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# IRAQ ACCESS TO JUSTICE PROGRAM VALUES OF ACCESS TO JUSTICE AND UNREGISTERED MARRIAGE

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# ABBREVIATIONS & ACRONYMS

<b>COMSEC</b>	General Secretariat for the Council of Ministers
<b>CDO</b>	Civil Development Organization (Kirkuk)
<b>CSO</b>	Civil Society Organization
<b>dTS</b>	Development & Training Services, Inc.
<b>GDF</b>	Gender dimensions framework
<b>GOI</b>	Government of Iraq
<b>IKR</b>	Iraqi Kurdistan Region
<b>IQD</b>	Iraqi Dinar
<b>KRG</b>	Kurdistan Regional Government
<b>NGO</b>	Non-governmental Organization
<b>UNICEF</b>	United Nations Children’s Fund
<b>USAID</b>	United States Agency for International Development
<b>USD</b>	United States Dollar
<b>VOP</b>	Voice of Older People

# BACKGROUND

## INTRODUCTION

An individual's access to justice is mediated by areas of social difference including age, gender, ethnicity, race, class, health and life stage. Understanding how information, services and resources flow to vulnerable populations and the links between access and social identity are vital for improving access to rights and entitlements.

This report was prepared by the USAID Iraq Access to Justice Program and uses a value network approach to explore the actors and activities involved in the registration process for those whose marriages have not been formally registered in an Iraqi court. The analysis draws on the Development & Training Services, Inc. (dTS) gender and value chain framework to identify how gender gaps constrain men and women from registering their marriages and claiming the associated legal rights and protections. This report also highlights the increasing and underlying problem of early or minor marriages in Iraq, the factors that lead to these and recommends opportunities where the Access to Justice Program can further influence change.

The USAID Iraq Access to Justice Program supports the growth of local and national institutions that provide information and advocacy to vulnerable populations. Program efforts are organized into three, interconnected program component areas:

- **Improve the practical knowledge** of vulnerable and disadvantaged of their responsibilities, rights and remedies under Iraqi law;
- **Increase the competence and availability of legal professionals** and civil society partners who assist vulnerable and disadvantaged Iraqis; and
- **Advocate for improvements to government processes** and procedures to facilitate the access of vulnerable populations to government services and legal remedies.

To promote sustainability, the Program partners with local civil society organizations.

The first sections of this report provide background on gender, value networks and the status of unregistered marriage in Iraq. The third section describes the actors and activities in the value network within the process of marriage registration, followed by an analysis of key gender-based constraints to legal registration of marriage in Iraq. The fourth section summarizes strategies and activities undertaken by the Program to overcome gender-based constraints, to endorse marriage registration and to prevent early marriages. The final section highlights gaps in efforts made to encourage and assist in the registration of marriages and to prevent early marriages and offers recommendations to enhance access to legal marriage.

## PURPOSE

The purpose of this value network analysis is fourfold:

- (1) Highlight the key organizations with which a beneficiary with an unregistered marriage must engage and the procedures he or she must follow in order to access the entitlements guaranteed under Iraqi law;
- (2) Determine the most common gender-based constraints<sup>1</sup> or obstacles encountered by men and women when attempting to register their marriages;
- (3) Highlight the ways in which the USAID Iraq Access to Justice Program has been successful in overcoming some of the gender-based constraints; and
- (4) Identify areas where the Program and its implementing partners can effectively influence further positive change in the coming years to ensure that married Iraqi men and women have the protection of legally registered marriage, to prevent early marriage and to assist those who are married outside the court yet lack the necessary requirements to formally register their marriages.

## METHODOLOGY

This report is the result of interviews with 21 civil society organizations from across Iraq, medical practitioners and Iraqi lawyers. The interviews delineate the circumstances that lead to unregistered marriages, the main obstacles faced by Iraqi men and women with unregistered marriages, as well as the main obstacles they encounter when trying to register these.

While differences exist from one community to another, the formal procedure for registering marriage is uniform across Iraq and is governed by the 1959 Personal Status Law.

Iraq, although a predominantly Muslim country, is made up of many diverse religious groups. Whether a marriage is held in a temple, a church or before a religious figure in a private venue, by law these must also be registered in court. Non-Muslim Iraqis follow the same steps as Muslims, however they register their marriages in the so-called Personal Items Court rather than the Personal Status Court. Christian marriages are conducted in the Church, where the couple signs a certificate of marriage document that is then taken to the Personal Items Court for registration; the marriage is registered and the couple is

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<sup>1</sup> A gender-based constraint refers to restrictions on men's or women's access to resources or opportunities that are based on their gender roles or responsibilities. The term encompasses both the measurable inequalities that are revealed by sex-disaggregated data collection and gender analysis as well as the processes that contribute to a specific condition of gender inequality (Rubin, Manfre and Nichols Barrett dTS).



provided with a copy of the official marriage document. This report focuses primarily on marriages of Muslim couples. However reference is also made to religious minorities where salient trends or relevant differences exist.

# BACKGROUND GENDER, VALUE NETWORKS AND ACCESS TO JUSTICE

There is growing recognition that value chain concepts are useful beyond the realm of economic growth and trade. Strategies have been developed for applying aspects of value chain analysis, such as mapping, to health and nutrition and access to justice. This analysis applies lessons from the gender and value chain literature to the USAID Iraq Access to Justice Program's objective of addressing access issues for vulnerable populations.

This analysis relies on Verna Allee's definition of value networks as any web of relationships that generate both tangible and intangible value through complex dynamic exchanges between two or more individuals, groups or organizations.<sup>2</sup> For this report, access to justice (access to the benefits of a legal marriage) is viewed as a value network.

There are multiple actors involved in generating both tangible and intangible value. The tangible value that is generated through this network is legal registration of a marriage. The intangible value generated is knowledge and benefits. Enhancing the extent to which the network is able to produce its mandated activities (legal registration of marriage) is assessed by tracing the steps through which a couple/person must go to register a marriage and the actors with which they must interact in order to do this. Mapping this network helps illuminate the common obstacles faced as well as the key areas of vulnerability associated with not having a formally registered marriage in Iraq.

The analysis assumes that value networks are embedded in a social context. Social and cultural factors shape the construction of organizational arrangements and affect how people interact with different actors within the network. Understanding the activities and actors within a network cannot be isolated from an examination of how gender relations shape and impact behavior and outcomes. To identify and assess key gender gaps within the access to justice value network for people with unregistered marriages, this analysis draws on the dTS gender and value chain approach and the gender dimensions framework (GDF).<sup>3</sup> The GDF offers a structured way to analyze gender relations.

Four intersecting dimensions of social life were examined to better understand how gender relations affect people with unregistered marriages when accessing legal marriage registration. These include: (1) access to productive assets; (2) social practices; (3) social beliefs and perceptions; and (4) laws, policies and institutions. Working through the GDF helps illuminate gender gaps that create gender-based constraints to peoples' access. Gender-based constraints are understood as restrictions to men or

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<sup>2</sup> Allee, Verna. *The Future of Knowledge: Increasing Prosperity through Value Networks*. Boston : Butterworth-Heinemann, 2003

<sup>3</sup> The dTS gender and value chain approach and GDF are outlined in *Promoting Gender Equitable Opportunities in Agricultural Value Chains* . Arlington, VA: dTS, 2009.

women's access to resources or opportunities that are based on their gender roles or responsibilities.<sup>4</sup> By focusing on how gender relations impact upon the production of tangible value, namely legal registration of a marriage, the Program has broadened the scope of traditional value chain analysis.

## **BACKGROUND TO MARRIAGE REGISTRATION IN IRAQ**

As in most countries, where unregistered marriages are a significant concern, in Iraq these are most prevalent where poverty, illiteracy and gender inequalities are most pronounced. In Iraq as in other countries the phenomena of unregistered marriages dovetails with those of child marriages, forced marriages and human trafficking. This is a cyclical concern, as unregistered marriages increase human rights violations, poverty, illiteracy and the failure of sustainable development.

