



Institute on Statelessness and Inclusion

And

The Global Campaign for Equal Nationality Rights

Submission to the Human Rights Council at the
26th Session of the Universal Periodic Review

Syrian Arab Republic

24 March 2016

Institute on Statelessness and Inclusion and The Global Campaign for Equal Nationality Rights

Submission to the Human Rights Council at the
26th Session of the Universal Periodic Review
March 2016

Syrian Arab Republic

Introduction

1. This submission to the 26th Session of the Universal Periodic Review (UPR) Working Group, focusses specifically on human rights violations due to gender discrimination in the nationality law of the Syrian Arab Republic, including statelessness. In this submission, the **Institute on Statelessness and Inclusion** and **The Global Campaign for Equal Nationality Rights** draw attention to ongoing challenges and short-comings related to Syria's compliance with international human rights standards, in particular violations of the State's obligations to uphold the right to non-discrimination and women's equal human rights; and proposes recommendations to be made to Syria in this regard.
2. While this submission focuses on gender discrimination in Syria's nationality law and its impacts, it must be noted that there are various other challenges in the country that have led, and can continue to lead, to statelessness. Significantly, Syria's Stateless Kurds were denationalised in 1962, and while a 2011 Decree aimed to resolve statelessness within the Kurdish community, the extent of implementation is unclear.¹ Secondly, many Internally Displaced Persons (IDPs) and refugee families face significant challenges accessing registration and documentation, resulting in a lack of proof of identity and nationality. While recognising the significant ongoing and future human rights impacts of these challenges, this submission does not address these issues. This is due to the unprecedented nature of the conflict ongoing in Syria and its wide-ranging and devastating human rights impact, as well as because the majority of the stateless Kurds and undocumented persons are displaced abroad or reside in non-regime controlled areas. In this context, the co-submitting organisations have focused the scope of this submission on the issue of gender discrimination in Syria's nationality law, which remains within the authority and ability of the Syrian government to address, and which also has a deep human rights impact that is being carried across borders and over generations as a result of the conflict driven mass forced displacement.
3. **The Institute on Statelessness and Inclusion** is an independent non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Its work combines research, education, and advocacy. The Institute has a dedicated human rights engagement programme through which it makes submissions to the Universal Periodic Review and to UN Treaty Bodies, on

¹ For more information about the denationalization of Syrian Kurds and the 2011 decree please see Z, Albarazi, *Stateless Syrians*, 2013; available at <http://ssrn.com/abstract=2269700>

the right to a nationality, statelessness and its human rights impacts in various countries around the world.²

4. **The Global Campaign for Equal Nationality Rights (the Global Campaign)** is a coalition of international and national organisations that promotes gender equality in nationality laws, so that women and men can confer, acquire, change and retain their nationality on an equal basis. The Campaign has a Steering Committee comprising Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, UNHCR and Women’s Refugee Commission. The Campaign was launched in June 2014 at a Side Event at the 26th Session of the Human Rights Council in Geneva, and has conducted numerous international advocacy activities to encourage states that still maintain gender discriminatory nationality laws to reform their laws and bring them into compliance with international human rights standards.³

The Universal Periodic Review of the Syrian Arab Republic under the First Cycle (2011)

5. Syria was first subject to the Universal Periodic Review on 7 October 2011, at Session 12 of the First Cycle. At this review, there were no recommendations specifically related to gender discrimination in Syria’s nationality law or resultant statelessness. However there were various recommendations more generally related to Syria’s treaty obligations including under the CRC and CEDAW, which are relevant. Following are some examples:

“Continue to harmonise its domestic laws with the international human rights conventions to which it is party, in line with democratic principles and fundamental freedoms and equality.” Recommendation made by Indonesia and accepted by Syria.

“Bring national laws fully into line with its obligations under ICCPR, CEDAW, CAT and CRC.” Recommendation made by the Maldives and accepted by Syria.

“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.” Recommendation made by Mexico and accepted by Syria.

“Incorporate into domestic law and enact the provisions of the international instruments, particularly CAT, CEDAW and CRC.” Recommendation made by Poland and accepted by Syria.

