



**Preventing statelessness among migrants and refugees: birth registration and consular assistance in Egypt and Morocco**

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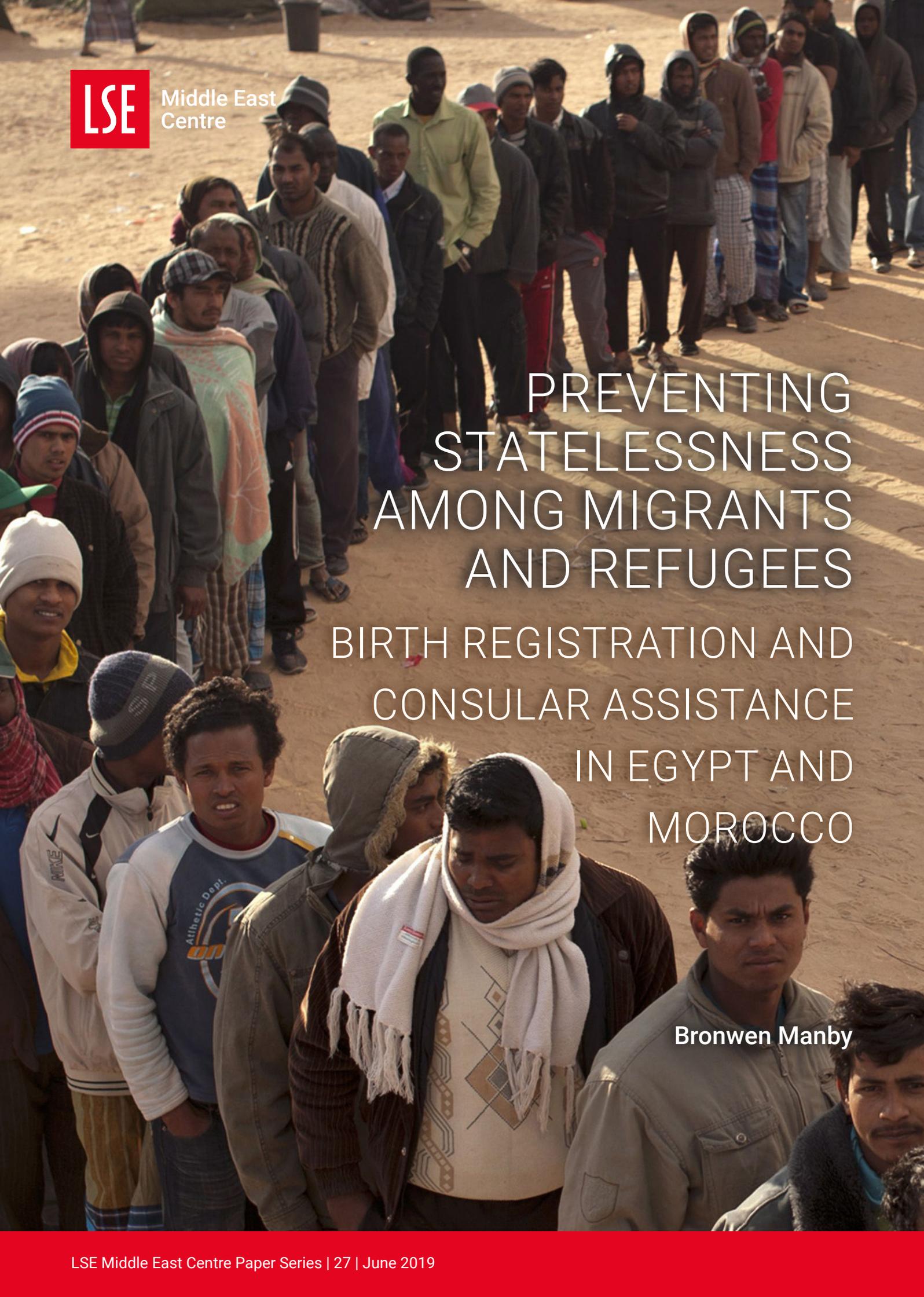
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Middle East  
Centre

A large group of people, likely migrants or refugees, standing in a line on a dusty ground. The people are dressed in warm clothing, including jackets, hoodies, and scarves. The background is a dry, dusty landscape. The text is overlaid on the right side of the image.

PREVENTING  
STATELESSNESS  
AMONG MIGRANTS  
AND REFUGEES  
BIRTH REGISTRATION AND  
CONSULAR ASSISTANCE  
IN EGYPT AND  
MOROCCO

Bronwen Manby

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# Preventing Statelessness among Migrants and Refugees: Birth Registration and Consular Assistance in Egypt and Morocco

Bronwen Manby

## About the Author

**Bronwen Manby** is Senior Policy Fellow at the LSE Middle East Centre and Principal Investigator for the research project 'Preventing Statelessness among Migrants in North Africa'. She has written extensively on nationality and statelessness in Africa.

## Abstract

This paper presents a synthesis of research findings on the identification needs of Sub-Saharan African and other migrants and refugees in Egypt and Morocco, particularly focusing on children born outside the country of nationality of their parents. The paper sets out the legislative and regulatory frameworks in place for birth registration and issue of identity documents, and reports the findings of focus groups and interviews with migrants and refugees on the implementation of these frameworks in practice, highlighting obstacles to the registration of the births of children of foreign parents and the difficulties of obtaining documents from the consular authorities of the country of origin. The paper provides recommendations for legal and administrative reform in Egypt and Morocco, to ensure that both children and adults can have access to documents that officially confirm their nationality. The research is set within the context of international policy objectives and discussions on the provision of 'legal identity to all', highlighting the dangers of exclusion and statelessness if the obstacles identified by the report are not addressed.

## Acknowledgments

The research for this report was carried out in collaboration between the LSE Middle East Centre, the Center for Migration and Refugee Studies (CMRS) at the American University in Cairo and the Association marocaine d'études et de recherches sur la migration (AMERM), Rabat. The research in Egypt was led by Nourhan Abdel Aziz under the supervision of Usha Natarajan, Co-Principal Investigator and Associate Director of the CMRS, and in Morocco was led by Malika Benradi, Co-Principal Investigator and Professor of Law at the University Mohammed V Rabat Agdal, with the assistance of Hajar El Moukhi, Hanane Serrhinni, and Badreddine Krikez.

The project was assisted by an advisory committee that provided important feedback on the research priorities and findings, made up of the following institutions: UNHCR Statelessness Section (Melanie Khanna, Radha Govil, and Lena Haap); UNICEF (Kerry Neal); IOM (Anne Althaus); Norwegian Refugee Council (Fernando de Medina Rosales and Monica Sanchez Bermudez); and Fateh Azzam (independent human rights consultant, and Senior Policy Fellow, Issam Fares Institute for Public Policy and International Affairs, American University of Beirut). Thanks also to Jacqueline Bhabha of Harvard University François-Xavier Bagnoud Center for Health and Human Rights for her comments on a draft of this paper, and to the participants at a workshop held at the LSE on 1 March 2019 at which the research findings were presented.

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## Key Findings

Procedural barriers to birth registration for the children of foreign parents greatly exacerbate the risks of statelessness already created by gaps in the legal framework.

Despite high reported rates of birth registration in both Egypt and Morocco, many parents who are refugees, asylum seekers, or migrants struggle to register the births of their children. Migrants with irregular status have the most difficulty.

The most important barriers in the host countries are:

- The requirement to produce a marriage certificate to register a child (for all in Egypt, for Muslims in Morocco);
- The requirement to prove legal (Egypt) or factual (Morocco) residence in the country;
- The requirement (by law in Egypt, or in practice in Morocco) to produce currently valid identity documents for the parents;
- The difficulty of proving the connection between parent and child in the absence of a birth notification from a registered health practitioner;
- Parents' lack of knowledge of the procedures and how to navigate them;
- The short time period (15 days in Egypt, 30 in Morocco) for routine birth registration, and the costs and difficulty of late registration;
- The lack of child protection services to secure late registration or other means of providing legal documents for vulnerable children.

These difficulties were present in both countries, but appeared to be greater in Egypt.

However, perhaps the greatest barrier was the difficulty of accessing consular services to obtain the documents required by the host country or to register the child's birth with the country of origin:

- Recognised refugees and asylum seekers would jeopardise their status by contacting their embassies, and even those who had not sought refugee status might fear to do so;
- The high costs of renewing or replacing passports or acquiring official copies of marriage certificates often put the documents out of reach;
- Many parents were unaware of requirements that birth registration in Egypt or Morocco also be transcribed by the consulate for the child to acquire the parent's nationality, and there is little or no outreach by consulates to migrants with irregular status.

