

## IRAQ<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles</i></p>	<p>Article 14 of the Constitution provides that all Iraqis are equal before the law without discrimination on several basis, including gender.<sup>2</sup></p> <p>Article 29 of the Constitution declares the family is the foundation of society and commits the State to protect motherhood, childhood and the aged.<sup>3</sup></p> <p>Matters regarding marriage and family relations of the Muslim majority population in Iraq are mainly governed by the Iraqi Personal Status Law No. 188/1959 (IPSL).<sup>4</sup> In the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, <i>Shari'ah</i> principles that are most relevant shall apply. In addition,</p>		<p>Iraq has reservations to Article 2(f), 2(g), 16 and 29(1) of CEDAW.<sup>11</sup></p> <p>The Government of Iraq in its 2013 report to the CEDAW Committee reiterated that Iraq's reservation to Article 16 of CEDAW is made on the basis of potential incompatibility between <i>Shari'ah</i> principles and Article 16 relating to family. The Iraqi government however asserts that the IPSL is an</p>		<p>According to the 2016 UNDP Human Development Report, Iraq ranked 121 on the UNDP Human Development Index and 123 on the UNDP Gender Inequality Index.<sup>13</sup></p> <p>According to Iraq's 2011 Multiple Cluster Indicator Survey, about 10% of households in Iraq are headed by women.<sup>14</sup></p> <p>The IPSL confers many rights for women in marriage, divorce, custody and</p>

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Iraq country table, we would also like to thank Katherine Gonzalez and Alyssa Oravec from Harvard Law School, and Zahra Ali for their inputs in its preparation.

<sup>2</sup> Article 14 of the Iraq's Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)

<sup>3</sup> Article 29 of the Iraq's Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)

<sup>4</sup> Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<p><i>between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>when adjudicating a case, courts are to be guided by judicial precedence as well as Muslim jurisprudence (<i>fiqh</i>) applicable in Iraq and other Muslim countries where the laws are closest to Iraqi laws.<sup>5</sup></p> <p>The IPSL, which was drawn from both the rules of Hanafi and Jafari jurisprudence (<i>fiqh</i>),<sup>6</sup> applies to all Iraqi Muslims regardless of sect.<sup>7</sup></p> <p>Despite the equality guarantees under the Constitution, the IPSL provides for a marital framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him to a certain extent. Thus:<sup>8</sup></p>		<p>approximation to Article 16.<sup>12</sup></p>		<p>inheritance. However after 2003, due to the fragile security situation in Iraq, the weaknesses in law enforcement and the dominance of tribal customs and religious edicts, women's organisations have documented breaches of the law.<sup>15</sup></p> <p>Two major attempts have been made to circumvent the rights available to women under the IPSL. Thus far, they have not been successful:</p>
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<sup>11</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<sup>13</sup> UNDP, "Human Development Report 2016", Table 5, pp. 214-217, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

<sup>14</sup> Central Statistics Organisation et al, "Iraq Multiple Indicator Cluster Survey 2011", Table HH.3, p. 11, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS\\_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS_English.pdf)

<sup>5</sup> Article 1 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>6</sup> Kelsey Cherland, "Developments in Personal Status Law: Iraq and Jordan" (CMC Senior Thesis, Paper 865, 2014), p. 71, [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc_theses)

<sup>7</sup> Article 2 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>8</sup> Articles 3, 23, 25 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>12</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 209, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>15</sup> Iraqi Women Network, Rafidain Women Coalition, Gathering of "No to violence etc.", "Iraqi women in armed conflict and post conflict situation" *Submission to the CEDAW Committee for the mid-term review of the Concluding observations issued by the Committee after the 57<sup>th</sup> Session*, 2016, pp. 12-13 [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGS\\_IRQ\\_25070\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGS_IRQ_25070_E.pdf)

	<ul style="list-style-type: none"> <li>• Article 3 defines marriage as a contract between a man and a woman who is lawfully permissible to him, the purpose of which is to establish a bond for a mutual life and procreate children;</li> <li>• Article 23 provides that the wife is entitled to financial maintenance from the husband even if she was staying at her parent's house, unless the husband asks her to move to his place and she abstains unrightfully. Her abstention is considered rightful if the husband did not pay her the immediate dower or as long as he is not spending on her;</li> <li>• Article 25 states that a wife is no longer entitled to financial maintenance if: (i) she leaves her husband's home without his permission and without legitimate reason; (ii) if she refuses to travel or move with her husband; or (iii) if she is convicted and imprisoned for a crime or debt. However, Article 25 also stipulates that:</li> </ul>				<ul style="list-style-type: none"> <li>• On 29 December 2003, the Iraqi Governing Council (IGC) passed Resolution 137 to abolish the Personal Status Law. The Resolution states that <i>Shari'ah</i> principles shall apply to matters relating to marriage and adjudication by the religious authorities of the various sects in Iraq. After a fierce fight by activists, the Resolution was repealed two months later;<sup>16</sup></li> </ul> <p>Following the repeal of Resolution 137, Article 41 of the Constitution was adopted by referendum in 2005. This is functionally</p>
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<sup>16</sup> Kelsey Cherland, "The Development Of Personal Status Law In Jordan & Iraq," CMC Senior Theses, 2014, 89, [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc_theses)