Syria’s International Obligations

6. Syria is a state party to 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 retain their nationality and to confer their nationality to children and spouses.⁴

² For more information about the Institute, see www.institutesi.org

³ For more information about the Global Campaign, see <http://equalnationalityrights.org/>

⁴ 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. CEDAW/C/GC/32, available at: <http://www.refworld.org/docid/54620fb54.html>

CEDAW 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.” Syria has entered a reservation to Article 9 (2) “concerning the grant of a woman’s nationality to her children”, but has no reservation in place on Article 9(1). The co-submitting organisations share the view of the Committee on the Elimination of Discrimination against Women that Article 9 among others is “central to the object and purpose of the Convention and that the reservations impact negatively on the enjoyment by women of their rights.”⁵ Therefore, we believe that the maintenance of nationality laws which discriminate on the basis of gender are themselves in conflict with the object and purpose of the Convention and with the general obligation of all state parties to “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”⁶

7. Syria is also a state party to the International Covenant on Civil and Political Rights (ICCPR), which obligates states to ensure each child’s right to a nationality (Article 24), and also mandates that all citizens be equal before the law without any discrimination to the equal protection of the law on any ground including sex (Article 26). Gender discrimination in Syria’s nationality law violates Syria’s obligations under both of these provisions, by undermining the right of the child to acquire a nationality and the equal right of the mother to transfer her nationality.
8. Syria is also a party to the Convention on the Rights of the Child (CRC), Articles 7 and 8 of which entrench every child’s right to acquire a nationality and protect against childhood statelessness. Article 7 of the CRC states that a child has “the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents ... in particular where the child would otherwise be stateless.” Article 8 calls for States Parties to “undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations...” These two provisions are to be read in conjunction with CRC Article 2 (Non-Discrimination, which requires state parties to uphold the rights enshrined in the Convention without discrimination based on various grounds including the sex of the child *or his or her parent*), and Article 3 (Best Interests of the Child shall be a primary consideration). Thus, it is more than evident that Syria’s obligations under the CRC require it to not discriminate against women in their ability to transfer nationality to their children, in particular where this impinges on the child’s right to acquire a nationality and in extreme cases would even lead to statelessness. Furthermore, Syrian women’s inability to confer nationality on their foreign spouses threatens a child’s right to know and be cared for by his or her parents, in violation of Article 7 of the CRC.
9. Syria is also a state party to the International covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of all forms of Racial Discrimination (CERD).
10. 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.

⁵ The CEDAW Committee has noted this on a number of occasions and in Concluding Recommendations for State Parties under review, including in CEDAW/C/ARE/CO/1, para 16, access at <http://mofa.gov.ae/EN/Documents/Convention%20on%20the%20Elimination%20of%20All%20Forms%20of%20Discrimination%20against%20Women.pdf>. In Syria’s first CEDAW review, the Committee’s Concluding Recommendations stated that the Committee, “calls upon the State party to review and withdraw all remaining reservations, and especially reservations to articles 9 and 16, which are incompatible with the object and purpose of the Convention,” access at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSYR%2fCO%2f1&Lang=en.

⁶ Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and nineteenth sessions), A/53/38/Rev.1, page 47, access at <http://www.un.org/womenwatch/daw/cedaw/reports/18report.pdf>

Gender discrimination in Syria's nationality law

11. In contravention of Syria's international obligations under CEDAW, ICCPR and CRC set out above, Article 3(a) of the Syrian Nationality Law Legislative Decree 275 1969 states that *"anyone born inside or outside the country to a Syrian Arab father", "shall be considered as Syrian Arabs ipso facto"*. While there are a few exceptions to this provision (see paragraph 16 below), this provision is clearly gender discriminatory. Furthermore, this provision stands in violation of the new 2012 Constitution of Syria, which stipulates that *"Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed."*
12. Syria is therefore one of 27 countries around the world that continues to discriminate against women in their ability to confer their nationality to their children on an equal basis with men. Given that gender discrimination in nationality laws has no basis under international human rights law, that it is easily remedied through law reform and that it continues to have significant detrimental human rights impacts including statelessness, the international community has come together to address this phenomenon under the banner of the Global Campaign for Equal Nationality Rights. Furthermore, UNHCR's Global Campaign to end statelessness prioritises the removal of gender discrimination from nationality laws through its Action Point 3.⁷
13. It is important to note that Article 8 of the Syrian Nationality Law Legislative Decree 275 1969 further discriminates against Syrian women by denying them the right to transfer nationality to their spouse on an equal basis to Syrian men. This provision too is contrary to Syria's constitutional and international law obligations.
14. 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.⁸ However, in 2011 a new bill was presented to the new Parliament and a committee was formed to discuss it. The bill has not yet been put to a vote in Parliament. This bill has not been made public, and therefore it has not been possible to assess it against Syria's international obligations. The failure to make the bill public also undermines the rights of the general public of Syria to be informed of and participate in political affairs, in violation of ICCPR Articles 19.2 (freedom of expression) and 25 (participation in public affairs).
15. Commenting on this situation, the Committee on the Rights of the Child in its last review of Syria (in February 2012) expressed concern *"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";*⁹ and urged Syria to *"proceed with the amendment of the Nationality Act to allow children of Syrian mothers married to foreign nationals to acquire the nationality of their mothers"*.¹⁰

