



# Understanding statelessness in the Syria refugee context

Research Report



Institute on  
Statelessness and  
Inclusion



NORWEGIAN  
REFUGEE COUNCIL

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The **Norwegian Refugee Council (NRC)** is an independent, international, humanitarian non-governmental organisation which provides assistance, protection and contributes to durable solutions for refugees and internally displaced persons worldwide.



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## EXECUTIVE SUMMARY

Civil war broke out in Syria in 2011. Since then, hundreds of thousands of civilians have been killed and significant areas of the country have fallen under the control of armed non-State actors. This has caused a humanitarian disaster of colossal proportions, both inside Syria and beyond its borders. As many as 4.8 million refugees are registered in neighbouring countries and over a million have travelled to Europe.

The overwhelming majority of these refugees hold Syrian nationality and face no immediate risk of statelessness. Moreover, children born in exile inherit Syrian nationality automatically, by operation of the law, if their father is a Syrian citizen. However, a small proportion of the refugees are already stateless (i.e. are not considered as a national by any State under the operation of its law). Others, particularly children born in exile, are at risk of statelessness due to the operation of Syria's nationality law or difficulties documenting their connection to Syria and right to nationality.

Statelessness is a driver of insecurity and injustice, including in situations of conflict and displacement. It is important for humanitarian actors to understand the challenges of protecting Syrian refugees' right to a nationality and ensuring effective protection for stateless refugees. This is relevant not only to the current refugee response, but also to mitigate problems that could arise in finding durable solutions for refugees from Syria, including voluntary return to Syria when circumstances in the country allow.

This research project aims to provide an assessment of the risk of new cases of statelessness arising among Syrian refugees and their children and the particular vulnerabilities of stateless refugees from Syria. The research focused on the countries neighbouring Syria which are hosting the greatest numbers of refugees: Lebanon, Jordan, Iraq, Turkey and Egypt. A specific goal of the project is to inform the development of a "toolkit" to help organisations engaged in the refugee

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response to better understand the intersections between their work and statelessness, and to share good practices, innovations and practical steps that they can take to ensure the effective protection of stateless persons and contribute to the longer-term prevention and reduction of statelessness.

With this aim in mind the research considered three profiles among the Syrian refugee population: 1) members of the general refugee population from Syria facing challenges in obtaining civil documentation; 2) individuals who are at heightened risk of becoming stateless in displacement; and 3) individuals who are both stateless and refugees.

### THE GENERAL REFUGEE POPULATION

Under Syria's nationality law, the child of a Syrian man automatically acquires Syrian nationality, whether born within Syria or abroad. Accordingly, the majority of the children born to Syrian refugees should be Syrian nationals. However, for refugee children born in exile, the ability to *prove* the link to Syria may be critical to ensuring that their Syrian nationality is recognised in practice. Since 2011, more than 300,000 children have been born in exile. For them, access to birth registration, in particular, is vital because it provides evidence of a child's identity, family links and Syrian nationality.

The research identified various factors which impede access to birth registration in host countries. Lack of the documentation required to complete the registration is a major problem, with many refugees having lost their documents or had these destroyed. Another challenge is that non-State actors in some parts of Syria have begun issuing documents, but the validity of these is disputed.

Marriage registration is particularly important since a marriage certificate is often required for birth registration in the host countries and to establish the identity of the child's (legal) father. In addition to those who no longer have marriage certificates, problems arise due to the custom within Syria of first marrying in the religious system and delaying, sometimes for a prolonged period, the formal registration of marriage.

Refugees may also face difficulties due to their lack of familiarity with the civil registration process in host countries while authorities in the host countries may not be aware of the Syrian procedures and their bearing on the civil status of Syrian nationals or on refugees' perception of what is expected of them to register a birth. Prohibitive costs and (in Turkey) language barriers may also create problems of access to civil registration procedures. To overcome these barriers, refugees often resort to coping mechanisms that can put them at further risk such as returning to Syria or falsifying documents.

There is already recognition of the need to devote attention to issues of civil registration and documentation within the Syria regional refugee response. The research highlighted the need to strengthen the capacity of organisations operating in the host countries to make effective interventions, by making information about the challenges which are specific to the Syria displacement context more readily available. Generalised activities to encourage and assist refugees to preserve evidence of their and their family members' Syrian nationality cannot be the remit of specialists only. Moreover, there it is important to facilitate the further sharing of information about what forms of intervention work well and what do not.

### PERSONS AT HEIGHTENED RISK OF STATELESSNESS

The research identified six profiles among refugees from Syria with a heightened risk of becoming stateless: 1) Children whose birth in the host State is not registered by the statutory deadline; 2) Children born within female-headed households; 3) Children born within child marriages; 4) Undocumented refugees; 5) Refugees not registered with UNHCR; 6) *Maktoum* refugees.

There are, in general, two factors rendering these groups particularly vulnerable to statelessness: gender discrimination in Syria's nationality law and lack of documentation of identity and nationality.

Since Syrian mothers, unlike Syrian fathers, cannot transmit their nationality to their children when born outside Syria, the key factor in determining access to Syrian nationality is prove of descent from a Syrian man. Where there are particular difficulties in registering the births of children or in documenting this connection with a Syrian father are therefore at particular risk of statelessness. All the groups identified as being at risk of statelessness share this general characteristic.

In female-headed households (around a quarter of Syrian refugee households) evidence of the Syrian nationality of the father of the child may not be available and the women may in any case face difficulties registering the birth of the child if authorities demand the presence of or proof of the identity of the father. Children born within child marriages are among those least likely to have their births registered, since these marriages are themselves illegal and so unlikely to have been officially registered. In addition to the reluctance of the parents to have contact with the authorities for this reason, the lack of a marriage certificate can, as noted above, be an impediment to registering the birth of a child. Children whose births are not registered by the statutory deadline are also likely to remain undocumented due to the complexity and cost of late registration procedures.

The remaining three risk profiles are refugees who are 'undocumented' in one way or another. Undocumented refugees are at heightened risk because they cannot provide proof of their identity or link to Syria. Of particular concern are the *Maktoum*, i.e. individuals who were never registered in Syria, often as a result of inter-generational lack of documentation within a family. This circumstance, coupled with their subsequent displacement, puts them and their children at a considerably higher risk of statelessness than the general refugee population. For such undocumented or unregistered refugees, registration with UNHCR can provide vital evidence of their identity and origin in Syria.

As with the general refugee population, the research highlighted the importance of measures to improve access to documentation and civil registration. It is important that practitioners are aware of risk profiles and the context which generates this risk, and share expertise with regards to the provision of assistance.

## STATELESS REFUGEES

The research also looked at the situation of stateless refugees; those people who were already stateless in Syria and have fled the conflict to neighbouring countries. There is no reliable data as to how many refugees from Syria are stateless, but at the end of 2015 UNHCR estimated the stateless population still in Syria as 160,000. The main profiles of stateless refugees are stateless Kurds (*Ajanib* – those registered as 'foreigners' in Syria and *Maktoum* – those completely unregistered in Syria) and Palestinian refugees from Syria (PRS). There are also a small number of isolated cases of stateless individuals who failed to acquire Syrian nationality due to gender discriminatory laws or lost nationality at some point because of political activism.

Being a *stateless* refugee from Syria can generate additional protection challenges. Stateless persons from Syria often do not have proof of identity which renders them unable to access civil registration and other required identity documents. Many stateless refugees have also crossed the borders irregularly which can compromise their legal stay in the country. Some cases were also reported in which stateless refugees experienced difficulties registering as refugees with the relevant body. Other protection problems include restricted freedom of movement, increased fear and uncertainty and heightened pressure to return to Syria. In the longer term, stateless persons may face problems when accessing durable solutions available to the Syrian refugee population. A more fundamental problem is the difficulty of identifying stateless refugees and

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the fact that even when identified they may not be registered as stateless by humanitarian organisations. This makes it hard to assess their situation or provide targeted support and contributes to the invisibility of this group.

Despite the problems identified by the research it also found that humanitarian organisations and host governments have already developed some good practices which can help to prevent statelessness among refugees from Syria. Efforts have been made to assess the risk of statelessness among Syrian refugee children in specific host countries and raise awareness of the challenges faced in protecting Syrian refugee children's right to nationality. Most importantly, host governments have taken steps to simplify or otherwise facilitate access to civil registration procedures for refugee families on their territory so that they can document their connection to Syria.

Overall, this research project confirmed the need to pay greater attention to helping Syrian refugees protect their right to Syrian nationality, especially in the face of problems relating to access to civil registration and to documentation proving nationality. The fact that a sub-set of refugees displaced by the conflict in Syria are stateless poses an additional challenge to ensuring that their protection needs are met and may present problems at a later date in the pursuit of durable solutions. Humanitarian and protection actors have a crucial role to play in providing assistance and protection to stateless refugees from Syria and mitigating the risk of statelessness for them and their children, including through both programme and advocacy activities. A central priority must be to prevent new cases of statelessness amongst the refugee population by ensuring access to civil registration procedures and to documentation proving nationality. While general measures to increase registration rates and facilitate procedures are having an important impact, efforts must be stepped up to address those cases in which access to or recognition of nationality is not straightforward. Moreover, it is vital to pay due attention to the particular situation and vulnerabilities of refugees who are also stateless.



## ABBREVIATIONS AND GLOSSARY OF KEY TERMS

ABBREVIATIONS	
1951 Refugee Convention	1951 Convention relating to the Status of Refugees
ARDD	Arab Renaissance for Democracy and Development
DRC	Danish Refugee Council
ICLA	Information, Counselling and Legal Assistance
IDP	Internally Displaced Person
INGO	International Non-Governmental Organisation
ITS	Informal Tented Settlement (Lebanon)
JCLA	Justice Centre for Legal Aid
KRI	Kurdistan Region of Iraq
MENA	Middle-East North Africa Region
MOI	Ministry of the Interior
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PRS	Palestinian Refugees from Syria
RSD	Refugee Status Determination
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees in the Near East
ARABIC TERMINOLOGY	
<i>Ajanib Kurd</i>	Stateless Kurd registered as a ‘foreigner’ in the 1962 Syrian Jazira census
<i>Bidoon</i>	A word that literally means ‘without’ and refers to a group of stateless persons who live predominantly in the Gulf region
<i>Isbat Nasab</i>	Recognition of Lineage – a document given by a Sharia judge that confirms the parentage of a child
<i>Itilaf</i>	Syrian Opposition Council
<i>Kafala</i>	Individual who “sponsors” another individual to help them obtain a residence permit
<i>Ketb Al Ktab</i>	Islamic Marriage Contract
<i>Maktoum</i>	An individual not present in the Syrian records
<i>Maktoum Kurd</i>	Stateless Kurd not registered in the 1962 Syrian Jazira census or in any records
<i>Mokhtar</i>	Local Mayor
<i>Sheikh</i>	A religious leader in a Muslim community
SYRIAN DOCUMENTS*	
<i>Daftar Ayli</i>	Family booklet that records all members of a family in one document.
<i>Hawiya</i>	ID card that every Syrian national obtains once over the age of 15
‘Red Card’ / <i>Bitqa Ajnabi</i>	The identification document for an <i>Ajanib Kurd</i>
<i>Taaref</i>	Document issued by the local <i>Mokhtar</i> which states the identity of the holder. It is often produced when an individual is not a citizen of Syria and needs a form of identification.

\* This list briefly describes the documents mentioned in this report. It is not an exhaustive list of all Syrian documents.

# INTRODUCTION

# 1

***“My biggest fear is that my children will never see their country. If they cannot prove that they are Syrian, they may never be allowed back. I want them to be Syrian; I want them to be able to go back.”<sup>1</sup>***

When Fakhriya asks her eldest son, now four, where he comes from, he smiles and says “Dar’a”. He has never been to Dar’a before, he was born a refugee in Jordan, but he believes that is where his Syrian father is, and that is where he will eventually grow up. A mother of three living in a small apartment in Irbid, Jordan, Fakhriya is worried about her children for many reasons. They have been displaced, removed from everything they know, and they are faced with many of the problems that challenge a refugee family. In addition to these challenges, her children are not registered, they have no documents, and she has no idea where their father is. She worries her children will remain unregistered, without any documents. She worries that she will eventually be unable to prove that her children are Syrian nationals.<sup>2</sup>

1 Interview with Fakhriya, Irbid Jordan, July 2016. All names in this report have been changed.

2 *Ibid.*

Five years of conflict has left millions of Syrians displaced across the Arab region and around the world. The overwhelming majority of persons displaced by the conflict in Syria hold Syrian nationality, will remain Syrian and face no immediate risk of statelessness. Since Syrian nationality is transmitted *jus sanguinis* (by descent), through the paternal line, any child of a Syrian father should automatically acquire Syrian nationality at birth, even if born in exile. Where children of a Syrian father lack proof of paternal descent, they may be denied recognition as Syrian nationals; denied their nationality. The risk that her children will not be recognised as Syrian nationals is one that Fakhriya, and other refugees in her position who no longer have contact with the father of their children, are acutely aware of.

However, conflict and displacement make the situation for Syrians more complicated. For various reasons, some refugees may find it difficult to establish their Syrian nationality or that of their children. It is then that statelessness may result.

To be stateless means to hold no nationality, (i.e. not be considered as a national by any State under the operation of its law).<sup>3</sup> This is a “mixed question of law and fact”.<sup>4</sup> What matters is how the individual is treated by the competent authorities, rather than whether he or she should be a national based on

a formalistic reading of the law<sup>5</sup> – so it is important to understand not only the letter of the law, but also how it is implemented to identify where statelessness may occur. Access to civil registration procedures and the ability to obtain documentation are critical to protecting the right to Syrian nationality in a displacement context and so for refugees, now and in the future. This is one of the reasons why facilitating access to civil registration and documentation has been recognised as an important focus within the refugee response.<sup>6</sup>

Even though being a refugee and being stateless are distinct issues, one can lead to the other<sup>7</sup> – an important consideration in contexts of continuing displacement and one where preventative action is key. Statelessness also features more directly as an issue in the context of the Syria refugee situation. The content of Syria’s current nationality law is such that some children of Syrian refugees who are born in exile face real barriers to accessing Syrian nationality, in particular due to the fact that Syrian women cannot transmit their nationality to their children. Where a child is born to a Syrian refugee mother and an unknown father,<sup>8</sup> it may be impossible for the child to secure Syrian nationality. In addition to this challenge, a small but not insignificant minority of refugees displaced from Syria were already stateless, prior to the conflict. They have

## Stateless Refugee

A person who is not considered as a national by any state under the operation of its law

Article 1 of the 1954 Convention relating to the Status of Stateless Persons

A person who has fled his or her country owing to a well-founded fear of being persecuted

Article 1 of the 1951 Convention relating to the Status of Refugees

3 Article 1 of the 1954 Convention on the Status of Stateless Persons codifies this international law definition of a stateless person. See further, A. Edwards and L. van Waas, *Nationality and Statelessness under International Law*, Cambridge University Press, 2014.

4 United Nations High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>, para. 23.

5 *Ibid*, paras. 24, 27 and 35. See also, B. Manby, *Identification in the context of forced displacement: Identification for Development (ID4D)*, World Bank, 2016, available at: <http://documents.worldbank.org/curated/en/375811469772770030/pdf/107276-WP-P156810-PUBLIC.pdf>.

6 See, among others, UNHCR, *The Future of Syria: Refugee Children in Crisis*, 2013, available at: <http://unhcr.org/FutureOfSyria/index.html>; Regional Refugee and Resilience Plan 2016-2017 (3RP), *Regional Strategic Overview*, 2015, available at: <http://www.3rpsyriacrisis.org/wp-content/uploads/2015/12/3RP-Regional-Overview-2016-2017.pdf>.

7 See further Norwegian Refugee Council (NRC) and Tilburg University, *Statelessness and Displacement: Scoping Paper*, 2015, available at <https://www.nrc.no/resources/reports/statelessness-and-displacement>.

8 Discussed below are the many circumstances where this may be the case.

no, and perhaps never had, a nationality, and they are now displaced from the country which they called home. That a refugee is *also* stateless may not be immediately apparent or even easy to establish as he or she seeks assistance in the country of exile,<sup>9</sup> but it is a relevant factor in the assessment of protection needs.<sup>10</sup> The circumstances in which they lived prior to the conflict, the documents that they hold (or lack), the strategies that they adopt during displacement, their participation in community structures, their level of resilience or their level of trust in institutions – these may be influenced by their statelessness, which is in turn relevant to the question of how to ensure that they receive appropriate assistance in the host country. Furthermore, stateless refugee parents are not in a position to transmit a nationality to their children, so any children will likely also be stateless, unless they are born in a country that offers its nationality to children born there.

Given the foregoing, it is important for actors engaged in the Syria refugee response to have an understanding of the interaction between the displacement prompted by the crisis in Syria, the challenges relating to the protection of the right to a nationality in a displacement context and the protection of stateless refugees. This is relevant not only to the current refugee response, but also to mitigate problems that could arise in the future in relation to, for instance, voluntary return to Syria when circumstances in the country allow.<sup>11</sup> Efforts have already been made to draw attention to these issues, including assessments of the risk of statelessness among children of Syrian refugees in specific host countries,<sup>12</sup> public awareness-raising of the challenges faced in protecting Syrian refugee children's right to nationality<sup>13</sup> and stock-taking of the progress achieved in addressing these challenges.<sup>14</sup> A range of activities are being undertaken in host countries to promote access to civil registration and documentation as a means to provide and preserve critical evidence of refugees' links to Syria.<sup>15</sup> There have also been significant efforts by host governments to simplify or otherwise facilitate access to civil registration procedures for refugee families on their territory so that they can document their connection to Syria.<sup>16</sup> All of these initiatives are having a real impact, with the United Nations High Commissioner for Refugees (UNHCR) reporting in 2016 that in the Middle-East and North Africa (MENA) region,

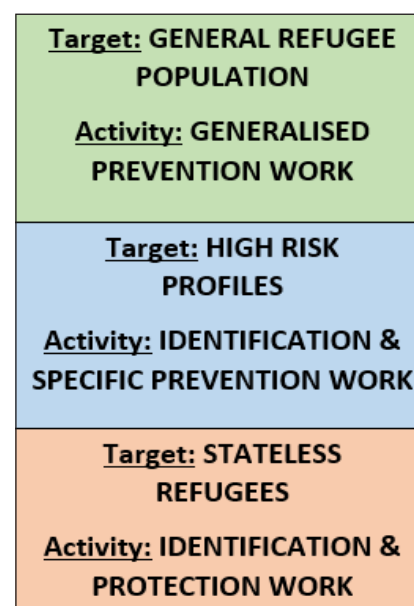
- 
- 9 As touched on above, to be stateless is distinct from the situation of being undocumented, i.e. having no proof of identity. In many cases, nationality is acquired automatically and a person can be considered a national even if they do not hold (certain forms of) documentation. The identification of cases of statelessness can therefore be challenging. This can also be complicated by factors such as the person's own lack of awareness of their nationality status or unwillingness to self-identify as stateless. See further the Statelessness chapter in UNHCR, *2013 Statistical Yearbook*, 2015, available at: <http://www.unhcr.org/54cf99f29.html>.
- 10 NRC and Tilburg University, *Statelessness and Displacement. Scoping Paper*, supra n7, pages 24-26.
- 11 See, for instance, UN Office for the Coordination of Humanitarian Affairs (OCHA), *Lebanon Crisis Response Plan 2015-2016*, 2014, available at: [https://docs.unocha.org/sites/dms/Syria/LCRP\\_document\\_EN\\_26Mar2015.pdf](https://docs.unocha.org/sites/dms/Syria/LCRP_document_EN_26Mar2015.pdf).
- 12 For instance, Refugees International, *Birth registration in Turkey: Protecting the future for Syrian children*, 2015, available at: <http://www.refugeesinternational.org/reports/2015/6/13/birth-registration-in-turkey-protecting-the-future-for-syrian-children>; NRC and International Human Rights Clinic – Human Rights Programme at Harvard Law School (IHRC), *Registering Rights: Syrian refugees and the documentation of births, marriages and deaths in Jordan*, 2015, available at: <http://hrp.law.harvard.edu/wp-content/uploads/2015/11/Registering-rights-report-NRC-IHRC-October20151.pdf>.
- 13 UNHCR, *Born in exile, Syrian children face threat of statelessness*, 4 November 2014, available at: <http://www.unhcr.org/news/latest/2014/11/54589fb16/born-exile-syrian-children-face-threat-statelessness.html>.
- 14 UNHCR, *In Search of Solutions: Addressing Statelessness in the Middle East and North Africa*, 2016, available at: <https://data.unhcr.org/syrianrefugees/download.php?id=11762>.
- 15 These include law and policy reform initiatives, community outreach projects, legal counselling programmes and more. *Ibid*, pages 11-21. See also, for instance, the work of NRC's Information, Counselling and Legal Assistance (ICLA) programme in Lebanon, including in NRC, *Update on marriage registration for refugees from Syria*, 2016, available at: <https://www.nrc.no/globalassets/pdf/reports/update-on-marriage-registration-for-refugees-from-syria.pdf>; and NRC, *Birth Registration Update: The challenges of birth registration in Lebanon for refugees from Syria*, 2015, available at: <https://www.nrc.no/globalassets/pdf/reports/the-challenges-of-birth-registration-in-lebanon-for-refugees-from-syria.pdf>.
- 16 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, supra n14, pages 15-16.

