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REPORT ON CITIZENSHIP LAW: SYRIA

AUTHORED BY
ZAHRA ALBARAZI

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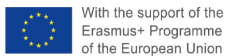
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Report on Citizenship Law

Syria

Zahra Albarazi

1. Introduction

Syria has a complicated relationship with defining the citizens of the State, having both gone through many stages of occupation and being home to many diverse populations. Prior to the 2011 uprising starting and the conflict that has followed, Syria was a country with various historical challenges with how it has organized its nationality legislation and the implementation of it. This includes both gaps in the nationality legislations – such as discriminatory clauses – and practice that has excluded groups from the citizenry. This has meant that there are many hundreds and thousands of individuals inside of Syria who have been left without a nationality. For instance, alongside the estimated three hundred thousand Kurds deprived of citizenship, a population of just under half a million Palestinian refugees from Syria are also considered as stateless. Of course, the conflict has exacerbated some of negative consequences of the gaps in the law. This is particularly true due to the discriminatory legal provisions and practices which mean mothers are unable to pass on nationality to their children on an equal basis with fathers, creating further cases and risks of statelessness for the millions of children of displaced or otherwise conflict-affected mothers.

There are multiple flaws in Syria's citizenship regime and many examples that show how citizenship as well as statelessness have been used as a political tool at the disposal of the state. When exploring the historical events of groups acquiring and groups being deprived of nationality political motives are clear. Palestinians, for example, trace their lack of citizenship back to state succession, the formation of the Israeli state in 1948. Many were displaced to Syria and hundreds of thousands live in the country without having been able to access Syrian nationality, similarly to those who went to other countries in the region.¹ There has been no effort by the current regime or regionally to modify this. Furthermore, sections of Syria's Kurds attribute their statelessness to discrimination at the hands of the Syrian state and its exclusionary ideology of Arab nationalism. They became stateless due to a census in 1962 which was designed to deprive them of citizenship and deprived hundreds of thousands of future generations access to citizenship. Clearly, Syria also has a complicated relationship with citizenship criteria and certain groups. One of the current challenges is that there are very limited statistics that stem from Syria with regards to citizenship issues. There are, for example, no statistics on the number of individuals who apply for citizenship, how many are afforded it, or reliable government statistics on the number of individuals who are stateless in the country.²

¹ F. Albanese and L. Takkenberg, *Palestinian Refugees in International Law* (Oxford University Press 2020).

² The United Nations High Commission for Refugees, which is the UN body responsible for statelessness, places the current number of stateless persons in the country as 160,000: Global Trends in 2019: <https://www.unhcr.org/5ee200e37.pdf>. This figure does not include stateless Palestinians.

To add to this, the conflict in Syria since 2011 has negatively impacted the country's fragile citizenship regime. Firstly, it has transformed the situation of individuals already experiencing protracted statelessness such as Kurds and Palestinians. Most problematic is that many of the internally displaced persons and refugees have had – for a whole host of reasons – difficulty in accessing or keeping their nationality.

This report hopes to explore how the citizenship regime was established, to highlight some of the main flaws in the legislation, and to present some of the main populations that are affected by these flaws.

2. Historical background

The establishment of modern Turkey and the partition of the former Ottoman Empire, under the Treaty of Lausanne and other post-World War I treaties, was the start of the application of nationality laws across the Middle East³. At this time, the formally labelled “Ottoman subjects” began to acquire the nationalities of the newly formed political states. Therefore, the Ottoman subjects – residing in what was known as the Federation of the Autonomous States of Syria – were subject to the first Syrian nationality law of 30/08/1924. This took place after the French High Commissioner created a note concerning the establishment of nationality.⁴ After this came the declaration of independence from France in 1946 and thereafter Act No. 98 of 21/05/1951. Although this was developed by Syrian lawyers, it was heavily based on the French nationality code. Notably, during that period, the French code relied solely on patrilineal filiation.

Over the next decade, there would be several amendments and changes to the nationality law, which reflected the tumultuous political situation of the country. There were several coups that took place during this time,⁵ and often changes would be made to the nationality law by a new ruling party to reflect their unique politics. This would start off with the nationality law promulgated by Legislative Decree No. 21 of 24/02/1953, amended by Act No. 492 of 16/02/1957. Then, in 1958, a group of Syrian and Egyptian lawyers prepared Act No. 82 of 23/06/1958 which was adopted under the United Arab Republic (a merger between the two countries), signed by Gamal Abdul Nasser himself.⁶ Here, unlike many other countries in the region, the French Mandate legislation on nationality was repealed. This republic – that joined Syria and Egypt – was one of the most significant attempts at materializing the pan-Arab ideology⁷. In this law, Article (2) stipulates:

The following shall be considered nationals of the United Arab Republic:

- (A) Anyone born to a father holding the nationality of the United Arab Republic.
- (B) Anyone born in the United Arab Republic to a mother holding the nationality of the republic and a father of unknown nationality or without one.

³ Ministry of Defense - Syria- French mandate over Syria, 1923 Treaty.

⁴ French High Commissioner issued resolution 2825-bis (i.e. 2825[2]).

⁵ Carleton, Alford. “The Syrian Coups D'État.” *Middle East Journal*, vol. 4, no. 1, 1950, pp. 1–11, access at: www.jstor.org/stable/4322135.

⁶ For more information on the United Arab Republic see T. R. L. “The Meaning of the United Arab Republic.” *The World Today*, vol. 14, no. 3, 1958, pp. 93–101, access at: www.jstor.org/stable/40393828.

