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Children Born of the ISIL Conflict in Iraq

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Abstract:

In the aftermath of three years of armed conflict involving the Salafi jihadist militant group known as the Islamic State of Iraq and the Levant (ISIL), thousands of Iraqi children are undocumented and at risk of statelessness because they were born in ISIL captivity. These children are the products of both ISIL-perpetrated sexual violence as well as consensual intercourse with members of the jihadist group. Whether or not they are the products of gender-based violence, the children born in ISIL captivity lack valid civil status registration and documentation, rendering it difficult if not impossible for them to prove their nationality and citizenship—putting them at an increased risk of statelessness—and leaving them unable to access to healthcare, housing, education, and other basic services.

A majority of the media coverage and limited scholarly research on the children born of the ISIL conflict in Iraq focuses exclusively on children born of ISIL-perpetrated sexual violence. This paper aims to close the gap in existing academic literature by investigating the social, economic, and legal challenges for all children born of the ISIL conflict in Iraq, regardless of whether or not such children are the products of gender-based violence or consensual marriage and intercourse. Because birth registration is a basic right necessary for establishing nationality and citizenship, and is often crucial for the realization of other human rights, this paper focuses on the lack of access to civil status registration as one of the most urgent concerns for virtually all children born of the ISIL conflict in Iraq. To investigate this issue, this study applies a human rights framework to the following research question: What are the risks and consequences for the children born of the ISIL conflict in Iraq who lack birth registration and civil status documentation?

Key terms: Islamic State of Iraq and the Levant (ISIL), Islamic State of Iraq and Syria (ISIS), Islamic State (IS), Daesh, Iraq, children born of armed conflict, right to nationality, right to birth registration, civil identity documents, human rights, children’s rights, gender-based violence, gender-based discrimination, statelessness, internally displaced persons (IDPs)
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Chapter 1: Introduction

In the aftermath of three years of armed conflict involving the Salafi jihadist militant group known as the Islamic State of Iraq and the Levant (ISIL),\(^1\) thousands of Iraqi children are undocumented and at risk of statelessness because they were born in ISIL captivity. Many of these children are the products of ISIL-perpetrated sexual violence; since their invasion of the Sinjar region of Northern Iraq in 2014, ISIL fighters have perpetrated a systematic campaign of sexual violence, including sex slavery and forced marriage, against women and girls in Iraq.\(^2\) Rape and forced pregnancies are among the tools the terrorist group has used in an attempt to “secure the next generation of jihadists.”\(^3\) The children born of ISIL-perpetrated sexual violence have been the subject of much media coverage, and the Government of Iraq expressed its dedication to providing services, livelihood support, and reparations for children born of ISIL rape when signing a Joint Communiqué with the United Nations on Prevention and Response to Conflict-Related Sexual Violence in September 2016.\(^4\) However, hundreds if not thousands of

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\(^1\) The armed group has referred to itself as the “Islamic State” (IS). ISIL is also known as the “Islamic State of Iraq and Syria” (ISIS); the “Islamic State of Iraq and al-Sham” (ISIS); and “Daesh” (the Arabic acronymic equivalent of ISIL: “ad-Dawlah al-Islāmiyah fi ’l-Irāq wa-sh-Shām”). For a detailed discussion of the rise and fall of ISIL, see: Willem Theo Oosterveld and Willem Bloem, “The Rise and Fall of ISIS: From Evitability to Inevitability,” Volatility and Friction in the Age of Disintermediation: HCSS StratMon Annual Report (The Hague Centre for Strategic Studies., 2017), https://hcss.nl/sites/default/files/files/reports/The%20Rise%20and%20Fall%20of%20ISIS.pdf; Amnesty International, “The Condemned: Women and Children Isolated, Trapped and Exploited in Iraq” (Amnesty International, 2018), https://www.amnesty.org/download/Documents/MDE1481962018ENGLISH.PDF.

\(^2\) ISIL has targeted women and girls in religious minorities, particularly from the Yazidi, Turkmen Shia, Shabak, and Christian communities, as well as from the Sunni majority. For more information, see: United Nations Office of the SRSG on Sexual Violence in Conflict, “Three Years after ISIL’s Attacks on Sinjar, Iraq, United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict, Pramila Patten, Demands Justice and Support for the Victims [EN/AR/KU],” ReliefWeb, August 3, 2017, https://reliefweb.int/report/iraq/three-years-after-isil-s-attacks-sinjar-iraq-united-nations-special-representative.


\(^4\) United Nations Assistance Mission for Iraq (UNAMI) and United Nations Office for the High Commissioner for Human Rights (UNHCR), “‘Human Rights, Every Day, for All Iraqis’: Promotion and Protection of Rights of Victims of Sexual Violence Captured by ISIL/or in Areas Controlled by ISIL in Iraq” (United Nations, August 22,
the children born in ISIL-controlled territory are also the products of consensual marriage to or intercourse with ISIL fighters.

Whether or not the child was the product of consensual intercourse, children who were born in ISIL captivity either have no civil identity documentation, or have documents issued by ISIL. The terrorist group issued personal status documents in an attempt to establish themselves as a “fully functioning state” rather than simply a rebel group; however, the documents issued by the Islamic State are not accepted by any official governments. While the exact number of pregnancies and births in ISIL territory is unknown, in 2018, the New Yorker reported that tens of thousands of Iraqi children have birth certificates issued by ISIL. The existing laws and practices for birth registration and the provision of nationality in Iraq make it virtually impossible for Iraqi mothers to independently register the births of and confer nationality to their children that were born in areas under ISIL rule. Furthermore, a widespread desire to
collectively punish members of ISIL and its affiliates has created additional obstacles to registering the births of children born of the ISIL conflict in Iraq. Consequently, thousands of children who were born in ISIL captivity do not have access to valid birth registration and identity documentation, rendering it difficult if not impossible for them to prove their nationality and citizenship—putting them at an increased risk of statelessness—and leaving them unable to access to healthcare, housing, education, and other basic services. The rights to nationality and birth registration are fundamental rights enshrined in human rights law that are not being realized for thousands of children in Iraq.

Although the Iraqi State declared its intent to address the concerns for children born of ISIL rape in the country amid growing international concern, such children and their lack of valid civil status documentation are still not a priority for Iraqi authorities. Moreover, the Government of Iraq’s expressed dedication to supporting children of the ISIL conflict is limited to those born of conflict-related sexual violence, and not all children born of the ISIL conflict. Children who are the products of both consensual and nonconsensual intercourse with members of ISIL in Iraq face similar social, economic, and legal challenges. Issues of stigmatization and a lack of access to valid birth registration and the resulting risks are common to virtually all children born in ISIL captivity. Under the country’s 2005 Constitution, any child born to an Iraqi mother or father is an Iraqi citizen. Therefore any child born to an Iraqi parent—regardless of any ISIL affiliation—is an Iraqi national whose rights the Government must realize and protect.

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11 Houry, “Children of the Caliphate.”
13 Bulos, “Born under a Bad Sign.”
The shared struggles of all children born of the ISIL conflict in Iraq is an understudied, under-addressed issue impacting thousands of children and their families. This paper aims to close the gap in existing academic literature by investigating the social, economic, and legal challenges for children born of the ISIL conflict in Iraq, regardless of whether or not such children are the products of gender-based violence or consensual marriage and intercourse. Because birth registration is a basic right necessary for establishing nationality and citizenship, and is often crucial for the realization of other human rights, this paper focuses on the lack of access to civil status registration as one of the most urgent concerns for virtually all children born of the ISIL conflict in Iraq. To investigate this issue, this study applies a human rights framework to the following research question: What are the risks and consequences for the children born of the ISIL conflict in Iraq who lack birth registration and civil status documentation?

1.1 Problem statement

While there is extensive academic research on children born of war and the rights to nationality and birth registration, there is a lack of scholarly work that addresses the particular issues of the human rights of the children born of the ISIL conflict or the rights to nationality and birth registration in Iraq, specifically. First steps toward developing a body of academic literature on the issue of children born of the ISIL conflict in Iraq are the works of Sean Lees and Serri Mahmood.

Sean Lees presents the risk of statelessness for children born of ISIL-perpetrated sexual violence in Iraq by critically examining how discrimination against women in Iraqi nationality provisions has created obstacles for mothers trying to confer their Iraqi nationality to their children born of ISIL rape. Although “a plain reading of the Iraqi Constitution would indicate that the children born of rape survivors would automatically enjoy nationality,” Lees explains, in
practice, Iraqi mothers seeking to confer nationality to their children born of ISIL rape face “nearly insurmountable challenges” due to discrimination against women in civil status registration and documentation practices.15 Lees addresses how identity documents in Iraq are required to enjoy basic rights and services like education, health care, welfare assistance, and freedom of movement, meaning undocumented children in Iraq may be unable to access basic rights guaranteed by international human rights law.16 He examines this issue through a human rights and rule of law framework with the rationale that “stateless people derive their rights from being human and the rule of law is the instrument by which those rights are protected.”17 According to Lees, rule of law fosters solutions to statelessness because it “requires the development of legal frameworks that provide access to nationality, and ensure the protection of human rights of stateless persons.”18

When explaining the plight of women survivors of ISIL-perpetrated sexual violence, Lees addresses how Iraqi traditional values that stigmatize rape create challenges for the women affected.19 However, Lees does not directly address how the stigmas of sexual violence or perceived ties to ISIL create additional obstacles for Iraqi women seeking to apply for the nationality of their children born of ISIL rape. Moreover, Lees’s analysis focuses specifically on the children born of ISIL-perpetrated sexual violence, and does not address the children who are the products of consensual intercourse to ISIL fighters in Iraq.

Serri Mahmood’s research complements Lees’s groundwork by offering more thorough context for the social, economic, and legal obstacles faced by the children born of ISIL-

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16 Lees, 3–4.
17 Lees, 7.
18 Lees, 8.
19 Lees, 1.
perpetrated gender-based violence and their mothers in Iraq. Her discussion is grounded in academic literature on children born of wartime rape and historical cases that illustrate common challenges to such children. Mahmood also addresses the barriers mothers face when seeking to confer their Iraqi nationality to their children born of ISIL rape; however, she does not make the same nuanced distinction that such obstacles are primarily rooted in practices regarding nationality provisions rather than Iraqi laws. Her research does, however, provide a more thorough account of the stigmatization and discrimination that female survivors of ISIL rape in Iraq endure from their families and societies and the potential ramifications of such treatment. Nonetheless, Mahmood also does not directly examine how the stigmas of sexual violence or perceived ties to ISIL create additional obstacles for women seeking to confer their Iraqi nationality to their children born of ISIL rape. Furthermore, her research focuses exclusively on the children born of ISIL-perpetrated sexual violence and does not address children who are the products of consensual relations with ISIL fighters.

Lees’s and Mahmood’s work is part of a larger trend: a majority of the media coverage and limited scholarly research on children fathered by ISIL members in Iraq focuses specifically on children born of ISIL-perpetrated sexual violence, and does not address them together with the children born of consensual marriage to or intercourse with members of ISIL. While it can be argued that the context of their pregnancies and births render them into two distinct categories of children, this paper examines them together as one collective research subject: children born of the ISIL conflict in Iraq. The rationale behind this approach is that there are shared challenges regarding a lack of access to valid civil status registration and the consequences of the Iraqi public’s desire to collectively punish ISIL and its affiliates for all children born of the ISIL conflict in Iraq, whether or not they are the products of consensual marriage or intercourse.

The analysis in this paper will define “children born of the ISIL conflict” as children fathered by ISIL members, whether the pregnancy was the result of consensual relations or gender-based violence, such as rape, sexual slavery, forced marriage, and/or forced pregnancy. The term “consensual relations” in this paper denotes consensual marriage between a woman and a male member of ISIL and/or consensual intercourse between a woman and a male member of ISIL. Any references to “consensual marriages to ISIL members” in this paper include consensual marriages between women and men who joined ISIL either before or after getting married as well as marriages that were officiated by ISIL and are therefore deemed illegitimate by the Iraqi Government and other official governments. This paper defines “consent” using Janet Halley’s “positive consent”: “the internal state of mind of agreeing to something because one positively and unambiguously wants it,” not to be mistaken with “constrained consent,” or “the internal state of mind of agreeing to something because one perceives it as better than the realistic alternatives.”

1.2 Objectives

This paper contends that the lack of access to valid birth registration and documentation for children born of the ISIL conflict in Iraq is due to both (1) the gender-based discrimination in the existing Iraqi laws and practices regarding civil registration and the provision of nationality as well as (2) the stigmatization against ISIL and the Iraqi public’s desire to collectively punish anyone with perceived ties to the extremist group. The purpose of this paper is to investigate the

21 Janet Halley, “The Move to Affirmative Consent,” *Signs: Journal of Women in Culture and Society* 42, no. 1 (September 1, 2016): 257–79, https://doi.org/10.1086/686904. Cases where women and girls living in areas under ISIL rule married members of the jihadist group as a “strategic coping mechanism” to “survive the reality of an occupying terrorist group in her community” (e.g., to avoid “the certainty of gang rape or sex slavery” for single women) constitute constrained consent, and not positive consent. For more details on such cases, see Mahmood, “Challenges of Children Born by ISIS Rape in Iraq.”
social, economic, and legal risks for children born of the ISIL conflict in Iraq who lack birth registration and civil status documentation. In doing so, it will demonstrate the consequences of gender-based discrimination in Iraqi nationality provision and the widespread desire to collectively punish ISIL and its affiliates, as well as emphasize the urgency of the need to increase access to civil registration in Iraq. Understanding the desire for collective punishment of ISIL and its affiliates is essential to grasping the risks and challenges for the undocumented children born of the armed conflict in Iraq. Furthermore, because a child’s access to birth registration in Iraq is inherently dependent on the parents’ access to registration, assessing the barriers to civil registration and documentation for the parents of children born of the ISIL conflict in Iraq is also necessary. This paper focuses on the barriers that Iraqi mothers face when seeking to register the births of their children of the ISIL conflict.

