This chapter looks at the legal aspects of migration in the Middle East. I ask how religion-based family laws impact the position of migrants as they go through major life events, such as marriage and birth. My particular focus is on Syrian forced migrants, both Muslim and non-Muslim, in Syria, Lebanon and Jordan. I argue that the strong relationship between marriage and children’s legitimacy across the religious spectrum, strict marital registration requirements, and the absence of protective legislation for forced migrants contribute to a situation where the human rights of Syrian forced migrants to legal identity and nationality are jeopardised. Paradoxically, this sometimes leads to a situation where displaced persons save human rights by risking human rights.

Migrants and non-Muslims have not yet received the attention they deserve in academic studies dealing with religion, gender, and law in the Global South. In these studies, the predominant focus is on the position of women and how Islamic laws impact their lives, usually in ways that are not deemed progressive from a human development perspective. There is little attention for how men and other identities outside the gender binary, such as LGTBQI+ people, but also private businesses (Fretwell Wilson 2018), including family businesses (Taş 2013), perceive their rights and duties under religion and how, if at all, they use religion-based laws to claim their rights.²

There is a geographical divide in how women are studied in relation to religion and law. In studies dealing with countries in the Global South, the women studied are usually citizens. A good example is the abundant literature on the position of Muslim women under Islamic family laws in Muslim-majority countries, such as Indonesia and Egypt. Studies on religion and law in Global North countries often focus on women who are non-citizens, or citizens with a migration background. This literature usually centres on Muslim migrant women and asks what it means when female migrants try to obtain rights by making use of religious law in liberal secular democracies (e.g. Bano 2012). This emphasis in academic literature on the position of women as citizens in the Global South and non-citizens in the Global North means that the impact of religion and law on men and other categories escape academic scrutiny. It moreover contributes to the impression that migration is a phenomenon merely restricted to movements originating in the Global South directed to the Global North. While this mobility certainly is a
Migration and law in the Middle East

reality which should be studied in its own right, in this chapter I argue that there is a dire need
to give adequate attention to another important part of empirical reality, South–South mobility.
This is important for at least two reasons.

First, South–South migration is more frequent than South–North migration (e.g. Castles,
De Haas, and Miller 2014; Sadiq 2009), and many Global South countries are migrant-receiving
countries. Relatedly, it is important to consider the historical and contemporary relations
between Global South governments, as they impact the way governments deal with migrants in
their territories. For example, many Middle Eastern states refuse to sign the 1951 UN Conven-
tion on the Legal Status of Refugees. The protracted Palestinian refugee problem is often cited
as a reason for their continued refusal to sign (Janmyr 2016: 62). This refusal has significant
repercussions for Syrian forced migrants’ human rights to legal identity and nationality in the
region, as we will see. Second, while the study of (Muslim) minorities in the Global North pro-
liferates, few studies explore how non-Muslim minorities and migrants in the Global South deal
with the legal aspects of migration. Yet, (forced) displacement is not only a physical movement
over space, but also an important transformation in the legal practices through which people
are related to space, with “the right to have rights” anything but guaranteed (Arendt 1966).
For instance, the relatively high prevalence of informal marriages among Syrian Muslims, but
not Syrian Christians, leads to serious problems with birth registration in Jordan and Lebanon
where formal marriage is the norm.

This chapter proceeds as follows. Section 1 provides an overview of migration in the Middle
East and North Africa. It takes forced migration of Syrians within the region as a case study
to answer the main question: how do religion-based laws—mostly Islamic and Catholic family
laws—impact the position of forced migrants as they go through major life events, such as mar-
rriage and childbirth? I focus on Syrian Muslims and Syrian Catholics for the simple reason that
these are the communities for which most data is available.