⁷ A political movement and belief system that promotes the idea that all Arabs should unite to form one country or state.

- (C) Anyone born in the United Arab Republic to a mother holding the nationality of the republic and his paternal filiation has not been legally established.
- D): Anyone born in the United Arab Republic to two unknown parents, and considered as a foundling born in the republic unless proven otherwise. This provision is retroactive for births prior to the effectiveness of this law.

This legislation, alongside its discrimination against women, would then create the main structure of law that would remain till this day. The following nationality laws did not differ substantively from the previous ones, and all these laws gave precedence to paternal filiation. For instance, the nationality law passed by the secessionist government, promulgated by the legislative decree No. 67 of 1961, adopted the same principle. Once the al-Baath party came to power – the party that is still in power today – and passed decree No. 276 of 1969,⁸ no substantial amendments were made. What we can see in the 1969 Legislative Decree, which is the current nationality regime, is that it grants a distinctive facilitated preference to Arabs who want to naturalise as Syrian, stemming from the pan-Arab ideology. Article 43 of the Syrian constitution, established in 1973 under Baath party ruling, then goes on to recognize that Syrian Arab citizenship is to be regulated by legislation.⁹ After that, a 1969 interior minister’s decision ensured the enacting regulations were issued in 1976.

Between then and today, Syria has acceded to and ratified various international instruments that are related to stipulating their citizenship regime, and which are contravened by their domestic nationality law. This includes the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Civil and Political Rights (ICCPR). They put reservations on certain articles, most notably Article 9 of CEDAW which provides for equality between men and women in nationality matters. Syria has not acceded to the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness, nor has it pledged to do so.

Today, it is important to also note that there are some inconsistencies between the Syrian nationality law and other legal regimes in the country. Most notably, the Syrian constitution of 1973 grants full equality to women, where Article 25(3) in the 2012 amendment states that “Citizens are equal in rights and duties, without discrimination on grounds of sex, race, language, religion or creed” and Article 23 goes on to state that “The state guarantees women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life”. Despite this, gender inequality remains a severe problem on many levels of legislation as well as the nationality law.

Alongside the nationality law, it should also be highlighted that the Syrian regime under the al-Baath party has subsequently passed several presidential and legislative decrees relating to citizenship which will be discussed in this report. These decrees would both deprive and grant Syrian nationality to various persons. The latest was for instance decree No. 49 of 2011, which allowed the granting Syrian nationality to those registered as foreigners in the Hassaka region in Northeast Syria – with the maktoumeen excluded. The decree was linked to the exceptional census of 1962, which was carried out in the Hassaka governorate and stripped thousands of Kurds of their Syrian citizenship.¹⁰ In addition, Syrian legislation does not allow for citizenship decisions to fall under the jurisdiction of the court.

⁸ Legislative Decree 276, access at <https://www.refworld.org/pdfid/4d81e7b12.pdf>.

⁹ The 1973 Constitution of the Syrian Arab Republic was adopted in 1973 and was the Constitution until 2012.

¹⁰ More information on this in section 2.1.1.

Therefore, there is a significant void in finding any case law in the country that is related to citizenship issues.

2.1 Minority groups

Aside from the specificities of the development of the citizenship regime, Syria has also had a unique and at times strained relationship with certain minority groups. The groups that have been most effected by issues with regards to citizenship are the following.

2.1.1 Kurds

Alongside direct discrimination and persecution that Kurds have faced in many areas of their lives in Syria,¹¹ a significant proportion of Syria's Kurds have also suffered for decades under a tailored policy implemented in the 1960s that formalised their exclusion and rendered them without Syrian nationality. In 1962, the Syrian government conducted a census under Decree No. 93 in the predominantly Kurdish region of Hassaka Governate, which was tailored to the Kurdish population in this region. The reason given by the government for this census was that many non-Syrian Kurds had crossed illegally from Turkey and they needed to determine who the real Syrians were.¹² In reality, the census was conducted in the context of sweeping pan-Arab ideology that was taking over the whole region, which was not favourable to other ethnicities.¹³ The census was significantly flawed for many reasons. For instance, being held for only one day left little time for the community to take part. Many were left without understanding of the process, many could not attend that day, and many were not able to provide the burdensome proof that they were Syrian citizens.¹⁴ To highlight the ineffective and arbitrary nature of this census, many members of the same family obtained different statuses. Ultimately as a consequence of this census, two statuses were created for those were not recognized as Syrian. Firstly, Ajanib – which means foreigner in Arabic – was the label for the Kurds who were included in the official registries but did not qualify to sustain their citizenship. Secondly, the Maktumeen, who did not participate in the 1962 census at all and whose files are not available in any registry.

Although there are no official statistics, estimates from before the Syrian conflict placed the population of the stateless Kurds at approximately 300,000, which stemmed from the number of 120,000 who were stripped from the nationality under the census.¹⁵ Since then, there were no attempts from the ruling party to modify or rectify the situation, up until 2011 when the uprisings began in the country. In an attempt to curb anger from the Northeast of the country, presidential decree in 2011 was ordered that meant that the Ajanib of Hassaka

¹¹ See OHCHR, *Persecution and Discrimination against Kurdish Citizens in Syria*, access at <https://lib.ohchr.org/HRBodies/UPR/Documents/session12/SY/KIS-KurdsinSyria-eng.pdf>.

¹² The Ministry of Local Affairs, in response to questions by Human Rights Watch in 1996, stated that 'At the beginning of 1945, the Kurds began to infiltrate [yatasallaluna] into Hasakeh governorate. They came singly and in groups from neighboring countries, especially Turkey, crossing illegally along the border.' HRW, 1996, *The Silenced Kurds*, access at <https://www.hrw.org/reports/1996/Syria.htm>.

