

Syria

COI Note on the Treatment of Women with Children Born Out of Wedlock in Syria

30 September 2019

1. Acquisition of Nationality by a Child Born to a Syrian Mother

According to Article 3 of the 1969 Syrian Nationality law (Legislative Decree 276):

The following shall be considered as Syrian Arabs ipso facto:

- a- *Anyone born inside or outside the country to a Syrian Arab father*
- b- *Anyone born in the country to a Syrian Arab mother and whose legal family relationship to his father has not been established (...).*¹

Under Syria's nationality law, the acquisition of nationality from a Syrian father is automatic at birth (*ex lege*) via paternal *jus sanguinis*, irrespective if the child was born inside or outside of Syria.²

As for Syrian women, they can confer nationality to their children only if their child was born inside Syria and in situations where a legal link to the father is not established. The law does not address the situation if the child is born outside Syria in the same circumstances and hence, an individual born abroad will only acquire Syrian nationality if the father is a Syrian national.³

2. Practical Obstacles to Registering a Child by the Mother in Syria

Contrary to legal provisions and statements made by the Syrian Government,⁴ certain profiles of children are reported to face difficulties in obtaining birth certificates, including children born

¹ Syrian Arab Republic, *Legislative Decree 276 –Nationality Law [Syrian Arab Republic]*, 24 November 1969, www.refworld.org/docid/4d81e7b12.html.

² "Syria's nationality law is predominantly based on paternal descent, whereby a person is Syrian, wherever they are born, if they have a Syrian father"; Institute on Statelessness and Inclusion (ISI), *Civil Society Submission on the Right of Every Child to Acquire a Nationality under Article 7 CRC*, 1 March 2018, <https://bit.ly/2mSoWyA>, para. 5.

³ "(...) Syrian children who are born outside the country, including those born as refugees, have no ability under Syrian law to acquire Syrian nationality from their mothers. This creates a significant risk of statelessness, especially for new-born refugee children who are forcibly separated from their fathers; as such children may lack evidence proving their Syrian paternity and their right to nationality on this basis.(...) Syrian children born inside Syria are, in principle, permitted to acquire nationality from their mothers under certain limited circumstances – namely, when the child's paternity has not been established"; UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: Syrian Arab Republic*, March 2016, www.refworld.org/docid/57f504b24.html, pp. 4-5. "(...) Syrian nationality law provides an exception whereby children born to Syrian women can obtain nationality through their mothers if the child's paternity is not legally established—but this protection is only afforded to children born inside Syria. In contrast, for children born outside the country, including refugees, nationality is only available to children through paternal descent, without exception"; UNHCR, *In Search of Solutions: Addressing Statelessness in the Middle East and North Africa*, September 2016, www.refworld.org/docid/57dbdaba4.html, p. 13.

⁴ In response to the report by the UN Committee on the Rights of the Child, the Syrian delegation outlined: "According to the Personal Status Act, the birth registration of all children was mandatory, and this applied also to children born out of wedlock and children born as a result of illegitimate relations. If the father of the out-of-wedlock child requested the birth registration, the child would receive his name, otherwise, the child would carry the mother's name"; UN Committee on the Rights of the Child, *Committee on the Rights of the Child Reviews the Situation of*

out of wedlock, those born from incidents of sexual violence, and children born to parents in certain inter-faith marriages.⁵

Reports further indicate that the procedural requirements for registering a child by the mother can be very difficult in practice, including on account of prevailing social norms, which are unaccepting of children born outside wedlock.⁶

Syrian women, moreover, faced difficulties in registering their children. As Syrian nationality is conferred to a child through his or her Syrian father, Syrian women encountered obstacles when proceeding administratively with civil registration in the absence of the father. Despite legal provisions enabling women to confer Syrian nationality without proving a legal link to the father, including children born out of wedlock, such as in cases of rape, this appeared rarely to be the case, likely owing to social norms and the stigma attached.⁷

Where the father of a child is unknown, the filiation of the child to the mother must be established through filing a case before a religious court.⁸ Women are required to approach the police and request the opening of an investigation into the circumstances of the

5 Children in Syria, 16 January 2019, <https://bit.ly/2sHkFNX>. “Under current legislation, children born outside wedlock may be registered in civil records under the name and surname of the mother”; Government of Syria / UN Committee on the Rights of the Child, *Fifth Periodic Report Submitted by the Syrian Arab Republic under Article 44 of the Convention, Due in 2015*, 1 November 2017, CRC/C/SYR/5, <https://bit.ly/2ScJAVQ>, paras 42, 107.

