

STATELESSNESS AND DISPLACEMENT

Scoping Paper



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The mission of Tilburg University in the Netherlands is “Understanding Society”. It aims to contribute to solving social issues by developing and transferring knowledge and bringing together people from various disciplines and organisations. The Statelessness Programme was established at Tilburg University in 2011 and is a specialised academic initiative dedicated to research, training and outreach on statelessness and related issues. Note that from 1 January 2015, the activities of the Statelessness Programme continue under the flag of the Institute on Statelessness and Inclusion (www.InstituteSI.org).

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 people worldwide.

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INTRODUCTION

“Undocumented and with no proof of their nationality, many Syrian refugee children face a dangerous and uncertain future due to the risk of statelessness”.

UN High Commissioner for Refugees (UNHCR), November 2014¹

With nearly 2.5 million Syrian refugees seeking refuge in neighbouring countries and an additional 6.5 million internally displaced within Syria, the risk of statelessness represents yet another by-product of the ongoing conflict and a further consequence facing the millions of displaced Syrians.² This report will provide a preliminary analysis of how statelessness impacts those who have been forcibly displaced not just from Syria, but throughout the world. The analysis highlights the two most significant links between statelessness and displacement, first exploring how stateless communities are often at increased risk of forced displacement and then how forced displacement itself may contribute to increased risks of statelessness. Finally, the report explores how statelessness may increase vulnerability in forced displacement contexts and the extent to which this can pose additional challenges to addressing their needs.

To date, there has been limited analysis of this nexus between statelessness and forced displacement, both in terms of academic literature and policy reporting. There has been

¹ UNHCR, “Born in exile, Syrian children face threat of statelessness”, November 2014, available at: <http://www.unhcr.org/54589fb16.html>.

² UNHCR, 2015 UNHCR country operations profile – Syrian Arab Republic, available at: <http://www.unhcr.org/pages/49e486a76.html>.

previous research into statelessness and irregular migration³ as well as some context-specific studies where displacement and statelessness interact.⁴ However, none have focused on the relationship between forced displacement and statelessness on a more general level. In 1993, UNHCR's Note on International Protection acknowledged that preventing and reducing cases of statelessness is "vital for the prevention of refugee flows".⁵ Yet, among the various stakeholders and humanitarian organisations working with displaced populations, relatively little attention is paid to the heightened vulnerability of stateless persons or the risks of new cases of statelessness arising amongst those displaced.

At the request of the Norwegian Refugee Council (NRC), the Institute on Statelessness and Inclusion at Tilburg University undertook this study into the link between statelessness and forced displacement, focusing on both refugees and internally displaced persons (IDPs). This scoping paper offers an initial exploratory analysis and does not offer concrete recommendations or guidance. Rather, the expectation is that examination of this link between statelessness and displacement will ultimately inform further study and discussion of how best to address these interconnected issues.

The research underlying this report combined a desk review with a short survey to draw out existing knowledge within NRC operations. A questionnaire was compiled and sent to NRC's Information Counselling and Legal Assistance (ICLA) programmes worldwide.⁶ As "Citizenship and Statelessness" has been recently added as a thematic policy area for ICLA programmes, the questionnaire aimed to better understand current operational and programming responses by NRC field offices and to improve any gaps in the future. The bulk of the data and case studies found in this report are derived from these questionnaires and from informal discussions with NRC ICLA staff members. Eleven responses were received that highlighted NRC's current work with stateless populations or populations at risk of displacement, explained what activities are currently being undertaken and raised ideas about what more might be done to prevent new cases.

The ICLA responses indicate that stateless populations already constitute a segment of NRC beneficiaries. Such populations include the stateless Kurds from Syria, Faili Kurds from Iraq, Palestinians and stateless Ivorians. Equally, displaced populations at risk of becoming stateless were identified across NRC operations. While ICLA programmes already contribute to the prevention of new cases of statelessness through their work on civil documentation, there remains scope for this engagement to be strengthened and expanded. These dimensions are each addressed in further detail in the sections below.

3 See, e.g., Van Waas, L., "The children of irregular migrant: a stateless generation?" in *Netherlands Quarterly of Human Rights*, vol. 25, no. 3, 2007; Blitz, B. and Lynch, M., (eds.) *Statelessness and Citizenship: A comparative study on the benefits of nationality*, Edward Elgar Publishing, 2011; Cholewinski, R. and Nonnenmacher, S., "The nexus between statelessness and migration", in Edwards, A. and van Waas, L. (eds.) *Nationality and Statelessness under International Law*, Cambridge University Press, 2014.

4 E.g., Amnesty International, *Bhutan: Forcible exile*, 1 August 1994.

5 UNHCR, Note on International Protection, A/AC.96/815, 31 August 1993; see also UN General Assembly, Office of the United Nations High Commissioner for Refugees: resolution adopted by the General Assembly, A/RES/50/152, 9 February 1996.

6 See Annex 1: NRC Staff Questionnaire.

STATELESSNESS AND DISPLACEMENT



Statelessness is a global human rights problem affecting millions of individuals, families and communities worldwide. To be left stateless was once described as “a form of punishment *more primitive than torture* for it destroys for the individual the political existence that was centuries in the development.”⁷ A person who is not considered as a national by any state will find himself vulnerable to further, cumulative human rights violations.⁸

While UNHCR estimates that there are at least 10 million stateless people worldwide,⁹ this figure expressly excludes stateless Palestinians and stateless refugees.¹⁰ A recent report suggests, for instance, that there are likely an additional 1.5 million stateless refugees to add to the global statelessness tally.¹¹ This demonstrates the strong connection between statelessness and displacement; indeed, as many as one out of every three stateless persons in the world has been forcibly displaced.¹²

7 See U.S. Supreme Court decision in *Trop v. Dulles*, 356 U.S. 86 (1958).

8 See, e.g., UNHCR, *Special Report: Ending statelessness within 10 years*, 2014, available at: http://ibelong.unhcr.org/cms-web/upl/entities/story/Stateless-Report_eng_final3.pdf; Women’s Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013; see also Greg Constantine’s photography series, “Nowhere People: The Global Face of Statelessness”, available at: <http://www.nowherepeople.org>.

9 UNHCR, *Global Trends* 2013, available at: <http://www.unhcr.org/5399a14f9.html>.

10 For further discussions on UNHCR statistical reporting on stateless persons and refugees, see *Statelessness* chapter in UNHCR, *2013 Statistical Yearbook*, available at: <http://www.unhcr.org/54cf99f29.html>.

11 Institute on Statelessness and Inclusion, *The World’s Stateless*, December 2014, available at: www.instituteSI.org/worldsstateless.pdf.

12 *Ibid*, p.143

To fully understand the link with forced displacement, it is important first to look more carefully at the definition and elements of statelessness. A stateless person is someone who does not possess any nationality – the term nationality referring to the legal bond between a person and a state. The international legal framework governing stateless persons centres on the 1954 Convention relating to the Status of Stateless Persons (“1954 Statelessness Convention”), which defines a stateless person as “a person who is not considered as a national by any State under the operation of its law”.¹³

This definition has been recognised by the International Law Commission as part of customary international law and should be applied in all countries, regardless of ratification of the 1954 Statelessness Convention.¹⁴ The majority of stateless persons belong to *in-situ* stateless populations, meaning that they already consider themselves to be in their own country and are not necessarily displaced. Thus, while this research explores links between displacement and statelessness, it is important to understand statelessness as a distinct legal status. Neither migration nor displacement is a necessary ingredient to meet the definition of statelessness under international law.

Rather, the causes underlying statelessness vary and can lead to individual or collective cases of statelessness.¹⁵ These include, for example, state succession where a new state has to define who belongs to its body of citizens and – depending on how this question is answered – this can lead to the exclusion of a segment of the population.¹⁶ An example of this can be found in Europe, where approximately 85 per cent of stateless persons, primarily in present-day Latvia, the Russian Federation, Estonia and Ukraine, are stateless as a result of the dissolution of the Soviet Union over twenty years ago.¹⁷ Statelessness may further arise when states enforce discriminatory criteria in their nationality legislation – whether on racial, religious, ethnic or political grounds – which preclude certain groups from accessing nationality or even result in the withdrawal of nationality.¹⁸ This latter situation arose in 1989 with the denationalisation and expulsion of tens of thousands of black Mauritians by the Arab-dominated government, a case which is discussed in more depth in the context of collective expulsions in the next chapter.¹⁹

Conflict of laws may likewise trigger statelessness; even though an individual or group may have links to more than one state, they may still fail to qualify under the law or operation of the law as a national of any of those countries. The likelihood of a conflict of laws leaving a person stateless is increased where discriminatory nationality rules are enforced, particularly with gender discrimination in the conferral of nationality. Where a mother cannot pass her nationality to her children, there is already one less avenue available through which to secure a nationality at birth.²⁰ As will be discussed in subsequent chapters, the risk of statelessness arising in one of the contexts outlined above only increases against a backdrop of forced displacement.

13 UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html> [hereafter, the “1954 Statelessness Convention”], Article 1(1).

14 To understand further the legal definition of a stateless person and the elements of this definition, see UN High Commissioner for Refugees, *Handbook on protection of stateless persons*, June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.

15 For more information on the causes of statelessness, see UN High Commissioner for Refugees (UNHCR), *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*, 2008, available at: <http://www.refworld.org/docid/49a28afb2.html>.

16 International Law Commission, *Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries)*, 3 April 1999.

17 UNHCR 2013 Statistical Yearbook, *supra* note 9, p. 96.

18 See, e.g., Chapter 20 of the Aliens and Nationality Law of Liberia under which only a person of ‘Negro’ descent may acquire citizenship.

19 For additional discussion of the denationalisation of black Mauritians, see *infra*, Chapter 2, Section 3, Collective expulsions.

