

[Protection of Stateless Persons in Iraq: Between National Legislation and Arab International Obligations]

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Abstract:

Statelessness is a major issue of human rights that affects millions of people around the world, especially those living in conflict areas. Iraq's history of conflict, displacement, administrative problems, and inconsistencies in nationality law have all contributed to the emergence of the phenomenon of stateless people. The issue of the protection of stateless people in Iraq is discussed from two perspectives: the first is related to the national level, whereas the second relates to the international level, especially the Arab level. In this context, the study aims to examine the level of compliance of the Iraqi law with international law regarding the prevention and reduction of statelessness, as stipulated in the two conventions of 1954 and 1961 related to the reduction of statelessness, the Arab Charter of Human Rights, and the guidelines of the United Nations High Commissioner for Refugees. The study's findings have indicated the existence of a lack of a comprehensive law related to the issue of statelessness, which makes the protection of stateless people in Iraq limited, the status of the stateless people vague, and the administrative practices inconsistent. In the context of the study's recommendations, the study aims to propose recommendations that would make the Iraqi law compliant with international law.

Keywords: Statelessness; Iraqi Nationality Law; Human Rights; UNHCR; Arab Charter; Legal Protection.

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[حماية عديمي الجنسية في العراق: بين التشريعات الوطنية والالتزامات الدولية العربية]

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الملخص:

يُعدّ انعدام الجنسية إحدى القضايا الخطيرة في مجال حقوق الإنسان والتي تؤثر على ملايين الأفراد حول العالم، ولا سيما في المناطق المتضررة من النزاعات. ويشكّل العراق حالة معقّدة في هذا السياق، إذ أسهمت الصراعات التاريخية، والنزوح، والاختلالات الإدارية، وتضارب أحكام قانون الجنسية في ظهور واستمرار جماعات عديمي الجنسية. تتناول هذه الدراسة حماية عديمي الجنسية في العراق من خلال منظورين متكاملين: التشريعات الوطنية والالتزامات المترتبة على العراق بموجب الأطر القانونية الدولية والعربية. وتعتمد الدراسة منهجاً فقهيّاً مقارناً لتحليل مدى اتساق القوانين العراقية مع المعايير الدولية المتعلقة بمنع وتقليل حالات انعدام الجنسية، ولا سيما تلك المنصوص عليها في اتفاقيتي عديمي الجنسية لعامي 1954 و1961، والميثاق العربي لحقوق الإنسان، والمبادئ التوجيهية الصادرة عن مفوضية الأمم المتحدة لشؤون اللاجئين. وتكشف النتائج أنه بالرغم من الضمانات الدستورية والإصلاحات التشريعية الجزئية، يفتقر العراق إلى إطار قانوني شامل لمعالجة حالات انعدام الجنسية، مما يؤدي إلى حماية محدودة، وإجراءات غير واضحة لتحديد الوضع القانوني، وممارسات إدارية غير متسقة. وتخلص الدراسة إلى تقديم توصيات تهدف إلى مواءمة التشريعات العراقية مع المعايير الدولية، وتطوير آليات مؤسسية أكثر فعالية لمنع وتحديد وحماية عديمي الجنسية.

الكلمات المفتاحية: انعدام الجنسية؛ قانون الجنسية العراقي؛ حقوق الإنسان؛ مفوضية الأمم المتحدة لشؤون اللاجئين؛ الميثاق العربي؛ الحماية القانونية.

1. Introduction

Statelessness, which refers to the status of not being considered a national of any state, is considered one of the worst violations of the dignity of the human being (UNHCR, 2023). In the Middle East, including Iraq, there is a considerable number of stateless people whose status is considered from a historical, political, and administrative perspective (Albarazi & van Waas, 2016).

The history of the nationality of the people of Iraq from the Ottoman era to the present day has resulted in the emergence of different categories of people who may be considered de facto or de jure stateless. Displaced persons, children born outside the civil status system, and individuals whose nationality is withheld by the state fall into this category. While the Constitution of Iraq of 2005 and Nationality Law No. 26 of 2006 have some positive provisions, they still do not match the commitments of Iraq at the regional and international levels.