	<ul style="list-style-type: none"> <li>- A wife shall not be bound to obey her husband if the husband is arbitrary in his demands for obedience, intending to injure or oppress her;</li> <li>- The court must give due consideration in issuing a ruling for the disobedience of the wife before ruling that a wife is disobedient. It must understand the reasons for her refusal to obey her husband and do its utmost to remove the causes of a wife's disobedience.</li> </ul> <p>Marriage and family relations of Bahraini's non-Muslim minority communities are governed by their own laws.<sup>9</sup></p> <p><b>Note:</b></p> <p>The Kurdistan Region has its own Personal Status Law – Act No. 15/2008.<sup>10</sup> This table primarily discusses the provisions of the Iraqi Personal Status Law.</p>				<p>equivalent to Decree 137. Article 41 states that Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law."<sup>17</sup> This article makes it possible for Iraq to propose communal based family law such as the Personal Status (Jafari) Bill.<sup>18</sup></p> <ul style="list-style-type: none"> <li>• In February 2014, shortly after reporting to the CEDAW Committee, the Government of Iraq approved the passing of the Personal Status</li> </ul>
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<sup>9</sup> Article 2 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>; Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 209-210, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>10</sup> Personal Status Law in Iraq Kurdistan Region (2008), [http://www.ekrg.org/files/pdf/personal\\_status\\_law.pdf](http://www.ekrg.org/files/pdf/personal_status_law.pdf); Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 234-235, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>17</sup> Article 41 of the Iraq's Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)

<sup>18</sup> Information obtained from Iraqi advocate, February 2017

					<p>(Jafari) Bill for discussion at House of Representatives. The Bill, among others, contain provisions that “permits marriage of girls aged 9 years, temporary marriages and polygamy, perpetuates the stereotype of women and the control of tribal customs and traditions, and promotes sectarian religious thought in regulating personal status”. As a result of national and international pressure, the Iraqi government withdrew the Bill until after the 30 April 2014 elections. The Iraqi government has not discussed the Bill since but some officials have</p>
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					issued statements renewing the call for its enactment. <sup>19</sup>
<p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>The minimum legal age for marriage is 18 for females and males based on Article 7(1) of the IPSL.<sup>20</sup> However, Article 8 provides that a judge may permit girls and boys who are 15 and above to marry if the judge is convinced that: (i) they have reached puberty and are physically capable of being married, and (ii) the marriage is an "urgent necessity". The judge is obligated to obtain the views of the guardian of the girl or boy regarding the marriage. Should the guardian object to the marriage, the judge may nevertheless authorise the marriage if the judge considers the objection unreasonable.<sup>21</sup></p> <p>Based on Article 8 of the IPSL, a judge not authorise the marriage of girls and boys below 15.<sup>22</sup></p>		<p>The Government of Iraq in its 2013 report to the CEDAW Committee informed that governmental agencies, such as the Ministry of Health and Ministry of State for Women's Affairs, attempt to educate girls about the importance of being married "in lawful fashion."<sup>24</sup></p>	<p>The ages of both parties are verified before a marriage is concluded by the appropriate officer in a competent court. The parties are required to submit a statement showing their age as a condition of marriage of registration.<sup>25</sup></p>	<p>According to UNICEF's State of the World's Children 2016 report, 24% of women aged 20- 24 in Iraq were first married by 18 and 5% by 15.<sup>26</sup></p> <p>According to UN World Marriage Data 2015, the average of first marriage among Iraqi females fell from 25.3 in 2004 to 22.0 in 2011. In 2004, the average age of first marriage among Iraqi males was 28.2.<sup>27</sup></p> <p>According to the Iraqi government as</p>

<sup>19</sup> Iraqi Women Network, Rafidain Women Coalition, Gathering of "No to violence etc.", "Iraqi women in armed conflict and post conflict situation" *Submission to the CEDAW Committee for the mid-term review of the Concluding observations issued by the Committee after the 57<sup>th</sup> Session*, 2016, pp. 12-13

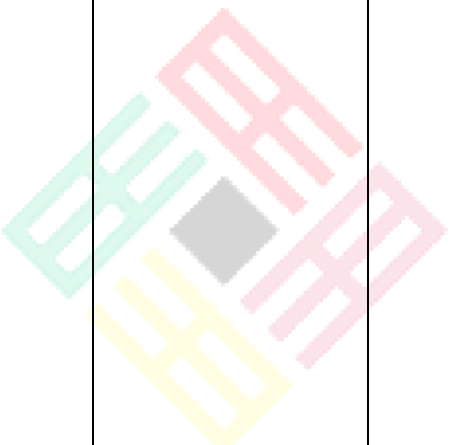
[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGS\\_IRQ\\_25070\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGS_IRQ_25070_E.pdf)

<sup>20</sup> Article 7(1) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>21</sup> Article 8 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>22</sup> Article 8 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>24</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 216, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>Article 40(3) of the IPSL provides that both spouses have the right to ask for divorce if the marriage contract was concluded before one of them reached 18 and the marriage was entered into without the consent of the judge.<sup>23</sup></p>			<p>well as civil society and media reports, the prevalence of child marriage in Iraq is high due to due: (i) customs and tradition, especially in communities still committed to tribal customs; (ii) socio-economic factors such as poverty and lack of education, health and legal awareness; (iii) difficulties in law enforcement, particularly in the rural areas; and (iv) political instability.<sup>28</sup></p> <p>The Personal Status (Jafari) Bill proposed in 2014 threatened to allow for the marriage of girls as young as nine years</p>
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<sup>25</sup> Article 10 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>  
<sup>26</sup> UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)  
<sup>27</sup> United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>  
<sup>23</sup> Article 40(3) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>  
<sup>28</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 216, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Girls Not Brides, "Iraq", *Child marriage around the world*, <http://www.girlsnotbrides.org/child-marriage/iraq/>; Zainab Salbi, "Iraqi woman explains why she married off her daughters at ages 15 and 16," *New York Times*, 10 August 2015, <http://nytlive.nytimes.com/womenintheworld/2015/08/10/iraqi-woman-explains-why-she-married-off-her-daughters-at-ages-15-and-16/>; Nizar Latif, "Worry over rise in divorce rate," *The National*, 10 January 2010, <http://www.thenational.ae/news/world/middle-east/worry-over-rise-in-divorce-rate>