20 See, e.g., Article 1 of Qatari Law No. 38 of 2005 on the acquisition of Qatari nationality, which allows men – but not women – to transmit their Qatari nationality to their children.

If, in addition to not being considered a national by any state, individuals also meet the definition of Article 1 of the 1951 Refugee Convention, then they are both stateless and a refugee. This article defines a refugee as someone who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, *not having a nationality* and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.²¹

The refugee definition, therefore, explicitly allows for the possibility of stateless persons to be recognised as refugees where they face persecution in their country of origin. Although, as noted, many stateless communities are *in-situ* – they remain in the country of birth or ancestry – there are many stateless persons who have been forcibly displaced across an international border and who receive protection as refugees. Stateless persons may also find themselves as internally displaced persons (IDPs), where they “have been forced or obliged to flee or to leave their homes or places of *habitual residence*, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border”.²² Again, it is clear from the definition that someone can hold no nationality and also be an IDP.

The primary responsibility in protecting refugees, IDPs and stateless persons lies first with the State. Under both international human rights law as well as customary international law, all States have an obligation to provide protection for refugees, IDPs and stateless persons on their territory. Additional legal obligations apply to States Parties to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the 1951 Refugee Convention and/or its 1967 Protocol, in accordance with the provisions laid out in these specific instruments.

The UN General Assembly granted UNHCR with the mandate to help States to identify, prevent and reduce statelessness as well as to protect the rights of stateless persons worldwide. In 2006, the Executive Committee expressly requested that UNHCR coordinate with governments, other UN agencies and civil society on statelessness.²³ UNHCR, therefore, has parallel, complementary and sometimes overlapping mandates for refugees, IDPs and stateless persons. Some refugees are stateless and some stateless persons are refugees, but the two legal statuses are distinct and do not always coincide; the same may often be true with regard to IDP status and statelessness.

In order to achieve effective protection but also to avoid double-counting, UNHCR categorises persons either as refugees or stateless. If they satisfy the criteria for both statuses, they will be counted and treated only as refugees.²⁴ Stateless refugees, therefore, only appear under UNHCR statistics as refugees and are excluded from total statelessness figures.²⁵ Additionally, both the 1951 Refugee Convention and the 1954 Statelessness Convention stipulate exclusion clauses for those who are already

21 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 7 March 2015], Article 1A(2) (emphasis added) [hereafter, the “1951 Refugee Convention”].

22 *Guiding Principles on Internal Displacement*, United Nations, 1998, E/CN.4/1998/53/Add.2 (emphasis added).

23 Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, ExCom Conclusion No. 106 (LVII), 6 October 2006, available at: <http://www.unhcr.org/453497302.html>.

24 Additionally, there is a more comprehensive legal mandate and stronger international protection framework under the 1951 Refugee Convention than the 1954 Statelessness Convention.

25 UNHCR 2013 Statistical Yearbook, *supra* note 9.

receiving assistance from another United Nations agency.²⁶ Consequently, all stateless Palestinians residing in the UN Relief and Works Agency (UNRWA) areas of operation – including the West Bank, Gaza, Lebanon, Jordan and Syria – are not considered persons of concern to UNHCR and do not appear in UNHCR statistics. However, while there are nearly 5.5 million Palestinians registered by UNRWA, it is important to note that not all should be considered stateless.²⁷ Beyond the ambiguity around the nationality status of those in the West Bank and Gaza, many Palestinians have acquired other nationalities, particularly from Jordan but also outside the Middle East. An estimated five million Palestinians worldwide are stateless at present or possess a nationality status that is currently uncertain.²⁸

While the granting of a statelessness mandate to UNHCR expressly acknowledges the link between statelessness and forced displacement, there has been little debate about how best to actually address and respond to statelessness in the specific context of forced displacement. As noted above, stateless refugees are typically classified exclusively as refugees, largely because the protection afforded by the 1951 Refugee Convention is more comprehensive than the 1954 Statelessness Convention.²⁹ This practice may, in some instances, be problematic because the specific and unique needs of stateless persons in a forced displacement context could be neglected and the prevention of new cases of statelessness may not be considered. Moreover, where a displaced population is or becomes stateless, this means that they can be susceptible to increased vulnerability, facing “diminished capacity [...] to anticipate, cope with, resist and recover from the impact of a natural or man-made hazard”.³⁰ Displaced stateless people may face greater difficulties exercising their basic rights than other, non-stateless refugee or IDP groups. For these reasons, statelessness is relevant to organisations working in emergency response – to address forced displacement resulting from statelessness, to prevent statelessness as a consequence of forced displacement and to respond to the special protection needs of stateless refugees and IDPs.

In accordance with the foregoing, the remainder of this paper is divided into three inquiries: statelessness as a cause of displacement; statelessness as a consequence of displacement; and statelessness as a challenge in the displacement context.

²⁶ See 1954 Statelessness Convention, Article 1(2)(i) (“This Convention shall not apply: To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance.”); 1951 Refugee Convention, Article 1D (“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.”)

²⁷ See, “UNRWA in Figures as of 1 January 2014”, available at: http://www.unrwa.org/sites/default/files/2014_01_uif_-_english.pdf.

²⁸ For additional information on this statistical calculation, see Chapter 3(VIII) on stateless Palestinians in *The World's Stateless*, Institute on Statelessness and Inclusion, pp. 127-132, December 2014, available at: <http://www.institutesi.org/worldsstateless.pdf>.

²⁹ 1954 Stateless Convention, *supra* note 12; UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.refworld.org/docid/3ae6b9620.html> (hereafter, the “1961 Reduction of Statelessness Convention”).

³⁰ For more discussion on assessment of vulnerability in displacement, see International Federation of Red Cross and Red Crescent Societies, *What is vulnerability?*, 2006, available at: <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/what-is-vulnerability/>.

2

STATELESSNESS AS A CAUSE OF DISPLACEMENT:

WHY ARE STATELESS POPULATIONS VULNERABLE TO FORCED DISPLACEMENT?

Stateless persons often find themselves in highly precarious and vulnerable situations in their countries of origin or where they habitually reside. This commonly results from the fact that populations have been made or kept stateless due to discrimination or stigmatisation of a particular group; their statelessness is one element of the detrimental treatment they endure, often characterised by a wide range of other human rights violations. Such violations can range from children being prevented access to healthcare or education;³¹ to insecurity and violence, and even, in extreme cases, ethnic cleansing.³² The discrimination faced by some stateless persons can sometimes be so severe as to amount to persecution, and can put them at the centre of local tensions or internal conflict, even forcing them to flee their homes or to cross international borders. The level and extent of the human rights challenges faced by stateless persons differs between countries and between different stateless groups and individuals. This following section will examine the ways in which stateless populations are uniquely vulnerable to and at risk of forced displacement in the context of conflict, serious human rights abuses, collective expulsions and even natural resource management.³³

31 For example, in September 2014, over 1,000 stateless Bidoon children in Kuwait were barred from entering or enrolling in school due to lack of birth certificates, which are systematically denied by the Kuwaiti government to Bidoon children. See Global Voices Online, “Kuwait sentences 1000 Bidoon children to illiteracy,” 16 November 2014, available at: <http://globalvoicesonline.org/2014/11/16/kuwait-stateless-bidoon-children-barred-from-school/>.

32 See, e.g., Human Rights Watch, *All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 22 April 2013, available at: <http://www.hrw.org/node/114882> (describing the role of the Burmese government in the forced displacement and ethnic cleansing of more than 125,000 Rohingya).

33 For further discussion of stateless refugee populations, see chapter 3(VII) on stateless refugees in *The World's Stateless*, Institute on Statelessness and Inclusion, pp. 116-126, December 2014, available at: <http://www.institutesi.org/worldsstateless.pdf>.

1. CONFLICT

Many of the largest stateless population throughout the world are targeted by serious racial, ethnic or religious discrimination, often evidenced through discriminatory state policies or broad societal discrimination. Rendering a group stateless based on a discriminatory criterion may be part of an overt policy by the authorities to exclude certain persons from citizenship, to deny their connection to the country and to prevent their full or equal membership of its community. These tailored mechanisms of denationalisation can, in extreme cases, constitute an attempt to change a state's demographic composition. Such measures can contribute to the stigmatisation or even vilification of a group. This may prompt stateless communities to become involved in, or the target of, inter-communal conflict. The denial of citizenship and the exclusion that results also deprives the stateless of various rights and this could give rise to such a sense of marginalisation and humiliation that stateless groups themselves feel forced to mobilise against the authorities. Denial of nationality can thus contribute to fuelling internal conflict.

One such example occurred in Côte d'Ivoire, which contains one of the largest stateless populations in Africa. In 2002, civil strife began in Côte d'Ivoire, largely triggered by the widespread nationality and documentation problems faced by a minority in the country.³⁴ The incumbent government amended the electoral regulations primarily to eliminate the presidential campaign of Alassane Outtara. Outtara was of Burkinabe descent and was excluded from standing in the elections based on his heritage. This directly affected political participation and voting rights as well as housing, land and property rights for all Ivoirians. As a result, Ivoirians who shared this ethnic heritage were denationalised overnight and often, with no other nationality, left stateless. In response to the tension that was generated by the concept of Ivorian versus non-Ivorian, division was created in society, which sparked conflict.³⁵ This is one example where inability to access nationality, and consequent statelessness, was one of the factors that resulted in large-scale forced displacement.³⁶ This situation ultimately led countries of West Africa to work together to develop a regional approach to addressing statelessness.³⁷

2. SERIOUS HUMAN RIGHTS VIOLATIONS

Citizenship, or nationality, is a fundamental human right that often facilitates the exercise of other human rights. The denial of citizenship to certain individuals and groups is, in many situations, often only one component of a larger policy of suppression of rights and even persecution. Irregular distribution of citizenship and the failure of the state to rectify this have a great effect on the enjoyment of rights.