The immediate consequences of these difficulties included the inaccessibility of education, health and other services for the children concerned, and greater vulnerability to exploitation. Less widely-reported consequences included the registration of children under the names of different adults who had the relevant documents, potentially resulting in the separation of parents and child in the event of resettlement or deportation. In the longer term, the consequences include the risk of statelessness. The administrative barriers to the acquisition of nationality need as much attention as the simple availability of birth registration and the minimum legal protections in both host and sending countries.

## Introduction

Requirements to show identity documents are ever more pervasive, and those who lack such documents find it increasingly difficult to operate in any society, even if their legal status as citizens is unquestioned. Those who do not have documents confirming regular migration status may face arrest or summary deportation, even if they have been living in the same country for decades—or generations. Those who are not recognised as nationals of any state—who are stateless—are most excluded of all, lacking, as Hannah Arendt said, a country that ‘wants even to oppress them’.<sup>1</sup>

As more and more children are born in a country that is not one where either parent holds nationality, the recognition of their right to a nationality becomes more fragile. This recognition depends not only on the laws of the state where they are born and on the laws of the state(s) of their parents’ nationality, but also on the procedural safeguards and registration systems in place to recognise these connections in practice.

There is a growing literature on the role of identification and identity documents among settled populations as tools both of empowerment and of control.<sup>2</sup> Scholars and policy makers have also paid significant attention to identity documents as a means of managing the movement of people, whether in support of stronger systems or denouncing their impacts.<sup>3</sup> The recent availability of biometric and digital forms of identification has encouraged initiatives, realised to different extents, to provide innovative systems of identification, including for those on the move.<sup>4</sup> Yet, while there has been some research that shows the lack of identity documents as a factor of vulnerability that goes beyond the simple fact of living as a refugee or migrant, even with irregular status,<sup>5</sup> there is little pub-

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<sup>1</sup> Hannah Arendt, ‘The Decline of the Nation-State and the End of the Rights of Man’ in Arendt, *The Origins of Totalitarianism* (New York: Meridian, 1958).

<sup>2</sup> For example, James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1999); Jane Caplan and John Torpey, eds, *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton, NJ: Princeton University Press, 2001); Colin J. Bennett and David Lyon, eds, *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective* (London/New York: Routledge, 2008); Keith Breckenridge and Simon Szreter, eds, *Registration and Recognition: Documenting the Person in World History, Proceedings of the British Academy 182* (Oxford: Oxford University Press, 2012).

<sup>3</sup> In the context of the European Union, for example, Elspeth Guild and Sergio Carrera, ‘EU Borders and Their Controls: Preventing Unwanted Movement of People in Europe?’ *CEPS Essays* No. 6, Centre for European Policy Studies, 14 November 2013. Available at <https://www.ceps.eu/publications/eu-borders-and-their-controls-preventing-unwanted-movement-people-europe>

<sup>4</sup> For example, the ID2020 initiative, at <https://id2020.org/>; see also Emrys Schoemaker, Paul Currión, and Bryan Pon, ‘Identity at the Margins: Identification Systems for Refugees’, Caribou Digital, 2018; Alan Gelb and Anna Diófasi Metz, *Identification Revolution: Can Digital ID be Harnessed for Development?* (Washington DC: Brookings Institution and Center for Global Development, 2018); World Bank, *World Development Report 2016: Digital Dividends*, Washington DC, 2016.

<sup>5</sup> For example, ‘Conditions and Risks of Mixed Migration in North East Africa: Study 2’, North Africa Mixed Migration Task Force, 2015. Available at <http://www.mixedmigrationhub.org/wp-content/uploads/2015/11/Conditions-and-Risks-in-Mixed-Migration-in-North-East-Africa.pdf>; Silvére Konan & Harouna Mounkaila, ‘Migrants en détresse: Analyse de situation et cadre de protection: Le cas du Niger et du Togo’, UNHCR and IOM, July 2013. Available at <https://www.humanitarianresponse.info/system/>

lished on the difficulties in obtaining documents from a country of origin.<sup>6</sup>

This research project aimed to fill the gap in existing empirical research on the difficulties faced by migrants and refugees as they navigate the interactions between the identification systems of their host and home countries. It was conceived against the background of two important global initiatives: the campaign and ten-point action plan launched in 2014 by the Office of the UN High Commissioner for Refugees (UNHCR) to end statelessness within a decade<sup>7</sup>; and the target set by the Sustainable Development Goals (SDGs) to ‘provide legal identity for all, including birth registration’ by 2030.<sup>8</sup> These commitments were joined in 2018 by the adoption of two ‘Global Compacts’, on refugees and on migration, emphasising ‘access ... to civil and birth registration and documentation’ for refugees and stateless persons<sup>9</sup> and provision to all migrants of ‘proof of legal identity and adequate documentation’.<sup>10</sup>

North Africa is a testing ground for the interpretation and application of these international commitments. The region, historically known for high rates of emigration, is increasingly learning to accommodate people whose origins lie in other regions of the world, many of them undocumented. There are very limited existing rights to acquire nationality based on birth in the territory of the North African states, requiring not only law reform to address these gaps, but also the preservation of legal connections to a country ‘of origin’, if statelessness is to be avoided.

The LSE Middle East Centre collaborated with partners in Egypt and Morocco—the Centre for Migration and Refugee Studies (CMRS) at the American University in Cairo, and the Association marocaine d’études et de recherches sur la migration (AMERM) associated with the Mohammed V University in Rabat—to research the particular challenges related to registration of births and identity documents faced by migrants and refugees in North Africa. This paper analyses the findings of two national reports published by our partners.<sup>11</sup>

The research found that obstacles to obtaining these documents are high, and often insurmountable. Despite high reported rates of birth registration in both Egypt and Morocco, many refugees and migrants, especially those in irregular status, reported serious difficul-

files/documents/files/Rapport%20migrants%20Niger%20Togo%20%28juil.%202013%29.pdf

<sup>6</sup> The particular situation of displaced Syrians has, however, received some attention: see for example, Zahra Albarazi and Laura van Waas, ‘Understanding statelessness in the Syria refugee context’, Institute on Statelessness and Inclusion and Norwegian Refugee Council, 2016; and the resources based on this report, available at <http://www.syrianationality.org/>

<sup>7</sup> Global Campaign to End Statelessness. Available at <https://www.unhcr.org/ibelong/>

<sup>8</sup> SDG Target 16.9. Available at <https://sustainabledevelopment.un.org/sdg16>

<sup>9</sup> ‘Global Compact on Refugees: Report of the UN High Commissioner for Refugees to the General Assembly’, A/73/12, 13 September 2018, para 82. Available at <https://www.unhcr.org/5b3295167.pdf>

<sup>10</sup> ‘Global Compact for Safe, Orderly and Regular Migration: Intergovernmentally Negotiated and Agreed Outcome’, 13 July 2018, para 20. Available at [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf)

<sup>11</sup> The country reports will be available for the CMRS at <http://schools.aucegypt.edu/GAPP/cmrs/Pages/default.aspx>; and for AMERM at <http://amerm.ma/>

ties in securing birth registration for their children in the host country. While the practical barriers to registration are similar, a legal status as asylum seeker, refugee, or irregular migrant creates additional difficulties, especially in approaching the consulate of the country of origin.

The main barriers were requirements for the parents themselves to present valid documents, including marriage certificates; and the impossibility for some, especially (but not only) refugees, of obtaining those documents from their consular authorities. Many migrants and refugees interviewed had no idea that, in many cases, births must also be registered with their consular authorities for the legal connection between parents and child to be recognised in the home country; and consular authorities showed little concern to provide assistance. In some cases, the barriers appeared deliberately created; but many were simply the Kafkaesque outcomes of clashing procedural expectations among the legal systems of different countries. Given the precariousness of their daily lives, it could not be a priority for those we interviewed to break through these barriers and bear the costs in order to secure birth registration for their children. There are no effective protection systems to provide paperwork for children separated from their parents, or to recognise a legal connection to those who have become their guardians.

Amidst an international focus on the importance of 'legal identity', there is insufficient attention to the resolution of these problems, leaving those affected at significant risk of statelessness.

## Research Objectives

The research project was designed to consider the protections that need to be in place to prevent statelessness among children born outside the country of nationality of (one of) their parents; as well as the obstacles that stand in the way of adults seeking documents to establish their own identity and nationality.

The nationality law provisions in North Africa that leave children and adults at risk of statelessness are already documented.<sup>12</sup> However, the procedural constraints to recognition and transmission of nationality based on identity of parents and location of birth are less well understood. Our aim was to understand these constraints through interviews with individuals seeking birth registration and other documents, with civil registration officials of the host states, and with consular officials of the sending states.