In section 2, I provide a brief overview of the family laws, which Muslims and Catholics
are subjected to in Jordan, Lebanon, and Syria—the countries housing large numbers of
Syrian forced migrants. As noted, there is a significant body of literature that analyses how
legislatures and legal professionals in secular liberal democracies deal with migrants with a
Muslim background who wish or must rely on Islamic-based regulations in personal status
matters. In such cases, migration law and private international law play an important role
in establishing the applicable rules, with the norm often being that the regulations of the
country of origin can be recognised as long as they do not infringe on public order. The
transplant or movement of formal (or state) law within the Global South in general, and
the Middle East in particular, is worthy of study too. First, compared to Western Europe,
migration laws and private international laws in the region are poorly developed and forced
migrants do not usually have special status (e.g. Elbalti 2019). Second, family laws in the
region strongly distinguish on the basis of gender and religion. Now, one could counterpoise
that since personal status laws are religion based throughout the region, there will be little
variation in the ways national legislatures have codified personal status laws, rendering a com-
parative analysis superficial. While there are many similarities in Muslim marriage regulations
on the substantive level, this does not apply to regulations pertaining to women’s divorce
rights, child custody, and polygamy. Moreover, there are procedural differences relating to
marriage, and the way they impact Syrian forced migrants going through life events is the
main purpose of section 3.

The analysis and findings are based on three main methods: a qualitative literature review of
secondary academic sources and grey literature; a qualitative analysis of legal documents (in Ara-
bic and French); and a short period of fieldwork in March 2017 in Lebanon, where I conducted
a life history interview with a young female Syrian forced migrant and had informal meetings with both Lebanese citizens and Syrian migrants.

**Migration in the Middle East**

As mentioned, in most of the Middle East (except for Turkey), religion-based family laws form the basis for the formal regulation of people’s most intimate relationships. This does not apply to other fields of law, which are mostly based on secular (European-based) laws. The same applies to migration regulations. Islamic theory and teachings relating to refugees and forced displacement exist and are known as *hijrah* law. *Hijrah* law, however, is rarely included in national legislation (Elmadmad 2008). Instead, forced migrants are treated as either refugees or ordinary foreigners, depending on whether the receiving country is a signatory to the 1951 Convention on the Legal Status of Refugees. One hundred forty-six countries in the world signed the 1951 Convention. Notable exceptions are India, Indonesia, the United States of America, most Arab Gulf countries (with the exception of, ironically, Yemen), Jordan, Lebanon, and Syria in the Middle East, and Libya in North Africa. Without this protection, forced migrants’ right to legal residency (and non-refoulement), freedom of movement, and registration of life events (particularly birth), and, relatedly, legal identity are under threat.

In migration literature, terms such as “migrant,” “refugee,” “asylum seeker,” and “citizen” are often used interchangeably despite the fact that the terms are not equivocal. While this may not cause many problems in our everyday use of them (although I think it does), when used as concepts for the purpose of academic research they require precision. In this chapter, I use the term forced migrant to denote people who were forced to leave their homes due to conflict, war, violence, natural disasters, development projects, trafficking, or human smuggling. In the process, they did or did not cross an international border. I reserve the term internally displaced person (IDP) for those who remained in their country of origin or place of habitual residence, and the term externally displaced person (EDP) for those who crossed an international border. It should be kept in mind that the categories do not exclude each other. As we will see, forced migrants may move in and outside their country of origin frequently, to obtain the necessary civil documentation to complete the marriage or birth registration process in the receiving country, for instance. I use the term asylum seeker to refer to forced migrants who request to be recognised as refugees under the 1951 Convention, through a refugee status determination process, and to those who successfully completed this process as refugees.

Migration in the Middle East and North Africa is usually studied from the perspective of emigration, with countries such as Algeria, Egypt, Lebanon, and Morocco being major migrant-sending countries. The arrival of forced Syrian migrants in Europe in 2015 reinforced the image of the MENA being a region where people emigrate rather than immigrate. Yet, in October 2016, the Pew Research Center published a research paper stating that the Middle East’s migration population had more than doubled since 2005, from 25 million in 2005 to 54 million in 2017 (Connor 2016). Whilst economic opportunities were partly responsible for this sharp rise (40 percent), the majority of the surge was due to regional conflict and the resulting forced removal of millions of people from their homes after 2011, following the Arab uprisings (60 percent) (Connor 2016: 4–5). This development has transformed the Middle East into the world region with the fastest growing international migrant and forcibly displaced population (ibid.: 4).

Most of the academic literature on migration within or to the Middle East either focuses on international migrants from outside the region who work in the oil-rich countries of the Persian Gulf or on the Palestinian diaspora. The US-led 2003 invasion of Iraq and the Arab
uprisings of 2011 altered the picture and led to a sharp increase in forced migration populations due to ensuing conflicts in Iraq, Syria, and Yemen. In 2015, the countries with the largest forced migrant populations were Syria and Iraq. Of the 7.1 million forced migrants living in Syria, 6 million are internally displaced. Of Iraq's 4.7 million forced migrants, 4 million are internally displaced. Hence, a majority (59 percent) of the Middle East's growing population of forced migrants never crossed international borders (Connor 2016: 8). They are internally displaced persons. While the numbers are difficult to gauge, the Iraqi and Syrian forced migrant populations house a significant number of Christians and Yazidis who fled their homes because of ongoing civil conflicts and persecution by the Islamic State.