¹³ Refugees International, 2006, *Buried Alive: Stateless Kurds in Syria*, access at <https://www.refworld.org/docid/47a6eba80.html>.

¹⁴ For more information on this census see Z. Albarazi, *The Stateless Syrians*, May 2013, available at: <https://www.refworld.org/docid/52a983124.htm>.

¹⁵ Refugees International, *Buried Alive: Stateless Kurds in Syria*, January 2006, available at: <https://www.refworld.org/docid/47a6eba80.html>.

could reacquire citizenship through Decree No. 49.¹⁶ Although many tens of thousands were able to benefit¹⁷ from this, in practice it was not possible for all to access this decree. Since the law was not implemented fully, the problem of statelessness in this community still persists. There are still thousands of stateless Kurds who have attempted to apply but who were unable to, many who are abroad who cannot access the process, and most notably the issue of unregistered persons, the Maktoumeen, has not been addressed as they were not included in this decree.¹⁸ The current figure for stateless Kurds in Syria held by UNHCR is 160,000.¹⁹ It is important to note that even under the amended constitution of 2012, the notion of Syria as an Arab State is still prevalent and citizenship is framed as ‘Syrian Arab citizenship’, irrespective of the actual ethnicity of individual citizens.

2.1.2 Palestinians

There have been several waves of Palestinian refugees that have come into Syria, most notably in the 1940s and the 1980s. Although always marketing itself as a supporter of the Palestinian cause, Syria has always denied Palestinians the right to acquire Syrian nationality. This stems from the idea that the only way to ensure the continuation of their ability to benefit from the right of return to Palestine is to prohibit them from naturalising in the country they live in.²⁰ According to the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) that is mandated to assist Palestinians in several countries including Syria, there were 560,000 Palestinian refugees from Syria registered with UNRWA before the Syrian conflict broke out. The actual figure of Palestinians in the country is likely to be much higher given many may not have registered with UNRWA – those known as non-ID Palestinians.²¹ Since the conflict, UNRWA estimates that 160,000 registered Palestinian refugees fled Syria. In terms of their identity documents, different groups among the Palestinians have different documents.²²

Due to the conflict, many Palestinians from Syria were displaced within Syria or became refugees. Because of their lack of citizenship, some faced additional hardships and displacement, such as being refused entry into neighbouring countries, being delayed in their

¹⁶ For more information on this decree see Institute on Statelessness and Inclusion / European Network on Statelessness, *From Syria to Europe: Experiences of Stateless Kurds and Palestinian Refugees from Syria Seeking Protection in Europe*, January 2019, at 9, available at: http://www.institutesi.org/from_syria_to_europe.pdf.

¹⁷ UN Human Rights Council, Working Group on the Universal Periodic Review – National Report of the Syrian Arab Republic, 28 September 2016, at 40, available at: <https://undocs.org/en/A/HRC/WG.6/26/SYR/1>.

¹⁸ For more information on the implementation of this decree see Mcgee, T, 2016, *Update on Syrias Kurds*, access at https://files.institutesi.org/WP2016_02.pdf.

¹⁹ UN High Commissioner for Refugees (UNHCR), *In Search of Solutions: Addressing Statelessness in the Middle East and North Africa*, September 2016, available at: <https://www.refworld.org/docid/57dbdaba4.htm>.

²⁰ Stemming from the Casablanca Protocol, League of Arab States, *Protocol for the Treatment of Palestinians in Arab States (“Casablanca Protocol”)*, 11 September 1965, available at: <https://www.refworld.org/docid/460a2b252.html>.

²¹ According to the Syrian government there are “40,000 Palestinian refugees...not registered [with UNRWA], according to the records of the [Syrian] General Authority for Palestine Arab Refugees (GAPAR).” See UN Human Rights Council, Working Group on the Universal Periodic Review – National Report of the Syrian Arab Republic, 28 September 2016, at 15, available at: <https://undocs.org/en/A/HRC/WG.6/26/SYR/1>.

²² Institute on Statelessness and Inclusion, Norwegian Refugee Council, *Understanding statelessness in the Syria refugee context*, 2016, available at: <https://www.refworld.org/docid/584021494.htm>.

journey in a third country, and having their country of origin and status registered incorrectly.²³

2.1.3 Other groups with precarious relationship to citizenship

The Dom are a traditionally nomadic community found across much region and believed to share their origins with the Roma of Europe. Many of the Dom often travelled across the borders between Syria and the neighbouring countries and all have faced severe discrimination against them. For both of these reasons, although no official statistics exist, many have never been able to acquire Syrian nationality.²⁴

Iraqi refugees have been entering into Syria for many decades due to the various conflicts the country has gone through. Estimates suggest 1 million were living there before the Syrian conflict broke out.²⁵ Iraq's nationality law is also discriminatory²⁶ where children born outside the country can only obtain citizenship from the father, and therefore Iraqi mothers who have had children in Syria without a legal link to a father may have stateless children. There are no figures as to whether any Iraqi in Syria have been able to access nationality, although most indications show this was not a practice even when an individual fulfilled the naturalisation requirements.