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<sup>12</sup> Bronwen Manby, *Citizenship Laws in Africa: A Comparative Study*, 3rd edition (New York: Open Society Foundations, 2016); Zahra Albarazi, 'Regional report on citizenship: The Middle East and North Africa (MENA)', Global Citizenship Observatory, 2017; Laura Van Waas, 'A Comparative Analysis of Nationality Laws in the MENA Region', Tilburg University, September 2014; Women's Refugee Commission & Tilburg University, 'Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa', June 2013; Delphine Perrin, 'Immigration and Citizenship Law in the Maghreb: Turning Aliens into Citizens', European University Institute, Working Paper RSCAS 2011/40; Delphine Perrin 'Identité et transmission du lien national au Maghreb: étude comparée des codes de la nationalité', *L'Année du maghreb*, III, 2007.

We set out to understand better the extent to which efforts by host states to ensure universal birth registration paid attention to the specific challenges faced by migrants and refugees without official documentation from their countries of origin. We inquired about the effectiveness of child protection systems to preserve the right to nationality of unaccompanied or separated children. Equally importantly, we sought to consider the access to consular services, and the impact of lack of access to consular services in relation to civil registration and identity documents. We also wished to investigate the impact of lack of official documentation of identity, and of nationality specifically, on both children and adults, in addition to the general problems created by irregular migration status.

## Research Methods

The research was coordinated from the London School of Economics Middle East Centre. Templates for interviews with migrants and refugees, and with the state and consular authorities of host and sending countries, were developed in consultation among the research partners, based on initial drafts prepared by the Middle East Centre. CMRS and AMERM conducted the primary research in Egypt and Morocco. Focus group discussions and interviews were conducted with Syrians and with Nigerians in both countries; in Egypt, CMRS also interviewed migrants and refugees from Ethiopia and Eritrea, Sudan and South Sudan, and Somalia; in Morocco, AMERM concentrated on those coming from Côte d'Ivoire, Senegal, and Cameroon. These communities were selected based on estimates of the most numerous populations of foreigners resident in each country. We did not focus on the stateless Palestinian community, whose challenges are already well-documented.<sup>13</sup> In total, around 50 migrants and refugees (all adults) participated in the research in Morocco, and 150 in Egypt, the majority through focus groups, with some interviewed in greater depth on specific issues.

Interviews with officials responsible for civil registration in the host country sought their perspective; as did interviews with UN agencies and civil society organisations with relevant mandates. Interviews with consular authorities were significantly more difficult to obtain, and despite repeated attempts, in Egypt only a representative from the Ethiopian consulate could be interviewed, and in Morocco, from Mali, Nigeria and Senegal.

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<sup>13</sup> For Egypt, see Oroub El-Abed, 'The Forgotten Palestinians: How Palestinian Refugees Survive in Egypt', *Forced Migration Review* Vol. 20 (2004), pp. 29–31, and other works by the same author.

## Legal and Policy Framework

### International Law

The right of every person to a nationality<sup>14</sup> has been part of international human rights law since the 1948 Universal Declaration of Human Rights.<sup>15</sup> However, the question of which particular state has the obligation to recognise the nationality of any child or adult is a vexed one. The basic principle of international law remains the rule established by the Hague Convention of 1930 that it is for each state to determine who are its nationals.<sup>16</sup> Some limits on state discretion have been set, including the rule recognised by the Hague Convention that children of unknown parents found in a country (‘foundlings’) should be presumed to be nationals; and the protection, less widely accepted but established by both the 1961 Convention on the Reduction of Statelessness and the 1990 African Charter on the Rights and Welfare of the Child, that a child who is otherwise stateless shall acquire the nationality of the state where he or she is born.<sup>17</sup> Gender discrimination in transmission of nationality to children is prohibited by the Convention on the Elimination of All Forms of Discrimination against Women, and increasingly rare.<sup>18</sup> But there is no general requirement in international law to recognise birth in a territory as a basis for acquisition of nationality, nor to recognise the nationality of children born to nationals outside the country of the parent’s nationality, especially over many generations.

The right to birth registration is protected by the same treaties, and there is extensive guidance from UNICEF and others on the importance of this protection and the steps to achieve universal coverage.<sup>19</sup> International law also protects the right of every person to recognition as a person before the law, regardless of the documents held or immigration

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<sup>14</sup> This paper uses ‘nationality’ and ‘citizenship’ as synonyms. Nationality is the term most often used in international law, while different national legal systems vary in their usage of (the equivalents of) either term.

<sup>15</sup> Universal Declaration of Human Rights, Article 15; International Covenant on Civil and Political Rights, Article 24(3); Convention on the Rights of the Child, Article 7. These obligations are also provided for in the African Charter on the Rights and Welfare of the Child, Article 6; and were supported by the Arab Declaration on Belonging and Legal Identity, adopted by ministers of the League of Arab States, 28 February 2018.

<sup>16</sup> Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930; see Paul Weis, *Nationality and Statelessness in International Law*, 2nd ed. (Leiden: Brill, 1979); Ruth Donner, *The Regulation of Nationality in International Law* (Irvington-on-Hudson, NY: Transnational Publishers Inc., 1994); René de Groot and Olivier W Vonk, *International Standards on Nationality Law: Texts, Cases and Materials* (Oisterwijk, The Netherlands: Wolf Legal Publishers, 2015).

<sup>17</sup> UNHCR, ‘Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness’, December 2012, available at <https://www.refworld.org/docid/50d460c72.html>; ACERWC, ‘General Comment on Article 6: Name and nationality’, April 2014, available at <https://acerwc.africa/general-comments/>

<sup>18</sup> UNHCR, ‘Background Note on Gender Equality, Nationality Laws and Statelessness’, 2019.

<sup>19</sup> UNICEF, ‘Every Child’s Birth Right: Inequities and Trends in Birth Registration’, December 2013; UNICEF, ‘A Passport to Protection: A Guide to Birth Registration Programming’, December 2013; UN Department of Economic and Social Affairs Statistics Division, ‘Principles and Recommendations for a Vital Statistics System (Revision 3)’, 2014.

status.<sup>20</sup> The (non-binding) commitments to ‘legal identity’ and documentation set out in the SDGs and Global Compacts complement these provisions; although they arguably provide a lower level of protection.<sup>21</sup>

There is, however, little guidance in international law on the rights of people outside their country of nationality to access consular assistance to preserve their nationality and identity.<sup>22</sup> The Global Compact on Migration does, however, establish a commitment to ‘ensure adequate, timely, reliable and accessible consular documentation to our nationals residing in other countries, including identity and travel documents.’<sup>23</sup>

The situation of refugees and their children is particularly challenging, despite provisions in the UN Refugee Convention intended to govern recognition of personal status documents issued in another country.<sup>24</sup> If an asylum seeker or refugee seeks consular assistance in relation to obtaining copies of such documents, the host country or UNHCR may consider that the refugee ‘voluntarily re-availed himself of the protection of the country of nationality’ and that refugee protection ceases to apply.<sup>25</sup>

<sup>20</sup> See for example, ‘Birth registration and the right of everyone to recognition everywhere as a person before the law: Report of the Office of the United Nations High Commissioner for Human Rights’, UN General Assembly, A/HRC/27/22, 17 June 2014, and associated resolutions of the Human Rights Council.

<sup>21</sup> Bronwen Manby, ‘Legal identity for all and childhood statelessness’, in *The World’s Stateless: Children*, Institute on Statelessness and Inclusion, 2017, at <http://children.worldsstateless.org/3/childhood-statelessness-and-the-sustainable-development-agenda/legal-identity-for-all-and-childhood-statelessness.html>; Bronwen Manby, ‘Identification in the Context of Forced Displacement’, Washington, DC: World Bank, Identification for Development Initiative, June 2016; Amal de Chickera, ‘GCM Commentary: Objective 4: Ensure That All Migrants Have Proof of Legal Identity and Adequate Documentation’, Refugee Law Initiative (blog), 8 November 2018, <https://rli.blogs.sas.ac.uk/2018/11/08/gcm-commentary-objective-4/>; Tendayi Bloom, ‘Statelessness and the Global Compact for Safe, Orderly and Regular Migration’, European Network on Statelessness (blog), 4 December 2018, <https://www.statelessness.eu/resources/statelessness-and-global-compact-safe-orderly-and-regular-migration-policy-brief>

<sup>22</sup> The international law relates largely to the rights of states to offer assistance, and of migrants to be informed of the availability of assistance that exists, but not to the obligations of states to provide assistance. Vienna Convention on Consular Relations, 1963, Article 5; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, Articles 7 and 65(2); Inter-American Court of Human Rights, *Advisory Opinion Oc-16/99 of 1 October 1999, requested by the United Mexican States: ‘The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law’*.

<sup>23</sup> Global Compact for Safe, Orderly and Regular Migration, para 20(c).