					old in exceptional circumstances. <sup>29</sup>
<p><b>Women's consent to marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Article 4 of the IPSL provides that a marriage contract is initiated by an offer expressed by one of the two parties to the contract and the acceptance by the other party.<sup>30</sup></p> <p>Article 9(1) of the IPSL prohibits relatives and non-relatives from forcing marriage on any person, whether male or female. The consent of the male or female to the marriage is required.<sup>31</sup></p> <p>If the forced marriage has not yet been consummated, the marriage is considered void pursuant to Article 9(1) of the IPSL. If the marriage has been consummated, a wife in a forced marriage may petition for divorce pursuant to Article 40(4).<sup>32</sup></p> <p>Article 9(2) of the IPSL provides</p>		<p>The Government of Iraq in its 2013 report informed that in an attempt to reduce forced marriages, the act has been criminalised in IPSL. However, despite legislative efforts and health awareness campaigns conducted by government institutions, forced marriage and early, unregistered marriages persist.<sup>35</sup></p>	<p>Marriages can be registered without fees if the parties submit a statement showing the identity of the two parties, their age, the dowry amount, and the absence of any legal impediment to the marriage. The document must be signed by the parties and certified by the village/district mayor (<i>mukhtar</i>), and supplemented by a medical report that the spouses are free from communicable diseases. The content of these documents must be written on the register and signed by the two parties in the presence of the judge who then</p>	<p>According to reports by civil society and the media, forced marriage is prevalent in Iraq. Factors that contribute to such marriages include the need (or perceived need) to: (i) alleviate the financial difficulties of the family; (ii) preserve "family honour" in rape cases; (iii) better protect young daughters from assault/sexual violence (particularly common among families in Iraq's Internally Displaced Persons (IDP camps)).<sup>38</sup></p> <p>Although it is technically illegal to conduct marriages</p>

<sup>29</sup> Jamie Tarabay, "Iraqi law would legalize marital rape, child marriage for country's Shia", *Aljazeera*, 27 April 2014, <http://america.aljazeera.com/articles/2014/4/27/iraqi-shiites-protestproposedfamilylaw.html>

<sup>30</sup> Article 4 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>31</sup> Article 9(1) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>32</sup> Article 40(4) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>



	<p>for a penalty of imprisonment and/or a fine for forced marriage.<sup>33</sup></p> <p>The mandatory registration of marriages is provided for in Article 10 of the IPSL. Article 10 also prescribes the standard procedure for the conclusion and registration of the marriage, which among others, makes it mandatory for a marriage to be conducted in the presence of a judge. Any man who concludes his marriage contract outside the court is punished with imprisonment and/or fine.<sup>34</sup></p>			<p>certifies the marriage and provides the spouses with the marriage evidence.<sup>36</sup></p> <p>There is a procedure by which a spouse in an unregistered marriage can seek to register the marriage. In this case, the wife would have to file a lawsuit against her husband for recognition under the IPSL. The wife would need to provide all documentation and evidence to prove the existence of the marriage.<sup>37</sup></p>	<p>outside of courts, according to USAID and media reports:<sup>39</sup></p> <ul style="list-style-type: none"> <li>• In 2015, Iraqi courts registered over 27,000 unregistered marriages that were concluded out of court (the statistics do not include Kurdistan). About 5,000 of these marriages took place in Baghdad, while the remaining unregistered marriages were concentrated in areas that are far from the cities;</li> <li>• Since Personal Status Court</li> </ul>
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<sup>35</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 216-217, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>38</sup> Tahiri Justice Centre, "Iraq", *Forced marriages overseas*, <http://preventforcedmarriage.org/forced-marriage-overseas-iraq/>

<sup>33</sup> Article 9(2) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>34</sup> Article 10, 10(5) of the Personal Status Law (1959), <http://www.refworld.org/docid/469cdf3011.html>

<sup>36</sup> Article 10 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>37</sup> USAID, "Iraq Access to Justice Program: Values of Access to Justice and Unregistered Marriage", 2014, pp. 26-31, [http://pdf.usaid.gov/pdf\\_docs/PA00K2Z4.pdf](http://pdf.usaid.gov/pdf_docs/PA00K2Z4.pdf)

<sup>39</sup> Al-Ghad Press, "Iraq Registers 27 Thousand Marriage Contracts Outside of Courts in 2015 and the Judiciary Considers it a Risk," *Al-Ghad Press*, 26 April 2016, <http://alghadpress.com/ar/news/53135/العراق يسجل 27 ألف عقد زواج خارج المحاكم في 2015 والقضاء يعتبره خطرا>; Oumayma Omar, "Unregistered marriages a trap for Iraqi women," *The Arab Weekly*, 30 October 2015, <http://www.thearabweekly.com/?id=2615>; USAID, "Iraq Access to Justice Program: Values of Access to Justice and Unregistered Marriage", 2014, pp. 18-19, 31, [http://pdf.usaid.gov/pdf\\_docs/PA00K2Z4.pdf](http://pdf.usaid.gov/pdf_docs/PA00K2Z4.pdf)

					<p>judges are allocated anywhere from 1,000 – 9,000 cases per year, efforts to register an unregistered marriage may be extremely delayed. Judges have the final decision and significant discretion when it comes to these cases;</p> <ul style="list-style-type: none"> <li>• Many couples do not register their marriages due to lack of awareness but find themselves needing to register later in order to obtain official documentation (e.g. for children) or apply for government subsidies;</li> <li>• Women from the rural and poor areas are particularly</li> </ul>
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					<p>susceptible to unregistered marriages and their adverse impact. Their marriage are conducted by local clerics without the women being aware of the need to go through official channels to register their marriages. The non-registration of their marriages causes complications for themselves and their children, particularly in instances where their husbands travel, die, or initiate a divorce.</p>
<p><b>Women's capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a wom-</i></p>	<p>A prospective bride over 18 does not require the consent of a marital guardian (<i>wali</i>) to enter into marriage.<sup>40</sup> A prospective bride between 15 and 18 requires</p>		<p>The Government of Iraq in its 2013 report to the CEDAW Committee informed that while</p>		

