

Displaced, unwanted and undocumented. Children born into Iraqi and Syrian families with (perceived) terrorist affiliations

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This article focuses on access to civil documentation, most importantly marriage, birth and death certificates, of displaced Iraqi and Syrian families with (perceived) terrorist affiliations who live(d) under non-state rule. The focus in western media and literature is often on the repatriation and deprivation of nationality of foreign, that is non-Iraqi or non-Syrian, women and children with (alleged) terrorist affiliations held in detention camps in Northeast Syria. Whereas the number of Iraqi and Syrian families with (perceived) ties to terrorist groups, most importantly ISIL, is significantly higher, little attention is paid to their legal status and citizenship, and their vulnerable position in their communities and respective countries. Being excluded on the basis of (alleged) belonging to a certain group, tribe or family, deprives these Iraqi and Syrian women and children of belonging to their (original) political or social community and excludes them from their citizenship, their access to legal identity, nationality and other basic rights. This article will address the documentation barriers faced by these families and the impact the lack of documentation has on the lives and futures of these women and children, possibly for generations to come.

1. Lack of identity and civil documentation in Iraq and Syria: A demographic overview

Khadija²

Khadija is a 32-year-old widow and mother of two from Abu Kamal, a city on the Euphrates river in Deir ez-Zor governorate. She lives with her children in an IDP camp in Northeast Syria after having been displaced a number of times previously. Her late husband joined ISIL in 2014, shortly after the group took control of the city. She learned that her husband died fighting for ISIL in 2016 but she never obtained proof of his death. Khadija wants to enrol her oldest child in a school and her youngest is in need of specialised medical care in a government-run hospital, but without the required documentation she cannot do anything. When ISIL occupied Abu Kamal, her informal Islamic marriage and, with that, the parentage of her first-born child had not yet been validated in court. Her husband had planned to do that when it was time to enrol their oldest child in school, as was common

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² While this case study is fictitious, it is loosely based on experiences shared by IDPs.

practice in their community/area.³ Her late husband had registered their marriage and children (the second who was born shortly before her husband's disappearance) in the ISIL administration, but Khadija had thrown away these papers once she was outside ISIL territory. Khadija has no documents to prove her and her children's identity or her relationship to the children. She is confined to the camp and is not allowed to leave to apply for the documents she needs (marriage and birth certificates, a family booklet). She was told that she cannot leave the camp because she is an ISIL-widow (she is considered a security treat), and even if she could, she would never be able to formalize her marriage in court because her husband was an ISIL fighter and she has no proof of his death. Besides, she will never be able to obtain this proof because he was a terrorist. Khadija is desperate, she has no idea what she can do to change her situation and that of her children; they have to pay the price for her deceased husband's crimes.

1.1 Iraq

Iraq has been ravaged by decades of oppression, conflict, violence, and forced displacement. From the rise of the Islamic State of Iraq and the Levant (ISIL) in 2014 until its territorial defeat in 2017, the country witnessed grave violence and forced displacement again. By mid-2021, out of a population of 41 million,⁴ 1.2 million persons were still internally displaced following the military operations against ISIL.⁵ Iraq also has one of the highest numbers of missing persons in the world, estimates run from 250.000 to one million persons who went missing, many of whom are presumably in yet unexcavated mass graves.⁶

Already a decade before ISIL insurgency, thousands of children born to Iraqi women and Al-Qa'ida fighters did not have access to state-run birth registration systems.⁷ In 2021, according to estimates, over one million IDPs and returnees remained without at least one key identity or civil document, including over half a million individuals who were missing two or more documents.⁸ In addition, nearly half a million children were missing at least one key identity or civil document.⁹ The

³ See section 5.1 for detailed information about court validation and registration of out-of-court marriages with the civil registry, as well as simultaneous validation of the parentage (*nasab*) of the children born of this marriage.

⁴ <https://worldpopulationreview.com/countries/iraq-population> (accessed 29 March 2022).

⁵ UN Office for the Coordination of Humanitarian Affairs (OCHA) Iraq, Humanitarian Bulletin, July 2021, <https://reliefweb.int/report/iraq/iraq-humanitarian-bulletin-july-2021> (accessed 14 February 2022). According to UNHCR, in January 2022, Iraq also hosted 256,006 Syrian refugees; the majority of which resides in the Kurdish Region of Iraq, see: <https://data2.unhcr.org/en/situations/syria/location/5> (accessed 14 February 2022).

⁶ International Commission on Missing Persons, at: <https://www.icmp.int/where-we-work/middle-east-and-north-africa/iraq/>.

⁷ Kathryn Hampton, 'Born in the Twilight Zone: Birth Registration in Insurgent Areas', *International Review of the Red Cross* 101/911, August 2019, pp. 507-36, at: <https://doi.org/10.1017/S1816383120000168>, p. 509; Ahmed al-Hamdani, 'Stateless Qaeda children in Iraq raise concerns', *Al Arabiya News*, 28 September 2010, at: <https://english.alarabiya.net/articles/2010%2F09%2F28%2F120558> (accessed 28 February 2022).

⁸ Protection Cluster - UNHCR, 'Protection Analysis Report. Right to identity and civil documentation', October 2021, at: <https://reliefweb.int/report/iraq/protection-analysis-report-right-identity-and-civil-documentation-october-2021>, p. 4.