⁷ UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>

⁸ Legal Agenda, *Syrian Women's Right to Pass Citizenship To Children: An Appraisal*, 2016, available at: <http://english.legal-agenda.com/article.php?id=742&folder=articles&lang=en>

⁹ CRC/C/SYR/CO/3-4, 9 February 2012, Para 41.

¹⁰ *Ibid.*, Para 42(b).

Gender Discrimination creating statelessness

16. While being gender discriminatory, Syrian nationality law does – on the face of it – provide a partial safeguard against statelessness. Article 3(b) of the Syrian Nationality Law Legislative Decree 275 1969 provides an exception to the above, by prescribing that *“Anyone born in the country to a Syrian Arab mother and whose legal family relationship to his father has not been established”* may also acquire Syrian nationality. Furthermore, Article 3(d) states that nationality will be granted 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”*.
17. However, these exceptions do not remedy the gender discriminatory nature of the law and as they are rarely implemented in practice, they also do not safeguard against statelessness. One of the fundamental consequences of this discrimination is that it results in statelessness of children who cannot acquire their father’s nationality or any other. The inability to acquire nationality through the father could be due to a variety of reasons: for example, when the father is himself stateless, deceased, unwilling or unable to cooperate to take the required administrative steps. Significantly, gender discrimination in nationality laws can perpetuate statelessness across generations, as male children who are rendered stateless through this provision will go on to have their own stateless children who cannot access nationality even if their mother is a citizen. The danger of inter-generational statelessness is further exacerbated by the existence of other stateless populations in Syria as well as challenges related to registration, documentation and proof of identity. Consequently, it is evident that gender discrimination in Syria’s nationality law (in violation of the State’s commitments under CEDAW, ICCPR and CRC) results also in statelessness, in violation of Syria’s obligations under the CRC and ICCPR to ensure that no child is born stateless in the country.
18. The Syrian conflict has added a further dimension to the statelessness consequences of Syria’s gender discriminatory nationality law. This conflict has created over 9 million refugees and internally displaced persons.¹¹ The forced displacement of such a huge proportion of the population has meant that the risks of statelessness are being amplified and transferred across borders and over generations. Due to the violent nature of the conflict, tens of thousands of Syrian fathers who are deceased, fighting, missing, imprisoned, displaced etc., have not been present at the birth of their children. This makes it extremely difficult to establish a child’s legal link to a Syrian father, heightening the risk of statelessness. Consequently, many children born both in exile and inside Syria, have no proof of paternity. Lacking identity documents, these children face additional obstacles to movement inside the country, including obstacles in fleeing areas under siege. Furthermore, with some countries only permitting asylum seekers from Syria, Iraq and Afghanistan, Syrians with a legitimate claim to asylum may be unable to access this status. This is not a problem that is small in scale, as estimates now show that over 145,000 Syrian refugee households in neighbouring countries, more than a quarter of the half a million households overall, are headed by women without the father present.¹²
19. The creation of statelessness in Syria, adds another layer of vulnerability to Syrian refugees and their children born abroad. While international law obligates refugee receiving states to provide comprehensive protection to all refugees in a manner which takes into account and addresses further vulnerabilities such as statelessness, the generation of statelessness as a result of Syria’s gender discriminatory nationality law does further complicate an already extremely difficult

¹¹ For more information of forced displacement as a result of the Syria conflict, see <http://syrianrefugees.eu/>.

¹² UN High Commissioner for Refugees (UNHCR), *Woman Alone: The fight for survival by Syria's refugee women*, 2 July 2014, available at: <http://www.refworld.org/docid/53be84aa4.html>

protection challenge. Furthermore, stateless Syrian refugees may face barriers to returning to Syria after the resolution of the conflict, indefinitely increasing the length of their displacement with significant human impact.

