

Written submission of the International Human Rights Clinic at Harvard Law School (IHRC) and the Norwegian Refugee Council Jordan (NRC)

To the Committee on the Elimination of Discrimination against Women (the Committee) for the Pre-Sessional Working Group for the Committee's 66th Session (25 – 29 July 2016)

June 2016

List of Issues for Jordan

This submission responds to the Committee's invitation to civil society to make submissions on the list of issues for states parties to the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) that are scheduled to be considered at the Committee's 66th Session.

While the Government of Jordan has put in place policies and procedures to protect the rights of Syrian refugees and their families, IHRC and NRC wish to bring to the Committee's attention several ongoing issues affecting Syrian refugee women and girls in Jordan.¹ Specifically, IHRC and NRC urge the Committee to include the following questions on the list of issues for Jordan's forthcoming review:

- What steps is the government taking to address the challenges Syrian refugees – particularly those living outside refugee camps – are encountering in marriage registration processes and/or to mitigate the consequences of non-registration?
- What steps is the government taking to evaluate and alleviate the problems faced by Syrian refugee women and girls who lack legal documentation in Jordan (for example, because they are not registered with the United Nations High Commissioner for Refugees and/or the Government of Jordan), particularly those living outside refugee camps?

As of June 2016, Jordan accommodates more than 655,000 Syrian refugees.² The vast majority – nearly 80 per cent – live in Jordanian cities and towns, outside official refugee camps.³ Since 2015, IHRC and NRC have been undertaking joint research to map the challenges that Syrian refugees living outside camps encounter obtaining civil

¹ IHRC works to protect and promote human rights and international humanitarian law through documentation; legal, factual, and strategic analysis; litigation before national, regional, and international bodies; treaty negotiations; and policy and advocacy initiatives. NRC is an independent, humanitarian, non-profit, non-governmental organisation that provides assistance, protection, and durable solutions to refugees and internally displaced people worldwide. In Jordan, NRC has directly assisted more than 400,000 Syrian refugees in both camps and host communities.

² In Jordan, the term "Syrian refugee" is widely used, including by the Government of Jordan, to describe people of Syrian nationality who have entered Jordan since the start of the conflict. Formally, UNHCR registers all persons of concern in Jordan claiming to be in need of international protection as asylum seekers, pending evaluation of their asylum claim in accordance with the Statute of UNHCR and a Memorandum of Understanding between UNHCR and the Government of Jordan. In this submission, the term Syrian refugee is used to describe people of Syrian nationality who have registered with UNHCR, as well as Syrians who have not registered with UNHCR but are seeking international protection in Jordan. The submission does not cover Palestinian refugees from Syria who are currently residing in Jordan. The number cited refers to the total number of persons of concern to UNHCR. UNHCR, "Registered Syrians in Jordan," 31 May 2016.

³ UNHCR, "Registered Syrians in Jordan," 31 May 2016.

documentation (such as marriage and birth certificates) in Jordan, as well as the consequences faced by those who lack such documentation.⁴ This submission is based on this research and focuses on concerns under Article 16(2) of the Convention, which requires states to take “all necessary action, including legislation, . . . to make the registration of marriages in an official registry compulsory.” It also highlights possible increased risks that Syrian refugee women who lack legal documentation in Jordan may face, which could affect their enjoyment of the rights set forth in the Convention. IHRC and NRC would be pleased to provide further information on these topics at the Committee’s request.

1. Marriage Registration for Syrian Refugees in Jordan

The Government of Jordan has acknowledged in its state report to the Committee that “not all Syrian marriage contracts have been officially registered, as required under Jordanian law,” and notes, “The failure to document marriage contracts causes problems and challenges such as failure to document marital rights, children and parentage.”⁵ It concludes, “More efforts are required to raise awareness and review legislation and procedures.”⁶ IHRC and NRC agree that further steps are required, particularly for refugees living outside camps, to facilitate Syrian marriage registration in Jordan.