6 According to the UN Committee on the Rights of the Child, “[O]ne of the major protection concerns for children in Syria was the civil registration and the right to acquire nationality. This was a long-standing issue which had been aggravated by the armed conflict and displacement, with some groups of children continuing to be at high risk of not being registered and documented at birth, for example children born to non-married parents or in mixed religion marriages, and children born out of situations of sexual violence or in contested or isolated areas. The lack of registration equated to a lack of legal status of the child and impeded access to all services – health, education and humanitarian assistance”; Committee on the Rights of the Child, *Committee on the Rights of the Child Reviews the Situation of Children in Syria*, 16 January 2019, <https://bit.ly/2sHkFNX>. “Although women have the same rights as men to register the births of their children, nationality is only transferred from the father and mothers therefore must struggle to register the births of their infants”; OECD Development Centre, *Social Institutions and Gender Index – Syrian Arab Republic*, 2019, <https://bit.ly/2kJmR7k>, p. 8. See also, Norwegian Refugee Council (NRC) / ISI, *Toolkit: Understanding Statelessness in the Syria Refugee Context*, accessed 30 September 2019, www.syrianationality.org/index.php?id=18; Friedrich Ebert Stiftung, *Syrian Personal Status Law*, December 2018, <https://bit.ly/2JyhaCT>, p. 6; Syria Direct, *East Ghouta Families Mired in Unrecognized Births, Marriages after Years under Opposition Rule*, 2 August 2018, <http://bit.ly/2mmem2C>; Al-Hayat, *Syria’s Fatherless Children*, 9 October 2016, <https://bit.ly/2nqeBdx>; UNHCR, *In Search of Solutions: Addressing Statelessness in the Middle East and North Africa*, 2016, www.refworld.org/pdfid/5829c32a4.pdf, p. 13; UN Committee on the Rights of the Child (CRC), *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Syrian Arab Republic*, 9 February 2012, CRC/C/SYR/CO/3-4, www.refworld.org/docid/5305e86f4.html, para. 43.

7 “(...) the application of this safeguard [transfer of nationality from the mother to her child in situations where a legal link to the father is not established], is challenging due to the social repercussions of registering a child who is born out of wedlock”; ISI, *Civil Society Submission on the Right of Every Child to Acquire a Nationality under Article 7 CRC*, 1 March 2018, <https://bit.ly/2mSoWyA>, para. 5. “(...) unwed mothers in the Middle East often face social isolation or harassment from their family and community members. In less common but more extreme circumstances, women who bear children outside of marriage may fear so-called ‘honor’ crimes, in which family members retaliate against women for perceived transgressions against the family ‘honor’”; Harvard Human Rights Journal Online, *Why Non-Marital Children in the MENA Region Face a Risk of Statelessness*, January 2015, <http://bit.ly/2mRFs1R>, p. 5.

8 UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/42/51, 15 August 2019, <http://bit.ly/2kRTHml>, para. 93.

9 Syrian Arab Republic/Ministry of Interior / UNHCR, *Syria – Booklet on Civil Documentation and Registration in the Syrian Arab Republic*, 25 April 2019, <https://bit.ly/2mYkwGg>, p. 22.

pregnancy,⁹ which can result in stigmatization, legal prosecution,¹⁰ as well as threats of violence from non-state actors, including “honour crimes”.¹¹ On the basis of the court ruling, the child can be formally registered with the responsible civil registry department and the child will be given a father's name and a grandfather's name, and the latter will be used as the child's surname.¹²

