



THE COMMITTEE ON THE RIGHTS OF THE CHILD

80th Pre-Sessional Working Group (04 – 08 June 2018)

Syria

Civil Society Submission on the right of every child to acquire a nationality under Article 7 CRC

1st March 2018

Introduction

1. The Institute on Statelessness and Inclusion (the Institute)¹ welcomes the opportunity to make this submission to the Committee on the Rights of the Child regarding Syria's compliance towards every child's right to acquire a nationality under Article 7 of the CRC.
2. The Institute hopes that the Committee will draw on this submission to raise the issue of realising the right of every child to acquire a nationality in its **List of Issues for Syria**, and address **recommendations to the Government of Syria in its Concluding Observations** to further prevent and reduce the problem of childhood statelessness in the country. This submission has been structured to highlight issues that may be included in the List of Issues by including them in text boxes under each substantive section, and recommendations that may be drawn on for the Committees Concluding Observations by listing them at the very end of the text.

¹ The Institute on Statelessness and Inclusion is an independent non-profit organisation committed to addressing statelessness and disenfranchisement in the world through the promotion of human rights, participation and inclusion. (www.institutesi.org)

The Report of Syria to the Committee

3. The report of Syria to the Committee deals with various issues related the right of children to registration and nationality.² Paragraphs 56 - 62 discuss some of the efforts of the authorities to tackle some of the challenges they face in relation to birth registration. Paragraph 56 sets out some of the efforts of the State to deal with destroyed registries inside Syria. Accordingly, the state has been working to create alternate and new centres for people to register the births of their children. Furthermore, the reports sets out that civil registration is now the responsibility of the Syrian Commission for Family and Population Affairs. Paragraph 60 details some of the efforts made by the authorities to raise public awareness on the registration of all vital events, such as workshops and training programmes in various regions across the country.
4. Paragraph 57, when discussing the registration of foreigners, mentions that the children of Maktoum can also have their birth registered. However they go on to say that this can take place even when the father is not alive, as long as there is legal proof that the father or grandfather is of Syrian origin. This is problematic as it may be nearly impossible for a Maktoum child to prove who their father or grandfather is, or what their nationality is.
5. Paragraphs 63 – 67 address the issue of nationality. It reiterates the naturalisation of Ajanib Kurds under decree 49 of 2011, claiming that over 70,000 persons have benefited and become nationals. The report also emphasises that this is an ongoing procedure. Paragraph 67 addresses gender discrimination in the nationality law, stating that the state is looking into revising Article 3 of the nationality law based on a draft law prepared by the Syrian Women’s League. The State does not provide any detail on what the draft law says.

Syria’s International Legal Obligations

5. There are several gaps and challenges in the law and policy framework of Syria and its implementation, that result in children being denied the right to acquire a nationality and/or the right to birth registration and documentation. These children are rendered stateless, or at risk of statelessness. Most notably Syria’s nationality legislation is gender discriminatory, denationalised Kurds are unable to re-acquire nationality, mixed religious marriages are not recognised and there are no legal governance systems in non-state controlled areas. There are also challenges in practice and implementation, where for example families are unable to access civil registries or naturalisation procedures. These problems result in new-born children being unable to obtain a nationality, have their births registered, or acquire any documentation. Given the complex nature of the conflict and scale of displacement, the propensity for the problems in law, policy and practice to result in statelessness, including, of children born abroad, has significantly increased.
6. The gaps in law and policy that are detailed, specifically in Syria’s current nationality law which was enacted in 1969, through Legislative Decree 276, are in clear violation of the international obligations of Syria. This includes their obligations under Articles 7 and 8 of the CRC, Article 9 of the Convention on the Elimination of Discrimination against Women (CEDAW), which calls on State parties to ensure that women and men have equal ability to acquire, change and

² The report CRC/C/SYR/5 available in Arabic at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSYR%2f5&Lang=en

retain their nationality and to confer their nationality to children and spouses³ and the International Covenant on Civil and Political Rights (ICCPR), which obligates states to ensure each child's right to a nationality (Article 24). 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.