2.2 The effect of the current conflict on citizenship issues

There have been many additional challenges created by the Syrian conflict with regards to issues relating to citizenship. Predominantly, existing challenges within the processes of acquisition and retention have been exacerbated due to the severity of the conflict. Firstly, the conflict has further problematised the experiences of already existing stateless communities, such as the Kurds and Palestinians. As many have been become internally displaced or have had to seek refuge outside the country, this often leads to new statelessness-related vulnerabilities added to those that already exist in a displacement context. For instance, prior to leaving, many stateless Syrians encountered increased security problems as they were unable to present recognised documentation at checkpoints that were found across the country. In addition to internal travel, many stateless persons faced additional challenges when trying to cross international borders. For example, there have been numerous instances where neighbouring countries to Syria were not allowing stateless Palestinians to enter.²⁷

²³ From Syria to Europe: Experiences of Stateless Kurds and Palestinian Refugees from Syria Seeking Protection in Europe, January 2019, available at: http://www.institutesi.org/from_Syria_to_Europe.pdf.

²⁴ There has been very little research conducted on this issue. For more information on the Dom of Syria, see VOA News, 2013, The Dom: Syria's Invisible Refugees, access at <http://www.voanews.com/a/the-dom-syrias-invisible-refugees/1626658.html> and this report: <https://www.stgm.org.tr/sites/default/files/2020-09/the-dom-the-other-asylum-seekers-from-syria-discrimination-isolation-and-social-exclusion-syrian-dom-asylum-seekers-in-the-crossfire.pdf>.

²⁵ Amnesty International, 2008, Suffering in Silence: Iraqi Refugees in Syria. AI Briefing MDE 14/010/2008, p. 1.

²⁶ Article 3, *Iraqi Nationality Law* [Iraq], Law 26 of 2006, 7 March 2006, available at: <https://www.refworld.org/docid/4b1e364c2.html>.

²⁷ See Human Rights Watch, 2012, Bias at the Syrian Border, access at <https://www.hrw.org/news/2012/07/04/jordan-bias-syrian-border> and Syria's Palestinians: a new nabka: https://mcusercontent.com/fbd4f0a24885246c0518468cc/files/81c1153a-7b33-4e9a-9f71-79676ff00f19/Syria_s_Palestinians_1.pdf.

Also, another challenge is when an individual reaches a country of asylum and there is unable to identify and clarify their status, where they are from or who their family members are.²⁸

Added to this, the conflict has brought about new cases and risks of statelessness, particularly for children born to displaced parents. There are substantial numbers of children born to Syrian refugee families over the last decade across the Middle East and elsewhere, where children might not be able to access another nationality. Therefore, there are now considerable risks of statelessness among the Syrian community in exile. Syria's nationality law, which stipulates that mothers can only pass on their citizenship when the child is born on Syrian territory, is the main reason behind this. For the tens of thousands of female-headed households where, for any number of reasons due to the conflict there is no legal link to the father (father's death, disappearance, displacement, etc.), this means that the children will obtain no citizenship. In female-headed households – which make up approximately a quarter of Syrian refugee households – if the authorities demand the presence of or proof of the identity of the father it may not be available. Also, children born within child marriages – which has unfortunately been a significant phenomenon for displaced families – are among those least likely to have their births registered, since in host countries these marriages are illegal and so would not have been officially registered.²⁹ There are also challenges to families who are displaced in accessing documentation that would help them clarify their status later.³⁰ Furthermore, safeguards in the law against a child being born stateless (including where the parents are unknown) are limited exclusively to children born within the Syrian territory, so would not be relevant to the millions of refugees. The risks of statelessness among the generation born during the conflict has been described as a 'ticking timebomb' by UN representatives and is likely to represent a major challenge for decades to come.³¹

Furthermore, an additional challenge is that many areas had been outside of the Syrian regime control for many years, and some remain so. Therefore, the legacy of non-state armed actor control – and, with that, that consistently changing governance systems – has meant that there are many new challenges related to the legal nationality or statelessness for children born in Syria. Obtaining documentation from these areas was often very difficult or impossible, and documents from these regimes – particularly those from the Islamic State (IS) – were not recognised anyway. The inability of many families to prove marriages, births and other vital events places added challenges in confirming nationality.

This section has highlighted how the multitude of reasons why citizenship issues are often challenging in Syria, including the often-intersectional discriminatory relationship that the country has had in relation to who does and who does not qualify to be a Syrian citizen. Although the official number of stateless persons inside of Syria may well have decreased over the last decade because of displacement outside of the country and because of the 2011 decree, statelessness stemming from Syria is increasing because of the new nuances and

²⁸ For more information on the problem Syrian stateless persons face when in Europe see ENS, 2019, *Stateless Journeys, Addressing Statelessness in Europe's Refugee Response*, access at: https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Addressing_statelessness_in_Europ_refugee_response-FINAL.pdf.

²⁹ For more information on the challenges the conflict has created with regards to statelessness, see ISI, NRC, 2016, *Understanding Statelessness in The Syria Refugee Context*, access at: <http://www.syrianationality.org/pdf/report.pdf>.

³⁰ Ibid.

³¹ M. Fleming, *The Situation in Syria is only going to get worse...and here's why*. The Guardian (16 February 2015), access at: <http://www.theguardian.com/global-developmentprofessionals-network/2015/feb/16/situation-syria-isgoing-to-get-worse-melissa-fleming-united-nations>.

protection contexts across the displaced population. Syria highlights the established nexus between citizenship and politics, as well as statelessness and displacement.

3. The current citizenship regime

This section will provide an analysis of Syrian nationality legislation. The aim is to identify provisions that are discriminatory or potentially problematic, that could lead to new cases of individuals not being able to obtain citizenship, as well as the provisions that could serve to prevent new or solve existing cases of statelessness. This section will also highlight the main flaws in the law – particularly gender discrimination – and comment on the discrepancies between legislation and practice. The current Syrian Arab nationality law is promulgated by legislative decree No. 276 of 24/11/1969.