⁹ *Ibid.*, p. 10.

ISIL-liberated governorates Ninawa and Al-Anbar had the highest number of individuals missing two or more key documents.¹⁰

1.2 Syria

Eleven years of conflict in Syria has led to one of the biggest displacement crises in recent history: out of a population of 21 million in 2011,¹¹ around 6.9 million IDPs reside inside Syria;¹² the neighbouring countries Turkey, Lebanon, Jordan, Iraq and Egypt host over 5.7 million refugees as of March 2022.¹³ According to the Syrian Network for Human Rights (SNHR), nearly 102,300 Syrians have been forcibly disappeared since the start of the conflict in 2011, mostly at the hands of the Syrian regime forces.¹⁴ This number appears not to include Syrians who went missing due to displacement, kidnapping, violence and destruction; the number is therefore likely to be much higher.

The ongoing violence and widespread displacement have severely restricted Syrians' access to civil registration services, legal identity and civil documentation, resulting in countless undocumented marriages, births and deaths.¹⁵ The 2022 Syria Humanitarian Needs Overview reports that 76 per cent of the assessed households across the country indicated a lack or loss of government-issued civil documentation.¹⁶ Disproportionally high lack of access to government-issued civil documentation was found among Syrians in northern Aleppo, Idlib, Ar-Raqqa, Al-Hasakeh, and Deir Ez-zor; while half of the HNO-assessed households reported having access to documentation issued by local authorities.¹⁷

UN agencies and humanitarian aid organizations have repeatedly identified lack of civil documentation as a major protection concern for Iraqi and Syrian IDPs, returnees and refugees.¹⁸ It disproportionately affects displaced women – especially widows, divorcees and women whose husbands are missing or deceased – and children across the region.¹⁹ Reportedly, Syrian children born from underage marriages – a phenomenon that has reportedly increased following the 2011 conflict and the COVID-19

¹⁰ Ibid., p. 11.

¹¹ <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=SY> (accessed 29 March 2022).

¹² UNOCHA, 2022 Syria Humanitarian Needs Overview (HNO), <https://reliefweb.int/report/syrian-arab-republic/2022-humanitarian-needs-overview-syrian-arab-republic-february-2022>, p. 17 (accessed 29 April 2022).

¹³ UNHCR, <https://data2.unhcr.org/en/situations/syria> (accessed 29 April 2022).

¹⁴ Syrian Network for Human Rights, <https://sn4hr.org/blog/2021/08/04/record-of-enforced-disappearances1/> (accessed at 14 February 2022).

¹⁵ There are no figures or estimates available on non-registered life events but the numbers are likely to be high.

¹⁶ UNOCHA, Syria HNO 2022, p. 26.

¹⁷ Ibid.

¹⁸ UNOCHA, Syria HNO 2022; UNHCR and NRC, 'Legal Identity and Housing, Land and Property Rights of Syrian Refugees from a Durable Solutions Perspective – Challenges and Opportunities' (Regional Report), December 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>.

¹⁹ Protection Cluster – Iraq 2021, p. 12; UNFPA, 'Voices from Syria 2020. Assessment Findings of the Humanitarian Needs Overview, 2020', https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/voices_from_syria_2020_final_draft.pdf, p. 42-44.

pandemic²⁰ – are among those least likely to have their births registered by host countries, as these marriages are, to varying degrees, considered unlawful and can therefore not be validated and registered.²¹ Unregistered children are more vulnerable to risks of statelessness, trafficking, child labour, gender-based violence and underage marriage.²² Being born into an (alleged) terrorist-affiliated family further exacerbates the vulnerability of conflicted-affected children and, in addition to remaining undocumented, they also face collective punishment such as public shaming, social stigma, marginalisation and ostracisation by state authorities and within their communities.²³

2. Legal identity and civil documentation in international law

Several international human rights treaties establish that every person has the right to be recognized before the law,²⁴ including the right of every child to be registered immediately after birth, as well as the right to a name and the right to acquire a nationality.²⁵ Having a legal identity, and with that, being able to register vital life events (birth, marriage, divorce and death) and obtain official civil documentation, is the gateway to the enjoyment of other rights. For this reason, the right to legal personhood has often been described as, to use Hannah Arendt's phrase, the "right to have rights":²⁶ it enables a person access to humanitarian aid, healthcare, education, (formal) marriage, freedom of movement, buy property and claim inheritance. The Sustainable Development Goal (SDG) 16.9 states that, by 2030, all people should have legal identity, including birth registration.²⁷ Birth registration is not only a right in itself²⁸ but also essential to safeguard a child's right to acquire a nationality, to

²⁰ Maya Gebeily, 'Syrian refugee girls face 'dangerous' child marriage trend, says charity', *Reuters*, 25 June 2021, at: <https://www.reuters.com/article/us-refugees-mideast-children-trfn-idUSKCN2E11MS> (accessed 16 February 2022).

²¹ Institute on Statelessness and Inclusion (ISI) and NRC, 'Understanding statelessness in the Syria refugee context: Research report', 2016, p. 38-39; Zahra Albarazi, 'Report on Citizenship Law: Syria', European University Institute (EUI), RSCAS/GLOBALCIT-CR 2021/15, p. 7.

