

تعزير الوصول إلى الهوية القانونية في سياق النزوح والعودة - تحليل قانوني للقانون رقم 13 لعام 2021

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الملخص:

تتنبت الوثائق الشخصية والسجلات المدنية الوضع المدني والقانوني للأفراد، من خلال توثيق واقعات الولادة، والزواج، والطلاق، والوفاة، والغياب، والوصاية، والجنسية وسواها من واقعات الأحوال المدنية والشخصية. في حالات النزوح الداخلي، غالبًا ما تُفقد الوثائق الشخصية أو تتضرر أو تتلف، كما أن أنظمة الأحوال المدنية الرسمية والتقليدية غالبًا ما تتعرض للتلف أو الضياع. تحلّل هذه المقالة قضية الهوية القانونية في سياق النزوح والعودة إلى أماكن السكن الأصلي أو أماكن السكن المعتاد قبل النزوح. تلقى موضوع البحث هذا القليل من الاهتمام الأكاديمي، على الرغم من كونه قضية حماية قانونية ملحة. توضّح المقالة كيف أن التطورات التشريعية السورية الأخيرة في عام 2021 تسهّل وصول النازحين والعائدين إلى الهوية القانونية والوثائق المدنية. وخلصت المقالة إلى أن الحق في

- 1- طالب دكتوراه في القانون العام، قسم القانون العام، كلية الحقوق، جامعة دمشق.
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الهوية القانونية هو بوابة التمتع بحقوق أخرى، بما في ذلك الحق في الجنسية، والوصول إلى الخدمات الأساسية مثل الصحة والتعليم. كما تخلص المقالة إلى وجوب تعزير مبادرات الوعي القانوني بأهمية الوثائق والسجلات المدنية، وعدّها من الأولويات.

الكلمات المفتاحية:

الأشخاص النازحون داخلياً، العائدين، الهوية القانونية، التوثيق المدني، حقوق الإنسان، النزوح الداخلي.

Enhancing Access to Legal Identity in the Displacement and Return Context: Legal Analysis of Law No. 13 of 2021 and Legislative Decree No. 07 of 2021

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Abstract:

Personal documentation and civil registries establish and provide evidence of the civil and legal status of individuals, including as it relates to birth, parentage, marriage and divorce, death, absence, guardianship and nationality. In situations of forced displacement, personal documentation is often lost, damaged or destroyed and both formal and traditional civil status systems seriously undermined. This article analyses the issue of legal identity in the Syrian displacement and return context. This topic of research has received surprisingly little academic attention, despite being an urgent legal protection issue. This article demonstrates how the recent Syrian legislative developments in 2021 facilitate access of

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the internally displaced persons (IDPs) and returnees to legal identity and civil documentation. The article concluded that the right to legal identity is the right to have other rights including nationality and to access basic services such as health and education. Enhancing the legal awareness initiatives regarding the importance of civil documents and records is also deemed a priority.

Key words:

Internally displaced persons, IDPs, returnees, legal identity, civil documentation, human rights, internal displacement.

Introduction:

The right to be recognized as a person before the law is one of the most basic human rights. Civil registration and documentation matters are paramount to addressing current humanitarian issues, to providing response and safeguarding the basic rights of IDPs, refugees, returnees and other crisis-affected populations. It is also an issue vital to creating conditions conducive for return of IDPs and refugees. The primary responsibility for creating conducive conditions rests with the national authorities, while the international humanitarian community plays important complementary and supportive roles.

Internal displacement is a cause for concern as the number of internally displaced persons annually is astounding. In 2017, 30.6 million people were forced out of their homes due to conflict and

disasters.⁷ This slightly fell to 27.8 million in 2018 with 54.3% of total disaster displacement coming from the East Asia and Pacific while 69.1% of conflict displacement came from Sub-Saharan Africa.⁸ Unfortunately, 2019 saw a huge spike in new displacements at 33.4 million, noted as the highest in 12 years. The long-standing conflict and violence led to approximately 4.57 million new conflict displacements. More alarming is that 2019 holds the highest ever recorded total of conflict displacement at 45.7 million people and a first time estimate of 5.1 million total disaster displacements leading to a final tally of 50.8 million IDPs.⁹ Access to official civil documentation has been complicated in situations of forced displacement, as documents may be destroyed, damaged or confiscated while civil registry offices may cease to function, and their records may be destroyed or even intentionally targeted.