3.1 Acquisition of nationality

3.1.1 At birth

In Syria, the primary method of acquisition of nationality is through the principle of paternal *jus sanguinis*, where a child obtains Syrian nationality if their father is a national, regardless of their place of birth. There are some exceptions specified by the law whereby nationality can be acquired in the absence of a paternal link, such as for foundlings who are found on the territory and for children who are born to an unknown father and a Syrian national mother. These are written in Article 3 of the law which stipulates:

The following shall be considered as Syrian Arabs ipso facto:

- (a) Anyone born inside or outside the country to a Syrian Arab father.
- (b) Anyone born in the country to a Syrian Arab mother and whose legal family relationship to his father has not been established.
- (c) Anyone born in the country to unknown parents or to parents of unknown nationality or without one. A foundling from the country shall be considered born in it, at the place in which he was found, unless proved otherwise.
- (d) Anyone born in the country and who was not entitled, at birth, to a foreign nationality by the right of affiliation.

It is clear that acquisition of nationality at birth in Syria is the primary method of acquisition of nationality and is almost exclusively done through the principle of paternal *jus sanguinis*. Therefore, anyone born to a Syrian father is Syrian, regardless of whether the child was born inside or outside Syria; and whether the mother was Syrian, foreign or stateless. The exception to this is stipulated in paragraph (b), where it is stated that original nationality may be proven based on maternal filiation. However, here the child has to be born inside the territory of Syria – so it is backed by *jus soli* principles – and only to children born outside wedlock. Therefore, a child born to a Syrian mother and non-Syrian father is not considered Syrian if he/she was born outside Syria or in wedlock. Ultimately, being born to a Syrian

mother does not grant the automatic acquisition of her nationality. It is important to note that the application of the paternal *jus sanguinis* seems relatively unproblematic, but that the exceptions granted to mothers is in fact rarely implemented, which will be discussed further below. Not only would it often be societally problematic for many women to try and register a child born outside of wedlock due to local stigmas against this, but the authorities are mostly unwilling to implement this provision, or unaware that it exists.

Alongside the main *jus sanguinis* safeguards of the law there are some *jus soli* provisions that are relevant. Article 3 also allows for the adoption of the *jus soli* principle as the primary basis to prove the original Syrian nationality of specific groups of children. The groups are:

- children born inside Syria to unknown parents (foundlings),
- children born inside Syria to known parents of unknown nationality,
- children born inside Syria to known parents, but they do not enjoy any nationality (stateless) at birth.

Notably, we see a positive safeguard for foundlings who are found on the territory who would be seen as Syrian nationals, which is seen to be well implemented. Also, what is clear with this third point is that is that Syrian law includes the safeguard widely prescribed by international law to ensure that statelessness is prevented at birth for all children born in the territory. This is a significantly positive component of the Syrian nationality law as it includes the safeguard that would immediately eliminate the possibility of new cases of statelessness stemming among children born in the country. However, in reality, this provision highlights the discrepancy between legislation and implementation, as intergenerational statelessness is a reality in the country. In terms of implementation, this safeguard is never seen to be executed. This is particularly illustrated by the fact that stateless individuals in Syria, predominantly from the Kurdish and Palestinian communities, are passing on their stateless status to their children even though their children would fall under the criteria of 3(d), they are not obtaining nationality. To highlight this, UNHCR stated in March 2019 that, “Syria has a safeguard in place to prevent statelessness among children born in the territory, but it is not clear that this is implemented in practice”.³²

3.1.2 Naturalisation criteria

There are no official statistics as to naturalisation numbers in the country (except for ajanib Kurds for which official figures were released some years ago), nor whether there are any naturalisation cases from individuals who are from the main stateless communities. It is difficult to assess therefore whether in practice individuals have been able to access naturalisation process in the country. What we do know is that all naturalisation applications are left to the discretion of the Minister of Interior (except in the case of the 2011 decree) which could leave space for the arbitrary application of this process. Naturalisation requirements in Syria are not specifically strict, especially comparatively to other legislation in the region, but have several flaws. The main requirements an individual needs to fulfil to become Syrian include:

³² UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness 2019, access at: <https://www.refworld.org/docid/5c8120847.html>.

- 5 years of residency,
- absence of a criminal record,
- knowledge of Arabic,
- no contagious diseases and sound mind,
- a profession or sufficient means of income.³³

The requirement of five years of residence is problematic, because the legislation shows that that precludes a legal status and given that many stateless persons have not been able to obtain legal residence they therefore cannot qualify for naturalisation. A further problem in this law is the requirement for an individual to have no contagious diseases and be of a sound mind. The prohibition of individuals suffering from physical or mental disabilities in accessing nationality is clearly a significant flaw in the law and may leave particularly vulnerable persons at risk of being stateless, although no data of this (lack of?) implementation is available.

It is important to note that, additionally, there are no facilitated procedures for naturalisation for those who are stateless (as well as no mechanism to determine the statelessness of anyone). However, there is another form of facilitation, that of those of Arab origin. Syrian nationality law clearly distinguishes people into three categories: Syrians, Arabs, and foreigners. There are significant differences in access to nationality stipulated by law between individuals who are of Arab origin and non-Arabs in Article 6. This article of the nationality code is dedicated to “special provisions for other Arab nationals”, where facilitated naturalisation is offered to people who are nationals of other Arab countries. Article 6 of the Law states that the Minister of Interior can, at his discretion:

waive regular conditions when the applicant:

- has a certificate of a Syrian émigré citizen,
- performed excellent services to the State or the Arab nation,
- and/or was of Arab origin and was able to provide a good reason for naturalisation.

