



IRAQ

A BRIEF ON EQUALITY AND NON-DISCRIMINATION, CHILD MARRIAGE, AND DETENTION BASED ON IMMIGRATION STATUS (CRC ARTICLES 2, 9, 19, 24, 28, 34, 37, AND GENERAL COMMENT NO. 4)

Information for the Committee on the Rights of the Child

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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,500 indicators that matter to equality, health, and well-being.

We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 98th Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states (150 in the case of detention based on immigration status) using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases that distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current available information on the constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Iraq, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Iraq address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Iraq for having provisions in place, we hope the Committee will recommend that Iraq work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Principles: Equality and Non-Discrimination (Article 2)

Our review of full-text national constitutions found that Iraq’s constitution explicitly guarantees equality and non-discrimination broadly and on the basis of all groups and statuses listed in the Convention, **with the exception of language and disability.**

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Iraq: Can Iraq outline any concrete, near-term plans to amend its constitution to prohibit discrimination on the basis of language and disability?
 - If not, recommend in its concluding observations that Iraq amend its constitution to explicitly prohibit discrimination on the basis of language and disability, consistent with CRC commitments. This could be added to Article 14 of the constitution, which already prohibits discrimination on the basis of other CRC-protected groups and statuses.

2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Iraq’s Personal Status Law sets the minimum age of marriage for boys and girls at 18. **However, a judge can approve the marriage of a child aged 15 or over** and can overrule a guardian’s objection to the marriage. Moreover, Article 2 of the Personal Status Law states that some Iraqis may be exempt from the Law’s provisions “by virtue of a special law,” but does not specify which laws provide exemptions. Iraq’s most recent data (2018) show high rates of child marriage in the country: 18% of girls aged 15-19 were currently married; 28% of women aged 20-24 were married before the age of 18; and 7% of women aged 20-24 were married before the age of 15.¹

¹ UNICEF data – Child Marriage. Retrieved February 28, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Iraq: Can Iraq outline any concrete, near-term plans to pass legislation that sets the minimum age of marriage to 18 years old without exceptions?
 - If not, recommend in its concluding observations that Iraq pass and implement legislation that protects children under the age of 18 from early marriage without exceptions.
- In its list of issues, ask Iraq: Which “special laws” provide exemptions from the provisions of the Personal Status Law? In particular, does Article 2 of the Personal Status Law permit some laws to apply a lower minimum age of marriage than what is specified in the Personal Status Law?
 - If Article 2 of the Personal Status Law permits some laws to apply a lower minimum age of marriage than what is specified in the Personal Status Law, recommend in its concluding observations that Iraq revise or repeal Article 2 to remove any exemptions from a minimum age of marriage of 18.

3. Special Protection Measures: Detention based on Immigration Status (Articles 9, 24, 28, 37)

Our review of legislation, regulations and decrees found that Iraq’s Law on the Residence of Foreigners permits the detention of foreigners and stateless persons prior to deportation, **without including protections for minor migrants or provisions on family unity.**



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Iraq: given the absence of explicit legal provisions on detention of minor migrants in the Law on the Residence of Foreigners, can Iraq provide details on any specific steps it is taking to explicitly prohibit the detention of minor migrants and asylum-seekers?
 - If Iraq is not taking any specific steps to explicitly prohibit the detention of minor migrants and asylum-seekers, recommend that Iraq take concrete steps to pass and implement such legislation.
- In its list of issues, ask Iraq: given the absence of explicit legal provisions on detention of minor migrants and asylum-seekers, can Iraq provide details on the current rates of detention among minor migrants and asylum-seekers?

DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. General Principles: Equality and Non-Discrimination (Article 2)

Article 2.1 of the Convention states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws, as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal



rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

We reviewed full text constitutions for all 193 UN member states available from official government sources and global compendiums that contain original constitutional texts to determine whether the constitution took any approach to equality across the grounds listed in article 2.1 of the CRC, by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

IRAQ'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON LANGUAGE AND DISABILITY

Our review of full-text constitutions found that Article 14 of Iraq's Constitution grants equality before the law without discrimination to all Iraqis, regardless of race, color, gender, religion, belief or opinion, origin, ethnicity, and economic or social status. However, some groups that are guaranteed equality in the Convention are not covered by this constitutional provision – specifically, children facing discrimination based on language and disability.