1.3 Theoretical framework and methodology

International human rights and the rule of law provide a conceptual framework to address the risks and consequences for children born of the ISIL conflict who lack access to valid birth registration. The underlying concept of human rights law has two major components: human rights are inherently sacred; and because humans are sacred, there are certain things that should or should not be done to or for every human being. The corollary is that there are basic rights and freedoms to which all human beings are entitled simply on the basis of their humanity. To protect and promote such rights, treaties, customary international law, general principles, and soft law lay out legally binding obligations for governments to act in certain ways or to refrain from certain acts in peacetime and during armed conflict. During non-international armed conflict, such as the one occurring in Iraq,22 international human rights law is applied together

22 This thesis uses the definition of “armed conflict” established by the International Criminal Tribunal for the former Yugoslavia (ICTY), which declared that “an armed conflict exists whenever there is a resort to armed force
with international humanitarian law. Building off of Lees’s argument, the children born of the ISIL conflict in Iraq derive their rights from being human, and the rule of law is the instrument by which those rights are protected. Identifying the international human rights and humanitarian law relevant to the risks and challenges faced by the children born of the ISIL conflict in Iraq elucidates the problems at stake as well as the obligations that the Government of Iraq must respect.

To explore the risks and consequences for unregistered children born of the ISIL conflict in Iraq from a human rights and rule of law framework, this paper critically examines contemporary Iraqi legislation regarding civil status registration and the provision of nationality, and existing academic and legal literature on children born of armed conflict, the rights to nationality and birth registration, and children born of the ISIL conflict in Iraq. The analysis of this research also relies on data gathered from reputable reports and media coverage on children born of the ISIL conflict from Government and non-Government agencies and organizations and United Nations entities.

In the following chapter, this paper analyzes existing literature on children born of war to contextualize the stigmatization of the children born of the ongoing armed conflict in Iraq and offers an overview of the discrimination against Iraqi children and mothers with perceived ties to ISIL. Chapter 3 presents an examination of literature that addresses the rights to nationality and birth registration, a summary of the civil registration system in Iraq, the lack of access to civil registration and documentation for children born of the ISIL conflict in Iraq, and the Government...
of Iraq’s response to the issue. Chapter 4 identifies the major risks and challenges of the lack of access to valid birth registration for children born of the ISIL conflict in Iraq for both the undocumented individuals, as well as the Government of Iraq. Chapter 5 contextualizes these risks by applying domestic and international law. The paper concludes with a summary of the key aspects and consequences of the lack of access to birth registration for the children born of the ISIL conflict and general recommendations for the Government of Iraq.
Figure 1: A map of territory in Iraq and Syria that is currently or was formerly controlled by ISIL. Since declaring a caliphate in 2014, ISIL invaded and seized land across the two countries. In 2015, opposing forces began driving the militants out of the cities, and in 2017, ISIL retreated from Mosul and Raqqa, losing almost all of its territory.\(^{23}\)

Chapter 2:
Children born of armed conflict in Iraq

The stigmatization of an ISIL affiliation and the condemnation of extramarital intercourse—even in the context of sexual assault—are two key factors that have led to structural discrimination against children born of the ISIL conflict in Iraq and their mothers. This discrimination has contributed to the lack of access to valid birth registration for the children born of the conflict in Iraq. The ignominy of being associated with ISIL in Iraq can be understood through examining existing research and literature on children born of armed conflict in general.

According to the Convention on the Rights of the Child (CRC)—to which Iraq is a State Party—a “child” is “every human being below the age of eighteen years.”

24 Ingvill C. Mochmann and Sabine Lee define “children born of war” as children whose fathers are considered members of an enemy, allied, or peacekeeping force in the home location of the mother, whether the pregnancy is the result of a consensual relationship or sexual violence.

25 Although Mochmann and Lee focus on children born of war between States and do not explicitly address fighters deemed “terrorists,” the children of terrorists, such as ISIL fighters, can be considered “children born of war” due to the enemy status of their biological fathers during a period of armed conflict. Therefore, while there is a dearth of literature on the human rights concerns for children of combatants labeled as “terrorists,” the scholarship on children born of war can be applied to the case study of children of ISIL fighters in Iraq.

24 United Nations General Assembly, Convention on the Rights of the Child, Article 1. Iraqi legislation does not use the term “child,” however, Article 106 of the Civil Code No. 40 of 1951 states that the age of majority is 18 full years.

Children born of war are considered a “specific category of concern” within the field of children and armed conflict because they are at particular risk of infanticide, abandonment, abuse, neglect, discrimination, and social exclusion during and after the period of conflict as a direct result of their biological origins. These children are also particularly at risk because they become the “symbol of the trauma the nation as a whole” experienced and consequently, the society often neglects their needs. Due to their fathers’ status as the “enemy” or the “other,” children born of war are often raised in hostile environments where they are stigmatized and discriminated against. The World Health Organization has further recognized children born of wartime rape as particularly vulnerable to human rights abuses and developmental difficulties because of their biological origins.

2.1 Stigmatization of and discrimination against children born of the ISIL conflict in Iraq

Children born of the ISIL conflict in Iraq and their mothers face severe stigmas when attempting to reintegrate into society. Such stigma has contributed to their lack of access to valid civil status registration and documentation. The ignominy and discrimination associated with ISIL pregnancies are rooted in Iraqi cultural values, specifically those regarding chastity and fidelity. Virginity is associated with “purity and a character of honour.” Consequently, the loss of virginity as well as maternity out of wedlock are heavily stigmatized, whether or not either is the result of non-consensual intercourse. Maternity out of wedlock is further stigmatized when

27 Carpenter, 109–10.
it results from ISIL rape, and when the children are born, they are considered “children of the enemy” and “a dishonour that shames the larger tribal identity” by their own families and communities upon their return. Thus, not only do these children bear the cultural shame affiliated with extramarital intercourse, but such children also face the stigma of “guilt by association” with ISIL, and are often treated as members or extensions of ISIL, both by the terrorist group and by many members of their mothers’ communities. In addition to being associated with criminality, children fathered by ISIL members risk stigmatization by their communities and state actors because they are considered the products of “adultery” when their parents were not married or had marriage certificates issued by ISIL, which are considered illegitimate.

Nihad Barakat Shamo Alawsi, a young Yazidi woman, is one of many Iraqis who considers children born of ISIL-perpetrated rape as extensions of ISIL. Nihad was 15 years old when she was captured by ISIL fighters and forced into sex slavery, from which she was impregnated. In an interview with the Sydney Morning Herald, Nihad stated: “I thought I was carrying a small IS man.” She attempted, unsuccessfully, to self-induce a miscarriage. When she was liberated from ISIL captivity, she was forced to leave her child behind with his father, and later said: “He is part of me but he's something from those criminals and he represents those

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35 Ramy Aqel, 17 November 2017 Interview, Email Interview, November 17, 2017.
36 Bulos, “Born under a Bad Sign”; Houry, “Children of the Caliphate.”
37 Nihad’s case is not unique; children who were born in ISIL captivity were often seized by members of the jihadist group. See: Ekin Karasin, “Teenage Yazidi Sex Slave Tells How She Escaped from ISIS,” Daily Mail, March 9, 2016, http://www.dailymail.co.uk/news/article-3484687/Teenage-Yazidi-sex-slave-tells-escaped-ISIS-leave-child-behind.html.
criminals. Even if I managed to meet him again, my family and all the Yazidi people would say, ‘This is a member of ISIS.’”

To avoid the stigma and ostracization that comes with bearing a child out of wedlock, particularly one fathered by an ISIL member, abortion and abandonment are the perceived solutions for many Iraqis; however, abortion is illegal in Iraq and adoption is not common, resulting in unsafe, unlawful, and stigmatized alternatives. Mothers of ISIL-fathered children who were able to escape or were liberated from Islamic State captivity have also abandoned their children in unpopulated areas of camps for displaced persons, at orphanages, on the streets, or even in trash cans due to the stigma and discrimination.

Iraqi mothers who have been willing and able to keep their children born of the ISIL conflict have had to choose between returning to their families and communities or abandoning their children once liberated due to associated stigmas; many local and tribal authorities have issued orders prohibiting the return of children with perceived ties to ISIL and neighbors, and security forces have threatened violence against those who attempt to return with such children. One 60-year-old woman residing in a camp for internally displaced persons (IDPs) described the threats her family was receiving to Amnesty International:

“Our problem is that in our neighborhood, they don’t accept us. We were told that our tribe won’t allow any ‘IS women’ to return…[The tribe] threatened to kill us—even the children. We are just women and children. We can’t stay at the camps…We need to go back home.”

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41 CARE, “Rapid Gender Analysis.”
42 Taub, “Iraq’s Post-ISIS Campaign of Revenge.”
44 Amnesty International, 34.
Although many of the bans against so-called “ISIL families” prohibit the return of all women and children with perceived ties to ISIL, some allow the women to return, but not their children.\textsuperscript{45} Some allow women to return with their daughter, but not their sons, and others only allow the return of children younger than a specific age.\textsuperscript{46} In the district of Shirqat in the Salah al-Din governorate, for example, the tribal council “issued a law that if the women marries again, she can return, but only if she goes back without her children,” a social worker explained to Amnesty International. “They will send the children back to the IS member’s family.”\textsuperscript{47} A displaced woman from a village near Jedaa in the Ninewa governorate reported to Amnesty International that the tribal authorities of her village have banned the return of any sons in so-called “ISIL families”:

“Because I have sons, I can’t return to my village. If I had daughters, it would be easier. This is the decision of the tribal council, because they believe that any sons in ‘IS families’ will become IS fighters. My family promised me that, if the decision changes, they will allow us to return. But for now, we will stay in the camp.”\textsuperscript{48}

Another IDP explained to Amnesty International that the militia and tribe in her Jedaa village, near Mosul, have prohibited all children with suspected ISIL-affiliation from returning:

“Now the Hashd [Popular Mobilization Units\textsuperscript{49}] have destroyed my house and even my mother and brother have stopped coming to visit [in the camp]…They are under pressure from the tribe not to come…They want me to leave my children if I want to go back. How? What does that mean? Where am I supposed to put them? This is what happens to ‘IS wives’…they tear apart your family and then shame you like it’s your fault.”\textsuperscript{50}

Bans like these on the return of children in so-called “ISIL families” are resulting in pressure for women with perceived ties to ISIL to abandon their children and cases of family separation.\textsuperscript{51}

\textsuperscript{45} Amnesty International, 34–35.
\textsuperscript{46} Amnesty International, 35.
\textsuperscript{47} Amnesty International, 35.
\textsuperscript{48} Amnesty International, 35.
\textsuperscript{49} The Iraqi Popular Mobilization Units (PMU; al-Hashd al-Sha’abi in Arabic) is an official network of militias under the umbrella of Iraqi armed forces. The Iraqi government formed the PMU in 2014 to defend Iraqi cities and participate in counteroffensive against ISIL. The PMU was legalized in 2016.
\textsuperscript{50} Amnesty International, “The Condemned,” 35.
\textsuperscript{51} Amnesty International, 35.
Some women have left their children with extended family members, while others have been pressured or forced to abandon their children in IDP camps.52

The disgrace of being associated with ISIL has the potential to result in “lethal retaliation,” “honor” crimes, suicide, untreated diseases, and unsafe abortions.53 One Iraqi widow of an ISIL fighter told legal scholar Mara Revkin that her brother was a victim of a grenade attack in his home near Hawija as a direct consequence of their family’s ISIL affiliation.54 Another Iraqi woman who attempted to return to her home in Mosul after living in an IDP camp reported that her neighbor drove her away with the threat: “We have to kill the IS families—you are a disease to the community.”55 The increased threat of violence leaves many women and children with perceived ISIL ties feeling trapped in their IDP camps or wanting to stay in the camps indefinitely to avoid retaliation.56 The resulting isolation that women and their children born of the ISIL conflict face from their families and communities renders them particularly vulnerable to further social and economic disadvantages, including lack of access to basic healthcare, housing, education, and economic security.57 The stigmas and discrimination can also result in psychological damage on the mothers and the children.58

Safia59 is an Iraqi woman who has had to battle such stigmas. Her step brothers forced her to marry an ISIL fighter after the terrorist group invaded and overran their home province. Safia’s husband—who withheld their marriage certificate—performed “brutal sexual acts” on her

52 Amnesty International, 35.
57 Mahmood, “Challenges of Children Born by ISIS Rape in Iraq,” 3.
59 Her real name was concealed to protect her identity.
and impregnated her before accusing her of enemy espionage. Following his accusation, the Islamic State court issued Safia’s execution. However, to comply with Sharia law, which does not allow persecution of any form against a pregnant woman, the court postponed Safia’s execution due to her maternity. Safia was ordered to spend the remainder of her pregnancy in a local prison before her scheduled execution. Safia experienced severe forms of torture before escaping the prison and giving birth in a different location. Her extended family considers her dishonorable for her marriage to an ISIL member and threatened her life, causing her to flee from one IDP camp to another to avoid recognition upon her escape. She claimed to have met other mothers in the IDP camps who did not register their children or share their stories out of fear for their safety.  

The children born of the ISIL conflict have been particularly stigmatized among the Yazidis—an ethnoreligious minority in Iraq specifically targeted by ISIL. Historically, extramarital intercourse (including rape) was particularly condemned among the Yazidis, under whose religious law, sexual contact with non-Yazidis traditionally resulted in exile from the community, regardless of whether or not it was consensual. This was the result of Yazidi religious doctrine that dictates that both parents must be Yazidi in order for a child to be Yazidi. While this initially caused concern for Yazidi survivors of ISIL rape hoping to reintegrate into the community, religious authorities have challenged the traditional culture by publicly declaring that Yazidi survivors of ISIL rape should be welcomed back into society. However, the same understanding does not apply to the children of such ISIL rape; Yazidi

60 Story from Mahmood, “Challenges of Children Born by ISIS Rape in Iraq,” 22, 27.
spiritual leader Khurto Hajji Ismail, referred to as Baba Sheikh, declared: “The victims are our daughters and sisters, but it is unacceptable in our religion to allow the birth of any children if both parents are not Yazidis.”

Statements like this from religious and social leaders have encouraged the exclusion of children born of ISIL rape from the community. Further, statements condemning the birth of “non-Yazidi” children have led to some Yazidi women abandoning their children in IDP camps or at orphanages. Muntajab Ibraheem, an official at the Hamam Ali 1 refugee camp and director of the Iraqi Salvation Humanitarian Organization, told the New York Times about two Yazidi sisters, ages 20 and 26, who came to the IDP camp with three toddlers they had given birth to in ISIL captivity. The sisters refused to nurse the toddlers, who were products of ISIL-perpetrated sexual violence, so Ibraheem and camp officials reported filling out paperwork to place the children in the care of the State. Some Yazidi women who brought their children fathered by ISIL members to an orphanage run by the Ministry of Labor and Social Affairs explained to the Minister that they wanted to return to their community, but did not believe that their families or society would accept their children.