For example, as groups may be rendered stateless due to religious discrimination, they may become particularly vulnerable to sectarian violence, as examined in detail

³⁴ For years, the Ivorian government has routinely denied claims of Ivorian nationality to millions of immigrants and their descendants. As a result, identification and birth registration documents were never issued and UNHCR estimates that there are approximately 700,000 stateless Ivoirians. For more information, see Internal Displacement Monitoring Centre (IDMC), "Côte d'Ivoire: protection needs of IDPs remain acute, despite modest political progress", June 2006, available at: <http://www.internal-displacement.org/assets/library/Africa/Cote-dIvoire/pdf/cdi-overview-june06.pdf>; UNHCR, "Hendriks commends efforts to end statelessness in Côte d'Ivoire", July 2014, available at: <http://www.unhcr.org/53ce1666.html>

³⁵ See further, B. Manby, *Nationality, migration and statelessness in West Africa – Draft report*, UNHCR and IOM, 2015, available at: <http://unhcr.org/ecowas2015/Nationality-Migration-and-Statelessness-in-West-Africa-REPORT-EN.pdf>

³⁶ For more information on the Côte d'Ivoire conflict, see Refugees International "Address root causes of conflict to prevent and reduce statelessness", 2007, available at: <http://www.refintl.org/policy/field-report/c%C3%B4te-d%E2%80%99ivoire-address-root-causes-conflict-prevent-and-reduce-statelessness>; see also UNHCR, "UNHCR support to NEPAD Planning and Coordinating Authority (NPCA)", April 2013, available at: http://www.un.org/africa/osaa/2013_un_system/UNHCR.pdf

³⁷ See Ministerial Conference on Statelessness in the ECOWAS Region, *Conclusion and Recommendations of the Ministerial Conference on Statelessness in the ECOWAS Region*, 23-24 February 2015, available at: <http://unhcr.org/ecowas2015/E-Conclusions.pdf>; further documentation related to the Ministerial Conference available at: http://unhcr.org/ecowas2015/#_ga=1.253296905.1221344627.1421312763.

through the Rohingya case study below.³⁸ More generally, stateless groups often serve as scapegoats and xenophobic sentiment may lead to the stateless being accused of disloyalty or even being traitors and spies for enemy countries.³⁹ The consequence of this may be such extreme stigmatisation and violence that stateless populations have no option but to flee. One example of severe persecution is the nearly 300,000 Syrian Kurds that were left stateless after a flawed 1962 census denationalised a large proportion of Kurds residing in northern Syria.⁴⁰ There, statelessness precipitated severe restrictions to basic rights such as the right to health, the right to marry, the right to own property and freedom of movement. As a result, over the decades, many have fled Syria, mainly to northern Iraq but also to other countries around the world, where they have since lived as refugees.⁴¹

Statelessness and Forced Displacement - The Rohingya Case

The Rohingya are an ethnic and religious minority in Myanmar who, in 1982, were excluded from nationality when the country's citizenship regulations were reformed and were left stateless as a result. They have suffered from extreme and targeted human rights abuses for decades, including circumstances rising to the level of ethnic cleansing.⁴² Their collective denationalisation is one of the ways in which the group has been oppressed and this has facilitated and engendered other abuses. As Human Rights Watch noted, the situation of the Rohingya shows that "[w]here an entire group is arbitrarily denied this basic right on the basis of ethnicity, this constitutes discrimination rising to the level of persecution".⁴³ Their situation has left them without the rights to freedom of movement, education, health, employment in the civil service, and land ownership. They have also been the targets of violent acts and these abuses have prompted many to flee their homes and risk their lives in the hope of finding safe haven.

Many Rohingya have fled to neighbouring countries and beyond. Despite being in need of international protection as refugees, the Rohingya often face harsh conditions in the host states in which they seek refuge and the journey itself can be extremely hazardous.⁴⁴ Additionally, within Rakhine State in Myanmar, some 140,000 Rohingya have become internally displaced. Most were forced to flee their homes as a result of inter-communal tensions which flared in 2012, with members of the Rakhine Buddhist majority initiating systematic violence against the Rohingya. The conditions in the IDP camps are dire with aid and media access being restricted by the authorities.⁴⁵ Known as one of the most persecuted communities worldwide, the Rohingya is an example of how persecution and violence of stateless populations can trigger forced displacement.

38 *The Washington Post*, "Rohingya Muslims flee Burma by Boat after Sectarian Violence", February 2013, available at: http://www.washingtonpost.com/world/asia_pacific/muslim-refugees-flee-burma-by-boat-after-sectarian-violence/2013/02/10/05aa359e-714a-11e2-ac36-3d8d9dcaa2e2_story.html

39 For example, stateless Bidoon in Kuwait have been frequently accused of being Iranian and/or Iraqi collaborators. See *Khaleej Times*, "Kuwait busts alleged Iran spy cell", 1 May 2010, available at: http://www.khaleejtimes.com/DisplayArticleNew.asp?xfile=/data/middleeast/2010/May/middleeast_May11.xml§ion=middleeast

40 For more information on the stateless Kurds, see McGee, Thomas, *The Stateless Kurds of Syria: Ethnic Identity and National I.D.*, 2013 available at: http://www.academia.edu/5677728/The_Stateless_Kurds_of_Syria_Ethnic_Identity_and_National_I.D

41 See Albarazi, Z, *The Stateless Syrians*, May 2013.

42 See Human Rights Watch, "Burma: Government Plan Would Segregate Rohingya", October 2014 available at: <http://www.hrw.org/news/2014/10/03/burma-government-plan-would-segregate-rohingya>.

43 Human Rights Watch, "The Rohingya Citizenship: The Root of the Problem", available at: http://www.hrw.org/reports/2000/malaysia/mayb_r008-04.htm

44 For more information on the stateless Rohingya, see Human Rights Watch, *All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 22 April 2013; Di Gaetano S, *How to Protect the Rights of the Stateless Rohingya People in Myanmar*, 2013, The Asian Resource Foundation; C. Lewa, "North Arakan: an open prison for the Rohingya of Burma" in *Forced Migration Review*, Issue 32, 2009; *The Burma Project, Ethnicity Without Meaning, Data Without Context*, 2014, available at: <http://www.tni.org/briefing/ethnicity-without-meaning-data-without-context>; Equal Rights Trust, "The Human Rights of Stateless Rohingya in Thailand", 2014, available at: <http://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf>

45 Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, 2014, available at: <http://www.fortifyrights.org/publications.html>; Aljazeera, "Myanmar's Rohingya face a humanitarian crisis", 19 April 2014, available at: <http://www.aljazeera.com/indepth/features/2014/04/myanmar-rohingya-face-humanitarian-crisis-2014419153817624529.html>.

3. COLLECTIVE EXPULSIONS

In addition to persecution and human rights violations that compel stateless individuals to flee their homes, stateless communities have also been directly encouraged to leave their country and, in extreme situations, even been forcibly deported. This occurs primarily where states use denationalisation as a demographic tool not just to exclude certain populations from their citizenry, but to physically remove them from the territory through collective expulsions. For example, in 1989, the Arab-dominated government in Mauritania denationalised an estimated 75,000 black Mauritians as part of broader discriminatory policies and land disputes, informed by ideas of pan-Arabism. With the stripping of nationality, their identification papers were destroyed and the black Mauritians were left stateless. A significant number was deported across the borders into Senegal and Mali, where they subsequently lived for years as refugees. In March 2007, the newly-elected Mauritanian president demonstrated his government's political will to repatriate and "rehabilitate the rights of the black Mauritians who suffered from acts of violence".⁴⁶ In collaboration with the Senegalese government and UNHCR, the Mauritanian authorities concluded a tripartite agreement which aimed to repatriate and reintegrate the refugees. Approximately 24,000 refugees were voluntarily repatriated within the first year. However, the agreement has yet to be fully implemented and some refugees remain outside Mauritania. As a result, many black Mauritians have yet to reinstate their nationality and have been omitted from the most recent census in Mauritania. There are believed to be approximately 30,000 black Mauritians living in exile who are likely still to be stateless refugees.⁴⁷ Among returnees, some black Mauritians continue to live in precarious conditions due to their previous denationalisation and exile and it is unclear whether all have successfully reacquired nationality.⁴⁸

A similar example involving the forced deportation of a stateless minority occurred with the Faili Kurds of Iraq. In 1980, through Presidential Decree 666, an estimated 300,000 Faili Kurds – largely Shia Kurds from northern Iraq – were stripped of their Iraqi citizenship by order of Saddam Hussein. After this denationalisation, a substantial number were forced from their homes and expelled across the border into Iran. Presidential Decree 666 was subsequently repealed in 2006 and Iraqi nationality was to be reinstated for all of those who had previously been denationalised. The Iraqi Ministry of Displacement and Migration (MoDM) states that approximately 20,000 families, representing 100,000 individuals, have since had their citizenship reinstated.⁴⁹ However, there are still some who lack the necessary documents to benefit from this initiative as individuals are required to show that they or their direct ancestors had been registered during the 1957 Iraqi national census. So, despite this substantial measure taken to resolve this problem, several thousand Faili Kurds reportedly remain in exile and stateless in Iran.⁵⁰

46 MacEwan, L, "Voluntary repatriation and the participation of Mauritanian refugees", *Forced Migration Review* 34, available at: <http://www.fmreview.org/en/urban-displacement/72-74.pdf>.

47 Institute on Statelessness and Inclusion, *The World's Stateless*, December 2014, available at: www.institutestl.org/worldsstateless.pdf, p. 115.