<sup>24</sup> Jinske Verhellen, ‘Cross-Border Portability of Refugees’ Personal Status’, *Journal of Refugee Studies* vol. 31, no. 4 (2018), pp. 427–43; James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005), chap. 3.2.4; Vincent Chetail, ‘Les Relations Entre Droit International Privé et Droit International Des Réfugiés: Histoire d’une Brève Rencontre’, *Journal de Droit International*, vol. 141, no. 2 (2014), pp. 447–75.

<sup>25</sup> Article 1 C of the 1951 Refugee Convention provides that: ‘This Convention shall cease to apply to any person falling under the terms of section A if: (1) He has voluntarily re-availed himself of the protection of the country of his nationality’. See also, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Reissued Geneva, February 2019.

**Table 1: Ratification of Relevant Treaties by Egypt and Morocco**

Treaty	Date of Ratification/Accession	
	Egypt	Morocco
International Covenant on Civil and Political Rights (ICCPR), 1966	1982	1979
Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979	1981	1993 <sup>26</sup>
Convention on the Rights of the Child (CRC), 1989	1990	1993
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 1990	1993	1993
Convention on the Rights of Persons with Disabilities (CRPD), 2006	2008	2009
Convention relating to the Status of Refugees, 1951	1981	1956
Convention on the Reduction of Statelessness, 1961	-	-
Hague Convention, 1930	Signature only	-
Arab Charter on the Rights of the Child, 1983	1993	-
Arab Charter on Human Rights, 2004	-	-
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969	1980	-
African Charter on the Rights and Welfare of the Child, 1990	2001	<sup>27</sup>

### The Law in Egypt and Morocco

The legal framework for nationality in both Egypt and Morocco is founded principally on descent. Amendments to the law adopted by Egypt in 2004 and by Morocco in 2007 removed discrimination on the basis of sex in transmission of nationality by parents to children (though not between spouses in marriage).<sup>28</sup> Both nationality codes provide that foundlings shall be presumed to be nationals; a child born abroad of unknown parents may also acquire Moroccan nationality if taken care of by a Moroccan national, through the Islamic system of guardianship known as *kafala*. But neither law provides the protection against statelessness that a child born in the country who cannot acquire nationality from his or her parents shall acquire the nationality of the country of birth. In Egypt, the law provides for significantly easier routes to acquire citizenship by naturalisation for those born in the country who are of Arab and Muslim heritage; while a child born in Morocco whose father was also born there and is of Arab Muslim origin may also opt to acquire nationality at majority.<sup>29</sup> In practice, naturalisation is very hard to access in both

<sup>26</sup> Morocco withdrew reservations relating to transmission of nationality in 2011.

<sup>27</sup> Morocco only rejoined the African Union in 2017, after an absence of more than three decades, and has not yet acceded to any of the human rights treaties.

<sup>28</sup> A draft law to remove gender discrimination in transmission between spouses was submitted to parliament in Morocco in November 2017.

<sup>29</sup> Law No. 26 of 1975 concerning Egyptian nationality, as amended by Law No. 154 of 2004; Dahir no. 1-58-250 portant Code de la nationalité marocaine (B.O. 12 sept. 1958), as amended by Dahir n° 1-60-132 du 16 safar 1380 (10 août 1960); Dahir n° 1-07-80 du 3 rabii I 1428 (23 mars 2007); and Dahir n° 1-11-170 du 27 kaada 1432 (25 octobre 2011).

countries.<sup>30</sup>

Given these quite closed nationality regimes, procedural protections against statelessness are even more important. The civil registration systems in both countries date back to 1912, and birth registration rates are high: reported to reach 99 percent in Egypt,<sup>31</sup> and 94 percent in Morocco.<sup>32</sup> Nonetheless, UN treaty bodies have regretted the particular difficulties faced in Egypt in registering children born out of wedlock;<sup>33</sup> the situation of abandoned children in Morocco;<sup>34</sup> and difficulties in both countries for the children of migrant workers.<sup>35</sup>

The Egyptian law on civil registration<sup>36</sup> continues to discriminate on the basis of sex: births are expected to be registered by the father, although (since amendments to the Child Law in 2008<sup>37</sup>) the mother may also report a birth if the father is not available. The parents (or other informants) must present valid identity documents, as well as the birth notification from a clinic or other recognised source, and a marriage certificate. In case the father is deceased, a death certificate must accompany the marriage certificate. Births are required to be registered within 15 days. There are further requirements if the birth is not registered within the 15 day time period.

In Morocco, both the civil registration law<sup>38</sup> and the 2004 family code<sup>39</sup> establish the duty for parents to register the births of their children. To do so, a parent needs a birth notification from a doctor or legally registered midwife or from the local authority, and, if the parents are Muslims, a copy of the marriage certificate.<sup>40</sup> Births must be registered within 30 days; late registration is possible, through a declaratory judgement of the lowest level civil tribunal.

Although Egypt is a party to the relevant treaties, there is no national legislation on asylum

<sup>30</sup> In recent years, no more than a handful of people have been naturalised in any one year in Morocco, while it has been reported that only 6,228 people were naturalised from independence in 1956 until 2006: <http://o-maroc.com/obtenir-nationalite-marocaine>; see also naturalisation decrees published in the Bulletin Officiel for Morocco at <http://www.sgg.gov.ma/Legislation/BulletinsOfficiels.aspx>; there are no official statistics available from Egypt.

<sup>31</sup> Ministry of Health and Population/Egypt, El-Zanaty and Associates/Egypt, and ICF International, 'Egypt Demographic and Health Survey 2014', Cairo, Egypt: Ministry of Health and Population and ICF International, 2015. See also statistics reported at [https://www.unicef.org/infobycountry/egypt\\_statistics.html](https://www.unicef.org/infobycountry/egypt_statistics.html)

<sup>32</sup> See statistics reported at [https://www.unicef.org/infobycountry/morocco\\_statistics.html](https://www.unicef.org/infobycountry/morocco_statistics.html)

<sup>33</sup> UN Committee on the Rights of the Child, 'Concluding Observations on the combined third and fourth periodic reports of Egypt', CRC/C/EGY/CO/3-4, 15 July 2011.

<sup>34</sup> UN Committee on the Rights of the Child, 'Concluding observations: on the combined third and fourth periodic reports of Morocco', CRC/C/MAR/CO/3-4, 14 October 2014.

<sup>35</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'Concluding observations on the initial report of Morocco', CMW/C/MAR/CO/1, 8 October 2013; 'Concluding observations on the initial report of Egypt', CMW/C/EGY/CO/1, 25 May 2007.

<sup>36</sup> Law No. 260 of 1960, amended by Law No. 11 of 1965 and Law No. 158 of 1980.

<sup>37</sup> Law No. 12 of 1996 promulgating the Child Law amended by Law No. 126 of 2008.

<sup>38</sup> Loi n° 37-99 relative à l'état civil, promulguée par le dahir n° 1.02.239 du 25 rejev 1423 (3 octobre 2002).

<sup>39</sup> Loi n°70.03 portant code de la famille, promulguée par le Dahir 1.04.22 du 3 février 2004.

<sup>40</sup> Décret pris pour l'application de la loi n° 3 -99 relative à l'état civil, 9 octobre 2002, article 17.

and refugee status. In practice, refugee status determination (except in case of Palestinian refugees, where different regulations apply) is conducted by UNHCR under a 1954 memorandum of understanding. Asylum seekers and refugees are provided with residence permits under the general migration law<sup>41</sup> based on their UNHCR registration, valid for only six months. The number of international migrants and refugees in Egypt increased from 295,000 to 491,000 between 2010 and 2015, in part due to the inflow of refugees from Syria.<sup>42</sup> As of June 2017, as this project got underway, there were an estimated 478,000 migrants and refugees in Egypt, including 219,212 registered refugees (of which more than half were from Syria).<sup>43</sup>

Following its ratification of the 1951 Refugee Convention, Morocco adopted a decree in 1957 authorising the establishment of a unit responsible for refugees within the foreign ministry.<sup>44</sup> This office was, however, not established for many years. In 2014, the Moroccan government adopted a new strategy on asylum and immigration.<sup>45</sup> Under this strategy, it finally established the Moroccan Office for Refugees and Stateless Persons (Bureau marocain des réfugiés et des apatrides, BMRA) within the Department of Foreign Affairs, with a sub-committee to hear requests for asylum and grant refugee status. A draft law on asylum was also put forward. The government also launched a programme of regularisation of migrants, relaxing the general requirements established by the 2003 immigration law,<sup>46</sup> with a second phase of regularisation in 2016. In order to benefit from these regularisation campaigns, a migrant would need to fulfil various conditions, including showing five years residence in Morocco, based on a certificate of residence issued by a local authority.<sup>47</sup>

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<sup>41</sup> Law on Entry and Residence of Aliens in the Territories of the United Arab Republic and their Departure Therefrom (Law No. 89 of 1960 as amended most recently by law No. 173 of 2018).