Children who, due to the above described obstacles, have not obtained a birth certificate, may not be able to prove their Syrian nationality and consequently would be at risk of statelessness.¹³

⁹ “A mother who wants to register her child born of rape or incest or out of wedlock is required to request a police report to initiate an investigation into the circumstances of the conception of the child”; UN Committee on the Rights of the Child (CRC), Consideration of Reports Submitted by States Parties under Article 44 of the Convention : Convention on the Rights of the Child: Concluding Observations: Syrian Arab Republic, 9 February 2012, CRC/C/SYR/CO/3-4, <https://www.refworld.org/docid/5305e86f4.html>, para. 43 (c).

¹⁰ Men and women who have sexual relationships outside of marriage or commit adultery can be prosecuted and face imprisonment under provisions of the Penal Code (articles 473 and 474); Syrian Arab Republic, *القانون الجنائي* (الاصادر بالمرسوم التشريعي رقم 148/1949), 1949, <https://bit.ly/2XGIWHi>. “The Penal Code criminalizes adultery. Although both men and women are tried for adultery, more women than men are likely to be prosecuted and are thus affected by its rules. Women may be prosecuted for committing an act of adultery that occurs anywhere, whereas men are prosecuted only if adultery is committed in the marital home or if the man takes a mistress openly. If convicted, a man faces a prison sentence ranging from one month to one year, while women face prison terms of three months to two years.” And further: “The Penal Code criminalizes adultery and extra-marital sex”; UNDP/UNFPA/ESCAWA, Syria Gender Justice & The Law, 2018, <https://bit.ly/2kRhGCy>, pp. 14, 18. “One such piece of legislation is Article 473 which states that an unmarried woman who has sex can receive a two-year prison sentence. Her male companion, on the other hand, faces a maximum prison term of one year, unless he is married in which case he faces a two-year term”; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Können unverheiratete Paare in Syrien Kinder haben und in einem gemeinsamen Haushalt leben? [a-10120]*, 12 April 2017, <https://bit.ly/2JHQs9U>.

¹¹ “(...) provisions of this nature are difficult to utilize in practice due to the significant stigma and protection risks women may face for coming forward to report births out of wedlock, which includes threats of violence from non-State actors”; UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: Syrian Arab Republic, March 2016, www.refworld.org/docid/57f504b24.html, p. 5. “A mother who faces imprisonment or possible death for registering her child's birth is unlikely to register the child (...); Harvard Human Rights Journal Online, *Why Non-Marital Children in the MENA Region Face a Risk of Statelessness*, January 2015, <http://bit.ly/2mRFs1R>, p. 7. See also below “3. Women at Risk of “Honour Crimes” on Account of Pre- or Extra-Marital Sexual Relations”.

¹² Syrian Arab Republic/Ministry of Interior / UNHCR, Syria – Booklet on Civil Documentation and Registration in the Syrian Arab Republic, 25 April 2019, <https://bit.ly/2mYkwGg>, p. 22. In response to the report by the UN Committee on the Rights of the Child, the Syrian delegation outlined: “According to the Personal Status Act, the birth registration of all children was mandatory, and this applied also to children born out of wedlock and children born as a result of illegitimate relations. If the father of the out-of-wedlock child requested the birth registration, the child would receive his name, otherwise, the child would carry the mother's name”; UN Committee on the Rights of the Child, Committee on the Rights of the Child Reviews the Situation of Children in Syria, 16 January 2019, <https://bit.ly/2sHkFNx>. “Under current legislation, children born outside wedlock may be registered in civil records under the name and surname of the mother”; Government of Syria / UN Committee on the Rights of the Child, Fifth Periodic Report Submitted by the Syrian Arab Republic under Article 44 of the Convention, Due in 2015, 1 November 2017, CRC/C/SYR/5, <https://bit.ly/2ScJAVQ>, paras 42, 107. See also, Legislative Decree No. 26 of 2007, *قانون الأحوال المدنية لعام 2007*, 12 April 2007, <https://bit.ly/2JKoQ5b>, Chapter 5, Article 28 b.