<sup>40</sup> Article 7 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<p><i>an choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>the consent of her guardian or judge to enter into marriage.<sup>41</sup></p> <p>Pursuant to Article 6 of the IPSL, both spouses may stipulate any condition in their marriage contract so long as they are legitimate. A wife may seek for divorce if her husband fails to fulfil the conditions he had agreed to in the marriage contract.<sup>42</sup></p>		<p>minors must be married in the presence of a guardian, namely the father or an uncle taking the father's place, a new amendment allows for the mother to act as the guardian.<sup>43</sup></p>		
<p><b>Polygamous marriages</b></p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recog-</i></p>	<p>A Muslim man may marry up to four wives at one time.</p> <p>Unless the prospective bride is a widow, Article 3 of the IPSL:<sup>44</sup></p> <ul style="list-style-type: none"> <li>• Prohibits a man from marrying more than one woman except with the authorisation of a judge (<i>qadi</i>). A judge may only authorise the polygamous marriage if three conditions are</li> </ul>		<p>The Government of Iraq is reportedly considering offering financial incentives for men to marry widows as second wives given the high number of war widows in the country. However, Iraqi leaders (and civil society groups) are divided on the</p>	<p>A woman may include a condition in the marriage contract stipulating that her husband may not take another wife. If the husband breaches this term of the marriage contract, the woman has the right to petition for divorce.<sup>50</sup></p>	<p>According to Iraq's 2011 Multiple Cluster Indicator Survey, about 6% of marriages in Iraq are polygamous.<sup>51</sup></p> <p>According to a media reports, polygamy may be increasing in Iraq due to the improved financial situation of</p>

<sup>41</sup> Article 8 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>42</sup> Article 6 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>43</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 214, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>44</sup> Article 3 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>50</sup> Articles 6(2), 6(3) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>51</sup> Central Statistics Organisation et al, "Iraq Multiple indicator Cluster Survey 2011", Table CP.5, p. 156, <https://mics-surveys->

<p><i>nised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>met: (i) the husband has financial capacity; (ii) there is a legitimate interest; and (iii) there is no fear of injustice between wives.</p> <ul style="list-style-type: none"> <li>Provides for a penalty of imprisonment and/or fine if a man concludes a marriage with more than one wife without first seeking the authorisation of the court.</li> </ul> <p>Article 26(1) of the Personal Status does not allow a husband to house more than one wife in the same home, unless the wives consent.<sup>45</sup></p> <p>Article 40(5) provides that a wife may file for divorce if a husband takes a second wife without court permission.<sup>46</sup></p> <p>In the Iraq Kurdistan Region, the Personal Status Law states that marrying more than one woman is not allowed unless authorised by</p>		<p>subject of whether encouraging polygamous marriages among with widows is a step in the right direction is assisting war widow, advocating instead that the Iraqi government should have more programmes to assist widows to be financially independent.<sup>49</sup></p>	<p>many men, and the large number of widows following the war. In addition, many polygamous marriages are being performed outside the jurisdiction of the court in violation of the law.<sup>52</sup></p> <p>According to a media report, while the amendments to the Kurdish Personal Status Law were intended to significantly reduce polygamy, the practice has been difficult to police and prevent, as some individuals travel across the border to engage in polygamous marriages. The regional government</p>
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[prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS\\_English.pdf](http://prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS_English.pdf)

<sup>45</sup> Article 26(1) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>46</sup> Personal Status Law No. 188 (1959) of 1959 (as amended), Article 40(5), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>49</sup> Palash Ghosh, "Iraq may encourage polygamy due to excess number of war widows," *IBT*, 26 January 2011, <http://www.ibtimes.com/iraq-may-encourage-polygamy-due-excess-number-war-widows-259905>; Roula Ayoubi, "Iraq toys with polygamy as solution for war widows," *BBC*, 26 January 2011, <http://www.bbc.com/news/world-middle-east-12266986>

<sup>52</sup> "Iraq Witnessing an Increase of Polygamy Out of Court and Five Years in Prison Waiting Violators", *Shafaaq News*, 25 March 2015, [http://www.shafaaq.com/en/En\\_NewsReader/f8f5ab86-e2ca-4999-84d0-d2fb7d13b3b3](http://www.shafaaq.com/en/En_NewsReader/f8f5ab86-e2ca-4999-84d0-d2fb7d13b3b3); Wassim Bassim, "Rising Income May Mean Iraqi Men Marry Multiple Wives", *Al-Monitor*, 26 January 2015, <http://www.al-monitor.com/pulse/originals/2015/01/iraq-polygamy-men-marriage-society.html>

	<p>the judge. A judge may only authorise the polygamous marriage if the following conditions are met: (i) the first wife has to agree before the court to her husband marrying a second wife; (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile; (iii) the man has the financial capacity to support more than one wife; (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations; (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife. A man who concludes a polygamous marriage without the authorisation of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.<sup>47</sup></p> <p>Temporary marriages are prohibited.<sup>48</sup></p>				<p>has created a special commission to investigate this issue and consider the potential of punishing those who exploit this loophole.<sup>53</sup></p> <p>According to a 2016 civil society shadow report submitted to the CEDAW Committee, temporary marriage is neither legally recognised nor is it socially acceptable. However, it is on the rise in recent years, including in universities. Reasons include destitution, increase in the number of widows and young people preferring to be in a temporary as opposed to a permanent marriage. There are no statistics on such marriages, because</p>
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<sup>47</sup> Article 1 of the Kurdistan Personal Status Law (2008), [http://www.ekrg.org/files/pdf/personal\\_status\\_law.pdf](http://www.ekrg.org/files/pdf/personal_status_law.pdf)