The article begins by providing a short account of how legal identity problems manifest themselves for IDPs through providing the conceptual definition, scope of their rights and the responsibility to protect them. A description is given of the extent of the problem and the consequences IDPs face due to a lack of legal identity. The article pays attention to the functioning of civil registry systems, and the issuance of civil status documentation such as birth certificates, marriage certificates, death certificates and identity cards. The article demonstrates the importance and instruments of facilitating the right of IDPs and returnees to access civil status documentation in light of the recent legislative developments in Syrian Arab Republic (Syria), especially the new Civil Status Law (CSL) No. 13 of 2021 and the legislative decree No. 07 Of 2021 which provided exemptions from the fines of delayed civil events.

7- Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC), Global Report on Internal Displacement, (2018). Geneva. Available at: <https://www.internal-displacement.org/global-report/grid2018/> [accessed 18 February 2021].

8- IDMC and NRC, Global Report on Internal Displacement, (2019). Geneva. Available at: <https://www.internal-displacement.org/sites/default/files/publications/documents/2019-IDMC-GRID.pdf> [accessed 20 February 2021].

9- IDMC and NRC, Global Report on Internal Displacement, (2020). Geneva. Available at: <https://www.internal-displacement.org/global-report/grid2020/> [accessed 20 February 2021].

It analyses the issue of legal identity in the Syrian displacement and return context; and highlights the important need to clarify how legal identity can best be guaranteed and protected.

Methods:

The objective of this article is to determine the impact of the new legislative developments in Syria on facilitating the access of IDPs and returnees to legal identity and civil documentation, as well as ensuring informed national response and further development of recommendations. The article will also provide an opportunity to share information on existing legal frameworks with a view to fostering improved support for durable solutions for IDPs and returnees. The article would specifically highlight initiatives and support provided on civil registration and documentation issues; discuss progress and achievements in civil registration/documentation; and identify possible gaps, and agree on next steps to better prepare for support to access civil registration and legal identity.

The article draws upon international reports, statements and reports from UN field offices, the Office of the High Commissioner of Refugees (UNHCR) and organisation of whom are the Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC). The article also analyses the main two national legal instruments: the new Civil Status Law No. 13 of 2021 and the legislative decree No. 07 of 2021.

Questions explored in the article include: what is the interlink between displacement and access to legal identity? What is the legal framework applicable at the national and international levels? To what extent the recent national developments positively impact access to civil documentation?

This article considered the evolution of civil registration and documentation as a human right under international law with

particular focus being placed on the right to birth registration and the right to recognition as a person before the law in light of the international conventions. As having a legal identity enables someone to hold other rights under law including nationality and to access basic services such as health and education.

The article then maps how legal identity is protected under international law, in situations of displacement. It does this by setting out the key provisions relating to legal identity under international humanitarian law and international human rights law. Taking stock of this factual and legal analysis, the article ends by analysing why civil status documentation and legal identity is becoming so vital. The article concludes by suggesting how legal identity in situations of displacement and return can be protected and secured.

Chapter One: Understanding legal identity and civil documentation in contexts of displacement:

Civil registration is defined as the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population, as provided through decree or regulation in accordance with the legal requirements in each country. As civil registration establishes the existence of a person under the law, it has been the fundamental means of conferring legal identity to an individual. Legal identity is thus defined as the basic characteristics of an individual's identity. For instance, name, sex, place and date of birth and family ties that are conferred through registration and the issuance of a certificate by an authorised civil registration authority following the occurrence of a vital event such as birth, death, marriage or divorce.¹⁰

The Syrian crisis has resulted in the closure and destruction of many civil registry offices. New births, marriages, divorces, and

10- United Nations Department of Economic and Social Affairs (2014), Principles and Recommendations for a Vital Statistics System, Version 03, available at: <https://unstats.un.org/unsd/demographic/standmeth/principles/m19rev3en.pdf> [accessed 11 April 2021]

deaths are often not entered into official records, leaving IDPs without documents to prove these events took place. Since not all records are digitally preserved, loss or destruction of original documents can result in the permanent loss of this information. Lack of civil registration and documentation services caused by the disruption of governance structures has serious consequences for all Syrian nationals, and IDPs and returnees in particular, as access to civil registration and documentation is critical for the enjoyment of fundamental rights, and for return to the place of origin when IDPs and refugees of facilitating or limiting the enjoyment of basic human rights, such as the right to food, the right are willing to return to their place of residence and rebuild their lives.