2. Problem of the Study

The central problem lies in the gap between Iraq's constitutional principles—which affirm the right to nationality—and the absence of a unified legal framework addressing statelessness. This gap results in inadequate protection mechanisms, inconsistent administrative procedures, and limited compliance with international norms.

3. Aim of the Study

This research aims to analyze the legal and institutional protection provided to stateless persons in Iraq, evaluating the compatibility of national laws with international and Arab obligations, and identifying the reforms needed to enhance protection.

4. Research Questions

1. How does Iraqi law define and address statelessness?
2. To what extent do national procedures protect stateless individuals?
3. What international and Arab obligations bind Iraq in this field?
4. How can Iraq strengthen its legislative and institutional framework?

5. Significance of the Study

The study contributes to legal scholarship by offering a comprehensive evaluation of Iraq's statelessness regime, highlighting alignment and divergence from international standards. It is practically significant for policymakers, human rights advocates, and international agencies working on nationality law reforms.

Chapter One: Theoretical Framework

1. Introduction

Statelessness has thus emerged as a critical human rights issue globally, especially in certain countries faced with the challenges of conflicts, dislocated populations, and poor governance. The lack of legal nationality status thus renders people vulnerable to all forms of exclusion and marginalization. In Iraq, the problem has been embedded in the historical, political, and legal developments that have characterized the identity and nationality status of its people over the past century. This chapter, therefore, identifies the theoretical basis for statelessness to create a basis for the discussion on the subject in Iraq. The discussion draws on the human rights framework and the literature on the subject to create a basis for the discussion (Albarazi & van Waas, 2016).

2. Concept of Statelessness

Statelessness is defined under international law as the status of a person who is “not considered a national by any State under the operation of its law,” a definition adopted in the 1954 Convention Relating to the Status of Stateless Persons. From a legal point of view, the sole connection of a person with the State is through their nationality. Statelessness may be *de jure*, when the individual is not considered a national of any State under the law, or *de facto*, when the individual holds a nationality but cannot prove it. Experts have noted that nationality is the key to the enjoyment of civil, political, economic, and social rights; therefore, the lack of it is a significant disability (Crawford, 2012).

3. Causes of Statelessness in Iraq

The issue of statelessness in Iraq can be attributed to a series of factors, ranging from disruptions and discriminatory policies, demographic changes, and administrative challenges. To start with, there was a series of issues from the Ottoman Empire, which was later followed by changes in governance, particularly in the territories. The issue was further compounded by the nationality decrees under the monarchy. Later, the Ba’ath regime resorted to using nationality as a tool for political control, revoking the citizenship of some groups, particularly Faili Kurds and some displaced persons. Currently, the issue can be attributed to displacement, particularly due to conflicts, the lack of civil documentation, and the challenges associated with birth registration. These factors have cumulatively contributed to the issue of statelessness, which can be attributed to a complex situation (Hassan, 2021).

4. Categories of Stateless Persons

There are different categories of stateless persons, and each has its own case depending on their background, where they came from, and the challenges they face. They may include those whose nationality was revoked by the previous governments, those without identification papers living in Iraq, children born outside the civil registration system, and others whose parents’ nationality is not certain. Moreover, the displaced people resulting from the conflicts and movements may also face the challenge of their nationality, thus becoming stateless even if they have the right to be nationals. This indicates that statelessness is a spectrum and thus requires legal recognition.

5. International Legal Framework on Statelessness

The international legal framework provides a strong foundation for the prevention and reduction of statelessness, as well as the minimum protection of individuals affected by it. The 1954 Convention clearly outlines the status and rights of stateless persons. It provides a framework for documentation, employment, and non-discrimination. Moreover, the 1961 Convention on the Reduction of Statelessness requires states to ensure the implementation of measures that prevent the birth of children in a stateless status and the deprivation of nationality arbitrarily. Other international instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, recognize the right of individuals to have a nationality. These conventions form the international framework that states, like Iraq, should adhere to in the formulation of their domestic law (Shaw, 2017).