<sup>48</sup> Iraqi Women Network, Rafidain Women Coalition, Gathering of "No to violence etc.", "Iraqi women in armed conflict and post conflict situation", *Submission to the CEDAW Committee for the 57<sup>th</sup> Session*, 2014, p. 17, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_16192\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_16192_E.pdf)

<sup>53</sup> Matt Frazer, "Iraqi Kurdistan enforces the new polygamy law," *Ekurd Daily*, 26 September 2011, <http://ekurd.net/mismas/articles/misc2011/9/state5458.htm>

					they are often done secretly. <sup>54</sup>
<p><b>Divorce rights</b></p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to</i></p>	<p>The IPSL provides for three different mechanisms for divorce: (i) unilateral repudiation (<i>talaq</i>); (ii) judicial divorce; and (iii) redemptive divorce (<i>khul'</i>).</p> <p>A husband may unilaterally repudiate a marriage without much restrictions.<sup>55</sup></p> <p>A husband may delegate his unilateral right to divorce to his wife (<i>isma</i>) through a stipulation in the marriage contract, thus permitting her to pronounce <i>talāq</i> upon herself (<i>talāq -i-tafwid</i>).<sup>56</sup></p> <p>Valid grounds for seeking judicial divorce by a wife include the husband's: (i) abuse of herself or the children in a way that makes life impossible to continue; (ii) infidelity; (ii) marriage to another wife without the permission of the</p>			<p>The registration of marriage and divorce is mandatory.<sup>59</sup></p>	<p>According to media reports, divorce rates in Iraq is rising. In 2014, the divorce rate in Iraq was approximately 20%, with 70% of divorces in Iraq being initiated by women. It is not uncommon for women to give up all their rights in order to obtain a divorce due to unbearable circumstances should they remain in the marriage.<sup>60</sup></p>

<sup>54</sup> Iraqi Women Network, Rafidain Women Coalition, Gathering of "No to violence etc., "Iraqi women in armed conflict and post conflict situation", *Submission to the CEDAW Committee for the 57<sup>th</sup> Session*, 2014, p. 17, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_16192\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_16192_E.pdf)

<sup>55</sup> Articles 37, 39 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>; Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 221-222, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>56</sup> Article 34 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>; Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 221-222, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>59</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 221-222, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>60</sup> Shafaaq News, "High divorce rate of about 20% in Iraq continues, 'Turkish drama' is one of the most important reasons", *Shafaaq News*, 2 May 2015, [http://www.shafaaq.com/en/En\\_NewsReader/5621f022-e765-4198-9baa-ef12cec019c7](http://www.shafaaq.com/en/En_NewsReader/5621f022-e765-4198-9baa-ef12cec019c7); Nizar Latif, "Worry over rise in divorce rate", *The National*, 10 January 2010, <http://www.thenational.ae/news/world/middle-east/worry-over-rise-in-divorce-rate>

<p><i>register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>court; (iii) imprisonment of three years or more; (iv) abandonment for two years or more for without a legitimate reason; (v) impotence provided certain conditions are met;(vi) serious illness that was discovered after the conclusion of the marriage; (vii) failure to provide financial maintenance without legitimate reason; (ix) staying in a foreign country for more than three years. In addition, the wife may seek divorce on the basis of dissention between the spouses. In such instance, the court will order a reconciliation process.<sup>57</sup></p> <p>A wife may petition a court to obtain divorce through <i>khul'</i> upon paying compensation to the husband.<sup>58</sup></p>				
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are availa-</i></p>	<p>Generally, upon divorce, a woman may be entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); and (iii) compensation if the former husband divorced her unreasonably. There is no legal concept of matrimonial assets.</p> <p>Article 50 of the IPFL provides that a woman may be entitled to</p>			<p>The couple may agree on the division of assets acquired during the marriage in the marriage contract.<sup>66</sup></p>	

<sup>57</sup> Articles 40-41, 43 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>58</sup> Article 46 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>66</sup> Article 6 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>



<p><i>ble to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>financial maintenance during the waiting period after the divorce (<i>iddah</i>). The <i>iddah</i> period is generally three months.<sup>61</sup></p> <p>Article 39(3) of the PSL provides that if the husband had arbitrarily divorced his wife, the court shall rule, at the woman's petition, for her former husband to pay compensation (<i>ta'wid</i>) appropriate to his financial status and the extent of his arbitrariness, provided that the total sum should not exceed her maintenance for a period of two years, in addition to her other established financial rights.<sup>62</sup></p> <p>The Law on the Right of a Divorced Woman in Residence provides that if the divorced woman indicates to the court that she wants remain in the marital home, a judge may grant the woman this right, whether the home was owned or rented by the husband fully or partially. If the judge rules in favour of the woman, any action taken by the husband in the six months preceding the divorce to change ownership of the home to deprive the woman of this right shall be</p>				
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<sup>61</sup> Article 50 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>; Kelsey Cherland, "Developments in Personal Status Law: Iraq and Jordan" (CMC Senior Thesis, Paper 865, 2014), p. 73, [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc_theses)

<sup>62</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 222, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

	<p>invalid in this case, and any rental rights shall be transferred to the woman.<sup>63</sup> The divorced woman does not have a right to remain in the home if the divorce was due to her infidelity or disobedience, or if she consented to the divorce.<sup>64</sup></p> <p>Following a divorce, a father is responsible for the financial maintenance of his children. If the mother is the custodian, he is obligated to pay her maintenance to cover the expenses of his children. A daughter is entitled to maintenance until she is married, and a son is entitled to maintenance until he reaches an age where he would be expected to earn a living unless he is a student, in which case until he completes his education successfully.<sup>65</sup></p>				
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers au-</i></p>	<p>A mother has priority right over the custody of her children so long as it is in the interest of the children. A mother retains custody over her children until they reach 15. Thereafter child may choose to remain in either the custody of the mother or move in with father,</p>				