Nine years into the conflict, Muslim and Christian Syrian forced migrants in and outside Syria continue to suffer from forced displacement. At the same time, life goes on and people go through major life events, such as marriage, birth, divorce, and death, the ongoing violence and dire humanitarian conditions notwithstanding. Formally, these events are regulated by religion-based personal status laws. In the next section, I present an overview of Muslim and Christian regulations pertaining to marriage, birth, and parenthood in Syria, Lebanon, and Jordan. This will help the reader to understand how religion-based family laws impact the position of migrants as they go through major life events, such as marriage and birth.

Religion-based family laws in Syria, Lebanon, and Jordan

In the centuries following the death of Prophet Muhammad in 632 AD (10 AH), a system of Islamic jurisprudence (fiqh) developed in which religious scholars (ulama or fuqaha) set out to derive rules from the main sources of Islamic shari'a: the Qur'an and the sunna (sayings and doings of the Prophet). Religious scholars usually aligned themselves to a particular school of law (madhhab), of which there were many. Four Sunni (Shafi'i, Hanafi, Hanbali, and Maliki) and one dominant Shi'a school of law (Ja'afari) remained, a situation which has remained unchanged from the twelfth century until today. Between and within schools, differences and similarities exist concerning family law issues, such as marriage and inheritance.

According to Islamic jurisprudence, a marriage is valid when there is a marriage contract, which contains the consent of both spouses; consent of the wife’s marriage guardian (wali), a dower paid by the husband to the wife. Muslim women are not allowed to marry non-Muslims. Marriage legitimises sexual relations between husband and wife. It also gives a husband the right to control his wife, meaning, among other things, that the wife is expected to live in the marital home prepared by the husband; be sexually available to her husband; and not leave the marital home without his consent (ibid.: 41). In turn, the wife is entitled to a dower (mahr or sadaq) and maintenance (nafaqa), usually consisting of food, clothing, and housing (including furniture and kitchen utensils) (ibid.: 38). Except for the Hanafis and Shiites, the other schools of law regard the non-payment of maintenance by the husband as a ground for divorce for the wife or she can try to collect it from him as a debt (ibid.: 39).

In the past, non-Muslims in the MENA were generally exempted from rules of Islamic family law. In the Ottoman Empire (thirteenth until early twentieth century), members of the “people of the book” (i.e. Christians and Jews) were given autonomy to apply their own rules regarding marriage, custody, divorce, guardianship, and inheritance. This was called the millet-system and included the establishment of their own courts as well. After the collapse of the Ottoman Empire (officially in 1922), the millet-system did not disappear. The new nation-states that emerged in its wake, including Jordan, Lebanon, and Syria, maintained different personal status laws for Muslims, Jews, and Christians, until this day. In many Muslim-majority
countries, non-Muslims have legislative autonomy with regard to personal status matters and sometimes also judicial autonomy (i.e. they have their own courts and judges).

In the MENA region, marriage is a vital social and legal event across the religious spectrum. The social acceptance of marriage opens the way for sexual intercourse and procreation, on both a social and a legal level. For Muslims and Christians alike, formal marriage often establishes the husband as the head of the household and allows him to exercise control over his wife.\(^{19}\) It is only through formal recognition of marriage that children obtain legal identity and access to public services, such as health care and education. This is a result of Muslim and Christian personal status regulations on paternal filiation. Paternal filiation gives a child the right to its father's surname, maintenance, and inheritance. It also prevents social stigma as children without paternal filiation are considered bastards, on both a legal and a societal level. All children born during the marriage are the social and legal children of the husband. When a husband suspects that a child is not his own, he usually cannot use a positive DNA test to formally negate paternity. Marital relations clearly prevail over blood relations. This is partly different for some Christian communities in the MENA. For instance, while Catholic family laws also depart from the marital paternity presumption, “clear evidence” (adla bayna) can be invoked to challenge paternity.\(^{20}\) The remainder of this section analyses marriage and filiation regulations pertaining to both Muslims and Christian Catholics in Jordan, Lebanon, and Syria. As we will see, these regulations frequently apply to Syrian forced migrants too.

