

# The Stateless Syrians

*Report of the Middle East and North Africa  
Nationality and Statelessness Research Project*

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More information about the Statelessness Programme can be found at <http://www.tilburguniversity.edu/statelessness>

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## Introduction

On the occasion of the 50th anniversary of the census that created one of the world's largest and most protracted stateless populations - the Syrian stateless Kurds - this paper considers how the country fares on the question of statelessness today. Syria stands at a critical juncture now that the political and social dynamics of the country, which had been at a stalemate for more than half a century, are changing rapidly. It is therefore a particularly opportune time to assess the potential for addressing statelessness in the country.



[Image from the 2003 Damascus demonstration on International Children's Rights Day, photo taken by then student journalist Mes'ud Hamid]

This report will first offer an analysis of Syria's nationality legislation from the perspective of the prevention and reduction of statelessness. It will then assess the causes underlying the rendering stateless of such a large community, looking additionally at severe protection consequences this had for affected persons and families. As will be seen, both of these issues are embedded in a broader atmosphere of discrimination towards the ethnic Kurds in Syria. The report will then go on to explore how, after half a century of exclusion, possible solutions may now be in sight for the stateless Kurds. The report will look both at the impact of a decree that is allowing members of the community to naturalise but also at the many issues that remain unanswered by this

initiative, particularly the exclusion of a significant proportion of stateless Kurds from the decree and access to this procedure.

Obtaining information on this issue is particularly difficult due to the limited availability of empirical field data, a lack of reliable statistics from all stakeholders, inconsistent use of terminology and discrepancies between recorded policy and its practical implementation by officials. This report relies heavily, therefore, on qualitative research conducted by a consultant in the field and the evidence gathered through first-hand interviews.<sup>1</sup> The first part of this research draws together a legal analysis of Syrian legislation alongside observations made by the consultant during two years of field research conducted in Syria.<sup>2</sup> The second half by a field mission that was conducted in the Kurdistan Region (KR) of Northern Iraq during the summer of 2012.

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<sup>1</sup> This field research was carried out by Thomas McGee, PhD researcher at the University of Exeter, UK, MA in Kurdish Studies.

<sup>2</sup> Conducted between September 2009 to August 2011, also supplemented by follow-up interviews with Kurdish refugees in Europe, as well as with activists and community leaders in Syria.

## An analysis of Syrian nationality legislation

This chapter will provide an in-depth analysis of Syrian nationality legislation, against the backdrop of Syria’s international obligations in the field of nationality.<sup>3</sup> The aim is to identify provisions that could lead to new cases of statelessness 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.

### *International Obligations*

Syria is not a State party to either the Convention Relating to the Status of Stateless Persons (1954) or the Convention on the Reduction of Statelessness (1961). Currently it looks unlikely to accede to either in the near future.<sup>4</sup> However, as the table shows, there are a number of international instruments that Syria has signed up to that are relevant to the issue of statelessness:

<b>Conventions ratified by Syria</b>	<b>Relevant Article</b>
International Convention on Civil and Political rights (1966)	<b>Article 24.3</b> ‘Every child has the right to acquire a nationality.’
International Convention on the Elimination of all forms of Racial Discrimination (1965)	<b>Article 5</b> ‘[...]Guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (iii) The right to nationality’
Convention on the Rights of the Child (1989)	<b>Article 7</b> The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
Convention on the Elimination of all Forms of Discrimination against Women (1979)	<b>Article 9.2.</b> ‘States Parties shall grant women equal rights with men with respect to the nationality of their children.’
Arab Charter on Human Rights (2004)	<b>Article 29. 1.</b> ‘Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.’
Convention on the Rights of the Child in Islam (2004)	<b>Article 7</b> ‘A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined [..]’

<sup>3</sup> Analysis of the legislation was completed towards the end of 2012.

<sup>4</sup> Syria has yet to even ratify the 1951 Convention relating to the Status of Refugees. Nor did Syria make any pledges with regards to action on statelessness during the 2011 UNHCR Inter-Ministerial meeting at which more than thirty states pledged to accede to one or both of the statelessness instruments. A full compilation of states’ pledges at this meeting is available at: <http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf>.

All of the conventions highlighted in the table stipulate the right to a nationality or the equal enjoyment of the right to nationality. Syria has, however, put in a reservation to one of the most relevant instruments: the Convention on the Elimination of all Forms of Discrimination Against Women. Here, like the majority of countries in the region, Syria has made a reservation to Article 9 that provides for equal nationality rights for men and women, including equal opportunity to transfer nationality to children.

Nevertheless, discrimination between men and women in the field of nationality is also in contravention of some of Syria's other international commitments, for instance those under the International Covenant on Civil and Political Rights (which has a stand-alone clause prescribing equality before the law in its article 26). Moreover, where discrimination in nationality law is leaving individuals unable to acquire any nationality, this can be seen as a violation of other obligations, most notably the CRC which specifies that every child has the right to acquire a nationality, as does the Convention on the Rights of the Child in Islam.

### *Development of Syrian Legislation*<sup>5</sup>

Syria fell under French Mandate following the fall of the Ottoman Empire. The French Mandate legislation on nationality (decision 16/s) that was the applicable framework during the colonial period was repealed when Syria gained independence from France as an established republic in 1944. This was followed by a brief period, beginning in 1958, of the United Arab Republic (UAR), a political union between Syria and Egypt. Separate Egyptian and Syrian nationality was abolished and their respective citizens became citizens of the UAR. However this union did not last long and collapsed in 1961. The Syrian Nationality Act as we know it today was established on November 20th 1969 under decree number 276, following the coming to power of the Baath regime. The enacting regulations were issued in 1976 and since then there have been no amendments to this legislation.

Article 43 of the Syrian constitution, established in 1973 under Baath party ruling, recognizes that Syrian citizenship is to be regulated by legislation. The constitution does not, therefore, set the conditions for acquiring or losing nationality - this is done through a separate decree. As such, amendments to the nationality act can be adopted through a regular legislative procedure and without the need for constitutional amendment. It also implies that is within the power of the authorities to pass additional decrees relating to the enjoyment of nationality.

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<sup>5</sup> Translations of articles are not always official and have been done by the researchers.

### ***Acquisition of nationality 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 whereby nationality can be acquired in the absence of a paternal link, such as for foundlings who are found on the territory<sup>6</sup> and for children who are born to an unknown father and a Syrian national mother.<sup>7</sup>

Syrian law includes the safeguard widely prescribed by international law to ensure that statelessness is prevented at birth. Article 3(d) states that nationality will be given to ‘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’. This would eliminate the possibility of new cases of statelessness arising among children born in the country. However this provision highlights the discrepancy between legislation and implementation in Syria, as in reality this 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.

### ***Gender Discrimination***

The Syrian constitution of 1973 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 opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life.” Despite this however, gender inequality remains a severe problem on many levels of legislation - Syria ranked 124 out of 135 countries in the World Economic Forum’s Gender Gap Index 2011,<sup>8</sup> highlighting how far the state is lagging behind in its development of gender equality.

Although accurate statistics are not available, the Syrian Women’s League estimated that in 2008 there were approximately 100,000 Syrian women married to non-nationals, mostly from other Arab states.<sup>9</sup> Most of these foreign husbands are Egyptian, Iraqi and Palestinian. A huge problem that arises in the context of these mixed-nationality marriages, between Syrian women and non-

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<sup>6</sup> Article 3C of the Syrian Nationality Law.