The victims of unregistered marriages are overwhelmingly women and children who are without the formal protection guaranteed by Iraqi law to families whose marriages are registered before the court. Iraqi law does not recognize a marriage if it is not registered by the courts. Couples who are married by religious clerics and do not also have the marriages registered by the courts are considered by the law to be single. This has serious consequences for women, who then have no formal protection in the events of abandonment or widowhood. Moreover, because women must show their marriage certificate to benefit from obstetric care according to the law, the children of these marriages cannot be born in a hospital, their births are not registered and they do not receive birth certificates.<sup>5</sup> These children are ineligible for state assistance including rations, healthcare or education. Without a legally registered marriage, the mothers and fathers are deemed to be single, their children's births are not registered and they subsequently have no formal identity or civil rights.

*Most people with unregistered marriages deliver their babies at home or with the assistance of a midwife. To deliver a baby in the hospital, the husband and wife must produce identity documents and proof that their marriage is formally registered. State-run hospitals request the marriage certificate for obstetric care. Thus underage girls will deliver their babies at home to avoid going to the hospital. This carries serious health risks — including high rates of maternal mortality — as girls under the age of 18 require special healthcare for delivery.<sup>6</sup>*

### **Registered marriage**

These are marriages that have legal contracts and have been witnessed and registered in the Personal Status Court according to the requirements of Iraq's Personal Status Law. In most cases the appropriate religious authority has also recognized these marriages. According to Iraqi Law, a couple wishing to

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<sup>4</sup> *Ibid.*

<sup>5</sup> From interview with Iraqi doctor in Baghdad, July 2013 .

<sup>6</sup> Interview with an Iraqi doctor in Baghdad.

marry must undergo a required medical examination,<sup>7</sup> bring all identity documents, and be seen by a judge in the Personal Status Court accompanied by two approved witnesses, where the couple recites marriage vows and signs the marriage contract.

Registration of the marriage will provide the couple with a legal marriage certificate. This will enable them to obtain new identity papers indicating their marital status. The marriage certificate ensures the protection of civil rights for men and women as well as their subsequent children. These rights include the right to healthcare, education and a ration card for basic food items as well as civil rights of political participation, etc.

### ***Unregistered marriage***

These are any marriages that are not legally registered in the Personal Status Court or Personal Items Court. Although a religious or tribal authority may have conducted and witnessed these, they have not been registered in the court and are not recognized by the state. These are, however, common in Iraq and socially approved. For instance, marriages adhering to *Sharia*<sup>8</sup> are considered religiously legitimate, and are accepted by society. But if such marriages are not registered in court they do not provide the married couple with formal registration documents that prove their union and protect their civil rights.

Unregistered marriages can further be separated in three main categories. These are traditional/religious, polygamous and so-called 'pleasure' marriages.

### ***Traditional religious marriage***

Traditional religious marriages have the same characteristics as legally registered marriages (e.g. longevity, commitment, children), however the couples' marriage has not been registered in the court before a judge. In this case, the religious agent or Sheikh conducts a marriage ceremony. Theoretically, the person who officiates a marriage ceremony is responsible for verifying the legal conditions of marriage and recording marriage details.<sup>9</sup> However, in practice this does not often happen.

In practice, anyone who can recite the wedding vows can marry a couple,<sup>10</sup> and under dominating interpretations of Sharia, this is an entirely proper marriage.<sup>11</sup> However, the couple has not registered the marriage as required by the law. In such cases, the husband is liable to be fined or imprisoned for failing to register his marriage. This type of marriage has the same social, cultural and religious responsibilities as formally registered marriage, but is not protected by the state and therefore provides

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<sup>7</sup> Medical examinations and laboratory tests are required for both spouses prior to the marriage certificate being registered. Reluctance to have this medical certificate is reason for some people to have their marriages conducted outside the court, claiming that the whole procedure is time consuming and they have fears that they may be prevented from being married because of the medical examination.

<sup>8</sup> Islamic law and jurisprudence.

<sup>9</sup> This includes checking that the marriage partners have had the appropriate health checks and are of the legal age of marriage.

<sup>10</sup> From interview with CSO Fatima House June 2013.

<sup>11</sup> From interview with Iraqi Lawyer June 2013.

no legal protection or rights. The most salient negative concerns with this type of marriage are protection of rights for woman and children, who are ineligible to have official identity documents to confirm their entitlements to healthcare and education, and protection in case of the death of or abandonment by a spouse or father.

### *Polygamous marriage*

Polygamous marriages are allowed under Iraqi law under certain conditions. In accordance with *Sharia*, the Personal Status Law permits a man to marry more than one woman under the conditions set out in Chapter I, Section I, Article 3:

*Marrying more than one woman is not allowed except with the authorization of the judge. Granting this authorization is dependent on the fulfillment of the following two conditions: (a) the husband should have the financial capacity to provide for more than one wife; and (b) there is a legitimate interest. (...) If justice between wives is feared, polygamy may not be allowed. The issue would then be left to the judge's determination. (...) Marriage to more than one woman is permissible when the prospective wife is a widow".<sup>12</sup>*

If the second marriage is not registered, the second wife and her children are not be able to access legal marriage rights. Theoretically, the husband faces a fine or prison sentence for having a marriage outside the court and without the permission of both the judge and his first wife.

### *"Pleasure" marriage*

These include two types of religious marriages: *Mut'ah* and *Misyar*:

- ***Mut'ah* (زواج المتعة), or 'pleasure' marriages** are temporary marriages that represent a marital relationship between a man and a woman for a limited period of time and in exchange for a certain amount of money. This marriage contract is normally administered by a cleric. However, in practice a man and woman can make this contract independently in Iraq. The marriage contract will expire automatically at the agreed upon time without the need to divorce. Under this type of marriage, there are no entitlements to inheritance in the case of death of one of the spouses before the marriage expiry date. No registration or legal rights are associated with this marriage. According to Hassem, "A *Mut'ah*, or pleasure marriage can last for half an hour or for several years. When the contract ends, so does the marriage. No witnesses, officials or family members need to get involved".<sup>13</sup> *Mut'ah* has been considered a Shiite Muslim practice, and during Saddam Hussein's regime (a Sunni Muslim government), the practice of *Mut'ah* was banned. During Hussein's reign, *Mut'ah* marriages could see the participants end up in prison or

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<sup>12</sup> Widows are one of the most vulnerable groups in Iraq. If a man is to marry a widow as a second wife the first wife does not need to consent to this marriage and the protection of equal treatment is not awarded to the widow as a second wife.

<sup>13</sup> Hassem, Oras (2012), *Secret Marriages Rising in Iraq: And Women and Children are the Losers*. [www.niqash.org/articles/?id=3119](http://www.niqash.org/articles/?id=3119)

fined. However after 2003, and especially since the Iraqi government has been led by mainly Shiite Muslim politicians, *Mut'ah* has become more common again.<sup>14</sup>

- ***Misyar* (زواج المسيار) ‘traveler’s’ marriages** are marriages under which the wife waives her rights to alimony, dowry and residence provision by the husband. For instance, the wife can stay in her parents’ house and be visited by the husband daily, weekly or monthly according to the agreement between the husband and wife. While it is possible that all the rights that the wife and children will receive all the rights associated with a regular religious (or even legal) marriage, this is rarely the case. In this arrangement, the parties may give up certain privileges demanded by a traditional religious marriage, as usually arranged by the husband and wife's families. *Misyar* marriages are generally considered to be “a more permanent arrangement than the *Mut'ah*, although in practical terms it could also involve short-term contracts.”<sup>15</sup> There is evidence to suggest that this type of marriage is increasing in Iraq as young people seek religious approval for their unions while unwilling or unable to formalize a marriage.