²² See for example, NRC and International Human Rights Clinic (IHRC), 'Securing Status. Syrian refugees and the documentation of legal status, identity, and family relationships in Jordan', November 2016, at: <https://www.nrc.no/resources/reports/securing-status-syrian-refugees-and-the-documentation-of-legal-status-identity-and-family-relationships-in-jordan/>, p. 33-35.

²³ NRC, 'Barriers from Birth. Undocumented children in Iraq sentenced to a life on the margins', April 2019, at: <https://www.nrc.no/resources/reports/barriers-from-birth/>, p. 11, 14; International Organization for Migration (IOM) – Iraq/Melisande Genat, 'Tribal Justice Mechanisms and Durable Solutions for Families with a Perceived Affiliation to ISIS', 2020, p. 25.

²⁴ Art. 6 Universal Declaration of Human Rights; art. 16 International Covenant on Civil and Political Rights.

²⁵ Art. 24 International Covenant on Civil and Political Rights; art. 7 Convention on the Rights of the Child. Related to this are provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (arts. 15 and 16), according to which women have the same rights as men with regard to marriage and birth registration.

²⁶ Hannah Arendt, 'The Origins of Totalitarianism', New York: HMH Books/imprint: Mariner Books, 1973, p. 296; Katharine M.A. Fortin, 'To be or not to be?: Legal Identity in Crisis in Non-international Armed Conflicts', *Human Rights Quarterly* 43/1, February 2021, pp. 29-69, p. 49.

²⁷ United Nations Statistics Division: <https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.9> (accessed 23 January 2022).

²⁸ See, UN Human Rights Council, "Birth registration and the right of everyone to recognition everywhere as a person before the law", A/HRC/RES/19/9 (7 April 2015); UN General Assembly, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/141 (4 April 2012), at 43(f).

establish legal parentage, and the right to family life. Moreover, unlike international human rights law, international humanitarian law applicable in armed conflict acknowledges the right to birth registration.²⁹

While noting Iraq and Syria ratified CEDAW with reservations referring to *shari'a*,³⁰ the Convention provides that state parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, including the right to enter into marriage and official marriage registration (article 16). In 2014, the CEDAW Committee adopted General Recommendation No. 30, which calls upon state parties to guarantee conflict-affected women and girls equal rights to obtain civil documentation and to ensure timely and equal registration of all births, marriages and divorces.³¹

3. Non-state actors in Iraq and Syria

Fortin argues that the “topic of legal identity in armed conflict has received surprisingly little academic attention”, especially in the context of non-international armed conflicts, such as the recent conflicts in Syria and Iraq.³² Individuals who live(d) outside the control of *de jure* government often have limited or no access to state-issued civil documentation. The figures provided earlier indicate that this accounts for IDPs and returnees in Iraq and Syria. Civil documentation is often perceived as something that is merely issued by state officials, but in Iraq and Syria non-state insurgent actors³³ have issued, and in parts of Syria continue to issue, identity and civil documents.

During their rule in Iraq, ISIL confiscated government-issued documentation from people and issued its own documents. The Iraqi government considers the documentation issued by ISIL invalid and refuses to recognize these documents.³⁴ Even the possession of these documents puts individuals and families at risk of confiscation, harassment and arrest by the Iraqi security forces.³⁵ As a result, a significant number of ISIL-marriages, and thus births to ISIL-married couples, are not recognized and remain

²⁹ The Human Rights Council, for example, confirms that the right to birth registration is found in international humanitarian law, referencing to article 50 of the Fourth Geneva Convention (1949), see Hampton 2019, p. 517.

³⁰ Iraq made reservations to articles 2 (f and g) and 16; Syria made reservations to articles 2, 9(2), 15(4), 16(1)(c, d, f, g), 16(2), and article 29(1) CEDAW. See:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en.

³¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30, available at: <https://www.refworld.org/docid/5268d2064.html> (accessed 23 February 2022), at par. 61 (c and d).

³² Fortin 2021, p. 30. The conflicts in Iraq and Syria may not be an international conflict, understood in the traditional sense of an armed conflict between two states, yet it is debatable whether the recent conflicts in these countries (Syria in particular) can be considered non-international, given the political and military interference of several foreign powers, including Russia, Iran, the United States, United Kingdom, The Netherlands, Turkey, Qatar, and Saudi Arabia.

³³ Hampton 2019.

³⁴ NRC 2019, p. 8; Fortin 2021, p. 42-43.

³⁵ NRC 2019, p. 8; Hampton 2019, p. 515.

unregistered.³⁶ Similarly in Syria, there are anecdotal indications that significant numbers of children remain unregistered in previously ISIL-held areas because they are fathered by foreign fighters (*muhajirin*). Registration of the marriage and subsequent births are denied because of the husband/father's illegal status; reportedly, this occurs in both government-run and non-state civil registries in Syria.³⁷