<sup>7</sup> Article 3B of the Syrian Nationality Law.

<sup>8</sup> The Global Gender Gap Report, 2011, World Economic Forum, access at [http://www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2011.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2011.pdf)

<sup>9</sup> Institute for War and Peace Reporting ‘*Campaign to change unfair citizenship law continues,*’ Access at <http://iwpr.net/report-news/campaign-change-unfair-citizenship-law-continues>, 15/12/12



national men, is gender discrimination in nationality law. Article 3 (a) of the 1969 Syrian nationality law states that ‘anyone born inside or outside the country to a Syrian father’ shall be considered Syrian, thereby explicitly discriminating against women in their ability to transfer 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.<sup>10</sup> Additionally, Chapter 4 Article 8 of the legislation goes on to regulate how a man can transfer nationality to his non-Syrian wife, but does not regulate similar facilitated acquisition of nationality for male spouses of female citizens.

*Tala, 16.*

Dina, a Syrian national, got married when she was 18 to a man from Nigeria when at the time she lived in France. After marriage they moved back to Syria where they had a daughter, Tala. After Tala was born Dana got divorced and her husband moved back to Africa - she has not been in touch with him since. Tala is now 16 years old and has not been able to obtain a Nigerian nationality. She has been told that she must travel to her father’s country of origin to obtain this, but her mother does not want her to go, she is not in contact with her father, and no-one has explained to her how she could travel anyway with no ID documents. Her mother is also worried that if she leaves the country she may not be allowed to re-enter Syria if she still has not obtained any documents. Not being able to obtain the nationality from her father, both Tala and her mother are unsure what to do. Tala has therefore been left stateless with serious impediments to her access to the most fundamental of rights.

Where a child of a Syrian mother cannot access the nationality of his or her non-national father, this puts the child at risk of becoming stateless. There are many recorded cases where this has become problematic. Women married to men from Africa with no consular presence in Syria for example have found difficulties in obtaining the nationality of their father. There are also many cases of the father leaving without taking the necessary steps to register the child with the appropriate authorities. As the safeguard against statelessness for children born on Syrian soil is not applied in practice - which could have provided a solution despite the discrimination - this leaves these children at risk of not obtaining any nationality.

The situation of the Stateless Kurds in Syria also highlights the problematic nature of this gender discrimination. Many children of stateless fathers and national mothers cannot regulate their status through their mothers. Khalil Ismael, an Ajanibi now residing in Northern Iraq, illustrates this through his family story:

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<sup>10</sup> Article 3B of the Syrian Nationality Law.

“My sister who is *ajnabiyya*<sup>11</sup> married a man with Syrian nationality. Their children were able to claim Syrian nationality, but even such cases may result in delays and frustrations registering the children. Probably, a bribe will have to be paid, but children from such a marriage can be registered in the end. My uncle served in the military and has in his possession a military book. Nonetheless he lost his nationality. As a male *ajnabi* when my uncle married a woman with Syrian nationality, their children could not be registered at all, as their mother did not enjoy the right to pass on her nationality to her children. Consequently the children became *maktoumeen*.<sup>12</sup>”

Women’s rights movements have been one of the few segments of civil society in Syria that was allowed limited space to work under the rule of the President Bashar AlAssad and previously, under his father Hafez. Reform of the nationality law has been one their main objectives, with regular initiatives and attempts to draw public attention and spark debate in parliament. The Syrian Women’s League for example, presented a memorandum to the People’s Assembly on 30 March 2004 which sought to remove this discrimination. This was included in the agenda of Assembly sessions and submitted to the Government.<sup>13</sup> However in October 2008, the Syrian parliament voted against giving women the right to pass nationality to their children. In 2008, the authorities argued that reform would be contrary to Sharia law which they said stated that children’s identity derives from the father’s name and nationality. However many of the clerics have disputed these arguments, including Mohammed Habbash, an Islamic cleric who is also a prominent member of the Syrian parliament, who requested an amendment of the citizenship law – leading many to believe that deeper political considerations are behind the discrimination.<sup>14</sup> In 2009, the Syrian Women’s League joined forces with the Islamic Studies Center to offer a new proposal: allowing children of non-national fathers the right to obtain nationality after 10 years of residency. Again, this initiative failed. The most recent initiative took place in May 2010, where a proposal was presented to a parliamentary session asking for gender equality in this legislation.<sup>15</sup> However there has been no indication of how these talks developed, no follow-up since and there will unlikely be in the current unstable environment.

There are a variety of reasons behind why these flaws in law and practice still exist. Syria has historically been a country of refuge for groups fleeing from neighboring countries, particularly

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<sup>11</sup> The female version of the word *Ajnabi*. The origins of this word will be explained in the following chapter.

<sup>12</sup> Maktoumeen are those who are not registered in Syria and a further explanation of their status will be given in the second section

<sup>13</sup> Euromed Gender Equality Programme, *National Situation Analysis Report: Women’s Human Rights and Gender Equality: Syria 2009-2012* access at [http://www.enpi-info.eu/files/publications/Situation%20Analysis\\_Report\\_Syria.pdf](http://www.enpi-info.eu/files/publications/Situation%20Analysis_Report_Syria.pdf)

<sup>14</sup> Institute for War and Peace Reporting, *Campaign to change unfair citizenship law continues*,<sup>3</sup> Access at <http://iwpr.net/report-news/campaign-change-unfair-citizenship-law-continues>, 15/12/12

<sup>15</sup> M. Isou. *Women in Syrian Law*, 2010 Article in Thara E-Magazine No 233, 15/05/2010 access at <http://www.thara-sy.com/TharaEnglish/modules/news/article.php?storyid=248>

Palestinians and Iraqis. Syria has always denied Palestinians the right to acquire Syrian nationality to, they claim, to ensure the continuation of their ability to benefit from the right of return to their original homeland.<sup>16</sup> So one fear is that a less discriminatory policy would facilitate these protracted migrant communities access to nationality. There is also the fear that a huge number of Iraqis and men from the Gulf who marry Syrian females would become part of the Syrian citizenry if the discriminatory policies were adjusted.

### ***Naturalization***

Naturalization requirements in Syria are not particularly strict when looked at comparatively to other states in the region. The main requirements include: 5 years of residency, absence of a criminal record, knowledge of Arabic, no contagious diseases and a profession or sufficient means of income. All naturalization applications however, following the trend of other countries in the region, are left to the discretion of the Minister of Interior. Additionally, there are no facilitated procedures for naturalization for those who are stateless. Moreover, the requirement of five years of residence is problematic, given that stateless *maktoumeen* have not been able to obtain legal residence, and therefore cannot qualify for naturalization. There are no reports or statistics as to whether there have been any successful naturalization applications from this group.