**Marriage and filiation in Syria**

In 2011, prior to the Syrian war, Muslims and Christians accounted for roughly 90 and 10 percent of the Syrian population, respectively (CIA World Factbook 2020). This religious diversity is reflected in Syria’s personal status law system, which consists of one Muslim, five Christian, one Druze, and one Jewish personal status laws. The Christian family laws are subdivided in Greek Orthodox, Syriac Orthodox, Armenian Orthodox, Catholic, and Protestant laws. The Greek Orthodox community in Syria is the largest (estimated 503,000 members), followed by the Catholics (estimated 193,500 members) (Courbage and Fargues 1998: 209). In the field of marriage and divorce, the different recognised religious communities have both legislative and judicial autonomy; in other matters (most importantly, paternity and legal guardianship), the general state law on family relations, the 1953 Syrian Law of Personal Status (SLPS), applies. Based on Islamic shari’a, the SLPS regulates matters of paternal filiation for all Syrian regardless of their religious affiliation. It is only through a state-recognised marriage that children are filiated to their father’s lineage (nasab).

Syrian Muslim couples can contract their marriages either in or outside court. If a marriage is contracted outside of court (at home, for example), it can be validated and registered with the state authorities later. Formally, the 1953 law allows a couple to establish a marriage concluded outside court only after they have complied with all the procedural measures required for a marriage in court. However, these procedures are dispensed with in the event that the wife has given birth or is evidently pregnant (Welchman 2007: 58; Eijk 2016: 147). Hence, in practice retroactive marriage ratification is a fairly easy process and, in some areas of Syria, it is common for parents to only register their marriage with the national authorities a few years after the marriage, for example when children need to be enrolled in school (Eijk 2016; NRC 2015a, 2015b; Zbeidy 2018). A Christian marriage has to be conducted in church by a priest, during a public church service; informal marriages outside the church are not recognised by the state or the Christian authorities. Once the marriage is registered with the relevant civil authorities, the father receives a family booklet containing the names of the nuclear family members, which is
updated when life events, such as birth, divorce, and death, occur. Possession of a family booklet demonstrates filiation, provides a strong indicator of legal and civil status, and gives children access to public services, both inside, and, as we shall see, outside Syria.

**Marriage and filiation in Lebanon and Jordan**

Lebanon is the most religiously diverse country in the MENA. Not only do the 18 officially recognised religious communities have their own personal status law regulations, but religion also is the foundation for the organisation of political life, with political power being distributed proportionally among the different confessional communities. It is estimated that currently less than 50 percent of the population is Christian and that Muslims (Sunnis and Shias combined) form a majority. In contrast to Syria, Catholics in Lebanon constitute the largest Christian group. Maronites are by far the largest Catholic community. In contrast to Lebanon, Muslims constitute the vast majority in Jordan (97.2 percent, predominantly Sunni). Christians form 2.2 percent of the total population, with the majority being Greek Orthodox. There is only a small community of Greek and Roman Catholics (CIA World Factbook 2020).

As in Syria, the different recognised religious communities in Lebanon and Jordan have legislative and judicial autonomy in the field of marriage. Substantively, there are no significant differences in marriage regulations among Muslims in Syria, Lebanon, and Jordan. Likewise, the same substantive Catholic regulations in Syria apply in Lebanon (Fransiskani, al 2010), as they are for the most part based on the Code of Canons of the Eastern Churches, issued by the late Pope John Paul II in 1990 (Eijk 2016: 62). The same applies to Jordan. Jordanian Catholic law contains 296 provisions and is applicable to all Catholic communities in Jordan (Art. 1), but different communities have different procedural laws. The Greek Catholics, for example, also apply the Law of the Eastern Churches. The Roman Catholics have their own procedural law (Art. 38). There are lengthy provisions dealing with trousseau and the dower (mahr), showing that they play as much a role in Muslim as Catholic marriage deliberations. Also similar to Islamic family law is the prevalence of the marital paternity presumption, by which the husband is deemed the legal father if married to the mother (Art. 80, 1). Only children born from a legal marriage are considered legal (shara’iyan) (Art. 79), unless, and here Jordan Catholic family law deviates from Islamic family law, clear evidence proves the opposite (Art. 80, 1). And whereas adoption in Islamic family law is forbidden, in Catholic family law illegitimate children can become legitimate when a couple adopts their illegitimate child(ren) (Art. 105, a). Moreover, a legal guardian of a child can adopt the child (his ward) (Art. 105, b). In a context of forced migration, the possibility of adoption would accommodate parents who cannot prove their marriage. Adoption would not only establish a child’s filiation (including the adoptive father’s surname, maintenance, and inheritance), but would also make them a citizen in public life. When children are given legal identity, they are less likely to become stateless and victims of underage marriage and human trafficking.