Sukaina Mohammad Ali Younis, an Iraqi Government official in charge of women’s and children’s issues in Mosul and the founder of an orphanage in the city, explained how many of the children in her orphanage are the abandoned children of ISIL fighters and the Yazidi women and girls they raped, or children forcibly taken from their biological parents and raised in ISIL.

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66 Callimachi, “Freed From ISIS, Yazidi Women Return in ‘Severe Shock.’”
67 Callimachi.
families. When discussing Yazidi women who want to return to their communities, Younis explained: “The mothers have no choice but to give up the children. If the woman is two or three months pregnant she has an abortion. If she is eight or nine months pregnant they take the baby away as soon as it is born.” Younis and aid workers have stated that some Yazidi (and Shiite Turkmen) families have threatened to kill the women if they return to their communities with children fathered by ISIL fighters. Moreover, under Iraqi laws, the children of rape may be seen as the products of “adultery,” giving their fathers the right to rear them. Iraqi law also dictates that a child’s religion is determined by their father’s, meaning that the rejection of children born of ISIL rape from the Yazidi community is perpetuated both by its religious authorities and by Iraqi law.

Mothers who are willing and able to keep their children born of the ISIL conflict in Iraq tend to reside with their children in IDP camps, the Organization of Women’s Freedom in Iraq’s (OWFI) or Government shelters, or with extended family members. As a result of the stigmas associated with ISIL-fathered children, these mothers often do not reveal that the children are products of rape, even to their families. Instead, the mothers frequently tell their families that the children were born of legitimate marriages to parents who are now deceased. To further

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70 Arraf, “Kidnapped, Abandoned Children Turn Up At Mosul Orphanage As ISIS Battle Ends.”

71 Arraf.

72 CARE, “Rapid Gender Analysis.”


74 Hussein, “Pregnant IS Rape Victims Face Challenges Upon Returning to Iraq.”

75 Aqel, 17 November 2017 Interview.

76 Aqel.

77 Aqel.
protect their offspring, the mothers often register such children under a different family member’s name.\textsuperscript{78}

The stigmas and challenges faced by children born of ISIL rape are also shared by those born of legal and/or consensual marriages between women of different backgrounds and ISIL members who have been imprisoned or killed.\textsuperscript{79} These children and their extended families face stigmatization and discrimination from society and law enforcement.\textsuperscript{80} The children are associated with criminality due to their fathers’ ISIL involvement and are consequently forced to undergo heightened security measures, including interrogation.\textsuperscript{81} These measures inhibit the mothers’ and children’s freedom of movement, hinder their ability to exercise basic rights, and exacerbate the stigmas they face.\textsuperscript{82}

\textit{Niqash}—a publication on politics, media, and culture in Iraq—tells the story of Nour Adel,\textsuperscript{83} a little Iraqi girl who was “persona non grata” in her own community at age one due to such stigmas. Nour is the daughter of a woman from central Iraq and a farmer from northern Iraq. Her parents were married in an Islamic State court shortly before her father left to fight for ISIL, never to be seen by Nour or her mother again. Because the couple was married in an Islamic State court, their marriage certificate is not recognized by the Iraqi Government, and Nour does not have any official documentation to prove that she is the child of her mother or the product of a legitimate marriage. Nour’s mother told \textit{Niqash} that her village has shunned her and her daughter, and that the locals describe the infant as one of the “children of the \textit{haram},” or “children of the terror.”\textsuperscript{84}

\begin{flushleft}
\textsuperscript{78} Aqel. \\
\textsuperscript{79} Aqel. \\
\textsuperscript{80} Aqel. \\
\textsuperscript{81} Aqel. \\
\textsuperscript{82} Ramy Aqel, 12 December 2017 Interview, Phone Interview, December 12, 2017. \\
\textsuperscript{83} Her real name was concealed to protect her identity. \\
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Chapter 3:
Rights to nationality and birth registration in Iraq

3.1 Rights to nationality and birth registration

One of the most significant concerns for the children born of the ISIL conflict is a lack of adequate birth registration and personal status documentation. Birth registration is a basic right necessary for establishing nationality and citizenship, often crucial for the realization of other human rights. Shuzhuo Li et al. define birth registration as “a permanent and official record of a child’s existence [and] the process by which a child’s birth is recorded by a particular government department.” Birth registration is related to, yet distinct from the provision of documents of proof of birth (i.e., birth certificates). The foundational right to birth registration is vital for a child’s ability to prove their existence before the law and consequently has great bearing on the child’s survival, protection, participation, and development within the society.

This fundamental right is set forth in Article 7(1) of the Convention on the Rights of the Child. The treaty guarantees every child’s right to be “registered immediately after birth” and the “right to acquire a nationality.” The right to be recognized as a person before the law is enshrined in, inter alia, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which Iraq is a State Party. The status of having legal personhood is known as “legal identity.”

86 Li, Zhang, and Feldman, 298.
89 United Nations General Assembly, Convention on the Rights of the Child, Article 7(1).
Economic and Social Commission for Asia and the Pacific defines “legal identity” as “the recognition of a person’s existence before the law, facilitating the realization of specific rights and corresponding duties” that is “evidenced by legal documentation…produced on the basis of the registration of vital events.” R.C. Chhangani and Maxwell Gidado explain how a child’s personal identity (i.e., name), family identity (i.e., family relations), and national identity (i.e., citizenship) comprise their legal identity. There is disagreement over whether or not the right to legal identity exists for unregistered and undocumented individuals. Mia Harbitz, an expert in public registries, maintains that legal identity is a civil status that is only “obtained through birth registration and civil identification that recognizes the individual as a subject of law and protection of the state.” Legal strategist Caroline Vandenabeele, on the other hand, argues that a person’s legal identity is a primary right that “exists regardless of whether one has a document to prove this citizenship.”

Although the right to legal personhood is a fundamental human right, pragmatically, those without birth registration and civil documentation are likely to find it difficult to lay claim to their rights without legal visibility. The United Nations Human Rights Council recognizes the practical importance of birth registration—including “late birth registration” and “the provision of documents of proof of birth”—as “means for providing an official record of the

95 Mia Harbitz and Juan Carlos Benitez Molina, Civil Registration and Identification Glossary (Inter-American Development Bank, 2010), 64.
97 van Waas, “The Right to a Legal Identity or the Right to a Legal ID?”
existence of a person and the recognition of a that individual as a person before the law.”

Chhangani and Gidado emphasize the significance of a child’s legal identity because without it, a child is a “non-legal person at the national level and stateless at the international level.” The Human Rights Council further expresses concern that “unregistered individuals have limited or no access to services and enjoyment of all the rights to which they are entitled” and that “persons without birth registration are vulnerable to a lack of protection.”

Although international law and theories argue for the fundamental necessity of a person’s legal identity and the universal right to it, a lack of civil identity documentation to establish one’s legal identity is a significant barrier for many, including the children born in ISIL captivity in Iraq and many children born of armed conflict in general. As Article 7(2) of the CRC requires that State Parties ensure the implementation of the right to legal identity to prevent statelessness, the obligation to register every child immediately after their birth falls on not only the child’s guardian, but also their government. Therefore, as a State Party to the CRC, the Government of Iraq is obligated to improve its registration process to ensure the realization of the right to legal identity for all children, including those born of the ISIL conflict.

Birth certificates and birth registration are important to both individuals as well as their governments. In his review of the birth registration process in India, Inder Jit Singh outlines the importance of a birth certificate for the individual by describing it as “the most visible evidence of government’s legal recognition of a child” with which the child can access a variety of

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100 United Nations Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law (A/HRC/RES/22/7).
Thus, registering a person’s birth is crucial for promoting and defending their human rights and safeguarding them from violence, exploitation, and abuse.\textsuperscript{104} For the State, birth registration is fundamental to the “rational operation of a humane government in the modern world,” according to UNICEF.\textsuperscript{105} The practice allows governments to maintain vital statistics which may in turn be used for effectively designing and implementing programs and policies intended to fulfill their duties under international law and to achieve internationally agreed upon goals.\textsuperscript{106} More specifically, the development of vital statistics can be used for public health programs, post-natal care of mothers and children, vaccination and immunization programs, and calculating birth and death rates.\textsuperscript{107} Iraqi authorities have acknowledged the necessity of developing and maintaining a legitimate civil registration system in the country: In his 1980 technical paper for the International Institute for Vital Registration and Statistics, then-Director of Vital and Health Statistics under the Ministry of Health, Adnan S. Al-Rabies, explains how through their “continuous, permanent, and legal record of vital events (births and deaths),” civil registration systems provide value in legal and evidentiary processes, in planning and executing public health programs, and in socio-economic and demographic planning.\textsuperscript{108} Improving birth

\textsuperscript{103} Singh, “Improving Birth Registrations,” 2436.

\textsuperscript{104} United Nations Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law (A/HRC/RES/22/7).


\textsuperscript{106} United Nations Human Rights Council. Such goals include the Sustainable Development Goals (SDGs), which the United Nations describes as “the blueprint to achieve a better and more sustainable future for all.” Two SDG targets and related indicators include improving civil registration and vital statistics: target 16.9 to provide legal identity for all, including birth registration, to promote just, peaceful, and inclusive societies, and target 17.19 to build on existing initiatives to develop measurements of progress on sustainable development and support statistical capacity-building in developing countries to revitalize the global partnership for sustainable development--the indicator for which is the proportion of countries that have achieved 100 percent birth registration and 80 percent death registration. For more information, see: United Nations, “The Sustainable Development Agenda,” United Nations Sustainable Development, 2017, https://www.un.org/sustainabledevelopment/sustainable-development/; Carla AbouZahr et al., “How Can We Accelerate Progress on Civil Registration and Vital Statistics?,” \textit{Bulletin of the World Health Organization} 96, no. 4 (April 2018): 226, https://doi.org/10.2471/BLT.18.211086.

\textsuperscript{107} Singh, “Improving Birth Registrations,” 2436; UNICEF, “UNICEF on Deficient Birth Registration in Developing Countries,” 662.

registration rates in Iraq would therefore be beneficial to not only the individuals receiving the resulting certification, but also for the State.

Vandenabeele catalogs which identity documents are legally required for accessing certain benefits and opportunities in Nepal to conclude that the citizenship certificate is the “most essential legal-identity document for accessing benefits and opportunities.” ¹⁰⁹ This approach can be applied to the case study in Iraq; inventoring the benefits and opportunities that require specific identity documents will reveal which document is the most essential and therefore the most important to focus on in the process of policy reform. In her analysis of laws on child abandonment, Katherine O’Donovan establishes the importance of determining whether or not such policies are concerned with the rights of the mother or the rights of the child. A similar approach can also be implemented in the examination of Iraqi laws; determining whose rights are prioritized and whose are neglected when analyzing Iraqi birth registration laws and processes will be important for approaching policy reform because it will highlight gaps in protection.

As in many countries, birth registration laws in Iraq favor those who are the products of legally recognized marriages. Kusum explains how children in general whose parents’ relationships are not socially or legally validated are particularly vulnerable to social and legal discrimination. ¹¹⁰ Such children are deemed “illegitimate” or “bastard” and function as “living symbol[s] of social irregularity and undesirable evidence of contramoral forces.” ¹¹¹ As reflected in its late birth registration requirements, Iraq is one of many societies around the world where procreation exclusively within legally recognized relationships is the only accepted norm. Consequently, children born outside of legal wedlock are discriminated against. The nearly-universal stigmatization of and discrimination against children born outside of wedlock, Kusum

¹⁰⁹ Vandenabeele, “To Register or Not to Register?,” 311–12.
¹¹¹ Kusum, 296.
argues, is perpetuated because treating such children as equally legitimate as children born within wedlock would threaten the peace and stability of marriage;\textsuperscript{112} equal treatment of children born within and outside of wedlock would signify to the society that extramarital relations are acceptable, thus undermining the sanctity of marriage and the legal or social definitions of a legitimate family. Identifying the social and legal definitions of legitimate marriages and births in Iraq is important for understanding the underlying motivations for its problematic legislation regarding birth registration and certification.

\textbf{3.2 Civil identification documents in Iraq}

\textit{3.2.1 Civil registration system}

Adnan S. Al-Rabie, the former Director of Vital and Health Statistics under the Ministry of Health in Iraq, defines civil registration as the Government’s system of “continuous, permanent, and compulsory recording of the occurrence and the characteristics of vital events, primarily for their value as legal documents as provided by law and secondarily, for their usefulness as a source of statistics for health planning and socio-economic development.”\textsuperscript{113} The civil registration system in Iraq is a “family-based manual population register.”\textsuperscript{114} All vital events, such as births, deaths, marriages, and divorces, are linked to the family and recorded in family registers\textsuperscript{115} at the local population registration offices (Civil Status Offices\textsuperscript{116}), operating

\textsuperscript{112} Kusum, 297.
\textsuperscript{113} Al-Rabie, “Registration of Vital Events in Iraq,” 1.
\textsuperscript{115} Also referred to as “family books”; “family censuses”; and “family registries” in English.
\textsuperscript{116} Also referred to as the “Civil Status Affairs Directorate”; the “Civil Status Departments”; “Civil Status Affairs Offices”; and “Civil Registration Offices” in English.
under the General Directorate for Nationality in the Ministry of Interior. The issuance of key civil identity documents is based on information recorded in the family register.

3.2.2 Birth certificates

The legal registration of births and deaths in Iraq is required by Law No. 30 of 1947, and regulated by the Registration of Births and Deaths Law No. 148 of 1971. A birth that is not attended by a doctor, midwife, or nurse licensed in obstetrics must be registered within 15 days if the child was born inside Erbil, Dohuk, or Suleymaniyah City, within 30 days if born in a city outside of the Kurdistan Region, or within 45 days if born in a rural area outside of Kurdistan or part of Kurdistan not in the aforementioned cities. The Government of Iraq requires parents who wish to register the births of their children who were not delivered by a doctor, midwife, or nurse certified in obstetrics to provide consent by both parents, proof of nationality and marriage of both parents, and two eyewitnesses to the birth of the child. Registering the birth of a child after the deadline also requires one of the parents to obtain a court order in person then deliver the court order to the Civil Status Office in the same province in which they are registered.
The parents might also be required to pay a fine if the deadline is exceeded. The *sijil* (family record) number, *sahifa* (family page) number, and *daaira* (local civil registration office) are copied onto the child’s birth certificate based on the parents’ identity documents.