Additionally the Syrian nationality law clearly distinguishes people into three categories: Syrians; Arabs, and other foreigners. There are significant differences in access to nationality between individuals who are of Arab origin and non-Arabs. It is interesting to note, for example, that naturalization requirements are influenced by the importance attached to the protection of Arab unity. Chapter 6 of the nationality code is dedicated to ‘special provisions for other Arab nationals,’ where facilitated naturalization 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 (Article 6.1); performed excellent services to the State or the Arab nation (Article 6.2); and/or was of Arab origin and was able to provide a good reason for naturalization (Article 6.3). This is in aid of offering Syrian citizenship to a person who originally, possibly generations ago, had an affiliation with an Arab country, whilst excluding the non-Arab sections of the population.<sup>17</sup> Basing a state’s formation on an ideology of ethnic exclusivity is especially troubling when it comes to ensuring access to nationality for other ethnicities who may have as much or even more of a claim to Syrian nationality. This ideology is used as one of the legitimizations of the Kurdish statelessness

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<sup>16</sup> In respect of the Casablanca protocol of 1965, League of Arab States, *Protocol for the Treatment of Palestinians in Arab States* (“Casablanca Protocol”), 11 September 1965, available at: <http://www.refworld.org/docid/460a2b252.html>

<sup>17</sup> Y. Davis *Citizenship legislation in the Syrian Arab Republic*, Arab Studies Quarterly, 1996, access at <http://www.thefreelibrary.com/Citizenship+legislation+in+the+Syrian+Arab+Republic.-a018413376>.

problem. There is a fine line between preferential treatment in access to nationality for those who are perceived to be affiliated with the state – either currently or historically – and outright discrimination on ethnic grounds to the exclusion of individuals or groups who clearly also enjoy a close and enduring connection with the state. In particular, Syria must be mindful of its obligations under the International Convention on the Elimination of all forms of Racial Discrimination (1965) which prohibits this discrimination.

### ***Loss and renunciation of nationality***

There are provisions in the Syrian nationality law that allows for the withdrawal of nationality from an individual in various circumstances. An individual can lose their nationality for the following reasons:

- having obtained the nationality by fraud (which would also result in a fine and prison sentence),
- undergoing military service of another country without permission and working for a foreign state,
- a naturalized 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,
- 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. However, the other provisions are more worrying. Such clauses, which are formulated in such a way as to leave much room for interpretation by the state, are of concern because there is scope for them to be misused for political reasons. Although it is not clear if this provision for the final criteria has ever been used, it does not take into account whether a person would be rendered stateless by its implementation and therefore creates a risk that someone will be left without any nationality. There have also been many debates more recently in Syrian media, specifically on Dunia TV (a Syrian pro-regime channel), where the idea of depriving Syrian opposition figures of their nationality was openly discussed as a viable option of getting rid of those who were seen as not loyal. This demonstrates how fragile retaining citizenship can be in Syria and how its withdrawal could be used as a political tool.

However, there are also positive components of this legislation. When an individual loses their nationality, under any of the aforementioned provisions, it is only the specific person who will lose it this does not affect the family. Moreover, there is no article in the Syrian nationality code that allows for renunciation of the nationality, meaning that a Syrian national should not be able to render him or herself stateless through voluntary renunciation.

## **The stateless Kurds of Syria - a solution in sight, 50 years on?<sup>18</sup>**

The flaws in legislation identified above can cause new cases of statelessness and pose an obstacle to addressing existing cases. Importantly however, there is also a significant stateless community in Syria who were deliberately targeted and rendered stateless half a century ago, and whose plight remains problematic; the stateless Syrian Kurds. This chapter aims to explain how and why this community became stateless, as well as highlighting the major protection concerns that face the stateless in Syria. It will then focus on the implications of a recent naturalization decree of 2011 which could represent a fundamental step towards addressing the problem. This decree aims to ‘grant’ nationality to a large percentage of this stateless population. Note that the information presented in this chapter is largely based on the findings from field research and interviews that were conducted in Syria between 2009-2011 and follow-up research that was conducted in the Kurdistan Region (KR) of Northern Iraq during the summer of 2012.

### ***Kurds as Syrians***

Syria is a largely heterogeneous society with many ethnicities and religious sects. The Kurds are the largest ethnic minority in Syria, who today make up an estimated nine percent of the total population, approximately 2 million people.<sup>19</sup> The majority of them reside in the North of Syria near the border with Turkey, whilst there are smaller communities in several cities, particularly Aleppo and Damascus and a large community of ethnic Kurds has been present in what is now the Syrian state for centuries.

The Kurds were seen to be treated equally under the French mandate rule of Syria, and were often recruited by the French to influential positions and were present in many areas of political life.<sup>20</sup> There were no substantial indications of tensions between the Kurds and the non-Kurds reported during this time. However, after Syria was recognized as a Republic, independent from France (in 1944), there began a gradual move away from the relative harmony that had previously been present between the different ethnic communities (where some reports suggest that minority groups were even favoured under the French.) This was largely due to a new pan-Arab ideology that was sweeping across the whole region, as well as the lasting anger at the perceived preferential treatment of minorities under the previous colonial power. At the same time, the

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<sup>18</sup> Names without a second name have been changed in respect to the request of the interviewees. All potentially identifying details have also been left unspecified on request of the interviewees..

<sup>19</sup> Background Note: Syria U.S. Department of State, 2012 access at <http://www.state.gov/r/pa/ei/bgn/3580.htm>. These are an estimate as official statistics are mostly unavailable in Syria and otherwise very difficult to obtain.

<sup>20</sup> Tachjian, Vahé (2004) (in French). *La France en Cilicie et en Haute-Mésopotamie: aux confins de la Turquie, de la Syrie et de l'Irak, 1919-1933*. Paris: Editions Karthala. p. 354.

initial post-independence period, before the takeover of the Baath regime, was one marked by vast political instability in Syria. This is illustrated, for instance, by the recurrent political coups that took place and the fact that in 1958, the two states of Syria and Egypt united to form the United Arab Republic (UAR), a union that was unsuccessful and short-lived - failing two years later in 1961.

Syria declared itself an *Arab Republic* in the 1973 constitution that was subsequently adopted, a constitution that is full of references to Syria being an *Arab* nation. This constitution, (amended in February 2012)<sup>21</sup> confirms the ethnic foundations on which the country was to be established. This first assertion of Syria as an Arab state marks the starting-point of tensions between the Syrian state and the Kurdish community. The Kurds were suddenly regarded as an obstacle in the Arabisation of the region. Syria's character is stated to be Arab, Democratic and a Republic, in line with pan-Arab ideology. It goes on to present the country as a region of the wider Arab world and there are many other indications of the 'Arabness' of the state. For instance, Article 143 states that "the Law secures the organization of the Syrian Arab nationality and guarantees special facilities for the expatriate Syrians and their children and for the citizens of the Arab countries." Since then the Kurdish community has been plagued by discrimination and persecution from both State policy and practice. For decades, they were not allowed to use their language officially, celebrate their festivities, wear their traditional clothes and there was often a refusal to register children with Kurdish names. Policies by the Syrian government were clearly aimed at suppressing the ethnic identity of this community.<sup>22</sup>

### ***The 1962 Census***

Alongside direct discrimination in many areas of their lives, a significant proportion of Syria's Kurds have suffered for decades under a tailored policy implemented in the 1960s that formalized their marginalization and rendered them stateless. In 1962, the Syrian government ordered that a census be carried out solely in the al-Hasakah province, a region inhabited predominantly by Kurds. This decision was taken during the transitional period between the fall of the UAR and the coming into power of the Baath regime. The decision, Decree No. 93, is believed to have been adopted by an unstable and dysfunctional government that resigned very soon thereafter, yet the impact of the census was lasting.<sup>23</sup> The reason given by the authorities of the necessity of this

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<sup>21</sup>It is unclear whether the recent amendments to the Syrian constitution, adopted during a period of such civil unrest are seen as legitimate or have been implemented. Regardless, even under the amended constitution, notion of Syria as an Arab State is still prevalent.