7. Syria has previously received limited recommendations under the Universal Periodic Review (UPR) concerning statelessness and nationality challenges, some of which are detailed in this submission. In 2011, there were various recommendations related to Syria's general obligations including under the CRC and CEDAW, which are relevant. An accepted recommendation by the Maldives recommended that Syria "*Bring national laws fully into line with its obligations under ICCPR, CEDAW, CAT and CRC.*" Unfortunately there were no recommendations specifically related to gender discrimination in Syria's nationality law or resultant statelessness, other than a more general recommendation by Mexico to "*Immediately adopt and implement necessary legislative and administrative measures to promote a greater inclusion of women in the country's public and political life, ensuring that they effectively participate in the decision-making process, and lift the reservations made to the Convention on the Elimination of All Forms of Discrimination Against Women.*"⁴ During the 2nd cycle in 2016 there were two recommendations, by the Czech Republic and Namibia, related to removing gender discrimination from Syria's nationality law. However there were no recommendations on improving civil registration or the protection of stateless persons.⁵
8. The legal bond of a nationality brings with it access to many rights in Syria. There are no specific procedures, laws or protection mechanisms in Syria tailored to the protection of the rights of stateless individuals. Most predominantly, stateless individuals, due to their lack of documentation, face many obstacles in accessing State education in Syria.⁶ For those who were able to access education, there were certain restrictions as to what they could do (for example join the shabibeh – a nation-wide student group). More widely, the enjoyment of basic rights such as travel, property rights, and the right to obtain other documents are all hindered because of statelessness, clearly violating many of the States obligations under the CRC and other human rights treaties.

3 Although Syria has a reservation to Article 9, in its recent General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee confirmed that Article 9 extends an obligation to ensure equality between men and women in the ability to confer their nationality to their spouse. Article 9(2) obligates states to "*grant women equal rights with men with respect to the nationality of their children.*" Furthermore, Article 9(1) obligates that states "*grant women equal rights with men to acquire, change or retain their nationality.*"

⁴ For all quotes see A/HRC/19/11, Report of the Working Group on the Universal Periodic Review, 2012, access at https://www.upr-info.org/sites/default/files/document/syrian_arab_republic/session_12_-_october_2011/a.hrc.19.11syriae.pdf

⁵ Please see a/HRC/WG.6/26/L.2, 2016, access at https://www.upr-info.org/sites/default/files/document/syrian_arab_republic/session_26_-_november_2016/a_hrc_wg.6_26_l.2_syria.pdf

⁶ A. Al-Rabeo Unjust Nationality Law Deprives Syrian Women's Children of Basic Rights, The WIP, 2010, available at: http://thewip.net/contributors/2010/12/unjust_nationality_law_deprive.html.

Issues of concern related to the right to a nationality and suggested questions for the state party's review

Foundlings & safeguards against childhood statelessness

9. Syrian nationality law contains a safeguard against statelessness at birth, whereby a foundling, a child born in Syria to stateless parents, or a child born in Syria who acquires no other nationality should be considered Syrian.⁷ This is a strong safeguard and would, in theory, reduce the risk of children being unable to acquire a nationality at birth.⁸ The registration of foundlings inside of Syria as Syrian nationals has been found to historically well implemented. However, these safeguards against statelessness at birth are not always implemented with regard to the two other factors. This is clearly evident in the intergenerational nature of statelessness in the country – where many stateless Kurds for example have inherited their statelessness from their parents (and grandparents before them).

In light of the gaps and challenges related to the lack of implementation of the safeguards against statelessness, the Committee is urged to ask Syria:

- **Why do children continue to be born stateless in Syria, despite the existence of such safeguards against childhood statelessness?**
- **What steps have Syria taken to enhance the implementation the safeguard against statelessness in its nationality law?**
- **What measures is Syria taking to ensure the implementation (and monitoring) of the legal provision which sets out that any child born in Syria to stateless parents obtains Syrian nationality?**

Discrimination

Gender Discrimination

5. Syria's nationality law is predominantly based on paternal descent, whereby a person is Syrian, wherever they are born, if they have a Syrian father. Birth within Syria, or to a Syrian mother, does not automatically confer nationality. Although the law provides for the possibility of the mother to transfer nationality to her child in situations where a legal link to the father is not established, this clause only applies to children born inside of Syria. Furthermore, the application of this safeguard is challenging due to the social repercussions of registering a child who is born out of wedlock.⁹

⁷ (Articles 3(C) and 3(D) on Legislative Decree 276).