It is interesting to note here that naturalisation requirements are influenced in many ways by the importance attached to unifying Arabs under pan-Arab ideology. Although this type of acceleration may be seen as justified consistent with political thought dominant in the Arab region, the worry is that giving facilitation to someone who has or had an affiliation with an Arab country, and potentially no direct connections to Syria, whilst excluding the non-Arab sections of the population, is troubling. In practice this can exclude people who have a significant connection to Syria and may perpetuate discrimination on an ethnic basis.

3.2 Gender discrimination

The Syrian constitution grants full equality to women where Article 33 states that “Citizens are equal in rights and duties, without discrimination on grounds of sex, race, language, religion or creed” and Article 23 goes on to state that “The state guarantees women all

³³ Article 4 of 276 nationality law.

opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life”. Despite this, gender inequality in Syrian legislation remains a severe problem.

As seen above, Syrian nationality law states that “anyone born inside or outside the country to a Syrian father” shall be considered Syrian, thereby prohibiting women from transferring nationality to their children. Women can transfer nationality only in the exceptional case that the father is unknown – paternity has not been legally established – and only if the child in question was also born in Syria. However, in addition to the ability for women to transfer nationality to their children, there is also discrimination against women in transferring nationality to their spouse. Article 8 of the legislation goes on to regulate how a man can transfer nationality to his non-Syrian spouse but does not offer acquisition of nationality for male spouses of female citizens on an equal basis. Official government statistics are not available, but the Syrian Women’s League estimated in 2008 that there were approximately 100,000 Syrian women married to non-nationals, mostly from other Arab states, and more specifically Egyptians, Iraqis and Palestinians.³⁴ The situation of the stateless groups in Syria also highlights the problematic nature of this gender discrimination. Many stateless male spouses of female nationals are unable to access citizenship, alongside the children of stateless fathers and national mothers not being able to regulate their nationality status through their mothers. This challenge has furthermore been exacerbated by the Syrian conflict. Not only has there been an increase in women marrying foreign men (who had come to fight or help with the humanitarian work), but there are also particular difficulties in registering the marriages of these couples, which is very common issue among the displaced and refugees.

There are also gender discriminatory provisions found in other laws that will affect the issue of citizenship. Mostly, the 1953 Personal Status Law (No. 59), modified by law no. 34 in 1975 covers vital events such as marriage, divorce and alimony, in addition to others related to guardianship, trusteeship and filiation. Articles 128-131 of the law for instance specify the conditions of establishing filiation from a valid marriage. Article 129 stipulates:

Filiation of a child of every wife in a valid marriage shall be attributed to the husband under the two following conditions:

1. The period of gestation must exceed the duration of the marriage contract [minimum duration of 180 days and a maximum duration of one solar year, as stipulated in article 128 of the personal status law]
2. There is no evidence proving that the spouses had no physical contact, as though one of them was in prison or in a distant country, for a period exceeding the duration of pregnancy.

Articles 132 and 133 specify the conditions of establishing filiation in invalid marriages and unlawful intercourse. Article 132 of the personal status law stipulates, “a child born at least 180 days after the consummation of an invalid marriage³⁵ shall be attributed to the husband.” For article 133, the first paragraph of this article stipulates “if a woman gave

³⁴ Institute for War and Peace Reporting ‘Campaign to change unfair citizenship law continues’, access at <http://iwpr.net/reportnews/campaign-change-unfair-citizenship-law-continues>.

³⁵ The exact meaning of this is not explained in the law but is believed to mean a marriage where fraud has taken place or the terms of the marriage contract have been broken.

birth from unlawful intercourse within the limits of the specified period of pregnancy, the child shall be attributed to the man.” Article 51 of the law, which stipulates that the consummation of an invalid marriage results in “filiation as prescribed in article 133”.

Articles 134 and 135 specify the provisions regarding filiation. Paragraph 2 of article 134 stipulates that “if the declarant is a married woman or a woman in her waiting period,³⁶ filiation to the father shall be established only by acknowledgement or providing proof”. And according to article 135, “maternal or paternal filiation of a child of unknown parentage shall be established by the acknowledgement of the declarant and a reasonable age difference between them” – this is the process to establish paternity/maternity for a child previously considered of unknown parentage.

Taking into consideration the extraordinary living circumstances faced by Syrians under internal and external displacement, establishing paternity becomes almost impossible, especially in cases where the requirements and conditions stipulated by the law cannot be met. For instance, the lack of a “valid marriage contract” – being lost or unrecognised by the countries of asylum, e.g., for being issued by entities outside of the Syrian government control – means failure to register the marriage and therefore failure to establish paternity. In these cases, children born to Syrian mothers cannot be granted Syrian nationality.

As mentioned above, failure to meet any of the requirements to confirm a marriage contract makes registering children born to Syrian mothers almost impossible, due to failure to establish the child’s filiation in relation to the Syrian father. For this reason, the Ministry of Justice must instruct Shariah courts in Syria, which are competent to consider matters of filiation in accordance with the Code of Civil Procedure, in order to facilitate the procedures of establishing paternity. Under domestic law, the Syrian government has duties to ensure that “everyone [shall] have a name and a surname, and the surname shall be passed on to the person’s children,” according to article 40 of the Syrian Civil Code.

There are some discrepancies to this, since different official religions can stipulate their own provisions, but in general these provisions highlight how abundant the issue of filiation to a father is for a child, and that challenges to the norm may have long-term effects on the children’s legal status.