<sup>63</sup> Article 1 of the Law No. 2/1994 amending Law No. 23/1988 on the Right of a Divorced Woman in Residence, <http://wiki.dorar-aliraq.net/iraqilaws/law/15982.html>

<sup>64</sup> Article 2 of Law No. 23/1988 on the Right of a Divorced Woman in Residence, [http://www.tqmag.net/body.asp?field=news\\_arabic&id=1738&page\\_namper=p3](http://www.tqmag.net/body.asp?field=news_arabic&id=1738&page_namper=p3)

<sup>65</sup> Article 59 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>; Kelsey Cherland, "Developments in Personal Status Law: Iraq and Jordan" (CMC Senior Thesis, Paper 865, 2014), pp. 75-76, [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1926&context=cmc_theses)

<p><i>tomatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>until the child reaches the age of majority.<sup>67</sup></p> <p>A mother does not forfeit her right to custody over her children upon remarriage. The court decides whether the mother or father has the better claim to raise the child, in the light of the child's best interests.<sup>68</sup></p>				
<p><b>Guardianship of Children</b></p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>A father has priority right over the guardianship of his children until they reach the age of majority (18).<sup>69</sup> However, a guardians may be dismissed if: (i) he is convicted of a dishonourable crime; (ii) he is sentenced to imprisonment of more than one year; (iii) the child is harmed by someone related to the guardian; (iv) the court deems the guardian's actions and negligence threatening to the minor's interest; (v) the guardian is found cheating.<sup>70</sup></p>				
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family</i></p>	<p>Abortion is strictly prohibited by law, except when it is necessary to safe the pregnant woman's life.<sup>71</sup></p>				<p>According to World Bank data, the total fertility rate decreased from 6.3</p>

<sup>67</sup> Article 57 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>68</sup> Article 57 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>; Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 228, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>69</sup> Article 82 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>; Iraq Legal Development Project, "The Status of Women in Iraq: An Assessment of Iraq's *De Jure* and *De Facto* Compliance with International Legal Standards, 2005, p. 56

<sup>70</sup> Article 84(4) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>71</sup> Articles 417-418 of the Penal Code (1969), <http://www.refworld.org/docid/452524304.html>; Centre for Reproductive Rights, "The World's Abortion Laws", 2014,

<p><i>planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>					<p>children per woman in 1960 to 4.5 in 2015.<sup>72</sup></p> <p>According to Iraq's 2011 Multiple Cluster Indicator Survey:<sup>73</sup></p> <ul style="list-style-type: none"> <li>• 8% of Iraqi women aged 15-49 have an unmet need for family planning services, with 5% having an unmet need for spacing and 4% an unmet need for limiting of children; and</li> <li>• 58% of Iraqi women are using a method of contraception, with women mainly using a modern method (36%).</li> </ul>
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<sup>72</sup> <https://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/AbortionMap2014.PDF>

The World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

<sup>73</sup> Central Statistics Organisation et al, "Iraq Multiple indicator Cluster Survey 2011", Tables RH.4, RH.5, pp. 105, 107, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS\\_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS_English.pdf)

<p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 22 of the Constitution guarantees Iraqi the right to work.<sup>74</sup></p> <p>Article 37 of the Constitution declares that personal liberty shall be protected.<sup>75</sup></p> <p>Article 44 of the Constitution provides every Iraqi has freedom of movement, travel, and residence inside and outside Iraq.<sup>76</sup></p> <p>Despite the constitutional provisions stating otherwise, the IPSL potentially restricts the personal rights of a married woman as a result of the maintenance-for-obedience legal framework provided for under the law.</p> <p>Thus, pursuant to Article 25 of the IPSL, a wife risk losing her entitlement to financial maintenance unless if she leaves the marital home without her husband's permission and without legitimate reason or refuses to travel or move with her husband. However:<sup>77</sup></p>		<p>The Government of Iraq in its 2013 report to the CEDAW Committee stated that:<sup>79</sup></p> <ul style="list-style-type: none"> <li>• Nothing in Iraqi law or custom obliges a wife to change her name after getting married;</li> <li>• The wife also continues to retain her independent legal personality, although her marriage is noted in her civil identity card;</li> <li>• There is no legal restriction that impedes on a married woman's choice of profession;</li> <li>• A married woman</li> </ul>	<p>According to World Bank data, female labour force participation increased from 11% in 1990 to 15% in 2016.<sup>80</sup> During the same period, male labour force participation decreased from 72% to 70%.<sup>81</sup></p> <p>According to the 2016 UNDP Human Development Report:<sup>82</sup></p> <ul style="list-style-type: none"> <li>• 36% of women over 25 have at least some secondary education as compared to 56% of men of the same age group;</li> <li>• 81% of females aged 15-24 are able to read and write a short simple sentence is</li> </ul>
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<sup>74</sup> Article 22 of the Iraqi Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)  
<sup>75</sup> Article 37 of the Iraqi Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)  
<sup>76</sup> Article 44 of the Iraqi Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)  
<sup>77</sup> Articles 25, 33 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>  
<sup>79</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), para. 232, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<ul style="list-style-type: none"> <li>Article 25 also stipulates that a wife shall not be bound to obey her husband if the husband is arbitrary in his demands for obedience, intending to injure or oppress her. In addition, the court must give due consideration in issuing a ruling for the disobedience of the wife before ruling that a wife is disobedient. It must understand the reasons for her refusal to obey her husband and do its utmost to remove the causes of a wife's disobedience; and</li> <li>Article 33 states that the wife's obedience is not due to the husband in any matter contradicting <i>Shari'ah</i> and the judge can award her maintenance.</li> </ul> <p>The Iraqi Passport Law No. 32/2015 states that women are allowed to obtain a passport without the consent of a guardian (<i>wali</i>).<sup>78</sup></p>		<p>continues to enjoy her independent legal personality. It is legally possible for her to own property, act independently and engage in all types of lawful civil and commercial acts.</p>		<p>almost universal as compared to 83% of males in the same age group; and</p> <ul style="list-style-type: none"> <li>60% of women are satisfied with their freedom of choice as compared to 58% of men.</li> </ul> <p>According to information on the ground, although women are now legally allowed to obtain a passport without permission of her guardian, the law has not been implemented and it is impossible for a woman to obtain a passport without the consent of a <i>wali</i>.<sup>83</sup></p>
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<sup>80</sup> The World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