“the percentage of Syrian refugee children born in the region who go undocumented at birth (receiving neither a birth certificate nor a medical birth notification) has been reduced from 34 per cent in 2012 to 7 per cent in 2015 regionally”.<sup>17</sup>

However, challenges remain – in terms of achieving universal access to civil registration and documentation for all refugees from Syria, in respect of particular profiles among the refugee population who nevertheless remain hard-to-reach or at heightened risk of statelessness for various reasons, and with regard to the identification and protection of stateless refugees from Syria.

The aim of this research project is to deliver and disseminate an assessment of both the risk of new cases of statelessness arising among Syrian refugees and their children and the particular vulnerabilities of stateless refugees from Syria, including looking at what is and can be done to address these problems. This will help to better inform the humanitarian community operating in the region on these important issues. The findings will also feed directly into the development of a practical “toolkit” to help civil society organisations engaged in the refugee response to better understand the intersections between their work and statelessness, and to share good practices, innovations and practical steps that they can take to ensure the effective and inclusive protection of stateless persons within humanitarian assistance programmes and contribute to the longer-term prevention and reduction of statelessness.

The research focused on the countries neighbouring Syria which are hosting the greatest numbers of refugees: Lebanon, Jordan, Iraq, Turkey and Egypt. This report maps out some of the challenges and good practices with regards to identifying and addressing statelessness and the risk of statelessness among refugees who have fled Syria. It looks at three profiles within the refugee population: 1) members of the general refugee population coming out of Syria facing challenges in obtaining civil documentation; 2) individuals who are at heightened risk of becoming stateless in displacement; and 3) individuals who are both stateless and refugees.



## 1.1 METHODOLOGY

This research project focused on the situation of refugees from Syria in Lebanon, Jordan, Iraq, Egypt and Turkey. It did not look at other displaced populations in the region nor Internally Displaced Persons (IDPs) inside the territory of Syria.<sup>18</sup> A qualitative methodology was selected – rather than a quantitative one – as the aim of the project was to develop a deeper understanding of the ways in which statelessness and the risk of statelessness feature as a challenge among the refugee population, and of efforts being undertaken to address this, rather than to establish the scale or reach of particular problems.<sup>19</sup>

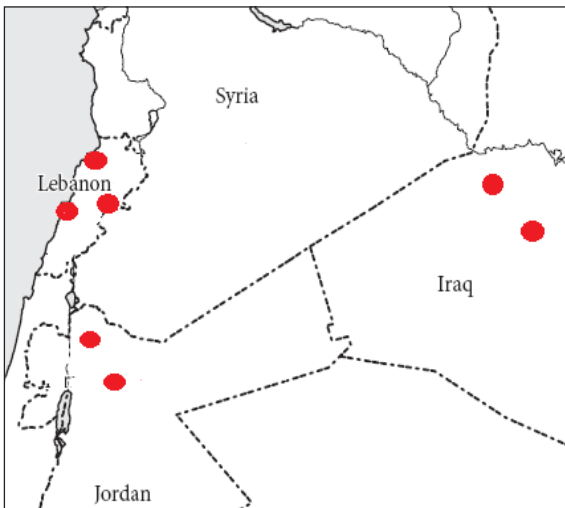
17 *Ibid*, page 15.

18 It must be noted however that statelessness and the risk of statelessness among those inside Syria is a significant issue. For more discussion on this please see International Rescue Committee (IRC) and UNHCR, *Civil Status Documentation in Non-Government Areas of Northern Syria*, 2016, available at: <https://www.scribd.com/document/319310864/IRC-Full-Assessment-Civil-Status-Documentation-in-Non-Government-Areas-in-Northern-Syria-July-2016>.

19 While a quantitative mapping of the scale of (potential) statelessness issues in the context of the Syrian displacement throughout the region has not been carried out, there are a number of surveys which provide an insight into how widespread certain relevant problems are among particular segments of the refugee population. See, for instance, on knowledge of civil registration procedures, UNHCR, *Multi-Sector Needs Assessment of Syrian Refugees Residing in Camps: Kurdistan Region of Iraq*, 2015, available at: [http://www.reachresourcecentre.info/system/files/resource-documents/reach\\_irq\\_msna\\_of\\_syrian\\_refugees\\_in\\_camps\\_march2015\\_3.pdf](http://www.reachresourcecentre.info/system/files/resource-documents/reach_irq_msna_of_syrian_refugees_in_camps_march2015_3.pdf); and for an assessment of birth registration needs in Lebanon, see the analysis based on NRC’s ICLA programming in *The challenges of birth registration in Lebanon*

## ► UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT

The research design, and the initial identification of issues, drew on the expertise developed by the Norwegian Refugee Council (NRC) in the delivery of programmes to refugees displaced from Syria. Through its Information, Counselling and Legal Assistance (ICLA) programmes, NRC provides counselling and legal representation services to refugees on issues related to legal identity, including access to civil registration, documentation and identification, nationality and the prevention of statelessness as well as issues related to legal status. In Lebanon, the NRC ICLA programme has been providing information on and helping to facilitate access to birth registration since May 2012, through various NRC Community Centres and outreach across different areas of the country. Over 550,000 refugees have been reached, with around 15% receiving counselling on civil registration and documentation. Since it was set up in 2013, the ICLA programme in Jordan has provided 71,000 services to over 23,000 Syrian refugees, with over 50% of cases concerning civil documentation. While the programme provides support to Syrians on a wide range of legal identity and civil documentation issues, over 70% of cases concern birth certificates with a further 22% concerning marriage certificates.



A desk review was conducted for all of the countries studied in this project. The desk research included existing literature, documented policies and procedures, situational statistics, and refugee case profiles. *Field research* was then carried out between May and July 2016 in Lebanon (in Akkar, Baalbeck and Beirut), the Kurdistan Region of Iraq (KRI), in Erbil, Dohuk and Sulimaniya and Jordan (in Amman and Irbid). Two weeks were spent in each country and data was collected through *key informant interviews* with selected stakeholders who work with the refugee population and *semi-structured interviews with refugees*. Refugees chosen for these interviews represented profiles of particular relevance to the research (e.g. stateless refugees and refugees who face a heightened risk of statelessness).<sup>20</sup> In total, 35 affected persons were interviewed.

In each country, a *validation workshop*, in the form of a consultative roundtable was held following completion of the interviews with affected persons. These roundtables brought together various stakeholders – national civil society organisations, international non-governmental organisations (INGOs) and United Nations (UN) agencies – to provide feedback and comments on the data collected and preliminary research findings.<sup>21</sup> The roundtable participants were also invited to discuss what might be useful for their work in terms of elements of a toolkit. Due to the limitations of the research project and the lack of NRC country operations in Egypt and Turkey, the desk review in these two countries was complemented by a number of *key informant interviews* which were conducted via electronic communications and no in-country activities or interviews with affected persons were carried out. In total, 33 key stakeholders were interviewed in the five selected countries.<sup>22</sup>

Following completion of the desk and field research phases of the project, a *regional expert roundtable* was convened to discuss and reflect on the findings. This was held in Amman on 20-21 September 2016 and attended by 30 participants.<sup>23</sup> The roundtable brought together stakeholders with expertise from working directly with the refugee population in the target

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for refugees from Syria, *supra* n16. Some statistical information on both the scale of particular problems and the number of persons reached through related assistance programmes is also provided in UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14.

20 Where possible ICLA case databases were used to identify research participants. In the Kurdistan Region of Iraq, NRC does not have a Syrian refugee database and therefore other NGOs working with refugees were contacted to identify individuals whose profiles were relevant to the project and who could be included in the research.

21 See Annex 2 for a list of those who attended each of these national consultative roundtables.

22 See Annex 1 for a full list of the interviews conducted in the course of this project.

23 See Annex 3 for a list of the participants in the Regional Expert Roundtable.

countries and those with relevant doctrinal knowledge and other international experience. The objectives of the regional roundtable were two-fold: to gather further feedback on the findings in order to ensure their relevance and accuracy before the finalisation of this research report, and to collect input and suggestions on the content, structure and means of dissemination of the toolkit that will be produced on the basis of this research. The roundtable discussions and other feedback received on this report have been taken into account in its finalisation as well as being reviewed by external experts from academia and humanitarian organisations.

## 1.2 OVERVIEW OF THE REPORT

This report presents the principal research results from the project outlined above. Chapter 2 offers critical background information in the form of a brief summary of pertinent questions relating to nationality, statelessness and documentation in the Syrian legal context and a general description of the refugee situation in the region. Chapters 3 to 5 outline the findings obtained for the three groups which formed the focus of this research. The challenges and opportunities for the general refugee population in obtaining documentation to facilitate current or future confirmation of nationality are discussed in chapter 3. Chapter 4 presents a number of profiles identified within the general refugee population of categories of persons who are particularly vulnerable to the risk of statelessness, exploring why this is the case and what is being done to mitigate that risk. In chapter 5, the situation of refugees who are already stateless is explored, presenting who they are and the findings of this research in respect of the particular challenges they face. Throughout these chapters, short ‘case study’ examples are presented with a view to illustrating specific problems.

The report concludes, in chapter 6, with a summary of key findings relevant to the work of humanitarian assistance organisations involved in the Syrian refugee response in the region. The toolkit to be developed on the basis of this research and existing materials will provide organisations engaged in the refugee response with information and guidance to:

- understand intersections between their work and statelessness;
- improve their capacity to identify those at risk of statelessness, as well as stateless refugees; and
- share good practices, innovations and practical steps that organisations can take to mitigate the risk of statelessness among Syrian refugees and meet the protection needs of stateless refugees.

# THE SYRIAN REFUGEE CONTEXT



The conflict in Syria began in 2011, plunging the country into a civil war. Since then hundreds of thousands of civilians have been killed and significant areas of the country have fallen under the control of armed non-State actors. This has caused a humanitarian disaster of colossal proportions: 4.8 million refugees are registered in countries around the region and over a million have travelled to Europe to seek refuge.<sup>24</sup> Inside Syria, 6.5 million people are internally displaced and 13.5 million people – including six million children – are in need of humanitarian assistance and protection.<sup>25</sup> In order to understand the way in which (the risk of) statelessness affects refugees from Syria in the region, it is important to first take a closer look at a number of elements of the Syrian context and the overall situation in the host countries in the region.

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24 Data as of 30 September 2016. See Syria Refugee Response Inter-Agency Information Sharing Portal, available at: <http://data.unhcr.org/syrianrefugees/regional.php>. For more on the situation of Syrian refugees in Europe, see, for instance, the online resource of the Migration Policy Institute at the European University Institute, *The Syrian Refugee Crisis and its Repercussions for the EU*, available at: <http://syrianrefugees.eu>.

25 Data as of 30 September 2016. See OCHA, portal for Syria, available at: <http://www.unocha.org/syria>.



## 2.1 NATIONALITY, STATELESSNESS AND CIVIL DOCUMENTATION IN SYRIA

To understand the situation displaced persons from Syria find themselves in regarding their nationality, it is important to understand some of the technicalities of the Syrian nationality law. It is also critical to acknowledge that there were some populations – and individuals – who were stateless prior to the conflict and are now among those displaced by it. Finally, some key elements of documentation and of Syrian nationality are explained.

### 2.1.1 SYRIAN NATIONALITY LAW

Syria's current nationality law was enacted in 1969, through Legislative Decree 276. It is predominantly based on paternal *jus sanguinis*<sup>26</sup> whereby a person is Syrian, wherever they are born, if they have a Syrian father. Birth within Syria, or to a Syrian mother, does not automatically confer nationality. Although the law provides for the possibility of the mother conferring nationality when a legal link to the father is not established<sup>27</sup> – which would theoretically benefit children born to unknown fathers or out of wedlock<sup>28</sup> – this clause only applies to children born inside of Syria.<sup>29</sup> There are also implementation challenges relating to the social repercussions of registering a child as born out of wedlock. In the present refugee context then, the gender discriminatory nature of Syria's nationality law is of serious concern, as it may leave children stateless where they have a Syrian mother and, for instance, an unknown or stateless father.<sup>30</sup>

Syrian nationality law also contains a safeguard against statelessness at birth, whereby a foundling, a child born in Syria to stateless parents, or a child born in Syria who acquires no other nationality should be considered Syrian (Articles 3(C) and 3(D) on Legislative Decree 276). However, the Article 3 safeguards against statelessness at birth are not systematically implemented.<sup>31</sup> Moreover, this provision clearly does not apply to the children of refugees from Syria who are born in host countries.<sup>32</sup>

The other way to acquire a Syrian nationality is through naturalisation. Non-nationals who have resided in the country for over 10 years and fulfil a number of other criteria, such as being able to speak and read Arabic fluently, can apply for naturalisation.<sup>33</sup> A non-national woman who marries a Syrian man can also naturalise through that marriage.<sup>34</sup> Citizens of other Arab countries benefit from facilitated naturalisation (i.e. a waiver of some of the criteria for naturalisation).<sup>35</sup> The legislation allows dual nationality, so a person can be a citizen of both Syria and another country.

26 Where nationality is based on familial connection to another national, not on connection to the territory.

27 Article 3(B), Legislative Decree 276 - Nationality Law [Syrian Arab Republic], 24 November 1969 (Syrian Nationality Law), available at: <http://www.refworld.org/docid/4d81e7b12.html>, frames the acquisition of nationality from a Syrian mother as automatic in cases where paternal filiation is not established.

28 There is no information on cases where this is implemented in practice.

29 Article 3(B) of the Syrian Nationality Law. For more discussion on this issue see Legal Agenda, *Syrian Women's Right to Pass on Nationality to Children: An Appraisal*, 2016, available at: <http://legal-agenda.com/en/article.php?id=3116>.

30 See further on the link between gender discrimination in nationality laws and statelessness, UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2016*, 2016, <http://www.refworld.org/docid/56de83ca4.html>.

31 See further section 2.2 and chapter 5 of this report.

32 For more information on the impact of this discrimination see, Institute on Statelessness and Inclusion and the Global Campaign for Equal Nationality Rights, *Submission to the Human Rights Council at its 26th Session of the Universal Periodic Review of Syria*, 2016, available at: <http://www.institutesi.org/SyriaUPR2016.pdf>.

33 Article 4 of the Syrian Nationality Law.

34 Article 8(1) of the Syrian Nationality Law.

35 Article 6(C) of the Syrian Nationality Law.

There are also some circumstances under which an individual may cease to be Syrian. Syrian nationality law allows a citizen to renounce their Syrian nationality voluntarily, but only following acquisition of a foreign nationality.<sup>36</sup> However, the law also sets out seven criteria under which a person could be stripped of their nationality. For example, if a Syrian national joins the military service of another State or resides in a State that is at war with Syria.<sup>37</sup> As such, the Syrian State enjoys significant discretionary powers to denationalise a citizen and these powers may be exercised even when this renders the individual stateless.

### 2.1.2 STATELESSNESS IN SYRIA

The issue of statelessness is not a new problem for Syria.<sup>38</sup> As UNHCR explains: “Syria is home to some historically stateless populations, including certain Kurdish populations, long-staying stateless migrants from other countries in the region, such as the *bidoon*, and individuals who may have become stateless due to the inability to acquire nationality from their mothers under the law”.<sup>39</sup> As of the end of 2015, UNHCR estimated the total number of stateless persons in Syria to be 160,000.<sup>40</sup>

A substantial stateless population, the stateless Kurds, had already been living in Syria for decades before the conflict. This group is a minority of Syria’s broader Kurdish population and their descendants, who were denationalised as the result of a census conducted in the North of Syria in 1962.<sup>41</sup> They can be separated into two sub-groups who are widely known as the *Ajanib* (those registered as foreign in the census) and *Maktoum* Kurds<sup>42</sup> (those who were not registered at all). The human rights situation of both of these groups was challenging even before the conflict, with widespread problems reported in accessing education, employment, property and other rights and the *Maktoum* Kurds, in particular, living a marginalised existence.<sup>43</sup> It is important to note that the adoption of Decree 49 in 2011 allowed the reacquisition of nationality for thousands of stateless Kurds. According to UNHCR, by mid-2013, some 104,000 stateless individuals had acquired nationality.<sup>44</sup> However the current conflict has made the process of applying for nationality difficult.

Besides the large population of stateless Kurds, there were over half a million Palestinian refugees registered with the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) in Syria,<sup>45</sup> and “tens of thousands”<sup>46</sup> who did not register (UNRWA registration is not mandatory). Now displaced again by the current crisis in Syria and with a precarious legal status,<sup>47</sup> this is another population included in this research.

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36 Article 10 of the Syrian Nationality Law.

37 Chapter Seven of the Syrian Nationality Law.

38 Situations of statelessness can be found across the MENA region. See, for instance, UNHCR, *The situation of stateless persons in the Middle East and North Africa*, 2010, available at: <http://www.refworld.org/docid/4cea28072.html>; and Institute on Statelessness and Inclusion, *The World’s Stateless*, Wolf Legal Publishers, 2014, available at: <http://www.institutesi.org/worldsstateless.pdf>, chapter 3.VI.

39 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 11.

40 UNHCR, *2015 Global Trends*, 2016, including annex tables, available at: <http://www.unhcr.org/global-trends-2015.html>.

41 For more in depth information on this group please see Z. Albarazi, *The Stateless Syrians*, 2013, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2269700](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269700).

42 Note there is a difference between *Maktoum Kurds*, and those labelled as *Maktoum* (who never accessed any registration in Syria).

43 See, for instance, Human Rights Watch (HRW), *Syria: The Silenced Kurds*, 1996, available at: <http://www.unhcr.org/refworld/docid/3ae6a8260.html>; and Refugees International, *Buried Alive: Stateless Kurds in Syria*, 2006, available at: [http://www.yasa-online.org/reports/buried\\_alive.pdf](http://www.yasa-online.org/reports/buried_alive.pdf).

44 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 11.

45 United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), *Where we work: Syria*, available at: <http://www.unrwa.org/where-we-work/syria>.

46 Syria Needs Assessment Project, *Palestinians from Syria*, 2014, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/palestinians\\_from\\_syria\\_march\\_2014.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/palestinians_from_syria_march_2014.pdf).

47 The nationality status of Palestinians is a highly complex issue, inextricably linked to questions of

Secondly, as highlighted in the previous section, access to Syrian nationality is problematic due to the gender discriminatory nature of the country's nationality law. Acquiring Syrian nationality at birth relies on the *father* being a Syrian citizen. There are very few circumstances in which a mother can transmit her nationality – and none apply when the child is born abroad.<sup>48</sup> The inability of mothers to transfer nationality to their children makes the situation particularly complicated in a country witnessing such large-scale displacement and separation of families.

Thus, there were stateless individuals in Syria prior to the crisis who were left without nationality due to gaps in the application of the nationality law or individual loss or deprivation of nationality.<sup>49</sup>

### 2.1.3 IDENTITY AND CIVIL DOCUMENTS IN SYRIA

According to a World Bank report: “Lack of identity documents is an important obstacle to the protection of people forced to leave their homes by conflict, persecution, or natural disaster [and] those who lack identity documents may face greater difficulties proving their entitlement to nationality or to refugee status”.<sup>50</sup> Documents issued in Syria allow for the confirmation of identity, prove nationality and demonstrate the link to the country of origin.<sup>51</sup> On the other hand lack of (a particular) document(s) from Syria can create a challenge for refugees in accessing civil registration, obtaining civil documentation, and/or obtaining identity documents in their host country – creating or perpetuating a cycle of lack of proof of identity or of the link to Syria. It is therefore important to understand the situation of documentation of refugees who have fled to neighbouring countries.

It is also important to acknowledge that there were flaws with the Syrian civil registration system before the conflict which have been further exacerbated as a result of the civil war.<sup>52</sup> One example is the lack of digitisation of records in Syria, which meant that registration records were only kept in hard-copy and not computerised.<sup>53</sup> This presents a problem in the context of the reported destruction of some of the civil registries,<sup>54</sup> whereby the only record of the existence of Syrian nationals – particularly the registration of vital events such as births – and their link to Syria may have been lost. Some Syrian national and local customs may also affect access to certain documents or procedures within the host country. The tradition in Syria, for example, of first performing the *Ketb Al Ktab* marriage ceremony and waiting a long time before officialising the marriage with the authorities is an example of this. If this practice is continued by displaced families, it can lead to problems as more importance is given to official marriage registration in other countries in the region – and the official marriage certificate plays a critical role in the registration of the birth of a child who is subsequently born within the union.<sup>55</sup> Further details of the Syrian system of civil documentation are provided in the next section.