### 3.2.3 National identity cards

A birth certificate is then needed to obtain a national identity card known as the “Civil Status Identity Card” (CSID). All Iraqi citizens must have a national identity card. The card must contain the following:

1. First name
2. Surname
3. Name of father and paternal grandfather
4. Name of mother and maternal grandmother
5. Gender
6. Date of birth in digits and letters
7. Birthplace
8. Marital Status

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123 Landinfo, “Travel Documents and Other Identity Documents (2016),” 27.
124 Bah, “The Iraqi Civil Registration System and the Test of Political Upheaval,” 112.
125 Landinfo, “Travel Documents and Other Identity Documents (2016),” 17–18. The CSID is called *Bitaka shakhsiyeh* or *Bitaqa hawwiya* in Arabic. In 2013, the Government of Iraq announced a project to issue new national identity cards and implement an electronic public register, transitioning from a paper-based public register to an electronic and biometric system in which every Iraqi citizen has their own personal registration number. In addition to replacing the CSID, the new identity card replaces the Iraqi Nationality Certificate (INC), Public Distribution System (PDS) card, and residence card. The new system is designed to have increased security features. The project was launched in 2015 and is overseen by the Directorate for National ID Cards—a new directorate created under the Ministry of Interior. The main server of the new system is in Baghdad, however, the new cards are issued by the same Civil Status Offices as the old CSIDs. The new system has been implemented in several districts; however, the old CSID is still being issued outside of larger cities. Iraq is expected to implement the new system across the whole country within five years. Because this new system is still being implemented, this paper does not focus on issues regarding the new national identity card or electronic register. For more information, see: Landinfo, “Irak: Innføring Av Nytt Nasjonalt ID-Kort Og Digitalisering Av Folkeregisteret (Iraq: Introduction of a New National ID Card and Digitalisation of the National Register),” February 16, 2017, https://landinfo.no/asset/3503/1/3503_1.pdf, cited and translated to English in Immigration and Refugee Board of Canada, “Iraq: Requirements and Procedures to Obtain One of the New National Identity Cards, (2014-2017)” (Immigration and Refugee Board of Canada, August 23, 2017), https://www.refworld.org/docid/5aa914a14.html; Landinfo, “Kurdistan Region of Iraq (KRI): Report on Issuance of the New ID Card” (The Danish Immigration Service Ministry of Immigration and Integration, November 2018), https://landinfo.no/wp-content/uploads/2018/11/KRI-Report-on-issuance-of-the-new-ID-card-UdA%CEA6ndingestylesen-Landinfo-November-2018.pdf.
9. Name of spouse  
10. Religious affiliation  
11. Signature of authorized representative  
12. Signature of issuer  
13. Full name of issuer  
14. Date of issue  

In addition to the child’s birth certificate, to acquire a CSID for their child, the parents must submit an application form signed by the head of the household, a guardian of the child, or a lawyer; provide two passport photos of the child;\textsuperscript{128} and present the national identity card of a close relative to the child, such as their father or grandfather.\textsuperscript{129} CSIDs are issued by the Civil Status Offices.\textsuperscript{130} A parent must obtain a CSID for their child in the same district where they are registered.\textsuperscript{131} Since ISIL seized areas of Ninewa and Anbar in 2014, the Government of Iraq has opened Alternative Civil Status Offices\textsuperscript{132} (See Section 3.4 for more information on the alternative offices).  

The national identity card is considered the most important personal status document in Iraq because it is used for all contact with public authorities, and is required for accessing healthcare, social welfare services, and education, for voting, for receiving pensions, and for selling and purchasing homes and cars.\textsuperscript{133} A national identity card is additionally needed when applying for other official documents, such as an Iraqi Nationality Certificate (INC), a passport, a driver’s license, and a Public Distribution System (PDS) card—a card needed to obtain food

\textsuperscript{128} Passport photos are not required for children 2 years old or younger. See Landinfo, “Iraq: Travel Documents and Other Identity Documents (2016),” 18.  
\textsuperscript{129} Landinfo, “Travel Documents and Other Identity Documents (2016),” 18.  
\textsuperscript{130} Landinfo, 16–18.  
\textsuperscript{131} Landinfo, 18.  
\textsuperscript{132} Landinfo, 18.  
\textsuperscript{133} Landinfo, 17; United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), AAH (Iraqi Kurds - internal relocation) [2018] UKUT 212 (IAC) (United Kingdom Upper Tribunal (Immigration and Asylum Chamber) June 26, 2018).
In addition to the CSID, the INC\textsuperscript{135} is one of the main identity documents in Iraq as it functions as proof of the holder’s Iraqi nationality, providing the basis for asserting citizenship.\textsuperscript{136} The right to obtain citizenship in Iraq is regulated under the Nationality Law No. 26 of 2006.\textsuperscript{137} INCs are issued to all Iraqis by the General Directorate for Nationality under the Ministry of Interior on the basis of application.\textsuperscript{138} The document may be required when applying for a passport, a birth certificate for one’s own children, marriage certificates, and death certificates.\textsuperscript{139} The INC is also necessary when applying for work in the public sector, accessing education, and using other public services.\textsuperscript{140} Because obtaining an INC, passport, driver’s license, and PDS card all require a national identity card, which in turn requires a birth certificate, unregistered children will not be able to obtain such documents.

### 3.3 Registration and documentation for children of the ISIL conflict in Iraq

Children born under ISIL captivity face the issue of lacking valid identity documentation. Whether or not the child was the product of consensual intercourse, children born in ISIL-controlled territory either have no documentation, or have documents issued by ISIL.\textsuperscript{141} The terrorist group issued documents, such as marriage licenses, birth certificates, and death certificates in an attempt to establish themselves as a “fully functioning state” rather than simply

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\textsuperscript{134} Landinfo, “Travel Documents and Other Identity Documents (2016),” 17; United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), \textit{AAH (Iraqi Kurds - internal relocation)} at 12.  
\textsuperscript{135} The INC is called \textit{shahadat jinsiyya} in Arabic.  
\textsuperscript{136} United Kingdom: Home Office, “Internal Relocation, Civil Documentation and Returns (Version 8.0),” 30; United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), \textit{AAH (Iraqi Kurds - internal relocation)} at 15.  
\textsuperscript{140} Landinfo, “Travel Documents and Other Identity Documents (2016),” 24.  
\textsuperscript{141} United Nations Assistance Mission for Iraq (UNAMI) and United Nations Office for the High Commissioner for Human Rights (UNHCR), ““Human Rights, Every Day, for All Iraqis,”” 13.
a rebel group\textsuperscript{142} (See \textit{Figure 2}). However, the documents issued by the Islamic State are not accepted by the Government of Iraq, the Kurdistan Regional Government,\textsuperscript{143} or other governments.\textsuperscript{144} Based on interviews with 56 IDPs in Iraq, the Minority Rights Group International reports that Iraqi public officers and Government administrators do not appear to have a standardized registration system or document application requirements for IDPs without civil identity documents.\textsuperscript{145} Moreover, interviewees reported encountering challenges with “complicated registration procedures,” “poor registration systems,” and “corruption within public institutions.”\textsuperscript{146} Obtaining legal documentation is particularly difficult for displaced women who lack transportation, money, and spare time.\textsuperscript{147} Even if the Government of Iraq were to begin to accept documents issued by ISIL, the stigma and danger associated with ISIL marriages and pregnancies would prevent many women from using such documents to verify their marriages and/or their children’s births.\textsuperscript{148}

\textsuperscript{142} Bulos, “Born under a Bad Sign”; Wanless, “Born under ISIS.”
\textsuperscript{143} Bulos, “Born under a Bad Sign.”
\textsuperscript{144} Houry, “Children of the Caliphate.”
\textsuperscript{145} Ahmed Hassin et al., \textit{Humanitarian Challenges in Iraq’s Displacement Crisis}, 2016, 10.
\textsuperscript{146} Hassin et al., 10.
\textsuperscript{148} Mahmood, “Challenges of Children Born by ISIS Rape in Iraq,” 27.
To retroactively obtain birth certificates for children born without documentation, the Government requires both parents to provide proof of their marital status as well as two witnesses to confirm the birth of the child. This prerequisite is virtually impossible to meet when the pregnancy was the result of ISIL-perpetrated rape, either parent is deceased or missing, and/or the identity of the father is unknown. The current legal framework does not provide adequate options for the registration of children born out of wedlock, including those born of

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**Figure 2:** A birth certificate issued by ISIL. This birth certificate will not be recognized by any official governments, including the Government of Iraq.

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extramarital rape. The International Organization told Landinfo in a 2018 interview that it will take the Iraqi courts several years to give such children a legal status in Iraq. Furthermore, children born of ISIL-officiated marriages that are not recognized by the Iraqi Government or Kurdistan Regional Government are considered children born out of wedlock. A woman whose husband has been detained, killed, or is missing cannot obtain new or replacement civil identity documents for herself or her children without filing a missing person’s report for her husband or providing a valid death certificate. According to Christopher Holt of the International Rescue Committee, “[m]ost women chose not to do this, due to the risks to their own safety which they believe will result from acknowledging in public or in court that they are or were married to an ISIS member.” Moreover, death certificates issued by ISIL are not recognized by the Iraqi Government and therefore do not provide sufficient basis for a single mother to independently register the birth of her children.

Mothers coming out of ISIL captivity face further challenges when seeking to register their children because many of them lack identification or personal status documents themselves; IDPs reported to the Minority Rights Group International that ISIL forced its captives to surrender all identity documents, making it difficult or impossible for some mothers who escaped or were liberated to register their newly born children when the public offices required updated records of the parents in order to do so. Other IDPs who did not lose their documents to ISIL are nonetheless forced by security actors to leave their identity documents in their IDP camps.

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151 Landinfo, “Notes on an Interview with the International Organization, Erbil Coordination Office (Erbil, 26 April 2018),” in Northern Iraq: Security Situation and the Situation for Internally Displaced Persons (IDPs) in the Disputed Areas, Incl. Possibility to Enter and Access the Kurdistan Region of Iraq (KRI) (The Danish Immigration Service Ministry of Immigration and Integration, 2018), 102–3.
152 Landinfo, 102–3.
154 Revkin, 20–21.
155 Bulos, “Born under a Bad Sign.”
156 Hassin et al., Humanitarian Challenges in Iraq’s Displacement Crisis, 10.
when attempting to leave—even for medical treatment—to ensure their return. Mobile magistrate Khalid al-Shimari told IRIN that tens of thousands of Iraqis no longer have civil status documents like birth certificates and national identity cards due to the ISIL conflict. Nearly every family who lived in ISIL-controlled territory between 2014 and 2017 has at least one person missing one or more civil status documents, reports the Norwegian Refugee Council. According to Dr. Rebwar Fatah, an expert witness in AAH v The Secretary of State for the Home Department before the United Kingdom Upper Tribunal (Immigration and Asylum Chamber), 1.5 million Iraqis in Mosul alone would need their civil status records updated. IDPs seeking to replace their identity documents are required to obtain the re-issued documents from their area of origin, creating further obstacles for those lacking valid civil status documents. For many IDPs, it would be virtually impossible to pass through security checkpoints when returning to their area of origin without their identity documents. This prevents many mothers of children born in ISIL captivity from obtaining the necessary documents to register the births of their children.

Single mothers in Iraq whose identity documents were destroyed and/or issued by ISIL face additional barriers to obtaining legal documents due to gendered restrictions. Although a father in Iraq can apply for citizenship on behalf his child without the consent of the child’s mother, a mother cannot apply for citizenship for her child without the consent of the child’s

157 Human Rights Watch, “Families of Alleged ISIS Members Denied IDs.”
160 United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), AAH (Iraqi Kurds - internal relocation) at 14.
161 Landinfo, “Notes on an Interview with an International Humanitarian NGO (24 April 2018),” in Northern Iraq: Security Situation and the Situation for Internally Displaced Persons (IDPs) in the Disputed Areas, Incl. Possibility to Enter and Access the Kurdistan Region of Iraq (KRI) (The Danish Immigration Service Ministry of Immigration and Integration, 2018), 55.
162 Landinfo, 55.
father.\textsuperscript{163} In an interview with the Minority Rights Group International, one IDP from Baghdad expressed the difficulty of going through the registration process as a woman: “For me, it is so difficult. Being a woman, I cannot get things done by myself.”\textsuperscript{164} Some Iraqi mothers of children born in ISIL captivity have been able to circumvent the legal requirement for paternal consent by bringing another male family member, such as a brother or father, to authorize their request for civil registration and documentation for themselves and their children. Another IDP in Baghdad explains how she was only able to make changes to her national ID card with the support of her brother-in-law, echoing the impossibility of navigating the paternal Iraqi civil registration systems without a man:

“My brother-in-law went to the citizenship department in Amiriayt al Fallujah and renewed my ID a month ago. I had to renew it to change my marital status from ‘married’ to ‘widowed.’ We cannot get any official documents issued in Baghdad. I would never have been able to do it without my brother’s personal intervention.”\textsuperscript{165}

Without updated personal status documents of her own, a mother in Iraq cannot register the birth of her child. The registration of children born of the ISIL conflict in Iraq is currently disproportionately dependent on male authorization, creating significant obstacles for single mothers.