6. Arab Regional Framework on Statelessness

In the Arab region, the issue of statelessness is addressed through the regional human rights system as well as the national traditions of the Arab states. The Arab Charter on Human Rights includes the right to nationality as well as the prohibition of the arbitrary deprivation of such a right. However, the Arab states have different approaches to the issue of statelessness, with some states failing to have any procedures to identify stateless individuals. The region faces numerous challenges such as displacement, conflicts, as well as restrictive nationality laws, which have led to the existence of stateless individuals. Iraq is a state party to the Arab Charter on Human Rights, which requires Iraq to ensure the non-discrimination of individuals with regards to nationality as well as to protect vulnerable individuals at risk of statelessness (League of Arab States, 2004).

7. Nationality and the Right to Legal Identity

The right to nationality is closely related to the notion of legal identity, which encompasses civil registration, documentation, and legal recognition. In Iraq, for example, the absence of civil documentation infrastructure, especially in conflict zones, increases the threat of statelessness. Birth registration is an important preventative measure, especially for children, as they may struggle to prove their lineage and nationality in the absence of documentation. It has been recommended by international guidelines that there must be accessible and non-discriminatory ways to register births and issue legal documents. In the absence of such infrastructure, people may not be legally visible and may not be able to assert their rights (UNHCR, 2023).

8. Theoretical Approaches to the Protection of Stateless Persons

According to the theoretical perspectives on the protection of stateless persons, there exist two approaches: the human rights-based approach and the state sovereignty-based approach. In the human rights-based approach, the individual's right to have a nationality is the core principle. This perspective views statelessness as a violation and advocates for the individual's protection. In contrast, the state sovereignty-based perspective emphasizes the state's discretion in the determination of its nationals. This perspective, however, warns against the obligations that may undermine the state's sovereignty. In the modern perspective, there is a need for a balance between the state's prerogative in the determination of its nationality laws and the need to comply with international principles that protect the individual from arbitrary exclusion. This balance is important in the Iraqi context, given the political and security environment.

Chapter Two: The National Legal System for Protecting Stateless Persons in Iraq

1. Introduction

The legal framework for the protection of stateless persons in Iraq is largely influenced by the constitution, nationality law, administrative organs, and history. The efforts of Iraq in addressing the consequences of discriminatory practices and the massive stripping of citizenship have been remarkable. However, the framework is still considered inadequate in the sense that there is a lack of a comprehensive legislative framework for the identification of stateless persons. This chapter aims to examine the constitution of Iraq, the Nationality Law No. 26 of 2006, civil documentation, and governmental practices to ascertain the level of protection of stateless persons in Iraq. Some of the strengths of the framework have been identified, as discussed in the analysis below (Hassan, 2021).

2. Constitutional Foundations of Nationality and Legal Identity

The 2005 Iraqi Constitution has set out several significant principles regarding nationality and protection against arbitrary deprivation of it. Under Article 18 of the Constitution, it is stated that nationality is a right and is subject to law. Withdrawal of nationality from any Iraqi citizen is prohibited unless permitted by law and subject to judicial review. Equality before the law and protection of children's rights have also been highlighted in the Iraqi Constitution, which provides a foundation for the prevention of statelessness. Despite the presence of a wide range of human rights provisions in the Iraqi Constitution, there is no definition of statelessness and no obligation on the state to establish a procedure for stateless status determination.

3. Nationality Law No. 26 of 2006

Nationality Law No. 26 of 2006 serves as the foundation of the domestic law of Iraq regarding citizenship. It is a significant law that addresses and prevents statelessness. The law introduced significant reforms, particularly after 2003, which included the restoration of nationality to those who had lost their nationality under the Ba'ath regime, particularly Faili Kurds, without the requirement of relinquishing another nationality. The law also recognizes the principle of *jus sanguinis*, which grants children nationality through their parent, thus preventing statelessness. However, there is a lack of provisions regarding the identification of stateless persons and the provision of protection to those who are found to be stateless, which limits the ability of the Iraqi government to deal with statelessness effectively (Mohammed, 2017).