<sup>42</sup> International Organisation for Migration, *World Migration Report*, 2018, Chapter 3, 'Migration and migrants: regional dimensions and developments'. Among the refugees, 126,688 were from Syria; 35,737 from Sudan, and 14,452 from Ethiopia; the remaining included Eritreans, South Sudanese, Iraqis, Somalis and Yemenis.

<sup>43</sup> North Africa Mixed Migration Hub, 'Country Brief: Egypt', March 2018. Available at <http://www.mixed-migrationhub.org/wp-content/uploads/2018/05/Country-Profile-Egypt.pdf>

<sup>44</sup> Dahir n° 1-57-271 du 26 août 1957 relatif à l'application de la convention de Genève relative au statut des réfugiés et décret n° 2-57-1256 du 29 août 1957 fixant les modalités d'application de la Convention relative au statut des réfugiés signée à Genève le 28 juillet 1951; Décret n° 2-57-1256 du 29 août 1957 fixant les modalités d'application de la Convention relative au statut des réfugiés du 28 juillet 1951 (tel que modifié par le décret du 8 octobre 1970 et par le décret n° 2-84-856 du 28 décembre 1984).

<sup>45</sup> Ministère chargé des Marocains Résidant à l'Étranger et des Affaires de la Migration, "Stratégie Nationale d'Immigration et d'Asile", December 2014. Available at <http://www.marocainsdumonde.gov.ma/sites/default/files/Fichiers/Pages/strat%C3%A9gie%20Nationale.pdf>

<sup>46</sup> Loi n° 02-03 du 11 novembre 2003 relative à l'entrée et au séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulières; implemented by Décret n° 2-10-60718 du 1 avril 2010.

<sup>47</sup> Six categories of migrants in irregular status potentially benefited from this programme: foreign spouses of Moroccan nationals living together for at least two years, and their children; foreigners married to other foreigners with regular status in Morocco, living together for at least four years, and their children; foreigners with employment contracts in place for at least two years; foreigners with at least five years residence in Morocco; and foreigners with serious illnesses resident in Morocco before 31 December 2013. See 'Informations communiquées par le Conseil National des Droits de l'Homme du Royaume du Maroc', UN Human Rights Council, A/HRC/25/NI/1, 24 February 2014; Ministère Chargé des Marocains Résidant à l'Étranger et des Affaires de la Migration, 'Guide pratique pour faciliter votre

Through these programmes Morocco had granted residency permits to around 50,000 people by late 2018.<sup>48</sup> As of mid-2017, there were an estimated 95,835 migrants and refugees in Morocco;<sup>49</sup> among them 6,779 falling within the mandate of UNHCR, more than double from 3,048 in 2014.<sup>50</sup>

### The Laws of Sending Countries

All the countries of origin for migrants and refugees considered for this report provide for transmission of nationality to children born outside the territory without discrimination based on the sex of the parent, with the exception of Sudan and Syria. A majority provide that the facts relating to a child's birth must be recorded through civil and (where the birth is outside the country) consular registration procedures in order to be legally recognised.<sup>51</sup>

Syria's nationality law is based on descent through the father, and establishes some of the most stringent restrictions of any country in the world on the rights of women to transmit nationality to their children. Although the law provides for the mother to confer nationality to a child where the father is not known, this only applies to children born in Syria.<sup>52</sup> Civil status events occurring outside the country must be registered with the consular authorities, with requirements to show the father's identity documents, as well as a marriage certificate.<sup>53</sup> Even if the father was Syrian and the mother holds a marriage certificate, she is only permitted to register a birth if a death certificate is also presented, creating major barriers to preservation of the child's future rights in Syria.<sup>54</sup>

Sudanese nationality law also discriminates on the basis of sex in transmission of nationality, though to a lesser extent: whether born in or outside of Sudan, the child of a Sudanese father is automatically attributed nationality at birth; whereas the child of a Sudanese mother must apply for recognition of nationality.<sup>55</sup> In relation to children born outside the country, a birth must be registered by the father within 30 days with the Sudanese mission in that country, following registration according to the procedures in the country of birth.

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intégration au Maroc', n.d. Available in English and French at <http://www.marocainsdumonde.gov.ma/fr/le-minist%C3%A8re/affaires-de-la-migration/nouvelle-politique-migratoire>

<sup>48</sup> Badra Berrissoule, 'Conférence intergouvernementale sur les migrations: Le Maroc donne l'exemple', *L'Economiste* (Casablanca), 10 December 2018. Available at <https://www.leconomiste.com/article/1037689-conference-intergouvernementale-sur-les-migrations-le-maroc-donne-l-exemple>

<sup>49</sup> North Africa Mixed Migration Hub, "Country Brief: Morocco", March 2018. Available at <http://www.mixedmigrationhub.org/wp-content/uploads/2018/05/Country-Profile-Morocco.pdf>; UNDESA, *International Migrant Stock: The 2017 Revision*, June 2017.

<sup>50</sup> UNHCR, "Global Focus: Morocco". Available at <http://reporting.unhcr.org/node/10331>; see also Nadia Bernoussi and Mohamed Benkeroum, "Maroc: Migrations internationales et justice constitutionnelle", *Annuaire international de justice constitutionnelle* Vol. 32, 2016, pp. 421–40. Available at [https://www.persee.fr/doc/aijc\\_0995-3817\\_2017\\_num\\_32\\_2016\\_2529](https://www.persee.fr/doc/aijc_0995-3817_2017_num_32_2016_2529)

<sup>51</sup> See generally, Manby, *Citizenship Laws in Africa*; Albarazi, 'Regional report on citizenship'.

<sup>52</sup> Legislative Decree 276 of 1969.

<sup>53</sup> 'Civil Documentation and Registration in the Syrian Arab Republic', UNHCR and Syrian Arab Republic Ministry of Interior Civil Affairs Directorate, July 2018. Available at <https://www.unhcr.org/sy/wp-content/uploads/sites/3/2018/09/Personal-Documentation-En-Jul-2018.pdf>

<sup>54</sup> Zahra Albarazi and Laura van Waas, 'Understanding statelessness in the Syria refugee context', Institute on Statelessness and Inclusion and Norwegian Refugee Council, 2016. See also resources based on the report, available at <http://www.syrianationality.org/>

<sup>55</sup> Sudanese Nationality Act 1994, as amended 2005, 2011, and 2018, section 4.

Late registration is only permitted with approval from Khartoum.<sup>56</sup>

The civil registration laws of Ethiopia and Nigeria provide in general for consulates to function as civil registration offices.<sup>57</sup> South Sudan adopted a new law on civil registration only in late 2018, with no provision relating to births outside the country.<sup>58</sup> The laws in these countries do not explicitly require consular registration for transmission of nationality, nor proof of birth registration in the host country before a birth can be registered by the parents with the consular authorities.

Eritrea creates a very specific set of difficulties for its nationals living abroad, who are expected to pay a two percent tax on their income, and must submit this in order to obtain consular assistance, in addition to any other fees payable.<sup>59</sup> Those who have not fulfilled the onerous military service obligations applicable in Eritrea have to complete a special form. Applicants who lack the required documentation will need close family members to attest to their identity, and, if possible, submit copies of their parents' national ID cards.<sup>60</sup>

The situation of migrants and refugees from Ethiopia, Eritrea, Sudan and South Sudan is particularly complex as regards identification, thanks to the separation of Eritrea from Ethiopia in 1992 and of South Sudan from Sudan in 2011. The secessions have left people believed to be of South Sudanese origin living in Sudan, or believed to be of Eritrean origin living in Ethiopia, with serious difficulties in obtaining recognition of Sudanese or Ethiopian nationality, even if they are entitled to it.<sup>61</sup>

I know a girl from South Sudan; her father has a passport from the North and the South. When her parents went to the Sudanese embassy they told them to go to the South Sudanese. When they went to the South Sudanese they told them no you should go to the North. — Sudanese

<sup>56</sup> Civil Registry Act 2011, section 11.

<sup>57</sup> Ethiopia Proclamation No. 760/2012 on the Registration of Vital Events and National Identity Card, section 7; Nigeria Births, Deaths, etc. (Compulsory Registration) Act No. 69 of 1992, section 44.

<sup>58</sup> South Sudan Civil Registry Act 2018.