In Iraq, unregistered marriages represent a growing problem. Since 2003, many couples opt for *Mut'ah* and *Misyar* marriages, as well as those witnessed solely by a religious cleric or Sheikh.<sup>16</sup> The most common form of unregistered marriage is a traditional religious marriage that has not also been registered in the court as required by law. According to the Program’s partner Fatima House Charity for Women, up to half of marriage registration cases in Sadr City (Baghdad) courts involve existing marriages that were not originally registered. This suggests that there are a corresponding number of births that are not registered.<sup>17</sup> In some rural areas, approximately 60% of marriages are unregistered.<sup>18</sup>

All categories of unregistered marriages, although commonly engaged, are not legally sanctioned and offer no legal protection. It is difficult to accurately determine the number of unregistered marriages in Iraq or of the subsequent number of unregistered births, and figures differ from one region to another and between rural and urban areas. However, CSO legal clinics note that the numbers have steadily increased since 2003.<sup>19</sup>

The increase in unregistered marriages was first noticed during the 1990s sanctions, when poor families tended to marry their daughters young. However, since 2003 these have increased at an unprecedented rate, which may be attributed to insecurity and the steady increase in underage or ‘early’ marriages.

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> From interview with Fatima House Charity for Women. A survey conducted by the Personal Status Court in Karkh (Baghdad) from January-August 2010 revealed that there were 2,301 cases of unregistered marriage in Baghdad. The highest rate was at the Karkh Personal Status Court, which had 636 cases. The second highest rate was in Kadhimiyah Personal Status Court, which has 620 cases. <http://www.iraqja.iq/view.1582/>

<sup>18</sup> From interview with CSO Odessa August 2013.

<sup>19</sup> From interviews with CSO Fatima House July 2013 and CSO Model Iraqi Women September 2013.

Under Saddam Hussein's regime, punishments and fines for failing to register a marriage were enforced. Since 2003, there has been a breakdown in governance and rule of law. As a consequence, laws governing marriage are either not adhered to or not enforced.

A further contributing factor is the transference of obedience from the state to religious and tribal authorities. Before 2003, the state was a strong source of governance and religious authority was controlled and carefully regulated by the state. Similarly, while tribal authority was somewhat encouraged under Saddam, this remained firmly under firm control of the state. However, since 2003 people look more to tribal and religious leaders for governance and such leaders have assumed more authority as well as impunity.

Most couples with unregistered marriages have been married before a religious or tribal representative. These marriages are considered religiously and socially legitimate and not out of the ordinary. In addition, it is common for marriages in Iraq to be arranged by the couples' families to close relatives. In rural areas, arranged marriages are the norm and these marriages often involve a degree of force (i.e. the wife in an arranged marriage is rarely given a choice in the matter). Young men are also sometimes betrothed without their consent and under considerable familial pressure.

*Over the past few years, Iraqi girls have been increasingly forced into marriage at an early age. The reasons and means of forced marriages have also changed. Since the establishment of the Iraqi state and until the 1990s, Iraqi girls were betrothed to a stranger or a relative, at the request of her father, who considered his daughter a sort of gift to offer to the suitor. She would not dare object or even give her opinion on such matters. Iraqi girls were also married off to men from other tribes, as "Diyyah" (blood money), in an attempt to settle disputes between the two tribes. This form of marriage is also known as "Fasliyah," a sort of compensation paid for a crime that the bride's brother or a member of her tribe committed against another tribe.<sup>20</sup>*

A steadily increasing number of unregistered marriages in Iraq concern either one or both spouses being under the legal age required to formally register a marriage. The legal age for marriage in Iraq is 18 years for both men and women. The overwhelming numbers of people marrying under the legal age are girls.<sup>21</sup> The marriage of a boy under the age of 18 years is much less common.<sup>22</sup> While provisions permit the marriage of women and men 15 years and older, most couples in this age group do not formally register their marriages. Many women in Iraq are married below the age of 15, and such marriages have increased in the past decade.

One CSO legal clinic in Iraq's southern region attests that approximately 70% of their unregistered marriage cases concern minors.<sup>23</sup> Although statistics differ and data collection is poor, early marriages

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<sup>20</sup> [www.al-monitor.com/pulse/culture/2012/12/the-underage-marriage-crisis-in-iraq.html](http://www.al-monitor.com/pulse/culture/2012/12/the-underage-marriage-crisis-in-iraq.html)

<sup>21</sup> From interview with CSO Biladi June 2013.

<sup>22</sup> From interview with CSO VOP July 2013.

<sup>23</sup> From interview with all CSOs June to September 2013.

are widely acknowledged as an increasing problem in Iraq. A survey undertaken by the Ministry of Planning for Iraqi families in 2007 shows that 21% of girls are married before 18 years of age, in contrast with 15% between 1997 and 2004. The Ministry of Planning's Central Statistical Organization revealed in 2011 that 6% of Iraqi girls are married before they are 15 years old and 25% before the age of 18.

According to a July 2013 report from the Ministry of Planning, Iraq has the highest rate of underage marriages in the world.<sup>24</sup> The authors of the report attribute the phenomenon to a decrease in education and increase in illiteracy of Iraqi girls. The report stresses education as an important factor to reduce this phenomenon. While many of the current marriage registration cases concern couples who are above the age of 18, the majority of these marriages took place years earlier when the wife (and in some cases the husband also) was a minor.

In October 2012, the U.S. Agency for International Development (USAID) announced its vision for ending child marriages and meeting the needs of married children, titled *Ending Child Marriage and Meeting the Needs of Married Children: The USAID Vision for Action*.<sup>25</sup> The vision aims to complement the *United States Strategy to Prevent and Respond to Gender-Based Violence Globally*<sup>26</sup> and extends the Agency's *Gender Equality and Female Empowerment Policy*,<sup>27</sup> *Youth in Development Policy*<sup>28</sup> and the *U.S. Government Action Plan on Children in Adversity*.<sup>29</sup> The policy stresses the importance of tending to the specific needs of children and young people in order to achieve long-lasting sustainable development. As the vision states, "Child marriage undermines efforts to promote sustainable development. Early marriage stifles boys' and girls' abilities to succeed and grow into empowered men and women able to better their selves, their families and their communities. Ending child marriage will remove a barrier to global progress and ensure girls have a future."

*The United Nations Children's Fund (UNICEF) defines a child marriage as a "formal marriage or informal union before the age of 18." Child marriages occur all over the world, and an estimated 10 million marriages of people beneath the age of 18 occur every year and there are an estimated 50 million early marriages worldwide. Globally, 1 in 7 marriages occur before the age of 15 years.*

UNICEF attests that orphans and girls without caregivers are particularly vulnerable to early marriage. In a country such as Iraq — which now has an estimated 5 million orphans (16% of the population) — this is a critical concern. There has been an increase in the number of orphans in Iraq since 2003, and these children are recognized as one of Iraq's most vulnerable populations. Similarly, internally displaced persons (particularly girls) are vulnerable to early marriage.

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<sup>24</sup> Al Sumaria (2013), *Iraq ranks first in child-bride rates*. [www.alsumaria.tv/news/79257/iraq-ranks-first-in-child-bride-rates/en](http://www.alsumaria.tv/news/79257/iraq-ranks-first-in-child-bride-rates/en)

<sup>25</sup> [http://pdf.usaid.gov/pdf\\_docs/PDACU300.pdf](http://pdf.usaid.gov/pdf_docs/PDACU300.pdf)

<sup>26</sup> [www.state.gov/documents/organization/196468.pdf](http://www.state.gov/documents/organization/196468.pdf)

<sup>27</sup> [www.usaid.gov/policy/gender-equality](http://www.usaid.gov/policy/gender-equality)

<sup>28</sup> [www.usaid.gov/policy/youth](http://www.usaid.gov/policy/youth)

<sup>29</sup> [www.usaid.gov/children-in-adversity](http://www.usaid.gov/children-in-adversity)



In addition, widespread poverty, fuelled by the international sanctions that began in the 1990s and ended in 2003, had a damaging impact on the lives of ordinary Iraqis. During this time, many families withdrew their daughters from school, preferring to invest instead in the education of their sons. Some families — particularly in rural areas and poor neighborhoods — also withdrew their sons from education, as these boys were needed to help provide financially for the families. The salient consequences of these sanctions include illiteracy and early marriage for girls.

