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**Refugee Documentation Centre**

**Country Marriage Pack**

**Iraq**

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Please see the Iraqi Personal State Law that covers all areas of Marriage.

**1. Types of Marriage**

**Civil Marriage**

According to the *Iraqi Personal Status Law*:

**“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” (Iraq (30 December 1959) *Personal Status Law*)

## **Religious Marriage**

According to the *British Embassy* in Bagdad:

“Marriages in Iraq usually consist of a religious service in a church, or mosque, and a civil ceremony conducted before a judge. The religious service may be dispensed with, but to be legally married in Iraq a civil ceremony must be conducted. A marriage certificate is issued.” (British Embassy (21 July 2011) *Marriage and Birth in Iraq*)

## **Traditional/Other Marriages**

A report by *Minority Rights Group International* states:

“In the recent UPR conducted on Iraq, the issue of temporary and unregistered marriages was also raised. It was reported that women who acquiesce to these marriages do so out of material necessity. Such marriages offer no protection or material guarantees for women and their children, and often amount to little more than prostitution” (Minority Rights Group International (23 February 2011) *Still Targeted: Continued Persecution of Iraq's Minorities*)

A report by the US Department of State report on Trafficking in Persons states:

“Some women and girls are subjected to sex trafficking within Iraq through the use of temporary marriages (*muta’a*), by which the family of the victim receives money in the form of a dowry in exchange for permission for the woman or girl to be married for a limited period of time, during which she is subjected to labor and sex trafficking..” (US Department of State (19 June 2013) *2013 Trafficking in Persons Report – Iraq*)

A report by *Human Rights Watch* states:

“Religious and government institutions are sometimes complicit in their exploitation—in exchange for charity or benefits, widows have been asked to engage in “pleasure marriages,” a previously banned traditional practice that critics say is akin to prostitution. The women who are coerced into the practice face stigmatization and have no recourse.” (Human Rights Watch (21 February 2011) *At a Crossroads; Human Rights in Iraq Eight Years after the US-Led Invasion*)

A report by *UNHCR* states:

“Nevertheless, the practice of early marriage reportedly persists. In rural areas of northern Iraq, a practice called *Zhin bi Zhin*, meaning “a woman for a woman”, can be a form of forced marriage as it involves the exchange of girls or women between two families where no dowry is paid. This exchange of females is particularly sought after if one party is unable to pay a dowry or if relations between two tribes would be strengthened through the exchange of

girls or women. Similar practices can also be found in other areas of Iraq.”  
(UNHCR (31 May 2012) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*)

A report by *Emory Law* states:

“Polygamy: only permitted by judicial permission, to be granted on two conditions: financial ability and lawful benefit; permission not to be granted if judge fears unequal treatment of co-wives; ILPS provides penalties of imprisonment and/or fines for non-compliance” (Emory Law (Date Unknown) *Iraq, Republic of*)

A report by *Social Institute and Gender Index (SIGI)* states:

“Early marriages do occur, particularly in rural areas. They are often arranged by parents and performed under a religious ceremony, but are not legally recognised.” (Social Institute and Gender Index (2007) *Gender Equality and Social Institutions in Iraq*)

A report by the *UNHCR* and the *UN Assistance Mission to Iraq* states;

“Forced marriage of minors is a violation of Iraqi law and the International Covenant on Civil and Political Rights, and constitutes a form of child abuse. Iraqi marriage law states that both parties must be over 18. However, religious marriages of children are frequently performed. UNAMI has been asked to intervene in a number of cases of girls as young as 13 who had allegedly been subjected to forced marriages. Since such marriages are frequently not registered, children of these marriages can have problems registering for birth certificates, and girls whose husbands have died are unable to access financial and other forms of support.” (UNHCR & UN Assistance Mission to Iraq (June 2013) *Report on Human Rights in Iraq: July – December 2012*)

## **Proxy Marriage**

No information on the above issue could be found among sources available.

## **2. Formalities of Marriage (Consent, Minimum Age and Registration of Marriage)**

A report by the *UK Home Office* states:

“The legal age of marriage is 18 years for both men and women, but with parents’ consent and judicial permission the age can be lowered to 15 years (SIGI Country Page)” (UK Home Office (30 August 2011) *Country of Origin Information Report – Iraq*)

A report by the *US Department of State, Bureau of Consular Affairs* states:

“In all cases the bride and groom must do the following in order to obtain a marriage certificate:

1. Submit the marriage ceremony applications at the Social Status Court (applications will be completed by the court clerks); and
2. Obtain a medical examination per instructions from the court clerk; and

Appear personally in front of a judge and two witnesses. If an Iraqi woman is marrying a non-Iraqi, one of her parents (or a legal guardian) must be present" (US Department of State (2011) *Marriage of U.S. Citizens in Iraq*)

According to the *Iraqi Personal Status Law*:

"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.

2- The judge can authorize the marriage of a mentally ill person if it was confirmed in a medical report that his marriage entails no harm to society and that it is in his personal interest, provided that the other person accepts the marriage expressly." (Iraq (30 December 1959) *Personal Status Law*)

It goes on to say:

"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.