<sup>59</sup> Human Rights Watch, 'Service for Life: State Repression and Indefinite Conscription in Eritrea', April 2009. Available at <https://www.hrw.org/report/2009/04/16/service-life/state-repression-and-indefinite-conscription-eritrea>; International Crisis Group, 'Eritrea: The Siege State', Report 163 / Africa 21 September 2010. Available at <https://www.crisisgroup.org/africa/horn-africa/eritrea/eritrea-siege-state>

<sup>60</sup> 'Eritrea: Identification documents, including national identity cards and birth certificates; requirements and procedures for obtaining and renewing identity documents, both within the country and abroad (2009–August 2013), 16 September 2013', Immigration and Refugee Board of Canada, ERI104539.E. Available at <https://www.refworld.org/docid/524970044.html>

<sup>61</sup> See, for example, Maureen Lynch and Katherine Southwick, 'Ethiopia-Eritrea: Stalemate Takes Toll on Eritreans and Ethiopians of Eritrean Origin', Refugees International, 2008; Katherine Southwick, 'Ethiopia-Eritrea: Statelessness and state succession', *Forced Migration Review*, Vol. 32: Statelessness, 2009; Nasredeem Abdulbari, 'Citizenship Rules in Sudan and Post-Secession Problems', *Journal of African Law*, Vol. 55, No.2, 2011, pp. 157–80; Munzoul A. M. Assal, 'Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote', Christian Michelsen Institute, 2011; Bronwen Manby, 'International Law and the Right to Nationality in Sudan', Open Society Foundations, 2011; Bronwen Manby 'The Right to Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws', Open Society Foundations, 2012; Mike Sanderson, 'Key Threats of Statelessness in the Post-Secession Sudanese and South Sudanese Nationality Regimes', *Tilburg Law Review*, Vol. 19, 2014, pp. 236–47; Ahmad A. Sikainga, 'Citizenship and Identity in Post-Secession Northern Sudan', *Bulletin of the Association of Concerned Africa Scholars*, Issue 86, 2011, pp. 11–19.

For those who are migrants or refugees in other countries, these challenges are even more grave. As documented by previous research by AUC, those of mixed parentage, or believed by the Ethiopian embassy to be of Eritrean origin, have found themselves unable to gain recognition from either Eritrea or Ethiopia.<sup>62</sup>

Among those states whose nationals were interviewed in Morocco, all apart from Nigeria share procedures with a family likeness based on the francophone civil law model. None discriminates on the basis of gender in their nationality codes, although Cameroon, Côte d'Ivoire, Mali and Senegal all provide for distinctions between those born in and out of wedlock in relation to proof of descent; for those born out of wedlock, descent must be established during the child's minority.<sup>63</sup> The nationality codes provide that facts related to place of birth and identity of parents are only recognised if established through civil registration. In case of children born outside the country, the births must be declared to the consular authorities following registration in the country of birth. In Cameroon and Côte d'Ivoire, there is a provision that birth registration in the country of birth may also be relied upon, and all permit registration of civil status events directly with the Ministry of Foreign Affairs if there is no consular representation in the country of birth; or, in the case of Cameroon, within a year of returning to the country.<sup>64</sup>

## Research Findings

### Birth Registration in Egypt and Morocco

Egypt and Morocco have long-standing identification and civil registration systems, with high rates of birth registration. Yet many migrants and refugees interviewed for this research struggled to register the births of their children, in either country. The principal obstacles faced by parents seeking to register the births of their children were similar in both countries, but with important variations. Generally, access to birth registration was easier in Morocco (despite the lower reported percentage of births registered). Among the most difficult challenges faced in both countries was the question of access to consular authorities to replace identity documents of parents, or to register the births of children.

<sup>62</sup> Louise Thomas, 'Refugees and Asylum Seekers from Mixed Eritrean-Ethiopian Families in Cairo', Centre for Forced Migration and Refugee Studies, American University in Cairo, 2006; see also Eirwen-Jane Pierrot, 'A Responsibility to Protect: UNHCR and statelessness in Egypt', UNHCR, January 2013.

<sup>63</sup> Loi n° 1968-LF-3 du 11 juin 1968 portant Code de la nationalité camerounaise, art 14; Loi n° 61-415 du 14 décembre 1961 portant Code de la Nationalité ivoirienne telle que modifiée jusqu'à 2013, art.9; Mali Loi N° 2011-087 du 30 Décembre 2011 portant Code des personnes et de la famille, art 229; Loi n° 61-10 du 7 mars 1961 portant Code de la nationalité sénégalaise, modifié 2013, art. 6.

<sup>64</sup> Cameroun, Ordonnance n° 81/002 du 29 juin 1981 portant organisation de l'état civil et diverses dispositions relatives à l'état des personnes physiques, telle que modifié et complété par la Loi N° 2011/011 du 6 mai 2011, arts. 5 and 6; Côte d'Ivoire Loi n° 64-374 du 7 octobre 1964, relative à l'État civil, modifiée par la loi n° 83-799 du 2 aout 1983; Senegal Loi n°72-61 du 12 juin 1972 portant Code de la Famille, modifiée 1999, art 44.

## Marriage Certificates

The most common difficulty obstructing foreign parents from registering the births of children born in Egypt is the requirement for a marriage certificate. Although the law theoretically permits other forms of proof of relationship, officials on the ground in practice require a marriage certificate to register a birth, even in case of children born of rape.<sup>65</sup> Only with legal assistance will a birth certificate be issued to a child born out of wedlock. In practice, if the father is not available (and there is no death certificate), another male family member can accompany the mother to register the birth of the child in their name—but only if that family member has all the required documents.

The problem here in Morocco is that when you don't have a marriage certificate and you are Muslim they register the births as father unknown. My husband is the father of four girls of which two are born in Morocco, and they are registered as children of unknown fathers. I'm against this solution. — Nigerian

Among the migrants and refugees interviewed, very few were aware of the process to register a marriage in Egypt; others could not register their marriages because they lacked valid identification documents or a residence permit. If their marriage has been registered in a country of origin, a letter from the relevant embassy is still needed to authenticate the marriage certificate or to state that the embassy does not object to the marriage of a national in Egypt. No consideration is given to the inability of a refugee to approach his or her embassy. Many had no formally registered marriage, if they had been married under customary law or with only a religious ceremony, or if they came from countries where no civil marriage certificate is issued (for example in Sudan and South Sudan, and in Syria).

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A marriage certificate is also required by the authorities in Morocco in case of Muslim parents (only). As in Egypt, the Moroccan authorities do not accept evidence that parents are formally married in accordance with the rules of their own country, if that country does not require civil registration in addition to any other ceremony. For those who are living together without a marriage of any kind, the situation is even more difficult. Single mothers also face significant difficulties if the father is not present, especially if they state that they are Muslim—even though unmarried Moroccan women are permitted under the civil registration law to register a birth, recording the father as unknown. For couples or women who state that they are not Muslim, however, parents are permitted to register a birth without a marriage certificate.

## Residence Permits/Certificates

An obstacle of equal significance in Egypt is the requirement to produce a residence permit showing legal presence in Egypt. It is a constant challenge for asylum seekers and refugees, or ordinary migrants in regular status, to keep their permits valid, since in most cases they expire after six months and it takes around two months to receive a new one.

<sup>65</sup> Mohamed Farahat, 'Children of rape of refugee women, and statelessness, in Egypt', *Forced Migration Review* Vol. 55, June 2017.

In Morocco, it is not a requirement to show legal residence in the country to register a child. In practice, however, officials responsible for civil registration may require a ‘residence certificate’. This is a document issued by a local government authority that confirms factual rather than legal residence; it is also required for the campaigns for regularisation of migrants initiated in 2014. Although these are supposed to be issued without charge, in some cases it appears that fees are demanded. To obtain a certificate of residence, a person will need to show a rental contract—which can be very difficult to produce for migrants who rent together in large groups, and move frequently.

### Parents’ identity documents

In Egypt, many parents among our participants were prevented from registering a birth because they themselves lacked any identity documents: both a currently valid residence permit and current identity documents are required. However, it is very common for migrants to arrive, particularly from Sudan, South Sudan, Ethiopia, and Eritrea without identification documents of any kind for themselves or their children. If they have no asylum or refugee document issued by UNHCR, or if their claim has been rejected, or if they cannot approach their consular authorities—because they fear to do so (even if they have not claimed refugee status) or are rejected as non-nationals—then they cannot register the births of their children born in Egypt.

In Morocco, a parent’s lack of identity documents also hindered birth registration of their children: although not formally required by the decree implementing the civil registration law (which requires only a birth notification and marriage certificate, for Muslims), this requirement was seen as the greatest obstacle to birth registration by the migrants themselves, given the difficulty and expense of obtaining documents from their consulates.

### Birth Notifications

In both countries, lack of an official birth notification from a registered health facility or practitioner created significant barriers to birth registration: without this notification, it is much harder to prove to the satisfaction of the authorities that the child is connected to the parents.