Marriage registration process

Like a Jordanian couple, a Muslim Syrian couple who wish to marry in Jordan must apply for a marriage certificate from the Jordanian Shari’a courts.⁷ Except in special circumstances, both parties must be over 18 lunar years old and the bride’s guardian must be present and consent to the marriage.⁸ The couple must provide the court with identity documents and a health certificate.⁹ Importantly, the court cannot marry non-Jordanian couples without the permission of the Jordanian Ministry of the Interior, and the couple can only obtain such permission in person at the Ministry of the Interior in Amman.

⁴ See International Human Rights Clinic at Harvard Law School and Norwegian Refugee Council, *Registering Rights: Syrian Refugees and the documentation of births, marriages and deaths in Jordan* (2015), available at <http://hrp.law.harvard.edu/wp-content/uploads/2015/11/Registering-rights-report-NRC-IHRC-October20151.pdf>.

⁵ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under, article 18 of the Convention, Sixth periodic report of States parties due in 2016, Jordan, CEDAW/C/JOR/6 15-10445 9/50, at para 12.

⁶ *Ibid.*

⁷ Personal Status Law (Jordan), Chapter 2, articles 5-13, “Conditions of Marriage”. This submission does not examine marriage registration processes for non-Muslim Syrian refugees living in Jordan. For Jordanian couples, marriage registration is completed by obtaining a “family book” from the Jordanian Civil Status Department; foreign couples are not eligible to receive family books from the Jordanian state, so marriage registration for Syrian refugees is complete once they obtain a marriage certificate or marriage ratification certificate from the Jordanian Shari’a courts.

⁸ See Personal Status Law, articles 5 and 10(b). There is a special procedure to allow girls between the age of 15 and 18 lunar years to marry. See “Special Instructions to Grant Marriage Permission for Those Who Are Below 18 Years of Age” (issued by the Chief Justice under article 10 of the Personal Status Law), available in English translation in UNICEF, *A Study on Early Marriage in Jordan 2014*, p. 45. If it is not the bride’s first marriage, a male guardian’s consent is not required.

⁹ The health certificate verifies that they are not carriers of thalassemia, a genetic disease. The court may also ask the couple to provide proof or make a declaration attesting to the fact that they are eligible to marry.

Marriages concluded in Jordan outside this process (“informal” marriages) are illegal.¹⁰ However, a couple who married informally in either Jordan or Syria can legalise and register their marriage in Jordan by obtaining a marriage ratification certificate from the Jordanian Shari’a courts. The requirements for a marriage ratification certificate are the same as for a marriage certificate, but a JOD 1,000 (approximately USD 1,410) fine must be paid if the couple married informally in Jordan, and the court may impose additional conditions.¹¹ A couple whose Syrian marriage certificate or family book (an official document issued by the government when a marriage is registered) was lost or destroyed can also apply for a marriage ratification certificate.

Challenges to registration

Although the Government of Jordan has made important accommodations to facilitate marriage registration for Syrian refugees – including waiving the JOD 1,000 fine for informal marriages for two two-month periods in 2014 and 2015 – IHRC and NRC’s research indicates that four main challenges have been affecting the ability of Syrian couples to register their marriages:¹²

- Syrian refugees may lack awareness or information about marriage registration in Jordan, particularly as Syrian marriage practices are different from Jordanian practices. In Syria, informal marriages are accepted and common; a couple may wait years before registering a marriage with the state, if they ever do so.
- Syrian refugees may be unable to produce official documents, such as identity documents, that are required to register a marriage. In particular, Syrians who lack certain types of legal documentation may struggle to obtain approval to marry from the Jordanian Ministry of the Interior.
- Inconsistency in court practices means that Syrian refugees may not always accurately predict how their case would be treated and they may be reluctant to approach the courts.
- Costs associated with marriage registration can be onerous; for example, even if a family does not have to pay the JOD 1,000 fine, they may face significant financial costs associated with family members travelling to multiple court sessions and the Ministry of Interior in Amman.

Consequences of non-registration

The number of unregistered marriages among the Syrian refugee population in Jordan is unknown, but likely to be substantial given that the challenges outlined above could affect many Syrian couples, including couples with long-term marriages who never went through the registration process in Syria. A woman with an unregistered marriage can face significant consequences. For example, she may struggle to prove she is married to her husband and encounter difficulties enforcing her rights under a marriage contract.