⁸ International Rescue Committee, 'Civil Status Documentation in Non-Government Areas of Northern Syria', 2016, p.15, <<https://www.scribd.com/document/319310864/IRC-Full-Assessment-Civil-Status-Documentation-in-Non-Government-Areas-in-Northern-Syria-July-2016>

⁹ Fisher, B, Why non-Marital children in the MENA Region Face a risk of Statelessness, 2015, access at <http://harvardhrj.com/2015/01/why-non-marital-children-in-the-mena-region-face-a-risk-of-statelessness/>

6. At its 2011 Review of Syria, the Committee commented on the issue of gender discriminatory laws, stating that it *'is also concerned that the amendment to article 3 of the Syrian Nationality Act (No. 276 of 1969), which denies children of Syrian women married to non-nationals the right to acquire Syrian nationality, is still pending endorsement by the parliament.'*¹⁰ Despite the Committee raising this concern, the discriminatory law remains in place today. There have previously been several initiatives to reform Syria's nationality law. Most significantly, a bill was presented to Parliament in 2004 by the Syrian Women's League. In 2008 the Parliament voted against this amendment on the basis that it was incompatible with Sharia law.¹¹ Again, in 2011 a new bill was presented to the new Parliament and a committee was formed to discuss it, again by a bill proposed by the Women's League. The report by Syria to the Committee has stated again that the law proposed by the Women's League is under review.
7. In the present context of mass-scale forced displacement, the gender discriminatory nature of Syria's nationality law is of serious concern, as it may leave children stateless where they have a Syrian mother and, for instance, an unknown or stateless father, or parents who were unable to legalise their marriage, violating their right to a nationality as set out by the Convention.
8. Since Syria's last review, with mass displacement a reality in the Syrian context, there are even more situations in which it cannot be established that the father of a child is Syrian national. These include situations such as: the marriage not being registered; marriage documents having been lost; the father being deceased, disappeared or separated from the family (living in a third country). Any one or more of these factors can mean that there is no legal or physical proof that a child's father is Syrian. In all countries, when a refugee mother cannot prove that the father of her child is Syrian, her child is at risk of statelessness.
9. In addition to this discrimination, as detailed below Muslim women are not able to marry non-Muslim men. Therefore, if a woman was to have a child as a result of this partnership, the discrimination in the nationality law would mean that the child would not automatically get her nationality, or any other. This highlights the intersectionality of discrimination against women in the country, and the impact this has on their children's right to acquire a nationality.

In light of Syria's gender discriminatory nationality law, the Committee is urged to ask Syria:

- **Can the Syrian state provide an estimate of the number of displaced and non-displaced persons made stateless due to Syria's gender discriminatory nationality laws?**
- **What deadlines has the State put in place to finalize the review of the law put forward by the Women's League, and what timeframe is in place to adopt a new gender neutral law?**
- **What measures has Syria taken to guarantee the nationality rights of children born in displacement to Syrian mothers who may be now at risk of statelessness?**
- **Will the State make public the draft and consider any comments by civil society to ensure that it retains no flaws or gaps.**

¹⁰ See CRC/C/SYR/CO/3-4 9

¹¹ Legal Agenda, Syrian Women's Right to Pass Citizenship To Children: An Appraisal, 2016, available at: <http://english.legalagenda.com/article.php?id=742&folder=articles&lang=en>

Discrimination against children born out of mixed religious marriages

10. As noted above, Article 48 of the Syrian Personal Status Code, enacted by the sharia courts, states that marriages between Muslim females and non-Muslim males are illegal. Accordingly, for a woman who has been legally identified as a Muslim to register her marriage the man she wishes to marry must have been born Muslim or converted to Islam. What this means in practise is that any children born out of these unregistered partnerships are unlikely to have their births registered. Denied birth registration and birth certificates, these children will not be able to establish a legal link to – significantly – a Syrian father, and therefore they are likely to be denied their right to a nationality. This prohibition on mixed marriages therefore violates both a child's right to have their birth registered under the Convention as well as the child's right to obtain a nationality at birth.

In light of the risk of statelessness to children born out of mixed religious marriages, the Committee is urged to ask Syria:

- **On what basis does Syrian law continue to be discriminatory against Muslim women in relation to their ability to enter into mixed marriages?**
- **What steps are the state taking to ensure the rights of children born to mixed-marriages who may face challenges in both registering births and obtaining nationality?**