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Palestinian statehood and Palestinian nationality policy. Moreover not all persons of Palestinian origin are similarly situated in terms of nationality. For a discussion of these issues, see Institute on Statelessness and Inclusion, *The World's Stateless*, *supra* n39, chapter 3.VIII.

48 Syrian Nationality Law.

49 The profiles of these different stateless populations in Syria are discussed further in chapter 5 of this report.

50 B. Manby, *Identification in the context of forced displacement*, *supra* n5, page 1.

51 Such as identification documents, nationality documents and proof of vital events such as births, marriages and deaths.

52 For more information on the civil registry system in Syria before the conflict, please see IRC and UNHCR, *Civil Status Documentation in Non-Government Areas of Northern Syria*, *supra* n18.

53 A project to complete digitalisation of all Syrian records was initiated as a joint initiative between the government and the United Nations Population Fund (UNFPA), but never completed.

54 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 12.

55 See also, UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 21.

## ► UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT

In Syria, citizens obtain their National Identity Card, called *hawiya*, at the age of 15 years.<sup>56</sup> This document confirms the Syrian nationality of the holder. The Syrian government also issues a family booklet, *Deftar Ayli*. The family booklet is a document issued by the Syrian government which records the members of a family and is evidence of both parental identity and marital status for displaced families.

Many IDPs and refugees have lost their civil documents during the conflict. Furthermore, the conflict has negatively impacted access to civil registration and the process of document issuance, renewal and replacement. Data collected inside Syria captured in the Humanitarian Situation Overview of Syria revealed significant disparities between different Governorates in this respect, but reportedly, less than half of the population were able to obtain or replace identity documents in most areas of Syria.<sup>57</sup> According to the 2015 Whole of Syria Protection Assessment overseen by the protection cluster, over ninety percent of Syrians considered the lack of civil documentation as an issue of concern.<sup>58</sup> In areas outside government control, non-State actors have established their own civil registration systems and started to issue their own documents.

In Jordan, many of the refugees have come from areas surrounding Dar'a, a city that was central to the civil registration process in the district which it covers, but also, since the onset of the conflict, a hotspot for fighting. For Noor, registration of her marriage in 2012 would have had to take place in Dar'a. She lived just outside the city but due to the conflict, was unable to go to the registry office to apply for the new family booklet or any other document. Because of this, her marriage to her husband, who has remained in Syria while she fled to Jordan, has not been recorded anywhere.<sup>59</sup>

Stateless persons who lived in Syria before the conflict may have held different documents to those possessed by nationals. They would not, for example, possess a *hawiya*, which is reserved for nationals. The stateless *Ajanab* Kurd might have a *bitaqa ajanabi* or so-called 'red card' which is an identification document specifically tailored for this population. Stateless *Maktoum* Kurds may hold a *taaref*, which is a document issued by the local *Mokhtar* to function as basic proof of identity for individuals who are not citizens of Syria.<sup>60</sup> In many cases stateless Kurds – *Maktoum* in particular – do not have any documents. Palestinians in Syria are issued other documents, including a Palestinian travel document: a document issued by the Syrian authorities to Palestinians who habitually reside on the territory, in lieu of a national passport, but not denoting nationality.

## 2.2 THE SITUATION IN REFUGEE-HOSTING COUNTRIES

At the time of this research, there were around 4.8 million UNHCR registered refugees from Syria living in Iraq, Jordan, Lebanon, Turkey and Egypt (see table below). The total number of refugees displaced by the Syrian conflict in the region is likely to be higher, as not all refugees have registered with UNHCR or with the host governments. In Lebanon, for instance, while just over 1 million refugees are registered with UNHCR, it has been estimated that the number may be closer to 1.5 million.<sup>61</sup>

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56 Immigration and Refugee Board in Canada, *Responses to information requests*, 2013, available at <https://www.justice.gov/sites/default/files/pages/attachments/2016/02/02/syr104456.e.pdf>

57 Humanitarian Situation Overview in Syria (HSOS), *Protection Factsheet* (draft), April 2016.

58 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 11.

59 Interview with Noor, Irbid Jordan, July 2016.

60 See also the Glossary of Key Terms.

61 Estimated arrivals December 2015 (as of 8 September 2016). Data from Syria Refugee Response Inter-Agency Information Sharing Portal, 'Lebanon', available at: <http://data.unhcr.org/syrianrefugees/country.php?id=122>.

Host country	Number of registered refugees <sup>62</sup>	Key characteristics of the refugee population
Iraq	247,339	97% of all refugees from Syria in Iraq can be found in the KRI region. <sup>63</sup> Just under 100,000 reside in refugee camps, the others are in urban settings. <sup>64</sup> A substantial number entered the country through informal (irregular) borders and the majority of refugees come from North Eastern Syrian cities, such as Alhassaka and Qamishli. Over 90% of Syrian refugees in KRI are Syrian Kurds. <sup>65</sup> The Kurdish identity of the refugees coming from Syria brings with it a sense of solidarity between the refugees and the host communities. <sup>66</sup>
Jordan	655,217	There are approximately 150,000 persons based in camps, <sup>67</sup> and many, especially Palestinian Refugees from Syria (PRS), also find themselves residing in the various Palestinian camps where UNRWA assistance is available. <sup>68</sup> Most of the refugees come from Dar'a and its surroundings (approximately 42% of registered refugees), <sup>69</sup> or the capital Damascus and its surroundings. Jordan's refugee response is relatively centralised, and the camp setting is well-organised and highly regulated. <sup>70</sup> A large number of Syrians also lived in Jordan before the crisis and the government has estimated the total Syrian population in the country to be 1.4 million. <sup>71</sup>
Lebanon	1,033,513	Lebanon is estimated to host more than 1.5 million refugees from Syria. <sup>72</sup> Many entered the country through informal borders and only just over a million are registered as refugees. <sup>73</sup> Lebanon's own population is estimated to be under 4.5 million people, so almost 1 in 4 people on Lebanese soil are now refugees from Syria. The majority of refugees living in Lebanon come from the cities of Homs, Hama and Damascus and their surroundings. There is a 'no camp' policy in Lebanon and therefore refugees live scattered across the country in urban settings or Informal Tent Settlements (ITS) – making identifying and/or reaching out to them particularly complex. <sup>74</sup> Many, especially Palestinians displaced from Syria, reside in Palestinian neighbourhoods and areas.
Turkey	2,743,497	Turkey hosts the largest number of Syrian refugees in the world, more than half of which are children. 2.7 million have been registered by the government and the real figure is potentially higher still. <sup>75</sup> Approximately 90% of the refugees live in urban areas, where they face obstacles accessing services, including due to lack of information and the limited reach of assistance organisations. <sup>76</sup> The rest of the refugee population lives in 25 camps which are predominantly located in the South of Turkey near Hatay, Kilis, Gaziantep and Sanliurfa. <sup>77</sup>
Egypt	117,702	All of the Syrian refugees in Egypt live in urban settings. <sup>78</sup> As Egypt does not share a border with Syria, very few entered the country through informal borders without a visa. The number of irregular entries through Sudan has drastically increased since the beginning of 2016 – almost 25% of Syrians registered since then did not have a valid visa. <sup>79</sup>

62 Registered Syrian refugees as of 31 May 2016. See 3RP, *Mid-Year Report, 2016*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=11804> and Syria Refugee Response Inter-Agency Information Sharing Portal, *supra* n24 for up-to-date statistics.

63 *Ibid.*

64 Syria Refugee Response Inter-Agency Information Sharing Portal, 'Iraq', available at <http://data.unhcr.org/syrianrefugees/country.php?id=103>.

65 A. Sood and L. Seferis, 'Syrians contributing to Kurdish Economic Growth', *Forced Migration Review*, Issue 47, 2014, available at <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria/sood-seferis.pdf>.

66 Interview with Intersos, Erbil KRI, July 2016.

67 UNHCR, *Registered Syrians in Jordan*, 2015, available at: <http://www.refworld.org/docid/55223da84.html>. ▶

## ► UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT

Prior to the conflict, all of the neighbouring countries were easily accessible to Syrians and there were no complicated visa procedures. Therefore, at the outset of the crisis, gaining legal entry to these countries was not difficult for the displaced. However, with the growing influx of refugees, the situation changed and more stringent entry requirements are now widely imposed. For example, until mid-2013, Syrian refugees fleeing to Jordan were allowed to enter through informal border crossings, although entry was denied to many single Syrian men crossing without relatives, Palestinian refugees from Syria and undocumented persons. From mid-2013 some restrictions were introduced on most informal border crossings into Jordan and from late March 2015 these restrictions were tightened still further.<sup>80</sup> Following a border security incident in June 2016, the Jordanian/Syrian border has been declared a militarised zone and sealed. Currently no admissions are permitted. Initially the Lebanese reception policy was very flexible. Since January 2015, Syrian nationals wishing to enter Lebanon must disclose their purpose for entry and comply with the requirements of one of a number of categories (transit, student, tourism, etc.). For each category, specified documents must be presented at the border. There is currently no category for refugees who are fleeing conflict or persecution and seeking safety in Lebanon. Similarly, July 2013 marked a shift in Egyptian migration policy that aimed to prevent Syrian refugees from entering Egypt; visa renewals were restricted and all Syrians were obliged to obtain a visa in order to enter. Under this new policy, Syrians must approach the Egyptian embassy in Damascus to request a visa and also obtain a security clearance from Egyptian National Security.<sup>81</sup>

Across the region, this changing environment and narrowing protection space is problematic for many reasons, but one consequence is that it has led to many refugees entering the countries without the host State's permission, through informal borders and/or by smuggling. Their

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68 There are over 2 million registered Palestinians in Jordan and over 10 camps, see UNRWA, 'Where We Work: Jordan', available at: <http://www.unrwa.org/where-we-work/jordan>. For more data on PRS in Jordan see UNRWA, 'PRS in Jordan', available at: <http://www.unrwa.org/prs-jordan>.

69 UNHCR, *Registered Syrians in Jordan*, *supra* n67.

70 As discussed later in section 3.1.2, entering and exiting the camp is closely regulated.

71 See, among others, Ministry of Planning and International Cooperation, *Jordan Response Plan for the Syria crisis: 2016 – 2018*, 2015, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/JRP16\\_18\\_Document-final+draft.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/JRP16_18_Document-final+draft.pdf).

72 Estimated arrivals December 2015 (as of 8 September 2016). Data from Syria Refugee Response Inter-Agency Information Sharing Portal, 'Lebanon', available at: <http://data.unhcr.org/syrianrefugees/country.php?id=122>.

73 *Ibid.*

74 UNHCR, 'Lebanon', available at: <http://www.unhcr.org/pages/49e486676.html>.

75 Syria Refugee Response Inter-Agency Information Sharing Portal, *supra* n24.

76 UNHCR, *Thematic Update: Turkey: Refugee Outreach Volunteers External Update*, 2016, available at: <http://reliefweb.int/report/turkey/turkey-refugee-outreach-volunteers-rov-external-update-september-2016>.

77 A. Icdygu, *Syrian Refugees in Turkey: the long road ahead*, Transatlantic Council on Migration, a project of the Migration Policy Institute, 2015, available at: <http://www.migrationpolicy.org/research/syrian-refugees-turkey-long-road-ahead>, page 8. Data from Directorate General of Migration Management, available at: [http://www.goc.gov.tr/icerik6/gecici-korumamiz-altindaki-suriyeliler\\_409\\_558\\_560\\_icerik](http://www.goc.gov.tr/icerik6/gecici-korumamiz-altindaki-suriyeliler_409_558_560_icerik).

78 International Labour Organisation (ILO), *The ILO response to the Syrian refugee crisis: February 2016 update*, 2016, available at: [http://www.ilo.org/wcmsp5/groups/public/--dgreports/--exrel/documents/publication/wcms\\_357159.pdf](http://www.ilo.org/wcmsp5/groups/public/--dgreports/--exrel/documents/publication/wcms_357159.pdf).

79 Sudan is one of the few remaining countries with no visa requirements for Syrians, so refugees travel to Khartoum by plane and continue the journey to Egypt by road. Information provided by UNHCR, September 2016.

80 HRW, *Jordan: Syrians blocked, stranded in desert*, News, 3 June 2015, available at: <https://www.hrw.org/news/2015/06/03/jordan-syrians-blocked-stranded-desert>.

81 Boston University Law Clinic, *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*, 2014, available at: <http://www.bu.edu/law/files/2015/07/FINALFullReport.pdf>.

irregular entry makes it difficult for these refugees to regularise their stay. For example, while all Syrians qualify under Turkey's temporary protection regime, those who have entered Turkey irregularly may face difficulties in registering for the Temporary Protection ID card. This can have knock-on effects for a refugee's ability to access civil registration procedures and to acquire documentation.<sup>82</sup>

Of the five host countries studied in this research, only Egypt and Turkey<sup>83</sup> are States Parties to the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention), with Turkey the only government that conducts its own Refugee Status Determination (RSD) of those who enter its national territory.<sup>84</sup> RSD procedures or registration in the other countries is carried out by UNHCR. The non-accession to the 1951 Refugee Convention means that the legal status of those who have fled Syria is not always considered to be that of a "refugee" under domestic law, neither is the full protection framework that international law accords to this status necessarily available to all who have fled the Syrian conflict. When it comes to the assistance available to Palestinian refugees, UNRWA is operational in Lebanon and Jordan, but not in Iraq, Turkey or Egypt.<sup>85</sup>

A specific regulatory framework to deal with situations of statelessness is also largely lacking among the host countries. Mechanisms for the identification and protection of (non-refugee) stateless persons are notably absent. Only Turkey has ratified the 1954 Convention on the Status of Stateless Persons (ensuring a minimum standard of treatment for stateless persons).<sup>86</sup>

Like Syria all of the host countries favour the conferral of nationality at birth via *jus sanguinis*, i.e. by descent from a national. Children of Syrian refugees are automatically Syrians by birth, as long as (they can prove that) their father is Syrian, thus only a small number face any immediate risk of failing to acquire Syrian nationality. Birth in the territory does not, in itself, qualify a child for nationality. None of the host States are parties to the 1961 Convention on the Reduction of Statelessness, which prescribes safeguards to prevent statelessness at birth or in later life, but all are party to the Convention on the Rights of the Child, which also safeguards against statelessness through Article 7 on the child's right to a nationality. There are some safeguards against statelessness in place,<sup>87</sup> although their implementation may be challenging.<sup>88</sup>

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82 See further section 3.1.2 of this report.

83 Note that Turkey currently maintains a geographical limitation in the application of the convention and considers Syrian refugees to be 'guests' rather than refugees. Egypt has made reservations to Articles 12 (1), 20, 22 (1), 23 and 24 of the 1951 Refugee Convention.

84 In response to the current crisis, Syrians who have fled to Turkey are recognised as "guests" and not as "refugees;" and the camps where Syrians reside are officially "guest-camps," not "refugee camps". See further Ş. Özden, *Syrian refugees in Turkey*, Migration Policy Centre Research Report 2013/05, 2013, available at: <http://www.migrationpolicycentre.eu/docs/MPC-RR-2013-05.pdf>, page 5.

85 See for further details, UNRWA, *Syria Refugee Crisis. Emergency Appeal 2016*, 2016, available at: [http://www.unrwa.org/sites/default/files/2016\\_syria\\_emergency\\_appeal.pdf](http://www.unrwa.org/sites/default/files/2016_syria_emergency_appeal.pdf).

86 The Turkish law on Foreigners and International Protection has a specific section on "statelessness", in particular regarding the determination of statelessness. There is no information about whether and how these provisions are being applied within the context of displacement from Syria.

87 Foundling provisions are in place in all five host countries and the Turkish Nationality Act also grants Turkish nationality to anyone born on Turkish territory if they do not acquire the nationality of one of the parents.

88 In Lebanon for example, Article 1 of Decree No.15 on Lebanese Nationality stipulates that every child born in the country who does not acquire another nationality at birth will be considered a Lebanese citizen. However, in practise, this is rarely implemented. See further, Frontiers Ruwad, *Invisible Citizens: A legal study of statelessness in Lebanon*, 2009, available at: <https://frontiersruwad.wordpress.com/2010/12/02/invisible-citizens-a-legal-study-on-statelessness-in-lebanon>.

## ► UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT

Some of the host States' nationality laws discriminate against women in the conferral of nationality, in the same way as the Syrian law. Thus, Lebanese<sup>89</sup> and Jordanian<sup>90</sup> mothers cannot pass nationality to their children,<sup>91</sup> which may lead to complications for accessing nationality for children of, for instance, a Jordanian mother and a refugee father, if the paternal link cannot be established<sup>92</sup> or if the father is a stateless refugee. It should also be noted that in Egypt, Iraq, Jordan and Lebanon, female nationals are not able to transmit their nationality to a non-national spouse following marriage (whereas national men can pass nationality to a foreign spouse through marriage).<sup>93</sup> Such rules will affect the prospects, for instance, for stateless refugees to acquire nationality through marriage to a national of the host community.

The central question in protecting the right to nationality for refugees from Syria is preserving and documenting their *link to Syria* and their *Syrian nationality*. Access to civil registration and documentation plays a critical role in this regard – civil registration being the registration of key life events (such as births, deaths, marriages, etc.). Syrian law states that Syrian citizens should follow the personal status laws of the country in which they reside.<sup>94</sup> Therefore, the main priority to prevent new cases of statelessness amongst the refugee population is ensuring access to the civil registration procedures in the host countries. As such, it is important to build an understanding of relevant procedures and requirements and how these apply to the refugee community. In general, Syrian refugees are subjected to the same rules and procedures that apply to nationals in the country of exile. The table below summarises the relevant procedures.

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89 Decree No.15 on Lebanese Nationality including Amendments [Lebanon], 19 January 1925, available at: <http://www.refworld.org/docid/44a24c6c4.html>.

90 Article 3 of Law No.6 of 1954 on Nationality (last amended 1987) [Jordan], 1 January 1954, available at: <http://www.refworld.org/docid/3ae6b4ea13.html>.

91 Under Iraqi law, if a child is born *abroad*, then an Iraqi mother does not automatically transfer her nationality to her child as an Iraqi father would. Under Article 4 of Law No.26 of 2006, 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. Article 4, Law 26 of 2006 - Iraqi Nationality Law [Iraq], 7 March 2006, available at: <http://www.refworld.org/docid/4b1e364c2.html>. While still being gender discriminatory, this provision is less likely to contribute to a risk of statelessness in the context of the Syria refugee situation given that it relates to children born outside Iraq.

92 For instance because the child is born outside of wedlock or the refugee father lacks documentation needed to register the birth.

93 Equality Now, *The State We're In: Ending Sexism in Nationality Laws*, 2016, available at: [http://www.equalitynow.org/sites/default/files/NationalityReport\\_EN.pdf](http://www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf), page 16.

94 Legislative Decree 376 – Civil Status Code [Syrian Arab Republic], 1957.



<b>Iraq</b>	For Iraqi citizens, the civil registration procedure is complex as there is a separate civil record for each governorate for the population. This also affects Iraqi refugees who had been residing in Syria and have now returned to Iraq. For foreigners, including refugees, the situation is much simpler as they follow the civil registration code <sup>95</sup> that is applicable to all foreigners, in whichever governorate they reside. In Iraq, the specific challenges that affect refugee populations in accessing birth registration involve children born out of wedlock (or in cases where the parents cannot prove they are legally married) and children born outside recognised health care facilities.
<b>Jordan</b>	Syrian refugees follow the same laws and procedures as Jordanian citizens for registering personal status issues such as births or marriages. These are centralised and at times difficult to access. <sup>96</sup> Jordan is also a country where personal status regulations are governed by the relevant <i>Sharia</i> courts and again the procedures can be difficult to follow. <sup>97</sup> For example, a Syrian refugee who married informally in Syria in accordance with Syrian custom but who had a child born in Jordan must first have the Syrian marriage ratified through a complicated Jordanian court proceeding before they can obtain a birth certificate for the child of the marriage. If the child is 12 months or older, the parents must go to court to have the birth certificate issued and may be financially penalised for late birth registration.
<b>Lebanon</b>	There are eighteen religious sects <sup>98</sup> that are recognised as legal entities that have the authority to govern at their discretion on personal status issues. <sup>99</sup> The birth and marriage registration systems are known to be complex – many studies have pointed to legal obstacles facing even Lebanese citizens, as well as unregistered, undocumented and stateless persons living in Lebanon, in obtaining basic documentation. <sup>100</sup> The full birth registration process for children of Syrian refugees born in Lebanon comprises 5 steps. <sup>101</sup>
<b>Turkey</b>	A Syrian refugee follows the same civil status procedures as a Turkish citizen, apart from the acquisition of a birth certificate, as the refugee is given an international birth certificate as opposed to a regular one. <sup>102</sup>
<b>Egypt</b>	Syrian refugees follow the same civil registration procedures as Egyptian nationals, which are centrally regulated. <sup>103</sup>

95 Law 188-1959, Al Waqa'a Al Iraqiah [Iraq], vol. 280, 30 December 1959, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5322d5ae4>.