48 See also, Open Society Justice Initiative, "Restoration of Nationality after Arbitrary Denationalization: Statement Submitted by the Open Society Justice Initiative for Consideration by the United Nations Human Rights Council at its Ninth Session, on the occasion of its Universal Periodic Review of the Islamic Republic of Mauritania", 2 November to 3 December 2010, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MR/OSJI_OpenSocietyJusticeInitiative_JS.pdf.

49 Taneja, Preti, "Iraq's Minorities: Participation in Public Life", *Minority Rights Group International*, 2011, available at: <http://www.minorityrights.org/download.php?id=1075>

50 For more information on the stateless Faili Kurds, see Refugees International, *The Faili Kurds of Iraq: Thirty Years Without Nationality*, 2010, available at: <http://www.refintl.org/blog/faili-kurds-iraq-thirty-years-without-nationality>.

4. OTHER FORMS OF VULNERABILITY

In other circumstances, statelessness itself may not directly cause displacement, but it may severely limit the coping strategies available to affected communities. Instead, statelessness may play an indirect or circumstantial role in the displacement caused by, *inter alia*, natural disasters, large infrastructure projects or changes in law and practice in relation to the right to reside. For example, stateless persons may be particularly vulnerable with regard to immigration laws since they lack any automatic right to residence. With both the stateless Bidoon in Kuwait⁵¹ and the Rohingya in Myanmar⁵², government rhetoric and terminology frequently describes and characterises stateless groups as “illegal residents” or “illegal immigrants”. If a state changes its policy or practice around the right to reside, or ceases to tolerate the presence of a stateless group, these changes may result in forced displacement, detention or deportation.

Large infrastructure projects and even natural disasters may likewise contribute to the displacement of stateless populations. Often stateless individuals lack land and property rights and may lack effective coping mechanisms or legal claims to challenge large infrastructure or land redevelopment projects. Stateless communities may be denied compensation or access to legal redress and may not be provided with relocation assistance. Where land may be confiscated for the extraction of natural resources, stateless populations are often excluded from any political participation or decision-making and may ultimately become internally displaced or even forced across the border into neighbouring countries.⁵³ Where natural disasters result in large-scale IDP or refugee situations, stateless individuals could face particular difficulties in finding a suitable alternative residence or re-acquiring their land and property.

51 The Bidoon are stateless as they were excluded from the initial registration of citizens at the founding of the Kuwaiti state. Kuwaiti authorities refer to them as “irregular migrants” and, therefore, they could potentially be at risk of deportation. For more information on the stateless Bidoon of Kuwait, see Amnesty International, “Kuwait: The ‘Withouts’ of Kuwait: Nationality for Stateless Bidun Now”, 16 September 2013, Index Number MDE 17/001/2013, available at: <http://www.amnesty.org/en/library/info/MDE17/001/2013/en>.

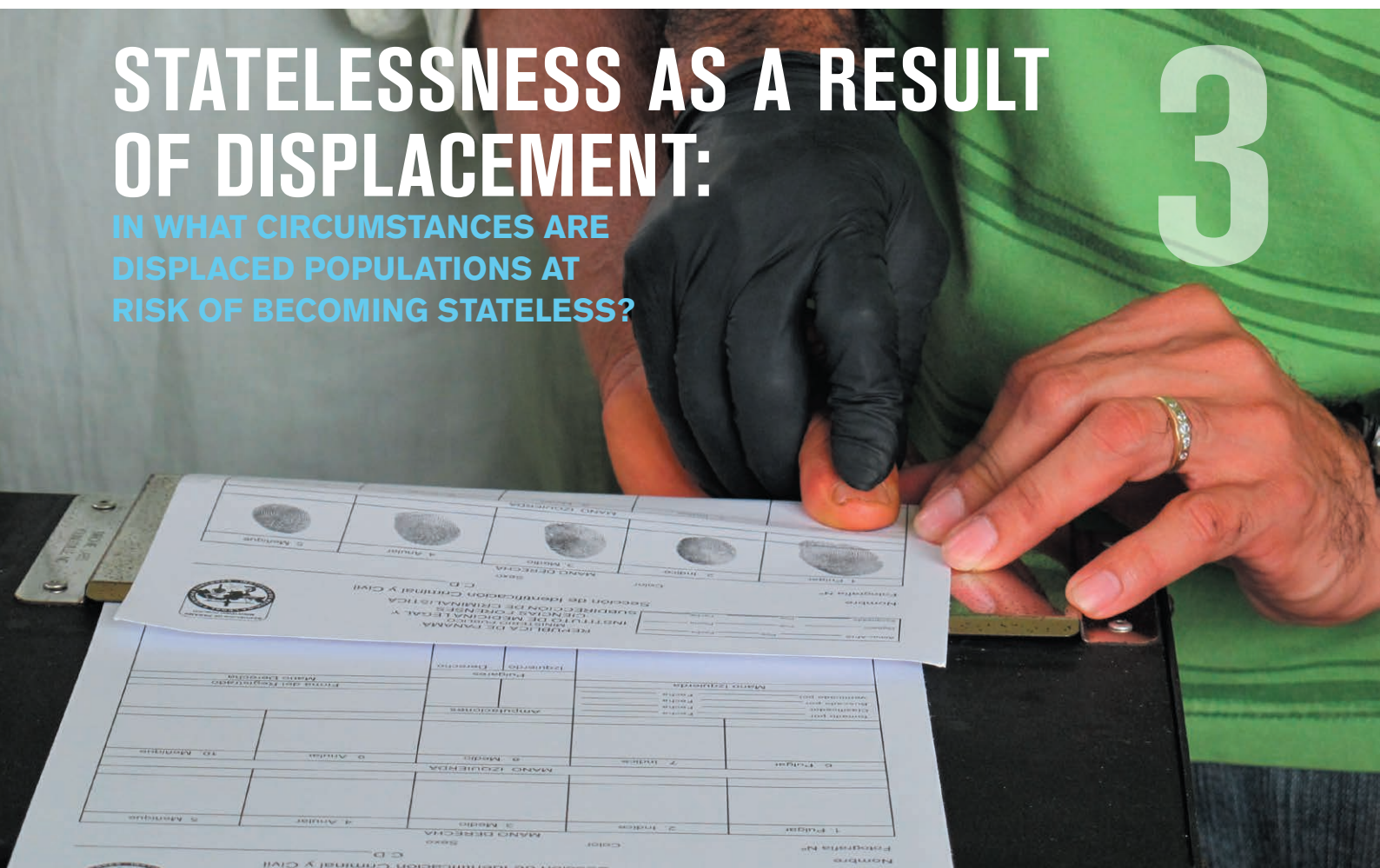
52 Human Rights Watch, “Burma: End ‘Ethnic Cleansing of Rohingya Muslims’”, 22 April 2013, available at: <http://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>.

53 For an example of a stateless community’s exclusion from consultation and decision-making in natural resource management, see Brunt, H, “‘Stateless Stakeholders: Seen But Not Heard?’ The Case of the Sama Dilaut in Sabah, Malaysia”, 2012, available at <https://www.sussex.ac.uk/webteam/gateway/file.php?name=helen-brunt-ma-dissertation.pdf&site=10>.

STATELESSNESS AS A RESULT OF DISPLACEMENT:

IN WHAT CIRCUMSTANCES ARE DISPLACED POPULATIONS AT RISK OF BECOMING STATELESS?

3



The precarious and unstable circumstances of displacement can, at times, increase the risk of becoming stateless, even for those who had formerly possessed a nationality. Various factors – including, but not limited to documentation problems, conflict of laws and even political hostilities – may expose displaced populations to a heightened risk of statelessness. This applies to both refugees and IDPs as well as to both protracted and temporary displacement situations.

The following section will provide only a general indication of how forced displacement may increase the risk of statelessness and does not attempt an exhaustive account of all potential scenarios. To identify where there may be a risk of statelessness in a particular context, a full assessment of the displaced population and a thorough analysis of the nationality and family or personal status laws and practices in both the place of origin and the place of displacement must be conducted.

1. CONFLICT OF LAWS

Conflict of laws may contribute to statelessness in situations where the nationality legislations of different states are inconsistent. Since States are generally free to determine their own nationality laws – provided these abide by international law,⁵⁴ regulations defining the acquisition and loss of nationality differ substantially across jurisdictions. For example, in some countries nationality may only be acquired through familial ties, or *jus sanguinis*, and even this is sometimes on a restricted, discriminatory basis through

⁵⁴ See Article 1, League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, available at: <http://www.refworld.org/docid/3ae6b3b00.html>.

paternal ties only. Other countries confer nationality through birth on the territory, or *jus soli*, and there are various combinations of these two practices. Such differences between the laws of different jurisdictions mean that displaced populations may fall through gaps and be rendered stateless.