<sup>22</sup>Human Rights Watch, *Syria: The Silenced Kurds*, 1 October 1996, E804, available at: <http://www.unhcr.org/refworld/docid/3ae6a8260.html>

<sup>23</sup>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](http://www.kurdwatch.org/pdf/kurdwatch_staatenlose_en.pdf)

census was that groups of foreigners, mainly Kurds from Turkey, were ‘infiltrating’ the northern areas of al-Hasakah region and the census was needed to identify them. 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.’<sup>24</sup> However the way in which the decree was implemented indicates that identifying infiltrators was not the only motivation behind the census. It should be understood in the context of other Arabization measures unfolding at the time.<sup>25</sup> More importantly, there are widespread reports that the census was implemented in an ad hoc and irregular fashion. Among the problems identified were:

- The census took place during a single day, which meant that if an individual was not available that day, they were not included in the registry. Syrian lawyers stated that ‘the committees of the census travelled all over the governorate and surveyed every person they found,’<sup>26</sup> which suggests that there was no thorough and systematic procedure to ensure the identification of all individuals.
- To be registered as a Syrian citizen in the census, each individual needed to provide a stringent list of documents on the day, including proof of residence in Syria in 1945. Article 19 of the census stipulates that ‘Any citizen of the Syrian Arab Republic recorded in the register of births, marriages and deaths in al-Hasakah province must procure an extract of his record and the records of his family,’ with Article 10 going on to state that “Before entering a resident in the register of births, marriages and deaths, the registration committees must avail of the means and methods to verify and confirm the accuracy of the information entered on the census forms by the person concerned {...}. The results of this inspection are to be submitted to the central committee so that it can confirm or reject the entry”. These stringent requirements may have put in place increased obstacles to some people in registering.
- Often reports have stated that decisions to register were made arbitrarily by the local official responsible.<sup>27</sup> This led to situations in which one individual was

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<sup>24</sup> Human Rights Watch, *Syria: The Silenced Kurds*, 1 October 1996, E804, available at: <http://www.unhcr.org/refworld/docid/3ae6a8260.html>

<sup>25</sup> According to Barut 2009 which refers to an article in the al-Ayyam newspaper, November 6th 1962, Said as-Sayyid, who masterminded the decree, was a ‘staunch Arab nationalist’ who wanted the ‘the unity of all Arabs.’

<sup>26</sup> From a defence statement submitted by the lawyers on behalf of eight Kurdish political prisoners to the Supreme State Security Court in Damascus in 1994

<sup>27</sup> Khalil Ismael, an *ajnabi* now residing in Northern Iraq talks about how his family were left out of registration. “My grandfather was on bad terms with the local landlord (*agha*) in 1962. The census committee came to visit the *agha* and owing to their ongoing dispute, the latter did not pass on the name of my grandfather for registration. As a result of my grandfather subsequently becoming stateless, he lost 150 donums of land.”



able to remain a citizen while their sibling or child was stripped of their nationality.<sup>28</sup>

- It was possible to appeal a decision, but only a three month timeframe was given to do this.

Moreover, all of the above must be understood in the context that a lot of residents in this area at the time were illiterate and, more importantly, had very little engagement with the authorities, so did not know about the census or how to proceed to ensure that they were registered as citizens – nor how to lodge an appeal.<sup>29</sup> The census, with all of its flaws, would go on to divide people into three categories:

- i) those who successfully satisfied the authorities of their residence in Syria prior to 1945 and had their Syrian citizenship confirmed; ‘Syrian National.’
- ii) those who attempted to demonstrate such residence but failed to convince the authorities and were instead recognized as ‘foreigners’; ‘Ajanib’.
- iii) those who failed and/or refused to participate in the census, rendering them at the same time illegal residents and invisible to the authorities. ‘Maktoumeen’.

As a consequence of this census, some 120,000 Kurds lost their Syrian citizenship - approximately 20 percent of the whole Kurdish community. As the vast majority of these individuals held no other nationality, they were rendered stateless by this one-day census. The size of the stateless Kurdish population has since grown significantly as the statuses of *ajnabi* and *maktoum* are hereditary.<sup>30</sup> Moreover, some of the flaws in Syrian nationality legislation discussed in the previous chapter, particularly the inability of Syrian women to pass their nationality to their children, have also contributed to the increase in the number of stateless individuals. There are no official statistics of how many each group consists of due to the controversial nature of this topic in Syria. The most recent estimates, before the 2011 decree, suggested that the stateless Kurdish population comprised approximately 300,000 people. The civil registry in the province undertook another census to count how many *ajanib* there are in 2008. Although statistics were never made officially available, it has been shown that there were 154,000 people in 2008. According to KurdWatch if the rate in which this number increased is applied to that of the *maktoumeen*, we would have 160,000 *maktoumeen*, which brings the total number of stateless persons to this

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<sup>28</sup> Another example of this was Mohammad Ali Al-DHamma. His father became *ajnabi*, as did one of the father’s brothers. However a third brother retained his Syrian citizenship.

<sup>29</sup> KurdWatch, ‘Stateless Kurds in Syria: Illegal invaders or victims of a nationalistic policy?’ March 2010. Available at [http://www.kurdwatch.org/pdf/kurdwatch\\_staatenlose\\_en.pdf](http://www.kurdwatch.org/pdf/kurdwatch_staatenlose_en.pdf)

<sup>30</sup> Although theoretically this should not be the case as Syrian nationality laws have provisions that would not allow this to happen, where it is stated that ‘anyone born in the state [Syria] as a child of parents who are unknown or of unknown citizenship or who are stateless’ can get the Syrian citizenship. According to this article, children born in Syria to *ajanib* and *maktoumeen* should have been awarded Syrian citizenship.

approximate figure of 300,000.<sup>31</sup> This means that the Stateless Syrian Kurds make up one of the biggest stateless communities, and its fifty-year history makes it one of the most protracted situations of statelessness, worldwide.

### *A solution in sight?*

The Kurdish community, including those who reside abroad, have long been one of the most vocal stateless communities and have regularly mobilised to protest against their situation. For instance, on the International Day of Human Rights in 2002, The Yekiti (a Kurdish Movement Party) demonstrated in front of parliament and in 2003 a demonstration was carried out by stateless Kurdish children on International Children's Rights day outside the UNICEF building in Damascus. However under an oppressive totalitarian regime this was both highly dangerous whilst also the successes of their protests and campaigns were limited. Instead, there had been relative stalemate in the development of solutions for this stateless community. There were reports of discussion in the Syrian parliament at the end of 2002 with regards to addressing the issue. Several media outlets highlighted this debate as a potential step forward in resolving the situation. The New York Times for example ran an article entitled 'After decades as nonpersons, Syrian Kurds may soon be recognized,'<sup>32</sup> whilst Reuters ran one saying 'Syria's stateless Kurds hope for new rights.'<sup>33</sup> However, nothing tangible ever came from these discussions.