20. Outside of increasing the risk of statelessness, gender discrimination in Syria's nationality law often increases the vulnerability of women and their families when fathers are not present. Even where the father is present, the conflict has resulted in an increase in customary marriages that have not been formalised by law, meaning paternity cannot be legally established.¹³ This may be due to administrative obstacles such as the inability of couples to access registration centres or the lack of awareness of how to register in host countries. Furthermore, as a result of the conflict there has been an increase in child marriages, which cannot be registered due to their illegality.¹⁴ It is therefore evident that the combination of gender discrimination in Syrian nationality law and the Syrian conflict is putting those girls forced into child marriages at risk of having stateless children – adding an extra layer of vulnerability to their situation.
21. On numerous occasions including in UNSCR Resolution 2122 (18 October 2013), the UN Security Council has noted the fact that discriminatory citizenship laws exacerbate the vulnerability of women in conflict and fleeing conflict.¹⁵ Following this Resolution, during the October 2014 Open Debate on Women, Peace and Security, the President of the Security Council stated that, “*the Security Council further recognizes that refugee and internally displaced women and girls are at increased risk of becoming stateless as a result of discriminatory nationality laws*”.¹⁶ More recently, in the Report of the Secretary-General on Women, Peace and Security, the Secretary-General stated as follows:

*In my previous report, I emphasized the need to eliminate statelessness (see S/2014/693). Nationality laws that do not grant women equality in conferring nationality to their children cause statelessness, a problem that has an impact on at least 10 million people worldwide. To date, 27 countries have laws that discriminate against women in their ability to hold custody of and confer nationality to their children. The impact of the problem is severe and can result in denial of access to basic public services and employment opportunities...One of the key actions is the removal of national laws that directly or indirectly discriminate against women and girls.*¹⁷

22. In the context of the Syrian conflict and resultant forced displacement, law reform which addresses gender discrimination and brings Syrian nationality law into compliance with international norms and standards, is more urgent than ever before. The continued failure to ensure equal rights to Syrian women to transfer their nationality to their children, generates statelessness and undermines human rights protection both within and beyond Syrian borders.

¹³Kamal Srouji, *Marriage in Syria: Difficulties, Bribes and Lack of Recognition*, Syria Deeply, 2015, available at: <http://www.syriadeeply.org/articles/2015/08/7841/marriage-syria-difficulties-bribes-lack-recognition/>

¹⁴ Save the Children, *Too Young to Wed*, 2014, available at: http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/TOO_YOUNG_TO_WED_REPORT_0714.PDF

¹⁵ The Security Council “*Expressing concern at women’s exacerbated vulnerability in armed conflict and post-conflict situations particularly in relation to forced displacement, as a result of unequal citizenship rights, gender-biased application of asylum laws, and obstacles to registering and accessing identity documents which occur in many situations.*” S/RES/2122 (2013), available at: <http://unscr.com/en/resolutions/doc/2122>

¹⁶ The Concept Note for the October 2014 Open Debate on Women, Peace and Security further stated, “*Statelessness can arise when a women’s experience of the conflict intersects with discriminatory nationality laws. Women may be left stateless when they cannot prove nationality because necessary documents such as identity documents and birth registration are either not issued or are lost or destroyed in conflict and are not reissued in their names,*” available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_731.pdf

¹⁷ S/2015/716, 16 September 2015

Human Rights Impact

23. The families of Syrian women, whose children are denied Syrian citizenship, continue to face significant hardships and human rights violations both inside and outside of the country. Inside Syria, families lacking nationality due to discrimination in the law are deprived of most forms of social security, with the exception of education and medical care.¹⁸ For instance, non-citizen children are not eligible to receive food subsidies.¹⁹ This and many other restrictions to the enjoyment of rights for non-citizen children, are contrary to the principle of the best interests of the child and many protections enshrined in the CRC. Furthermore, they can have severe consequences on the welfare and livelihoods of these children and their families.
24. Adult stateless offspring of Syrian women are also subject to various challenges on their ability to access basic rights inside the country. They are for example, subject to unduly stringent labour regulations that are applied to non-citizens and face several restrictions in joining trade unions²⁰. They are not entitled to own property, except in accordance with the Property Law,²¹ which obliges the family to register their property in the Syrian mother's name. There are also restrictions on inheritance: when the mother dies, non-citizen children have one year to dispose of their inheritance shares that exceed the limit allowed for in the aforementioned law. All of these restrictions undermine rights enshrined in the ICCPR and ICESCR, among other international treaties.
25. Gender discrimination in nationality laws also has links with gender-based violence, with stateless individuals at an increased risk of being trafficked.²² As stated above, stateless girls may also be at an increased risk of child marriage, with some families reporting to view early marriage as a route to securing legal status of their daughters.²³
26. Finally, due to the conflict, various emerging challenges are being witnessed by those who are born outside of the country. Gender discriminatory nationality laws often places obstacles on the children of these families being able to obtain any documentation or legal status in the host countries. There are also anecdotal reports on the impediments these children face in returning to Syria – with problems at the border in entering as they are not legally recognised as being Syrian. In a conflict context, securing a durable solution for children who are displaced or born in exile can be particularly difficult when they are left with no legal status or nationality.²⁴