¹³ Syrian Arab Republic / Ministry of Interior / UNHCR, Syria – Booklet on Civil Documentation and Registration in the Syrian Arab Republic, 25 April 2019, <https://bit.ly/2mYkwGg>, p. 20. “In the present context of mass-scale forced displacement, the gender discriminatory nature of Syria's nationality law is of serious concern, as it may leave children stateless where they have a Syrian mother and, for instance, an unknown or stateless father, or parents who were unable to legalise their marriage, violating their right to a nationality as set out by the Convention.it may leave children stateless where they have a Syrian mother and, for instance, an unknown or stateless father, or parents who were unable to legalise their marriage”(emphasis added); ISI, Civil Society Submission on the Right of Every Child to Acquire a Nationality under Article 7 CRC, 1 March 2018, <https://bit.ly/2mSoWyA>, para. 7. “Children without documentation such as birth certificates or proof of birth within wedlock are particularly vulnerable to long-term negative effects, including the denial of education or inheritance”; International Legal Assistance Consortium (ILAC), *ILAC Rule of Law Assessment Report – Syria 2017*, <https://bit.ly/2ux8hyV>, p. 151. “Stateless children are usually unable to obtain a passport, own property, attend

3. Women at Risk of “Honour Crimes” on Account of Pre- or Extra-Marital Sexual Relations

Women accused of pre- or extra-marital relations and women with children born outside wedlock, including as a result of rape, are reported to be at risk of being stigmatized and targeted for killing by their (extended) family members on account of having brought shame to the family by having transgressed cultural, social or religious norms.¹⁴ Prior to the outbreak of the war in 2011, albeit no official statistics on “honour crimes” were available, NGOs and women groups estimated there to have been hundreds of “honour” killings every year.¹⁵ The number of “honour killings” is reported to have increased since 2011.¹⁶ Fear of “honour killing” and other negative repercussions is reported to be a reason for women and girls to abandon the newborn after giving birth if the pregnancy was the result of an illicit relationship.¹⁷ No information was found among consulted sources in relation to the treatment of unmarried women with children by specific religious and/or ethnic communities in Syria. However, based on reports, “honour” killings are not geographically limited and occur across the country both in urban and rural areas and among all religious and ethnic groups.¹⁸

school, access health and financial services, or engage in legal employment”; West Asia-North Africa Institute (WANA), Contingency Planning for Post-Conflict Syria, September 2016, <https://bit.ly/2lZt283>, p. 49.

¹⁴ “*Women and girls who have babies as a result of rape remain at risk of honour killings if it becomes known the child is a result of rape. At the very least, they face divorce and ostracization from their family and community*”; UN Human Rights Council, “*I Lost My Dignity*”: Sexual and Gender-Based Violence in the Syrian Arab Republic, A/HRC/37/CRP.3, 8 March 2018, www.ecoi.net/en/file/local/1433339/1930_1527146239_a-hrc-37-crp-3.pdf, para. 99.

¹⁵ ACCORD, *Können unverheiratete Paare in Syrien Kinder haben und in einem gemeinsamen Haushalt leben?* [a-10120], 12 April 2017, <https://bit.ly/2JHQs9U>; Harvard Human Rights Journal, *Why Non-Marital Children in the MENA Region Face a Risk of Statelessness*, 6 January 2015, <https://bit.ly/2LyikQl>. Despite some legal reforms enacted since 2009, the criminal law in Syria is reported to play a role in condoning “honour crimes” because it provides for a lesser minimum sentence for perpetrators who murder women in the name of “honour” as compared to minimum sentences for other forms of murder. *“The 2009 amendment introduced punishment of only two to three years, which was increased to five to seven years in 2011. In contrast, the punishment for murder is 20 years hard labour.”* And further: *“It is within a judge’s discretion to determine if a murder is an honour crime, and judges frequently take the defendant on his word, admitting no other evidence”*; ILAC, *ILAC Rule of Law Assessment Report – Syria* 2017, <https://bit.ly/2ux8hyV>, pp. 54, 57. See also, EuroMed Rights, *Syria – Situation Report on Violence against Women*, November 2017, <https://bit.ly/2laTThb>, pp. 1-2. See also, US Department of State, *Country Report on Human Rights Practices 2018 – Syria*, 13 March 2019, www.ecoi.net/en/document/2004226.html; UNDP/UNFPA/ESCWA, *Syria Gender Justice & The Law*, 2018, <https://bit.ly/2kRhGCy>, p. 14