The discrimination against women in Iraqi registration procedures not only limits women trying to obtain or update their own documents, but also poses challenges for women trying to register their children born in ISIL captivity. Article 18 of the 2005 Iraqi Constitution declares that “[a]n Iraqi is any person born to an Iraqi father or mother,” and that “Iraqi nationality is a right of every Iraqi and is the basis of his citizenship.”\textsuperscript{166} Therefore an Iraqi woman should be

\textsuperscript{163} Landinfo, “Travel Documents and Other Identity Documents (2016),” 25.
\textsuperscript{164} Hassin et al., Humanitarian Challenges in Iraq’s Displacement Crisis, 10.
\textsuperscript{165} Hassin et al., 10.
\textsuperscript{166} Government of Iraq, Constitution of the Republic of Iraq, Article 18; Washington Post, “Full Text of Iraqi Constitution,” Washington Post, October 12, 2005, Article 18(1), http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html. Pursuant to Article 3(b) of the Iraqi Nationality Act No. 26 of 2006, a person shall also be considered Iraqi if they are “born in Iraq to unknown parents.”
able to confer citizenship to her child. However, the Government of Iraq requires mothers who wish to register the births of their children who were not delivered by a doctor, midwife, or nurse certified in obstetrics to provide consent by both parents, proof of nationality and marriage of both parents, and two eyewitnesses to the birth of the child. Without verification of paternity, a child is categorized as “an abandoned child,” and can be denied Iraqi citizenship.

An IDP in Baghdad told the Minority Rights Group International: “I applied for a citizenship certificate for my daughter but I was told the application couldn’t be processed without her father’s citizenship certificate. Her father has passed away and I do not have his documents.” Another IDP in Tikrit told Human Rights Watch that her husband joined ISIL and was killed during the conflict. “My husband is dead, but in order to get my son a birth certificate, I need [to] present [my husband’s] death certificate,” she said. “I just can’t do any of that, I told the judge. All he said was, ‘It’s not in my hands.’ I’m scared my son will never be able to go to school, and I just don’t know what will happen to us.” Many mothers of children born in ISIL-controlled areas in Iraq share the struggles of these IDPs because the men who impregnated them are deceased and either have no death certificate or only have a death certificate issued by ISIL, which will not be accepted by any official governments. Some women whose children are fathered by dead or missing ISIL fighters have been too afraid to give the father’s name at the hospital, even when giving birth in a government-controlled area. To avoid the stigmatization and discrimination that comes with being associated with ISIL, these women withhold the biological father’s name when giving birth.

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168 Hassan-al-Jibouri, “Sins of the Father.”
169 Hassin et al., Humanitarian Challenges in Iraq’s Displacement Crisis, 11.
170 Human Rights Watch, “Families of Alleged ISIS Members Denied IDs.”
171 Human Rights Watch.
172 Human Rights Watch.
173 Human Rights Watch.
Iraq requires providing the biological father’s identity in order to register the birth of a newborn, the consequence is that such mothers are unable to register the births of their children and obtain civil identity documents for them.\textsuperscript{174} With the acquisition of valid identity and personal status documents evidently dependent on paternal documentation, the current registration policies and practices in Iraq render it difficult if not impossible for most mothers with children born of the ISIL conflict to register and obtain valid identity documents for their children.

Iraqi families with perceived connections to ISIL have faced additional obstacles to registering their children born of the ISIL conflict because Iraqi security forces and local authorities have been systematically blocking access to obtaining, replacing, or renewing civil identity documents for IDPs with suspected ISIL ties.\textsuperscript{175} An international humanitarian worker told Amnesty International:

“\textquote{It takes a regular IDP family two to four weeks to get new documents, and to close the case…When it’s an ‘IS family,’ the documents may never be reissued. They are invited to the courts just like other families, but then they face some kind of obstacle. There will be a spelling mistake, or they will be missing some essential information. For other families, they don’t care about these things, but for an ‘IS family,’ it means that issuing their documents is delayed, often indefinitely…The authorities will have no problem saying ‘no’ to these families.}”\textsuperscript{176}

Iraqi security officers are also routinely denying the security clearances needed to obtain birth certificates, identity documents, and other essential documents to persons suspected of having ties to ISIL.\textsuperscript{177} For most of the women and children who are being denied security clearance in Iraq, security officers are rejecting their clearance on the basis of perceived relationships with ISIL members rather than on individual security determinations.\textsuperscript{178}

\textsuperscript{174} Human Rights Watch.
\textsuperscript{175} Amnesty International, \textquote{The Condemned,} 22.
\textsuperscript{176} Amnesty International, 23.
\textsuperscript{177} Human Rights Watch, \textquote{Families of Alleged ISIS Members Denied IDs.}
\textsuperscript{178} Human Rights Watch.
Women and children seen as ISIL affiliates are further prevented from obtaining valid personal status documents because security actors in the Civil Status Directorate offices and in the courts have been routinely harassing lawyers of so-called “IS families.”¹⁷⁹ One international aid worker told Amnesty International:

“When we started doing legal representation [of “IS families”], our lawyers would get abused and harassed. They would be told that, by doing this, they themselves were IS supporters...After being harassed, many decide it’s not worth it. We have had lawyers quit with 20 open cases after getting threats.”¹⁸⁰

Another international aid worker told Amnesty International that “[l]awyers are being told, ‘Don’t come to the court with this kind of case again,’” and that some Civil Status Directorate offices are limiting the number of cases that non-governmental organizations (NGOs) can file each month.¹⁸¹ Local attorneys are being harassed, as well: one Iraqi lawyer told Amnesty International that when he requested a file for a family with suspected ties to ISIL at a Civil Status Directorate office, “[the staff members’] faces would change, and they would say, ‘What, you are working for the ‘IS families?’”¹⁸² As a consequence of the harassment, lawyers are less willing to assist individuals with perceived ties to ISIL seeking valid civil status registration and documentation, including children.¹⁸³

Knowing the treatment of so-called “IS families” by Iraqi authorities, many families with perceived ISIL often do not make any attempts to obtain new or replacement civil status documents for themselves and their children.¹⁸⁴ Security forces and camp authorities also prohibit many IDPs from leaving their camps and/or have confiscated IDPs’ identity documents, making it impossible for many IDP families to obtain or replace civil status documents for

¹⁸⁰ Amnesty International, 23.
¹⁸¹ Amnesty International, 23.
¹⁸² Amnesty International, 23.
¹⁸³ Human Rights Watch, “Families of Alleged ISIS Members Denied IDs.”
themselves and their children born of the ISIL conflict.\textsuperscript{185} Ultimately, the barriers to accessing civil status registration for children born of the conflict and their mothers are not limited to official Iraqi laws, policies, and practices; their ability to obtain valid personal status documents is also hindered by the stigma and discrimination that comes with being associated with ISIL.

3.4 Government response to the children born of the ISIL conflict in Iraq

The Government of Iraq expressed its dedication to combating the issue of children born of ISIL rape when signing a Joint Communiqué with the United Nations, through the Office of the Special Representative of the Secretary General for Sexual Violence in Conflict, on Prevention and Response to Conflict-Related Sexual Violence in September 2016. The Communiqué is an agreement of collaboration between the United Nations and the Government of Iraq to address critical issues regarding conflict-related sexual violence in Iraq. “[E]nsuring the provision of services, livelihood support and reparations for survivors and children born of rape” is one of the six expressed priority areas.\textsuperscript{186} However, issues regarding children born of ISIL rape and their lack of documentation are still not a priority for all Iraqi authorities; in an interview with the \textit{Los Angeles Times} in March 2017, Judge Motaz Azem Mohammad, the head of Mosul’s appeals court, stated: “New marriages and new babies, this is not the issue. Our biggest problem is the loss of existing records.”\textsuperscript{187} Moreover, while the Government of Iraq’s expressed dedication to supporting children born of conflict-related sexual violence is a step in the right direction, the Government needs to take action to not only protect children born of ISIL

\textsuperscript{185} Landinfo, “Notes on an Interview with Belkis Wille, Human Rights Watch (Skype Meeting, 19 April 2018),” in \textit{Northern Iraq: Security Situation and the Situation for Internally Displaced Persons (IDPs) in the Displaced Areas, Incl. Possibility to Enter and Access the Kurdistan Region of Iraq (KRI)} (The Danish Immigration Service Ministry of Immigration and Integration, 2018), 93.

\textsuperscript{186} United Nations Assistance Mission for Iraq (UNAMI) and United Nations Office for the High Commissioner for Human Rights (UNHCR), “‘Human Rights, Every Day, for All Iraqis,’” 6.

\textsuperscript{187} Bulos, “Born under a Bad Sign.”
rape, but all children born of the ISIL conflict. Children born of ISIL-perpetrated sexual violence as well as consensual marriages and intercourse with Islamic State fighters are all at great risk of facing stigmatization and discrimination and lacking valid identity documents. Any child born to an Iraqi mother or father is an Iraqi citizen,\(^{188}\) and therefore any child born to an Iraqi parent—regardless of any ISIL affiliation—is an Iraqi national whose rights the Government must realize and protect.

While Iraqi authorities have not announced an official policy for handling issues regarding registration,\(^{189}\) the Nationality Directorate of Iraq has been working with UNHCR to tackle broader civil documentation issues for IDPs in the country.\(^{190}\) The Ministry of Interior in Baghdad created three temporary offices in Mosul, Qayyara, and Hamam al Alil for returning lost documents to IDPs, however, not all IDPs can find or receive their lost documents in these offices.\(^{191}\) Since 2014, the Ministry of Interior has further created two Alternative Civil Status Offices in Baghdad and Najaf in collaboration with the United Nations High Commissioner for Refugees (UNHCR) to issue replacement identity documents, such as birth certificates and national identity cards, to IDPs fleeing from areas that were controlled by ISIL like Mosul, Salahaddin, Anbar, Diyala, and Kirkuk.\(^{192}\) Nonetheless, many IDPs complained to the Minority Rights Group International that getting to these offices requires great amounts of time and money that they often do not have and can be dangerous.\(^{193}\)

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\(^{188}\) Government of Iraq, Constitution of the Republic of Iraq, Article 18(3)(a).

\(^{189}\) Houry, “Children of the Caliphate.”

\(^{190}\) United Nations High Commissioner for Refugees (UNHCR), “Refworld | In Search of Solutions,” 9, cited in Hassin et al., Humanitarian Challenges in Iraq’s Displacement Crisis, 11–12.

\(^{191}\) Landinfo, “Notes on an Interview with an International Non-Governmental Organization Operating in the Kurdistan Region (Erbil, 24 April 2018),” in Northern Iraq: Security Situation and the Situation for Internally Displaced Persons (IDPs) in the Displaced Areas, Incl. Possibility to Enter and Access the Kurdistan Region of Iraq (KRI) (The Danish Immigration Service Ministry of Immigration and Integration, 2018), 86.

\(^{192}\) United Nations High Commissioner for Refugees (UNHCR), “In Search of Solutions,” 9; United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), AAH (Iraqi Kurds - internal relocation) at 37; United Kingdom: Home Office, “Internal Relocation, Civil Documentation and Returns (Version 8.0),” 35.

\(^{193}\) Hassin et al., Humanitarian Challenges in Iraq’s Displacement Crisis, 11–12.
The Minister of Interior has reportedly refused to open additional Alternative Civil Status Offices to “protect civil records from fraud, to protect confidentiality and to avoid duplication, as there was no database or electronic system.”\(^{194}\) Landinfo reports that forgery of personal status documents is a pervasive issue in Iraq as fake Iraqi birth certificates, national identity cards,\(^{195}\) and nationality certificates\(^{196}\) are in wide circulation.\(^{197}\) The Norwegian embassy in Jordan suggests that birth certificates are the most commonly forged civil status document in Iraq, followed by national ID cards.\(^{198}\) In the interest of national security, the Government of Iraq seeks to minimize opportunities for members of ISIL who have committed serious crimes to be able to forge identity documents.\(^{199}\)

As a security measure, the federal authorities perform background checks on persons in Iraq seeking to restore, replace or renew lost civil documents in areas that were under ISIL control to determine whether or not the person in question is affiliated with ISIL.\(^{200}\) These background checks are not a regulation, but a security measure occurring in specific areas that were under ISIL control.\(^{201}\) If the person clears their background check, they are eligible to go to a Civil Status Office or Alternative Civil Status Office to have their documents restored, replaced, or renewed.\(^{202}\) IDPs risk not receiving security clearance if their names are identical to any individual on the lists of persons who were not cleared by the authorities.\(^{203}\)

\(^{194}\) United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), *AAH (Iraqi Kurds - internal relocation)* at 37.

\(^{195}\) Forged national identity cards are reportedly available on the open market at a low price. See page 22 of Landinfo, “Iraq: Travel Documents and Other Identity Documents (2016) for more information.

\(^{196}\) According to the Norwegian ID Centre, nationality certificates are commonly forged using commercial laser printers. See page 26 of Landinfo, “Iraq: Travel Documents and Other Identity Documents (2016) for more information.

\(^{197}\) Landinfo, “Travel Documents and Other Identity Documents (2016),” 22, 26, 29.

\(^{198}\) Landinfo, 22.

\(^{199}\) Human Rights Watch, “Families of Alleged ISIS Members Denied IDs.”

\(^{200}\) Landinfo, “International Non-Governmental Organization,” 86.

\(^{201}\) Landinfo, 86.

\(^{202}\) Landinfo, 86.

\(^{203}\) Landinfo, “International Organization, Erbil Coordination Office,” 103.
at an increased risk of detention and/or abuse.\textsuperscript{204} Moreover, the Directorate of Civil Status Affairs lacks adequate funding and personnel to handle the present demand for new or replacement documents, which has resulted in an inflated backlog of cases.\textsuperscript{205} While the process to acquire new documents would normally take two to six weeks in total, under the current circumstances, it currently takes six weeks just to file a claim for a new document.\textsuperscript{206} Iraqi authorities have discriminated against undocumented mothers and children with suspected ISIL affiliations in the process of obtaining official documents by making harassing remarks and refusing services.\textsuperscript{207} The difficulties in obtaining or replacing civil status documents have reportedly caused many IDPs to give up trying.\textsuperscript{208} To follow through with its expressed dedication to addressing critical issues for children born of rape and to protect the human rights of all Iraqi children born of the ISIL conflict, the Government of Iraq must establish and implement more effective and egalitarian processes for registering children born in ISIL territory, regardless of their fathers’ real or perceived connections to ISIL.