<sup>81</sup> The World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

<sup>82</sup> UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

<sup>78</sup> Iraqi Passport Law (2015), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102984/124756/F1073654773/4381.pdf>

<p><b>Inheritance rights</b></p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>Generally, inheritance rights between women and men are unequal. Chapter 9 of the IPSL details the inheritance shares among beneficiaries. In many instances, a woman is entitled to half the share of a man. For instance:<sup>84</sup></p> <ul style="list-style-type: none"> <li>• Article 89 provides that male siblings shall inherit twice the amount of female siblings;</li> <li>• Article 91(1) specifies that a husband is entitled to a quarter of the legacy when there is an inheriting descendent to his wife; and to half when the latter does not exist. As for the wife, she is entitled to one-eighth of the legacy when there is an inheriting descendent; and to a quarter when the latter does not exist.</li> </ul> <p>The exception to the general rule includes Article 91(2) of the IPSL whereby daughters can inherit an entire property in the absence of son, thus excluding male agnates.<sup>85</sup></p>			<p>A person may choose to write a will. However, a will can cover no more than one-third of the estate, except by permission of all existing beneficiaries.<sup>86</sup></p>	<p>Kurdish women have called on legislators to improve inheritance rights for women, asking for equality to men with regards to inheritance.<sup>87</sup></p>
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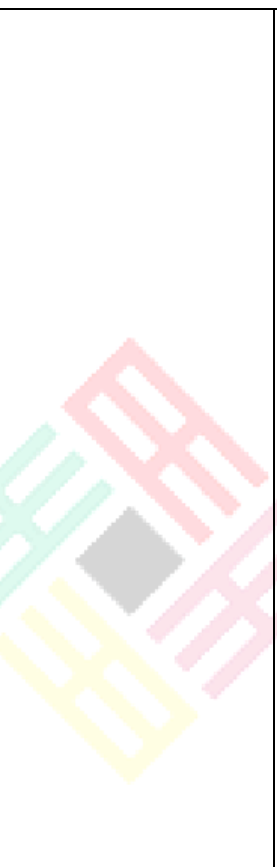
<sup>83</sup> Information obtained from Iraqi advocate, February 2017

<sup>84</sup> Articles 89, 91(1) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>85</sup> Article 91(2) of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>86</sup> Article 70 of the Personal Status Law (1959), <https://docs.google.com/file/d/0B8ITLJi5y4TKcXF3MFJnUTFwUmc/view>

<sup>87</sup> Amanj Khalil, "Women Claim New Law Erodes Their Rights" *IWPR*, 12 June 2008, <https://iwpr.net/global-voices/women-claim-new-law-erodes-their-rights>

<p><b>Violence against women in the family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 &amp; 19 Para. 40 GR21</p>	<p>Article 29(4) of the Constitution prohibits that all forms of violence and abuse in the family.<sup>88</sup></p> <p>Iraq has not yet adopted specific legislation to criminalise acts of domestic violence. The Iraqi Parliament is completing its review of the draft Anti-Domestic Violence Law, which was introduced in 2015.<sup>89</sup></p> <p>The Penal Code contains some general prohibitions that are applicable to domestic violence. The Penal Code criminalises and provides for penalties for certain offences involving the family (issuing and obtaining an invalid marriage certificate, etc.) as well as rape, indecent assault, etc.<sup>90</sup></p> <p>However, under the Penal Code:<sup>91</sup></p> <ul style="list-style-type: none"> <li>Article 41(1) permits a husband to use physical discipline against his wife</li> </ul>		<p>The Government of Iraq it is 2013 report to the CEDAW Committee informed that to address the grave issue of violence against women in Iraq, various ministries, including the Ministry of Human Rights, Ministry of State for Women's Affairs, Ministry of Interior have instituted programmes to address the issue.<sup>93</sup></p>	<p>According to civil society and media reports, violence against women in Iraq is increasing significantly, especially with the militarisation of ISIS.<sup>94</sup></p> <ul style="list-style-type: none"> <li>A 2015 report states that at least 14,000 women have been killed by gender-based violence since 2003;</li> <li>Feminist groups are forced to scale back their efforts due to the ongoing conflict and sectarian violence. The focus of these groups are now</li> </ul>
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<sup>88</sup> Article 29(4) of the Iraqi Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en)

<sup>89</sup> Human Rights Watch, "Strengthen Domestic Violence Bill", 19 March 2017, <https://www.hrw.org/news/2017/03/19/iraq-strengthen-domestic-violence-bill>

<sup>90</sup> Penal Code (1969), <http://www.refworld.org/docid/452524304.html>

<sup>91</sup> Articles 41(1), 128, 130-131, 398 of the Penal Code (1969), <http://www.refworld.org/docid/452524304.html>

<sup>93</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 27-46, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>94</sup> The Kvinna till Kvinna Foundation, "Violence Against Women in Iraq", 2014, p. 2, <http://kvinnatillkvinna.se/en/files/qbank/217b4c71837fac172fabebfc299f755b.pdf>; Maguy Arnos, "14,000 Women Killed by Gender-Based Violence in Iraq since 2003: Report", *Al-Akhbar*, 18 February 2015, <http://english.al-akhbar.com/node/23836>; Zahra Radwan, Zoe Blumenfeld and Foreign Policy In Focus, "Surging Violence Against Women in Iraq", *The Nation*, 2 July 2014, <https://www.thenation.com/article/surging-violence-against-women-iraq/>