Syria is particularly interesting in this regard as a wide array of armed groups has been involved in the conflict, since its start in 2011. At different stages of the conflict, several groups established their own judicial mechanisms and civil registry services. Early 2022, the key actors in control of various parts of the country are: the Government of Syria (GoS), the Islamist faction *Hay'at Tahrir ash-Sham* Salvation Government (Northwest/Idlib), the Kurdish-led Autonomous Administration of North and East Syria (Northeast),³⁸ and the Turkey-backed Syrian Interim Government in the north (Afrin, northern Aleppo, Ras al-‘Ayn).³⁹ The civil documentation status of the inhabitants of the non-government controlled areas is alarming: there is a significant lack of GoS-issued documentation amongst IDPs and host communities; the non-state issued documentation is not recognized by GoS and other countries; possession of such documents in GoS-controlled areas can be seen as evidence of oppositional affiliation and may result in arbitrary arrest or detention.⁴⁰ Moreover, Syrians living in these areas usually strongly prefer GoS documentation over non-state documents because of the reasons mentioned above, and because GoS documents unlock access to basic human rights and services, including legal identity, birth registration, nationality, education, health care, freedom of movement, and the right to buy and own property or land.⁴¹

4. Barriers to civil documentation

Iraqis and Syrians without identity and civil documents face numerous barriers seeking to obtain or renew their civil documentation and register life events. Missing civil documentation impedes their ability to exercise their rights as citizens, access basic services, and their freedom of movement. The

³⁶ According to a NRC report, a Iraqi Ministry of Interior study “estimated that as many as a third of marrying-age Iraqi women in IS controlled territory married during this period.” (NRC 2019, p. 17).

³⁷ Hussam al-Omar, ‘Raqa: IS Jihadists’ ex-wives struggle to enroll non-registered children in official civil data’, *Enab Baladi*, 28 February 2022, at: <https://english.enabbaladi.net/archives/2022/02/raqqa-is-jihadists-ex-wives-struggle-to-enroll-non-registered-children-in-official-civil-data/>.

³⁸ It should be noted, however, there are still functioning GoS-institutions, including courts and civil registry offices, in Al-Hasakeh and Qamishli, where the Syrian regime remained in control of small pockets of territory (International Legal Assistance Consortium (ILAC), ‘ILAC Rule of Law Assessment Report: Syria 2021’, at: <http://ilacnet.org/wp-content/uploads/2021/06/ILAC-Rule-of-Law-Assessment-Syria-2021-.pdf>, p. 158). These institutions are, however, inaccessible for many Syrians living in the Northeast, especially for IDPs, for many reasons, including fear to enter a GoS-controlled area, no permission to leave the IDP camp, lack of identity or supporting documentation, and high costs.

³⁹ ILAC 2021.

⁴⁰ Fortin 2021, p. 44; Hampton 2019, p. 515; Aron Lund, ‘Stop-gap solutions for Syrians without papers’, *The New Humanitarian*, 4 August 2020, at: <https://www.thenewhumanitarian.org/analysis/2020/08/04/syria-documentation-solutions> (accessed 14 February 2022).

⁴¹ Fortin 2021, p. 45; Hampton 2019, p. 513; not publicly available NGO research.

inability to obtain official civil documentation is often the consequence of an accumulation of interconnected factors, including: fear to approach the authorities (often connected to fear of arrest, conscription, being considered a terrorist or mistaken for someone else); restrictions on freedom of movement (due to violence, checkpoints, lack of identity documents, being confined to one's IDP camp); lack or loss of identity or (supporting) civil documentation; failure to obtain a security clearance; government institutions that are destroyed, non-operational or overcrowded and understaffed; complex and lengthy procedures, and prohibitive costs.⁴² In Iraq, for example, IDPs and returnees are required to undergo a security clearance procedure when they want to obtain civil documentation. Human Rights Watch reports that “[m]ore perversely, Iraqis need security clearance to enter a government building, including a courthouse if you want to seek judicial remedy for, as an example, being rejected for security clearance.”⁴³ In Syria, returnees need a security clearance from the GoS authorities and they need to sign a ‘reconciliation document’ before being able to return to their homes.⁴⁴

4.1 Presumed affiliation to ISIL or other non-state groups

Another major barrier to accessing registration procedures and obtaining civil documentation is (perceived) affiliation to ISIL or another non-state group. The category ISIL or other non-state group affiliates or presumed affiliates is broadly applied in Iraq and Syria to include an ample mix of individuals and families: widows, children or (even distant) relatives of a (foreign)⁴⁵ fighter or non-combatant member; anyone born, married or having lived in former ISIL/non-state controlled territory; anyone perceived by security forces and/or community members⁴⁶ to be affiliated to ISIL/terrorist group; belonging to a tribe which supported ISIL; ISIL-victims of sexual violence or forced marriages; ISIL child soldiers, including Yazidi children.⁴⁷ It is important to note that there is more information

⁴² UNICEF and UNAMI, ‘Analysis of the Legal Framework Governing Civil Documentation in Iraq’, n.d., at: <http://mptf.undp.org/document/download/24287> (accessed 16 February 2022), p. 6; Protection Cluster – Iraq 2021; UNOCHA, 2019 Syria Humanitarian Needs Overview (HNO), <https://reliefweb.int/report/syrian-arab-republic/2019-humanitarian-needs-overview-syrian-arab-republic-enar>, p. 51, 55; not publicly available NGO research.

⁴³ Belkis Wille, ‘Iraq: Not a Homecoming’, *Human Rights Watch*, 14 June 2019, at: <https://www.hrw.org/news/2019/06/14/iraq-not-homecoming> (accessed 28 February 2022).