*One of the devastating repercussions of the sanctions regime was that poorer Iraqis in central and southern areas were forced to give their daughters up for early marriage as a way of reducing the number of mouths to feed. For many, the justification was that marriage would provide some security for their girls. This practice has continued, and the average age of marriage in some areas is now 10, even though the law states that girls must be at least 15 to marry.<sup>30</sup>*

Theoretically, Iraq's Personal Status Law offers direct protection for young girls by forbidding under-age marriage. Girls and boys aged 15 through 18 must have the approval of their legal guardian and/or a judge before marrying. But increasingly local clerics ignore the law.<sup>31</sup> "Often they will conduct a marriage just to avoid shame."<sup>32</sup> Many of these couples enter the marital relationship under some degree of force. Most of these marriages are conducted under traditional, religious law, and while the relationships are seen as official at religious and community levels, the union is neither registered nor recognized by law.<sup>33</sup> In 2012, in recognition of the paucity in rule of law in the previous years of war as well as the prohibitive security situation, the Government of Iraq introduced an amnesty for all couples with unregistered marriages that occurred after 2003.

The penalty for having an unregistered marriage is found in Chapter 1, Section 4, Article 10 of the Personal Status Law:

*Any man who concludes his marriage contract outside the court is punished with a period of imprisonment that is no less than six months and no more than a year, or charged with a fine that is no less than IQD 300 and no more than IQD 1,000.<sup>34</sup> If he concludes another marriage outside the court when he is already married, the imprisonment penalty shall range between a minimum of three years and a maximum of five years.*

In addition, Chapter 1, Section 1, Article 3 of Personal Status Law states:

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<sup>30</sup> International Civil Society Action Network/ICAN (2013), *What the Women Say: Picking up the Pieces—Iraqi Women in the Aftermath of War and Occupation*. [http://issuu.com/whattthewomensay/docs/what\\_the\\_women\\_say\\_\\_iraq](http://issuu.com/whattthewomensay/docs/what_the_women_say__iraq)

<sup>31</sup> From interview with CSOs Fatima House, Model Iraqi Women and an Iraqi lawyer in Baghdad (July-August 2013).

<sup>32</sup> From interview with an Iraqi lawyer in Baghdad (August 2013).

<sup>33</sup> [http://apps.americanbar.org/roll/publications/liraq\\_personal\\_status\\_law\\_1959\\_english\\_translation.pdf](http://apps.americanbar.org/roll/publications/liraq_personal_status_law_1959_english_translation.pdf)

<sup>34</sup> This was modified in 2010 to be no less than IQD 50,000 (USD 350) and no more than IQD 250,000 (USD 1,750).

*Each person who concludes a marriage contract with more than one wife, contrary to the stipulations of paragraphs 4 and 5, shall be sentenced to no more than one year of imprisonment or charged with a fine not exceeding IQD 100 or both.<sup>35</sup>*

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<sup>35</sup> This was also modified in 2010 to be no less than IQD 50,000 (USD 350) and no more than IQD 250,000 (USD 1,750).

# STEPS TO REGISTER AN UNREGISTERED MARRIAGE IN IRAQ

## ***Personal Status Law (1959), Chapter 1, Section 4, Article 10***

*The marriage contract should be registered in a special record in the competent court without paying any fees, according to the following conditions:*

- 1. Submitting a statement showing the identity of the two parties to the contract, their age, the amount of the dowry, and the absence of any legal impediment to the marriage. This document must be signed by the two contracting parties and certified by the Mukhtar (mayor) of the district or the village, or by two revered figures of the district's citizens.*
- 2. The document must be supplemented by a medical report confirming that the two spouses in question are free from communicable diseases and health impediments, in addition to other documents required by law.*
- 3. The content of the document must be written on the register and signed by the two parties to the contract, through a written signature or a thumbprint, in the presence of the judge who then certifies the marriage and provides the spouses with the marriage evidence (Hujja).*
- 4. The content of the documents duly registered is to be put into effect. In addition, they are applicable in what concerns the dowry as long as they are not subject to an objection before the competent courts.*
- 5. Any man who concludes his marriage contract outside the court is punished with a period of imprisonment that is no less than six months and no more than a year, or charged with a fine that is no less than three hundred Dinars and no more than a thousand Dinars. If he concludes another marriage outside the court when he is already married, the imprisonment penalty shall range between a minimum of three years and a maximum of five years*

The Personal Status Law, Article 10, Item 5, requires that the marriage certificate and contract be obtained at and registered by the court (see above). A marriage certificate is necessary to prove the marriage, claim paternity and custody, and to protect both spouses' rights and the rights of their children to healthcare, education and civil rights. Theoretically, a formally registered marriage also protects against coercive marriages or the marriage of minors, and bans the marriage of a man with more than one woman unless the marriage meets the required legal conditions set out in Article 3 of the Personal Status Law.

There are two common categories of cases seeking marriage registration in Iraq: Type A is when a man and woman are both willing to register their marriage in order to obtain a legal marriage certificate from the Personal Status Court. Type B is when the wife petitions to obtain a marriage certificate to prove her marriage to a husband who is not present because he is dead, has divorced her, is missing, denies or

refuses to register the marriage, or where the husband's address is unknown. The majority of contemporary cases for marriage registration are Type B.

## I. SUBMIT REQUEST TO PERSONAL STATUS COURT

### *Type A*

Both the husband and wife attend the Personal Status Court to submit a request to register their marriage. They must attach all the required documents: IDs, citizenship certificates and the religious (or informal) marriage contract. If any of the required documents are missing, the court will request copies from the Civil Status Directorate. The spouses may also call two witnesses to testify on their behalf. The judge then refers the case to the Investigation Court.

### *Type B*

The wife files a lawsuit against the husband for recognition of the marriage under the Personal Status Law. She must provide all documentation and evidence as above. Such cases generally follow one of three types of claim:

1. **The husband is dead.** In this case, the wife must provide an official death certificate. Should she not be in possession of her husband's death certificate, two affiants must testify to the marriage and the death. The wife is also required to furnish additional evidence (e.g. informal marriage document, photo of the wedding ceremony) to prove that she was, indeed, married and that the husband is, indeed, deceased.
2. **The whereabouts of the husband is unknown.** In this case, the wife files a petition against the husband with supporting documentation to prove that she was married to the man in question. The documents must show the husband's last known address, which will be used by the court to subpoena the relevant Local Council for a confirmation of said address. Once the last known address is confirmed, the court will issue a subpoena for the husband to present himself in court.
3. **The husband repudiates the marriage.** In this case, as before, the wife files a petition against the husband with supporting documentation to prove that she was married to the man in question. The documents must show the husband's last known address, which will be used by the court to subpoena the relevant Local Council for a confirmation of said address. Once the last known address is confirmed, the court will issue a subpoena for the husband to present himself in court.

### *Obstacles*

- The husband and wife may not be able to attend the court if they live in a remote area where there is no court. The couple may also be unable to afford transportation costs to get to the court.