¹⁶ The Guardian, ‘They See no Shame’: ‘Honour’ Killing Video Shows Plight of Syrian Women, 12 November 2018, <https://bit.ly/2lmbR07>; The Syrian Observer, Honor Killings Increased Fourfold Since Start of Syria Crisis, 5 July 2016, <https://bit.ly/2VdMDRH>.

¹⁷ “*Reasons for abandoning children include the fear of honor crimes, where unmarried pregnant women and girls choose to abandon their baby rather than risk rejection or physical violence from family that could result in death*”; Child Protection Working Group, *Desk Review – Child Protection Priority Issues in Syria*, June 2013, <http://bit.ly/2mg01oM>, p. 3.

¹⁸ “*In many parts of Syrian society, the concept of honour is constructed around notions of female virginity before marriage and sexual fidelity afterwards*”; UN Human Rights Council, “*I Lost My Dignity*”: Sexual and Gender-Based Violence in the Syrian Arab Republic, A/HRC/37/CRP.3, 8 March 2018, www.ecoi.net/en/file/local/1433339/1930_1527146239_a-hrc-37-crp-3.pdf, para. 95. “*According to UNHCR branch office in Damascus, honour-killings mostly occur in remote areas where people are more likely to follow old tradition and customs, but they also take place in the city. UNHCR explained that honour-killings occur among all ethnic groups including the Kurds, the Arabs, the Druze and the Christians*”; Danish Refugee Council, *Syria: Kurds, Honour-Killings and Illegal Departure*, January 2007, www.refworld.org/docid/46dd2a5e2.html, pp. 15-17. See also, France 24, *No Prison if You Kill Your Daughter in the Name of Honour*, 17 September 2009, <http://rec.f24.my/12IC.T>; The New Humanitarian, *Popular Campaign Takes Aim at “Honour Killings”*, 23 October 2005, <https://bit.ly/2lalaPE>.

In areas under *de facto* control of extremist Islamist groups, women accused of illicit sexual activities have reportedly been targeted for killing.¹⁹

4. Availability of State Protection

In addition to general concerns over the precarious state of the rule of law in Syria and its impact on citizens' ability to obtain state protection generally,²⁰ women's ability to seek protection from the state²¹ is undermined by prevailing traditional and patriarchal attitudes towards the role of women in society,²² including within the judicial sector;²³ legal provisions minimizing penalties for the killing on the basis of "honour" by male relatives,²⁴ and widespread and chronic corruption within the police and judiciary.²⁵ Furthermore, the existence of significant criminal sanctions for women engaging in sexual relationships outside of marriage

¹⁹ "For example, in March the COI reported that in 2016 Jabhat Fatah al-Sham stoned to death a woman from Heish village in Idlib after members of the terrorist group accused her of having engaged in extramarital relations. Authorities reportedly apprehended the woman in the home of the unmarried man with whom she was involved and immediately executed her as an honor killing. The unmarried male reportedly was summarily shot and killed immediately upon being detained"; US Department of State, *Country Report on Human Rights Practices 2018 – Syria*, 13 March 2019, www.ecoi.net/en/document/2004226.html. See also, The Independent, *Teenage Girls Accused of Adultery 'Are Stoned to Death by ISIS Militants'*, 26 February 2016, <https://bit.ly/2lJM8p2>; Reuters, *Nusra Kills Woman Accused of Adultery in Syria: Activists*, 14 January 2015, <https://bit.ly/2mQcMGY>; Reuters, *Man, Woman Stoned to Death for Adultery in Syria: Monitor*, 21 October 2014, <http://reut.rs/124ro5p>; UK Home Office, *Operational Guidance Note: Syria*, 21 February 2014, <https://bit.ly/2JHDE4j>, p. 14.

