

## Acquisition of Iraqi Nationality by a Child Born Outside Iraq

May 2019

### a. Iraq's Nationality Law (Law No. 26 of 2006)

According to Article 3 of the Iraqi Nationality, law dated 7 March 2006 (superseding Law No. 46 of 1963):<sup>1</sup>

*A person shall be considered Iraqi if:*

*a. he/ she is born to an Iraqi father or an Iraqi mother;*

*b. he/ she is born in Iraq to unknown parents. A foundling found in Iraq shall, in the absence of proof to the contrary, be considered to have been born therein.*

Article 4 of the same law states:

*The Minister may consider Iraqi any person born outside Iraq to an Iraqi mother and an unknown or stateless father, if he chooses the Iraqi nationality, within one year from coming of age (reaching the age of maturity), unless he fails to do so, due to difficult circumstances, provided that he is residing within Iraq at the time of application for the Iraqi nationality.*

### b. Acquisition of nationality from an Iraqi father

Under Iraq's nationality law, the acquisition of nationality from an **Iraqi father** is automatic at birth (*ex lege*) via paternal *jus sanguinis*, irrespective if the child was born inside or outside of Iraq. In practice, challenges arise where the child of an Iraqi national father has difficulties in proving that the father is an Iraqi national, or establishing paternal filiation, or both.

### c. Acquisition of nationality from an Iraqi mother if child is born in Iraq, or if born outside Iraq to a known non-Iraqi father who has another nationality

Iraqi women can confer nationality to their children if their child was born inside Iraq, or if born outside Iraq to a known non-Iraqi father who has another nationality. In both cases, relevant administrative procedures must be followed, with all steps to be completed inside Iraq.

### d. Acquisition of nationality from an Iraqi mother if child is born outside of Iraq to a father who is stateless or to an unknown father

Although the Iraqi Constitution of 2005<sup>2</sup> establishes gender equality by providing that nationality is acquired by descent from either men or women, Iraq's 2006 nationality law limits the ability of Iraqi women to confer nationality on children born outside the country.<sup>3</sup> For such births, and when the father

<sup>1</sup> *Iraqi Nationality Law* [Iraq], Law 26 of 2006, 7 March 2006, <https://www.refworld.org/docid/4b1e364c2.html>.

<sup>2</sup> *Constitution of the Republic of Iraq* [Iraq], 15 October 2005, <https://www.refworld.org/docid/454f50804.html>.

<sup>3</sup> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2019*, 8 March 2019, <https://www.refworld.org/docid/5c8120847.html>. "Article 3 of the Iraqi Nationality Law establishes the equal right of an Iraqi father and mother to transmit nationality to their children. No further conditions are placed on this conferral of nationality by descent."

is unknown or stateless, the acquisition of nationality is only possible under limited circumstances as set out in article 4 of the Nationality Law (namely, the child must have been born outside Iraq; the child's father must be either stateless or unknown; the application for the Iraqi nationality should occur within one year of reaching the age of maturity, unless owing to difficult circumstances; and the person should be residing in Iraq at the time of the application).

The procedural requirements for demonstrating that the father is stateless are strict and may be difficult to fulfil in practice. Furthermore, the final decision is subject to the discretion of the Iraqi government: even if all legal requirements have been established to the satisfaction of the government, it retains the discretion power to deny applications for Iraqi nationality.<sup>4</sup>

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*Nevertheless, the retention of article 4 causes difficulties in the interpretation and application of this rule by explicitly authorising the Minister to consider granting nationality to a child born to an Iraqi mother outside Iraq, if the father is unknown or stateless. This language contradicts that of the preceding article which should allow all children of an Iraqi mother to acquire nationality as a matter of right, regardless of place of birth. In practice, female nationals can only confer their nationality to their children on an equal par to men if the child is born in the territory of Iraq. This discrimination is unjustified and is furthermore in violation of Article 14 of the Iraqi constitution that stipulates equality between men and women. Additionally it has been noted that the procedural requirements for proving that the father is stateless are strict and often highly difficult to fulfil. As there are a large number of Iraqi women in the Diaspora married to non-Iraqi men, this puts many children at risk of becoming stateless"; The Women's Refugee Commission and Tilburg University Statelessness Programme, Briefing on Qatar, Iraq and Bahrain for the Committee on the Elimination of Discrimination Against Women (CEDAW) 57th Pre-Session Working Group, 29th July - 02 August 2013, <http://bit.ly/2Ubl3of>.*

<sup>4</sup> The position of the competent Iraqi authority is determinative of the question whether the individual is an Iraqi national or not. Paras 38 and 44 of the UNHCR Statelessness Handbook explain that "the view of the competent authorities responsible for issuing identity documents that constitute proof of nationality" is "generally decisive" in situations of non-automatic nationality acquisition, namely when people go through an application procedure to request nationality; UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, 2014, <https://www.refworld.org/docid/53b676aa4.html>, paras 38, 44.