- Waiting in queues for many hours to be seen by the judge is prohibitive. Court buildings and other government facilities are not designed to receive high volumes of people at the same time, posing accessibility problems for elderly, sick and disabled people in particular.
- Security issues often prevent people from traveling to urban areas — where most courts are located — to register their marriage. Many feel that waiting in crowded places presents an increased risk for terrorist attacks.
- Traditional beliefs and norms often present reasons to not register the marriage. Many men refuse to be told that they should register their marriage before a court. Many others believe that a religious ceremony suffices to formalize the union, and thus find formal registration with the government duplicitous and unwarranted.
- In rural areas—particularly in Iraq’s southern region—many, including men, are illiterate and thus cannot complete registration forms and follow administrative procedures without assistance. Levels of awareness among such people of their rights is correspondingly low.
- Families often forbid women from attending court, as her movements outside of the home are restricted. Women suffer from social discrimination and violence when attempting to get a marriage certificate, especially when her circumstance involves divorce or the death or desertion of her husband.
- In some cases, the husband encourages witnesses to perjure themselves by providing false evidence against the wife’s claim. This can even extend to the husband’s family, who can publically deny the marriage. In such a case, the woman must then file a case against them in order to reject their false testimony.
- Impoverished couples often cannot pay the expenses for legal consultations, court fees and possible fines. Lawyers generally request fees ranging from IQD 250,000 to 1,000,000 (USD 210 to 845)
- Many have no identity papers because they have been lost, damaged or were never issued in the first place. Men often refuse to allow women to access their own papers, and obtaining replacement (or issuing new) documents is a complicated and lengthy process. In the case of unofficial marriages, religious authorities sometimes do not keep proper records, making the marriage entirely undocumented.
- Many are afraid to go to court out of fear of punishment, either for the unregistered marriage itself or because they have false identification documents (or no documents at all). When the wife and/or husband were underage at the time of marriage, they are unlikely to attempt to register it with the authorities for similar reasons.

## 2. COURT INVESTIGATION

### *Type A*

Both the husband and wife must appear before a judge in the Investigation Court, where the validity of the marriage is examined. After confirming the couple’s status as a married couple, the judge refers the

case to the Misdemeanor Court. Failure to legally register a marriage is a misdemeanor under Iraqi law. The judge will assign a hearing date within 15 days to examine the case. Should the couple be in a position to provide all the required documentation to the court, the hearing will proceed.<sup>36</sup>

### **Type B**

If the testimony and evidence presented to the court are sufficient to prove the validity of the marriage, the judge will issue a favorable decision and allow the wife to register her marriage with the authorities. In such a case, the wife must wait 10 days for the documents to be finalized and the marriage announced in the newspapers before her civil status can be considered official.

If the competent Local Council submits a letter to the court confirming that the husband's current whereabouts is unknown, the court publishes a notice in two local newspapers demanding that he present himself before the court at an appointed time and place (see Article 21§1, Iraqi Procedures Act of 1969). The procedure generally requires 15 days.

### **Obstacles**

- If the husband's whereabouts is truly unknown, if he resides outside of Iraq, or if he is illiterate, it is unlikely that he will see the local newspaper announcement demanding his presence in court.
- The husband can repudiate the marriage and refuse to attend court proceedings.
- Families often forbid women from attending court, as her movements outside of the home are restricted.
- If the woman is a widow or divorcée, the husband's family will often prevent her from filing a case against the husband. This is particularly the case when the husband is a cousin or other close relative.
- Sometimes the husband will not attend court out of fear of prosecution (monetary fine, imprisonment or both).

## **3. MISDEMEANOR COURT HEARING**

### **Type A**

If all documentary evidence is submitted and both the husband and wife are present, the Misdemeanor Court hearing will commence. The judge will rule on a sentence for failing to register a marriage: either a six-month suspended sentence for the husband (imprisonment is not normally warranted since the husband is typically the family's sole breadwinner and his imprisonment would adversely affect his family), or a monetary fine of IQD 50,000 to 200,000 (USD 40 to 170). The couple is then referred to

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<sup>36</sup> If both parties are willing and present during the court proceedings, the registration process normally takes 30 days. If one party objects or does not attend the hearing, the process could take up to one year.

the Personal Status Court, with the judge's recommendation of fine or imprisonment attached to the case file.

### **Type B**

If the husband does not attend the court, his family is subpoenaed to testify before the court. If they do not appear in court, the wife must provide physical evidence under the Evidence Law (1979). This evidence may be a contract from a Sheikh or religious authority, a written contract from the person who conducted the marriage ceremony, sworn statements from two witnesses or any other evidence that proves that the marriage exists.

### **Obstacles**

- As mentioned under previous steps, Iraqi women are not allowed to move freely, thus restricting their ability to collect evidence and solicit witnesses.
- People are reluctant to serve as affiants if there is a family dispute, in which case most will side with the husband's family. Because most marriages in Iraq are between cousins, family relations are extremely important.
- Sometimes the religious authority who conducted the informal marriage is missing or dead, in which case it is very difficult to prove that the marriage took place. While religious authorities usually keep records of the marriages they officiate, these are easily lost, ruined or destroyed.

## **4. FINAL COURT RULING**

### **Types A and B**

Should the Personal Status Court judge determine that the documents submitted into evidence are sufficient to prove the existence of the marriage, the judge will order that it be officially registered as such, thus ending the proceedings. The applicant will need to wait 10 days for the marriage documents to be established and for the marriage itself to be announced in the official newspapers.

## **5. UPDATE IDENTITY PAPERS**

### **Types A and B**

After the required 10-day waiting period (see previous step), the wife (or couple) is required to submit a request to the Civil Status Directorate to change her/their civil status on her/their identity papers. The Civil Status Directorate requires an official letter of confirmation from the Civil Status Court, which cannot be hand-delivered but must, instead, be sent by official courier from the court. This step in the process usually requires at least one month to complete.

### **Obstacles**

- Time itself is considered an obstacle. The procedure often takes many months or even a full year, as many visits are required to the Personal Status Court and other government offices.

- In many cases, the documents are lost in the post.
- As with previous steps, economic, traditional and social constraints present major obstacles.



# ACTORS IN THE ACCESS TO JUSTICE NETWORK

As people seek to legally register their marriages, they are not simply following procedures. They are interacting with people and organizations. How these groups and entities are structured, and their embedded gender beliefs and norms impact on a person's access to justice. What follows is a summary of the key actors in the access to justice network for people seeking to register their marriages.

## FAMILY

Girls and women in Iraqi society are considered a vulnerable group, comprising approximately 75% of all Program beneficiaries. Most unregistered marriages are enabled by traditional, social and family norms that present constraints to women and girls.

Traditional power structures dictate that men are the main decision makers in all matters related to marriage and family life, including divorce. Marriage by a verbal contract in front of a religious or tribal authority remains the most common and socially accepted type of marriage for Iraqi families. Particularly when the groom's family is eager for the marriage to be conducted quickly by a religious or tribal authority, the bride and her family are obliged to agree.

In such cases, the expeditious nature of the marriage precludes the formal registration of the marriage, which is considered too lengthy and complicated. In addition, poor men may insist that the marriage not be formally registered in order to save time and money. Finally, men who decide to marry a second wife without informing the first wife will not attempt to register the second marriage.

Iraqi families tend to marry off their daughters at an early age and to close relatives. So-called “early” (underage) marriages have increased steadily since the 1990s and at an unprecedented rate since 2003. This is the result of weakened rule of law and reinforced tribal and religious authority, combined with a lack of formal education and correspondingly high rate of female illiteracy. Iraqi families traditionally take pride in their daughters' early marriage — particularly those who have not yet entered puberty — considering it a way to secure her future and relieve a financial burden on the family.<sup>37</sup> Families often do not ask for the bride's approval. Most unregistered marriages concern the marriage of a minor, and the marriage is therefore not registered until the girl reaches the age of 18 or when her children have reached the age of matriculation.

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<sup>37</sup> From interview with a medical doctor in Baghdad. This is not approved by the Iraqi Personal Status Law which requires that both marriage partners have reached puberty.

Unregistered marriage is normal in Iraq and often does not pose a problem in the daily lives of a couple until their children are required to attend school, or when the woman is widowed or abandoned. In rural areas, children often do not attend school at all. If a wife is widowed or abandoned and her marriage is unregistered, this will present as an immediate problem.

## **PERSONAL STATUS COURT**

The Personal Status Court is one of the three types of courts in Iraq's judicial system. These courts hear cases related to Iraq's Personal Status Law, such as marriage, divorce, custody, inheritance, endowments and similar matters. The 1959 Personal Status Law, which follows *Sharia*, governs the Personal Status Court.