In Morocco, if there is no birth notification the civil status authorities must conduct an

I’m an irregular migrant, I have no rights, and my child is in the same situation as me. If I register the birth, I’ll reveal my own status and I risk being identified. Here in Morocco there is misery, but at least no conflicts. — Nigerian

I have not delivered yet but I am scared I will face a problem because I know others who were in my situation and were not granted a birth certificate. My passport is expired. I do not have residency (in Egypt). I also do not have any communication with the father of the child. — Nigerian

I’m in a serious situation. I can’t get an identity document that allows me to register my three children with the Moroccan authorities.... It’s very difficult, especially since I come from Côte d’Ivoire, and I don’t want to have anything to do with the embassy for many reasons you can understand. — Ivorian

inquiry, seeking witness testimony from those who were present at the birth; and if registration is attempted more than 30 days from the date of birth, a family judge must establish the identity of the parents and their connection to the child. The research also documented cases where health facilities refused to issue a birth notification to a parent, as a way of creating pressure for medical bills to be paid—a practice that is completely illegal.

In Egypt, if there is no birth notification a parent must go to the nearest health office and seek a doctor or other official to attend the place where the birth took place, in order to verify the facts and write a certificate with the same information as would appear in a birth notification. After more than 15 days, the parents must go together to the health office with the child, for an estimate of the child's age and the issue of a declaration of paternity. The health office should then report the birth incident to the civil registry department.

### **Other Barriers: Lack of Information, Costs, and Fear**

In both Egypt and Morocco, migrants and refugees lacked understanding of the procedures to register their children's births or obtain other documents. They also lacked information about the (limited) legal assistance available to refugees supported in both countries by UNHCR. Language barriers were significant; especially in Egypt for those who did not speak Arabic, and in Morocco among those from anglophone countries. There were some parents who believed that the notification of birth from the hospital was sufficient, not realising that it had no legal effect without formal registration.

My son's passport has expired. He wants to register his son who is now 10 months old but he cannot do so with an expired passport. He cannot renew it because he cannot afford the cost of renewing a passport. — Syrian

From when I wake up, I have to think about feeding my children, finding shelter, a job, keeping them from the cold. Registering their births is not a priority for me... even if registered who is going to look after them? — Ivorian

In Morocco, the fear of being identified as in irregular status and expelled by the Moroccan authorities held some back from registering a birth. Some believed that the fact that they had been rejected for regularisation meant that they could not access birth registration for their children.

Even though birth registration is supposed to be free in both countries, for some parents birth registration for a child was simply not a priority among

the many other challenges of a precarious daily existence. Invisible costs included transport and lost income from other activities, and above all the costs of obtaining the supporting documents required.

### **Time Periods and Late Registration**

Given all these challenges, the time period for registration of births was also a barrier. Migrants and refugees interviewed in Morocco were unanimous that the 30 day period for registration of a birth was too short before the late registration procedure before a judge was required. In Egypt, registration is supposed to take place within 15 days of the birth, an even more unreasonable requirement.

While late registration is possible, it is more onerous. In Morocco, the system for late registration through the civil tribunals was perceived as difficult to access: the entire procedure is in Arabic, and all documents must be translated into Arabic and notarised. In the absence of a marriage certificate, it is difficult to show paternity; and without a birth notification even the parentage of the mother may be hard to prove. While practice varies, some groups providing assistance to migrants and refugees reported that tribunals could require testimony from up to 12 people, or from the *mokaddem* (local government official) of the neighbourhood where the parents live.

In Egypt, the procedure for registration of a birth after more than 15 days is very long and elaborate, involving visiting multiple government offices, and providing all documents and information in Arabic, including a valid current residence permit, late birth notification, marriage certificate, police report, and declaration of paternity. If the birth registration is more than one year from the date of birth, further requirements apply. The process may take six to eight weeks.

### Unaccompanied and Other Vulnerable Children

Both Morocco and Egypt have protections in their law that should provide the right to nationality for children found in their territory of unknown parentage.

The research in Egypt came across many cases of guardians taking care of unrelated children from their community, whether the parents were unknown, or dead, or had abandoned the child. This was especially the case among the Sudanese, South Sudanese, and Eritreans. There is a procedure for registering foundlings and abandoned children but very few migrants and refugees know about it and it takes a significant amount of time. There were also suggestions that this protection is not applied in case of children where there is the belief that the parents are originally from another country. Often, however, the parents are known, but no longer able or willing to look after the child. The adult caring for the child has no way of legalising this relationship and obtaining documents for the child. The only possibility may be to add the child on to a UNHCR refugee or asylum seeker card; but this will then require the parent to produce a birth certificate in order to renew the residence permit.

The CMRS also heard of many unaccompanied and separated older children among the Ethiopian and the Eritrean communities, who had left their own countries alone: they lack any knowledge of the processes to gain identification documents, and fear approaching the embassy in case of being deported.

Another category of children with no way to resolve a lack of documents were those who

We cannot register children who were not born in Egypt. Some of us give birth on the way from Eritrea to Egypt. Some of us stayed for a long time in Sudan and gave birth there. We did not get birth certificates there. Here, we cannot provide the authorities with the documents to register the children. Someone told me we have to lie and say the child is born in Egypt to get the birth certificate. But they will know that the newcomers with older children could not have delivered here. What do we do now? — Eritrean

were not born in Egypt or Morocco, but rather in the country of origin or en route. There is no practical route for parents in this situation to obtain late registration of birth from the country of birth, and no procedure in either Egypt or Morocco, or among consular authorities, to recognise the child's link to the parents and provide identity documents.

### Access to Consular Assistance

If a valid identity document from a country of origin is required for a parent to regularise status in the country of residence or to register the birth of a child, then the accessibility of consular services for issue or renewal of documents is critical not only for the parent, but also for the child.

In both Egypt and in Morocco, many of those interviewed had no identity documents of any kind from their country of origin. Their original documents had been lost, destroyed or confiscated during the journey; and some had left their country of origin without any documents at all. A combination of costs, fear, lack of knowledge, and heavy procedural requirements hindered issue or recovery of documents for parents, and that difficulty in turn could prevent registration of births in the host country or with the consulate.

We need a solution for adults who have no identity documents and cannot approach their embassy to get them — Sudanese

Migrants and refugees from Syria, Sudan, South Sudan, Ethiopia and Eritrea in Egypt all reported that their embassies were effectively inaccessible to them. In

some cases, this was because their asylum claim or refugee status would be jeopardised if they were to approach the embassy. Others had been rejected for a refugee claim, but the embassy would not assist them with documents—they believed as a punishment for claiming refugee status. Others who had not claimed refugee status nevertheless feared surveillance.

In Morocco, the requirements of the francophone West African countries for parents to present a Moroccan birth certificate in order to register a birth with the consulate created an obstacle to such registration even for parents who had valid passports. Adult migrants seeking to restore their identity documents reported investigations of different levels of intensity to confirm their nationality. Syria has no consulate in Morocco, meaning that Syrians must travel to Algeria or Spain to obtain or renew any documents.

The Nigerian consulates had a more open attitude in both Egypt and Morocco, and were reported to accept testimony from the Nigerian community in the host country about the origins of a person in order to verify their Nigerian nationality: this applied both to children and to adults.

Another significant barrier to accessing consular services for identity documents was cost. Consulates charge significant fees for issue or renewal of a passport: US\$300 in case of a Syrian passport, valid only two years; US\$100 for Sudanese and South Sudanese, valid for five years, and similar amounts for the others. These fees are out of reach for many migrants and refugees. Costs are also high for registering births, marriages or deaths, or for obtaining copies of civil status records from the home country. Eritreans must add the

two percent tax on their income in order to obtain consular assistance. Fees were similarly high among the consulates reviewed in Morocco. And there are other costs. In at least one case, a parent had been forced to return to the home country to seek the documents required to register the births of children born in Morocco.

In any event, most of those interviewed were not aware of a need to register births with consular authorities as well as with the host country for the child's right to nationality of the parent to be preserved. Those consulates interviewed showed little concern about ensuring that registration did take place, and there is no coordination between the civil registration authorities of the country of birth and the relevant consulates in order to facilitate the documentation of children.

### Consequences

The obstacles to birth registration in both countries create a situation where those who cannot produce a marriage certificate or their own identity documents have to register their children under the names of other people. In Egypt, our research came across one family of four children, each of them registered to different fathers—although they were all born to the same father, who was not listed on any birth certificate. In Morocco, where the fear of deportation was higher, we found a case of a woman who had given birth in a health facility under a false name, greatly complicating the process of formal registration of birth where descent must be proved. Among the Syrian refugees contacted, there was a case where a child whose father was not available had been registered in the name of his brother. The lack of a demonstrated legal connection could mean, for example, that those who finally secured resettlement in a third country—or who were deported—could not take their children with them.

Where the difficulties had prevented birth registration altogether, or discouraged a parent from trying, the consequences of lack of registration could be serious.