96 Law 36 of 2010, Al Jarida Al Rasmiyya [Jordan], vol. 5061, 17 October 2010, available at: <http://www.farrajlawyer.com/viewTopic.php?topicId=153>.

97 For more information on the civil registration system and problems of access for refugees see, NRC and IHRC, *Registering Rights*, supra n12.

98 According to the decision number 60 issued on 13 March 1936 and amendments, which lists all sects and establishes their responsibility for setting their regulations and religious system.

99 Article 9 of the Constitution explicitly “guarantees that the personal status and religious interests of the population, to whatever religious sect they belong shall be respected”. See, Lebanese Constitution, 1926, available at: <https://www.lp.gov.lb/CustomPage.aspx?id=26&masterId=1>, Art. 9.

100 For more information please Frontiers Ruwad, *Birth Registration Procedures in Lebanon: Practical Manual*, 2014, available at: [https://frontiersruwad.files.wordpress.com/2015/03/birth-registration-manual\\_english.pdf](https://frontiersruwad.files.wordpress.com/2015/03/birth-registration-manual_english.pdf).

101 For information on the five steps see, NRC, *The Challenges of Birth Registration in Lebanon for Refugees from Syria*, supra n15 and UNHCR, *Addressing Statelessness in the Middle East and North Africa*, supra n14, page 15 (at note 35).

102 Law No. 4721 – Turkish Civil Code [Turkey], 7 December 2001.

103 Law 100-1985 amending Law 25-1920 and Law 25-1929, Al Jarida Al Rasmiyya [Egypt], vol. 27, 3 July 1985, available at: <http://www.mohamoon.com/montada/Default.aspx?action=ArabicLaw&ID=11>.

# PROTECTING THE RIGHT TO SYRIAN NATIONALITY: ACCESS TO CIVIL REGISTRATION

## 3

As already stated, the majority of refugees from Syria, including children born in exile, hold Syrian nationality and the risk of statelessness among them is marginal. However, problems may arise in respect of the recognition of nationality for some refugees, especially in situations of protracted displacement and for children born in exile, if preventative steps are not taken.<sup>104</sup> Access to birth registration,<sup>105</sup> in particular, is critical since “the lack of civil registration and related documentation makes persons vulnerable to statelessness and associated protection risks”.<sup>106</sup> Since 2011, more than 300,000 children from Syria have been born in exile,<sup>107</sup> and, for instance, in Azraq refugee camp, located in North Jordan, on average 70 children are born every month.<sup>108</sup> For these children, birth registration provides proof of their identity, family links

104 See, among others, B. Manby, *Identification in the context of forced displacement*, *supra* n5.

105 Birth registration is defined by the United Nations Children’s Fund (UNICEF) as “the official recording of a child’s birth by the State. It is a permanent and official record of a child’s existence. Birth registration is part of an effective civil registration system that acknowledges the person’s existence before the law, establishes family ties and tracks the major events of an individual’s life, from live birth to marriage and death.” For more information, see UNICEF, *A passport to protection: A guide to birth registration programming*, 2013, available at: [http://www.unicef.org/protection/files/UNICEF\\_Birth\\_Registration\\_Handbook.pdf](http://www.unicef.org/protection/files/UNICEF_Birth_Registration_Handbook.pdf).

106 UNHCR Executive Committee, *Conclusion on civil registration*, 2013, No.111(LXIV)-2013, available at: <http://www.refworld.org/docid/525f8ba64.html>. See also UNHCR, *Child Protection Issue Brief: Birth Registration*, 2013, available at: <http://www.refworld.org/pdfid/523fe9214.pdf>.

107 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 10.

108 The Independent, *Birth rate soars in Jordan refugee camp as husbands discourage wives from using contraception*, 13 March 2016, available at <http://www.independent.co.uk/news/world/middle-east/birth-rate-soars-in-jordan-refugee-camp-as-husbands-discourage-wives-from-using-contraception-a6928241.html>.

and nationality. A second form of civil registration that is of critical importance is the registration of marriage. Marriage documentation is often a required document for birth registration and therefore the lack of formal marriage documentation can become a barrier to birth registration.

The importance of birth and marriage registration for protecting refugee children's right to Syrian nationality is widely recognised among actors engaged in the regional refugee response<sup>109</sup> and many efforts are already underway to improve access and facilitate procedures for children born in host countries.<sup>110</sup>

This chapter gives an overview of some of the general challenges related to accessing civil registration procedures which were identified during this research and describes several good practices put in place by host governments, UNHCR and other organisations to facilitate access to civil registration.

### 3.1 BARRIERS TO CIVIL REGISTRATION IN THE HOST COUNTRY: PROBLEMS WITH DOCUMENTS

#### 3.1.1 LACK OF REQUIRED DOCUMENTS

A first and significant problem is that some refugees lack identity or other documents that are required to access civil registration procedures. In all of the host countries, a birth notification is given to the family by the health official assisting with a child's birth, and this notification plays a central part in the birth registration process. Thus, where a birth notification is not available or has been lost, the birth registration process becomes complicated. In Lebanon, the vast majority of parents – approximately 98%,<sup>111</sup> are able to obtain a birth notification.<sup>112</sup> The Lebanese legal framework (and current practice) provides for the possibility of birth registration of children born outside of hospitals with unauthorised midwives, but if a birth occurs in these circumstances, the procedure to obtain a birth notification may not always be straight forward. The research uncovered other reasons for not obtaining a birth notification, such as (as in the example below), when there is a problem between the family and health authorities (for example due to the refugees' inability to pay any medical fees relating to the birth) and therefore notifications are not given.

Khaloud has been living in Jordan since 2012. She was registered with UNHCR and knew she was entitled to free healthcare for her pregnancy and birth, but at the time of the birth she was confused as to which hospital she should go to obtain the free healthcare. She ended up in a private hospital, where she gave birth to a healthy boy. When she was making preparations to leave, the hospital administration handed her a bill for 350 Jordanian dinars.<sup>113</sup> She did not have that money, but she was told that she was not entitled to free healthcare there and she could not see her baby until she paid. She said that she felt she had no other choice than to take her baby boy and run away from the hospital. In doing this, she never got the birth notification, which means her son's birth cannot be registered. When she went to the registration office, they advised her to go back to the hospital to obtain the notification. However, she knows that if she does, they will demand payment before they give her the notification.<sup>114</sup>

109 Including in 3RP, *Regional Strategic Overview*, 2015, available at: <http://www.3rpsyriacrisis.org/wp-content/uploads/2015/12/3RP-Regional-Overview-2016-2017.pdf>.

110 See the overview presented in UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14.

111 Information provided by UNHCR Lebanon, September 2016.

112 This is a document that is needed to then obtain a birth certificate.

113 Approximately the equivalent of US\$500.

114 Interview with Khoulood, Irbid Jordan, July 2016.

## ► UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT

The lack of proof of marriage can also be a major barrier to obtaining birth registration documentation. In Lebanon, for example, marriage certificates are needed to complete the final step in the birth registration process and, according to UNHCR, 29% of Syrian new-borns lack official birth certificates *because* their parents lack the required documentation to obtain them.<sup>115</sup> In Jordan, in the early stages of the conflict Syrian IDs and passports were confiscated from refugees who entered Jordan via informal (irregular) border crossings, a policy that was stopped in December 2013. Many documents – but not all – have been returned through a verification exercise.<sup>116</sup> Without these documents some Syrian refugees struggle to prove their identity, in order to access civil registration.

While the lack of documents is a major and ongoing challenge, it is also an area in which many good practices have emerged. In Lebanon, for example, in 2013 the Personal Status Department distributed a Circular recognising the Syrian Family Booklet as evidence of both parental identity and marital status<sup>117</sup> if families could not provide a marriage certificate when trying to register new births. This was a significant step, however, since additions to the family book can only be made in Syria the family booklets cannot be updated from abroad for children born abroad. In KRI, the authorities have recognised that families who have fled are not always likely to be documented, and that their lack of documents is stopping them from accessing other documents. For this reason, they sometimes allow flexibility in the application of the otherwise strict requirement that all documents that are presented to government authorities need to be the original. Instead, unofficial copies may be accepted or even digital pictures of the originals that are sent from family members back in Syria.<sup>118</sup> In Jordan, the government has also started to accept photocopies in lieu of original documents where refugees no longer have their originals, which has increased access to birth registration.<sup>119</sup>

### 3.1.2 LACK OF RESIDENCE PERMIT

Most of the countries covered by this research have not ratified the 1951 Refugee Convention, and refugees are subject to the regular rules of the national immigration law. Acquisition of a valid residence permit is essential for many reasons. Often, for instance, these permits give access to rights such as education or healthcare. What is particularly important, in the context of preventing statelessness, is that these permits confirm the identity of an individual and may be needed for civil registration – either as a legal requirement or a practical pre-condition to access the civil registration process.

In several of the host countries, some refugees experience difficulties gaining or maintaining a legal residence status, which may have a consequent impact on their access to civil registration. In Lebanon, to obtain a residence permit, refugees either need a Lebanese national to sign a pledge of responsibility on their behalf or they must show their UNHCR registration certificate and sign a pledge not to work.<sup>120</sup> Recent policy changes have lifted the pledge not to work and replaced it with a pledge to abide by Lebanese law, however refugees not registered with UNHCR or otherwise deemed not to be genuine refugees by the General Security Office have no other option but to seek sponsorship. There are also problems with the prohibitive fees for obtaining a residence permit, which amount to \$200 per year per person aged 15 and above, so some refugees simply cannot afford to maintain a legal residency status.<sup>121</sup> In Turkey, the government

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115 Information provided by UNHCR Lebanon, June 2016.

116 Interview with UNHCR Jordan, July 2016.

117 UNHCR, *The Future of Syria: Born in Exile*, 2015, available at <http://unhcr.org/FutureOfSyria/born-in-exile.html>.

118 Interviews with Personal Status Department, Erbil KRI, July 2016.

119 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 16.

120 The pledge not to work has been lifted since June 2016 and replaced with a new declaration to abide by the laws and regulations which can be signed at the GSO.

121 HRW, *How Lebanon's Residency Rules Facilitate Abuse of Syrian Refugees*, 2016, available at: <https://www.hrw.org/report/2016/01/12/i-just-wanted-be-treated-person/how-lebanons-residency-rules-facilitate-abuse>.

introduced the legal concept of “temporary protection” through the Law on Foreigners and International Protection and the adoption of a Temporary Protection Regulation.<sup>122</sup> The Temporary Protection Status is in principle acquired on a *prima facie*, group-basis, by Syrian nationals, PRSs and other stateless persons originating from Syria.<sup>123</sup> Therefore, all refugees arriving from Syria, including the ones who are undocumented, are in principle able to register. However, flaws in this procedure are being reported, meaning that not everybody has access.<sup>124</sup>

The Jordanian government issues biometric cards to all refugees living in its territory registered with UNHCR. Authorities initially provided a ‘white card’ (former Ministry of Interior (MOI) service registration card) but later decided to conduct a re-registration or ‘verification’ exercise of all Syrian refugees, and the criteria for obtaining the new MOI card are more stringent.<sup>125</sup> ‘Bailouts’ or formal permission to leave the camps on a permanent basis could previously be granted to refugees in cases of family reunion outside of the camps with a *kafala* (sponsorship), from a Jordanian citizen, however the policy has been suspended since January 2015. The over 17,000 Syrian refugees who have left the camps since July 2014 without ‘bailout’ documents are unable to access the MOI service registration card and, consequently, cannot remain lawfully within the community. If detained by the police they will be returned to the camps. The number of Syrian refugees who are residing outside the camp without new MOI cards is currently estimated at around 157,000.<sup>126</sup> Not having regularised their stay outside of the camp results in fear of approaching the authorities, including for birth or marriage registration, on account of fear of arrest, or at minimum being sent back to the camps.

### 3.1.3 INCONSISTENCIES AS TO WHICH SYRIAN DOCUMENTS ARE REQUIRED IN THE HOST COUNTRY

Access to civil registration is largely decentralised, with the local level being the point of first contact. There is some inconsistency as to what documents these officials require in order to process civil registration applications. *Sharia* courts in Lebanon and Jordan, for example, have some discretion, particularly on what constitutes witness evidence. *Mokhtars* also operate, to some degree, at their discretion. In Lebanon, the discretion of the *Mokhtar* and religious court is linked to what they believe constitutes enough evidence to prove identity for individuals who lack official documents.<sup>127</sup> There were therefore real discrepancies among those interviewed as to which documents were required – with some reporting very stringent conditions and others reporting very flexible requirements. For example, with regards to issuing a proof of marriage certificate, one *Sharia* court in Lebanon stated that they needed the ID, family booklet and health certificate from both sides, whereas another required ‘anything’ that proves the refugees’ identity.<sup>128</sup> *Sharia* courts can also provide a document that is called *Isbat Nasab* – the ‘recognition of lineage’ for children. This is not a birth certificate but is a stamped document that states who

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122 Applicable to foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection, Article 3(f) of Temporary Protection Regulation, 22 October 2014, available at: [http://www.goc.gov.tr/files/\\_dokuman28.pdf](http://www.goc.gov.tr/files/_dokuman28.pdf).

123 Refugee Rights Turkey, *Information booklet on registration and status for Syrian refugees and other persons under “Temporary Protection”: questions and answers*, 2016, page 2.

124 Interview online with Daryl Grisgraber, May 2016.

125 To obtain the new MOI card Syrians must present their identity document, UNHCR Asylum Seeker Certificate (ASC), a health certificate and proof of address. Any refugees who left the camps after July 2014 must additionally show proof that they have been legally ‘bailed out’ of the camps. No bailout certificates have been issued since January 2015. For more information on the situation of accessing residency permits in Jordan see, NRC and IHRC, *Registering Rights*, *supra* n12.

126 Interview with NRC ICLA, Jordan, July 2016. As of August 2016, out of the 520,000 refugees registered with UNHCR as living outside the camps, nearly 363,000 had obtained new MoI cards and around 157,000 had not. At least 17,000 additional refugees are ineligible to receive new MoI cards having left the camps without formal ‘bailout’ documents. However many thousands of refugees have lost contact with UNHCR over time and some of them may have left Jordan.

127 According to Article 11 of the Law on the Registration of Personal Status of 1951.

128 Interviews with Sharia Courts, Baalback and Tripoli Lebanon, May 2016.

the parents of a child are. The requirement to provide this also varies between officials. Although this inconsistency can be challenging, it also offers a space for potential flexibility which may work to the benefit of refugee families who lack certain documents.

### **3.1.4 DEALING WITH DOCUMENTS ISSUED BY NON-STATE ACTORS IN SYRIA**

An emerging challenge is the question of the legitimacy and value attributed to personal documents issued in non-government controlled areas by non-State actors such as the Kurdish Self Administrated Area, Local Councils in southern Syria and the Free Independent Judicial Council under the Interim Government in northern Syria. These non-State actors have become involved in registering births and marriages. The Interim Government registration practices, for instance, have been found to largely mirror those of the government of Syria.<sup>129</sup> In numerous areas of Syria, these documents may be all that is available to people, yet the question of their legal validity is a challenging one. In the refugee-hosting countries, there is a lack of consistency as to which non-State actor-issued documents are accepted. Certain Lebanese religious judges, for example, accept *itilaf*-issued documents (from local councils in opposition-controlled areas), whereas in other areas these documents are considered fraudulent.<sup>130</sup> It is reported that some Syrian *Sheikhs* resident in Lebanon have even considered it within their power to issue such documents. In Jordan, documents such as the *itilaf* documents are also seen, however there seems systematic position across all authorities that these documents cannot be recognised inside the country.<sup>131</sup> In KRI, there has been a surge of documents being used that are produced by the Kurdish Peoples Protection Unit forces – one lawyer spoke of how he regularly advises clients that they should not attempt to use these documents and in fact should get rid of them as they would be considered to be fraudulent.<sup>132</sup> In KRI, neither the authorities nor the international NGOs accept these documents as proof of identity.<sup>133</sup>

## **3.2 BARRIERS TO CIVIL REGISTRATION IN THE HOST COUNTRY: KNOWLEDGE GAPS**

### **3.2.1 REFUGEES' LACK OF AWARENESS OF THE HOST COUNTRY'S PROCEDURES**

Most refugees understand the importance of personal documents. In Lebanon for instance, Oxfam organised community-driven sessions to better understand refugees' needs. The sessions showed that accessing civil registration was a concern to the community.<sup>134</sup> However, prioritisation and awareness of the modalities of procedures is a real problem. In KRI, a UNHCR survey showed that 40% of households did not know where to obtain marriage and/or birth certificates.<sup>135</sup> In Turkey, refugees are often unsure of which steps to take and which procedures to follow.<sup>136</sup> When refugees attempt to acquire a birth certificate for their new-born there is often confusion, for example where refugees mix up the birth report of the hospital, the registration for a temporary protection status, and the birth certificate.<sup>137</sup> In addition, most of the Turkish registration offices are housed in the foreigners' departments of police stations,

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129 IRC, Identify me: The Documentation Crisis in Northern Syria, 2016, available at: <https://www.scribd.com/document/319309287/Identify-Me-July-2016-IRC>, page 4.

130 Interviews with Sharia Courts, Baalback and Tripoli Lebanon, May 2016.

131 Interviews with Sharia Court, Amman Jordan, July 2016 and Interview with Justice Centre for Legal Aid (JCLA), Irbid Jordan, July 2016.

132 Interview with Harikar, Dohuk KRI, July 2016.

133 Interview with Qandil, Erbil KRI, July 2016.

134 Interview with Oxfam, Beirut Lebanon, May 2016.

135 UNHCR, *Multi-Sector Needs Assessment*, *supra* n19.

136 Interview online with Daryl Grisgraber, May 2016.

137 S. Reynolds and D. Grisgraber, *Birth Registration in Turkey: protecting the future for Syrian children*, Refugee International field report, 2015, pages 6 and 9.

which can put refugees off approaching them for registration.<sup>138</sup> Not only Syrian refugees, but also individuals working with and for them can be unsure of the procedures and steps, as well as lacking understanding of the importance of birth certificates in terms of avoiding the risk of statelessness.

Across the different host States in which fieldwork was conducted, the refugees interviewed had no or a very limited understanding of the procedures, whilst relevant bodies (*Sharia* courts, healthcare officials and *Mokhtars*) all confirmed lack of knowledge of the population when they approached their offices. Those actors who have the widest reach in terms of contact with refugees, often do not have the time (and sometimes incentive) to explain complex procedures to refugee families.

Significant work is already being undertaken in trying to address this lack of awareness. UNHCR has carried out public awareness campaigns in all countries covered by this research, for example handing out informational brochures on the procedures to register births<sup>139</sup> and screening instructional videos on birth registration in registration and community centres.<sup>140</sup> UNHCR's Outreach Volunteers programmes have accompanied new mothers to hospitals and civil registration offices to assist them in the procedures.<sup>141</sup> Other organisations<sup>142</sup> provide counselling and public awareness-raising on civil documentation. Most of the organisations work with focal points from inside the refugee community and have substantial outreach to displaced families and individuals. NRC, through its ICLA programme, is providing legal aid in completing registration procedures, particularly obtaining birth and marriage certificates, in Lebanon, KRI<sup>143</sup> and Jordan and has carried out activities such as national outreach programmes, research, public awareness campaigns, and the production of brochures which have been disseminated among the affected population and organisations involved in these procedures. By February 2015, in Lebanon, over 145,000 refugees had received ICLA services.<sup>144</sup> Legal aid providers in Egypt provide advice to Syrian refugees on birth registration procedures and assist mothers in registering new births in difficult cases, such as those involving children born out of wedlock. According to UNHCR, these efforts have resulted in over 90% of Syrian refugee births being successfully registered in the country.<sup>145</sup>

### 3.2.2 HOST COUNTRIES' LACK OF AWARENESS OF SYRIAN DOCUMENTS AND THE SYRIAN CIVIL REGISTRATION SYSTEM

The lack of awareness and understanding about documents issued by the Syrian Government and their function is a problem across the region. For instance, is the *taaref* seen as a legitimate Syrian document and should it therefore be accepted in the host State? In both Lebanon and Jordan there was a difference in opinion among *Mokhtars*, lawyers and *Sharia* courts on whether to accept the *taaref* as a legitimate document that would enable holders to prove their identity.<sup>146</sup> It is not seen as a legal document in Lebanon but it is at the discretion of the *Mokhtar* to decide whether it suffices as proof of identity. In KRI, government bodies located in different regions reportedly differed on whether they would accept the *taaref* document as legitimate,

138 Interview online with Yesim Mutlu, Middle East Technical University, Turkey.

139 For example UNHCR, *Register the Birth of Your Children, Protect Their Rights!*, 2015, available at <https://www.humanitarianresponse.info/en/system/files/documents/files/birth-registration-english-2015.pdf>.