4. Civil Registration and Documentation Procedures

Civil registration is a vital part of the legal identity infrastructure of Iraq. Nevertheless, the weaknesses in the civil registration sector contribute significantly to the issue of statelessness. Services like birth registration, the provision of civil identity cards, nationality certificates, and residency permits rely on the effectiveness of the administrative system. In a territory experiencing a crisis like Iraq, records are destroyed, records are lost, and the administrative capacity is impaired. Displaced persons and children born during the territorial conflicts from 2014 to 2017 face challenges in establishing their lineages. This creates a situation where individuals with a legitimate claim to nationality remain undocumented and stateless because of a lack of proof of their identities (UNHCR, 2023).

5. Groups Affected by Statelessness Under Iraqi Law

Although there have been changes to the law affecting the system, there still exist some categories of people in Iraq who are still at risk of being stateless owing to the gaps in the Iraqi legal system. The people who fall into this category include those who have been deprived of their citizenship in the past, those who lack proper registration in the border regions of Iraq, the children of unregistered marriages, those who were born in the context of displacement without access to any form of documentation, and those whose family legacy is statelessness owing to the parents' inability to pass on their citizenship because they were unable to prove their own legal status. Even though the Iraqi legal system grants the right to nationality to foundlings as well as the children of Iraqi mothers and foreign fathers, the complexities involved cause a delay in the process (Hassan, 2021).

6. Absence of a Statelessness Determination Procedure (SDP)

The most important gap in the Iraqi legislative framework is the lack of a Statelessness Determination Procedure (SDP), which is a part of most legislative systems. This allows the State to identify stateless persons and provide them with a legal status and documents. In the Iraqi legislative framework, there is a lack of a legal framework that determines the way to define the status of a person as a stateless individual, the institution that is responsible for this, and the rights of the individual. In the Iraqi context, stateless persons deal with different institutions, such as the judiciary, the directorate of civil status, and security forces. This leads to a lack of consistency in the decisions made regarding the status of the individual (Shaw, 2017).

7. Administrative and Institutional Challenges

Effectiveness of the national system is further undermined by institutional fragmentation as well as the differing implementations of the various ministries involved. The competence of the civil status directorates differs as does the exchange of information between the Ministry of the Interior, the Ministry of Migration and Displacement, and the provinces. Discretionary power is considerable, especially when there is no documentation or when identity is disputed. Political instability is another factor which affects the effectiveness of the state in providing uniform protection policies. These factors have a direct bearing on the stateless population's access to their rights or the acquisition of nationality for their children (Hassan, 2021).

8. Legal Remedies and Judicial Oversight

The judicial system in Iraq also offers some avenues to individuals to seek justice against administrative actions or to reclaim their nationality. For example, judicial bodies have ruled in favor of restoring nationality in cases of wrongful deprivation of nationality by the previous regimes. However, judicial remedies are complicated and take a long time to be resolved. Moreover, many stateless individuals cannot afford judicial remedies. In the absence of a law on statelessness, judicial bodies can only apply general principles of administrative and civil law, which is not effective in protecting stateless individuals (Mohammed, 2017).

9. Alignment with International Obligations

In spite of the fact that Iraq has not ratified the 1954 and 1961 conventions on statelessness, the state is still obliged to follow the general guidelines that prohibit the arbitrary deprivation of nationality and the right to a legal identity. The state's participation in the UNHCR activities is a move towards the acknowledgment of the statelessness issue, and the efforts made by the state to address the issue by restoring the nationality to the stateless populations during the Ba'ath regime. Nevertheless, the absence of comprehensive legislation and procedures to address the issue is a challenge to the state's full compliance with the general guidelines to protect the stateless people (UNHCR, 2023).