The risk of this happening is especially present in the context of displacement across an international border because it implicates the nationality laws of at least two countries.⁵⁵ If stateless persons are forcibly displaced there is a risk of inter-generational statelessness for children born in the host country unless an effective safeguard exists and is applied to the children born of stateless refugees. Some conflict of laws scenarios that may expose displaced persons to statelessness include, but are not limited to:

- *Residence Abroad*: Nationality laws worldwide differ in how they deal with the connection to their nationals who reside abroad. If the legislation takes a restrictive approach to residency abroad, it may prescribe loss of nationality on the basis of a certain period of absence from the country of nationality. For example, Article 16 of the Myanmar citizenship law allows for loss of citizenship for any “citizen who leaves the State permanently.”⁵⁶ Although it is unclear how to determine whether an individual has permanently left, the legislation has potential for misuse against forcibly displaced populations. Likewise, while there is no evidence this clause has been enforced, Article 12(G) of the Syrian nationality law does allow for stripping of nationality if a Syrian national has settled in a non-Arab country for more than three years and does not return upon request.⁵⁷ In amending its nationality laws in 2006, Indonesia expressly added a safeguard to ensure that citizens are not rendered stateless by such loss of nationality. Where a person has become forcibly displaced outside their country of origin, there is the possibility such clauses relating to loss of nationality may be applied to them. Moreover, the frequent condition of regular reporting to the country’s consular services to pre-empt loss of nationality may be difficult for many refugees due to the protection risks involved in approaching an embassy or consulate.
- *Limits on jus sanguinis or jus soli*: Most countries use a combination of *jus sanguinis* (nationality by descent) and *jus soli* (nationality by place of birth) in their nationality laws, but the exact conditions set can differ greatly from one state to another. Often the laws include various exceptions or limits which exclude certain categories of children from acquiring nationality. A *jus soli* regime may contain exceptions for people of a particular migration or displacement status. For example, children of irregular migrants or refugees may not qualify for nationality solely through birth on the country’s territory, even if that child would also be unable to acquire nationality through *jus sanguinis* if the parents are stateless. Some states that generally apply *jus sanguinis* have limitations for children born outside the country of origin which heightens the risk of a conflict of laws leading to statelessness for displaced populations. An example of such conflict of laws would be where a Liberian refugee mother gives birth in Sierra Leone, the father of the child being unknown. The child would be stateless as Sierra Leone does not have a *jus soli* principle in its law or a safeguard for children born in its territory who would otherwise be stateless and Liberia only recognises paternal and not maternal *jus sanguinis* for children born outside the territory.⁵⁸ Colombia provides a second example where displacement

55 For more information on the link between conflict of laws and statelessness, see Samore, W., “Statelessness as a Consequence of the Conflict of Nationality Laws”, 1951, *American Journal of International Law*, Vol. 45, No. 3; see also, Nonnenmacher, S. and Cholewinski, R., “The nexus between statelessness and migration,” in Van Waas, L.E. and Edwards, A., (eds.) *Nationality and Statelessness under International Law*, Cambridge University Press, 2014.

56 Article 6, Burma Citizenship Law, 15 October 1982.

57 Legislative Decree 276 - Nationality Law [Syrian Arab Republic], Legislative Decree 276, 24 November 1969. Indonesian nationality legislation likewise states that someone residing outside the territory for five consecutive years, without reporting this to a representative of the Indonesian government, may be subject to loss of nationality.

58 Chapter 20, Aliens and Nationality Law [Liberia] (conferring Liberian nationality on “[a] person born outside Liberia whose father (i) was born a citizen of Liberia; (ii) was a citizen of Liberia at the time of the birth of such child, and (iii) had resided in Liberia prior to the birth of such child.”).

may create a conflict of laws as *jus sanguinis* conferral of nationality to children born outside Colombia is conditional on the completion of consular registration – which may not be possible to meet if the parent is a refugee and is unable or unwilling to approach the consulate.⁵⁹

- ▶ *Protracted Situations:* After generations abroad, a displaced community's ties with the country of origin may be lost entirely and it may cease to consider them as nationals, yet access to nationality of the host country is not necessarily guaranteed. Burundian refugees, for example, who fled ethnic conflict since the 1970s face problems with respect to return and reintegration precisely because of the protracted nature of the conflict. These Burundian refugees have spent most, if not all, of their lives in exile, mainly in Tanzania. Their prolonged absence has meant that they have lost key rights such as the right to land, and have also, to a large extent, lost their family and cultural ties. Many may no longer be Burundian nationals because, after decades away, they are unable to prove their ties to the community. Children of Burundian refugees did not access Tanzanian nationality and although the Tanzanian government opened up naturalisation several times to the first waves of refugees, permitting some of them to apply for Tanzanian citizenship, the majority never acquired Tanzanian nationality.⁶⁰ Recent reports suggest further measures to provide Burundian refugees access to Tanzanian citizenship – although the implementation of these measures has yet to be confirmed.⁶¹ In a recent ECOWAS Ministerial Conference in West Africa, it was recognised that “refugees are particularly vulnerable to the risk of losing proof of their identity” and the heightened risk of statelessness in the context of protracted refugee situations was explicitly highlighted.⁶²
- ▶ *Political upheaval:* Displaced populations may also be affected by major political upheaval that occurs during their absence from their country – such as state secession. For a community already in a protracted displacement context, their particular situation may be neglected during political negotiations and their ties to the country of origin may be contested or difficult to establish. During the waves of displacement that accompanied the lengthy Sudanese civil war, many southern Sudanese displaced to the north lost all their identity documents and, due to their extended exile, also established families with local northern communities. To many, this was seen to have weakened their link to their south Sudanese roots. Amendments to the Sudanese law in 2011 provide that ‘Sudanese nationality shall automatically be revoked if the person has acquired, *de jure* or *de facto*, the nationality of South Sudan’.⁶³ The nationality law of South Sudan requires a person to have been born there, have been resident for many years, or belong to one of the indigenous ethnic communities of South Sudan in order to acquire nationality.⁶⁴ Given these requirements, many of those displaced may be unable to satisfy the nationality requirements for South Sudan following the country's independence and they simultaneously risk losing their original Sudanese nationality because of a

59 Article 1b of Ley 43 de 1993 Nivel Nacional states that a child born outside Colombia who has at least one Colombian parent can be registered as a Colombian national by birth, either upon returning to Colombia (for residents) or at a consulate abroad (for non-residents).

60 Human Rights Watch, “Chapter 3: From Offers of Citizenship to Increased Hostility,” in *In the Name of Security: Forced Round-Ups of Refugees in Tanzania*, vol. 11, no. 4, July 1999, available at: v.

61 See Hovil, Lucy, “Statelessness averted? Former Burundian refugees to receive Tanzanian citizenship”, *IntLawGrrls*, 15 October 2014, available at: <http://ilg2.org/2014/10/15/statelessness-averted-former-burundian-refugees-to-receive-tanzanian-citizenship/>.

62 See Ministerial Conference on Statelessness in the ECOWAS Region, *Conclusion and Recommendations of the Ministerial Conference on Statelessness in the ECOWAS Region*, 23-24 February 2015, at para 58, available at: <http://unhcr.org/ecowas2015/E-Conclusions.pdf>.

63 Article 10(2) of the revised Sudanese Nationality Law.

64 Article 1 of the South Sudanese National Law.

divergent interpretation of the South Sudanese law by the Sudanese authorities.⁶⁵

Somaliland is another example where political upheaval could contribute to statelessness. Despite not being recognised internationally as a sovereign state, Somaliland has self-proclaimed its independence and IDPs from South Central Somalia are regarded by Somaliland authorities as both “refugees” and “foreigners”.⁶⁶ As this region considers introducing mandatory civil registration, the question remains what status IDPs from South Central Somalia may acquire in the future in Somaliland.

2. ACCESS TO CIVIL REGISTRATION AND DOCUMENTATION

Birth registration and the acquisition of a birth certificate are extremely important as they often provide the first legal recognition of a child and are frequently a prerequisite to obtaining any further civil or identity documents. According to Article 7 of the United Nations Convention on the Rights of the Child (CRC):

“The child shall be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality”.⁶⁷

An important distinction must be drawn between lack of birth registration and lack of nationality because, in most situations, a child acquires a nationality automatically at birth and the lack of birth registration has no effect in terms of nationality status. However, birth registration can be critical to the recognition by the state in question of the person's nationality.⁶⁸ Such risk is particularly heightened in the context of cross-border displacement where the nationality legislation of at least two countries may be implicated. In 2013, UNHCR's Executive Committee emphasised that “registration and documentation, especially birth registration as a proof of birth of a person, contribute to enhancing protection and the implementation of durable solutions, including by documenting links with countries of origin.”⁶⁹

Despite this, birth registration is often challenging in situations of forced displacement. Non-registration of births can be broadly attributed to either parental inaction or stringent administrative practices. Such examples of barriers with regard to birth registration in the context of displacement include:

- ▶ Costly and/or lengthy application procedures to register births;
- ▶ Barriers for foreigners and/or refugees to register births under regulations of the host country;
- ▶ Discrimination from local authorities towards foreigners and/or refugees which

65 Information provided by the NRC South Sudan Office. For more information on the situation of statelessness in South Sudan following succession, see Manby, B., “The Right to a Nationality and the Secession of South Sudan: A commentary on the impact of the new laws,” *Open Society Initiative for Eastern Africa*, 2012, available at: <http://www.opensocietyfoundations.org/sites/default/files/right-nationality-and-secession-south-sudan-commentary-20120618.pdf>.

66 UNHCR, *UNHCR Country Operations Plan 2008 - Somalia*, 1 September 2007.

67 See also, Universal Declaration of Human Rights (UDHR), Article 15 (“(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”); International Covenant on Civil and Political Rights (ICCPR), Article 24(3) (“Every child has the right to acquire a nationality.”); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Article 29 (“Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.”).

68 Whether a person is considered as a national by a state under the operation of its law is a mixed question of law and fact. It may be that a person qualifies for automatic acquisition of nationality on the basis of the facts of his or her birth, but due to the inability to establish those facts, the state nevertheless in practice does not consider the person to be a national. See also UN High Commissioner for Refugees, *Handbook on protection of stateless persons*, June 2014.

69 UN High Commissioner for Refugees (UNHCR), *Conclusion on civil registration*, 17 October 2013.

effectively restricts access to registration (E.g., authorities may be reluctant to register refugee children due to mistaken belief that doing so would then grant access to nationality and citizenship in the host country);

- ▶ Discrimination from local authorities towards IDPs as outsiders from the community;
- ▶ Legal or administrative provisions requiring IDPs to register births in their place of origin or habitual residence;
- ▶ Lack of parental awareness of the requirement and procedures to register births in the place of displacement and/or the consequences of failing to do so;
- ▶ Parents not possessing necessary documents to register a birth due to lack or loss of documentation;⁷⁰
- ▶ Limited access to authorities responsible for birth registration due to restrictions on freedom of movement or encampment of refugees or IDPs where such administrative services are unavailable.