140 See an example of an instructional video at <https://www.youtube.com/watch?v=fsmHvjeBODs&feature=youtu.be>

141 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, pages 17-19.

142 Specifically JCLA, Arab Renaissance for Democracy and Development (ARDD), Harikar, Qandil, International Relief and Development (IRD), Intersos, Caritas Lebanon Migrant Centre (CLMC) and Caritas.

143 Here notably Qandil, Civil Development Organisation (CDO) and Harikar are also providing these services.

144 See NRC, *The challenges of birth registration in Lebanon for refugees from Syria*, *supra* n15.

145 3RP, *Annual Report 2015*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=11002>.

146 For example, interviews with *Mokhtar*, in Baalback Lebanon and Tripoli Lebanon differed; Interviews with JCLA Irbid Jordan and *Sharia* Court Irbid Jordan differed.

with Dohuk authorities, for example, not accepting them whilst those in Sulimaniya regarding them as legitimate documents.<sup>147</sup>

A related issue is a lack of awareness of the civil registration system and refugees continuing practices that were the norm, inside Syria, before the conflict and prior to displacement, but which cause problems in the host countries. Certain practices were normal in Syria and are not necessarily well-understood nor compatible with the law and practice of the host countries. The *Ketb Al Ktab*, for instance, i.e. the unregistered marriage with the local *Sheikh*, is perceived and treated differently in Syria and the host States. People across the Middle-East region engage in the practice and even in Syria a marriage still has to be registered officially. However in Syria, official marriage registration is often delayed and so the *Ketb Al Ktab* plays a larger part in people's lives. This type of marriage has no legal standing in any of the neighbouring countries: additional registration steps are required for the marriage to be formalised and documentation to be acquired. However, refugees continue the tradition of the *Ketb Al Ktab*, as this was common practice in Syria. Often the Syrian *Sheikhs* who now also live amidst the refugee population continue to perform these ceremonies as it is challenging for refugees to adapt to new procedures and legal frameworks.<sup>148</sup> This type of marriage reportedly becomes particularly complex when Syrian women marry foreign men – specifically men from the Gulf region. In most cases, they only conduct the *Ketb Al Ktab* and if the husband subsequently abandons his family, this leaves the wife with no proof of marriage and the children (if any) with no proof as to who the father was (perhaps with the exception of a birth notification).<sup>149</sup>

### 3.3 BARRIERS TO CIVIL REGISTRATION IN THE HOST COUNTRY: PRACTICAL AND LOGISTICAL ISSUES

#### 3.3.1 PROHIBITIVE COSTS/ACCESS

In most countries the costs of accessing civil registration are minimal, comprising only logistical expenses, such as transportation to the registration office. Nevertheless, for some families, this may already pose a significant financial burden, especially in countries where refugees do not have the right to work and do not have an income.<sup>150</sup> In some cases, however, the issuance of documents is subject to a fee. In Egypt, the actual acquisition of a birth certificate costs 20 Egyptian pounds.<sup>151</sup> In Jordan issuing a normal marriage certificate costs between 40 – 100 Jordanian dinars<sup>152</sup> in total.

When a refugee does not have all of the required documents or has not followed the legal procedures, the costs can become prohibitive. For instance, in KRI, if parents do not register the birth of their child within the first 45 days following the birth, they have to go through a court case to confirm the recognition of lineage, which costs approximately 35,000 Iraqi dinars.<sup>153</sup> In Lebanon, once the child reaches 12 months of age a court case must be pursued in order to prove the family relationship. The cost of this procedure (*Sharia* and civil courts combined) is usually between 500,000 and 1,000,000 Lebanese pounds<sup>154</sup>, depending on whether the court requires a DNA test and takes between 9 and 12 months in duration. If a refugee couple married in Syria do not have a marriage certificate in Jordan, they must apply for a 'recognition of

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147 Interview with CDO, Sulimaniya KRI, July 2016.

148 Interview with Mokhtar, Qubaiyat Lebanon, May 2016. These Syrian *Sheikhs* demand nothing or very little in terms of fees which is another reason why this practice continues. However, some understand that marriage registration has become impossible for some couples due to their lack of documentation and so will carry them out but ask for a particularly high fee.

149 Interview with JCLA, Irbid Jordan, July 2016.

150 Interview with Frontiers Ruwad, Beirut Lebanon, May 2016.

151 Approximately US\$3.

152 Approximately US\$56-140

153 Approximately US\$30.

154 Approximately US\$300 to US\$700.



marriage' in the Jordanian courts. Additionally, a penalty of 1,000 Jordanian dinars<sup>155</sup> is imposed for the recognition of informal marriages which have taken place in Jordan, which is a prohibitive amount for most Syrian refugee families.<sup>156</sup> There are some good practices in Jordan that mitigate this problem. For instance, the Danish Refugee Council (DRC) offers cash-assistance to families whose only obstacle to obtaining documentation is monetary, and the government has offered several amnesties for those who cannot afford the fees for certain documents.<sup>157</sup>

Physical access to registration offices is also a problem. Often the registration office is too far away, and transportation costs are too high or security check-points impede the ability of the individual to travel there.<sup>158</sup> This is another area of emerging good practice: the Jordanian authorities have played a pivotal role in facilitating physical access to documentation for the refugees by setting up *Sharia* courts *inside* the camps. These are empowered to provide various documents, such as marriage certificates, so that camp-based refugees do not have to travel in order to access civil registration procedures.<sup>159</sup>

### 3.3.2 LANGUAGE BARRIERS/INCORRECT INFORMATION

A specific issue in Turkey is that Arabic speaking Syrian refugees face a language barrier when interacting with Turkish speaking government officials. In particular, district offices do not have Arabic speakers present, which makes it less likely that people will try to register.<sup>160</sup> Moreover, the differences in alphabet between Turkish and Arabic cause problems. Turkish officials record the names of Syrian babies, using the Turkish alphabet. The 'Turkisation' of Arab names causes confusion later on for Syrian children, as the names may be spelt differently, and may potentially cause future problems when children are trying to substantiate their link to their Syrian father.<sup>161</sup>

## 3.4 REFUGEES' COPING MECHANISMS FOR ACCESSING DOCUMENTATION AND CIVIL REGISTRATION

### 3.4.1 RETURN TO SYRIA

To try to circumvent the problems of obtaining documentation, the Syrian displaced population has reportedly adopted certain coping mechanisms. One of these is return to Syria – or paying someone to return to Syria on their behalf – in order to access registration procedures or documents there. This is often a dangerous option and might also mean that the documents are obtained fraudulently or that incorrect information is given.<sup>162</sup>

Mohammed lives in Lebanon and faced many problems in registering the birth of his daughter as he did not have the required documents. His wife had initially tried to go through the regular routes but was turned away as she was questioned and told to prove that the child was hers. He therefore smuggled himself and his new-born baby girl into Aleppo amidst the fighting to get her a birth certificate as he was worried that without one she would not be able to go to school in the future. He eventually succeeded in getting her the necessary documents.<sup>163</sup>

155 Approximately US\$1,400.

156 Interview with JCLA, Irbid Jordan, July 2016.

157 Interview with Danish Refugee Council (DRC), Amman Jordan, July 2016. UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, pages 16 and 21.

158 Interview with LOST Lebanon, Tripoli Lebanon, May 2016.

159 UNHCR, *Jordan Monthly Update*, May 2014, available at: <https://data.unhcr.org/syrianrefugees/download.php?id=6215>.

160 S. Reynolds and D. Grisgraber, *Birth Registration in Turkey*, *supra* n137, pages 7-8.

161 *Ibid.*

162 NRC and IHRC, *Registering Rights*, *supra* n12, page 29.

163 Interview with Mohammed, Baalback Lebanon, May 2016.

### 3.4.2 FALSIFICATION OF DOCUMENTS

Another common coping mechanism is to obtain documents fraudulently. The use of fake documents – which are often costly – or recording fraudulent information on documents is a growing practice.<sup>164</sup> With the market for fraudulent documents also come scams by brokers. There are many families who have claimed that they have been duped by individuals who claim that they can offer help to families unaware of or unable to access procedures. Anecdotal reports suggest that the brokers request significant fees and then do not provide documents, or provide fake ones.<sup>165</sup>

In the Bekaa region of Lebanon, Najeeb had tried and failed to register the birth of his child who was over 12 months old. He did not know that there was a deadline and had no time to register his son before. He did not know how to go through the court system, nor could he afford this. Outside the personal status department he was approached by a man who said he could assist Najeeb in completing the process. Najeeb claims he gave the man US\$500 to obtain a marriage certificate for him and birth certificate for his son. However, these never materialised and he lost contact with the broker.<sup>166</sup>

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164 For instance, interview with Personal Status Department, Erbil KRI, July 2016 and Mokhtar, Baalback Lebanon, July 2016.

165 NRC, *The challenges of birth registration in Lebanon for refugees from Syria*, supra n15, page 25 and interview with Qandil, Erbil KRI, July 2016.

166 Interview with Najeeb, Baalback Lebanon, May 2016.

## 4

# PROTECTING THE RIGHT TO SYRIAN NATIONALITY: REFUGEES AT HEIGHTENED RISK OF STATELESSNESS

As explored above, a small minority of refugees may find themselves at heightened risk of being rendered stateless after having been displaced, and are therefore in need of protection to mitigate this risk. During the research, a number of ‘risk profiles’ were explored. This section provides an overview of those individuals who face a significantly heightened risk of statelessness, but is not exclusive. The issues discussed here overlap to some extent with those relating to the general refugee population, as presented in the previous chapter. Nevertheless, given the particularities of the risk faced by those identified in this section, a more tailored and specialist form of intervention may also be warranted to ensure the prevention of statelessness.

## 4.1 RISK PROFILES FOR PERSONS FACING PROBLEMS WITH ACCESS TO BIRTH AND MARRIAGE REGISTRATION

As discussed in chapter 3, birth registration plays a vital role in the prevention of statelessness among Syrian children born in exile.<sup>167</sup> Not being registered at birth does not – of itself – render a child stateless, but when a child is left unregistered and undocumented and there is no evidence of the legal link to their Syrian father, lack of birth registration can put that child at risk of statelessness.<sup>168</sup>

<sup>167</sup> UNHCR, *Child Protection Issue Brief: Birth Registration*, supra n107.

<sup>168</sup> For more information on the nexus between birth registration and statelessness see UNHCR and Plan International, *Under the Radar and Under Protected*, 2012, available at: <http://plan-international.org/about-plan/resources/publications/campaigns/under-the-radar-and-under-protected>, page 5.

While the general challenges which arise in respect of access to civil registration for refugees from Syria were discussed in the previous chapter, the following sections take a closer look at three profiles for which specific obstacles can arise and where further assistance may be needed: 1) children whose birth in the host State is not registered by the set deadline; 2) children born within female-headed households; and, 3) children born within child marriages

#### **4.1.1 CHILDREN WHOSE BIRTH IN THE HOST STATE IS NOT REGISTERED BY THE STATUTORY DEADLINE**

In each of the host countries, there are statutory deadlines within which a child born in that State must be registered, but a wide variety of legal and practical obstacles as well as a lack of awareness may cause such registration deadlines to be missed. When this happens, the process often becomes significantly more complicated. In Egypt, the birth of a child should be registered within 14 days at the Egyptian health office in the district where the child was born. Upon registration, the Egyptian health office will issue a birth certificate. Failure to register the birth within the first 14 days will result in a lengthy registration process.<sup>169</sup> In Turkey, the general registry office will register the birth up to 30 days after the birth at no cost. For babies born in Lebanon, there are several steps that the parents must complete,<sup>170</sup> and if the first three of these steps are not all taken within one year from the date of birth, then registration can only be achieved through a court order. In Jordan, the first deadline is one month, after which there is a 10 Jordanian dinar<sup>171</sup> penalty for late birth registration. If the family fails to register the birth before the child turns one year old, they will have to follow a court procedure to obtain the birth certificate.<sup>172</sup> In KRI the statutory deadline is 45 days and again if the one-year deadline is not met, a court proceeding is needed – often a costly and lengthy process.<sup>173</sup>

In Lebanon, Yahya did not register the birth of his daughter before the one-year deadline. He decided to falsify the birth date of his daughter in order for her to be considered younger than one year. He paid a broker a significant amount to produce a birth notification that would reduce his daughter's age by a full year. However, he was still unable to obtain a birth certificate as his marriage was not registered.<sup>174</sup>

Across the host States, different organisations raise awareness and facilitate access to complete birth registrations before the respective deadlines and even tackle the more complex procedures after the deadlines. NRC, for example, provides legal counselling for any individual who requests help navigating the procedures, whilst Justice Centre for Legal Aid (JCLA) and Arab Renaissance for Democracy and Development (ARDD) in Jordan will provide legal aid and represent those who have passed the deadline in court proceedings.<sup>175</sup> In many cases families are unable to register the births of children as the parents do not have formal marriage certificates from Syria. By the time the marriage certificate is ratified through a court process, the child is often more than 12 months old and the late birth certificate must also be obtained through the court process. NRC will typically assist the parents with the court procedures necessary to obtain both the marriage ratification and birth certificates. For example, in Lebanon, apart from legal representation offered to parents, who missed the deadline, ICLA introduced a response scheme where parents

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169 For more information please see USA Embassy in Egypt, 'Report of Birth Abroad', available at: <http://egypt.usembassy.gov/consular/acs2.html>.

170 For information on the five steps see, NRC, *The challenges of birth registration in Lebanon for refugees from Syria*, supra n15. Obtaining a birth notification from the hospital/midwife/birth attendant, obtaining a Birth Certificate from the local Mokhtar, registering the certificate at the Personal Status Department including (a) the Nofous; and (b) at the Foreigner's Register.

171 Approximately US\$40.

172 For more analysis on birth procedures for late registration please see NRC, *The challenges of birth registration in Lebanon for refugees from Syria*, supra n15 and NRC and IHRC, *Registering Rights*, supra n12.

173 UNHCR, *Register the Birth of Your Children, Protect Their Rights!*, supra n139.

174 Interview with Yahya, Baalback Lebanon, July 2016.

175 See also on legal aid and counselling initiatives in respect of birth registration for Syrian refugees, UNHCR, *Addressing Statelessness in the Middle East and North Africa*, supra n14, page 17.

of unregistered children of 9 months old and above might receive additional paralegal assistance or legal representation in order to register before the deadline. At the same time, ICLA is training humanitarian partners and local communities on identification and referral, which includes sensitisation to deadlines in the procedure.

#### 4.1.2 CHILDREN BORN WITHIN FEMALE-HEADED HOUSE-HOLDS OR WHERE THE FATHER IS NOT LEGALLY PRESENT

Syria's nationality law is based on paternal *jus sanguinis*; only a Syrian man can transfer nationality to his child.<sup>176</sup> The displacement of millions of Syrians has meant that this discriminatory law is playing an even more active role in putting new-born children at risk of statelessness. Across the region, men may have been killed or separated from their families, remained in Syria, have disappeared, are unknown, or have moved on to a third country. In the region, 75% of refugees from Syria are women and children,<sup>177</sup> and UNHCR reports that an average of one in four Syrian refugee households are headed by women, with no man present.<sup>178</sup> In these households, women have become the main income providers, and are responsible for ensuring the family remains documented. There are a number of scenarios resulting from these facts in which children face varying degrees of risk. For instance, a child of a Syrian refugee mother and an unknown father will likely find that he or she has no access to Syrian nationality and is stateless as a result.<sup>179</sup> A child born to a Syrian mother and father, who remain unmarried or have never formalised their marriage and where the father is absent from the household, will have great difficulty establishing legal paternity and this may lead to an inability to be recognised as a Syrian national.<sup>180</sup> On the other hand, if the couple is married and this has been registered, but the marriage certificate has been lost or left behind during displacement, it may be possible to re-certify the marriage through witness testimony in the host country and for this to enable the registration of a child such that legal paternity is recognised. Much will therefore depend on the specific circumstances of the case as well as which host State the family finds itself in, but the sub-set of the refugee population which is comprised of female-headed households is an important target group for more activities to protect the right to Syrian nationality.

Hassan was born in Dohuk in 2013, to a Syrian mother and a father who has been missing in Syria since 2012. His mother brought no documents from Syria so cannot prove the marriage to her husband. She has registered Hassan's birth, and has obtained a birth certificate, which it is possible to do in Dohuk without putting the name of the father on the certificate. However, this complicates the establishment of Hassan's nationality as he has nothing to prove that he has a Syrian father. His mother hopes that she will find her husband, or witnesses to her marriage, or her documents. But, until then, Hassan remains with limited evidence of the legal link to his Syrian father.<sup>181</sup>

176 Under Syrian law, there are certain circumstances where a woman can transfer their nationality, such as when the father is unknown, but this is rarely implemented and the child must have been born on Syrian territory.

177 UNHCR data, 'Syrian Refugees', available at: <http://data.unhcr.org/syrianrefugees/syria.php>.

178 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, supra n14, page 10. See also, for more detail on Lebanon, Amnesty International, *Lebanon: Refugee women from Syria face heightened risk of exploitation and sexual harassment*, Press Release, 2 February 2016, available at: <https://www.amnesty.org/en/press-releases/2016/02/lebanon-refugee-women-from-syria-face-heightened-risk-of-exploitation-and-sexual-harassment>. In KRI, this issue is less pervasive, with 4% of refugee households being female-headed. Information from UNHCR, Erbil KRI.

179 They would fall into the category of stateless refugees, discussed in chapter 5.

180 This problem can be compounded by other factors relating to the birth of children out of wedlock. In Jordan, for instance, it is a crime to have a child outside of marriage and therefore registering a child only under the mother's name is in itself nearly impossible. There are certain provisions in Jordan's Civil Status Law of 2001 that provide for registering children born out of wedlock. In practical terms, the main obstacles are social repercussions rather than legal ones. Legal repercussions require a private complaint of adultery lodged with the authorities by one of the concerned parties (usually their family). See also more generally on this issue B. Fisher, 'Why non-marital children in the MENA region face a risk of statelessness' in *Harvard Human Rights Journal Online*, 2015, available at: [http://harvardhrj.com/wp-content/uploads/2015/01/Fisher\\_HRJ\\_01-05-15.pdf](http://harvardhrj.com/wp-content/uploads/2015/01/Fisher_HRJ_01-05-15.pdf).

181 Interview with Khaldiya, Duhok KRI, July 2016.

## ► UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT

In Egypt,<sup>182</sup> children born out of wedlock will face obstacles obtaining a birth certificate immediately following their birth; for a child to be issued with a birth certificate, the mother must show a marriage contract. Alternatively, and without the necessity of having a marriage contract, a father could approach the relevant institution and claim paternity of the child.<sup>183</sup> Children born out of wedlock who are unclaimed by their fathers are given a different family name instead of the name they should have held at birth (that of the father, grandfather, and the family).<sup>184</sup>

Now a refugee in Jordan, Amina had married unofficially in Syria and got divorced after only a few months. She then fled to Jordan where she gave birth to the child of her divorced husband. She has not registered her baby boy. She then met and married her new husband in Jordan and got the *Ketb Al Ktab* (Islamic marriage contract). She recognised the importance of registering the marriage, but when she tried to, she was told that she needed to prove that she was divorced. She could not do this, and could only register her new marriage after making an oath in court that she had never been married before. She has not spoken to or heard news of the father of the child for over three years and therefore because she has made an oath in court that she has never been married, legally her child is unlikely to ever establish the link to his Syrian father.<sup>185</sup>

Mixed-marriages between different nationalities in the region are common. Some displaced families comprise Syrian national father and Lebanese/Palestinian/Jordanian/Iraqi mother, who had been residing in Syria before they were forced into displacement. In some cases, these marriages were not officially registered in either of the concerned countries. Lebanese, Iraqi, and Jordanian nationality laws contain elements of gender discrimination;<sup>186</sup> women from these countries are generally unable to transfer their nationality to their children. Due to this discriminatory legislation, and the absence of the Syrian father, coupled with the lack of a marriage certificate showing marriage to a Syrian man, it may be particularly difficult to verify Syrian paternity and thus to establish that the child is a Syrian national.

### 4.1.3 CHILDREN BORN WITHIN CHILD MARRIAGES

Child marriages<sup>187</sup> present another significant problem in the displacement context due to the vulnerable and precarious situation families find themselves in.<sup>188</sup> Child marriages are more likely not to be registered officially, and, as discussed above, registering births without a marriage document is problematic. The same is true for second marriages where polygamy is not recognised. In some situations, especially where the father leaves or is not present, this may put children at risk of statelessness. Again, without a birth certificate stating the name of the father and a marriage certificate attesting to his legal paternity, it is harder to establish the link between father and child which is the basis for acquisition of nationality. Whilst condemning the practice of child marriages, the CRC principle of the best interests of the child<sup>189</sup> and that the

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182 According to the Executive Charter of Law No. 12 of 1996 on the rights of the child and the Executive Charter, in addition to the 1994 Law No. 143 on Civil Status.