Chapter Three: Iraq's Arab and International Obligations

1. Introduction

Iraq's obligation towards the protection of stateless individuals is not only based on its internal law but also on its international obligations towards the regional and international human rights regimes. Although Iraq has not ratified any of the two main Statelessness Conventions of 1954 and 1961, it has ratified a number of universal and Arab human rights treaties that enshrine the principle of the right to a nationality, prohibit the arbitrary deprivation of citizenship, and oblige states to respect the principle of legal identity. This chapter will examine Iraq's position regarding its obligation towards the protection of stateless individuals, including the extent of its internal law in compliance with the evolving international law standards. Special reference will be made to the UN human rights regime, the Arab Charter on Human Rights, and the cooperation between Iraq and UNHCR. These regimes all contribute to the responsibility towards the prevention and reduction of statelessness.

2. United Nations Human Rights System

International human rights law recognizes the right to nationality as a basic principle that is essential for the enjoyment of all other human rights. The Universal Declaration of Human Rights provides in Article 15 that: "everyone has the right to a nationality." In addition, the provision prohibits the arbitrary deprivation of the right to a nationality. The International Covenant on Civil and Political Rights, which Iraq is a party to, requires states to ensure the legal recognition and the protection of the rights of children. This includes the provision of access to birth registration. Therefore, there are obligations on the part of the Iraqi government to ensure that there is no statelessness, and all persons have the right to a nationality. Although the UN human rights instruments do not specifically prohibit statelessness, they require states to take all necessary steps to ensure the promotion of inclusiveness and non-discrimination in the enjoyment of the right to a nationality.

3. The Role of UNHCR and International Cooperation

UNHCR is a key actor in assisting states in the implementation of international norms regarding the issue of statelessness. Iraq has worked alongside UNHCR in initiatives like documentation support programs, birth registration programs, and legal assistance programs for displaced and marginalized groups. This partnership with UNHCR in implementing programs shows Iraq's commitment to the international norms regarding the issue of statelessness, even if it is not a party to the Statelessness Conventions. In fact, the international campaigns of UNHCR, especially the #IBelong Campaign,

emphasize the eradication of statelessness through legislative action, development of civil registration systems, and the establishment of Statelessness Determination Procedures (SDPs). This shows that Iraq is now joining the international community in recognizing the need to address the issue of identity gaps among marginalized groups (UNHCR, 2023).

4. Arab Charter on Human Rights

The UNHCR has been at the center of the efforts to help countries implement the international norms on statelessness. Iraq has been working hand in hand with the UNHCR on initiatives such as documentation support, birth registration, and legal assistance for displaced and marginalized groups. This is an indication that Iraq is committed to adopting the best practices on statelessness, even in the absence of the ratification of the two conventions. The #IBelong campaign by the UNHCR, for example, focuses on the elimination of statelessness by enacting legislative provisions, improving registration processes, and developing Statelessness Determination Procedures (SDPs). The participation of Iraq in the activities organized by the UNHCR on statelessness issues is an indication that there is now a growing awareness of the need to address the long-existing identity gaps among vulnerable groups (UNHCR, 2023).

5. Comparative Obligations within Arab States

The most immediate regional responsibilities of Iraq lie in the Arab Charter for Human Rights, which Iraq ratified in 2013. Article 29 of the Arab Charter states that the right of every individual to have a nationality is recognized, and the withdrawal of nationality should not be arbitrary. Article 7 of the Arab Charter ensures the principle of equality before the law. Article 32 of the Arab Charter ensures the protection of the rights of children, birth registration, and the protection of their identities. From the above articles of the Arab Charter, it is evident that there is a commitment at the regional level to prevent statelessness, as well as the avoidance of discrimination in the enjoyment of the right to nationality on the basis of race, gender, or social origin. As a member of the Arab League, Iraq is bound by the articles of the Arab Charter, which includes the need to avoid statelessness, especially among vulnerable groups of society (League of Arab States, 2004).