\textbf{Chapter 4:}

\textbf{Risks and consequences for undocumented children and their mothers in Iraq}

\subsection*{4.1 Risks and consequences for the children and their mothers}

The absence of valid identification or personal status documents has several risks and consequences both for the undocumented individuals and for the State. Unregistered children in Iraq are unable to receive their Iraqi national ID cards, Iraqi nationality certificates, and

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\textsuperscript{204} Landinfo, 103.\\
\textsuperscript{205} Landinfo, “International Non-Governmental Organization,” 86.\\
\textsuperscript{207} Hassin et al., \textit{Humanitarian Challenges in Iraq’s Displacement Crisis}.\\
\textsuperscript{208} Landinfo, “International Organization, Erbil Coordination Office,” 103.
\end{flushright}
passports. Consequently, such individuals are unable to access healthcare, education, social welfare services, Government-run shelters, or other basic services and are unable to receive certain humanitarian aid. Furthermore, undocumented persons have severely restricted freedom of movement as they cannot obtain a passport and therefore may not be able to return to their country of origin if they leave, and are often unable to pass checkpoints, which require identity documents and security clearances. Proving one’s citizenship without civil identity documents is also difficult if not impossible, leaving undocumented children vulnerable to statelessness. Those without birth certificates in Iraq will additionally find it difficult or impossible to later register marriages, deaths, and births.

Unregistered children are at an increased risk of harassment, exploitation, human trafficking, and terrorist radicalization. More specifically, undocumented individuals are more likely to be victims of exploitation and discrimination by landlords and employers, and arbitrary arrest, detention, and refoulement by Government authorities. UNHCR and the United Nations

209 Landinfo, “Travel Documents and Other Identity Documents (2016).”
211 Huson, “Mobile Magistrates Are Iraq’s New Frontline Fighters.”
212 Mahmood, “Challenges of Children Born by ISIS Rape in Iraq,” 17.
214 Houry, “Children of the Caliphate.”
217 Coomaraswamy, Preventing Conflict Transforming Justice Securing the Peace, 69.
Committee on the Rights of the Child have concluded that unregistered minors in Iraq are especially vulnerable to the sale of children, human trafficking, child labor, illegal adoption, early marriage, child pornography, and other forms of sexual exploitation. United Nations Women argues that although there are grave challenges and consequences for any unregistered individual, women and girls who lack documentation in particular are at an increased risk of sexual exploitation and abuse, illegal adoption, and child labor.

In Iraq, a lack of civil identity documents often prompts the assumption that the undocumented individual must have lived in an area under ISIL control. Moreover, possessing ISIL-issued personal status documents is also often perceived as a link to ISIL. The Norwegian Refugee Council explains that “[because Iraqi] society lacks understanding of people who could not flee IS[,]…in the public perception, there is no distinction between the people who were collaborating with IS and the people who lived under IS’s rule.” The stigmatization and discrimination against those with real or perceived ties to ISIL exacerbate the risks and barriers for undocumented children born of the ISIL conflict in Iraq.

4.1.1 Restricted freedom of movement and de facto detention

Wathiq al-Hamdani, the former police chief in Mosul, told Human Rights Watch that traveling around Iraq without valid identity documents is extremely dangerous and increases the

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219 Coomaraswamy, Preventing Conflict Transforming Justice Securing the Peace, 83–84.


traveler’s risk of arrest. Authorities in IDP camps in Iraq have been prohibiting many undocumented women and children from leaving the camps due to their undocumented status and/or suspected affiliation with ISIL. Other undocumented IDPs have been unable to leave their camps because they are unable to pass through security checkpoints without their personal status documents or they fear they will be arrested. The consequence is *de facto* detention for many undocumented women and children with real or perceived connections to ISIL, restricting their freedom of movement. When displaced mothers are in *de facto* detention, they are unable to travel to Civil Status Offices to register the births of their children and obtain vital civil status documentation for them.

4.1.2 Adult justice system

Without a birth certificate, an individual’s age is difficult or impossible to conclusively determine, leaving minors vulnerable to premature subjection to adult justice systems rather than their juvenile counterparts. Unregistered minors in Iraq are more vulnerable to capital punishment. The Government of Iraq reinstated the death penalty pursuant to Order No. 3 of 2004 after it was suspended by Order No. 7, section 3 of 2003 under the Coalition Provisional Authority (CPA). The Government of Iraq has defended its legalization and implementation of

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223 Human Rights Watch, “Families of Alleged ISIS Members Denied IDs.”
226 Amnesty International, 24. Discrimination and threats of violence from their families, communities, and Iraqi security forces have also deterred children born of the ISIL conflict in Iraq and their mothers living in IDP camps from returning home. Members of their communities and Iraqi security forces have also destroyed, confiscated, or looted the homes of families associated with ISIL, preventing them from returning home. Furthermore, many displaced families with suspected ISIL ties who face discrimination when attempting to return home have “boomeranged” back to IDP camps. The discrimination and threats of violence contribute to the *de facto* detention for undocumented children born of the ISIL conflict who are living with their mothers in IDP camps. For more information, see Amnesty International, “The Condemned,” 34-37.
227 The Coalition Provisional Authority (CPA) was the transitional government of Iraq established following the U.S.-led Multi-National Force-Iraq (MNF-I) invasion of the country on 19 March 2003 and the fall of the Ba’athist regime. United Nations Assistance Mission for Iraq (UNAMI) and Office of the High Commissioner for Human Rights (OHCHR), “Report on the Death Penalty in Iraq” (Baghdad: Office of the High Commissioner for Human
the death penalty, maintaining that capital punishment is necessary because of the country’s “extraordinary security situation.” The State further claims that the death penalty functions as a deterrent to acts of terrorism, offers justice to victims of armed violence and terrorism, and is rooted in “traditional values of Islam” supported by the majority of Iraqi society. Article 77, paragraph 2, of the Juvenile Welfare Act No. 76 of 1983 does not permit the imposition of the death penalty for persons under the age of 18, and Article 79 of the Iraqi Penal Code No. 111 of 1969 extends the prohibition of capital punishment for persons between the ages of 18 and 20 at the time of committing an offence. However, the United Nations Committee on the Rights of the Child has concluded that there have been cases in Iraq where a lack of birth registration and difficulties in conclusively establishing the age of children have led to death sentences for persons who were under 20 years of age at the time of the offence. If the births of those born in ISIL captivity in Iraq remain unregistered, such children will be at an increased risk of being prematurely processed through the Iraqi criminal justice system as adults. The difficulty or impossibility of determining their exact ages will render those who remain undocumented more vulnerable to capital punishment.

4.1.3 Shelters

After escaping ISIL captivity in Iraq, children born of the ISIL conflict and their mothers tend to reside in OWFI shelters, in IDP camps, or with extended family members.
Government of Iraq also provides shelters for survivors of gender-based violence and their children; however, there are only three shelters operating in the Kurdistan region and none in south or central Iraq, and only women and children with valid civil identity documents can take advantage of this service. Furthermore, all shelters in Iraq report a lack of financial resources and the staff of the Government shelters do not have adequate sensitivity training to handle the issue of children born of the ISIL conflict without further stigmatizing them.

Options outside of the State-run shelters are limited because the Government of Iraq prohibits the operation of shelters by non-governmental organizations outside of the Kurdistan region. The founder and director of OWFI, Yanar Mohammed, elucidated the cultural tendency to distrust shelters in Iraq:

“Shelters are thought of as encouraging women to disobey their husbands, and daughters to disobey their parents. This leads to the presumption that a shelter—a place where a group of immoral women reside without a male guardian—is likely a brothel.”

The former head of the Iraqi parliament’s Committee for Women, Family, and Childhood, Haifa al-Hilfi, also sheds light on the cultural unease with shelters: al-Hilfi explained that “[t]here is a fear that if these sheltered are opened, many women will use them to leave their families,” which the Iraqi Government perceives as a “real risk that would threaten many Iraqi families.”

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234 Ramy Aqel, 16 November 2017 Interview, Personal Interview, November 16, 2017.
236 Aqel, 16 November 2017 Interview.
OWFI is the only Iraqi civil society organization that provides shelter to survivors of gender-based violence and their children outside of Kurdistan in spite of the Iraqi Government’s ban.\(^{240}\) To avoid persecution by Iraqi authorities, OWFI must take special measures to conceal their operations, which inevitably makes the organization’s services less accessible to those needing shelter.\(^{241}\) The ban has also made OWFI and its residents unprotected targets of militia raids and violence by extremists groups.\(^{242}\) NGO-run shelters encounter further risks when housing undocumented individuals in particular, even when the NGO has an agreement with local law enforcement to operate, because a lack of documentation is commonly construed as a sign of trafficking or prostitution in the Iraqi public perception.\(^{243}\)

\textbf{4.1.4 Internally displaced persons camps}

Life for undocumented Iraqis is extremely difficult, even for those residing in IDP camps.\(^{244}\) IDPs are required to register with the Ministry of Migration and Displacement (MoMD) to obtain a one-time Government assistance package and receive other aid from the Government, such as heaters, stoves, blankets, carpets, and plastic sheeting; however IDPs need a nationality certificate, nationality card, housing card, and food ration card to register with the MoMD.\(^{245}\) Moreover, NGOs providing humanitarian aid to IDPs are required to use the MoMD beneficiary list to determine who is eligible for aid.\(^{246}\) This means that IDPs who are unable to


\(^{246}\) St. Thomas King and Ardis, “Identity Crisis?”
register with the MoMD due to a lack of civil status documents are often unable to receive humanitarian aid.\textsuperscript{247} National identity cards are also required for employment, both inside and outside of IDP camps.\textsuperscript{248} One IDP explained to Amnesty International: “My daughter didn’t have her identity card, so they wouldn’t hire her for any job…None of the ‘IS families’ has an identity card, so we don’t have the same opportunities for work as the people in the rest of the camp.”\textsuperscript{249} The necessity of possessing personal status documents to secure employment leaves female-headed families with suspected affiliations to ISIL particularly vulnerable because many of these families have been ostracized from their extended families and communities, leaving them with little to no financial assistance outside of IDP camps.\textsuperscript{250} A female-headed family’s financial security is additionally undermined if the matriarch is a widow who does not possess her husband’s death certificate, which is required for her to inherit her husband’s property, collect his accrued or vested pension benefits, and/or remarry.\textsuperscript{251} If nothing is done to address the lack of access to valid birth registration for the children born of the ISIL conflict, the undocumented individuals will have restricted access to rights and services even within IDP camps.

The Government of Iraq has created several facilities it calls “rehabilitation camps” or “isolation camps” to hold families with suspected ISIL ties with the ostensible purpose of “protecting them from revenge killings,” according to counter-terrorism advisor to the Iraqi Government, Hisham al-Hashimi.\textsuperscript{252} The counter-terrorism expert has also stated that IDPs in these camps who lack valid identity documents or cannot prove they have no ties to ISIL are being held indefinitely in these “\textit{de facto} internment camps,” indicating that suspects bear the

\textsuperscript{247} St. Thomas King and Ardis.
\textsuperscript{249} Amnesty International, 23.
\textsuperscript{250} Amnesty International, 24.
\textsuperscript{251} Amnesty International, 24.
burden of proving their innocence when accused of ISIL affiliation.253 In July 2017, Nineveh authorities opened the first “rehabilitation camp” in Bartalla, 14 kilometers east of Mosul, where Iraqi security actors forcibly relocated at least 170 families with suspected ties to ISIL.254 This camp was formed following a directive issued by Mosul’s district council in June to send so-called “ISIL families” to camps “to receive psychological and ideological rehabilitation, after which they will be reintegrated into society if they prove responsive to the rehabilitation program.”255 Local authorities reportedly closed the “rehabilitation” camp and transferred its residents to “regular” IDP camps within two weeks of the camp’s opening after Human Rights Watch reported that at least ten women and children died traveling to or at the camp and that the camp offered no education, training, or other programs.256 However, al-Hashimi disclosed that five similar camps are still operating: Tel Kayf Camp, Hamam al Alil Camp, Leilan Camp south of Kirkuk, Kilo 18 Camp in west Anbar, and al-Taji Camp north of Baghdad. These camps hold at least 10,000 families—between 60,000 and 100,000 individuals—who are prohibited from leaving unless they receive authorization.257 The consequence is that mothers in such facilities are often unable to register the births of their children born of the ISIL conflict because they are unable to obtain special authorization to leave the camps.

Discrimination against suspected ISIL affiliates has severe consequences for women and children in IDP camps in Iraq. IDPs in Iraq reported to Amnesty International that some camp authorities and humanitarian aid workers routinely deny any camp residents with perceived ISIL

254 Human Rights Watch, “Alleged ISIS Families Sent to ‘Rehabilitation Camp.’”
255 Human Rights Watch.
256 Human Rights Watch.
ties access to adequate food, water, healthcare, and other humanitarian aid. One 44-year old woman told Amnesty International:

“During the visit of [a local aid organization], they were going to distribute kitchen supplies: dishes, spoons, and a food basket. When one family approached them, they said: ‘You are an IS family—you don’t get anything.’ They beat them with a stick. During that distribution, 50 families left without anything, including ours. They said they would come the next day, but they never came back.”

As long as the displaced children born of the ISIL conflict in Iraq are unable to obtain valid civil status registration, their access to basic rights and services are under threat because of the routine discrimination against so-called “ISIL families.” Their undocumented status further limits their options because identity documents are required to receive aid from the Government and NGOs with humanitarian services. When families with perceived ISIL ties in IDP camps are being abused, their options for recourse are limited because the discrimination is widespread and institutionally supported. Furthermore, lacking proof of citizenship severely restricts an individual’s rights because one’s entitlement to rights and Government protection is most clearly enshrined in the proof of their legal identity. Without civil status registration, the children born of the ISIL conflict in Iraq lack the necessary basis to prove their legal status as Iraqi citizens, making it difficult for them to lay claim to their rights.