NRC ICLA prevention of statelessness

In certain country programmes, NRC already contributes to the prevention of statelessness amongst forcibly displaced populations; one example is with refugees from Syria (including Palestinian refugees from Syria or Syrian nationals) living in Lebanon. The Lebanese civil registration system is difficult to navigate for refugees as well as for Lebanese themselves. For example, certain documents must be presented for the registration of a new-born child within one year of birth. After one year, an often costly and lengthy judicial procedure is required.

The NRC ICLA programme has been providing information, counselling and legal assistance on all forms of civil documentation, including birth registration, to refugees from Syria since May 2012 through various NRC community centres and outreach across Beirut/Mount Lebanon, the Bekaa, North and South of Lebanon. In addition, NRC runs mobile legal clinics and mobile information sessions throughout the country. Since Syrian personal status law sets out that registration of children

born abroad is to be conducted under the jurisdiction of the foreign country, the ICLA programme is helping Syrian refugees who give birth in Lebanon to navigate the Lebanese registration process and, at least, obtain birth certificates for their children.⁷¹ For those legally entitled to Syrian nationality, birth registration will help confirm their bond with Syria, their links to their parents and prevent new cases of statelessness. Advice, counselling, legal representation and logistical assistance is provided. By February 2015, over 145,000 individuals had received ICLA services (including information and/or legal assistance) with regards to birth registration in Lebanon.⁷² This work has helped to expose challenges relating to the civil registration context in Lebanon more broadly and may be useful in addressing problems for the Lebanese host community themselves. This example demonstrates the potential for NRC interventions relating to statelessness to have a significant impact even beyond the immediate displacement context.

⁷⁰ NRC programmes have, for example, encountered this in Ecuador where Colombian refugee parents could not register their children because they themselves were without documentation.

⁷¹ Full registration of a new baby born to non-Lebanese nationals in Lebanon is a five-step process (within a twelve-month period) and NRC advises most refugee parents to follow only the first three steps. The final two steps require approaching the Syrian embassy in Lebanon and directly contacting authorities of the State from which the refugees have fled. However, completing the first three steps is sufficient to ensure that the refugees possess adequate documents to prove their identity and nationality in the future.

⁷² For more information on the work of NRC's ICLA programme in Lebanon, please see <http://www.nrc.no/?aid=9147816>

Alongside problems with birth registration, there are other barriers in accessing civil registration and identification documents which may increase the risk of statelessness. Marriage certificates, death certificates and other civil registration documents are often essential pieces of evidence that help to establish residency, parentage, identity and nationality. Challenges in accessing civil documentation that may put individuals at risk of statelessness include, *inter alia*:

- *Lack of civil documentation prior to displacement and/or loss during displacement:* In some cases, a group or community never possessed civil documentation in their place of origin. This can especially be a problem amongst minority, indigenous or nomadic populations. Although this may not have caused difficulties for them in their place of origin, in the context of forced displacement, being undocumented poses challenges. For example, many Tuareg, who traditionally have not possessed any form of civil documentation, were forced to flee both Mali and Libya due to internal conflict.⁷³ Upon return to their respective countries, many Tuareg refugees faced various obstacles in proving their identity and that they were, in fact, citizens of their country of origin.

Many who are forcibly displaced will either not take their documents with them or may lose them during or prior to flight. This often creates serious problems in trying to access new or alternative documents in the future, particularly where conflict may make replacing lost documents an impossibility. Beyond the loss of documents, documents may be intentionally confiscated or even destroyed during flight. Under the Pol Pot regime, many Cambodian nationals who were ethnically Vietnamese fled or were forcibly deported to Vietnam and had all their identity documents destroyed by authorities whilst they were leaving. Upon return to Cambodia after the conflict and heightened by the problem of non-functioning civil registries, many refugees were unable to prove that they had ever been citizens of Cambodia; even today, decades later, many remain stateless.⁷⁴

- *No civil registration system:* The absence of an effective – or any – civil registration system in the area hosting a displaced population can also heighten the risk of new cases of statelessness. In Syria, for example, access to civil registration and documentation of those internally displaced inside Syria is an underexplored issue. This situation could be further complicated due to constantly changing territorial control between different factions and authorities, all of whom have differing or potentially non-existent administrative and legal systems. Without any structure for registration, people will be left undocumented and unable to assert their identity in the future, putting them at risk of statelessness. Equally, in countries that are immersed in conflict, the civil registration infrastructure may be completely destroyed, such that refugees and IDPs on return to their homes may find that they no longer exist in any registration system. In the Central African Republic, for example, there has been a deliberate strategy of destroying the archives and civil registries by those involved in the current conflict.⁷⁵ This situation could potentially put returnees at risk of not being able to prove their identity or nationality and having no institutional records to do so either. This may be particularly problematic for minority populations or for those perceived as connected with a foreign state and whose nationality may therefore be more readily contested.
- *Unaccompanied minors*⁷⁶: Many unaccompanied minors who are found in

⁷³ Information provided by the NRC Mali office.

⁷⁴ For more information on the stateless Cambodians, see Ngyuyen, L and Sperfeldt, “Cambodia: A Boat Without Anchors”, *Jesuit Refugee Service*, 19 February 2013, available at: http://www.jrsap.org/news_detail?TN=NEWS-20130219083535

⁷⁵ Information provided by the NRC Central African Republic office.

⁷⁶ UNHCR has defined an “unaccompanied minor” as “a person who is under the age of eighteen, unless, under the law applicable to the child, majority is attained earlier and who is ‘separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.’” See UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, February 1997, available at: <http://www.unhcr.org/3d4f91cf4.pdf>.

displacement contexts have never possessed documents or were unaware of them and therefore have no proof as to their identity or nationality. Without any evidence of parentage or where they were born, and if this problem is not identified or dealt with effectively, they risk not being recognised by any state as a national.

- *Foundlings:*⁷⁷ Situations of conflict can lead to an increase in rates of abandonment of children as well as children becoming orphaned. An additional problem, therefore, can be where countries do not have a safeguard in their nationality law for foundlings. If a state does not have a legal mechanism to ensure that foundlings can acquire nationality – a gap which exists, for instance, in Côte d'Ivoire – then the child may be left stateless.
- *Fraudulent documentation:* Individuals who do not have necessary identity documents and cannot obtain new or replacement ones may, at times, resort to negative coping mechanisms and attempt to obtain documents fraudulently. Fraudulent documents may hinder access to rights or recognition of nationality in the future and, if discovered, the authorities may contest the individual's status. Under new guidelines in Ecuador, individuals found to have acquired fake Ecuadorian identity documents are completely removed from the Ecuadorian registry. For displaced Colombians living there – some of whom had acquired fake Ecuadorian documentation, this may be particularly problematic in cases where the parents hold a Colombian identity document but their children are not Colombian⁷⁸ and now their children would be excluded from the Ecuadorian records and unable to benefit from the *jus soli* legislation.⁷⁹ In Mali, the government has been known to refuse national identity documents to refugees and internally displaced persons as they are so concerned about fake documentation that they systematically question the validity of all documents which are provided for the application.⁸⁰

⁷⁷ The term “foundling” generally applies to any “children found in a country who are of unknown parentage.” UNHCR, *Causes of Statelessness*, available at: <http://www.unhcr.org/pages/49c3646c15b.html>.

⁷⁸ Such children could only attain Colombian nationality if they chose to pursue a formal registration process requiring that they approach the Colombian authorities, which refugees may be reluctant to do.

⁷⁹ Information provided by the NRC Colombia office.

⁸⁰ Information provided by the NRC Mali office.

SYRIA – LACK OF DOCUMENTATION AND THE RISK OF STATELESSNESS

With nearly 9 million Syrians either internally displaced and refugees⁸¹ and numbers continuing to rise, the risk of statelessness among the displaced Syrian population and especially among new-borns is apparent. In the Syrian Multi-Sector Needs Assessment (MSNA) report of 2014, the risk of statelessness and the vulnerability of those left without documentation was highlighted as an area of concern. This section highlights a few, though not all, of the obstacles to birth registration and reasons why displaced Syrian may be at increased risk of statelessness.

“MSNA findings show that lack of personal identity documentation is the main safety and dignity concern affecting individuals across all areas covered and it is particularly problematic in Dar’a, Ar-Raqqa, Quneitra, and Idlib. [...] People without documentation (either because they were lost, damaged, expired or they failed to register) are reported to be exposed to harassment and exploitation at checkpoints. Documentation services including death, marriage and property documentation have been disrupted, resulting in difficulties accessing assistance and services, and proving custody, inheritance and ownership. In particular, documentation for newborns, particularly in non-Government-controlled areas is a major issue, resulting in risk of statelessness, lack of access to services and other problems.”⁸²

None of the neighbouring host countries implements safeguards that allow children born on their territory who do not possess any other nationality to access their nationality. Additionally, Syrian personal status law sets out that registration abroad is to be conducted under the jurisdiction of the foreign country. This can sometimes be problematic. Taking the example of Lebanon, UNHCR has stated that:

“With the continued arrival of refugees from Syria, the number of stateless persons in Lebanon and persons at risk of statelessness has risen. Some refugees arrive in Lebanon with unconfirmed nationality, or without documents proving their nationality. [...] Stateless from Syria may lack nationality due to gaps in Syria’s national legislation or lack of access to civil registration procedures.”⁸³

In Lebanon, 75 per cent of new-born Syrian refugee children have not been registered. Syrian refugees in Lebanon face a lengthy, multi-step process to access birth registration for their children and many either do not undergo this process or are unable to fulfil all requirements. With the further entry and visa renewal restrictions recently imposed by the Lebanese authorities,⁸⁴ more Syrians are now deemed “illegal immigrants” and many more may find it difficult to approach the authorities to acquire documentation. Additionally, where the father is unknown or there is no legal documentation to confirm marriage,⁸⁵ it becomes particularly difficult to register births.⁸⁶ Equally, Syrian nationality law does not allow women to transfer their nationality to their children so many female-headed households who cannot prove paternity may face difficulties ensuring their new-borns obtain nationality. The discrimination against women has added further problems with the rise in Syrian refugee women unofficially marrying foreign men.⁸⁷ With their mothers unable to pass on nationality themselves and with no legal proof of paternity, children born in such circumstances are at extreme risk of not obtaining any nationality. Additionally, Syrian children under the age of 15 who have been included in their parents’ family booklet and who have fled as refugees, may face difficulties in obtaining their own identification once they reach 15 as they cannot return to Syria to do the process. NRC is monitoring these cases in Lebanon, particularly regarding the challenges of these children to obtain residency visas in country.