Ethnic discrimination against the Kurdish population

11. A substantial and growing stateless population, the stateless Kurds, have been living in Syria since the 1960s. This group is a minority from within Syria's broader Kurdish population and their descendants, who were denationalised as the result of a census conducted in the North of Syria in 1962.¹² There are two sub-groups of Kurds who became stateless because of this census – those who are widely known as the Ajanib (those registered as foreign in the census) and Maktoum¹³ Kurds (those who were not registered at all) and were denationalised overnight. There are no official figures, but estimates place this population at approximately 300,000 persons of all the stateless Kurd population.¹⁴ As this status is hereditary and the safeguards against statelessness in the law are not implemented, children born into these families continue to be born stateless.¹⁵ The human rights situation of both of these groups was challenging even before the conflict, with widespread problems reported in their children accessing education and living a marginalised existence. In the context of the conflict, their lives have become even more challenging. Those children who are displaced – internally or externally – are often unable to confirm their status because of the conflict, and at minimum, they are unable to prove where they are from or who their relatives are. Additionally, because of historic problems with access to education, this community is effected by high levels of illiteracy which may add an additional layer of vulnerability to their displacement.

12. The adoption of Decree 49 in 2011 allowed the reacquisition of nationality for thousands of stateless Ajanib Kurds. According to UNHCR, by mid-2013, some 104,000 stateless individuals

¹² Z.Albarazi, Stateless Syrians, 2013 access at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269700

¹³ The work word Maktoumeen is the plural of Maktoum, so both words are used to describe the same community.

¹⁴ KurdWatch, 'Stateless Kurds in Syria: Illegal invaders or victims of a nationalistic policy?' March 2010. access at http://www.kurdwatch.org/pdf/kurdwatch_staatenlose_en.pdf.

¹⁵ Z.Albarazi, Stateless Syrians, 2013 access at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269700

had acquired nationality.¹⁶ In its State report Syria has noted that approximately 70,000 persons have registered as nationals as a result of this decree. However, what is not noted is that the current conflict has made the process of applying for nationality difficult and therefore many children of Ajanib Kurds continue to be born stateless. Difficulties arise from stringent document requirements, requirements to register in specific districts and with all family members present. In addition, these developments exclusively apply to the Ajanib sub-section of the stateless Kurds, and therefore those who are Maktoumeen cannot benefit. In the Committee's 2011 recommendations to Syria, it welcomed '*Legislative Decree No. 49 of 7 April 2011 regulating the status of Syrian Kurds. The Committee is however concerned that this Decree might benefit only Kurds registered as —Foreigners (Ajanib) and not the stateless Kurds known as —Maktoumeen*' and recommended that Syria take '*immediate steps to guarantee that all children of Syrian-born Kurdish parents, including children of stateless Kurds known as Maktoumeen promptly acquire Syrian nationality and enjoy their rights without discrimination,*' which unfortunately is yet to take place.

In light of the lack of substantial effort of Syria to resolve the statelessness of Kurds – specifically children being born stateless - the Committee is urged to ask Syria:

- **How does Syria plan to facilitate access to nationality for the Ajanib Kurds by removing prohibitive obstacles and negative consequences, such as allowing the process to be conducted from embassies abroad and removing the immediate military conscription prospect of those who naturalize.**
- **Is Syria looking at opening up this naturalization procedure up to the Maktoum Kurds?**

Issues of concern related to displacement and birth registration and suggested questions for the state party's review

13. Before the conflict, Syria had developed a strong system of birth registration and was achieving nearly 100% birth registration.¹⁷ In Syria, a birth certificate can facilitate proof of legal identity, freedom of movement, access to services, and entry into school. Today, Syria continues to have a strong system for registering the births of children, even outside of the area of origin of the parents, apart from the challenges of births outside of culturally appropriate partnerships. Even in more complicated situations, such as when the parents have no marriage certificate or other documentation, or when they failed to meet deadlines for registration, there are straightforward procedures in place to ensure birth registration.¹⁸

14. However, this is only the situation within Syrian government controlled areas. There are 6.5 million Syrian internally displaced persons (IDPs) and many of them live in areas controlled by non-State actors. Data collected inside these areas has revealed significant disparities between different Governorates outside regime areas in this respect.¹⁹ One of the largest

¹⁶ The number is unlikely to have gone up much since as those who didn't register had not because of displacement, and therefore very few are likely to have returned since

¹⁷ UN Stats, Civil Registration and Vital Statistics System in Syria, 2008, access at <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50189.aspx>

¹⁸ For more details on the birth registration procedures in Syria see <http://www.syrianationality.org/index.php?id=20>