183 T. Badawy, Comments on Egypt's Report to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, 2007, available at: [www2.ohchr.org/english/bodies/cmw/docs/tarek\\_badawy.doc](http://www2.ohchr.org/english/bodies/cmw/docs/tarek_badawy.doc).

184 Egyptian birth certificates, passports, and national identity documents must have a person's four names written in them. These four names are the citizen's first name, his father's name, his grandfather's name, and his surname.

185 Interview with Amina, Irbid Jordan, July 2016.

186 See section 2.2 of this report.

187 A marriage in which one or both parties are under the age of 18. See more generally on this issue globally UNICEF, *Ending child marriage: Progress and Prospects*, 2014, available at: [http://data.unicef.org/wp-content/uploads/2015/12/Child-Marriage-Brochure-HR\\_164.pdf](http://data.unicef.org/wp-content/uploads/2015/12/Child-Marriage-Brochure-HR_164.pdf).

188 See for example, Save the Children, *Too Young to Wed: The growing problem of child marriage among Syrian girls in Jordan*, 2014, available at: [http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/TOO\\_YOUNG\\_TO\\_WED\\_REPORT\\_0714.PDF](http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/TOO_YOUNG_TO_WED_REPORT_0714.PDF).

189 See, UNICEF, Factsheet: A summary of the rights under the Convention on the Rights of the Child, available at: [http://www.unicef.org/crc/files/Rights\\_overview.pdf](http://www.unicef.org/crc/files/Rights_overview.pdf).

child should not be penalised for the actions of others must come into force. In this context it is clear that the best interest of the child to have a nationality (and so not be stateless) should override concerns about legitimising child marriage by allowing the offspring of such marriages to be registered without fear of prosecution of the parents for their illegal marriage.

The response to child marriage differs from country to country. In Syria, the minimum age for marriage with parental consent is 13 for girls and 15 for boys, and polygamy is allowed.<sup>190</sup> In Lebanon the official minimum age is based on the personal status law of the different religious confessions. The minimum age (with authorisation) for marriage for Shi'a and Sunni girls is 9 and there is, therefore, significant discretion given to *Sharia* court judges to allow a marriage above that age as they see appropriate.<sup>191</sup> However, there is little knowledge among the refugee population of the regulations on child marriage.<sup>192</sup> In Turkey, child marriages are officially considered to be illegal – the revised 2002 Turkish Civil Code raised the statutory minimum age of marriage to 17,<sup>193</sup> which means child marriages are not officially recorded.<sup>194</sup> Syrians who married before the minimum age may pretend to be older at the registry offices to avoid any possible legal sanctions. This can lead to them making fraudulent statements which could have negative implications in the future. Similar problems arise where Syrian girls or women enter into a marriage as a second wife, which is also considered to be illegal in Turkey. Because polygamy and child marriages are not allowed in Turkey, mothers in such marriages may be discouraged from giving birth in hospital or registering new-borns, out of fear of prosecution.<sup>195</sup> In Jordan, child marriages are very common even though, if caught, the husband and father may be imprisoned and/or fined.<sup>196</sup> The age of marriage in Jordan is 18, although marriages for persons aged between 15 and 17 can be approved by the Chief Justice of the *Sharia* courts. In practice, this makes parents in child marriages less likely to register their children.<sup>197</sup>

Soumaya was 14 when she got married in Jordan, to a Syrian man, several months after she and her family had arrived in the country. She immediately got pregnant and had the baby at 14. She did not register the child's birth as she was worried about the consequences – her family and her husband knew that the marriage was illegal and they have not officially registered it, so they discouraged her from approaching the authorities. Her child is currently not registered, and they have passed the deadline for registration. Soumaya plans to wait until she is 17, then go to register her marriage and subsequently the birth of her child.<sup>198</sup>

190 See legislative decree No. 26, of the private Syrian Registration of 2007.

191 See, Frontiers Ruwad, *Marriage Registration in Lebanon: a guide to procedures and practices*, available at: <https://www.anamawjoud.com/resources/wedding-registration-en.pdf>.

192 NRC, *Update on Marriage Regulations Procedures for Refugees from Syria*, 2016, available at: <https://www.nrc.no/resources/reports/update-on-marriage-registration-for-refugees-from-syria-july-2016>.

193 Article 124, Turkish Civil Code.

194 S. Reynolds and D. Grisgraber, *Birth Registration in Turkey*, *supra* n137, page 10.

195 *Ibid*, pages 10-11. Interview with NRC, Geneva Switzerland, June 2016.

196 Save the Children, *Too Young to Wed*, *supra* n188.

197 Interview with Personal Status Department, Amman Jordan, July 2016.

198 Interview with Sumaya, Irbid Jordan, July 2016.

## 4.2 RISK PROFILES FOR PROBLEMS WITH PROOF OF IDENTITY AND NATIONALITY

Each of the risk profiles described above relates to a scenario in which access to birth registration tends to be problematic and some form of intervention or assistance is needed in order to help refugees to navigate the process. In the following paragraphs, three further risk profiles are explored: 1) undocumented refugees; 2) refugees not registered with UNHCR; and 3) the *Maktoum*.

### 4.2.1 UNDOCUMENTED REFUGEES

An individual who has no document to prove their identity or nationality and has been displaced from their country may be at risk of statelessness.<sup>199</sup> In particular, if an individual's record in the country of origin no longer exists and they cannot prove their identity or obtain documents in the host country there is a risk that the competent authority may not recognise them as a national.<sup>200</sup> This risk increases over time and across generations.

In Syria not all civil registration documents have been digitised, and with the conflict and the reported destruction of some civil registration offices,<sup>201</sup> the loss of documents could prove problematic for refugees when trying to re-acquire proof of identity. In addition when documents have been lost or stolen, this may not be reported to the competent authorities, for example if the family lives in fear of arrest as they have not obtained a residence permit, and therefore it may become difficult to rectify their situation later on.<sup>202</sup> There are also a significant number of children born in Syria who were neither registered at birth, nor issued any form of identity documentation prior to fleeing Syria. Since registering a birth which took place in another country is outside of the jurisdiction of the Civil Status Departments of host countries, registration of these births is more complicated and not always possible. However some good practices have been recently been put in place in Jordan, for example an increasing acceptance of witness testimonials to marriages.<sup>203</sup> Finally, not having documents leads to problems in acquiring other documents – a vicious cycle that is difficult to break.<sup>204</sup>

Lana, currently residing in Irbid in Jordan, had to leave her hometown of Dar'a so suddenly during the conflict that she was not able to take her documents with her. She went back in late 2015 as she felt she needed to have her documents, especially her ID, to regularise her stay and work in Jordan. However, on her return, she discovered that her house had been destroyed by bombing and her documents with it. She had to return to Jordan quickly so was unable to apply for new documents.<sup>205</sup>

As well as not bringing any documents with them when they left Syria, the risk of refugees losing documents in the host countries is also a reported problem. In Lebanon, for example, the ITSs are particularly susceptible to floods and fires, leaving documents at risk of being destroyed.<sup>206</sup> If a document is lost in an ITS, it often cannot be reported to either the Lebanese or Syrian authorities due to problems in gaining access to the relevant office, and the fear of approaching the authorities. In this light, some advice or help for refugees on how to preserve documents can be seen as a good practice. When a hospital or midwife for example provides a birth notification

199 See, amongst others, B. Manby, *Identification in the context of forced displacement*, *supra* n5.

200 Convention the Status of Stateless Persons, *supra* n4 and UNHCR, *Handbook on the Protection of Stateless Persons*, *supra* n4.

201 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 12.

202 Interview with Harikar, Duhok KRI, July 2016.

203 UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 20.

204 Interview with Personal Status Department, Amman Jordan, July 2016. See also section 3.1.1 of this report.

205 Interview with Lana, Irbid Jordan, July 2016.

206 Interview with IRC, Beirut Lebanon, June 2016.



to a family (whose priority is the new-born baby and not preserving this notification), it can help to ensure that the document is given in a plastic sealed envelope, which could also later be used to store other documents, or to photocopy or photograph important documents.<sup>207</sup>

#### 4.2.2 REFUGEES NOT REGISTERED WITH UNHCR

In refugee contexts, registration with UNHCR plays a vital role. As UNHCR explains: “registration of refugees with UNHCR, by providing a record of their status, helps protect refugees”.<sup>208</sup> UNHCR registration helps to preserve proof of refugees’ identity and links to their country of origin. For undocumented refugees who do not have a residence permit in their place of exile, the registration with UNHCR is often the only process through which their presence in the host State, links with their State of origin and very existence is recorded.<sup>209</sup> The UNHCR registration and verification processes offer the opportunity to check and record civil registration documents possessed by refugees as well as making scans or copies of these documents so that there is a record/paper trail, in case of loss of documents after displacement.<sup>210</sup> As such, UNHCR registration is an important source of proof of identity and nationality for refugees. A refugee who is registered with UNHCR is also easier to contact or to inform of the risks of statelessness and the steps they have to take to prevent this, or to provide information on civil registration procedures. A document that proves registration with UNHCR also often helps to facilitate freedom of movement. Moreover, without UNHCR registration, refugees can face difficulties accessing humanitarian assistance. This can mean, for instance, that they may have to pay for healthcare.<sup>211</sup> Unregistered families in Northern Lebanon, for example, may resort to homebirths because they cannot afford hospital care. This means that they do not necessarily receive a birth notification which is required in order to register a child’s birth, thus increasing the child’s risk of statelessness.<sup>212</sup>

Throughout the region, not all refugees from Syria have registered with UNHCR, although the number of unregistered refugees is not known.<sup>213</sup> Some refugees choose not to register with UNHCR<sup>214</sup> because they do not understand the benefit in such registration, they are unaware of the process, or because they are fearful of having their information shared with the country of origin.<sup>215</sup>

Another cause of non-registration is physical access to registration services, including transportation costs, constraints on free movement particularly where access to UNHCR registration centres requires crossing security checkpoints.<sup>216</sup> In North Lebanon, for example, there is only one registration centre – in Tripoli – which serves a wide area, in which checkpoints are commonplace.<sup>217</sup> In Egypt, initially, registration took place only in Cairo, and many refugees had to travel several hours to make themselves known to UNHCR. However, in response to this problem, UNHCR established mobile registration units in areas where large numbers of Syrian

207 Interview with Médecins sans Frontières (MSF), Irbid Jordan, July 2016.

208 UNHCR, ‘Registration’, available at: <http://www.unhcr.org/registration.html>.

209 Note that in Turkey, refugee registration is conducted by the State, rather than UNHCR. See above, section 2.2.

210 Interview with registration officer, Erbil KRI, July 2016.

211 Interview with International Medical Corps (IMC), Duhok KRI, July 2016.

212 Interview with Mokhtar, Baalback Lebanon, June 2016.

213 In Lebanon, for instance, estimates are reported to range from 200,000 to 400,000. D. Mitri, *Challenges of aid coordination in a complex crisis: An overview of funding policies and conditions regarding aid provision to Syrian refugees in Lebanon*, Civil Society Knowledge Center, Lebanon Support, 2014, available at: <http://www.alnap.org/resource/20094>.

214 See more generally on refugees’ resistance, in some cases, to identification, B. Manby, *Identification in the context of forced displacement*, *supra* n5, page 22.

215 Lebanon Humanitarian INGO Forum (LHIF), *Background Paper on Unregistered Syrian Refugees in Lebanon*, 2014, available at: [http://lhif.org/uploaded/News/d92fe3a1b1dd46f2a281254fa551bd09LHIF%20Background%20Paper%20on%20Unregistered%20Syrian%20Refugees%20\(FINAL\).pdf](http://lhif.org/uploaded/News/d92fe3a1b1dd46f2a281254fa551bd09LHIF%20Background%20Paper%20on%20Unregistered%20Syrian%20Refugees%20(FINAL).pdf)

216 See, NRC, *The challenges of birth registration in Lebanon for refugees from Syria*, *supra* n15.

217 Interview with NRC ICLA, Tripoli Lebanon, June 2016.

refugees were living.<sup>218</sup> In Jordan, all Syrian refugees who were not registered with UNHCR before the 14<sup>th</sup> of July 2014 and have left the camps will not be able to register with UNHCR unless they obtain a ‘bailout’ permit from a camp.<sup>219</sup> Since January 2015 Jordanian authorities have frozen the process of issuing ‘bailouts’.<sup>220</sup> Due to the tightening of registration/screening procedures for refugees (to avoid fraudulent access to humanitarian assistance), it has sometimes become difficult for persons without any documents to register as refugees because of their inability to prove that they are from Syria.<sup>221</sup> This is a general policy to avoid corruption but one consequence is the creation of a challenge for refugee families who do not have documents, who cannot prove that they are from Syria and who may thereby already be at heightened risk of statelessness – including *Maktoum* refugees (see below).<sup>222</sup>

### 4.2.3 MAKTOUM - THOSE WHO WERE NEVER REGISTERED IN SYRIA

*Maktoum* is a term used to describe the situation of individuals who had never been registered in Syria and for whom there is no official record of their existence.<sup>223</sup> They have never been formally documented; their names and the names of their families are not registered in the Syrian records, leaving them unable to obtain a national ID card. These circumstances, coupled with their subsequent displacement by the conflict, puts the *Maktoum* at significant risk of statelessness.

Many *Maktoum* belong to families in which several generations have gone unregistered. In some instances, the initial lack of registration was to avoid military service, in others it was to prevent members of the family from inheriting property. Some *Maktoum* have no documents, whereas others possess a *taaref* card which was obtained from their local *Mokhtar* in Syria. The wording on the back of this document is ambiguous as to whether they are Syrian nationals. This document served as basic proof of identity for *Maktoum* in their hometowns inside Syria. In exile, their status is more precarious as the *taaref* is not always accepted as proof of identity for the purposes of accessing e.g. civil registration procedures. So children of *Maktoum* who are born in exile may be left entirely without proof of identity.<sup>224</sup> Moreover, it is unclear whether this population is considered to be nationals by Syria under the operation of its law, and if so, whether this will continue in the future. There are no figures for the number of *Maktoum* from Syria among the refugee population in the region – nor was this population flagged previously in

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218 Boston University Law Clinic, *Protecting Syrian Refugees*, supra n81. To expand the number of registered Syrian refugees in Egypt, since 2013 UNHCR has established a “mobile registration process” in Cairo, Alexandria and Damietta, and has increased efforts to inform Syrians of the benefits of UNHCR registration. Due to security concerns, however, mobile registration has maintained a slow pace, and many of the Syrians that live scattered throughout Egypt’s urban centres remain unaware of UNHCR’s registration initiatives. For these and other reasons, UNHCR has only been able to register less than half of the estimated Syrians who have fled to Egypt.

219 Interview with ICLA, Amman Jordan, July 2016.

220 Information provided by ICLA Jordan.

221 UNHCR Lebanon states that when a person with no documentation seeks registration with UNHCR they go through a nationality verification procedure. This procedure started being implemented from July 2013, when there was a massive influx of refugees from Qusair, Syria, many of whom were undocumented. The verification is very thorough and can take around one hour per case to complete. In those cases where there was a doubt as to the person’s nationality, staff would give them the benefit of the doubt and register the case. Prior to the introduction of this procedure, there may have been cases that were unable to register under the presumption that those who are undocumented are ineligible for registration. However, those who were rejected before July 2013 approached UNHCR again (either at the Reception centres or through mobile missions) after it became known that UNHCR had introduced the new nationality verification procedure alongside their continuous outreach programmes and referral systems targeting potential unregistered Persons of Concern.

222 Interview with affected population, Tal Abbas Lebanon, 3 and 4 June 2016.

223 Note that the *Maktoum* referred to here are a distinct population from the stateless Kurdish *Maktoum* who are discussed later on in the report.

224 See further section 3.1.3

any literature dealing with cases of statelessness or the prevention of statelessness in Syria, so little is known about the issue in general. During this research, *Maktoum* Syrian refugees were identified in both Lebanon and Jordan.

Rami, a refugee in Lebanon, is *Maktoum* due to the situation of his father's grandfather. This ancestor's first wife only gave permission for him to take a second wife under the assurance that the marriage would not be registered – so that the children of the second wife would not inherit. Because of this decision, decades later, Rami and his siblings were also never registered in the Syrian records, did not have ID cards and were *Maktoum*.<sup>225</sup>

Rusiya, a refugee in Jordan, tried to get an ID at the age of 16 in Syria, but the government office which she approached could not find her records. She has no idea why – the rest of her family were documented Syrian nationals. She obtained a *taaref* from the *Mokhtar* in her local village while she attempted to sort out her situation, but fled three years later – before she got a response from the authorities as to her nationality status. She has since approached the Syrian embassy in Amman to continue her quest to obtain an ID, and the embassy has informed her that they are not responsible for these matters. Residing in a Palestinian camp in the outskirts of Irbid, at the time of the interview in July 2016, she remained without any recognition from the Syrian authorities that she is a Syrian national. In Jordan, she gave birth to a son, who was able to acquire Jordanian nationality through his Jordanian father.<sup>226</sup>

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225 Interview with Rami, Tripoli Lebanon, June 2016.

226 Interview with Rusiya, Irbid Jordan, July 2016.

# STATELESS REFUGEES FROM SYRIA

# 5

As the previous sections have shown, most refugees from Syria – and their children – are Syrian nationals who may need assistance in accessing and maintaining proof of their identity, links to Syria and nationality. However, some of the refugees from Syria were actually stateless, even before they became refugees: they are “not considered as a national by any state under the operation of its law”.<sup>227</sup> There are also some cases in which refugees have become stateless following their displacement as well as children born stateless in exile, including due to the intergenerational nature of statelessness among the populations concerned.

## 5.1 PROFILES OF STATELESS REFUGEES

There is no comprehensive data on how many refugees from Syria are stateless, either in the region as a whole or in the individual neighbouring countries. UNHCR Lebanon reports that approximately 0.2% of Syrian refugees registered with them in Lebanon have been identified as stateless, which translates into several thousand persons.<sup>228</sup> In the Domiz camp in KRI, which is the main camp for Syrian refugees, 5% were believed to be stateless *Maktoum* Kurds.<sup>229</sup> Given that stateless refugees are not always registered with UNHCR and those registered are not always identified as stateless but may be recorded as Syrian nationals,<sup>230</sup> there is a risk that many are not being identified as stateless in any data or research. The actual number of stateless refugees from Syria is therefore likely to be higher than these estimates. Unsurprisingly, the

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227 1954 Convention on the Status of Stateless Persons, *supra* n3.

228 Interview with UNHCR, Beirut Lebanon, May 2016.

229 UNHCR, Domiz camp Survey Data, 2013.

230 See further section 5.2.1.

main stateless groups that were identified among the displaced over the course of this research reflect the main pre-conflict stateless populations in Syria.

### 5.1.1 STATELESS KURDS (AJANIB AND MAKTOUM)

The stateless Kurds are a minority of Kurds in Syria who were denationalised in 1962 and their descendants.<sup>231</sup> As part of the Jazira census<sup>232</sup> that left them stateless, some Kurds were classified as *Ajanib* (rather than Syrian) and given a foreigners' residency. Another group, which later came to be known as the *Maktoum* Kurds, were not registered in the census at all and were also not recognised as Syrian nationals. There is no exact data as to how many stateless Kurds lived in Syria prior to the conflict, although the number was estimated to be around 300,000.<sup>233</sup> In 2011, Syria adopted Presidential Decree 49, offering the *Ajanib* Kurds the opportunity to naturalise.<sup>234</sup> It is not clear how many persons benefited from this decree<sup>235</sup> and the crisis and resultant displacement has made it difficult to map its impact on the number of stateless Kurds in Syria.<sup>236</sup> Furthermore, there are no clear figures to indicate how many have fled to other countries due to the current conflict.

Most stateless Kurds who have fled have gone to KRI due to territorial proximity and ethno-political affiliations. However, members of this group have also been displaced to other countries, for instance in the Bekaa region in Lebanon where one ITS is entirely populated by stateless Kurds.<sup>237</sup> The majority of the stateless Kurds interviewed possess either a *taaref* document or – if *Ajanib* Kurds – a *Bitaqa Ajnabi* or 'red card'. These are documents that are specific to those who are stateless or unregistered, distinct from documents possessed by Syrian nationals in general and thereby also from the documents usually encountered among the refugee population. If these different documents are not widely recognised, this may affect access to, for instance, civil registration procedures in the host country.

Due to the discrimination this community faced for decades whilst living in Syria, *Maktoum* Kurds are likely to be more impoverished than the average Syrian.<sup>238</sup> Access to education, for instance, was widely reported to be a problem for this community which is likely to have resulted in substantially lower education levels.<sup>239</sup> This could make them more vulnerable in a displacement context in terms of their legal knowledge and empowerment, affecting their ability to receive and understand information about their situation and how to access certain rights, including documentation and civil registration. Awareness of their socio-economic context may help humanitarian assistance organisations to better tailor their programming for this group.

