

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

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Syrian Arab Republic

I. BACKGROUND INFORMATION

The Syrian Arab Republic ("Syria") is not a State Party to the *1951 Convention relating to the Status of Refugees*, the *1967 Protocol*, the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*.

Refugees and asylum-seekers:

While Syria is not signatory to the 1951 Convention, and currently lacks a comprehensive national legal framework on asylum, Syria is applying flexible policies to refugees and asylum seekers particularly in relation to their entry and residency on Syrian territory as well as access to public services.

Syria's existing national legal framework on asylum comprises of article 39 of the 2012 Constitution of the Syrian Arab Republic according to which "political refugees shall not be extradited because of their political beliefs or their defence of freedom." In addition, a residency law issued in March 2014 (Law No.2/2014) stipulates that refugees, including asylum-seekers, may obtain an annual temporary residency permit based on their possession of valid UNHCR documentation, under the condition that they hold a valid national passport and have entered Syria legally. The same law exempts refugees and asylum seekers from the annual residency fees. Additionally, the status of the so-called ex-Iraq Palestinian refugees¹ has been regularized and ex-Iraq Palestinian refugees are granted a temporary six-month residency regardless of the legality of their entry to Syrian territory and the identity documents they hold. Additionally, following UNHCR's advocacy, the Government of Syria has regularized the status of a number of refugees and asylum-seekers who were forced to enter the country irregularly or whose passports were expired and were unable to renew them through diplomatic missions in Syria.

As of 30 June 2021, there were 15,377 refugees and 8,769 asylum-seekers registered with UNHCR. While the majority of the refugees and asylum-seekers in Syria are from Iraq, there are also refugees and asylum-seekers from several other countries, including Afghanistan, Sudan, Somalia, Yemen, Pakistan and South Sudan as well as the aforementioned ex-Iraq Palestinian refugees.

Stateless persons:

¹ Ex-Iraq Palestinian refugees refer to Palestinian refugees who habitually resided in Iraq, and were under the mandate of UNHCR, before having to flee to Syria due to the events in Iraq in the early 2000s. This group is not eligible to register with UNRWA.

Syria has various stateless populations within its territory, including two groups of ethnic Kurds, each with varying rights and statuses prescribed by national law.² Presidential Decree No. 49 of 2011 ("Decree No. 49") regulating the status of Syrian Kurds, only allows Kurds registered as "Foreigners" (*Ajanib*) to acquire nationality by application. However, unregistered Kurds, who are known as the *Maktoumeen*, are not mentioned by Decree No. 49 and are therefore ineligible to apply for nationality and remain in need of a solution.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Various legal developments have taken place during the past years which have facilitated the issuance of residency to refugees and asylum-seekers. This is a noteworthy since residency remains a main requirement for the enjoyment of rights and access to services, such as access to justice, health care and education, registration of civil events and freedom of movement.

In the past few years, several Presidential Legislative Decrees have enabled refugees and asylum-seekers to benefit from waivers of fines imposed for overstaying upon expiry of residency or for delayed registration of civil status events as well as from other penalties related to violating laws that regularize the entry and exit of Arabs and Foreigners. Additionally, in 2020, following the suspension of UNHCR registration activities, immigration authorities exceptionally agreed to renew residency permits for refugees and asylum-seekers even if their UNHCR documentation had expired.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Lack of a legal framework to protect refugees

In the absence of a national legal framework and domestic asylum procedures, UNHCR currently conducts registration and refugee status determination under its mandate.

Despite numerous positive legal developments, refugees and asylum-seekers still face legal issues relating to civil registration and legal documentation, immigration formalities as well as legal representation before national authorities due to the fragmented legal provisions and policies paired with reduced government capacities resulting from the conflict. Since the beginning of the conflict in Syria, the protection situation for refugees has significantly deteriorated and local integration in Syria does not appear attainable in the years to come. While voluntary repatriation might be an option in a few individual cases, it is not considered feasible for the majority of refugees in Syria. Though resettlement to a third country is the only realistic solution, the resettlement quota for refugees in Syria remains very limited.

Legal amendments to existing laws would be a critical factor in order to improve the legal situation of refugees and asylum-seekers in Syria. While Syria maintains a flexible and generous policy towards refugees, the legal framework relating to the entry and legal status of foreigners do not explicitly address the particular needs of asylum-seekers and refugees, who require safeguards beyond those granted to other foreigners. For instance, residency is predicated on legal entry to Syria and possession of a valid passport, both of which are requirements refugees cannot be expected to fulfill.