### 4.1.5 Education

Children born of the ISIL conflict in Iraq risk a lack of access to education. A student is required to provide their national identity card in order to register for school in Iraq; however, because birth certificates are required to obtain national identity cards, children whose births are

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258 Amnesty International, “The Condemned,” 20, 30. Security forces, camp authorities, humanitarian workers, and other residents have also been intimidating, sexually assaulting, and sexually harassing women with perceived ties to ISIL, leaving them feeling extremely unsafe and vulnerable while effectively trapped in the camps. For more information, see Amnesty International, “The Condemned,” 27-32.

not registered with the Government are unable to attend school.260 Education opportunities for children born of the ISIL conflict in Iraq have also been limited by a dearth of learning facilities with adequate supplies and funding, particularly within IDP camps.261 Although a few IDP camps in Iraq have educational programs that adhere to the official education curriculum in Iraq or allow children residents to travel to schools near their camps, most camps only offer programs whose curricula are not recognized by the official Iraqi education system, informal “play spaces” for elementary learning, or no educational options at all.262 The schools inside IDP camps often depend on finding teachers among the IDPs, which is often not possible.263 According to Amnesty International, many women expressed concerns about the lack of education opportunities for their children in IDP camps.264 One discontent mother said:

“At the current moment, our priority is to get the kids in school and to get them an education. Our number one priority now is education. There is no real school here. There is not an official school in the camp. All of my children—aged eight, nine and ten—they don’t even know how to write their names.”265

Even when learning facilities are operating in camps, civil status documents are still needed to register and attend these schools.266 Mareeb Ibrahim, a 7-year-old displaced girl in Hammam al-Alil 2 camp told Kurdish media network Rudaw: “I want to go to school but they don’t let me in because I don’t have a national identification document.”267 “I couldn’t get her [Mareeb] a national identification document because we went through ISIS,” Mareeb’s father, Ibrahim Helo, added. “She watches her friends and neighbors go to school, she asks me, ‘father I

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260 Landinfo, “Travel Documents and Other Identity Documents (2016),” 17; United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), AAH (Iraqi Kurds - internal relocation) at 12.
263 Landinfo, “Education Available to IDPs in the Kurdistan Region,” 1.
265 Amnesty International, 38.
267 AFP.
want to go to school.’ I tell her I am not able to get [her] a national ID. They even ask for a big amount of money to issue the identification document.”

There is only one makeshift primary school in Hammam al-Alil 2, which aid groups established in 2018. The makeshift school lacks necessary resources: it does not have desks, chairs, boards, or other vital school supplies, according to the school’s principal, Ibrahim Mohammed. Although Mareeb is not a child born of the ISIL conflict, her predicament foreshadows the plight that children born of the conflict will face if they remain unregistered; undocumented children will likely be unable to attend school both inside and outside of IDP camps in Iraq.

4.1.6 Terrorist radicalization

The stigmas associated with ISIL have resulted in routine exclusion of children born of the ISIL conflict in Iraq and their mothers from Iraqi society through a denial of access to food, water, healthcare, civil status documentation and redocumentation, and other basic services. Such treatment has left many with perceived ties to ISIL feeling helpless and mistreated. An 18-year old in Jedaa 6 Camp said:

“Life here [in the camp] is constant humiliation…If your husband was with IS, he’d force you to go with them. Then he dies and you get punished after him. What is the fault of women and children?...As long as we live we will have to accept everything bad that has happened to us.”

The impacts of such exclusion and discrimination may be long-lasting. A 45-year old woman IDP told Amnesty International: “The children here are taunted all the time—by other children and their parents. Children will never forget seeing their families humiliated.” If the children born of the ISIL conflict continue to be marginalized or rejected from Iraqi society, their

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268 AFP.
269 AFP.
270 AFP.
vulnerability to future terrorist radicalization will increase. Excessively harsh punishment or treatment of those associated with ISIL has the potential to “polarize populations within Iraq” and produce an “endless cycle of violence,” which in turn creates “opportunities for foreign meddling and a deepening of the kinds of resentments and paranoias that led to the emergence of ISIS—and even al Qaeda before that.”\(^{273}\) One international journalist described the situation as a “time bomb” to Amnesty International, explaining that “[t]here is no better place to raise a new generation of terrorists than in these camps” because of the injustices against women and children associated with ISIL.\(^{274}\) Echoing this sentiment, international journalists and human rights organizations have referred to the camps as “incubators,” where the “seeds for the next round of inter-communal violence and atrocities in Iraq” could be sown.\(^{275}\)

IDPs share the concerns of the international human rights community about the potential ramifications of the mistreatment of so-called “ISIL families”: one member of a female-headed IDP family with suspected ISIL-affiliation told Amnesty International: “There are no human rights here in the camp. You are building a new generation here—a savage generation. They will be the next generation of IS.”\(^{276}\) Another IDP expressed a similar perspective on the matter: “It’s not good to put all of these ‘IS children’ in one place—they will just become more extreme,” she said. “It’s much better for them to be a part of the community. This is the only way that we can avoid the same thing happening again.”\(^{277}\) Another IDP explains:

“For us, it was a terrible experience to be under IS, and now we face an even harder test…We are rejected by everyone…As mothers, we can bear this treatment, but what about our children? This treatment will create a new IS. For sure, this is what this terrible camp will produce. If we lived in a village, outside the camp, maybe we can teach our

\(^{275}\) Amnesty International, 46.
\(^{276}\) Amnesty International, 46.
\(^{277}\) Amnesty International, 46.
children to go on a better path. All we want is safety and stability. We want to live with others, and to enter the community again.”

When compounded with the stigmatization and discrimination for having perceived ISIL ties, the lack of access to valid civil status registration renders children born of the ISIL at a heightened risk of marginalization and mistreatment in society. The collective punishment of families with suspected affiliation to ISIL and lack of access to basic services from being undocumented could foster resentment among the children born of the ISIL conflict in Iraq. This resentment has the potential to “create the conditions for the next cycle of violence in Iraq.”

4.2 Risks and consequences for the Government of Iraq

The ramifications of the lack of access to valid civil registration and documentation for children of the ISIL conflict are not limited to the undocumented individuals; the risks and consequences also impact the State. The current barriers to education due to a lack of access to civil identification documentation create the risk of leaving thousands of Iraqi children uneducated, increasing the likelihood of illiteracy and unemployment, and rendering it more difficult for them to effectively contribute to the nation’s economy. Accessible birth registration and accurate statistics are also fundamental to the rational operation of the Government of Iraq; the practice allows the government to maintain vital statistics which may in turn be used for public health programs, post-natal care of mother and child, vaccination and immunization programs; calculating birth and death rates; continuously and accurately updating population registers and associated registers, including electoral rolls; and maintaining accurate identification systems necessary for national administration and security.

278 Amnesty International, 46.
279 Amnesty International, 46.
children who cannot access basic rights are at an increased risk of future terrorist radicalization, making the lack of access to birth registration for children born of the ISIL conflict an issue of national security. This epidemic puts thousands of children at risk of statelessness and exploitation while compromising vital government data and creating national security risks—all which stand to impede the rights of not only the currently undocumented children, but also future generations of Iraqis. Improving access to birth registration in Iraq would therefore be beneficial to not only the individuals receiving the registration and resulting documentation, but also to the State.

Chapter 5:
Application of International and Domestic Law

International human rights law is the body of international law that was developed to protect and promote the basic rights and freedoms to which all humans are entitled, solely on the basis of their humanity.281 These rights are set forth and guaranteed by treaties, customary international law, general principles, and soft law.282 International human rights law sets out obligations and duties to which State Parties are legally bound to respect “in order to promote and protect the human rights and fundamental freedoms of individuals or groups.”283 Iraq is a State Party to several of the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the

282 United Nations Office for the High Commissioner for Human Rights (UNHCR), 5.
283 United Nations Office for the High Commissioner for Human Rights (UNHCR), 5.
Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The rights and obligations enshrined in these treaties apply both in peacetime and during armed conflict. 284

During times of armed conflict, international human rights law applies in tandem with international humanitarian law—the set of rules that regulate armed conflict. 285 International humanitarian law seeks to mitigate the effects of armed conflict by protecting civilians (i.e., those who are not or are no longer taking part in fighting) and by restricting the means and methods of warfare. 286 These legally binding rules are determined by customary international law and treaties, such as the four Geneva Conventions of 1949, to which Iraq is a State Party. 287 Serious violations of international humanitarian law in non-international armed conflicts, such as the one occurring in Iraq, constitute war crimes. 288 States have a duty to investigate and prosecute war crimes allegedly committed by their nationals or armed forces, on their territory, or over which they have jurisdiction. 289 A State that is responsible for violating international human rights and humanitarian law in non-international armed conflict is obliged to provide full reparation for the victims of such violations and to adopt measures to prevent future violations of a similar nature. 290

286 United Nations Office for the High Commissioner for Human Rights (UNHCR), 12.
290 United Nations Office for the High Commissioner for Human Rights (UNHCR), International Legal Protection of Human Rights in Armed Conflict, 73; International Committee of the Red Cross, Protocol Additional to the
5.1 Reprisals and collective punishment

Customary international law prohibits parties to non-international conflicts from resorting to reprisals\(^{291}\) or collective punishment\(^{292}\) against persons who do not or who have ceased to take direct part in hostilities. Iraqi authorities have engaged in collective punishment of families with perceived ties to ISIL by forcibly placing them in “rehabilitation camps,” systematically denying them security clearance needed to travel and obtain identity documents, denying them access to basic necessities such as food and water, and by harassing and assaulting them. When committed against individuals or groups who have never taken direct part in ISIL’s hostilities or have ceased to take direct part, these acts constitute collective punishment that violates the customary rules of international humanitarian law. The acts of retributive justice that seek to collectively punish members of the extremist group and its affiliates but are without legal process are also in violation of the Iraqi Constitution, which prohibits extrajudicial punishment.\(^{293}\)

5.2 Freedom of movement

Article 44(1) of the Iraqi Constitution and Article 12(1) of the ICCPR provide the right to freedom of movement for all Iraqis and all persons lawfully within Iraq, respectively.\(^{294}\) The ICCPR only allows State Parties to restrict freedom of movement when necessary to protect national security, public order, public health or morals, or the rights and freedoms of others.\(^{295}\) Any restrictions must be provided for in the law, proportionate to the interest to be protected,

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\(^{292}\) Henckaerts et al., Rule No. 103, 374.

\(^{293}\) Government of Iraq, Constitution of the Republic of Iraq, Article 19(2).

\(^{294}\) Government of Iraq, Article 44(1); United Nations General Assembly, International Covenant on Civil and Political Rights (ICCPR), Article 12(1).

\(^{295}\) United Nations General Assembly, International Covenant on Civil and Political Rights (ICCPR), Article 12(3).
non-discriminatory, and be in compliance with international human rights law. While the restriction of movement in Iraq in specific areas and for certain persons may be justified as necessary security measures, the current security clearance requirements violate international law. Not only have the restrictions not been provided for by law, but they have also severely restricted the movement of persons who do not or have ceased to take direct part in hostilities. Individuals have been subjected to severe restrictions on their movement on the sole basis of suspected ties to ISIL, often with flimsy evidence or no evidence at all.

The right to freedom of movement has been particularly restricted for displaced persons in Iraq. The United Nations Guiding Principles on Internal Displacement affirm that IDPs have the right to liberty of movement and the right to move freely in and out of camps. When camp authorities and security actors in Iraq prohibit displaced persons with suspected ties to ISIL from leaving their IDP camps, require special authorization to leave their camps, or confiscate the identity documents of any IDPs attempting to leave their camps, they are violating the displaced person’s right to freedom of movement guaranteed by the Iraqi Constitution and international human rights law. The direct and indirect restrictions on their liberty of movement have forced many children born of the ISIL conflict in Iraq and their mothers into de facto detention. Because many of the families being subjected to restrictions on movement do not or have ceased to take direct part in hostilities, the limitations on their movement do not appear to meet the requirements of necessity and proportionality. Moreover, because the movement of persons with real or perceived ties to ISIL has been particularly limited, such restrictions are

discriminatory and a form of collective punishment, thereby violating international law. Moreover, such restrictions have thwarted the displaced persons’ ability to access adequate food, water, healthcare, work, and education, violating their fundamental economic, social, and cultural rights that are non-derogable under the ICESCR.\textsuperscript{299}

International humanitarian law also provides IDPs with the right to voluntary return in safety to their homes as soon as the reason for their displacement ceases to exist.\textsuperscript{300} Under Principle 28 of the UN Guiding Principles on Internal Displacement:

> “Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity to their homes…Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.”\textsuperscript{301}

Not only have Iraqi authorities failed to fulfill their duty to facilitate the safe and voluntary return of those who were displaced by the ISIL conflict but whose home regions have since been liberated from ISIL control, but Iraqi camp authorities and security actors have actively prevented their safe and voluntary return. Authorities have forcibly kept so-called “ISIL families” in \textit{de facto} detention in IDP camps and have perpetuated acts and threats of violence against returnees with suspected ISIL ties. The mistreatment and hostile environment for those suspected of ISIL affiliation has caused many of them to “boomerang” back to IDP camps and prevented many others from even attempting to return home. By both failing to safeguard the rights of displaced persons attempting to return home and actively contributing to the unsafe conditions for IDPs with perceived ISIL ties attempting to return home, Iraqi authorities are falling short of their duties and actively violating the rights of displaced persons in the country.

\textsuperscript{300} Henckaerts et al., \textit{Customary International Humanitarian Law, Volume 1: The Rules}, Rule No. 132, 468.
The restricted freedom of movement for families with perceived ties to ISIL further hinders access to valid birth registration and documentation for children born of the ISIL conflict. When the parent(s) of a child that was born in ISIL captivity cannot leave their IDP camps or pass through security checkpoints, their ability to travel to Civil Status Offices and alternative offices is severely restricted, hindering their ability to register their children and obtain vital civil identity documents for them. Therefore not only are the restrictions on the liberty of movement for so-called “ISIL families” in Iraq violations of domestic, human rights, and humanitarian law in and of themselves, but they also undermine the rights and access to basic services for children born of the ISIL conflict.