Among the INGOs interviewed in Lebanon and KRI, there was general awareness of the potential presence of stateless Kurds among the refugees, but this knowledge was significantly lower among interviewees in other countries where this profile is encountered less often. INGOs in KRI

231 For more in depth information on this group see, Z. Albarazi, *The Stateless Syrians*, *supra* n41.

232 *Ibid.*

233 UNHCR, *Global Trends 2011, 2012*, available at: <http://www.unhcr.org/statistics/country/4fd6f87f9/unhcr-global-trends-2011.html>.

234 Z. Albarazi, *The Stateless Syrians*, *supra* n42. See also T. McGee, *Statelessness Displaced: Update on Syria's Stateless Kurds*, Institute on Statelessness and Inclusion Working Paper Series, 2016, available at: [http://www.institutesi.org/WP2016\\_02.pdf](http://www.institutesi.org/WP2016_02.pdf); and UNHCR, *Addressing Statelessness in the Middle East and North Africa*, *supra* n14, page 11.

235 UNHCR has estimated that 104,000 stateless persons had benefited from the Decree by mid 2013. See UNHCR, *Global Report 2012: Syrian Arab Republic*, 2013, available at: <http://www.unhcr.org/51b1d63cb.html>.

236 In the most recent UNHCR Global Trends report, published in June 2016, the estimate given for the number of stateless persons who remain in Syria is 160,000. UNHCR, *Global Trends 2015*, *supra* n40, Annex Table 7.

237 Approximately 30 families.

238 UNHCR, *Global Trends 2015*, *supra* n40.

239 For more information please see, Refugees International, *Buried Alive: Stateless Kurds in Syria*, *supra* n43.

appeared to have the strongest understanding of these groups, as they had also encountered stateless Kurdish refugees in Iraq a decade before the Syria crisis, in the aftermath of the 'Alqamishli riots'.<sup>240</sup> However, in depth knowledge of the issue, such as what the differences between *Ajanib* and *Maktoum* were and what documents they may possess, was lacking among many of the stakeholders interviewed.

### 5.1.2 PALESTINIAN REFUGEES FROM SYRIA (PRS)

In Syria, before the conflict there were over half a million Palestinians registered with UNRWA in Syria as Palestine refugees,<sup>241</sup> and many more Palestinians who lived in Syria but were not registered or eligible for registration with UNRWA. Palestinians often had unique documents, such as a specific ID for Palestine refugees and the Palestinian travel document – a document issued by Syria to Palestinians who habitually resided on the territory, in lieu of a national passport, but not denoting nationality. Due to the conflict many have now dispersed to neighbouring countries and beyond.

#### 5.1.2.1 General Population of PRS

Palestinians refugees have been displaced across the region (often several times due to various conflicts) since 1948. Their protracted displacement is a challenging issue for them. Nearly half a million stateless Palestinians are registered with UNRWA in Lebanon and 2.1 million in Jordan.<sup>242</sup> It is important to note that the majority of Palestine refugees residing in Jordan have been granted Jordanian nationality – but this does not apply to PRS who have fled from Syria, who have not been granted nationality in Jordan. As of 31 August 2016, there are also an estimated 30,000 PRS registered with UNRWA in Lebanon who have fled from Syria, the vast majority from Damascus.<sup>243</sup> Approximately 15,500 PRS are estimated to reside in Jordan.<sup>244</sup> In these countries where UNRWA operates, eligibility for UNRWA services – like registration with UNHCR for other refugees – plays a central role in the protection of PRS.<sup>245</sup>

In neighbouring countries where UNRWA does not operate,<sup>246</sup> there has historically been a far smaller PRS presence and this is mirrored in the current displacement context. Estimates show that although 10,000 PRS have entered Turkey, only 3,500 are currently residing in the country (the majority having moved onwards, mainly to Europe),<sup>247</sup> whilst the figures in KRI and Egypt are likely to be lower still. In Turkey, PRS are granted the same registration and protection via the Temporary Protection Identification Card as Syrian nationals.<sup>248</sup> Nevertheless, it has been

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240 For more information please see J. Tejel. 'The Qamishli revolt, 2004: the marker of a new era for Kurds in Syria', in *Syria's Kurds: History, Politics and Society*, Routledge, 2009, pages 108–132.

241 UNRWA, 'Where We Work: Syria', available at: <http://www.unrwa.org/where-we-work/syria>; UNRWA's consolidated eligibility and registration instructions define Palestine refugees as "persons whose normal place of residence was Palestine during the period of 1st June 1946 to 15th May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. (...) descendants of Palestine refugee males, including legally adopted children, are [also] eligible for registration"; UNRWA, *Consolidated Eligibility and Registration Instructions (CERI)*, 2009, available at: <http://www.unrwa.org/sites/default/files/2010011995652.pdf>, page 3.

242 UNRWA, 'Where we work: Syria', *supra* n241.

243 UNHCR, *Refugees from Syria: Lebanon*, 2015, available at: <https://data.unhcr.org/syrianrefugees/download.php?id=8649>.

244 Middle East Monitor, *But Where are they now?*, 2016, available at: <https://www.facebook.com/middleeastmonitor/photos/a.175445796925.124046.152879306925/10154384398221926/?type=3&theater>.

245 See further the section on non-ID Palestinians below.

246 Which in this research includes Egypt, KRI and Turkey.

247 A. Clementi, 'No way out: the second Nakba of Palestinian refugees from Syria escaping to Turkey', *Al-Majdal quarterly magazine of BADIL Resource Center for Palestinian Residency and Refugee Rights*, No 57, 2015, available at: <http://www.badil.org/en/publication/periodicals/al-majdal/itemlist/category/252-al-majdal-57.html>, page 35.

248 *Ibid.*

reported that in practice, the Turkish authorities sometimes do not accept Palestinian documents – such as Palestinian travel documents – which can result in irregular border crossing even for those with a valid Palestinian travel document.<sup>249</sup> There have also been reports that the Turkish government refuses to issue Temporary Protection cards to some who hold a Syrian-issued Palestinian Travel Document.<sup>250</sup>

### 5.1.2.2 Children of PRS

New-born PRS may fall through the gaps of registration and not be recorded anywhere, irrespective of whether the birth takes place within or outside UNRWA's areas of operation. In order to add a child to their UNRWA records, a PRS must go through the office in Syria where the parents were initially recorded. This can be a complicated procedure and is often impossible when a family is displaced in a neighbouring country.<sup>251</sup> However, as with all other Palestine Refugees, in exceptional circumstances UNRWA continues to record and provide services until the registration of the Refugee can be verified. The status of these children who have not been added to the family records may become increasingly vulnerable and they may remain unrecorded for many years,<sup>252</sup> until they are able to return to Damascus. This lack of registration may mean it will be more difficult for them to obtain other documents in the future.<sup>253</sup>

### 5.1.2.3 Non-ID Palestinians

A non-ID Palestinian is the term commonly used to refer to a Palestinian who is not registered with UNRWA, UNHCR or the authorities of the country in which they reside.<sup>254</sup> Although there are no figures, there are known cases of non-ID Palestinians from Syria who have been displaced across the region. The operational definition of a Palestine Refugee that forms the basis for UNRWA registration is any person whose “normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict”.<sup>255</sup> While registration with UNRWA is a prerequisite for an entitlement to services, in exceptional cases, UNRWA has adopted a flexible approach to providing services until registration can be verified. The issue of non-registration with UNRWA is still a pertinent issue because Palestinians living in Syria previously enjoyed a wide range of rights and could often access basic services through UNRWA, regardless of their legal status or whether they were UNRWA-registered. Many had not therefore taken steps to register in the past. UNRWA accepts new registrations and for the duration of the conflict has also recorded individuals with neighbouring UNRWA fields of operation to ensure as far as possible that eligible persons receive services, even if not previously registered. Some refugees may nevertheless find it challenging to prove eligibility. At the same time, Palestine refugees who receive UNRWA assistance have been specifically excluded from the international refugee law regime of the 1951 Refugee Convention and its 1967 Protocol, which form important cornerstones for UNHCR's refugee mandate.<sup>256</sup> This

249 Amnesty International, *Turkey: Struggling to Survive: Refugees from Syria in Turkey*, 2014, available at: <https://www.amnesty.org/en/documents/EUR44/017/2014/en>, page 15.

250 See E. C. Dağlıoğlu, 'Palestinian refugees from Syria face visa obstacle', 3 June 2015, available at: <http://www.agos.com.tr/en/article/10791/palestinian-refugees-from-syria-face-visa-obstacle> and Action Group for Palestinians of Syria and Palestinian Return Centre, *Palestinians of Syria. The Bleeding Wound*, 2015, available at: [http://actionpal.org.uk/en/reports/special/the\\_bleeding\\_wound\\_semi\\_annual\\_report\\_2\\_2014.pdf](http://actionpal.org.uk/en/reports/special/the_bleeding_wound_semi_annual_report_2_2014.pdf), page 77.

251 Interview with UNRWA, Beirut Lebanon, May 2016.

252 UNHCR, *The Situation of Palestinian Refugees in Lebanon*, 2016, available at: <http://www.refworld.org/pdfid/56cc95484.pdf>.

253 Emergency registration procedures allow for non-State endorsed documents to be accepted on an exceptional basis. There are, however, significant problems with physical access to registration points in Syria.

254 For more information on the definition and on the situation of non-ID Palestinians in Lebanon, see DRC, *Survey Report on the Situation of Non-ID Palestinian Refugees - Lebanon*, 2007, available at: <http://www.refworld.org/docid/47fdad80.html>.

255 UNRWA, *Consolidated Eligibility and Registration Instructions (CERI)*, supra n241.

256 UNHCR, *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, 2009, available at: <http://www.refworld.org/docid/4add77d42.html>.

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means that PRSs are not assisted by UNHCR as long as they receive assistance from UNRWA. However, in Jordan and Lebanon – both UNRWA countries of operation – stakeholders interviewed reported that some PRSs can fall through the cracks in the UN system – unable to register with either UNRWA or UNHCR and so unable to obtain protection from either agency.<sup>257</sup> Thus, following their further displacement from Syria where they were already living in a situation of exile, some Palestinians who were never registered – either because they could not or did not want to – have become particularly vulnerable.<sup>258</sup> They may not be able to access humanitarian assistance offered by UNHCR to registered refugees, and although UNRWA often provides services to all Palestinians, this is not guaranteed for those not registered with UNRWA. Moreover, since their precarious legal status may make them fearful of approaching any authorities, non-ID PRSs can be forced to live under the radar with no access to civil registration documents or pathways to regularise their status.<sup>259</sup>

In a Palestinian camp in Irbid, Jordan, Lamia – a non-ID Palestinian – witnessed her neighbour who tried to obtain employment in the capital, being caught and deported back to the Syrian border because she was Palestinian.<sup>260</sup> This scared Lamia and meant that she would not approach any organisation or government authority. Lamia's husband is wanted by the government in Syria (he was seen to be affiliated to the opposition forces) and therefore she does not prioritise access to the civil registration procedures. Her main concern is ensuring her family can stay in Jordan.<sup>261</sup>

### 5.1.3 ISOLATED CASES OF STATELESS REFUGEES

Other profiles among the displaced stateless refugees also exist – although the numbers are unknown and likely to be relatively low. These include:

- Those stateless as a consequence of the gender discrimination in Syrian nationality law.<sup>262</sup> There are no figures or estimates of the number of such persons in Syria, but if the child was unable to obtain nationality from their foreign, unknown or stateless father, they would be left stateless.
- The Dom - a traditionally nomadic community found across much of the MENA region which is believed to share its roots with the Roma of Europe.<sup>263</sup> A minority of Dom who were originally from the Syrian territory – but who often travelled across the borders between Syria and the neighbouring countries – never accessed Syrian nationality or registration.
- Syrian refugees whose application for the renewal of documents has been rejected by the Syrian authorities with the justification that they are no longer citizens. Those who have reported this problem believe it was because they were members of or supported opposition groups. Syrian nationality law gives the State broad powers to deprive individuals of nationality - for example, if someone has been outside the country for more than 3 years.<sup>264</sup> Beyond

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257 Information provided by NRC ICLA Jordan and UNRWA Lebanon.

258 Interview with UNRWA, Beirut Lebanon, May 2016.

259 For more information on the two mandates, see N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, Vol. 26(4), 2016 available at <http://ijrl.oxfordjournals.org/content/26/4/581.abstract>.

260 It is important to note that this practice contrary to the principle of non-refoulement that this derives not just from the refugee convention but also from international human rights law (CAT & ICCPR)

261 Interview with Lamia, Irbid Jordan, July 2016.

262 As discussed above, under Article 3 of Syrian Nationality Law nationality is based on paternal *jus sanguinis*.

263 See for more on this community A. Williams, 'The Gypsies of Syria – A DRC update', *KURI-DRJournal*, Vol. 1, 2001, available at: <http://www.domresearchcenter.com/journal/14/syria4.html>; C. Hilleary, 'The Dom: Syria's Invisible Refugees', Voice of America, 22 March 2013, available at: <http://m.voanews.com/a/1626658.html>.

264 Chapter Seven, Syrian Nationality Law.



anecdotal evidence of individual refugees experiencing difficulties at the point of re-issuance of Syrian documents, it is unclear to what extent these provisions for loss or deprivation of nationality are being invoked in practice.

- Political dissidents who were seen to be opposed to the Baath regime in the 60s and 70s and arbitrarily deprived of their nationality. An estimated 27,000 persons were denationalised and may be stateless.<sup>265</sup>

The fieldwork undertaken within this project did not focus on these profiles or the specific challenges they face, and this is an area in which further research is needed.

## 5.2 CHALLENGES FACED BY STATELESS REFUGEES

This research confirmed that statelessness can affect a refugee's ability to enjoy protection, including with regard to the exercise of certain rights. Statelessness may also have an impact on the availability of durable solutions for refugees,<sup>266</sup> although it is evidently difficult to establish the extent of this problem at present in the Syria displacement context. The following sections highlight the particular challenges stateless refugees may face, both now and potentially in the future.

### 5.2.1 IDENTIFICATION OF STATELESS REFUGEES

To provide effective protection, it is important to understand fully the status of the individual or family concerned. If they do not hold a nationality, this may lead to specific vulnerabilities, such as particular obstacles to accessing documentation. However, there is a substantial knowledge gap when it comes to statelessness issues among stakeholders that work with refugees. Lack of awareness and/or understanding of the stateless profiles that may be found among the displaced appeared to be a significant obstacle to identification.<sup>267</sup> Even if the problem is identified, there are few mechanisms through which this information may be recorded and eventually addressed. For example, none of the intake forms among the INGOs interviewed provide for the possibility of recording a refugee as a stateless person.<sup>268</sup> UNHCR policy in KRI has been to register stateless refugees as Syrian nationals, and if they are *Ajanib* or *Maktoum* this will be recorded in the case notes.<sup>269</sup> When statelessness is not identified, the problems and challenges stateless refugees face may be misunderstood – which limits pathways to providing effective protection and obstructs timely interventions that may help with the resolution of statelessness in the long term.

### 5.2.2 PROTECTION ISSUES

Given the precarious situation of all persons displaced by the Syrian crisis, many of the challenges that stateless refugees experience are similar to those which confront the larger refugee population, especially undocumented refugees and those who are not registered. Nevertheless, there are additional concerns facing stateless refugees which are specific and linked to their statelessness. The most prominent of these challenges identified through this research were the following.

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265 Arab Commission for Human Rights, 'Stateless in Syria', 2004, available at <http://hem.bredband.net/dccls2/r1.htm>.

266 For more discussion on some problems facing stateless refugees see Institute on Statelessness and Inclusion, *The World's Stateless*, *supra* n38.

267 Interview with Personal Status Department, Erbil KRI, July 2016.

268 Interview with NRC, Amman Jordan, July 2016.

269 Interview with UNHCR, Erbil KRI, July 2016.

### 5.2.2.1 Inability to access documentation

Civil registration procedures in all countries require certain documents in order to register events such as births or marriages.<sup>270</sup> Without documentation of identity, or with documents specifically for stateless persons that are not understood or not recognised by many authorities, stateless refugees may be unable to access other documents. The stateless Kurds interviewed in Lebanon, for example, had all registered with UNHCR and obtained a registration certificate, however, none had made any attempt to obtain any other civil document (such as a marriage certificate) inside Lebanon as they did not believe they could obtain them.<sup>271</sup>

Khalid, a *Maktoum* Kurd now living in an ITS in Lebanon, had not attempted to register the birth of his child as he believed that the family did not have the required documents needed to access the civil registration system. He had been able to obtain the birth notification from the health authority as they are registered with UNHCR and therefore the mother was able to give birth in a public hospital. However, he had not tried to take the next steps in the registration process, as some of his neighbours in the same position as him had failed to register their children. He possessed a *taaref* document but had heard that this was not accepted by the Lebanese authorities.<sup>272</sup> His child was born in 2014, so at the time he was interviewed the one-year deadline for birth registration had long passed, making it even more difficult for Khalid to register the child's birth.<sup>273</sup>

### 5.2.2.2 Illegal entry

The majority of stateless refugees interviewed for this research had entered the host country irregularly. The research did not attempt to establish whether the frequency of illegal entry was higher among stateless refugees than among other refugees – but the stateless refugees who were interviewed indicated that they believed that they could not enter countries through formal channels and so felt that there was no other way to flee Syria. When an individual has entered the country illegally, it can mean that there are difficulties returning legally to Syria or obtaining a legal stay in the host country.<sup>274</sup> PRS face particular challenges in entering all host countries.<sup>275</sup> Jordan, for instance, started denying entry to Palestinians fleeing from Syria early on in the conflict.<sup>276</sup> Among those who have entered Jordan, irregularly or not, many have been detained and deported back to Syria or left at the borders and this has resulted in many PRS going into hiding, afraid to approach the authorities because they may be detained and/or deported.<sup>277</sup> This also means they may not attempt to access civil registration procedures.

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270 See section 3.1.1 of this report.

271 It is not clear from this research whether the stateless were more likely not to obtain documents in Lebanon, but they felt that their legal status prevented them from doing so.

272 Interview with Khalid, Tripoli Lebanon, June 2016.

273 See further section 3.1.1 of this report.

274 Note that under international refugee law, the penalisation of refugees for illegal entry is prohibited. See article 31 of the 1951 Convention relating to the Status of Refugees, available at: <http://www.unhcr.org/3b66c2aa10>.

275 For example, to enter Lebanon due to restrictions on their entrance. See European Commission, *Lebanon: Syria Crisis*, 2016, available at: [http://ec.europa.eu/echo/files/aid/countries/factsheets/lebanon\\_syrian\\_crisis\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/lebanon_syrian_crisis_en.pdf).

276 HRW, 'Jordan: Palestinians Escaping Syria Turned Away', 7 August 2014, available at: <https://www.hrw.org/news/2014/08/07/jordan-palestinians-escaping-syria-turned-away>.

277 For more information see HRW, *Not Welcome: Jordan's Treatment of Palestinians Escaping Syria*, 2014 available at <https://www.hrw.org/report/2014/08/07/not-welcome/jordans-treatment-palestinians-escaping-syria>.

### 5.2.2.3 Return to Syria

For various reasons, stateless refugees are under increased pressure to return to Syria. In KRI, many felt that obtaining identity documents fraudulently in Syria or pretending that a child was born in Syria, was an effective method to regularise their situation. Many *Ajanib* Kurds have also reportedly returned to Syria in order to attempt to benefit from the 2011 naturalisation decree.<sup>278</sup> This decree offered nationality to those individuals who were registered as *Ajanib*, but applications for naturalisation, required them to be physically present in their hometown together with all members of their family who wish to acquire nationality.<sup>279</sup> Many problems arose because of this. For instance, when the authorities of KRI became aware that an individual or family had returned to Syria, they sometimes took away their residence permit, and UNHCR might remove them from the register of refugees.<sup>280</sup> Since March 2016, the KRI authorities have put in place an amnesty to regularise registration and documentation of those who temporarily left for Syria and have since returned to the KRI. There is a process where those temporarily returning to Syria for various reasons are allowed to retain their refugee certificates and residency cards, if permission is granted. However, this does not cover all those who have temporarily left for various reasons.<sup>281</sup>

### 5.2.2.4 Restricted movement

In all the host countries, there are many security checkpoints on roads at which people are asked to present identity documents and proof of legal stay. The situation of checkpoints differs between countries and even from region to region. In Aarsal in Eastern Lebanon, for example, there are areas that it is not possible to leave without identification. In general, freedom of movement within the host countries is heavily regulated. When a stateless refugee has no document this may mean they are unable to travel freely in the host country, which has a significant impact on their ability to find employment and access services.<sup>282</sup>

### 5.2.2.5 Increased fear and uncertainty

The stateless refugees who were interviewed were well aware of their precarious legal status and what it had meant for them in Syria. They often also expressed concern about what this status would mean for them in their place of displacement. They did not know what implications statelessness and/or the lack of documentation would have for themselves, their children and their families in the future.<sup>283</sup>

For Yacoub, living in Sulimaniya KRI, having a family with Syrian nationality who could live as “proper Syrians”, even in a foreign country, would be a dream come true. Possessing only a *Bitaqi Ajnabi* complicated life for him and his family. He was very happy when his eldest daughter married a Syrian citizen so that she too could become Syrian and would not face the same uncertain future that the rest of his children face, and wanted his other daughters to do the same.<sup>284</sup> The nationality law in Syria, like that of other countries in the region, allows a man to transfer his nationality to his spouse, but does not allow a woman to transfer nationality to her spouse.<sup>285</sup>

278 For more information on this decree see Z. Albarazi, *The Stateless Syrians*, *supra* n41.

279 Interview with Qandil, Erbil KRI, July 2016.

280 Interview with Faliya, Dohuk KRI, July 2016; interview with Harikar, Dohuk KRI, July 2016.

281 Information provided by UNHCR KRI.

282 Interview with Mokhtar, Baalbak Lebanon, July 2016.

283 Interview with Intersos, Erbil KRI, July 2016.

284 Interview with Yacoub, Sulimaniya KRI, July 2016.

285 See section 2.1.1 of this report.

### 5.2.3 DURABLE SOLUTIONS

Concerns were also raised by those interviewed for this research about the long-term situation of stateless refugees. There are three widely recognised durable solutions for refugees – voluntary repatriation, local integration and resettlement<sup>286</sup> – and there were a number of signs of potential problems in relation to these solutions, as outlined below.