⁴⁴ Refugee Protection Watch, ‘Trapped in between Lebanon and Syria. The Absence of Durable Solutions for Syria’s Refugees’, October 2020, at: <https://paxforpeace.nl/media/download/trapped-in-between-lebanon-and-syria.pdf> (accessed 6 March 2022), p. 13. The latter requirement also applies to Syrians residing abroad who want to apply for renewal of their passports at a Syrian Embassy (anonymous informant, personal communication, 26 January 2022). Also, as explained by Sosnowski and Hamadeh, the GoS requires a security clearance for most property sales and seizes properties of displaced persons who are perceived to be anti-regime (Marika Sosnowski and Noor Hamadeh, ‘“The Rights to Have Rights”: Legal Identity Documentation in the Syrian Civil War’, *GIGA Focus Middle East* 4, October 2021, available at: <https://www.giga-hamburg.de/en/publications/giga-focus/the-rights-legal-identity-documentation-syrian-civil-war> (accessed 14 February 2022), p. 5-6.

⁴⁵ The true identity of foreign fighters cannot always be determined by the (former) wives, as many fighters used aliases like ‘Al-Hulandi’ or ‘Al-Tunisi’.

⁴⁶ This includes false accusations by disgruntled neighbours or community members as a result of longstanding tribal feuds (IOM/Genat 2020, p. 17).

⁴⁷ Amnesty International, ‘The Condemned. Women and Children isolated, trapped and exploited in Iraq’, April 2018, at: <https://www.amnesty.org/en/documents/mde14/8196/2018/en/>, p. 12; IOM/Genat 2020; Impunity

(publicly) available about Iraqi families with perceived affiliation to ISIL than there is about Syrians with ties to ISIL or other terrorist/rebel groups. This can be explained by the larger presence and operations of humanitarian aid organisations in Iraq compared to Syria. Moreover, these organisations depend on the permission and cooperation of the Syrian regime, and – when and where feasible – the non-state actors in control of other areas.

In Iraq, not having identity or civil documentation and coming from a former ISIL-held area is enough to raise suspicion from the security forces and fellow community members.⁴⁸ Being on the national security database or on any of the security forces’ or government-aligned militias’ ‘wanted lists’ or having a close relative member whose is on one of these lists, impedes a person’s ability to obtain or renew identity and civil documentation. When a displaced Iraqi applies for a legal identity or other document, the person is subjected to a background check by intelligence and security forces. If the person or one of his/her relatives appears on one of the various ‘wanted lists’, the application will most likely be denied.⁴⁹ These forms of collective punishment are unlawful, unconstitutional,⁵⁰ and violate international humanitarian law.⁵¹ The fear of arrest or being forced to disavow a close relative or report an ISIL family member to the authorities⁵² may prevent individuals from approaching the authorities to apply for documentation or register the birth of a child.⁵³ Moreover, “lawyers have received routine harassment and threats for taking on their cases.”⁵⁴

5. Gender-specific challenges around access to civil documentation

Female-headed households

Even before the ISIL occupation, there were an estimated 1 to 3 million female-headed households

Watch and PAX, ‘Violations of Housing, Land and Property Rights: An Obstacle to Peace in Syria. What can International Policymakers do?’, March 2020, at: <https://paxforpeace.nl/what-we-do/publications/violations-of-housing-land-and-property-rights-an-obstacle-to-peace-in-syria> (accessed 6 March 2022), p. 2, 5-6; Hampton 2019, p. 514; not publicly available NGO research.

⁴⁸ NRC 2019, p. 14.

⁴⁹ Amnesty International 2018, p. 23.

⁵⁰ Article 19(8) of the 2005 Iraqi Constitution states that “punishment shall be personal”.

⁵¹ Amnesty International 2018, p. 39.

⁵² The process of disavowing close relatives and pledging to sever all bonds with them is called *tabri’iyya*, which is often inaccurately, according to Melisande Genat, interchangeably used to refer to the quasi-legal mechanism called *ikhbar*, that is a legal procedure “whereby an individual with perceived affiliation reports his (or her) ISIS relative (...) It is done in front of an investigative judge (*qadhi at-tahqiq*) and entails a complaint filed under [sic, article 5] of the anti-terrorism law of 2005” (IOM/Genat 2020, p. 14). Reportedly, these tribal judicial mechanisms are used in some former ISIS-occupied Iraqi governorates for various reasons, for example to manage the return of IDP families with a perceived ISIS-affiliation to their areas of origin, obtain security clearance, or renew civil documentation.

⁵³ Martin Clutterbuck, ‘Documenting Life and Death: Women’s Experiences During Conflict in Syria and Iraq’, in: Centre of Excellence for Civil Registration and Vital Statistics Systems, The Compendium of Good Practices: Harnessing Civil Registration and Vital Statistics (CRVS) Systems in Conflict, Emergencies, and Fragile Settings, 2021, pp. 1-24, at: <http://hdl.handle.net/10625/60023> (accessed 28 February 2022), p. 8.

⁵⁴ Amnesty International 2018, p. 23; Wille/HRW 2019.