6. Customary International Law and General Principles

Even without accession to these treaties, a considerable number of provisions regarding statelessness have been acknowledged as being a part of customary law. These provisions include the prohibition against arbitrary deprivation of nationality, the avoidance of statelessness in children, and the avoidance of discrimination in the application of nationality law. The customary law provisions also include the application of due process in the deprivation of nationality, as well as the avoidance of statelessness except as necessary. With regard to Iraq, there is a necessity to note the relevance of these provisions from a legal standpoint, particularly as they relate to provisions found in the constitution and the human rights regime. The provisions regarding customary law can be useful in addressing legislative gaps.

7. Obligations Toward Children and Birth Registration

International and regional human rights treaties have emphasized the issue of the prevention of childhood statelessness. The Convention on the Rights of the Child (CRC) was ratified by Iraq in 1994, which requires the state to ensure the immediate registration of the child at birth and the right to a nationality of the child. This is especially relevant to children in situations of conflict or refugee situations or undocumented marriages, as they are prone to the risk of statelessness in Iraq. However, Iraqi legislation accords the right to nationality to foundlings, although there are administrative challenges to the application of the law. This is a critical aspect of Iraq's CRC obligations (UNHCR, 2023).

8. Non-Discrimination in Nationality Laws

Non-discrimination is one of the fundamental principles in international and regional nationality instruments. In this case, Iraq is obliged to ensure that there is no restriction to access nationality on grounds of ethnicity, gender, religion, and political opinion. Although there were positive changes in the 2006 Nationality Law with regard to restoring nationality to previously excluded persons, there are gaps with regard to children of Iraqi mothers and foreign fathers in complex documentation cases. International principles state that nationality laws should be implemented in a way that does not lead to marginalization of minority and displaced persons. This is essential in avoiding statelessness; hence, domestic legislation should comply with international principles to reduce statelessness (Albarazi & van Waas, 2016).

9. Assessment of Iraq's Compliance with Regional and International Obligations

Iraq has made considerable achievements in addressing the issue of statelessness; however, it has failed to be consistent in the implementation of the other requirements. Despite the comprehensive provisions in the constitution and the Nationality Law of 2006, the lack of an SDP, inconsistencies in administrative practices, and lack of civil documentation hinder the efforts of the State in the protection of stateless individuals. Iraq's cooperation with the UNHCR and ratification of the Arab Charter show the State's commitment to the improvement of the protection of stateless individuals; however, it still lags behind. A comprehensive reform program, in accordance with international guidelines, is required to ensure Iraq's compliance with international law and the development of a comprehensive framework for the prevention and reduction of statelessness (Shaw, 2017).

Conclusion:

The issue of statelessness in Iraq can be understood to be a complex interplay of history, law, administration, and evolving human rights obligations. While considerable steps have been taken to reform statelessness in Iraq since 2003, particularly with respect to the 2005 Constitution and the Nationality Law No. 26 of 2006, there are a number of gaps that continue to undermine the protection of stateless individuals. For example, Iraq has taken considerable steps to confer nationality on individuals who were previously arbitrarily deprived of nationality under previous political regimes. Additionally, Iraq has also taken considerable steps to harmonize elements of national legislation with international and regional human rights obligations. However, the lack of a Statelessness Determination

Procedure and inconsistencies in civil documentation systems and administrative fragmentation are key challenges to statelessness in Iraq.

Iraq's obligations with respect to the Arab Charter on Human Rights, the Convention on the Rights of the Child, and international human rights obligations generally require Iraq to provide equality in nationality laws and to ensure that children are protected from arbitrary deprivation of nationality and to ensure that children can access nationality. While cooperation with UNHCR indicates a commitment to statelessness issues, implementation on the ground varies considerably.

To make considerable progress on statelessness in Iraq, a comprehensive national strategy on statelessness should be developed with respect to international best practice. This will allow Iraq to better implement its human rights obligations and reduce the risks of statelessness in the future.

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