¹⁰ In addition to a fine, article 36(c) of the Personal Status Law states that the penalty prescribed by the Jordanian penal code may be imposed. Article 279 of the Penal Code (No 16 of 1960) provides for a term of imprisonment of between one and six months for performing or assisting in performing an illegal marriage. In practice, imprisonment is very rare.

¹¹ Such as the presence of witnesses to the informal marriage (a difficult requirement to meet if the witnesses are not in Jordan).

¹² For a more in-depth discussion on the challenges to marriage registration, see International Human Rights Clinic at Harvard Law School and Norwegian Refugee Council, *Registering Rights: Syrian Refugees and the documentation of births, marriages and deaths in Jordan* (2015), pp. 18-22.

Another important consequence is the effect of an unregistered marriage on the couple's children. In Jordan, marriage registration is a requirement to register the birth of a child. Consequently, if a couple's marriage is unregistered and the wife gives birth in Jordan, the child's birth cannot be registered until the marriage is registered; non-registration may affect the child's ability to access services in Jordan, such as health and education, and create a risk of statelessness.¹³ Lack of a birth certificate may also affect a family's ability to travel together, imperiling the right to family unity. The situation is especially complicated for women who marry informally before the legal age of marriage, as there may be no path to registering children born to the couple.¹⁴

In addition to taking further steps to facilitate marriage registration of Syrian refugees, measures are required to better protect the rights of children born to unregistered marriages, including improving processes to best ensure the right to a nationality and the right to a legal identity.

2. Risks to Refugee Women and Girls Who Lack Legal Documentation

Although many Syrian refugees are registered with UNHCR and the Government of Jordan, some refugees living outside camps are unable to obtain legal documentation that may be necessary to access services, such as health and education, and humanitarian assistance in Jordan. For example, refugees who left refugee camps in Jordan after July 2014 without going through the official process to do so are unable to receive an Asylum Seeker Certificate from UNHCR (a document that lists a family as "persons of concern" to UNHCR); such refugees are also ineligible to apply for a Ministry of the Interior Service Card while they remain outside the camps (this card, issued to Syrians by the Government of Jordan, provides access to services, such as health and education). Without legal documentation, refugees may fear that they could be returned to refugee camps by Jordanian authorities. In some cases, refugees may be also adopting negative coping mechanisms, such as self-restricting their movement or engaging in illegal work.

International evidence indicates that undocumented women and girls face particular risks, including sexual and physical violence, exploitation in the informal economy, subjugation in familial relations, reproductive health concerns, physiological stress, and social isolation.¹⁵ Based on preliminary research undertaken by IHRC and NRC in 2016, Syrian refugee women in Jordan who lack legal documentation may face a number of increased risks, including: an increased incidence of domestic violence; exploitative working conditions; separation from children (who are taken away to live with relatives with better legal status in Jordan); and obstacles to divorce. The problems encountered by Syrian women and girls who lack legal documentation in Jordan require further research and analysis.

¹³ If the child is older than one year, the couple cannot register the birth through the normal process, but must file a lawsuit in the Jordanian Magistrates Courts.

¹⁴ For a more in-depth discussion on the consequences of non-registration, see International Human Rights Clinic at Harvard Law School and Norwegian Refugee Council, *Registering Rights: Syrian Refugees and the documentation of births, marriages and deaths in Jordan* (2015), pp 22, 26-29.

¹⁵ See, for example, Magalhaes, Carrasco, and Gastaldo, "Undocumented Migrants in Canada: A scope literature review on health, access to services, and working conditions," *J Immigr Minor Health*, 2010 Feb; 12(1): 132-151; Esplen and Brody, *Putting Gender Back in the Picture: Rethinking Women's Economic Empowerment* (Institute of Development Studies, 2007); and *Gendered Paths to Legal Status: The Case of Latin American Immigrants in Phoenix, Arizona* (Immigration Policy Center, 2013).