While there are many substantive similarities between Syria, on the one hand, and Jordan and Lebanon, on the other hand, there are significant procedural and empirical differences regarding marriage registration. Where in pre-2011 Syria unregistered marriages were common in rural areas, after the start of the conflict in 2011, they have become more common in urban areas too as people have to cross “new” borders to obtain the civil documentation they need (see later), but also because men who served in the army need government approval to marry. Fearing being called to service, some men rather marry informally. Where, in practice, people in Syria can relatively easily register an unregistered marriage retroactively; in Lebanon and Jordan, formal marriages are the standard. In Lebanon “by far the majority of marriages are legally
above board of course: that is the norm” (Clarke 2018: 129), and in her study on Syrian forced
migrants in Jordan, Zbeidy found that her interlocutors often stated that the phenomenon of
informal marriages [in Jordan] only became an issue with the arrival of Syrian forced migrants
after 2011 (2018: 369–370). In both countries, the retroactive registration of informal marriages
is possible but requires a couple to go through a legal procedure much more complicated than
in Syria. Where in Syria formal requirements are waived when a wife is pregnant or has already
given birth, in Lebanon “the registration of births within the legal timeframe [30 days] of birth
declarations is of vital importance; missing the deadline would entail a fine in the first year and
later registration would only be possible through a court decision” (Frontiers-Ruwad 2014: 10).26
Jordanian associations for women claim that when a Syrian couple in Jordan could not
show proof of marriage in the hospital where the wife had just given birth, the newborn was
taken away from the mother and the father was arrested (Zbeidy 2018: 370–371). In the next
section, I show what happens to the more than 2.5 million Syrian forced migrants in Jordan
and Lebanon, who frequently lack the official documentation needed for civil registration of
marriages and births.

**Forced Syrian migrants dealing with marriage and birth**

Many Syrian forced migrants in the Middle East marry and have children, or divorce, whether
in a refugee or an IDP context, but several studies have established that many of these events
are not registered with the state authorities in Syria, Jordan, and Lebanon (NRC 2015a, 2015b;
UNHCR 2018). Many Syrian forced migrants in Lebanon and Jordan recognise the impor-
tance of registration of vital life events (NRC 2015a: 7; Zbeidy 2018), but stricter marital
registration requirements and the absence of protective migration laws hamper the registration
of marriages and births. This has two consequences, at least. There now is a large group of
women who cannot divorce and remarry because their marriages were never formally rec-
ognised. Should they remarry, they run the risk of being accused of bigamy and, relatedly, of
having given birth to children born out of wedlock whose right to legal identity and nationality
will be compromised. In addition, tens of thousands of young children were never registered,
have no legal identity, and are de facto stateless. They are at risk of becoming victims of illegal
labour, sexual exploitation, underage marriage, and human trafficking (including illegal adoption).
These conditions, however, apply not only to EDPs but also to IDPs.

**Marriage and birth of IPDs in Syria**

Most Syrian forced migrants were and are displaced within Syria. Syrian IDPs are faced with
difficulties in regularising their family status (e.g. marriage and birth), depending on whether
they reside in areas still (or again) under the control of the Syrian government forces. After
2011, large parts of Syria were captured and controlled (to varying degrees in time and space)
by several jihadi and other armed rebel groups: Islamic State (IS) and the Kurdish-dominated
Syrian Democratic Forces, who established the Autonomous Administration of North and East
Syria (also known as Rojava). IDPs in areas controlled by non-government (of Syria) groups face
great difficulty crossing the borders to government-controlled areas when they want to obtain
the civil documentation they need to complete marriage and birth registration procedures.