Even before this, the Syrian government had claimed in a Human Rights Watch report that "[a]s a result of the investigation of these protests (from Stateless Kurds) and successive extensions of the deadline for their submission, the number of those registered as foreigners decreased from 84,000 persons in 1966 to 40,587 in 1986."<sup>34</sup> But there were no other reports on if, how and when this happened. On the other hand, Akram Murad<sup>35</sup> speaks of a situation where the Syrian regime, in May 2010, stripped 287 Kurds from al-Hassaka Province, who were at the time residing outside Syria, of their Syrian citizenship. They were prohibited from receiving any identification papers or other documents due to accusations of 'crimes against the state,'<sup>36</sup> putting them at risk of becoming stateless if they did not obtain any other nationality. Khalid Ali and Masoud Khalaf

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<sup>31</sup> 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](http://www.kurdwatch.org/pdf/kurdwatch_staatenlose_en.pdf).

<sup>32</sup> K. Zoepf *After Decades as Nonpersons, Syrian Kurds May Soon Be Recognized*, New York Times, 2005, access at <http://www.nytimes.com/2005/04/28/international/middleeast/28syria.html>.

<sup>33</sup> L. Nouehied *Syria's stateless Kurds hope for new rights*, Kurdish Media, 2005, available at <http://www.kurdmedia.com/article.aspx?id=6894>.

<sup>34</sup> Human Rights Watch, *Syria: The Silenced Kurds*, 1 October 1996, E804, available at: <http://www.unhcr.org/refworld/docid/3ae6a8260.html>.

<sup>35</sup> A stateless Kurd currently residing in Northern Iraq, during an interview with our researcher.

<sup>36</sup> A complete list of the names has been compiled by Kurdwatch and can be consulted at: [http://www.kurdwatch.org/pdf/kurdwatch\\_liste\\_en.pdf](http://www.kurdwatch.org/pdf/kurdwatch_liste_en.pdf).

who reside in Northern Kurdistan and who were amongst those who were denationalized have confirmed that this measure had been effectuated.

### ***Decree no 49 of 2011***

In 2011, the government finally adopted a decree that could significantly change the discourse of this situation. In the beginning of the same year, Syria began to witness a large-scale popular uprising that spread across the country, with groups taking to the streets demanding fundamental freedoms. This was an expansion of the so-called ‘Arab Spring’ that was sweeping across the Middle Eastern region, having started in North Africa. The Assad regime, fearing that a significant proportion of the protestors would come from the Kurdish population due to the discrimination they had faced under the regime for decades, in an attempt at appeasement, began to make several concessions. A first order entitled the *ajanib* to the provision of social services<sup>37</sup>, while a second one stated that they should be treated like Syrian citizens in terms of employment.<sup>38</sup> Finally, in March 2011, there was the adoption of Decree 49. This Presidential Decree was passed stating that the authorities will grant "Syrian Arab nationality" to people registered as "foreigners" in the province of al-Hasaka.<sup>39</sup> The decree is surprisingly short and does not set out any criteria of how this will be regulated.

The ability to assess the implications of the 2011 decree is hampered by the fact that the country has since entered into a violent armed struggle. Nevertheless, we have attempted to gain an impression of how the decree is being implemented, through in-depth individual and key informant interviews, predominantly among people who fled to Northern Iraq. It appears – from consulting the stateless Kurds encountered in the KRG about their family members within Syria – that there has indeed been a real commitment on the part of the Syrian government to naturalize the *ajanib*. Most nationalized Kurds report that their ID card functions like that of any other citizen and some have been able to apply for and receive a passport. According to one individual based in Aleppo at the time of interview, ‘the empty words have finally been filled.’

Relatively early on after the decree was passed, the Deputy Minister of Interior, Hasan Jalali, was quoted as saying that already more than 37,000 Kurds who are registered in the Registry of Foreigners in the Governorate of Hassakeh had applied for Syrian citizenship, and that by June 2011 9,381 citizens had been granted citizenship. He added that “the authorities are facilitating

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<sup>37</sup> Decree 153/11, date 7/03/2011.

<sup>38</sup> Decree 9444/1, date 7/03/2011.

<sup>39</sup> This provision can be found in Article 1 of the decree.

the application process, and (stateless) Kurds who reside in other provinces can apply in their respective provinces.<sup>40</sup> The government has not publicly released any updated statistics since.

However, there have been several reported problems that have hindered the potential successes of this decree. Most worryingly is that the *maktoumeen*, who make up a large proportion of the stateless Kurds are not included in this decree and cannot benefit. There are however further complications to the application of this decree;

*Firstly*, the current volatile situation has created millions of refugees and internally displaced persons and has left many areas outside of the rule of law. This means that not everyone who could potentially benefit from the decree is able to. For example, some of those who applied for citizenship in April 2011 and subsequently fled to KRG believe that their papers may now be ready for collection, but they are unable to return to Syria to collect them, as they risk arrest at the border.

*Secondly*, it has been seen as necessary for people to apply collectively with their whole family otherwise individuals who were left out have found it difficult to apply afterwards:

“If the family book has been made without some members in it, after this happens, it is very difficult to add [adult] members. A lot of questions will be asked about why they did not apply with the rest of the family and why the family did not mention that there was missing family members.”<sup>41</sup>

*Thirdly*, many thousands of stateless Kurds live outside of the country or the province. Some have been abroad for decades and many more have fled recently due to the conflict. These Kurds cannot benefit from the decree as they cannot access the procedure which must be carried out in the offices in the region in which they are registered. One individual based in Belgium and another currently in the KRG (Kurdistan) said that their respective families had tried to acquire citizenship on their behalf but had been refused on the grounds that the applicant must be present in order to be considered. Khalil Ismail tells how both he and his sister cannot obtain nationality despite his family in Syria successfully gaining it: ‘We cannot legally return to Syria in order to benefit from the nationalization decree as we have no transport documents. If we were to return we would surely be questioned at length and possibly put in prison.’ He goes on to mention that

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<sup>40</sup>The Syria Report, *Al-Watan: 37,000 stateless Kurds Applied for citizenship*, 2011 available at: <http://www.syria-report.com/news/press-review/al-watan-37000-stateless-kurds-applied-citizenship>

<sup>41</sup>Interview with Ali – a formerly stateless (*ajnabi*) Kurd from the city of Qamishlo in al-Hassaka Province.

some people living outside have been able to obtain citizenship, however, but only due to their connections.

*A fourth*, greater challenge is that this naturalization decree was restricted to the category of “foreigners” (*ajanib*). It did not extend to the second category of stateless Kurds, the *maktoumeen*, who had been left out entirely from the original registries. However, this research has found that in some exceptional cases, when the individual concerned is familiar with the authorities, it had been possible for *maktoumeen* to become naturalized through their *ajnabi* fathers who became nationals. One example we found was Ibrahim Amr who testified that he had been able to obtain citizenship for his two *maktoumeen* children following his own naturalization (from *ajnabi*). He added that the procedure was simple for his daughter since she was 14 years old, which is the normal age to apply for a national ID card in Syria. The process was lengthier for his son who was 17 at the time, but was eventually successful.

*Finally*, one of the most controversial issues that have been reported relating to this decree is that of recruitment into military service for naturalized Kurds. Military service is an obligation for all men in Syria, with a few exemptions, such as for families with only one son. Some sources have reported that the current regulations governing conscription for recently naturalized Kurds are contained within an official governmental decree issued in December 2011.<sup>42</sup> The decree stipulates that there is an exemption for naturalized Kurds born before 1993 from being drafted to conduct national military service. However, many Syrian Kurdish sources say that there is no officially published and publically consultable source for these purported regulations. They insist, rather, that the status quo is informed by internal guidelines to the relevant security and/or military apparatuses. None of the many Syrian Kurds consulted (including political figures, journalists and lawyers) were able to indicate the official number and title under which this decree was issued. Numerous people said that they knew of the contents of the ‘law’ and their accounts were mostly concurrent:

- those born prior to 1993 are exempt altogether,
- those born in the year of 1993 would serve in the military, but were not immediately called into service,
- those born in 1994 or later would be immediately eligible for service once they turn 18 years of age according to the criteria applied to other Syrian citizens.