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" (Ibid)

According to a report by the *US Department of State*:

"The minimum age of marriage is 14 with parental permission and 18 without. The government made few efforts to enforce the law. A tradition of forced marriages for girls as young as 11 years old continued, particularly in rural areas. During the year a study by UNICEF and the government found that 21 percent of women ages 15 to 19 years old were married." (US Department of State (19 April 2013) *Country Report on Human Rights Practices: Iraq*)

### **3. Divorce**

According to the *Iraqi Personal Status Law*:

"Article 47 – The wife must observe a waiting period called *iddat* in the two following cases:

1- If she and her husband are separated after consummation, whether through revocable divorce, minor or major irrevocable divorce, legal separation, annulment, peaceful suspension, or choice of termination.

2- If her husband died, even if such death occurred before consummation.

#### Article 48

1- In cases of divorce and annulment, the waiting period of the woman whose marriage was consummated takes three possible forms.

2- If the woman reached puberty but has never menstruated, her *iddat* after separation shall be of three full months.

3- The *iddat* of the woman whose husband is deceased is four months and ten days. If a woman is pregnant, she must observe an *iddat* of four months or for the period remaining until delivery of her child, whichever is longer.

4- If the husband of a divorcee dies while she is still in her *iddat*, the latter must observe the death *iddat* and the previous period shall not be counted.”  
(Iraq (30 December 1959) *Personal Status Law*)

A report by *Emory Law* states:

“Judicial Divorce: wife entitled to request dissolution if husband does not fulfil any lawful condition stipulated in marriage contract;

either party may request dissolution upon following grounds: such harm as makes continuation of marriage impossible; marital infidelity; if marriage was contracted without judicial permission before either party attained 18 years; if marriage was concluded outside court by coercion and was not consummated; if husband marries polygamously without judicial permission; and if any of above grounds are not proven, on grounds of discord (in which case courts initiate reconciliation procedures; if reconciliation efforts fail and husband refuses to pronounce *talaq*, courts may grant judicial divorce; if wife is found to be at fault, her financial rights are forfeit). Wife may request judicial divorce upon following grounds: if husband is imprisoned for three or more years; if husband abandons wife for two or more years without lawful reason; if husband does not consummate marriage within two years of contract; husband's impotence or affliction (if after consummation, must be confirmed by medical report); husband's infertility if wife has no living son by him; husband's serious illness which would cause wife harm; non-maintenance after grace period of up to 60 days; non-maintenance due to husband's absence, disappearance, concealing his whereabouts, or imprisonment for more than one year; and if husband refuses to pay maintenance arrears after 60-day grace period; wife may also request judicial separation before consummation in return for any dower and proven expenditure on husband's part for purpose of the marriage” (Emory Law (Date Unknown) *Iraq, Republic of*)

A report by *Still Human Still Here* states:

“The fact-finding mission also learned that the courts in the KRG region will not allow a second marriage within five years for those divorced as a result of honour-related issues” (Still Human Still Here (20 February 2012) *Commentary on the December 2011 Iraq Operational Guidance Note*)

A report the *UK Home Office* states:

“The Institute for International Law and Human Rights, article Women and the Law in Iraq, dated December 2010 explained with regard to divorce rights:

'The [Personal Status] Code also regulates divorce, 'to sever the bond of marriage', which can be done by the husband, wife, an authorised representative or the judge, and 'must be performed according to Shari'a. While the husband can perform the divorce 'by pronouncing three repudiations', the wife may only have recourse to the provisions on 'separation', available to both spouses" (UK Home Office (30 August 2011) *Country of Origin Information Report – Iraq*)

According to a report by the *US Department of State*;

"Local and international NGOs reported that forced divorce--the practice of husbands or their families threatening divorce from primarily early married girls (ages 12-16) in order to pressure the girl's family into providing additional money to the girl's husband and his family--also occurred, particularly in the southern provinces. Victims of forced divorce were forced to leave their husbands and his family; meanwhile, social customs regarding family honor prevented the victims from returning home to their families, which sometimes resulted in adolescent girls' being abandoned" (US Department of State (19 April 2013) *Country Report on Human Rights Practices: Iraq*)

#### **4. Marriage between Non Nationals and Nationals**

According to the *US Embassy in Iraq*

"In all cases the bride and groom must do the following in order to obtain a marriage certificate:

- The parties must appear personally in front of a judge of the Social Status Court in order to submit an application for marriage;
- If the groom is a non-Muslim, there must be a religious marriage ceremony prior to the parties appearance at the Social Status Court;
- After submitting the application, the parties must obtain a medical examination per instructions from the court clerk;
- After obtaining the medical examination, the parties return to the Social Status Court with two witnesses;
- If an Iraqi woman is marrying a non-Iraqi, one of her parents (or a legal guardian) must be present;

A marriage contract is issued by the court and signed by both parties. (US Embassy in Iraq (2013) *Validity of Marriages Abroad*)

A report by the *US Bureau of Consulate Affairs* states:

##### **"Marriage Procedures**

"In all cases the bride and groom must do the following in order to obtain a marriage certificate:

1. Submit the marriage ceremony applications at the Social Status Court (applications will be completed by the court clerks); and

2. Obtain a medical examination per instructions from the court clerk; and
3. Appear personally in front of a judge and two witnesses. If an Iraqi woman is marrying a non-Iraqi, one of her parents (or a legal guardian) must be present.” (US Bureau of Consulate Affairs (2013) *Marriage of U.S. Citizens in Iraq*)

## **Marriage Between Two Non Nationals**

No information on the above issue could be found among sources available.

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