For example, between 2015 and 2020, a Syrian Muslim woman from Raqqa became a
grandmother 12 times. Located in IS territory and now in Rojava, Raqqa is outside the control
of the Government of Syria, making it impossible to register the babies’ births in Raqqa. The
nearest town in Syrian government-controlled area for civil registration is Hama.
Migration and law in the Middle East

few births, the grandmother takes a bus from Raqqa to Hama to register several births in one go. Before the war it took three hours to cover the 350 kilometres separating the two towns. Now, the road is dotted with checkpoints and it takes at least eight hours to reach Hama. Over the years, it has become the grandmother’s duty to register the babies as checkpoints are dangerous places for the babies’ fathers. Many a Syrian man who looks young and physically fit tries to evade compulsory conscription in the Syrian army. As places where IDs are checked, and where men could be jailed or conscripted, checkpoints are to be avoided. Older women are treated with more respect because of their age and more innocent appearance, and this is why the family wanted the grandmother to make the onerous journey. She did not refuse. Her marriage was never registered, simply because it was not custom to record vital life events. The births of her three eldest children were not registered either until much later in life. Until today, their exact birth dates are unknown, which significantly impeded their access to education, and she does not want this to happen to her grandchildren too.27

Displaced Syrian migrants sometimes make dangerous journeys into Syrian territory to obtain the civil documents they need, and it is very likely that the situation for Syrian forced migrants living in camps controlled by Rojava authorities is even more onerous as they probably need permission to leave the camps. In addition to the ongoing violence and instability, including the constant emergence of new borders, it is fair to assume that the number of unregistered life events has increased significantly in areas that, de jure, still belong to the Government of Syria, but are ruled by other authorities de facto. Hence, not only EDPs but also IDPs face considerable hurdles registering vital life events, and the case of Syria shows that with forced migrants travelling in and out of (different parts of) Syria, it is hard to make a clear distinction between IDPs and EDPs in the first place.

Marriage and birth of forced Syrian migrants in Lebanon and Jordan

In the years following the start of the Syrian conflict, Lebanon witnessed the arrival of approximately 1.5 million Syrian forced migrants in the country (Janmyr 2016: 58–59; UNHCR 2018: 1), resulting in a population increase from 4.5 million to 6 million. Jordan received approximately 630,000 registered Syrian refugees (NRC 2015b: 5). Jordan, Lebanon, (and Syria) are not signatories to the 1951 Refugee Convention and have no national legislation dealing with forced migrants. Hence, Syrian forced migrants do not have a special status. In Lebanon, for instance, “asylum issues are attended to through immigration laws, which monitor entry and exit of all [foreigners]” (Janmyr 2016: 65). In Jordan and Lebanon, most Syrian forced migrants register with the UNHCR to access basic services and to be eligible for resettlement to a third country.28 In the meantime, they are legally treated as foreigners, especially in Lebanon, where they have to renew their residency permits every six months at a cost of USD 200 per person,29 an amount many families cannot afford (e.g. Janmyr 2016: 65). The high renewal fees led the number of irregularly residing Syrians in Lebanon to skyrocket; UNHCR estimated that it was 73 percent at the end of 2018 (UNHCR 2018: 2). Deprived of legal residency, Syrian parents are not allowed to register their children.30 The situation might have improved a little as of September 2017 when “only” one parent is required to have legal residency in order to complete birth registration (UNHCR 2018: 2).

Yet, without legal residency, the other family members are under constant fear of deportation, and it is questionable that in return for birth registration a family member with legal residency would risk the Lebanese authorities to find out about the irregular status of the rest of his/her family. Moreover, in order to obtain a birth certificate (the step preceding birth registration), parents must be able to show proof of marriage, which they very often find hard to
do: they married informally in Syria, they lost the marriage certificate or the family booklet when fleeing Syria, the Lebanese border authorities took their civil documentation, or they were irregular residents in Lebanon when they married. In response, a Syrian parent or family member sometimes travels back to Syria, with or without the baby, to register the birth and/or fetch the necessary civil documentation from the local authorities in his/her hometown, or they pay somebody to do this (NRC 2015a: 24–26; Sonneveld 2020). Additionally, although legal residency is not required when requesting a birth certificate with the Lebanese local authorities, irregular residency hampers people’s freedom of movement to such an extent that many parents are afraid that when they travel to the birth certification office, they will be stopped along the way at one of the many checkpoints and be deported to Syria (NRC 2015a: 6).