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<sup>42</sup> Damascus Bureau, *Naturalized Kurds Exempted Military Service*, 2012, available at: [www.damascusbureau.org/?p=3145](http://www.damascusbureau.org/?p=3145).

However whether these restrictions were actually being implemented is again unclear. Given that the decree to naturalize stateless Kurds was issued in April 2011, and the decision pertaining to the exemption of military service was not released until December of the same year, many naturalized individuals had fled to the KRG in the interim period under the expectation that they would be called for the military. Khalil Ismael stated during an interview that given the fear of being called up for military service: “More stateless Kurds have come to Kurdistan during the Revolution because of this reason.” Additionally, many of those interviewed who were called up for military service talked of the injustice of this situation. Ali, who obtained nationality in May 2011 and was born after 2013 talks about military conscription:

‘I have lived my whole life without nationality, not just me – many members of my family are in this situation. Taking citizenship now is meaningless if it means that I will be forced into the army and commanded to kill other citizens. The meaning of citizenship and citizen has been lost.... We are yet to know what it really means to belong to this country, really and officially ...’

Moreover, there have been stories of men born before 1993 who were taken into military service after acquiring citizenship due to the governments increasing need to expand its army for the armed struggle, although it has been impossible to verify these cases.

### ***Grant vs. recognition or reinstatement of nationality***

There has been much scepticism regarding the motives behind the naturalization decree. Although many of those interviewed stated that they see the regulation of citizenship as belonging to the post-Assad regime and not particularly legitimate in the current climate, and most said they applied for pragmatic benefits, most were suspicious of the decree’s objectives and approach. As one interviewee put it, ‘it is an attempt to silence the Kurds [in the protests] as they previously silenced us by taking the citizenship away.’

Khalil Ismail, former *ajnabi* who was able to naturalize, views the 2011 decree as a measure which is “better than nothing” but “still illegitimate.” He draws attention to the term used in the text of the decree: “manaha” (to grant) and argues that the decree ought rather to refer to the “i’adaa” (return) of nationality to the stateless Kurds of Syria, thereby giving value of their claim to such a Syrian nationality. Further, he argues that the historic “salab” (deprivation) must be acknowledged by Syrian authorities. He continues that nationality should not be given as a “gift”, concluding that when it is, it can always be taken back again.

Faisal Badr, Human Rights lawyer from the al-Hassaka region also stressed the importance in noting that this naturalization is not applied retrospectively: ‘the granting of citizenship to foreigners rather than the restoration of their citizenship,’ he suggests is important, as failure to recognize the illegality of depriving Kurds of citizenship will ‘cut the legal route to establishing claims on the state for compensation ’

In conclusion, it is clear that there have been government efforts to implement decree no 49. Many who were *ajanib* and some who were *maktoumeen* children of naturalized *ajanib* have been able to obtain nationality. Nevertheless, research has shown that, due to the problems stipulated above there are *ajanib* who have been left without the ability to obtain citizenship, as well as the majority of the *maktoumeen*.

## Testimonies of the long-term protection concerns of stateless Kurds

The legal bond of a nationality typically brings with it access to many rights and benefits. Although non-nationals theoretically should enjoy a range of rights, protected as *human rights*, they can face obstacles when it comes to exercising these in practice. Moreover, they are usually excluded from political rights. As such, stateless people commonly face a range of difficulties in their day to day lives which has been the case in Syria for stateless persons.

### *Palestinians*

Alongside the stateless Kurds and those who fall under the flaws in legislation and practice highlighted above, there is one other notable community who remain stateless in Syria. The Syrian State will not allow Palestinians access to Syrian nationality and they are left as a stateless population. The Palestinian population in Syria is approximately 400,000 individuals. Palestinian affairs are regulated in the Syrian Arab Republic under Law No. 260 of 10 July 1957, which states that. Law No 260 (article 1) states:

Palestinians residing in the territory of the Republic of Syria on the date of the promulgation of this Law shall be considered as Syrians by origin regarding all provisions in the Laws and Regulations in force concerning employment, work, business and military service without prejudice to their original nationality.

Their protection concerns often differ to the ones analyzed in this section – as they were often awarded more rights, especially in comparison with the stateless Palestinian populations of neighbouring countries. For example, Palestinians are equal to Syrian citizens in terms of their access to employment and Syria offers travel documents to Palestinians on much the same terms as these are issued to its own nationals: a 1963 law provides the legal foundation for the issuance of such documents, which can even be issued or extended via a Syrian embassy abroad and which allow the holder to re-enter Syria and take up residence there, even after spending many years abroad.

There are no specific procedures, laws or protection mechanisms in Syria tailored to the protection of the rights of stateless individuals. Clearly the current internal conflict in Syria presents a challenge in assessing what access to protection stateless individuals currently hold in terms of their access to rights comparatively with citizens. However, it is clear that stateless Kurds have long experienced difficulties in accessing many fundamental rights in Syria. The extent to which an individual faces problems often differs and is also dependent on factors such as personal connections, bribes or discriminatory attitudes of particular officials.



Below is a compilation of some of the most important protection concerns identified in on the treatment of Syria's stateless Kurds through the interviews conducted in the context of this study.

### ***Property rights***

Kurds who were stripped of their nationality in 1962 also forfeited all property rights and many had their land confiscated. Article 22 of the 1962 census stated that an individual, alongside the loss of his nationality will lose the assets acquired on the basis of that nationality, including for example property or land they have obtained. Despite this, there were reports that the State still required payment of property tax on the land that the denationalized Kurds no longer owned.<sup>43</sup> Akram Murad, a formerly stateless Kurd, highlighted this problem stating that one of the biggest issues facing their community was that "A lot of people have lost land and property due to the census and not having nationality." Syria then went on to introduce further restrictions in its legislation on property rights in 2008 (Decree 49), which has made ownership and inheritance of land more difficult.<sup>44</sup> A residence permit was needed to acquire Land and there were certain restrictions on foreigners acquiring property.<sup>45</sup>

One of the main criticisms of the 2011 Decree 49 was that, not being retroactive, it offered no compensation for the stripping of ownership or land rights as a consequence of the loss of nationality in 1962. Ibrahim Amr, another formerly stateless Kurd interviewed, believes that people should be collectively compensated as not only were they stripped of the property and land that they had owned, but also their descendants for 50 years had faced difficulties in acquiring any other land. This question is particularly pertinent now in the context of the naturalisation decree since that allows for *acquisition* of nationality from today, rather than *reinstatement* of nationality or indeed recognition that the person was always a national, thus there is the question of the effect in terms of a right to compensation for previous suffering.