²⁰ "Military objectives were placed above civilian governance by all parties to the conflict creating a vacuum of the rule of law in parts of the country"; UN Human Rights Council, *Human Rights Council Discusses the Situation of Human Rights in Syria*, 12 March 2019, <https://bit.ly/2lj3IJN>. "...stark deficiencies may exist in the national justice system (...), including a shortage of personnel, a lack of training in addressing serious criminal cases, concerns about the bias of national judges and prosecutors, limited court infrastructure, outdated rules of procedure, corruption, and limited case management"; HRW, *Syria: Criminal Justice for Serious Crimes under International Law*, 17 December 2013, www.refworld.org/docid/52ce6f664.html. "Interviewees cited delays, complexity, high costs, the authoritarian nature of the system, and corruption as dissuading them from referring disputes to the justice system. One driver seems to have been inadequate staffing (...). This, coupled with a complex legal architecture, slowed case turnover with anecdotal reports suggesting a 5-10 year processing period. Judges were also under-remunerated, which reduced their productivity and incentivised corruption"; WANA, *Contingency Planning for Post-Conflict Syria*, September 2016, <https://bit.ly/2lZt283>, p. 36.

²¹ The Independent International Commission of Inquiry assessed that there was "[N]ear-total absence of accountability" for sexual and gender-based violence; UN Human Rights Council, *"I Lost My Dignity": Sexual and Gender-Based Violence in the Syrian Arab Republic*, A/HRC/37/CRP.3, 8 March 2018, www.ecoi.net/en/file/local/1433339/1930_1527146239_a-hrc-37-crp-3.pdf, para. 1. Already before the conflict, "discriminatory laws and practices encouraged impunity for gender-based violence in Syria and prevented women, girls and LGBT people from accessing justice. (...) Syrian women and girls face sexual violence, forced and early marriages, **and 'honor' crimes**, amongst other forms of gender-based violence; **and they lack adequate protections, access to justice, and victim services**" (emphasis added); Human Rights and Gender Justice (HRGJ) Clinic, City University of New York School of Law, et.al., *Human Rights Violations Against Women and Girls in Syria – Submission to the United Nations Universal Periodic Review of the Syrian Arab Republic*, 24 March 2016, <https://bit.ly/2mV44Xk>, para. 2.

²² "The Committee is concerned at the persistence of deep-rooted patriarchal attitudes and stereotypes with respect to women's roles and responsibilities, all of which discriminate against women, perpetuate their subordination within the family and society and ultimately restrict their rights under the Convention"; Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Second Periodic Report of Syria*, CEDAW/C/SYR/CO/2, 18 July 2014, www.refworld.org/docid/575133f94.html, para. 21.

²³ "(...) justice sector employees lack understanding of gender issues, rights and responsibilities"; WANA, *Contingency Planning for Post-Conflict Syria*, September 2016, <https://bit.ly/2lZt283>, p. 37.

²⁴ See above footnote 15.

²⁵ "Women were particularly vulnerable to the impacts of corruption perverting the course of justice." And further: "Problems with interference from the security forces, and judicial bribery and corruption remain endemic"; ILAC, *ILAC Rule of Law Assessment Report – Syria 2017*, <https://bit.ly/2ux8hyV>, pp. 40, 63. Syria has been ranked 178th (out of 180 countries) in the Global Corruption Perceptions Index for 2018. "Unsurprisingly, the instability of government institutions and complete lack of political rights and checks and balances, allows corruption to flourish in Syria"; Transparency International, *Middle East & North Africa: Corruption Continues as Institutions and Political Rights Weaken*, 29 January 2019, <https://bit.ly/2DHQIsS>.



or adultery is an additional bar to state protection,²⁶ including where persecutory acts are perpetrated by non-state actors such as armed groups and members of society.

²⁶ See above footnote 10.