Additionally, denying refugees and asylum-seekers in Syria the right to work remains a cause for concern to UNHCR. The right to work is a foundation for the realization of other human rights and for a life in dignity. Article 23 of the Universal Declaration of Human Rights

² Pursuant to Law No. 93 of 1962 and 1962 census, Kurds who could not prove that they had lived in Syria since 1945 were deprived of Syrian nationality and designated *ajanib*, meaning "foreigner". Kurds who did not participate in the 1962 census were also deprived of nationality, but were designated *maktoumeen*, meaning "unregistered".

recognizes that the right to work is a universal human right. Similarly, Article 6 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'), to which Syria is a signatory, stipulates the right to work and gain a living.³ The UN Committee on Economic, Social, and Cultural Rights has stressed that "the right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community".⁴ In its General Comment No 20, the Committee noted that rights in the *ICESCR* apply "to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons... regardless of legal status and documentation".⁵

Extending the right to work to refugees and asylum-seekers would considerably improve the protection environment in Syria, allowing refugees and asylum-seekers to provide for themselves and their families while also contributing to the communities that host them.

Recommendations:

UNHCR recommends that the Government of Syria:

- a) Accede to the *1951 Convention relating to the Status of the Refugees* and its *1967 Protocol*, and adopt comprehensive national asylum legislation;
- b) Remove in respect to asylum-seekers and refugees the requirement that legal residency can only be attained if a person has entered Syria legally and is in possession of a valid passport.
- c) Extend the right to work to refugees and asylum-seekers.

Issue 2: Statelessness

While the reduction of statelessness among the Ajanib achieved through the adoption of Decree No. 49, which is still in effect, is a landmark accomplishment, a substantial number Ajanib still remain stateless. Similarly, the situation of the Maktoumeen remains unresolved. In this regard, it is notable that Article 3(d) of Syria's Nationality Law confers citizenship to anyone born on the territory who did not acquire another nationality at birth,⁶ which should entitle Maktoumeen children born in Syria to Syrian citizenship. However, in practice, Maktoumeen children are not regarded as Syrian nationals, prompting further measures to resolve their situation, such as a more comprehensive application of Article 3(d).

Beyond the aforementioned groups, the risk of statelessness is further increased by the nationality law not granting women equality with men in conferring nationality to their children.⁷ Gender inequality in the nationality law can create statelessness where children cannot acquire nationality from their fathers. This can occur (i) where the father is stateless; (ii) where the laws of the father's country do not permit conferral of nationality in certain circumstances, such as when the child is born abroad; (iii) where a father is unknown or not married to the mother; (iv) where a father has been unable to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children because, for example, he has died, has been forcibly separated from his family; or (v) where a father has failed to undertake administrative steps to confer nationality or acquire proof of nationality for his children, for example if he has abandoned the family. Ensuring gender equality in nationality

³ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), U.N. Doc E/C.12/GC/18 (6 February 2006), para. 1

⁵ UN Committee on Economic, Social, and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (2009), para. 30

⁶ Article 3(d) of Syria's Nationality Law states that "Anyone born in the country and was not, at the time of his birth, entitled to acquire a foreign nationality by virtue of his parentage" shall be considered as Syrian Arabs ipso facto. *Legislative Decree 276 - Nationality Law* [Syrian Arab Republic], Legislative Decree 276, 24 November 1969, <https://www.refworld.org/docid/4d81e7b12.html>

⁷ UNHCR, *Background Note On Gender Equality, Nationality Laws And Statelessness 2021*, 5 March 2021, p. 2, <https://www.refworld.org/docid/604257d34.html>.

laws thus prevents statelessness in these scenarios.⁸

Syria is a state party to the *Convention on the Elimination of Discrimination against Women (CEDAW)*, which under Article 9 obliges State Parties to grant women equal rights with men to acquire, change or retain their nationality as well as to confer nationality to their children.⁹ The Committee on the Elimination of Discrimination has specifically highlighted in its General Recommendation No 32 the obligation of State parties to review and reform their nationality laws to ensure equality of women and men with regard to the acquisition, changing and retention of nationality and to enable women to transmit their nationality to their children and to their foreign spouses.¹⁰

Syria is also a State Party to the *International Covenant on Civil and Political Rights (ICCPR)*, which under Article 24 guarantees every child the right to acquire a nationality.¹¹

Furthermore, Syria is party to the *Convention on the Rights of the Child (CRC)*, which under Article 7(1) states that all children have a right to acquire a nationality and under article 7(2) obliges the States Parties to ensure the implementation of the right to acquire a nationality, in particular where the child would otherwise be stateless.