¹⁸ Social Welfare Law of 2014. See also Legal Agenda, *Syrian Women's Right to Pass Citizenship To Children: An Appraisal*, 2016, available at: <http://english.legal-agenda.com/article.php?id=742&folder=articles&lang=en>

¹⁹ Lisa Davis, *Why are so many Syrian children being left stateless?*, Open Democracy, 2015, available at: <https://www.opendemocracy.net/5050/lisa-davis/why-are-so-many-syrian-children-being-left-stateless>

²⁰ Trade Union Law Decree 31, 1964

²¹ Property Acquisition Law for Arabs and foreigners Decree No11, 2008

²² "Statelessness increases risk of exploitation and trafficking," Tilburg University, available at: <https://www.tilburguniversity.edu/current/press-releases/press-release-statelessness-and-human-trafficking/>

²³ "Gender Aspects of Statelessness," Women's Refugee Commission, access at <https://www.womensrefugeecommission.org/gbv/child-marriage/62-protection/advocacy/918-ada-williams-prince-remarks-gender-aspects-of-statelessness>; "Lebanon: Give women equal citizenship rights to men under the nationality law," Equality Now, available at: <http://www.equalitynow.org/take-action/discrimination-in-law-action361>

²⁴For more information on the consequences of statelessness on durable solutions please see Norwegian Refugee Council, *Statelessness and Displacement*, 2015, available at: <http://www.nrc.no/arch/ img/9197390.pdf>

Recommendations

27. Based on our collective and continuous research, advocacy and engagement on the issue of gender discrimination in nationality laws around the world and resultant statelessness and human rights challenges; and in particular, our ongoing work in relation to Syria; drawing on the content of this submission, The Institute and Global Campaign suggest the following recommendations to be made to the Syrian Arab Republic.
28. While the Human Rights Council has stated that “(t)he second and subsequent cycles of the review should focus on, *inter alia*, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review”,²⁵ in light of the fact that while general recommendations relating to Syria’s implementation of its treaty obligations including the CEDAW, CRC and ICCPR statelessness were made during the first cycle, and these recommendations were accepted but not adequately acted on by Syria; and also given that more specific recommendations to reverse the growing and urgent human rights challenges identified in the submission are needed, the following recommendations are proposed:
- I. Syria’s laws, policies and practices must fully comply with its obligations under Article 9 CEDAW and Syria is urged to remove its reservation to Article 9(2) of the Convention.
 - II. Syria must take immediate steps to amend/repeal all discriminatory provisions in the Syrian Nationality Act of 1969 that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men. Syria should implement the recommendation of the Committee on the Rights of the Child and present its new nationality bill before parliament. The new bill must comply with Syria’s obligations under the CEDAW and eliminate all forms of gender discrimination in the nationality law.
 - III. The effective implementation of the new law must be ensured as well as its retroactive application so that children already born to Syrian mothers may obtain Syrian nationality. This includes disseminating information on legal reform both within and beyond Syria and ensuring that Syrian embassies and consulates are informed of the law and capacitated to implement procedures relating to retroactive application of the law to allow children already born to Syrian mothers to acquire nationality.
 - IV. Syria must fully promote, respect, protect and fulfil its other obligations regarding the right to nationality under international human rights law. In particular, Syria should ensure that its nationality laws, policies and practices fully comply with Articles 2, 3, 7 and 8 of the CRC and Articles 24 and 26 of the ICCPR, as well as with the general principles of equality and non-discrimination enshrined in international treaties.
 - V. Syria should take steps to ensure equal protection of the law to persons who have been denied nationality and rendered stateless as a result of gender and ethnic discrimination. This includes ensuring that such persons have equal rights and access in terms of social welfare, work, joining trade unions and inheritance.
 - VI. Syria is urged to accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
29. The Institute and Global Campaign remain available to provide technical assistance in relation to any of these recommendations.

²⁵ Human Rights Council, *Resolution 16/21: Review of the work and functioning of the Human Rights Council*, UN Doc. A/HRC/RES/16/21, April 2011, Annex 1, Para 6.