Another yet to be substantiated problem is that of the denationalisation of Syrian refugees. States often have a wide array of powers that allow them to deprive individuals of citizenship. They may be able to use these powers against individuals caught in forced displacement and those deemed to no longer “belong” or “deserve” to be citizens. There have been anecdotal reports of Syrians who have approached their authorities and have been denied documents only to be told they are no longer recognised as belonging to Syria due to their anti-government ideologies.⁸⁸ For all these reasons, Syrians who find themselves affected by forced displacement in the current crisis are increasingly at risk of statelessness.

81 UNHCR, 2015 *UNHCR country operations profile – Syrian Arab Republic*, available at: <http://www.unhcr.org/pages/49e486a76.html>.

82 Syrian Multi-Sector Needs Assessment (MSNA), October 2014, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/141028_Syria_MSNA_Report_FINAL.pdf.

83 UNHCR Statelessness Update, February 2014 (copy on file with the author).

84 *BBC News*, “Syrians Entering Lebanese Face New Restrictions”, 5 January 2015, available at: <http://www.bbc.com/news/world-middle-east-30657003>.

85 For more information, see NRC, Update on Marriage Registration for Refugees from Syria, June 2014, available at: http://www.nrc.no/arch/_img/9180354.pdf.

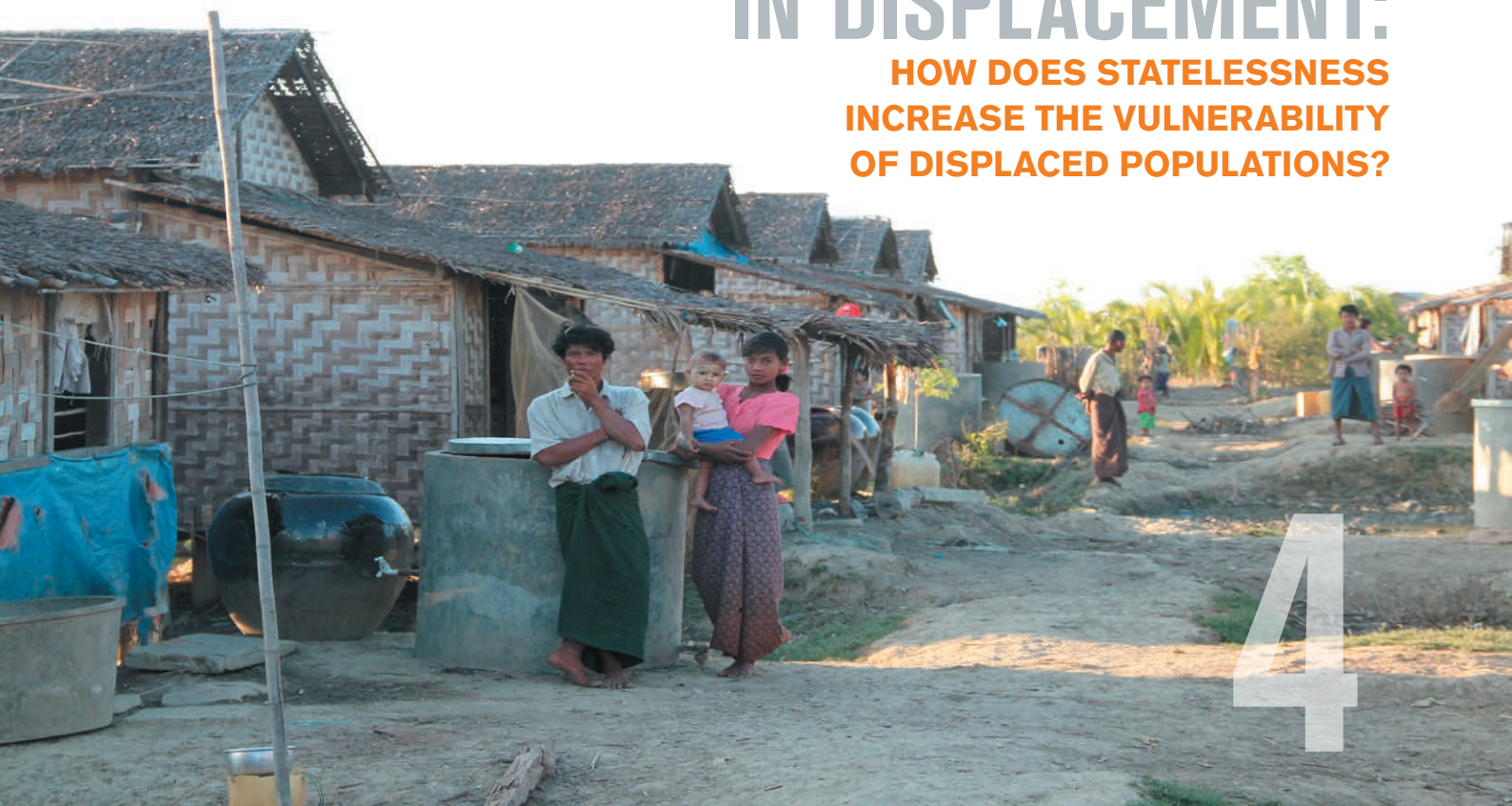
86 For more on this issue throughout the Middle East and North Africa region, see B. Fischer, “Why non-marital children in the MENA region face a risk of statelessness”, *Harvard Human Rights Journal Online*, January 2015, available at: http://harvardhrj.com/wp-content/uploads/2015/01/Fisher_HRJ_01-05-15.pdf.

87 This may be due to a number of factors, including that the brides are too young to legally be married or the husband specifically requests an unofficial marriage contract. See Alakhbar, *Syrian Refugees: Forced into Marrying off their Daughters*, 2012.

88 Discussions with humanitarian workers, Bekaa valley, Lebanon.

STATELESSNESS AS A CHALLENGE IN DISPLACEMENT:

**HOW DOES STATELESSNESS
INCREASE THE VULNERABILITY
OF DISPLACED POPULATIONS?**



The difficulties faced in protecting the needs of the stateless has long been understood, as highlighted in this extract from a 1949 United Nations study of statelessness:

“The stateless person is an anomaly and...it is often impossible to deal with him in accordance with the legal provisions designed to apply to foreigners who receive the assistance of their national authorities, and who must, in certain cases, be repatriated....Officials must possess rare professional and human qualities if they are to deal adequately with these defenceless beings, who have no clearly defined rights and live by virtue of good-will and tolerance.”⁸⁹

Statelessness renders individuals and groups more vulnerable, such that they are more susceptible to harm and less likely to seek or benefit from support. This creates an added problem in the displacement context. Conventional legal and social systems often do not adequately cater for them, and they are left “defenceless”.⁹⁰ Understanding the strong link between statelessness and displacement then needs to be followed with understanding how the fact of statelessness might affect the needs of and programming for displaced populations. There are certain vulnerabilities that stateless individuals and groups may be exposed to due to their lack of nationality.

One example would be the inability to cross borders during a conflict, due to lack of documentation or neighbouring states’ unwillingness to allow stateless persons to enter

89 UN Ad Hoc Committee on Refugees and Stateless Persons, *A Study of Statelessness, United Nations, August 1949, Lake Success - New York*, 1 August 1949, E/1112; E/1112/Add.1, available at: <http://www.refworld.org/docid/3ae68c2d0.html> [accessed 7 March 2015]

90 Mechanic, Tanner, *Vulnerable people, Groups, And Populations: Societal View*, Health Affairs, 26(5) (2007) pp. 1220-1230.

their territory. Stateless Palestinian refugees from Syria have faced serious barriers in attempting to flee the conflict. For many Palestinians, this current crisis marks their second or even third wave of displacement since Israel was established in 1948. Along the Syrian-Jordanian border, authorities began denying entry to Palestinian families fleeing the Syrian civil war. At first it was just a question of practice, but Jordan enforced an official policy of non-entry for all Palestinians from Syria beginning in 2013.⁹¹ According to Amnesty International, the Lebanese authorities likewise have been routinely refusing Palestinians access to the territory.⁹² The consequences of not being allowed to flee conflict are clearly immense, leading to families being split and groups of stateless Palestinians unable to access key protection.⁹³ This is true regardless of whether statelessness played a role in the initial displacement (e.g. whether the stateless are fleeing persecution as a particular targeted community or whether they, along with others, are fleeing more general violence or conflict).