Despite these international legal obligations, gender discrimination remains present in the current Syrian legal framework, leading to an increased risk of statelessness. The Syrian Nationality Law at present omits the right of Syrian women to confer nationality to their children except in specific circumstances as provided under article 3(b), which allows the transmission of the Syrian nationality by a Syrian mother in a situation where a legal link to the father is not established and the child was born inside Syria.¹² However, in practice, implementation of this provision remains inconsistent.

Similarly, Syrian children who are born outside the country, including those born as refugees, are at heightened risk of statelessness in cases where the father is himself stateless, has disappeared or passed away, or is unwilling or unable to assist the child in being confirmed as a Syrian national.

The gender inequality embedded in the Syrian Nationality Law can perpetuate statelessness through generations, with the children who have been rendered stateless having stateless children of their own. The increased risk of inter-generational statelessness is further exacerbated by the challenges related to registration, civil documentation, and proof of identity in the Syrian context.

To reduce the risk of statelessness, an amendment to the Nationality Law, allowing Syrian women to confer nationality to their children on an equal basis, would be of particular importance as the conflict has increased risks of statelessness due to forcible separation of families, death and disappearance of many fathers and loss of personal documentation, making it difficult to establish a child's legal link to a Syrian father.

Recommendations:

UNHCR recommends that the Government of Syria:

- a) Resolve the situation of the residual stateless Kurdish population;

⁸ Ibid.

⁹ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 <https://www.refworld.org/docid/3ae6b3970.html>

¹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, p.3, <https://www.refworld.org/docid/54620fb54.html>

¹¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <https://www.refworld.org/docid/3ae6b3aa0.html>

¹² Article 3(b), *Legislative Decree 276 - Nationality Law* [Syrian Arab Republic], Legislative Decree 276, 24 November 1969, <https://www.refworld.org/docid/4d81e7b12.html>

- b) Adopting or amend legislation to permit Syrian women to transmit Syrian nationality to their children on an equal basis with men.

Issue 3: Civil documentation and the return of IDPs and refugees

Civil documentation plays a key role for returns as it improves freedom of movement, access to vital services, such as health and education facilities, as well as livelihoods, all of which consequently support the ability of refugees and internally displaced persons (IDPs) to return. Absence of civil documentation also affects returnees' rights in respect to Housing, Land and Property (HLP) as HLP documentation can only be obtained by properly documented individuals. Despite the central importance of civil status documentation, limited access to such documentation has been well documented and identified as a leading protection concern in Syria.¹³

The crisis in Syria has affected many sectors of public life, not least rule of law and effectiveness of public institutions. Civil registration and cadastral services have been negatively impacted in areas outside government control, with limited capacities also in the government-controlled areas. Destroyed or damaged civil and cadastral registries present additional challenges. Several incompatible systems have been established for the issuance of civil status documentation in non-government held areas. Furthermore, Syrian refugees face various constraints in hosting countries that has limited their opportunities to register their civil status events. This has left many Syrians without any recognized documentation of their identity, family composition or nationality.

UNHCR welcomes a series of legislative measures undertaken by the Government of Syria to improve access to civil registration and documentation. Law No. 13/2021, which amended the Civil Affairs Law, introduced a number of welcome changes. In particular, persons no longer need to return to the place of origin to initiate civil documentation matters, which can now be handled at the nearest civil registry. Moreover, the time periods within which new civil status events need to be registered were significantly extended. Moreover, Legislative Decree No. 7/2021, waived the fines for not registering civil events or obtaining documentation within the stipulated time frames.

Notwithstanding, limited access to civil documentation still prevails in many areas, particularly for Syrians whose events have occurred outside Syria or in non-governmental controlled areas, where civil status documentation may have been issued by entities that are not recognized by the Government of Syria. A mechanism needs to be established to permit individuals to exchange or transfer documentation issued by entities that are not recognized by the Government of Syria.

Recommendations:

UNHCR recommends that the Government of Syria:

- a) Develop a practical and safe mechanism for Syrians living in, or who have lived in, non-governmental controlled areas to obtain replacement documents for documents issued by entities not recognized by the Government of Syria, without imposition of prohibitive fees and fines;
- b) Expand the number of organizations authorized to provide legal services, to ensure improved access for all IDPs and returnees to civil status and housing, land and property documentation; and
- c) Establish a mechanism that would enable undocumented Syrian refugees who are willing to return to initiate identification of their Syrian nationality at the border and provide them with the basic documents. This mechanism should include children who are born abroad to Syrian mothers, but were not duly documented.

¹³ UN Office for the Coordination of Humanitarian Affairs (OCHA), 2021 *Humanitarian Needs Overview: Syrian Arab Republic*, March 2021.

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