¹⁹ captured in the Humanitarian Situation Overview of Syria

underreported issues is the loss or lack of birth certificates of IDPs born outside State controlled areas. The scale of lost documentation and the impact on those who lack legal identity are profound. Syrians in 91% of sub-districts inside non-government controlled areas report that loss or lack of identity documents is one of their top three protection needs.²⁰ IDPs are at significant risk of lost identity documents due to the conflict, and they also are less likely to register the birth of their children. This is due to many reasons, including the difficulties they may face in accessing registries, the fact that registries have been destroyed or that there is simply no registration governance system in the area in which they live.²¹

15. Lack of birth registration often means that a child will not be able to identify where they were born and who their parents are. If unable to prove their claim to their Syrian citizenship in a manner recognised by Syrian law – by proving their father is Syrian - tens of thousands of children born in Syria may be rendered stateless, denied their right to acquire a nationality and, subsequently, the protection of their state. The UN High Commission for Refugees (UNHCR) describes this situation as a “ticking time-bomb.”²² This sentiment is reflected by the concerns of the population where over ninety percent of Syrians considered the lack of civil documentation as an issue of concern.²³ Additionally, in many neighbouring countries a child cannot be registered without legal proof of the father’s identity, which may mean that in female-headed households the children may be at risk of not being able to register their new born children.²⁴
16. The inability of so many children who are living in non-government controlled areas, have been displaced there, or have been displaced outside, to register their births is a substantial challenge to their right to registration and right to nationality. This is due to problematic (or non-existent) procedures of many of the areas and countries surrounding Syria, and the gender discriminatory nature of the nationality law. Not only does this violate Syria’s obligations under CRC and many other human rights instruments, but also will have negative consequences on its achievements on the Sustainable Development Goals, particularly Article 16.9 which requires countries, by 2030, to provide legal identity for all including free birth registrations.²⁵

In light of the gaps and challenges in birth registration, the Committee is urged to ask Syria:

- **What steps are Syria taking to ensure that children born in these areas are not penalised when they return to government-controlled areas?**
- **What steps is Syria taking to ensure that children born in non-government controlled areas will be recognised as Syrian nationals?**

²⁰ According to the Identify Me report; IRC, Identify Me, 2016, access at <https://www.rescue-uk.org/sites/default/files/document/1207/identify-me-july-2016-irc.pdf>

²¹ For more information see IRC, Identify Me, 2016, access at <https://www.rescue-uk.org/sites/default/files/document/1207/identify-me-july-2016-irc.pdf>

²² Fleming, F. (2015, 16 February). The Situation in Syria is only going to get worse...and here’s why. The Guardian. Access at: <http://www.theguardian.com/global-development-professionals-network/2015/feb/16/situation-syria-isgoing-to-get-worse-melissa-fleming-united-nations>

²³ 2015 Whole of Syria Protection Assessment

²⁴ For more information on this see NRC, ISI, Understanding Statelessness in the Syrian Refugee Context, 2016, access at <http://www.syrianationality.org/pdf/report.pdf>

²⁵ For more information on the Sustainable Development Goals please see <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

Recommendations

Based on the points identified above, the following recommendations are made which we hope the Committee will consider in urging the Government of Syria to ensure the right of every child to acquire a nationality:

- I. Prioritise as a matter of urgency, the amendment of the Nationality Act to bring it in line with international standards by ensuring that Syrian women are enabled to transfer nationality to their children without restriction, on an equal basis to men, and that no child is denied the right to a nationality due to gender discrimination in the nationality law.**
- II. Take all necessary steps to respect, protect and fulfil every child's right to acquire a nationality under Article 7 CRC. In particular, implement comprehensive safeguards to protect all children born in Syria from statelessness.**
- III. Take all necessary steps to facilitate the realisation of the right to nationality and all related rights, for all stateless persons in Syria – in particular, children. Ensure that no child of stateless parents in Syria is also made stateless through the denial of their right to acquire a nationality.**
- IV. Ensure that all children, regardless of their parent's ethnicity, religion, marital status or any other factor, are guaranteed their enjoyment of the right to immediate birth registration and the provision of a birth certificate with the name of their father and mother.**
- V. Urgently facilitate access to nationality for all Ajanib Kurds by removing prohibitive obstacles and negative consequences, and allowing the nationality process to be conducted from embassies abroad.**
- VI. Open the naturalisation procedure to the Maktoum Kurds and their children, to ensure their right to a nationality.**
- VII. Ensure that all children born in non-government controlled areas are recognised as Syrian citizens, thereby protecting their right to acquire a nationality.**