(FHH) in **Iraq**, as a result of decades of conflict and violence.⁵⁵ Since the defeat of ISIL in 2017, the number of FHHs and widows sadly increased. UN Women Iraq estimates that 10 per cent of Iraqi households are headed by women.⁵⁶ A recent study of the UN agency UNFPA estimated the proportion of female-headed households in **Syria** in 2020 to be 22.4 per cent, vis-à-vis only 4.4 per cent eleven years earlier.⁵⁷

As mentioned earlier, displaced women and children are often disproportionately affected by the lack of civil documentation. If the husband or other male family members are absent, women often have to bear the responsibility of regularising their family's situation. This is challenging for women for several reasons. First, Iraqi and Syrian women are confronted with gender-discriminatory laws, such as Personal Status and Nationality Laws, and traditional practices, restricting them from registering their marriages and children.⁵⁸ For example, in both countries personal status laws reinforce patriarchal gender relations in marriage and the family; and a Syrian (married) mother cannot confer her nationality to her children except for certain exceptional conditions. Secondly, it has been reported that women often lack experience in dealing with administrative procedures and that it is therefore difficult for them to go to courts and civil registries.⁵⁹ Besides, as sole providers and caretakers of their families, women often do not have the time or financial resources to deal with judicial and administrative procedures. The lack of female staff in courts and government offices, and the fact that women are likely to be questioned about their missing or deceased husbands put up additional barriers for women.⁶⁰ Also, women in unregistered marriages whose husbands are missing or deceased face great difficulty obtaining *ex post facto* court validation of their out-of-court marriage and subsequent establishment of the parentage of children born from these marriages, because of the husband's absence and lack of proof of their death or disappearance.⁶¹

⁵⁵ The International Committee of the Red Cross, 'Iraq: Women in War', March 2009, available at: <https://www.icrc.org/en/doc/resources/documents/field-newsletter/iraq-women-newsletter-050309.htm> (accessed 13 February 2022)..

⁵⁶ UN Women Iraq, at: <https://iraq.unwomen.org/en/about-us/un-women-in-iraq>; Iraq has a population of around 40 million people. Moreover, according to the Iraqi High Commission for Human Rights, there were 5 million orphaned children in Iraq in 2021, see: Fadhel al-Nashmi, 'IHCHR Report: 5 million Orphaned Children in Iraq', *Asharq Al-awsat*, 12 December 2021, at: <https://english.aawsat.com/home/article/3354921/ihchr-report-5-million-orphaned-children-iraq> (accessed 18 February 2022).

⁵⁷ United Nations Population Fund, *Regional Situation Report for the Syrian Crisis*, Issue #99, November 2020, available at: https://www.unfpa.org/sites/default/files/resource-pdf/UNFPA_Regional_Situation_Report_for_the_Syria_Crisis_-_November_2020_-_FA.pdf (accessed 13 February 2022).

⁵⁸ Esther van Eijk, *Family Law in Syria: Patriarchy, Pluralism and Personal Status Laws*, London: I.B. Tauris, 2016, p. 76-78; Fortin 2021, p. 51.

⁵⁹ Sosnowski and Hamadeh 2021, p. 4; not publicly available NGO research.

⁶⁰ Clutterbuck 2021, p. 10.

⁶¹ Nisreen Aladdin and Mukhtar al-Ibrahim, "Syria's Fatherless Children", *Arab Reporters for Investigative Journalism* (ARIJ), 9 October 2016, at: <https://en.arij.net/report/syrias-fatherless-children> (accessed 18 February 2022).

5.1 Unregistered marriages and births

Both Iraqi and Syrian personal status laws allow for *ex post facto* validation of an informal Islamic marriage by a judge, provided there is sufficient proof of the marriage, most importantly witnesses, and the couple is able to present an official proof of identity.⁶² While these requirements are often challenging for many displaced families, when the husband is missing, deceased or on a ‘wanted list’, it is virtually impossible for a wife to obtain a government-issued marriage certificate.⁶³ Wives must prove the identity and whereabouts of their husband and present a marriage certificate or alternative proof of marriage; if the husband is on a ‘wanted list’, the marriage application will be refused.⁶⁴ An unregistered marriage not only affects the marital status of a wife, but also has serious consequences for the children born into these marriages. Proof of a legal marriage is required for birth registration and the establishment of legal parentage (*nasab*).⁶⁵ When a child is born from an informal marriage, a personal status judge will commonly validate both the marriage and the children’s parentage at the same time.⁶⁶ Without government-issued proof of the marriage, the birth of children cannot be registered, making it difficult to prove the relationship with their father. If there is no proof of marriage, a personal status court can establish paternity or maternity through acknowledgement, such as when a man claims paternity in court. In both Iraq and Syria, judges have wide discretion to decide these cases in the best interest of the child.⁶⁷ Yet, without proof of the husband/father’s death or disappearance, wives/mothers have to go through lengthy, complex and costly court procedures to prove any life event.⁶⁸

Without a government-issued proof of marriage and/or proof of the father’s death or disappearance, children run the risk of being denied birth registration, paternal filiation, inheritance, citizenship, and nationality. Article 3(a) of the Iraqi Nationality Law No. 26/2006 provides for the acquisition of Iraqi nationality through both the paternal and the maternal line. In practice, however, “Iraqi authorities require confirmation of Iraqi paternal legal identity before processing applications for birth, nationality, or citizenship certificates.”⁶⁹ Besides, the procedures for acquisition of the Iraqi nationality in cases where the father is unknown (e.g., a foreign fighter) or stateless are complex and, in the end, the final

⁶² For more information on validation procedures of out-of-court marriages and child’s parentage in Syria, see: Van Eijk 2016, p. 147 ff.; NRC 2019, p. 17; Clutterbuck 2021, p. 7.