While most of the substantive and procedural personal status law provisions and regulations on marriage and filiation of Muslims and non-Muslims in Syria and Lebanon are similar in Jordan, and while Jordan has not signed the Refugee Convention either, Syrian forced migrants have been given relatively more protection in Jordan. In contrast to Lebanon, Syrian forced migrants in Jordan receive cards from the Ministry of Interior Affairs (i.e. MoI Service cards), which guarantee legal residency, among others. And while birth registration still depends on proof of marriage, the Jordanese authorities gradually relaxed the burden of providing proof of marriage (NRC 2015b: 18–19). Nevertheless, in Jordan too, Syrians regularly cross back into Syria to retrieve necessary civil documentation or complete the registration process (NRC 2015b; Zbeidy 2018).

Similar to Syrian IDPs, Syrian EDPs in Lebanon and Jordan are faced with religious personal status regulations, which dictate that only children born from parents who are legally married are legitimate. What complicates the situation in Jordan and, particularly, Lebanon are the stricter marital registration requirements, which make it hard to register informal Muslim marriages retroactively. Another major obstacle to marriage and birth registration is the lack of special status afforded to forced migrants. Especially in Lebanon where the number of irregular forced migrants is high, lack of legal residency makes parents reluctant to travel within the country and approach local government authorities. The opposite is also possible—parents, or grandparents, cross back into Syria to complete the marriage or birth registration process.

**Conclusion: saving human rights by risking human rights**

Given the limited attention to the legal aspects of migration in the Middle East, and given the strong legal position of religion in the region, I asked in this chapter how religion-based family laws impact the position of Syrian forced migrants as they go through major life events, such as marriage and birth. I looked at both Muslims and Christian Catholics in Syria, Lebanon, and Jordan to do justice to the limited attention for minorities in the region who also suffer from forced migration.

There is a strong relationship between marriage and children’s legitimacy in both Muslim and Catholic family laws in the three countries. This means that the non-registration of marriage greatly hampers children’s access to legal identity and nationality, independent of conditions of forced migration. However, understanding the impact of these substantive provisions in migrants’ everyday lives requires us to also look at procedural registration requirements, which are versatile in Syria but not in Lebanon and Jordan. Additionally, in the absence of protective refugee status, strict registration regulations are unlikely to be waived or relaxed quickly. This sometimes forces parents or other family members to cross back into Syrian war territory (sometimes with their children) to retrieve the civil documentation they need to complete the registration procedures.
Syrian Catholics might have a slight advantage over Muslim Syrians in that they do not have a tradition of informal marriage. This would facilitate birth registration in Jordan and Lebanon as Syrian Catholics are more likely to possess proof of marriage. They also have more possibilities to adopt children born out of wedlock and ensure that these children obtain legal existence and nationality. Much, however, depends on Syrian forced migrants’ ability to obtain legal residency. In countries, such as Jordan and Lebanon, where Syrians lack special refugee status, irregular residence is a widespread reality. This either forces parents not to travel at all (fearing they will be arrested and deported back) or to travel back to Syria to obtain the necessary civil status documentation papers. In so doing, they safeguard human rights (the right to legal identity and nationality) by jeopardising other human rights (the right to non-refoulement and the right to life).

In the years following the onset of the Syrian war, academics and policymakers mostly focused on the cross-continental migration of Syrian forced migrants. Little attention has been paid to the much larger movement of Syrians within the region, let alone the even larger movement of Syrians within Syria. In analysing the legal effects of forced migration in the region and, to the best of my ability, inside Syria as well, I have tried to do justice to an empirical reality, which matters a great deal to the people involved. Religious laws on marriage and filiation, strict registration requirements, and irregular residence have caused Syrians to develop certain risk management strategies, such as onward circular migration, which involves movement in and out of Syria. Circular migration “challenges the classical definition of a ‘refugee’ as one fleeing but not returning” (Chatty and Mansour 2011: 102). When people are both IDPs and EDPs, we perhaps not only need a relaxation of civil status registration requirements, but also a relaxation of international definitions of what being a refugee means and when international protection is needed. In the meantime, Syrian forced migrants will continue to cross borders, risking their lives and their human rights to safeguard the human rights of their family.