A primary obstacle for Iraqi citizens is the time required to follow the required procedures. The Personal Status Courts receive increasing numbers of cases, and a judge may review up to 50 cases daily. The number of civil servants and judges assigned to marriage registration cases is inadequate to cover the increasing demand.

Personal Status Court judges are formally allocated 1,000 cases *per* year. In reality, however, judges are often assigned up to 9,000 cases *per* year. As a result, many cases suffer delays and may not even be concluded due to the case overload. Efforts to appoint lawyers to the bench have yet to come to fruition.

Iraqi law is flexible with regard to marriage registration, and the final decision is with the judge who enjoys a measure of discretionary power. If the judge is satisfied with the evidence presented before him/her, he/she can order an immediate recognition of the marriage. This discretionary authority is often engaged to register the marriage of a minor or the marriage of a second wife without meeting the criteria established by the Personal Status Law. Sometimes the judge will assist the couple by manipulating the marriage date so that it is deemed to have taken place within the amnesty period for unregistered marriage.

Non-Muslim Iraqis (e.g. Christians and Sabian Mandaens) are required to bring their marriage registration cases before the Personal Items Court, rather than the Personal Status Court. The procedure to obtain a marriage certificate for non-Muslims, however, remains the same.

## **INVESTIGATION COURT**

The Investigation Court is one of the three types of courts in Iraq's judicial system. This court is responsible to initiate and determine the result of judicial investigations into alleged crimes. The court's determination, in this case regarding the husband's failure to register his marriage, is the basis for a ruling by the Misdemeanor Court, which is responsible for sentencing.

## MISDEMEANOR COURT

The Misdemeanor Court rules on so-called “lesser” crimes (e.g. petty theft, disorderly conduct, simple assault, vandalism). Infringements of marriage contracts are under the jurisdiction of the Misdemeanor Court, which issues a sentence as outlined in the previous section. Misdemeanor Court judges generally treat such transgressions with lenience.

## CIVIL STATUS DIRECTORATE

The Civil Status Directorate is part of the Ministry of the Interior. The Directorate is responsible for recording and maintaining all official identity cards issued to Iraqi citizens. These documents (most notably the *Jinsiya*) are the essential documents needed for accessing all government services, including ration card, residence card, school registration and healthcare. Family records are also stored at the Civil Status Directorate. When an unmarried man or woman wishes to change the civil status on his/her identity document (e.g. from single to married, from married to divorced), an application must be made to the Civil Status Directorate.

## DISTRICT COUNCIL

For the Personal Status Court to issue a ruling on marriage registration, the wife must submit a letter certifying the residence of her deceased or “missing” husband from the relevant District Council. Both Provincial (first-level administrative division) and District (second-level) Councils share similar responsibilities, but the District Councils have less decision-making authority. Iraq’s 120 District Councils are responsible for a specific districts composed of several neighborhoods (Baghdad, for instance, has 15 District Councils).

## CIVIL SOCIETY

In 2003, the necessary conditions for civil society to flourish began to take shape. Thousands of new non-governmental organizations (NGOs) were established and registered under Coalition Provisional Authority (CPA) Order #45 (2003).<sup>38</sup> Before this, there were no civil society organizations working in Iraq on behalf of Iraqi families. There was an organization called the General Union for Iraqi Women, which was purported to advocate for vulnerable Iraqis including widows, orphans and the illiterate. In practice, however, the organization was constrained under the mandate of the Ba’athist Regime and merely provided a propaganda tool for the party. The organization was commonly seen to support only those who showed their loyalty to the Ba’athist Party.

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38 For a discussion on civil society NGO relationship with government please see [www.icnl.org/research/monitor/iraq.pdf](http://www.icnl.org/research/monitor/iraq.pdf).

To date, the USAID Iraq Access to Justice Program has supported 34 CSOs and 38 CSO-operated legal clinics. These organizations work with and on behalf of Iraq's most vulnerable populations, including widows, people with disabilities, children and youth, religious and ethnic minorities, Iraqis without formal identity and the internally displaced. Of the 38 CSO-operated legal clinics, 21 work directly with widows. While there are civil society organizations throughout Iraq that assist widows, these 21 legal clinics are the only ones offering legal services. The Program's CSO partners offer legal advice and services, awareness-raising workshops and financial assistance to obtain their rights.

## LEGAL SERVICE PROVIDERS

Many Iraqis and most women in Iraq lack knowledge of their legal rights and the processes to obtain them. In the majority of cases, people cannot afford lawyers and do not engage their advice or support. Because of this, they are not provided with the advice they need to obtain their entitlements under Iraqi law.

Iraqi lawyers typically work individually, rather than in firms. The lawyers' fees for marriage registration amount to approximately IQD 1,000,000 (USD 846). Free legal aid in Iraq has yet to be institutionalized within the Iraqi judicial system. Nevertheless, the USAID Iraq Access to Justice Program supports approximately 40 lawyers in 19 civil society-operated legal clinics. These lawyers work for a salary of between USD 700 and USD 900 *per* month.

Vulnerable Iraqis can receive free legal advice and assistance from Program-supported legal clinics. They normally engage the services of a legal clinic lawyer after attending an awareness-raising training or workshop. In most cases, the lawyer will continue to assist the beneficiary until the marriage is registered and the case is closed. The provision of free legal assistance by Program-supported civil society organizations has resulted in an increased number of couples, and particularly women, formally registering their marriages.

## RELIGIOUS AND TRIBAL LEADERS

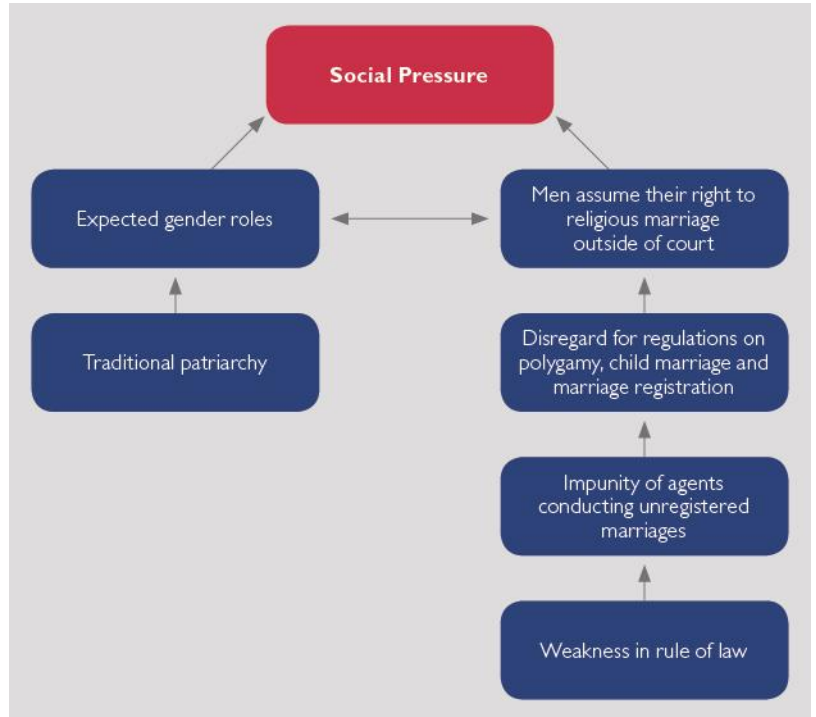
An informal marriage contract can easily be obtained in Iraq from a religious or tribal leader (*Sheikh*). While such a contract is religiously and culturally accepted, it has no legal value until the marriage is registered in court. Many of these traditional leaders work in courts and have a court-issued license to marry couples and collect a fee for their services (ranging from IQD 50,000 to IQD 500,000, USD 40 to USD 420, depending on the profile of the couple).