3.3 Deprivation/loss of nationality

There are provisions in the Syrian nationality law that allow for the withdrawal of nationality from an individual in several circumstances, without regard to whether it would render the person stateless. According to the nationality legislation an individual can lose their nationality for the following reasons:

- having obtained the nationality by fraud,
- undergoing military service of another country without permission and working for a foreign state,
- a naturalised citizen can have his or her nationality withdrawn if the Minister deems the deprivation to be in interest of the security and safety of the State,

³⁶ This refers to a particular time a woman waits after divorce or death of her husband before she marries anyone else.

- citizens who reside in a non-Arab country for more than 3 years and who do not respond to requests for a justification of their absence, or provide an insufficient response, will have the nationality withdrawn.

The first two provisions can be justified under international law as criteria under which a country can withdraw nationality.³⁷ However, their possible abuse, and the content of the two remaining provisions, are very worrying in terms of arbitrary deprivation of nationality. The clauses have been formulated in a vague manner in order to leave room for discretionary interpretation by the state. Given the nature of Syria's relationship with its citizenry, these are of particular concern because the provisions leave scope for them to be utilised for political reasons. It is not clear through existing research whether the provision of three years residency abroad has been implemented and/or to what extent. In addition, nothing in the nationality law takes into account whether a person would be rendered stateless by the implementation of any of the provisions and therefore creates a risk that someone will be left without any nationality.

In addition to these provisions found in the nationality law, the president also has considerable power to deprive Syrians of their nationality. For example, it is documented how political dissidents who opposed the ruling Baath party in the 1960s and 1970s were arbitrarily deprived of their nationality by way of a presidential decree. This was done under the recommendation of the interior minister, and not through the nationality legislation. Through this decree, it was estimated that 27,000 people have had their nationality arbitrarily removed, and it is unknown how many were rendered stateless by this action.³⁸ If these individuals were male and stateless this would also mean that their future children would also be unable to access Syrian nationality due to the paternal *jus sanguinis* system described above, creating more cases of intergenerational statelessness.

It must be noted that there are also some positive components of the legislation. Firstly, there is no provision in the Syrian nationality law that allows for renunciation of Syrian nationality. In practice, this means that a Syrian national should not be able to render him or herself stateless through voluntary renunciation of citizenship. Also, when an individual has their nationality removed – under any of the provisions – the law states that the nationality of other family members is not affected – it only affects the targeted individual.

4. Current political debates and reform plans

Unfortunately, the concept of who belongs to the Syrian citizenry has rarely been a topic for political discussion in Syria. Moreover, given the limited space for political discussion in the country issues around citizenship (e.g., the deprivation of nationality of the Kurds in the 1960s is not public knowledge) are often not well understood. Therefore, there has been very little debate – whether in the political or public sphere – with regards to the citizenry of the country or issues around citizenship management.

However, one issue where there has been discussion about the need for reform or change has been with regards to the gender discriminatory elements of the law. Work on women's rights has been one of the few segments of civil society in Syria that was allowed

³⁷ According to the 1961 Stateless Convention on the Reduction of statelessness

³⁸ Arab Commission for Human Rights, 2004, access at <http://hem.bredband.net/dccls2/r1.htm>

limited space to work under the rule of both Hafez and his son, the current President Bashar Assad. Firstly, it is interesting to try and understand the justification of the discrimination through statements made via United Nations mechanisms. Syria has ratified the CEDAW, which stipulates in article 9 that “States Parties shall grant women equal rights with men with respect to the nationality of their children”. However, Syria has entered a reservation to this particular article in legislative decree No. 330 of 2002,³⁹ for being contrary to Sharia law, without expanding or explaining these contraventions. The reservation was changed in the States Parties’ second report for the Committee on CEDAW of 2012 where it confirmed that “there is no contradiction between article 9 and Sharia law, for there is a big difference between filiation, which is established according to Sharia and attributed to the father; and nationality, which is the relationship between the individual and the State, and it is a man-made law”.⁴⁰ However, another paragraph of the report justified Syria’s reservation to article 9 “on the basis of national considerations regarding the return of Palestinian refugees and the need to preserve their identity and right of return”.⁴¹ One paragraph of the same report states that the reason for Syria’s reservation on article 9 arises from a sovereign, not discriminatory, standpoint: “considering the critical geopolitical and strategic location of Syria. In addition to being a major transit center between continents, it is also an open State that welcomes and hosts newcomers, displaced persons, those fleeing the scourge of wars and asylum seekers; consequently, many marriages occur. Therefore, the impediments of granting nationality to children of Syrian women born to a non-Syrian father arise from a sovereign, not discriminatory, standpoint.”⁴² This unclarity demonstrates how fragile retaining citizenship can be in Syria and how its manipulation could be used as a political tool.

Aside from these unclear justifications which allow little space for analysis or advocacy, work to challenge this discrimination continued. As part of the work of women activists, reform of the nationality law to get rid of the discrimination against women has been one their main objectives. Syria has therefore witnessed regular initiatives and attempts to raise public awareness and force discussion in parliament on the issue. Back in 2004, for example, the Syrian Women’s League⁴³ – one of the main groups that work on Syrian rights – presented a memorandum to the People’s Assembly which asked for the removal of this discrimination. As a consequence of this, it sparked political debate and was included in the agenda of Assembly sessions and submitted to the Government. However, although this was a good first step, in 2008 the Syrian parliament voted against giving women the right to pass nationality to their children. The argument presented by the authorities was that such reform would be contrary to Sharia law – law that they claimed stipulates that children’s identity derives from the father’s name and nationality. Despite this claim, the initiative has gained support from Islamic clerics in the country. Many have disputed these arguments, most predominantly the Islamic cleric Mohammed Habbash, who was also a member of the Syrian parliament. After the initial rejection, Habbash went on to request an amendment of the citizenship law and in 2009 the Syrian Women’s League, alongside the Islamic Studies Center, requested the government to look at a new idea, to allow children of non-national

³⁹ Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women access at <https://digitallibrary.un.org/record/472978?ln=en>.