⁶³ NRC 2019, p. 18; Clutterbuck 2021, p. 7.

⁶⁴ Clutterbuck 2021, p. 7.

⁶⁵ Protection Cluster – Iraq, p. 12; not publicly available NGO research.

⁶⁶ Van Eijk 2016, p. 147 ff.

⁶⁷ Harith Al-Dabbagh, ‘Iraq’, in: Nadjma Yassari et al., *Filiation and the Protection of Parentless Children. Towards a Social Definition of the Family in Muslim Jurisdictions*, Berlin: T.M.C Asser Press, 2019, pp. 103-33, p. 112-14; Van Eijk 2016.

⁶⁸ NRC 2019, p. 3, 17-18; Protection Cluster – Iraq 2021, p. 12; IOM/Genat 2020, p. 31; Aladdin & Al-Ibrahim 2016.

⁶⁹ Clutterbuck 2021, p. 6. According to Yassen there is an additional practical caveat, namely that “Iraqi women only enjoy the same rights as men to confer their nationality to their children if the child is born in the territory of Iraq.” (Abdullah Omar Yassen, ‘Report on Citizenship Law: Iraq’, European University Institute (EUI), RSCAS/GLOBALCIT-CR 2021/12, p. 7).

decision remains subject to the discretion of the Iraqi government.⁷⁰

In Syria, children acquire nationality through the patrilineal line; accordingly, a person is entitled to Syrian nationality if he/she is able to demonstrate that his/her father is Syrian, wherever the person is born.⁷¹ In exceptional cases, such as when a child is born to a Syrian national mother and the father is unknown⁷² or a foreign national (who cannot pass on his nationality at the time of birth),⁷³ the mother can pass her nationality to the child if the birth was in Syria. This would theoretically benefit children born to unknown fathers or absent fathers whose whereabouts are unknown,⁷⁴ but this provision is rarely implemented due to the social stigma associated with unwed mothers registering a child in her name or registering a child born outside a (proven) marriage.⁷⁵ Sexual relationships are supposed to be confined within the bonds of marriage, which also preserves and ensures the paternal lineage of the children.⁷⁶ The fact that a mother cannot pass on her nationality to her children, whether by law⁷⁷ or in practice, without such negative repercussions can result in children becoming stateless if the marriage remains unregistered.

5.2 Terrorist-affiliated women and children

Female-headed families in IDP camps in Iraq have reported being denied access to food, water, health care, education, and civil documentation due to their alleged affiliation to ISIL.⁷⁸ Without identity documents they face severe restrictions on their movement, as they are often prevented from leaving the camp, not allowed to cross through checkpoints, or do not dare to because of increased risk of arbitrary arrest.⁷⁹ IDP women and children with perceived ISIL ties reported being verbally and sexually harassed, due to their alleged affiliation, by security forces, humanitarian aid workers and others present in the IDP camps. These women also reported having been subjected to sexual violence, including rape and sexual exploitation, again because of their perceived ISIL affiliations.⁸⁰ The Iraqi law provides no solution to the issue of establishing paternity for children born to Iraqi mothers, fathered by (foreign)

⁷⁰ Yassen 2021, p. 8.

⁷¹ Article 3(a) Syrian Nationality Law No. 276/1969.

⁷² Article 3(b) Syrian Nationality Law.

⁷³ Article 3(d) Syrian Nationality Law.

⁷⁴ See UN High Commissioner for Refugees (UNHCR): “[For] children born in Syria, there is theoretically an exception to the paternal *jus sanguinis* rule: they can acquire nationality from their Syrian mother if the child’s father is unknown (i.e. if paternity is not legally established). However, women are reported to be reluctant to do this because they fear they will be stigmatized if they declare that paternity is unknown.” UNHCR, *Good Practices Paper - Action 7: Ensuring birth registration for the prevention of statelessness* (November 2017) at 16, available at: <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/11/Good-Practices-Paper-on-Ensuring-Birth-Registration-for-the-Prevention-of-Statelessness.pdf>.

⁷⁵ Aladdin & Al-Ibrahim 2016.

⁷⁶ Van Eijk 2016, p. 108-110.

⁷⁷ One of the reservations to CEDAW made by the Syrian government was a reservation to article 9(2) CEDAW, concerning a mother’s right to pass on her nationality to her children.

⁷⁸ Amnesty International 2018, p. 20; IOM/Genat 2020, p. 32.

⁷⁹ Amnesty International 2018, p. 24-25.

⁸⁰ *Ibid.*, p. 26-29.