Since 2003, there has been a marked increase in fraud related to informal marriage registration. Unlicensed "agents" perform marriages — including *muta'a* — in areas close to religious shrines and in neighborhoods such as Baghdad's Sadr City and Kadhimiyah. Such fraudsters capitalize on the lack of awareness and popular misconception that informal religious marriages are legally accepted and that court registration is unnecessary.

# KEY GENDER-BASED CONSTRAINTS

## I. SOCIAL PRESSURE

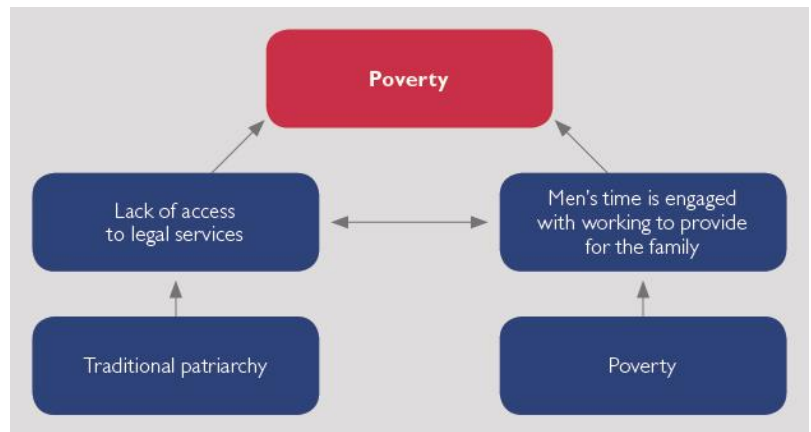
Iraqi men are conditioned to be the head of the household. Masculine authority in Iraq is particularly pronounced with regard to women, children and all matters related to the family. They will often refuse to register their marriages, feeling that being told to do so undermines their authority. If a man accepts his wife's request to register their marriage, he is often considered by others as weak. Inversely, a man who disregards laws governing marriage is commonly regarded as strong and masculine. Particularly in rural areas, formal marriage registration is viewed as a subordination to government, which constitutes an affront to the man's authority over his family.



A lacuna in the rule of law, which allows fraudulent “agents” to conduct unregistered marriages with impunity, facilitates masculine privilege to these out-of-court marriages.

## 2. POVERTY

Poverty is a burden for many Iraqi families, and although all members of the family suffer the consequences of poverty, the responsibility to provide is often placed solely on the men. The lengthy process of marriage registration involves financial costs that are prohibitive. Many men cannot register their marriages because they must work and fear losing their jobs. Many men are also too poor to take the necessary time off to follow the marriage registration procedures.



Iraq ranks 131 out of 186 countries in terms of the number of its citizens who live under the international poverty line (USD 1.25 per day) — the worst in the region. As a comparison, Syria ranked 116 and Palestine 110.<sup>39</sup>

- 23% of Iraqis—an estimated 6.21 million—live below the national poverty line (IQD 76,896 or USD 66 per month, USD 2.20 per day).<sup>40</sup>
- Highest poverty rates in Muthanna (49%), Babil (41%) and Salah ad Din (40%).<sup>41</sup>
- Lowest poverty rates in Dahuk (10%), Erbil and Sulaymaniyah (3%).<sup>42</sup>
- 2.8% of Iraqis live below the international poverty line of USD 1.25 per day.<sup>43</sup>

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<sup>39</sup> UNDP (2013), *Human Development Report 2013*.

<sup>40</sup> Source: UNFPA

<sup>41</sup> Source: Ministry of Planning

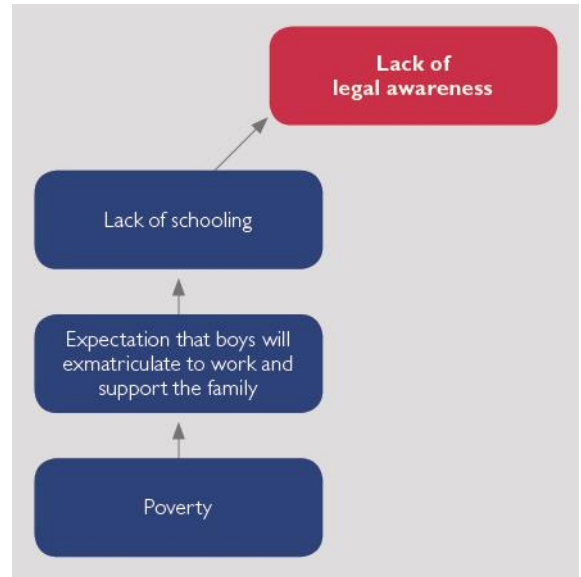
<sup>42</sup> *Ibid.*

<sup>43</sup> Source: UNDP (2013)

### 3. LACK OF AWARENESS

Boys from poor families are often withdrawn from school at an early age and put to work to supplement the family’s income. This is particularly the case in rural areas and poor neighborhoods, where boys can be employed in low-skilled jobs. Economic sanctions have had a serious impact on poverty levels in Iraq. Unskilled, rural laborers were particularly affected, and illiteracy is on the rise.

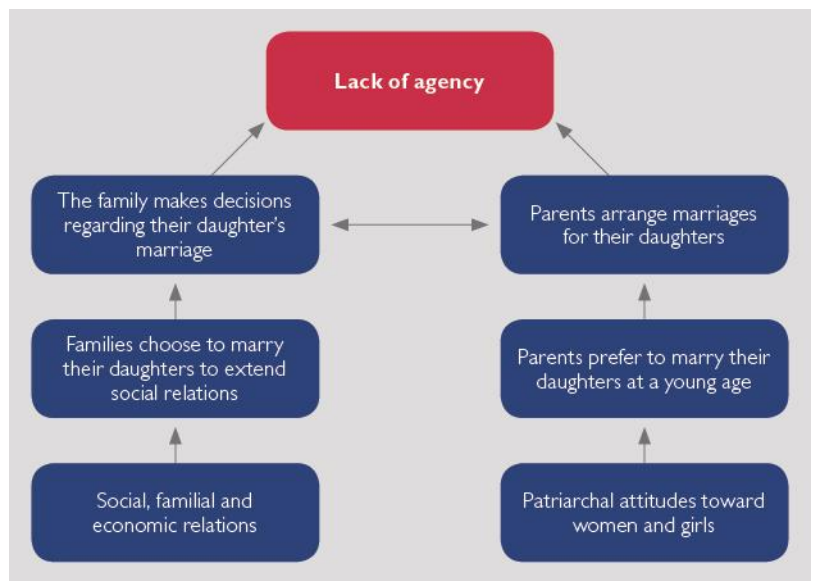
Women, too, often lack awareness of their legal rights due in part to the high rate of illiteracy among Iraqi women. While schooling is free for all Iraqi children, girls are often excluded. United Nations figures estimate that illiteracy rates in Iraq are 20%, and in some parts of the country the rate is as high as 50% for girls.



Societal attitudes dictate that in times of social and economic hardship, Iraqi parents are more likely to educate their sons and withdraw their daughters from school. Adding to the threats faced in situations where security is a concern, many Iraqis — especially poor women — still live with the consequences of the decade-long sanctions imposed on the Saddam Hussein regime. One of the damaging repercussions of the sanctions is that poor Iraqis commonly withdraw their daughters from school to reduce the economic burden on the family. In addition, after elementary school, Iraqi children enter mixed-sex schools and many families remove their daughters from school because cultural norms do not permit the mixing of boys and girls. Isolation is a further common reason for lack of education as well as the general lack of legal awareness among women.