### ***Access to education***

Stateless individuals, due to their lack of documentation, faced many obstacles in accessing State education in Syria.<sup>46</sup> It has been reported that the *maktoumeen* are not permitted to study beyond

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<sup>43</sup> Refugees International 'Buried Alive: Stateless Kurds in Syria' January 2006, available at: [http://www.yasa-online.org/reports/buried\\_alive.pdf](http://www.yasa-online.org/reports/buried_alive.pdf)

<sup>44</sup> Amnesty International Report, *Stateless Kurds seek better life and future*, May 2009, The National, 2 October 2009 [United Arab Emirates]. Danish Immigration Service, *Report on fact-finding mission to Syria and Lebanon. Conditions for Kurds and stateless Palestinians in Syria etc.*, 17-27 September 2001.

<sup>45</sup> Institute for War and Peace Reporting, *Campaign to change unfair citizenship law continues,*. Available at: <http://iwpr.net/report-news/campaign-change-unfair-citizenship-law-continues>, 15/12/12

<sup>46</sup> 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](http://thewip.net/contributors/2010/12/unjust_nationality_law_deprive.html).

the ninth grade - schools are prohibited from issuing certificates to them with the official school stamp.<sup>47</sup> The *maktoumeen*, are also prohibited from enrolling at universities.<sup>48</sup> What is clear from the interviews is that, in practice, the documents requested and obtained from educational authorities vary – issuance is often arbitrary and can depend on personal connections. The Mukhtar (local administrator), for example, can play a positive role by encouraging schools to take on a pupil, but he is under no duty to provide such assistance and the decision as to whether to do so may be arbitrary.

Khalili Ismael highlights the problem he faced with this issue:

“I first became aware of the consequences of my statelessness during my first days of primary school. My parents did not have the correct papers for me, and I remember being taken from office to office. This lack of papers caused me to be one year late for school enrolment. In the meantime, my parents had to change my date of birth (making me one year younger) so that I was the correct age to be beginning school.....

Once I got to the point of registration for grade 7, the school told me that my identity paper was no longer legible and that I would need to obtain a new one. So my father took me to the *mukhtar* once again. This time the *mukhtar* wrote a different village as my place of birth.”

This story is common among the stateless, where it has often been highlighted that the biggest problem connected with being stateless is the lack of access to education. The story of Mohammad Ali al-Dahmaa, who was *maktoum* until 2001 when he became *ajnabi*, highlights again the problem with access to education:

“In Syria, students sit exams in the ninth grade (*tersiya*). When students pass these exams, they have the right to progress to the next stage of their education. In 1999 I began grade 9 and then took the exams and passed. However, unlike other students, I was not provided with any certificate supporting this fact. Therefore I was unable to continue in the local school where I had all my friends....

In 2000, I decided to try and transfer to a different school. I took my papers from my previous school in order to register in the new school, but my paper was blank,

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<sup>47</sup> Circular Letter No. 4724/4623 from the Ministry of Education, Directorate of Education in al-Hasakah, dated September 17, 2008. Available at: [www.kurdwatch.org](http://www.kurdwatch.org).

<sup>48</sup> According to several of the interviews, Stateless *ajanib* were given permission to access universities in 1978.

so I could not register. By chance there came a new decision [resolution] from the Ministry of Education stating that some students from our area could apply to do the three remaining years of high school in just two years. This meant going to a new [vocational] school in another *muhafeza* (province).....

Of the students there were 24 boys. I was the only *maktum* but there were a few *ajanib*. I completed grade 10 in this school. In grade 11, I had the bad luck that my teacher was Baathist. He did not approve of my presence in the class and refused to teach me. So I studied mostly at home that year and had to pay for private tuition. Also I decided to enrol in a private institute for a computer course. I paid for this course and completed it but again received no certificate like the other participants. The course was a month long, so it was not terribly important but the fact that I was not awarded the certificate was hurtful.....

Later that year (2001), I and my family became *ajanib*. This was the first time I had heard that *maktumin* had been able to become *ajanib*. Of course my family had to pay a lot of money, but this gave me new hope. Nonetheless when I tried to enrol in a new school for 12<sup>th</sup> grade – the final year of school – I was told that I could not because I didn't have the school leaving certificate (from 9<sup>th</sup> grade).....

In order to try and register I visited my previous (vocational) school to take my papers. By chance the administrator handed me this paper. She must not have known what it was, because she later got into a lot of trouble for doing this. Each student normally has a school record in his or her name. However, this one contained my name and those of all the other stateless pupils in my school year. Our names were in a grid, but all the other columns were empty. Underneath the grid was the sentence, 'Note: Not permitted to issue these students any document pertaining to their success [in examinations].....

I did not at that time realize how important this paper was; otherwise I would have made a copy. I took this paper and went with a lawyer to the Directorate of Examinations. The Director there got very angry when the lawyer showed him my paper. He snatched it from us and shouted at us to leave. Later, I heard that the Directorate of Education called the school and made problems for the employee who had given me the paper.....

This meant that I missed the opportunity to register to take the baccalaureate exam in 2002. I prepared to register again in January 2003 [for exams in June of that year], but since my 9<sup>th</sup> grade papers held by the school had the word *maktum* written on them, I was told that Damascus<sup>49</sup> had rejected my application. Finally in 2004, I applied and succeeded in gaining the baccalaureate. Because of all my problems as a stateless Kurd, I finally graduated from university last year (2011). Were I not stateless, I would have been able to complete this level of education six years ago.”

### *Access to formal employment*

Stateless individuals in Syria cannot access employment at government agencies or state-owned enterprises. There are certain professional fields that restrict their access to non –Syrians, such as the law profession.<sup>50</sup> Other professions, such as medicine, require specific permission from Ministries which is often hard to acquire for the *ajanib*, and impossible for other stateless persons.<sup>51</sup> There are many more types of jobs where stateless persons also face restrictions and therefore are often left to work in the informal economy. Mohammad Ali al-Dahmaa indicates the trouble he had in trying to access work:

“I wanted to become a teacher, but of course this is very difficult with an *ajnabi* ID. In Syria there are two ways to become a teacher. The first is through the state agency. This would never be possible for me because of my status. The second is to work on hourly employment. I did this for a while and would earn \$30-40 a month, scarcely enough to cover transport to and from work.”

Another stateless person interviewed described the problems he has faced because he was unable to access formal employment or engage in business through the regular legal channels:

“Since I could not work in the state sector, I decided to set up a company with some friends. Even though the company was not registered in my name, we lost our licence because of my status. Myself and the three partners ended up in prison. They stayed a couple of days and I remained three weeks.”

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<sup>49</sup> According to the interviews this was applied by the Directorate of Education presumably under instructions from the security apparatus.

<sup>50</sup> Human Rights Watch, *Syria: The Silenced Kurds*, 1 October 1996, E804, available at: <http://www.unhcr.org/refworld/docid/3ae6a8260.html>.

<sup>51</sup> KurdWatch, ‘*Stateless Kurds in Syria: Illegal invaders or victims of a nationalistic policy?*’ March 2010. Available at: [http://www.kurdwatch.org/pdf/kurdwatch\\_staatenlose\\_en.pdf](http://www.kurdwatch.org/pdf/kurdwatch_staatenlose_en.pdf).