Further dedicated study is required to map the specific vulnerabilities of stateless displaced populations and to contribute to the overall knowledge-base on statelessness. Some of these unique issues faced by stateless populations in forced displacement contexts include:

- ▶ Increased risk of being detained or forcibly returned due to lack of proof of identity, nationality or country of origin;
- ▶ Lack of legal recourse when faced with a conflict due to lack of a nationality as well as documents required to claim assistance from the police or courts;⁹⁴
- ▶ Greater restrictions on freedom of movement;⁹⁵
- ▶ Difficulties in accessing financial aid for which documentation may be required;⁹⁶
- ▶ Difficulties in accessing humanitarian assistance or fear in approaching service providers;
- ▶ Negative coping mechanisms such as procuring false documents and potential future consequences and risks of doing so;⁹⁷
- ▶ Fear amongst stateless individuals and families to approach authorities or local community for assistance due to often longstanding marginalisation and even vilification;
- ▶ Increased obstacles to repatriation where the country of origin may deny or contest their status or unable to cross the border to re-enter their country of origin;
- ▶ Increased problems upon return with regard to restitution of housing, land and property or compensation for damages;⁹⁸

91 "Jordan: Bias at the Syrian Border: Palestinians Face Detention, Threat of Forced Return", *Human Rights Watch*, 4 July 2012, available at: <http://www.hrw.org/news/2012/07/04/jordan-bias-syrian-border>

92 "Denied Refuge, Palestinians from Syria seeking safety in Lebanon", *Amnesty International*, 1 July 2014, Index number: MDE 18/002/2014, available at: <https://www.amnesty.org/en/documents/mde18/002/2014/en/>.

93 Information provided by the NRC Jordan office.

94 For more information on stateless persons access to legal recourse, as well as other rights, see UN Office of the High Commissioner for Human Rights (OHCHR), *The Rights of Non-Citizens*, 2006, HR/PUB/06/11.

95 In Warrap State in South Sudan, for example, stateless persons are at increased risk of freedom of movement violations. Information provided by the NRC South Sudan office.

96 For more information on the difficulties stateless persons may face in accessing financial aid and specifically microfinance schemes, see Colgan B. and Kolinsky, O., "Statelessness and Microfinance: Can Microfinance Improve The Living Conditions of The Stateless", *Tilburg Law Review*, Volume 19, Issue 1-2 (2014), pp. 90-97

97 Information provided by the NRC Mali Office.

98 Information provided by the NRC DR Congo Office.

- ▶ Increased obstacles to local integration where host community is concerned stateless populations will demand citizenship or where access to citizenship is obstructed due to legal or documentation requirements that a stateless person cannot meet (e.g., proof of renunciation of former nationality as a criteria for naturalisation);⁹⁹
- ▶ Increased difficulties during asylum status determination procedures in proving identity and country of origin.

This list should not be considered exhaustive nor is it likely that all of these issues will manifest themselves in any given situation. Rather, it aims to highlight ways in which the heightened vulnerability of stateless persons may be exhibited in situations of forced displacement. It is important to remember that the marginalisation of the stateless group in their country of origin may itself lead them to be more vulnerable in displacement. For instance, being ostracised by their fellow displaced persons who do hold nationality could make stateless individuals more vulnerable to abuse or exploitation. When assessing the vulnerabilities of specific groups in forced displacement in order to determine the most appropriate response, the circumstance of statelessness must also be given due consideration where relevant and feasible.

99 Information provided by the NRC Jordan Office.

CONCLUSION



Forced displacement and statelessness are interconnected phenomena on many levels. Statelessness puts people at heightened risk of being forcibly displaced and forced displacement may leave people at heightened risk of becoming stateless. The circumstances and consequences of statelessness also add additional layers of insecurity and vulnerability for those who find themselves in forced displacement contexts.

This analysis is not exhaustive and there will be other situations and contexts in which this link surfaces. It is critical that organisations working in the context of displacement or providing assistance to forcibly displaced populations become more aware of the unique circumstances that stateless persons who have fled will face. Moreover, they must be aware of how their programmes can help to prevent new cases of statelessness occurring, including through addressing obstacles in acquiring civil documentation and proof of identity. As the NRC Lebanon example illustrates, there can be benefits for both the displaced population and potentially the host community who may also face difficulties in claiming nationality and obtaining documents.

This nexus of statelessness and forced displacement should be explored more closely with a view to identifying challenges, drawing out data that can help to inform the international community's response to statelessness, extracting relevant good practices and expanding current work to include stateless-specific needs. The assumption that it is sufficient to “treat” the displacement condition of a refugee or IDP population without considering the specific circumstance of statelessness – or risk of statelessness – where this is relevant, must be challenged.

ANNEX

NRC STAFF QUESTIONNAIRE

QUESTIONNAIRE ON THE LINK BETWEEN FORCED DISPLACEMENT AND STATELESSNESS

At the request of NRC, the Statelessness Programme of Tilburg University, the Netherlands, is undertaking a study regarding the link between forced displacement and statelessness. We would be very grateful if you could take the time to complete the following short questionnaire.

Please provide extra details and examples where relevant. Feel free to insert links to relevant information or sources online, or to attach supporting documents. We kindly ask that you submit the completed survey to by 21st of May 2014, via statelessness.programme@tilburguniversity.edu. We may also wish to follow up with some offices to elaborate further through a short telephone interview or in person during the NRC global core competencies seminar in Dar es Salaam.

A Stateless person (article 1 of the 1954 Convention relating to the Status of Stateless Persons):

“a person who is not considered as a national by any State under the operation of its law.”

A stateless person is someone who does not hold a nationality. This is a separate question from whether the person holds particular documentation (e.g. undocumented) or a particular residence status (e.g. irregular).

Nationality: A legal bond between a person and a state that results in a mutual relationship of rights and duties. For example, a national has the right to live in the state and may have the duty to perform military service.

Why a study of Forced Displacement and Statelessness?

Statelessness is a global human rights problem that affects over 10 million people. A person who is not considered as a national by any state will find themselves vulnerable to further, cumulative human rights violations. This may include an increased risk of being forcibly displaced. To add to this, forced displacement may be putting many individuals and groups at risk of becoming stateless, creating new cases of statelessness. ‘Citizenship and statelessness’ was recently added as a thematic policy area of NRC’s *Information, Counselling and Legal Assistance* (ICLA) programmes, which are aimed at improving the enjoyment of rights by people in situations of displacement. However, there is little research available that offers a concrete understanding of this link.

In this light, this study aims to map to undertake research to explore the linkages between statelessness and forced displacement. It wishes to carry this out using theoretical analysis as well as empirical research. This questionnaire will gather information that will help further this understanding. As a new thematic area in NRC this questionnaire also wishes to understand current operational and programming responses by NRC field offices, in order to improve any gaps in the future.

Country of Operation: _____

Geographical areas of Operation: _____

Displaced Population(s) NRC works with: _____

Name and title of respondent: _____

QUESTIONNAIRE

1. Stateless persons amongst the population receiving assistance (Where individuals/groups were stateless before being forcibly displaced)

- a. Has your office come across the problem of statelessness among the population(s) it is assisting? If yes, please elaborate (e.g. in what context(s)? Which stateless population(s) have you dealt with? What do you know about the cause(s) of their statelessness?)
- b. Do you know if there was a link between their statelessness and the reasons behind their forced displacement? Please explain
- c. Are stateless persons among the population(s) you are assisting currently at increased risk of rights violations due to their status, including
 - i. Access to education
 - ii. Access to healthcare
 - iii. Access to legal services
 - iv. Civil registration / documentation
 - v. Others (please specify)
- d. Where applicable, what are any increased obstacles to the following you have found with this stateless population?
 - i. Return to area of origin
 - ii. Local integration
 - iii. Resettlement
- e. Do you have any other observations on the impact of statelessness on individuals in the forced displacement context?

2. Risk of statelessness amongst the assisted population (the risk of new cases of statelessness amongst those displaced)

- a. Do any groups or individuals in the displaced populations face obstacles with regard to (please explain who faces problems and why):
 - i. Registering births,
 - ii. Registering marriages,
 - iii. Registering deaths
 - iv. Access to national identity documents
 - v. Access to residency documents
 - vi. Other forms of civil registration or access to documentation
- b. Do you know of situations where the displaced population is at risk of losing their original nationality due to their displacement? (This would mean that they lost their citizenship as a result of the nationality law in their countries of origin)
- c. Do you know of any situations where an individual has been stripped of their nationality by the government of their country of origin, following their displacement? (for example because they are from a group the government is not sympathetic towards?)

- d. When a new child is born, are they able to obtain their parent's nationality of origin if the parent who is a national is:
 - i. Their mother (child born in wedlock)
 - ii. Their father (child born in wedlock)
 - iii. Their mother (child born outside of wedlock)
 - iv. Their father (child born outside of wedlock)
- e. Where applicable, when a new child is born, are they able to obtain nationality from the host country?
- f. Do you know of any new born children who are unable to acquire a nationality? Why?
- g. Are foundlings able to access nationality? If not, what are the obstacles.
- h. Are unaccompanied minors at risk of becoming stateless if they have arrived without documents or knowledge of their nationality status? Why?
- i. Do you have any other observations on how displaced individuals or populations that you assist may be at risk of becoming stateless?
- j. What are any increased obstacles to durable solutions you have found with this new stateless population?

3. Operational responses

- a. When responding to a situation of forced displacement, do you undertake any of the following activities (if yes, please describe how)
 - i. Identify who among the displaced population is stateless?
 - ii. If stateless people are identified or present themselves, undertake a specific assessment of their protection needs
 - iii. Undertake an analysis of the nationality laws of the country of origin?
 - iv. Undertake an analysis of the nationality laws of the host country?
 - v. Any other mechanism for identifying problems of statelessness?
- b. Has your office undertaken any specific activities to ensure improved enjoyment of rights by stateless people who have been forcibly displaced? Please describe briefly.
- c. Has your office undertaken any specific activities to prevent new cases of statelessness from arising among people who have been forcibly displaced? Please describe briefly.
- d. Does your office have the necessary knowledge and capacity to deal with the issues raised in relation to statelessness? Please explain.
- e. Do you have employees who are dedicated to working on the issue?
- f. What do you think can be done to improve the response of your office in addressing statelessness?
- g. Do you have any other observations on the operational responses of your office?