### 4. LACK OF AGENCY

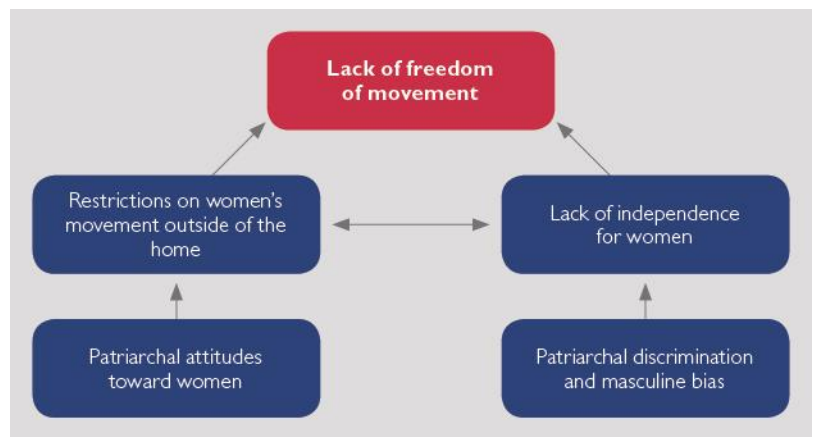
Arranged marriages are common in Iraq, generally between close relatives. Women and girls have little agency in the arrangement. The husband’s family is, in most cases, responsible for all marriage arrangements and if they choose not to register the marriage in court, the bride cannot demand otherwise. Should the family decide to marry their daughter at a young age, the daughter is obliged to agree. If she objects, she will most likely be punished, and sometimes killed.



Compounding this lack of agency among women is their economic dependence on men. Iraqi women are generally not expected to take paid employment, and are sometimes harshly discouraged from seeking gainful employment. Women are expected to remain in the home, raising children and caring for the family's domestic needs. Without access to independent income, women and girls remain under the control of male relatives.

## 5. LACK OF FREEDOM OF MOVEMENT

Women and girls in Iraq often cannot move freely outside of their homes. Women's independence and mobility is often curtailed with severe punishment. Women and girls are under constant surveillance from neighbors and members of their close communities, resulting in their exclusion from participation in public life. Male relatives often refuse to accompany women outside of the home. These restrictions have serious implications on their ability to seek entitlements from hospitals, lawyers and courts.





# TAKING ACTION TO ADDRESS GENDER-BASED CONSTRAINTS

The USAID Iraq Access to Justice Program and its civil society partners are improving access to justice for people with unregistered marriages by reducing key gender-based constraints. This section summarizes key directives by the Program to address these gaps.

## HELPING WOMEN REGISTER THEIR MARRIAGE AND UPDATE THEIR CIVIL STATUS

Through the Program's civil society partners, women are able to attend awareness-raising workshops and receive free legal services to register their marriages, document their children's births and update the civil status on their identity documents. As of May 2013, the Program's legal clinics had successfully obtained 844 marriage certificates on behalf of Iraqi women whose marriages were not registered. Eighty of these women visited the legal clinics for the sole purpose of marriage registration, while the remaining 764 initially visited the legal clinics for other reasons (e.g. obtaining widows' benefit).

The issue of underage marriage has yet to be dealt with substantively by the Government of Iraq. The Program recently completed an awareness-raising campaign on unregistered marriages, and supported the production of a documentary film directly concerned with the issue of "early" marriage. The video, *Rahma, Zeinab and Others*, was produced to draw public attention to the issue, and highlights the marriages of underage girls as the primary reason why marriages are not formally registered.<sup>44</sup> The campaign ran throughout the country, and was endorsed by and implemented in cooperation with the General Secretariat for the Council of Ministers (COMSEC) Citizens' Affairs and Public Relations Directorate.

## GRANTEE ACTIVITIES

- **Anhur Foundation for Education and Human Rights (Dhi Qar):** Anhur conducted a total of four workshops, which were attended by 211 women. Two of these were held in the remote Al-Chibayish district, whose residents have little or no access to livelihoods and resources. These workshops focused on issues such as unregistered marriage, the negative impact of early marriage, and women's rights under Iraqi law.
- **Civil Development Organization (Kirkuk):** CDO conducted a total of 30 workshops, reaching 924 people (48 men, 876 women). Most of CDO's workshops were held in local high

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<sup>44</sup> The film was produced by UN Women in collaboration with Program grantee Model Iraqi Women.

schools for girls, with a particular focus on the importance of marriage registration and the problems associated with “early” marriage.

- **Voice of Older People (Ninawa):** VOP implemented a campaign on unregistered marriage with a live, call-in TV talk show to provide legal awareness on marriage registration and the required process.

## RECOMMENDATIONS

To date, the achievements of the Program and its civil society partners are significant. It is critical that these activities continue in order to improve access to justice for vulnerable Iraqis. The demand for this work will continue, given the large numbers of unprocessed marriage registration applications and the steady increase in unregistered and so-called “early” marriages. Additionally, as legal clinics are currently located in only 10 of the 18 governorates, there is a need for these to be opened throughout the country.

The following areas require ongoing and concerted attention. Addressing these will further ensure the success of the Program’s work.

### *Continue awareness-raising campaigns*

Campaigns to increase the legal awareness of Iraqis are an imperative. While the Program has successfully completed many of these, the demand continues. Future campaigns should target issues such as marriage registration, the right to education, the rights of the child, ending child marriage, limiting “pleasure” marriages to those clearly falling within *Sharia* and women’s rights in general.

### *Lobby government for reforms to laws, policies and procedures associated with citizenship and identity documents*

The children emerging from unregistered marriages are unable to claim formal Iraqi identity and subsequently do not enjoy protections under Iraqi law. These children are the primary and most vulnerable victims of unregistered marriages. Article 18 of the Constitution of Iraq states that Iraqi citizenship is “a right for every Iraqi and is the basis of his nationality” and that “anyone who is born to an Iraqi father or to an Iraqi mother shall be considered Iraqi.” The Program’s advocacy team is well situated to advocate for legal reform to protect the right of children to Iraqi citizenship as guaranteed by the constitution regardless of whether his/her parents’ marriage was registered. Children should not carry the burden of their parent’s failure to register their marriage. The relevant laws governing citizenship and birth registration should be assessed to identify entry points to ensure that children of unregistered marriages have the right to Iraqi citizenship and the associated legal documents.

Laws protecting against the use of child labor and exploitation of children should also be assessed in order to identify areas where they can be strengthened.

### ***Strengthen laws protecting children’s fundamental right to education regardless of gender or economic status***

The Program’s advocacy team can work with the Ministry of Education to strengthen the implementation of mandatory education in Iraq. The Program can work with COMSEC to advocate for strengthening the implementation of penalties for keeping children out of schools and to prevent child labor. The Program’s public awareness experts can support awareness-raising activities on the rights of children to education and specifically the rights of girls and the poor to education.

Campaigns to increase literacy are needed in Iraq. These can emphasize the correlation between illiteracy and early marriage to help reduce unregistered marriages. These interventions will support the U.S. Government’s vision for ending child marriages and meeting the needs of married children.

### ***Strengthen laws protecting marriage and ensuring the protections granted under the Personal Status Law***

Iraq’s Personal Status Law protects against child marriage, unlawful polygamy, abandonment and forced marriage. In practice, however, judges disregard these protections. Turning a blind eye to child marriage is a particular concern. Advocacy to protect the laws governing marriage and to prohibit early marriage are imperatives. The implementation of the Personal Status Law requires monitoring.

### ***Lobby government for a centralized vital statistics registry***

A centralized vital statistics registry—including data on births, deaths and marriages—is required to streamline administrative procedures and enhance bureaucratic efficiency. The Ministry of Health includes a Statistics Department that is responsible for gathering data from all Iraqi hospitals. However, many births, deaths and marriages are not registered. Cooperation between the governorates is poor and not all data is stored electronically. Civil society organizations can be supported by the Program to lobby the federal government and the KRG to rectify this problem. Doing so would reduce the burdens on men and women (e.g. travel, time) to obtain official documents. Restrictions on women’s travel, in particular, would be less relevant and pose less of an obstacle.

### ***Support initiatives to increase the number of judges in the Personal Status Courts***

The Personal Status Court is overwhelmed with cases. The Program’s lawyers can evaluate the marriage registration process to lobby for procedural changes that will lessen bureaucratic inefficiency and barriers to marriage registration.