Constitution of Iraq (2005)

Article 14: Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, color, religion, sect, belief or opinion, or economic and social status.

2. [Special Protection Measures: Child Marriage \(Articles 19, 24, 28, 34, and General Comment No. 4\)](#)

General Comment No. 4 (2003) states that:

The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Child marriage has life-long health, educational, and economic consequences, particularly for girls. Married girls are more likely to be victims of domestic abuse, experience pregnancy and childbirth complications due to early childbearing, and drop out of school, all of which affect core rights of the Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).



We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, under religious and customary law, and with court or governmental approval. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

IRAQ’S LEGISLATIVE PROVISIONS: MINIMUM AGE OF MARRIAGE 18, BUT WITH IMPORTANT EXCEPTIONS

Iraq’s Personal Status Law sets the minimum age of marriage at 18 for boys and girls, but permits a judge to license the marriage of children as young as 15 – and to overrule a guardian’s objections to the marriage. Moreover, Article 2 of the Personal Status Law states that some Iraqis may be exempt from the Law’s provisions “by virtue of a special law,” but does not specify which laws provide exemptions.

Law No. 188 of the Year 1959 (amended to 1987)

Article 2.1- The provisions of this law apply to all Iraqis except for those who are exempted by virtue of a special law.

Article 7.1- In order for the marriage to be valid, the two parties to the contract should be sane and have reached 18 years of age [...]

Article 8.1- If a 15-year-old person asks to be married, the judge can authorize his marriage if the eligibility and physical ability of the person in question was proven to him, after obtaining the approval of his legal guardian. If the guardian abstains from responding, the judge calls upon him to state his answer during a defined period. Thus, if the guardian does not object or if he submits an objection that is unworthy of consideration, the judge shall proceed to authorizing the marriage.

Article 8. 2- The judge can authorize the marriage of a 15-year-old person if he sees in it an urgent necessity. Giving such authorization is also conditional upon the attainment of legal puberty and physical ability.

The most recent data available, from 2018, show high rates of child marriage in Iraq. 18% of girls aged 15-19 were currently married; 28% of women aged 20-24 were married before the age of 18; and 7% of women aged 20-24 were married before the age of 15.² Iraq’s child marriage legal framework and on-the-ground reality consequently both remain issues of concern.

² UNICEF data – Child Marriage. Retrieved February 28, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>



3. Special Protection Measures: Detention based on Immigration Status (Articles 9, 24, 28, 37)

As noted in the 2002 Committee's Report on the Rights of All Children in the Context of International Migration, migrant children may experience heightened vulnerabilities. Particularly, the detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention including the right to liberty (Article 37) and the right to not be separated from their family (Article 9). Children held in detention may also face barriers accessing education (Article 28) and health services (Article 24).

Article 37.b. specifically states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Article 9.1 affirms the right to family unity stating:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]

IRAQ'S LEGISLATIVE PROVISIONS: NO PROVISIONS ON MINOR DETENTION FOUND

Iraq's Law on the Residence of Foreigners permits the detention of foreigners and stateless persons prior to deportation, without specifying provisions that protect minor migrants or address family unity.

Law on the Residence of Foreigners No. 76 of 2017

Article 28. In case that a foreigner cannot be deported or expelled, or he is stateless, the Minister or his authorized representative may decide to determine his place of residence for a period specified in the Minister's decision until the foreigner is deported or expelled from the territory of the Republic of Iraq.

Article 29. In case that a foreigner cannot be deported or expelled from the Republic of Iraq, and who poses a threat to public security, the Minister or his authorized representative may determine his place of residence for a temporary period until he is deported or expelled.

Article 30. The decision to deport a foreigner may include members of his family whom he supports, provided that they are mentioned in the deportation decision.



Article 48. The Director General or his authorized representative shall have the power of an investigating judge in accordance with the provisions of the Criminal Procedure Code, which shall allow him to detain a foreigner for a period not exceeding (7) seven days which may be extended in order to deport or expel the foreigner from the territories of the Republic of Iraq.

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