#### 5.2.3.1 Voluntary repatriation

In Lebanon, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) Response prioritised interventions “to facilitate, as a requirement for their future repatriation, access of persons displaced from Syria to civil documentation as per Lebanese laws and regulations”,<sup>287</sup> highlighting the existing recognition of the importance and urgency of documentation. There may be obstacles to repatriation, where the country of origin denies that the individual belongs to that State and/or the returnee is prevented from crossing the border to re-enter.<sup>288</sup> In the future refugees from Syria who are stateless or who cannot prove their nationality may find that they are refused permission to cross the border and re-enter Syria. In Jordan, interviews with the affected population disclosed examples of families trying to cross the border to return to Syria who have been denied exit by the Jordanian authorities on account of the absence of legal identity documents. Authorities contended in these cases that when a child does not possess any documents, they cannot be certain that the child belongs to the family and therefore restricted exit to avoid situations of human trafficking.<sup>289</sup>

#### 5.2.3.2 Resettlement to a third country

Resettlement is a durable solution that is of particular importance to refugees who have urgent protection needs.<sup>290</sup> It has also been an important durable solution for *stateless* refugees; UNHCR reported that in the period 2009 – 2014, 20% of all refugees resettled by UNHCR were stateless as statelessness is considered a legal vulnerability that may qualify a refugee for resettlement.<sup>291</sup> However there is a risk that stateless refugees will face obstacles in accessing – or indeed be denied the opportunity for – resettlement. Stateless persons may be disadvantaged in this respect, due to their (lack of) legal status. For example, the Syrian Vulnerable Persons Resettlement scheme of the UK, which regulates the British resettlement of Syrian refugees, exclusively accommodates *Syrian nationals*, and therefore stateless persons do not fall within its scope. This is reportedly affecting the resettlement prospects of stateless Kurds from KRI.<sup>292</sup>

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286 UNHCR, *Refugee Protection and Mixed Migration: The 10-point plan*, 2010, Chapter 7 – Solutions for Refugees, available at: <http://www.unhcr.org/50a4c17f9.pdf>.

287 OCHA, *Lebanon Crisis Response Plan 2015-2016*, *supra* n11.

288 Such problems have come to light in other displacement contexts, for instance in respect of a small sub-set of refugees who fled Liberia during the conflict and lived in exile for decades: when now trying to return, they are faced with questions over their nationality. See on this example and more broadly, B. Manby, *Identification in the context of forced displacement*, *supra* n5, pages 10-11.

289 Interview with Lama, Irbid Jordan, July 2016.

290 Resettlement is described as “the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against *refoulement* and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country.” UNHCR, *Resettlement Handbook*, 2011, available at: <http://www.refworld.org/docid/4ecb973c2.html> page 3.

291 UNHCR, *Ending statelessness within 10 years. A Special Report*, 2014, available at: <http://www.refworld.org/docid/572062254.html> page 4.

292 For more information on the resettlement challenges see T. McGee, *Statelessness Displaced*, *supra* n234.

In Jordan, Sami lives in a house with several family members, including his parents and his brother's family. His youngest child was born in Jordan, but they had not registered his birth as the process was too complicated. Sami's other brother has been resettled to Canada and he wanted to join him as he saw no future for himself or his children in Jordan. He approached the Canadian embassy directly and was offered the opportunity to apply for resettlement. He spoke of how the process was smooth until they asked for his son's birth certificate. He currently cannot prove that his son is their child, a requirement for him to accompany the family to Canada. He is now trying desperately to register his son's birth, but the procedure is particularly complex as the deadline for registration within one year has passed.<sup>293</sup>

### 5.2.3.3 Local integration

The aim of interventions to mitigate statelessness in the context of displacement from Syria is to ensure that all refugees retain or gain access to Syrian nationality. Nevertheless, "in cases where resettlement is not an option, finding a home in the country of asylum and integrating into the local community could offer a durable solution to their plight and the chance to build a new life".<sup>294</sup> UNHCR indicates that local integration can therefore be an appropriate solution "in some countries and/or for some groups or refugees [including potentially for] refugees born on the territory of the host country who may otherwise be stateless, refugees who do not have the possibility to repatriate in the foreseeable future, and refugees who have established close links to the host country".<sup>295</sup> However, in the countries hosting refugees from Syria, prospects for local integration – including the eventual naturalisation of (stateless) refugees – are likely to be limited, especially because these countries host such a substantial number of refugees from Syria, often comprising a large proportion of their population. The issue of naturalisation is generally sensitive in this region,<sup>296</sup> and the situation of long-standing/historic *in situ* stateless populations which are also present in the host countries is generally characterised by marginalisation rather than integration.<sup>297</sup> In such an environment, local integration is likely to be a significant challenge and is unlikely to be offered as a durable solution for stateless refugees from Syria.

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293 Interview with Sami, Irbid Jordan, July 2016.

294 UNHCR, 'Solutions: Local Integration', available at: <http://www.unhcr.org/local-integration-49c3646c101.html>.

295 UNHCR, *Refugee Protection and Mixed Migration: The 10-point plan*, supra n286, chapter 7 – Solutions for Refugees, pages 193-194.

296 For instance, Lebanon has a delicate confessional balance which it feels that any naturalisation may threaten. For more information see L. van Waas, *Nationality, Statelessness and the Numbers Game in Lebanon*, Tilburg Law School, 2014, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2550734](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2550734).

297 For more information on the human rights situation of the stateless in Lebanon please see, Frontiers Ruwad, *Invisible Citizens, A Legal Study on Statelessness in Lebanon*, 2009, available at [http://www.refugeelaidinformation.org/sites/srlan/files/fileuploads/Invisible\\_Citizens\\_-\\_A\\_Legal\\_Study\\_on\\_Statelessness\\_in\\_Lebanon\\_Nov\\_2009.pdf](http://www.refugeelaidinformation.org/sites/srlan/files/fileuploads/Invisible_Citizens_-_A_Legal_Study_on_Statelessness_in_Lebanon_Nov_2009.pdf); and Legal Agenda, *The Statelessness in Lebanon: Between Shame and Shadows*, 2016, available at: <http://english.legal-agenda.com/article.php?id=741&lang=en>. For more information on the situation of stateless persons in Jordan, see HRW, *Stateless Again: Palestinian Origin Jordanians Deprived of their Nationality*, 2010, available at: <https://www.hrw.org/sites/default/files/reports/jordan0210webwcover.pdf>. For a discussion of the situation of stateless persons in Egypt, see See, L. Kingston and K. McBride, 'Legal Invisibility and the Revolution: Statelessness in Egypt', *Human Rights Review*, 2013.

# CONCLUSION



The overwhelming majority of persons displaced by the conflict in Syria hold Syrian nationality and face no immediate risk of statelessness. Moreover, children born in exile inherit Syrian nationality automatically, by operation of the law, if they can establish that their father is a Syrian citizen. Nevertheless, the research undertaken within this project confirms the need to pay greater attention to helping Syrian refugees protect their right to Syrian nationality, especially in the face of problems relating to access to civil registration and to documentation proving nationality. It also draws further attention to the fact that a sub-set of refugees displaced by the conflict in Syria are stateless and shows that this poses an additional challenge to ensuring that their protection needs are met. These stateless refugees may also face particular problems in accessing durable solutions.

Organisations engaged in the refugee response in the region would benefit from a better understanding of the interaction between displacement from Syria and (a risk of) statelessness. This would strengthen their ability to tailor programming or advocacy activities to mitigate the risk of statelessness among particularly vulnerable populations and to respond to the protection needs of stateless refugees from Syria. In other words, with improved access to information about the manner in which statelessness intersects with their work, refugee practitioners will be better able to meet the needs of their beneficiaries. This concluding chapter of the research report therefore provides a short summary of the principle findings of the research and offers suggestions as to how to translate these findings into practical tools for practitioners, drawing heavily on extensive consultations with persons engaged in the regional refugee response. The analysis is sub-divided by the three main target groups which were the focus of this research: 1) the general refugee population; 2) refugees at heightened risk of statelessness; and 3) stateless refugee.

## 6.1 THE GENERAL REFUGEE POPULATION

In a situation of forced displacement, proof of identity and of connection to the country of nationality is critical. Without this, a refugee who spends a long period in a situation of displacement or a child born in exile may face problems with the recognition of their nationality in the future. Thus, while most refugees from Syria do not face a significant risk of statelessness, this research confirmed the importance of continuing and strengthening activities aimed at facilitating access to documentation and civil registration for the refugee population as a whole. Such efforts help to protect refugees' right to and proof of Syrian nationality.

There are a number of specificities of the Syria displacement context that it would be useful for refugee response organisations to be aware of. Firstly, due to the conflict, the issuance of identity documents and civil registration has been disrupted and people's existing documents may have been lost or destroyed, while the Syrian registries are not all digitised and the conflict may also have caused the destruction of registry records. Secondly, in areas that are not controlled by the government of Syria, non-State actors have started to perform civil registration and issue civil documentation, but the legal standing of these documents is problematic. Thirdly, numerous factors are obstructing access to civil registration for refugees in the host countries, including the need to present documents that refugees may not hold – for instance because these have been destroyed or because they hold papers which were issued by a non-State actor and these are not recognised by the authorities in the host country. Refugees who lack a residence permit or have not registered their stay in the host country may also face difficulties – legally or practically – in accessing civil registration procedures. Meanwhile, differences between the procedures in the host State and the Syrian processes and practices with which the refugees are familiar sometimes cause confusion for both the refugee population and the authorities in the host State, who are sometimes unaware that rules or practicalities can be “lost in translation”. The centrality of official marriage registration to the process of registering births in the host countries, where it effectively acts as a precondition for birth registration, is an example of how differences in traditions may generate challenges for the refugee population – in Syria, couples often delayed formalising marriages and official marriage registration documentation had less relevance.

There are also problems with physical access to civil registration systems for some refugees in the host countries. The complexity and cost of “late” registration (i.e. after the deadline set by law) means that refugees who initially faced difficulties accessing registration or who wait too long to start the procedure will face additional challenges in registering. Finally, it was found that refugees may adopt certain coping strategies to circumvent problems of obtaining documentation, including returning to Syria to try to access procedures there or falsifying documents. Such practices may expose refugees to further risk and result in fake documents which are not accepted by the authorities.

The longer the conflict in Syria endures and refugees remain in exile, the more essential it becomes to help them to maintain proof of their connection to Syria and of their Syrian nationality. Experience from other refugee situations around the world demonstrates how prolonged displacement can leave some refugees struggling to demonstrate their links to their country of origin and even lead to cases in which their nationality is not or no longer recognised. There is already widespread recognition of the need to devote attention to issues of civil registration and documentation within the Syria regional refugee response. To strengthen the capacity of organisations operating in the host countries to make effective interventions, it is important to provide information about the challenges which are specific to the Syria displacement context, as summarised above. Since these issues can potentially affect any refugee, the scale of displacement from Syria creates a significant challenge. There are, quite simply, so many refugees, who already have so many humanitarian needs, in so many locations. This means that generalised activities to encourage and assist refugees to preserve evidence of their and their family members' Syrian nationality – ultimately contributing to preventing cases of statelessness throughout the refugee population – cannot be the remit of specialists only. Tools

which aim to strengthen efforts to protect Syrian refugees' right to Syrian nationality will need to make key information accessible, including in terms of: language (non-technical and with an Arabic version), functionality (short texts, supporting graphics, quick and easy to navigate) and availability (accessible online and in a mobile-friendly format). As different actors continue to implement a range of activities to facilitate, for instance, timely birth registration, it is also important to generate efficiency savings by sharing information about what works well (and what does not), so good-practice based tools will also be valuable.

## 6.2 PERSONS AT HEIGHTENED RISK OF STATELESSNESS

Within any given (refugee) population, some people can be identified as facing a heightened risk of statelessness due to their circumstances and the social, political or legal context. Ensuring that they are not left stateless can require tailored prevention activities. Six so-called 'heightened-risk' profiles were identified and explored within this research, as set out in chapter 4:

1. Children whose birth in the host State is not registered by the statutory deadline
2. Children born within female-headed households
3. Children born within child marriages
4. Undocumented refugees
5. Refugees not registered with UNHCR
6. *Maktoum* refugees

The situation of these refugees was found to demand special attention due to a combination of the law and policy context in Syria and that of the host countries. A central problem is that gender discrimination in the Syrian nationality law means that children can only acquire nationality through paternal descent (i.e. through the father, but not mother). Although the law provides for nationality to be conferred when the Syrian father is absent, missing or deceased, if there is no legal proof that he was the father, the child may face difficulties being recognised as a national. For this reason, extra care must be taken to ensure that children can establish their link to their father. Birth registration is particularly important in this context, but may be a challenge in the case of female-headed households as civil registration officials may demand the presence of or to see documentation from the father in order to process the registration. It can also be more difficult to register the birth of a child in the absence of a marriage certificate and the marriage certificate may be needed to prove who a child's *legal* father is. Lack of marriage certificates is therefore a particular – and persistent – problem for the refugee population generally and a particularly intractable one in the context of child marriages where marriage registration itself may not be possible (as the marriage is illegal). While the category of “children whose birth in the host State is not registered by the statutory deadline” is a much broader one and may affect a cross-section of refugees for a variety of underlying reasons, the result of this lack of registration is a situation similar to the other two groups: it becomes much harder to obtain proof of birth and of that vital connection to a Syrian father. The complexity of late registration procedures in the host countries is such that specialist assistance is often required for a refugee family to complete the process successfully.

The other three refugee profiles discussed also face a heightened risk of statelessness due to potential difficulties in proving their link with Syria and their Syrian nationality. Due to interrupted access to documents, or the loss of documents due to the conflict/during flight, some refugees from Syria are undocumented when they leave the country. Refugees who are not registered with UNHCR miss out on the record that this creates of their displacement from Syria and means that the paper trail which UNHCR helps to create of a refugees' identity and origins (including by copying or scanning vital documents) is not generated. Individuals referred to as *Maktoum* were never registered in the civil registry in Syria and so have no official proof of their existence. They may struggle to obtain any identity documents from the Syrian authorities and are likely to face the greatest difficulties in being recognised as Syrian nationals.

In all of these cases, the challenges relate primarily to civil registration and documentation procedures. There is often a cyclical nature to the problem: lack of one document obstructing



access to another. A *Maktoum* refugee is likely to be undocumented; a person who is undocumented may find it more difficult to register as a refugee; an undocumented or unregistered refugee can struggle to register the birth of a child, as may a female-headed refugee family, which can cause a delay beyond the statutory deadline and make the registration more complex. As such, some refugees face multiple issues and would fall into several of the risk profiles outlined.

In order to strengthen the capacity of organisations in the region to provide tailored and specialised help where needed (i.e. to help mitigate the risk of statelessness where this may be most significant) it is therefore important not only to flag particular profiles of refugees whose situation may require further attention, but to clarify the underlying reasons for this vulnerability. Practitioners will then be better equipped to recognise the foundational issue in a complex case and can also identify refugees beyond these specific categories who face a heightened risk of statelessness due to the operation of the same law and policy framework. As such, it is of interest to provide a straightforward overview of the risk profiles that practitioners should be alert to. This overview needs to be comprehensible to a non-specialist audience, while also offering enough technical detail to explain why a heightened risk of statelessness may arise in these cases. Moreover, it is critical to recognise that in many such cases, a refugee will require specialist assistance to navigate, for instance, the civil registration process. Tools which support the establishment and use of referral mechanisms for complex cases would therefore also be valuable.

### 6.3 STATELESS REFUGEES

Some refugees are already stateless. Their lack of nationality may have been a cause of their displacement or, in a situation of generalised violence or conflict, it may simply be that the existing stateless population are displaced as well as others (perhaps even more readily due to their vulnerability and lack of alternatives in country). In the context of the Syria regional refugee response, it is vital to recognise that there was already a stateless population in Syria prior to the conflict. This population included stateless Kurds (two categories, *Ajanib* Kurds and *Maktoum* Kurds), Palestinians (PRS) and various isolated profiles. Some refugees may also have become stateless while displaced due to gender discrimination in the Syrian nationality law and potentially the deprivation of Syrian nationality from refugees.

This study found that refugees who are stateless are not always identified as such. Even when their statelessness is identified, it is not always recorded. At the same time, the research showed that the situation of these refugees is made more precarious by their statelessness. Stateless refugees face heightened protection risks, which include inability to access civil registration, restricted movement and pressure to return to Syria. Some PRS appear to be unable to register for assistance with either UNRWA or UNHCR. There were also signs that statelessness may be a factor which complicates access to durable solutions for refugees from Syria, including limiting access to resettlement programmes.

An underlying issue identified in the research was that there is a substantial knowledge gap when it comes to statelessness issues among stakeholders that work with refugees. There is a lack of awareness and/or understanding of the stateless profiles among refugees from Syria and mechanisms through which stateless refugees may be identified or recorded. For example, none of the intake forms among the INGOs interviewed provide for the possibility of recording a refugee as a stateless person. This poor identification and tracking of cases of statelessness is a major contributing factor to the lack of visibility of this sub-set of the refugee population and the lack of information on their situation and particular vulnerabilities. While the issues described above were flagged in the research, it is unclear how prevalent the problems are among all stateless refugees in the region. The starting point for better understanding and responding to the specific vulnerabilities of stateless refugees must be to increase awareness of the interplay between statelessness and displacement, including specifically of the existence of various profiles of stateless refugee who have fled Syria. As with refugees at heightened risk of statelessness, there is a need both for simple tools to aid in the identification of relevant cases, as well as more in depth research into what it means to be, for instance, a stateless *Maktoum* Kurd refugee.

## ANNEX 1: LIST OF INTERVIEWS CONDUCTED

Egypt	Ashraf Milad Ruxi, Asylum Lawyer
	Egyptian Foundation for Refugee Rights
	UNHCR
Jordan	Danish Refugee Council
	Terre des Hommes
	ARDD
	JCLA
	UNHCR
	MSF
	Sharia Court
	Civil status department
	Mokhtar
KRI	UNHCR
	CDO
	IMC
	Harikar
	Qandil
	Civil Status Department
	IRC
	Midwife
Lebanon	Sharia court (North)
	Sharia court (Bekaa)
	Midwife
	Mokhtar (North)
	Mokhtar (Bekaa)
	LOST
	UNRWA
	OXFAM
	Ruwad Frontiers
Turkey	Refugees International Consultant
	Maria Fernandez, researcher

## ANNEX 2: LIST OF ATTENDEES AT NATIONAL ROUNDTABLES

Jordan	MSF
	ARDD
	JCLA
	UNHCR
	ICLA Jordan
	INTERSOS
KRI	Public Aid Organization
	UNHCR
	ICLA Erbil
	ICLA Baghdad
	TDH
Lebanon	IRC
	OXFAM
	UNHCR
	Frontiers
	ICLA Lebanon
UNRWA	

## ANNEX 3: LIST OF PARTICIPANTS AT REGIONAL EXPERT ROUNDTABLE

Regional Expert Roundtable, held on 20-21 September 2016 in Amman, Jordan

### PARTICIPANTS

Zahra Albarazi	Institute on Statelessness and Inclusion
Andrzej Kula	NRC-ICLA Programme (Lebanon)
Genevieve Boutin	Syria Crisis Coordinator, UNICEF (Amman)
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The following persons, while not in attendance at the roundtable, reviewed and provided comments on a draft version of this research report:

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