	<p>within the bounds of what is permissible by <i>Shari'ah</i>, law, or custom;</p> <ul style="list-style-type: none"> <li>Article 128 allows for honourable motives or extreme provocation to be mitigating factors that can be taken into account to either exempt from or reduce punishment for a crime. Articles 130 and 131 specify the reduced punishments when a mitigating factor exists. For example, Article 131 provides that if a mitigating factor exists for a crime punishable by death, the sentence may be reduced to life imprisonment or imprisonment for a term no less than one year;</li> <li>Article 398 provides that any action against a rapist who marries the victim will become void and any investigation or other procedure is discontinued, and if a sentence has already been passed, the sentence will be quashed.</li> </ul> <p>Marital rape is not specifically criminalised.<sup>92</sup></p>				<p>to help women survive as opposed to advocating for women's rights;</p> <ul style="list-style-type: none"> <li>There are no publicly funded domestic violence shelters in southern and central Iraq. The Organisation of Women's Freedom in Iraq operates two shelters in Baghdad but without government permission. In the Kurdistan Region of Iraq, there are currently three official shelters for women victims of gender-based violence.</li> </ul> <p>According to the 2011 Iraq Woman Integrated Social and Health Study:<sup>95</sup></p> <ul style="list-style-type: none"> <li>45% of married</li> </ul>
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<sup>92</sup> The Kvinna till Kvinna Foundation, "Violence Against Women in Iraq", 2014, pp. 1-2 <http://kvinnatillkvinna.se/en/files/qbank/217b4c71837fac172fabebfc299f755b.pdf>

					<p>women reported they had been subjected to psychological violence (humiliation, intimidation and control of her behaviour);</p> <ul style="list-style-type: none"> <li>• 56% of men believe they have the right to beat their wife if she is disobedient.</li> </ul> <p>According to Iraq's 2011 Multiple Cluster Indicator Survey:<sup>96</sup></p> <ul style="list-style-type: none"> <li>• About 9% of women aged 15-49 have suffered a form of female genital mutilation or cutting;</li> <li>• About 56% of women aged 15-49 stated that a husband is justified in hitting or beating his</li> </ul>
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<sup>95</sup> The Kyinna till Kvinna Foundation, "Violence Against Women in Iraq", 2014, p. 1, <http://kvinnatillkvinna.se/en/files/qbank/217b4c71837fac172fabebfc299f755b.pdf>

<sup>96</sup> Central Statistics Organisation et al, "Iraq Multiple indicator Cluster Survey 2011", Table CP.11, p. 166, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS\\_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS_English.pdf)

					wife in at least one of the following circumstances: (i) she goes out without telling him (39%); (ii) she neglects the children (35%); (iii) she argue with him (35%); (iv) she refuses sex with him (32%); she burns the food (17%).
<p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>Both an Iraqi woman and man may pass their nationality to their non-Iraqi spouses, provided they meet various conditions e.g. married for at least five years, etc.<sup>97</sup></p> <p>An Iraqi woman who marries a non-Iraqi man will not lose her nationality unless she declares the renunciation of her Iraqi nationality in writing.<sup>98</sup></p> <p>An Iraqi father passes his citizenship to his children wherever they are born. An Iraqi mother may</p>		<p>The Government of Iraq in its 2013 report to the CEDAW Committee asserted that that it treats men and women equally with respect to Iraqi nationality and had thus lifted Iraq's reservation to Article 9 of CEDAW that was made at the time of accession.<sup>100</sup></p>	<p>The procedural requirements for proving that a father is stateless are strict and often difficult to fulfil.<sup>102</sup></p>	<p>UNHCR noted that the current nationality law only allows women the equal right as men to confer nationality if the child is born in the territory of Iraq, which is discriminatory.<sup>103</sup></p>

<sup>97</sup> Articles 7, 11 of the Iraqi Nationality Law (2006), <http://www.refworld.org/docid/4b1e364c2.html>

<sup>98</sup> Article 12 of the Iraqi Nationality Law (2006), <http://www.refworld.org/docid/4b1e364c2.html>

<sup>100</sup> Iraq State party report, U.N. Doc. CEDAW/C/IRQ/4-6 (2013), paras. 119-127, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>102</sup> Tilburg University, "Briefing on Qatar, Iraq and Bahrain", *Submission to the Pre-Sessional Working Group of the CEDAW Committee for the 57<sup>th</sup> Session*, CEDAW Committee, 2013, p. 3, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BHR/INT\\_CEDAW\\_NGO\\_BHR\\_14648\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BHR/INT_CEDAW_NGO_BHR_14648_E.pdf)

<sup>103</sup> UNHCR, "Background Note on Gender Equality, Nationality Law, and Statelessness", 2014, p. 4, <http://www.unhcr.org/4f5886306.pdf>

	<p>pass her citizenship to her children if the child is born in Iraq. If the child is born abroad, an Iraqi mother may apply for Iraqi nationality for her child, provided that the child's father is unknown or stateless and the child is residing in Iraq at the time of the application.<sup>99</sup></p>		<p>Despite this claim however, the Iraqi Ministry of Foreign Affairs in its website states that an Iraqi birth certificate can only be issued to a child of an Iraqi father.<sup>101</sup></p>		
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<sup>99</sup> Article 18 of the Iraq's Constitution (2005), [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en); Article 4 of the Iraqi Nationality Law (2006), <http://www.refworld.org/docid/4b1e364c2.html>

<sup>101</sup> "FAQ's," Website of the Iraqi Ministry of Foreign Affairs, <http://www.mofa.gov.iq/en/submenu.php?id=16>