ISIL fighters, as a result of forced marriage, rape or sexual slavery.⁸¹ If the husband is considered an ISIL-sympathizer (a terrorist), although most of them are dead or have disappeared, the Iraqi authorities will not recognize the marriage.⁸² Reportedly, very few women want to keep a child born of such a marriage, which means that these children are treated as foundlings and are put into state care.⁸³

When the husband has died or disappeared in Iraq or Syria, most women are unable to obtain a death certificate for their husbands, because obtaining a declaration of death for a missing person takes time or a (presumed) death certificate is denied altogether because the deceased is an ISIL or other armed terrorist group affiliate.⁸⁴ Generally, if a woman is unable to prove the whereabouts of her husband, she is met with suspicion; similarly, reporting a husband missing can raise suspicions about a possible terrorist affiliation.⁸⁵

5.3 Negative coping mechanisms

The impact and consequences of being unregistered from birth, having no proof of marriage or death, or lacking identity documentation may last for years or even for life, and affect future generations and may lead to statelessness. Faced with enormous barriers to accessing civil documentation, people may resort to negative coping mechanisms, such as remaining undocumented, crossing dangerous lines of contact to obtain official government documentation (in Syria, wives and other female relatives are often the ones to travel to GoS-areas because they are less likely to be arrested), or using intermediaries who charge exorbitant fees.⁸⁶ Besides, displaced individuals who obtain documentation through intermediaries face heightened risks of exploitation and ending up with fraudulent documents.⁸⁷ Coping mechanisms to which widows or conflict-affected families may also resort include registration of children under the name of another male relative or entering an informal marriage with another man to ‘cover up’ the first husband’s affiliation.⁸⁸ While some of these coping strategies may provide a temporary or partial solution, they risk leading to detrimental and long-lasting consequences, such as criminal proceedings for forgery or loss of custody.

5. Conclusions

According to Hannah Arendt, the calamity of the rightless is that they are deprived of the right to action and to speak, the right to belong to some kind of organized community, i.e. the ‘right to have rights’.⁸⁹

⁸¹ UNICEF and UNAMI, p. 4; Yassen 2021, p. 15-16.

⁸² UNICEF and UNAMI, p. 6.

⁸³ UNICEF and UNAMI, p. 4, 6; Yassen 2021, p. 16.

⁸⁴ UNICEF and UNAMI, p. 5; IOM/Genat 2020, p. 31; Syrians for Truth & Justice, ‘Southern Syria: Thousands of Survivors Fail to Register their Dead Relatives’, 21 March 2020, at: <https://stj-sy.org/en/southern-syria-thousands-of-survivors-fail-to-register-their-dead-relatives/> (accessed 6 March 2022).

⁸⁵ Clutterbuck 2021.

⁸⁶ Fortin 2021, p. 30; not publicly available NGO research.

⁸⁷ Sosnowski and Hamadeh 2021, p. 3

⁸⁸ Clutterbuck 2021, p. 11; Al-Omar 2022; not publicly available NGO research.

⁸⁹ Arendt, 1973, p. 295-97.

It is not the loss of specific rights (i.e. rights of citizens), but “the loss of a community willing and able to guarantee any rights whatsoever”⁹⁰ that is the calamity that has befallen many stateless, rightless persons, including refugees and IDPs. By marginalizing and collectively punishing Iraqi and Syrian families with (perceived) terrorist affiliations, their governments, and in some cases, their tribes, communities of origin, and their families, deprive them of belonging to – what used to be - their political, familial, tribal or social community. By treating them as outcasts and non-citizens, the Iraqi and Syrian governments *de facto* deprive them of their citizenship. Excluding individuals from the political community is to exclude them from access to legal identity, nationality and enjoyment of other basic rights. This is what has happened and continues to happen to thousands of undocumented Syrian and Iraqi families, women and children, whose marriages, births and deaths are not recognized or registered by the official state authorities.

This article discussed the precarious legal status and citizenship of displaced women and children in Iraq and Syria, who live(d) under non-state rule, such as ISIL or other armed opposition groups, and families with (perceived) affiliation with such non-state groups. These women and children, because of their (perceived) affiliation to these groups, are routinely denied access to civil registration, most importantly marriage and birth certificates, and, consequently, cannot obtain civil and identity documents. They are often treated as outcasts, as rightless, second-class individuals, and are deprived of their right to belong, their right to a legal identity, a nationality, and other basic rights.

It is sad and alarming that civil documentation has become so highly politicized, in Syria where possession of non-state documentation can be taken as evidence of oppositional affiliation, and in Iraq where withholding legal identity and civil documents to family members of ISIL-affiliates is used as a form of collective punishment. The governments of Iraq and Syria should, aided by UN agencies and other humanitarian actors, allow all their (*de facto*) citizens to complete registration of their life events and provide access to official state documentation. Moreover, Iraqi, Syrian, and other (including, for example, European) government authorities should be lenient in accepting the details stated in non-state issued documents, as evidence of the occurrence of marriage, birth, divorce and death in areas that were or are outside government control.⁹¹ For example, the personal status courts in Iraq and Syria have wide discretionary power; they should be allowed to accept, free from government or security forces interference, a wide array of documentation and witness evidence of marriages, birth of children, divorce and death of deceased or missing husbands presented by widows, female heads of households, children and other relatives. The registration of these life events must be ensured and facilitated and, with that, access to basic services, as well as the acquisition of Iraqi or Syrian nationality to prevent statelessness of the many children who are born into conflict-affected families in Iraq and Syria.

⁹⁰ Arendt 1973, p. 297.

⁹¹ See also Sosnowski and Hamadeh 2021; Hampton 2019.

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