5.3 Rights to food, water, and healthcare

In cases of displacement, international humanitarian law dictates that all possible measures must be taken to ensure that the displaced civilians have access to adequate shelter, hygiene, health, safety, and nutrition. The ICESCR guarantees the right to an adequate standard of living—which includes adequate food—and the “fundamental right of everyone to be free from hunger.” The CRC further affirms the right of every child to a standard of living that is adequate for the child’s physical, mental, spiritual, moral, and social development. The ICESCR also enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which requires access to adequate health care. The child’s right to the enjoyment of the highest attainable standard of health and to access health care services is also set forth by the CRC. The rights to an adequate standard of living, to adequate food, and

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to the highest attainable standard of health also encompass the right to adequate water and sanitation.\textsuperscript{307} The right to health care is further guaranteed for Iraqi citizens by the country’s Constitution.\textsuperscript{308} The Iraqi Constitution also provides that the “State shall guarantee to the individual and the family—especially children and women—social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing.”\textsuperscript{309}

As a State Party to the ICESCR, Iraq is obligated to secure access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger for everyone under its jurisdiction, even in times of disaster.\textsuperscript{310} Any discrimination in access to food, including the denial of access to food for particular individuals or groups, through the direct action of the State of Iraq or other entities insufficiently regulated by Iraq constitutes a violation of the ICESCR.\textsuperscript{311} Iraq must also guarantee access to health care,\textsuperscript{312} to adequate sanitation, and to the minimum essential amount of potable water that is sufficient for personal and domestic uses to prevent disease without discrimination,\textsuperscript{313} even during armed conflicts.\textsuperscript{314} As a party to non-international armed conflict, the Government of Iraq is further obliged to allow

\begin{footnotesize}
\begin{enumerate}
\item Government of Iraq, Constitution of the Republic of Iraq, Article 31(1).
\item United Nations Committee on Economic, Social and Cultural Rights, paras. 18-19.
\item United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), (E/C.12/2002/11), para. 22.
\end{enumerate}
\end{footnotesize}
and facilitate rapid and unimpeded passage of humanitarian relief, including essential foodstuff, for civilians in need.\textsuperscript{315} The United Nations Guiding Principles on Internal Displacement also stipulate that all humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.\textsuperscript{316}

Many children born of the ISIL conflict in Iraq and their mothers have been unable to access adequate food, water, and health care. Members of IDP camp administration, staff members of international and national humanitarian organizations, armed actors, and other individuals tasked with distributing aid in the camps have been routinely denying access to adequate levels of humanitarian assistance for families in IDP camps with perceived ties to ISIL. Iraq is required to take the necessary measures to ensure that all displaced persons within its jurisdiction have access to food, water, health care, and humanitarian aid without discrimination. The denial of access to such services on the basis of real or perceived ties to ISIL constitutes discrimination that violates international human rights and humanitarian law. Families who are suspected to be affiliated with ISIL have further been prevented from accessing adequate food, water, and health care due to their lack of access to valid civil status registration and documentation. The State of Iraq requires IDPs to register with the MoMD to receive Government assistance and humanitarian aid—a registration process that requires identity documents. Many children born in ISIL captivity and their mothers have been unable to obtain valid personal status documents, and consequently have been unable to register with the MoMD and receive assistance. Many children and mothers with suspected ties to ISIL have also been unable to obtain health care because access to health care services in Iraq requires civil identity documents, and many of the children born in ISIL-controlled territory and their mothers lack

\textsuperscript{315} Henckaerts et al., \textit{Customary International Humanitarian Law, Volume 1: The Rules}, Rule No. 55, 193.  
such documents, or IDP camp authorities or security actors have confiscated the identity
documents of residents attempting to leave their camps. Iraqi authorities are falling short of their
obligations under the country’s Constitution and under international law by failing to take steps
to ensure that the children of the ISIL conflict and their mothers have access to health care.

5.4 Right to education

International human rights\textsuperscript{317} and humanitarian law\textsuperscript{318} specify that children affected by
non-international armed conflict are entitled to “special respect and protection.” In particular,
children affected by armed conflict require special respect and protection to ensure that they have
access to education, food, and healthcare.\textsuperscript{319} Article 34(1) of the Iraqi Constitution stipulates that
“[e]ducation is a fundamental factor for the progress of society and is a right guaranteed by the
state.”\textsuperscript{320} The Constitution further provides that primary education is mandatory, and “[f]ree
education in all its stages is a right for all Iraqis.”\textsuperscript{321} Under the Constitution, the Government of
Iraq is required to “combat illiteracy.”\textsuperscript{322} The ICESCR sets out the right of everyone to
education, which includes the right to free and compulsory primary education provided by State
Parties, the accessibility and availability of secondary and higher education, and the progressive
introduction of free secondary and higher education.\textsuperscript{323} The CRC reaffirms the right to education
for every child and requires State Parties to provide compulsory and free primary education to
all.\textsuperscript{324} The State of Iraq is currently not fulfilling its obligations under its Constitution and under
international law by failing to provide access to primary education for all children in IDP camps

\textsuperscript{317} United Nations General Assembly, Convention on the Rights of the Child, Article 38.
\textsuperscript{318} Henckaerts et al., \textit{Customary International Humanitarian Law, Volume 1: The Rules}, Rule No. 135, 479.
\textsuperscript{319} Henckaerts et al., Rule No. 135, 481.
\textsuperscript{320} Government of Iraq, Constitution of the Republic of Iraq, Article 34(1).
\textsuperscript{321} Government of Iraq, Article 34.
\textsuperscript{322} Government of Iraq, Article 34(1).
\textsuperscript{324} United Nations General Assembly, Convention on the Rights of the Child, Article 28.
in the country. Furthermore, because public education in Iraq requires personal status documents, if the undocumented children born of the ISIL conflict continue to lack access to valid civil identity registration and documentation, they will be unable to access education.

5.5 Right to be recognized as a person before the law

The right to be recognized as a person before the law is enshrined in the UDHR\textsuperscript{325} and the ICCPR.\textsuperscript{326} The Human Rights Council has explained the importance of birth registration and provision of documents of proof of birth as means for providing an official record of the existence of a person and the recognition of that individual as a person before the law.\textsuperscript{327} States have a duty to “register births without discrimination of any kind and irrespective of the status of [their] parents.”\textsuperscript{328} To increase access to birth registration, the Council has called upon States to:

“identify and remove physical, administrative, procedural, and any other barriers that impede access to birth registration, including late registration, paying due attention to, among others, those barriers relating to…gender, nationality, displacement…and detention contexts, and to persons in vulnerable situations.”\textsuperscript{329}

The United Nations Committee on the Elimination of Discrimination against Women has also recommended that State Parties to CEDAW “[g]uarantee [that] conflict-affected women and girls [have] 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.”\textsuperscript{330} The Committee further recommends that State Parties “ensure the timely and equal registration of all births,

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\textsuperscript{325} United Nations General Assembly, Universal Declaration of Human Rights, (217 A (III)), Article 6.
\textsuperscript{326} United Nations General Assembly, International Covenant on Civil and Political Rights (ICCPR), Article 16.
\textsuperscript{327} United Nations Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law (A/HRC/RES/22/7).
\textsuperscript{328} United Nations Human Rights Council.
\textsuperscript{329} United Nations Human Rights Council.
marriages, and divorces.”\textsuperscript{331} To ensure this right for internally displaced persons, the United Nations Guiding Principles on Internal Displacement assert that:

“the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain these or other required documents.”\textsuperscript{332}

Having a legal identity in Iraq—established by civil identity documents like birth certificates and national identity cards—provides a person with effective access to services and the enjoyment of rights guaranteed by domestic and international law, including freedom of movement and access to basic services such as health care and education.\textsuperscript{333} The systematic denial of access to valid civil identity registration and documentation for families with suspected ISIL affiliation may be a violation of their right to be recognized as a person before the law.\textsuperscript{334} When Iraqi authorities do not allow parents to register the births of their children born in ISIL captivity and/or to ISIL fathers, and/or do not allow parents with perceived ISIL ties to obtain new or replacement civil identity documents needed to register the births of their children, such authorities are undermining the children’s right to be recognized as a person before the law because they lack the most basic documents needed to prove their legal identity.

\textbf{5.6 Discrimination against women}

Article 14 of the Iraqi Constitution (2005) stipulates that “Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, colour, religion, sect, belief or opinion, or economic or social status.” As a State Party to CEDAW, Iraq is also

\textsuperscript{331} United Nations Committee on the Elimination of Discrimination Against Women, para. 61(d).
\textsuperscript{333} Amnesty International, “The Condemned,” 43.
\textsuperscript{334} Amnesty International, 43.
obligated under international law to “accord women equality with men before the law.”\(^{335}\)

CEDAW also requires State Parties to “grant women equal rights with men with respect to the nationality of their children.”\(^{336}\) The contemporary laws and practices regarding birth registration in Iraq violate the country’s Constitution and international law. The disproportionate dependence on paternal documents in the birth registration and nationality conferral requirements in Iraq constitutes discrimination based upon gender and therefore such regulations do not treat all Iraqis equally under the law. The fact that women with children of the ISIL conflict in Iraq have been able to circumvent the stipulations for paternal involvement by bringing male family members to endorse their petitions to retroactively register the births of their children further exemplifies the gender-based discrimination in Iraqi registration laws and practices. The Government officials who have allowed women to register the births of their children with the support of a male family member other than the biological father of the child have not been implementing the law exactly as written. However, even when making exceptions to the existing legal requirements, many officials have still required the action of a male family member; these women do not necessarily have to meet the laws precisely as written, but nonetheless cannot act without male support. In addition to those pregnant from the ISIL conflict, any Iraqi woman who wants to register the birth of and confer Iraqi nationality to her child without the involvement of the biological father or another male family member faces structural barriers. These barriers are intentionally and explicitly gendered—the laws and policies were designed such that the same


restrictions do not apply to Iraqi men seeking to register the births of or confer nationality to their children.

Chapter 6: Conclusion

Whether or not the child was the product of consensual intercourse, virtually all children born of the ISIL conflict in Iraq lack valid civil status documents. The lack access to birth registration and documentation is one of the most urgent concerns for these children because birth registration is a basic right necessary for establishing nationality and citizenship, and is often crucial for the realization of other human rights. Discrimination against women in Iraqi laws and practices regarding birth registration and nationality provisions make it nearly impossible for Iraqi mothers to independently register the births of and confer nationality to their children that were born in areas under ISIL rule. Furthermore, the stigmatization against ISIL pregnancies and a widespread desire to collectively punish anyone with perceived ties to the extremist group have created additional obstacles to registering the births of children born of the ISIL conflict in Iraq. Consequently, thousands of children who were born in ISIL captivity remain undocumented.

The children born of the ISIL conflict in Iraq derive their rights from being human, and the rule of law is the instrument by which those rights are protected. Identifying the international human rights and humanitarian law relevant to the risks and challenges faced by the children born of the ISIL conflict in Iraq elucidates the problems at stake as well as the obligations that the Government of Iraq must respect. The rights to nationality, birth registration, and legal personhood are fundamental rights enshrined in international human rights law that are not being realized for these undocumented children. Birth registration and civil status documentation
establish a child’s legal visibility, providing the basis to lay claim to their nationality, legal personhood, and other subsequent rights. Children without valid birth certificates are unable to access education, health care, housing, welfare assistance, and other basic services. Proving one’s citizenship without civil identity documents is virtually impossible, leaving undocumented children vulnerable to statelessness. Unregistered children are also at an increased risk of exploitation, arrest, detention, and human trafficking. Those without birth certificates will additionally find it difficult or impossible to later register marriages, deaths, and births. An inventory of the benefits and opportunities that require specific civil status documents reveal that the national identity card is the most essential personal status document in Iraq. However, because a birth certificate is required to obtain a national identity card, policy reform in Iraq should focus on increasing access to birth registration to ultimately increase access to obtaining national identity cards and subsequent rights and services.

The lack of access to civil status registration for the children born of the ISIL conflict in Iraq not only presents consequences for the undocumented individuals, but also for the Government of Iraq. The current barriers to education due to a lack of access to civil identification documentation creates the risk of leaving hundreds if not thousands of Iraqi children uneducated, increasing the risk of illiteracy and unemployment, rendering it more difficult for them to effectively contribute to the nation’s economy. Accessible birth registration and accurate statistics are also fundamental to the rational operation of the Government of Iraq; the practice allows the government to maintain vital statistics which may in turn be used for public health programs, post-natal care of mother and child, vaccination and immunization programs, and calculating birth and death rates. Furthermore, because unregistered children who cannot access basic rights are at an increased risk of future terrorist radicalization, the lack of access to birth registration for the children of the ISIL conflict is an issue of national security.
This epidemic therefore puts thousands of children at risk of statelessness and exploitation while compromising vital government data and creating national security risks.

Because the Constitution of Iraq gives Iraqi women the right to confer nationality to their children, Iraqi mothers of children born of the ISIL conflict should be able to register the births of and confer nationality to their children. However, in practice, gender-based discrimination has presented barriers to birth registration and nationality provision for such mothers. An analysis of the existing laws and practices regarding birth registration and nationality provisions in the country reveals that rights of men and of children born of legal marriages are prioritized, while the rights of women and of children born outside of legal wedlock are neglected. To protect the rights guaranteed in its constitution and to address the gap in protection, the Government of Iraq should consider immediately implementing policy reform that authorizes all Iraqi women to confer nationality to their children. As a State Party to the CRC, the Government of Iraq is further obliged to improve its civil registration processes. Its duties set forth in international law require the State of Iraq to take active measures to increase access to birth registration for the Iraqi children born of the ISIL conflict. Allowing women who are Iraqi nationals to register their children without additional requirements has the potential to greatly increase access to birth registration and documentation for children born of the ISIL conflict in the country. Registered children who can access education, healthcare, and other basic rights are more likely to become productive, peaceful members of Iraqi society.

The children born of the ISIL conflict should not be persecuted for any real or perceived affiliation with the Islamic State; however, they currently face stigmatization, discrimination, and threats of violence and marginalization from their families, communities, and authorities. The Government of Iraq has a legal obligation under international human rights and humanitarian law to realize and protect the rights of its citizens. More needs to be done to address the
stigmatization of children fathered by ISIL members, to reform legislation in Iraq to protect the rights of all Iraqi women and their children, to better integrate the children born of the ISIL conflict into society, and to avoid marginalization which may render them vulnerable to terrorist radicalization and recruitment. Iraqi authorities must take active measures to terminate and prevent the acts of retributive justice that seek to collectively punish members of ISIL and their affiliates. Moreover, the Government of Iraq needs to reform its policies and practices regarding birth registration, shifting from a paternal to egalitarian system by providing more legal agency to single mothers and making registration processes more accessible to Iraqis of all backgrounds. It is only through legal and social reform that the children of the ISIL conflict in Iraq can grow up as fully integrated citizens whose legal and human rights are respected. Until it takes action, the Government of Iraq is leaving thousands of Iraqi children at risk of statelessness and exploitation, and creating national security risks—all which stand to impede the rights of not only the currently undocumented children, but also future generations of Iraqis.
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