Notes

1 I wish to express special thanks to Esther van Eijk. Her legal and empirical knowledge of Syrian Catholic and Syrian Muslim family laws has been of indispensable value in writing this chapter.
2 For an exception, see Hart de Sonneveld, and Sportel (2017).
3 An exception forms Nurmohamed’s forthcoming legal-empirical work on the rights of non-Muslims in family law, criminal law, and commercial law in the United Arab Emirates.
4 I use the terms family law and personal status law interchangeably.
5 Private international law (PIL) regulates private relationships across national borders. It determines the choice of applicable law. National laws are the primary sources of PIL. PIL is also laid down in treaties and conventions, legal guides, and other documents.
6 Cases of infringement of public order can be a husband’s polygamous marriage and a husband’s pronouncement of unilateral divorce (talaq).
7 However, see Morocco and Tunisia where women no longer need a marriage guardian to marry.
8 There is wide variation in the way national legislatures deal with women’s divorce rights, child custody, and polygamy in their Muslim personal status laws. For an overview, see Welchman (2007) and Sonneveld (2019). For example, where in Egypt, Morocco, and Tunisia women can divorce without the consent of the husband and without the need to show cause in court, in most other Muslim-majority countries they need the consent of the husband or to show cause in court.
9 Forced migrant is a broad category encompassing people who were forced to leave their homes due to war, conflict, natural disasters, or development projects (building of dams, for example), among others. A small number of forced migrants are refugees, that is to say, people who crossed an international border, asked for asylum, and successfully went through a refugee determination process. They were able to prove that they feared persecution based on several categories (e.g. race, political opinion) as outlined in the 1951 Convention on the Legal Status of Refugees (see note 8).
10 The term “refugee” shall apply to any person who “owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (Article 1A-2).
11 Indonesia did not sign the 1951 Refugee Convention but it enacted national legislation in 2016 (effectively implemented in 2018) dealing with asylum and refugee matters (personal communication with Bilal Dewansyah, 7 March 2020).
12 They did sign the 1967 Protocol.
14 The building of a dam, for example, very often forces people to leave their homes. The same applies to trafficking where human beings are traded. The distinction between trafficking and smuggling is complex. Suffice it to say here that human smuggling (the provision of a service to a person, such as transportation, to illegally cross an international border) quickly develops into trafficking when coercion is involved.
15 For in- and out-migration of Iraqis in Jordan and Syria, see Chatty and Mansour (2011).
16 The consent of the marriage guardian is not a necessary condition in the Hanafi school of law and the Shiite school of law (Peters 2006: 18–19).
17 The presence of witnesses is obligatory in the Sunni schools of law and commendable in Shia Islam (ibid.: 21).
18 “A stipulation not to pay a dower or an invalid dower vitiates the marriage contract under Malikite law (although the nullity is covered by consummation), whereas according to the other Schools the marriage remains valid and the proper dower (mahr al-mithl) is due” (Peters 2006: 35).
19 This no longer applies to Muslims in Morocco, Algeria, and Tunisia.
20 See, for example, Article 80 of the Jordanian Catholic law on personal status.
21 Some of the smaller communities merged, bringing the total number of officially recognised personal status law systems to 15.
22 Given the sensitivity of this issue in Lebanon, univocal statistics are hard to obtain.
23 The Maronite Church is an Eastern Catholic Church, which belongs to the Roman Catholic Church in the Vatican.
24 With the exception of the so-called temporary marriages, which are allowed in Shi’a Islam but not in Sunni Islam. A temporary marriage (zawaj al-mut’a) allows a couple to marry for a specified period of time, ranging from a few hours to a lifetime. In Lebanese Shi’a court practice, these marriages do not seem to play a significant role (Clarke 2018).
26 Late birth registration in Lebanon was simplified in March 2018. As of yet it is unclear what the effects are in practice (UNHCR 2018: 2).
27 Personal communication with a Syrian forced migrant from Raqqa, 24 February and 10 March 2020.
28 In Lebanon, around 88 percent were registered with the UNHCR as of 2014 (NRC 2015a).
29 It is not clear whether the renewal fees are USD 200 per six months (Jannyr 2016: 68) or per year (UNHCR 2018: 2). During the fieldwork in Lebanon in March 2017, Syrian forced migrants claimed they had to pay USD 200 every six months.
30 In 2014, the Norwegian Refugee Council found that around 92 percent of the interviewed Syrian forced migrants (N = 797) in Lebanon were unable to complete the steps necessary to register the birth of their children (NRC 2015a: 6), which should happen within twelve months from the date of birth.

References