Egypt requires a birth certificate for a child to be registered in a public school. Although schools run by the communities themselves will accept children with no birth certificates, for example among the Sudanese, these are expensive. In any event, a birth certificate will be required to sit exams. Children without birth certificates and adults without a valid res-

It is very hard to approach the embassy. Especially if you applied for asylum. They know the people who apply. They have a list. And they will punish you. — Sudanese

The embassy only help people who arrived legally but we came here illegally, we don't have passports. — Ethiopian

We're scared of being arrested and sent back. The consulate doesn't care about the irregular migrants, they won't give us a consular card to protect us. The *clandestins* are not welcome. — Ivorian

I haven't been able to register the child with the embassy because I don't have all the required documents and my wife is not here, her presence is needed. — Senegalese

We do not have any relationship with the embassy as we are political asylum seekers. And where can we get the 2% taxes in US\$ to pay to them monthly? — Eritrean

idence permit cannot obtain treatment at government hospitals. In Morocco also, a lack of birth registration may result in the exclusion of children, although initiatives have been undertaken to ensure that the children of foreigners are placed in school.

For adults lacking identification, it was hard to distinguish the consequences of a lack of any identity documents at all from the consequences of a lack of documents showing a regular immigration status. However, a person without identity documents from a country of origin cannot obtain a regular migration status in the country of residence, other than that of asylum seeker or refugee.

If we do not have valid documents we cannot do anything. A simple example is the difficulty to own a legal SIM card from phone companies in Egypt without legal ID. — Eritrean

The embassy will not recognize this child. I wonder how we can go back home or to a different country without any proof that this child belongs to these parents. — Syrian

I tried to register my child in school but they asked me to bring a birth certificate. I do not have one. — Ethiopian

Egypt has not historically expelled those without papers from the country: our research came across migrants who had lived in Egypt for decades without any valid identity documents of any kind. Nonetheless, the lack of a valid residence permit increasingly makes movement outside an immediate neighbourhood difficult, creates the need to pay bribes, and prevents access to many services.

Morocco's resident migrant population is generally less long-standing, but the

government has from time to time conducted round-ups of migrants, including during the recent drive for regularisation. Around 5,000 people were reported to have been caught up in raids over several months in 2018, and taken to the Algerian border or remote areas in the south of the country.<sup>66</sup> In the absence of identity documents, there was also no possibility of regularising a person's status in Morocco.

Lack of documents showing regular migration status generally led to an inability to obtain regular work or to increased likelihood of exploitation and to difficulties in accessing health care and housing. Without a residence permit, it may be impossible to rent a place to live: a residence permit depends either on recognition as a refugee or the possession of valid identity documents from a home country. In Egypt, increasingly more stringent requirements to present identification at different points mean that lack of a valid residence permit will prevent purchase of a SIM card for a mobile phone or opening a bank account. Without a bank account or SIM card, migrants cannot receive money transferred from relatives who have reached Europe or the United States.

Despite some help supported by UNHCR or by some NGOs, there is a lack of legal assistance to resolve challenges of identity documentation for refugees and, especially, irregular migrants, in both countries.

<sup>66</sup> 'Dénonciation des déplacements forcés et illégaux des migrant(e)s noir(e)s du Nord du Maroc', AMDH, 25 September 2018 (originally in Arabic 16 August 2018); 'Morocco: Relentless crackdown on thousands of sub-Saharan migrants and refugees is unlawful', Amnesty International, 7 September 2018.

## Policy Implications

Our research confirmed suspicions that, despite the high reported rates for birth registration in both countries, there are significant obstacles to birth registration for migrants and refugees in both countries, and systems for child protection are inexistent or do not adequately consider questions of legal identity. Expectations about the difficulty of accessing consular assistance were even more definitively fulfilled.

The findings of our research suggest the following efforts to help those who are refugees or migrants in irregular status through the procedural mazes that block the preservation and establishment of legal identity and nationality. These are needed in addition to the reforms to nationality law in host and sending countries necessary to protect against statelessness, including removal of gender discrimination, and protections for foundlings and children who cannot acquire the nationality of one of their parents.

1. *Simplify birth registration, above all by removing requirements for parents to show legal status in the country and a legal marriage*

The requirements for registration of the births of children of foreign parents should be simplified and *de-linked from the legality of both the immigration and marital status of the parents*. Further efforts should be made to reduce discrimination against women in the registration of children, both in law and practice, especially in Egypt. Late registration should be facilitated in case of children of foreign parents, and the deadlines extended. Expired passports or identity cards should be accepted as proof of identity, and guidance established to enable births to be registered if parents lack any official identity documents.

2. *Reduce the obstacles to registration of births and issue of documents by consular authorities*

Consular procedures need to make allowance for the requirements of civil registration in the host country, establish systems to issue the documents required or an agreed equivalent, and provide the possibility of registration of children of nationals with the consulate even if their births were not registered in the country of birth. Consular fees should be set at levels or provide for exemptions that place the issue or renewal of documents within reach for the poor.

Neither UNHCR nor host countries should consider that the decision to approach consular authorities to obtain civil registration or other identity documents required to fulfil civil registration requirements in the host country amounts to a decision by that person to 're-avail' him or herself of the protection of that country, triggering loss of refugee status.

3. *Child protection systems*

Unaccompanied and separated children, whose parents are known but who but have no documentary proof of that link, need late birth registration (if they were born in the country of residence) or alternative documents that record the same facts in relation to their identity, so far as they are known, and provide them with a legal residence status and a route to establish their nationality, as well as to legalise a relationship with those who have taken up the role of guardian.

#### 4. *Information and assistance for migrants and refugees*

UN agencies (especially UNHCR, IOM and UNICEF) should make it a priority to provide support and outreach to irregular migrant and refugee communities for birth registration and identity documents, including information and training in relevant languages, and financing for legal and paralegal assistance.

#### 5. *Information, training and resources for civil registration and consular officials*

Civil registration officials need training to facilitate birth registration by migrants and refugees and to emphasise to parents the importance of registration with consular authorities. Consular officials need training on the procedures in the country where they are assigned, and support to provide that information in turn to their nationals present in the country. Both civil registration and consular authorities will need additional resources if they are to reach the most vulnerable groups.

#### 6. *Guidance on access to nationality and identity documents for the children of refugees*

A refugee status determination procedure will in principle ensure that adult refugees are issued identity documents. Children are usually included within the documentation of one of their parents. However, this registration does not protect the future nationality rights of the child, if nationality of the country of birth cannot be acquired. The children of refugees cannot be registered with the consulates of the country of origin of their parents, even though this may be necessary under the law for the child to acquire the parent's nationality.

#### 7. *Guidance on inter-country recognition of civil status documents*

More research is needed (especially outside the European context) on the immense complexity of the interaction of different civil registration systems under private international law and guidance on common standards for the recognition of civil status documents. The African Union and the Arab League would be well-placed to take steps in this direction.

#### 8. *Guidance on the obligations of consular authorities*

The operation of consular assistance remains a virtual 'black box', almost impossible to penetrate. International law considers consular assistance to be a prerogative of the state, not a right of the person seeking help. There is a lack even of 'soft law' standards on the assistance people should expect from the consular representatives of their country of nationality or origin—whatever their legal status in the country of residence and whether or not they have documents from their home country.

## Conclusion

Migrants and refugees are often faced with major obstacles to obtain the identity documents needed to navigate their daily lives. If they cannot overcome these obstacles, they live in the ‘illegible’ margins of the state, invisible to the authorities, or are forced to adapt their identities to satisfy the rules and fit into the categories established by state procedures.<sup>67</sup> In the past, invisibility could have advantages, but today’s constant requirements for identification leave those without the necessary documents among the most vulnerable. The coping mechanisms found by this research leave real identities distorted or unrecorded, including the connections of children to parents. These children, and the adults they become, are at high risk of statelessness.

The commitment of SDG Target 16.9, ‘To provide legal identity for all, including birth registration’, reflects the importance of birth registration for the rights of the child, and the overall objective of the Sustainable Development Goals, to ‘leave no one behind’. The commitment of the Global Compact on Migration to ‘Ensure that all migrants have proof of legal identity and adequate documentation’, similarly states its concern ‘to empower migrants to effectively exercise their human rights’. But the two commitments leave important questions hanging: what is ‘legal identity’ and what constitutes ‘adequate documentation’?

This research project illustrated the complexity of the answers to these questions. If ‘legal identity’ objectives do not take into account this complexity, many will be left vulnerable, and perhaps more vulnerable than they were before. These will include the children and adults left stateless or families separated by the challenges identified in this report. Identification systems have as much potential to exclude as they do to include, and should be designed to reduce these risks.

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<sup>67</sup> On ‘legibility’, see Scott, *Seeing Like a State*.

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Migrants workers line up in a refugee camp in Tunisia.

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