There have also been reports of a substantial disparity in the provision of social security benefits and accident compensation between Syrian nationals and stateless persons if and where they do find themselves in similar types of employment.<sup>52</sup>

### *Access to documents*

The *ajanib* population were issued with a red card which is a specific *ajnabi* identity paper. Any other official documents such as birth, marriage and death certificates are very difficult to obtain. There have been reports that the *maktomeen* are given certificates of identity by the Mukhtars stating that they are *maktoum*.<sup>53</sup> However these have no legal standing and are used only as a basic and unofficial form of identity paper. Often it has been reported that Syrians do not recognize these types of ID, which can be problematic for the Stateless Kurds. One interviewee talked of how he had to explain what his ID meant to a potential employee:

“I realized there was no way for me to explain without making myself sound like a political criminal. If I had told him that the government will not give me ID, this will be understood as a criticism of the state, and then he will understand that they took my ID because I am against his country.”

Stateless persons have no access to travel documents or passports which impedes their ability to travel. This may be particularly problematic now, as those who have fled the current violence to neighbouring countries may find it difficult to re-enter Syria or to regularise their stay abroad. Internal travel has also been reported as problematic. One man who tried to help a friend with an eye illness to travel to Damascus for healthcare tells of an example of this:

“We put him on the bus to Damascus. On the way, the security stopped the bus and asked to see his identity. When he showed them his *shahadet ta'rif* [the document given by the local *mukhtar* to recognize the existence of a *maktoum*] he was returned back home. They even made him pay for a return ticket!”

There have been reports of difficulties in registering marriages for the *ajanab*, where even with a court decree they are not officially registered.<sup>54</sup> Mohammed Ali Al-Dhammi explains how his Syrian national mother and *ajnabi* father were not able to register their marriage and get a

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<sup>52</sup> Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.63, 24 September 2001.

<sup>53</sup> Human Rights Watch, *Syria: The Silenced Kurds*, 1 October 1996, E804, available at: <http://www.unhcr.org/refworld/docid/3ae6a8260.html>.

<sup>54</sup> Refugees International ‘*Buried Alive: Stateless Kurds in Syria*’ January 2006, available at: [http://www.yasa-online.org/reports/buried\\_alive.pdf](http://www.yasa-online.org/reports/buried_alive.pdf).

marriage certificate. Mohammad and his 14 siblings were consequently all born as *maktumeen*, since they could not access the nationality of their mother nor the *ajnabi* status of their father.

### ***Community participation***

From the interviews conducted, a clear issue that is in evidence is the feeling of exclusion that a lot of the stateless individuals experience. In addition to not being able to access many fundamental human rights, general participation in community activities were often restricted due to their status. Khalil Ismail highlights this feeling he had during his time in school:

“In school, we were always meant to feel excluded. Those of us without nationality were not invited to join the shabibeh (a student affiliation of Ba’ath party). At that age, even though I didn’t particularly want to join the party groups, this still hurt, because to be shabibeh gains you extra marks in exams.”

He goes on to say that even at university he “always felt a difference between myself and students with Syrian nationality”. This sense of isolation that these individuals feel would potentially leave communities marginalised and on the periphery of the rest of society. This situation may result in heightened tensions or problems between the community itself and other neighbouring communities and even between them and the wider society. Such tensions pose a risk of acting as a catalyst for local or even national struggles and instability.

### ***Personal security***

One issue that has not been widely reported has been the issue of personal security amongst the stateless Kurds. The tense and often oppressive political atmosphere in Syria has made it difficult for many people to ensure their own personal security. Being stateless, and having little recourse to state protection, has accentuated the vulnerability of this community in being exposed to violations of their personal security. It has been suggested that some security agents might even target stateless persons as they know that they are unlikely to be in a position to complain or challenge such treatment.

One *ajnabi* interviewed, now settled as a political refugee in Europe, explained how on two occasions he was stopped by police during 2004, a moment of particularly sensitive relations between Kurds and the Syrian state.<sup>55</sup> He recalls how one time he was stopped by police in Aleppo and a seemingly routine check turned aggressive once he presented his ID. They took

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<sup>55</sup>For further details on the Kurdish revolts of 2004 see (Tejel, 2009; Montgomery, 2005; Gambill, 2004)

him in the car and beat him while driving around. A second time, while he was walking in the street of one of Damascus' Kurdish quarters he was stopped by security and asked for his ID. He remembers the officer's response:

*“What is that? This is not an identity [document] for a human. This is an identity [document] for an animal. He started to play with me and repeatedly asked what the document was, even though he knew. I told him it's my ID. He started to swear and asked why it is different to normal. I didn't answer but he kept asking so I said, it is the one the government gave me and then he started to beat me.”*

On this occasion, the individual ended up staying a fortnight in prison, being moved from prison to prison, sometimes “underground, with 300 people in a few small rooms”. “When I got out,” he explains, “I was *destroyed*.”

During the current lawless armed struggle where there is a massive increase in checkpoints and the ability to identify oneself has become particularly important, being able to ensure personal security has become an even greater challenge for stateless persons. Many of those interviewed spoke of the severe difficulty of crossing the many ad-hoc security checkpoints and controls in the current situation with no form of identification.

## Conclusion

It is clear that the current situation in Syria renders it difficult to analyze the effectiveness of any initiatives being taken to address the problem of statelessness 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 research and 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 being palpably discriminatory, is leading to new cases of statelessness. This discrimination will, in any future review of Syria's nationality policy, need to be redressed. Reform that tackled similar flaws in nationality legislation have been witnessed recently in many MENA states, such as Tunisia and Iraq, and such a move would be a tangible and realistic way for future leaders to contribute to the avoidance of statelessness. 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.

With regards to the stateless Kurd 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. Several substantial concerns remain, however, as to the effectiveness and future implications of this decree. The main challenges that may hinder its success which need to be carefully considered include:

- Reviewing the question of compensation to those naturalized under the 2011 decree. As the government has declared this naturalization as the *granting* of citizenship rather than the *reinstating* of it, critics have highlighted that the state has therefore ignored the issue of compensation. No responsibility has been taken of the impact that half a century of statelessness have had on the affected. The main concern reported is that there should be compensation offered for property and land that was confiscated from this community upon their denationalisation.



- Understanding the scope of the population covered under this decree and working to address those who are excluded. There are two main groups who are still unable to access citizenship. Firstly, effort must be made to ensure that *ajanib* who reside outside of Syria (long-term or recently fled) can access the procedure for naturalization, something that is not currently possible. Enabling them to apply from abroad and /or ensuring returnees in the future have complete access to the procedure will be vital as a substantial proportion of *ajanib* currently live abroad. The second group are the tens of thousands of *maktoumeen* who are not covered by this decree. They remain stateless and efforts must be made in the future to address, at a minimum, their severe protection concerns as well as to initiate a discussion on their legal status and right to nationality.
- Ensuring continued legitimacy of this decree under any future regime. Often when new governments come into power following a period of instability, they seek to make their mark on the legal system by introducing new initiatives or invalidating past decrees. There is a risk that past decisions and decrees are declared illegitimate by a new government and it is therefore important to continue to put pressure on Syria to address statelessness in order to ensure that a future government continues the implementation and further development of such policies to the benefit of stateless or newly naturalised people.

The present instability in the country is severely challenging for all Syrians, but it is possible to view this situation as offering potential opportunities to address statelessness in the future. Any new government would be looking to gain trust from its people and rebuild national solidarity and stability. Addressing of the issue of statelessness, in particular in line with the suggestions above, would play a fundamental role in this. Syria has had one of the largest stateless populations worldwide, suffering from some of the most severe protection problems, for over half a century. The developments unfolding today are finally a sign that a start has been made in solving this problem and therefore increased pressure should be applied to any future regime to continue and consolidate these efforts.