⁴⁰ Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Second and third periodic reports of States Parties.

⁴¹ Ibid.

⁴² Ibid.

⁴³ S. Zakzak, 2016, *Syrian Women’s Right Pass on Citizenship To Children: An Appraisal*, access at <http://www.andyahaidar.com/legal-agenda.com/en/article.php?id=3116>.

fathers the right to obtain nationality after ten years of residency in the country. Unfortunately, they were unsuccessful again.⁴⁴

After this the most recent initiative took place before the conflict in 2010, when a proposal was presented asking again for gender equality in the nationality legislation. However, not long after this the conflict erupted and therefore there has been no indication of whether these debates progressed after this application. Outside of Syria the debate about amending the law has continued. Most recently, in 2017, Syria responded to criticisms from the Committee on the Rights of the Child regarding the discriminatory Nationality Law by stating that, “There are no stateless children in the Syrian Arab Republic ... Granting nationality to children of Syrian mothers married to non-Syrians, Article 3 of the Nationality Act is currently being reviewed and great efforts are being made to ensure that children of Syrian mothers may obtain nationality. The General Women’s Federation has drafted a bill for the amendment of that article under which women would pass on their nationality to their offspring. The bill is currently being examined”.⁴⁵ However, apart from this one statement from the regime there has been no public indication that this has been happening. The authorities themselves went on to say that “the crisis affecting the Syrian Arab Republic has delayed discussion on the subject and the enactment of a relevant law”.⁴⁶

Other than discrimination there has been little debate on issues of progressing the law. During the conflict there were several debates in Syrian media on Dunia TV – a Syrian pro-regime channel – where the concept of depriving Syrian opposition figures of their nationality was openly discussed as a viable option for getting rid of those who were not seen as loyal. The debates did not develop further from media debates and there was no indication that these types of ideas were being debated in the political circles. Other than these, there are currently no pending bills or framework laws that have not been adopted yet, nor has the present government announced reforms in its government programme. It would be important to observe the constitutional committee⁴⁷ of Syria develop in terms of discussing citizenship issues for a future Syria.

5. Conclusions

It is clear that the current situation in Syria renders it difficult to analyse the real impact of gaps and flaws in the countries citizenship laws and policies. It also makes it difficult to assess any potential opportunities taken to address the problem of statelessness and flawed citizenship policy in the country. Syria is undergoing an extended period of political turmoil and the nature of future dynamics or potential for further agreements to be established is impossible to predict. However, despite this, several concluding remarks can be made on the basis of the analysis presented in this report. In terms of nationality legislation, there are two prominent issues that are obstructing access to nationality and contributing to statelessness. The first of these is the gender inequality evident in nationality legislation that, aside from

⁴⁴ M. Isou. Women in Syrian Law, 2010 Article in Thara E-Magazine No 233, 2010, access at <http://www.tharasy.com/TharaEnglish/modules/news/article.php?storyid=248>.

⁴⁵ Committee on the Rights of the Child, Fifth periodic report submitted by the Syrian Arab Republic, 2017, available at: <https://undocs.org/pdf?symbol=en/CRC/C/SYR/5>.

⁴⁶ Committee on the Rights of the Child, List of issues in relation to the fifth periodic report of the Syrian Arab Republic – Addendum - Replies of the Syrian Arab Republic to the list of issues, 2018, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1226&Lang=en.

⁴⁷ Security Council Briefing on the Situation in Syria, Special Envoy Geir O. Pedersen. UN Department of Political and Peacebuilding Affairs.

being palpably discriminatory, is leading to new cases of statelessness especially amongst the displaced. This discrimination will, in any future review of Syria's nationality policy, need to be addressed. The second concern is the non-enforcement of the safeguard against childhood statelessness found in Syrian law. Ensuring the full and correct implementation of the existing legal safeguard – where any child born in the territory that would otherwise be stateless is given Syrian nationality – is vital as it is already in line with international standards and would demonstrate Syria's commitment to ensuring that no new cases of statelessness arise amongst children.

In addition to this, vague and discriminatory naturalisation requirements must also be addressed. With regards to the stateless populations living in, and having fled from, Syria, there are also potential opportunities that could begin to challenge the status quo of their status. With regards to the Kurdish population, the 2011 decree can be welcomed as a positive development which allowed a large proportion of the stateless community to obtain citizenship and benefit from the related rights whilst highlighting the substantial concerns of the decree that remain, especially as to the effectiveness and future implications of this decree. Also, no responsibility has been taken for the impact that half a century of statelessness has had on those affected, nor has the scope of the population covered under this decree and working to address those who are excluded been sufficient. Syria has had one of the largest stateless populations worldwide, and an issue not covered by this report is that they have suffered from some of the most severe protection problems for over half a century and will likely continue to do so.

Finally, as part of current and future discussions on the upcoming situation of the country as part of a post-conflict situation, there needs to be assurance that these gaps and flaws will be addressed, challenges facing the displaced in accessing citizenship are explored, and that historical cases of statelessness are countered.