Section One: Defining internally displaced persons and responsibility for protecting them:

The Guiding Principles on Internal Displacement (GPID) defines Internally displaced persons as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border."¹¹ Analysis shows that the UN cites "armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters" as the causes of IDPs forced from their homes to another within an "internationally recognized state border".

11- While the UN Guiding Principles on Internal Displacement are not legally binding, their authority has been recognized globally, particularly as they draw from international humanitarian and human rights law. The Africa Union in particular has codified the UN Guiding Principles on Internal Displacement with the 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the so-called "Kampala Convention," preceded by the 2006 Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons). The UN High Commissioner for Refugees (UNHCR), Guiding Principles on Internal Displacement, 22 July 1998, available at: <https://www.refworld.org/docid/3c3da07f7.html> [accessed 03 March 2021]

The primary responsibility for protecting IDPs, and all persons within their own country, rests with the national authorities of the country. National responsibility is a core concept of any response to internal displacement. It is a fundamental operating principle of the international community and is routinely emphasized by governments themselves, as a function of their sovereignty.¹² Yet, it is sometimes the very governments responsible for protecting and assisting their internally displaced populations that are unable or even unwilling to do so, and might even be directly involved in forcibly uprooting civilians.¹³

IDPs enjoy human rights that are articulated by international human rights instruments and customary law. In situations of armed conflict, moreover, they enjoy the same rights as other civilians to the various protections provided by international humanitarian law. Once persons have been displaced, they retain a broad range of economic, social, cultural, civil and political rights, including the right to basic humanitarian assistance, such as food, medicine, shelter, the right to be protected from physical violence, the right to education, freedom of movement and residence, political rights such as the right to participate in public affairs and the right to participate in economic activities.¹⁴

Section Two: Relevance of IDPs issues to lack of civil registration and documentation

IDPs are initially unable to replace personal documentation that was left behind, lost, destroyed, or confiscated in the conflict or disaster

12- Global Protection Cluster (2010), Handbook for the Protection of Internally Displaced Persons, available at: <https://www.refworld.org/docid/4790cbc02.html> [accessed 03 March 2021]

13 Addressing Internal Displacement: Framework for National Responsibility, The Brookings Institution-Bern Project on Internal Displacement, 2005. Available at: https://www.brookings.edu/wp-content/uploads/2016/06/04_national_responsibility_framework_Eng.pdf [accessed 04 March 2021]

14- The Guiding Principles on Internal Displacement compiles human rights and humanitarian law relevant to internally displaced persons. Further background are available at: <https://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx> [accessed 04 March 2021]

situation, or during fleeing their home.¹⁵ This can result in numerous issues, as such documents are often necessary to access basic services. The fact that IDPs may be unable to replace lost or destroyed personal documentation, even years after their initial displacement, impedes their ability to become self-sufficient (as such documents are essential to move freely, access social services, qualify for reconstruction or compensation funds, purchase or rent housing and land, enrol in school, and find employment in the formal labour market).¹⁶

Many IDPs are not aware how to issue personal documents or how to replace their lost ones. Replacement of documentation is often difficult for a variety of reasons, one of which is the complex administrative procedures. Furthermore, some documents can only be obtained from the area in which the person is registered in the civil status record which could be sometimes inaccessible in some operational contexts. Many IDPs are facing challenges in the birth registration for reasons related to their unawareness about the importance of registration, negligence, lack of proper official documents needed for registration, or their inability to access areas where their civil records are located.¹⁷

Section Three: Importance of legal identity revealed:

Having a legal identity is a basic human right. It allows IDPs to travel, work, go to school, get married, confirm parentage, receive health care, access government services, vote, inherit, buy and sell property – nearly everything. While many take the

15- Baker, H.M. (2019). Iraq: No documents, no future, available at: <https://www.nrc.no/perspectives/2019/iraq-no-documents-no-future/> [accessed 07 March 2021]

16- Tull, K. (2019). Civil Documentation for Internally Displaced Persons (IDPs) in Protracted Displacement. K4D Helpdesk Report. Brighton, UK: Institute of Development Studies. Available at: <https://resourcecentre.savethechildren.net/library/civil-documentation-internally-displaced-persons-idps-protracted-displacement> [accessed 07 March 2021]

17- UN High Commissioner for Refugees (UNHCR), Echoes From Syria Issue 1 - June 2014, Protection Sector/issue 1, available at: <https://www.refworld.org/docid/53a933434.html> [accessed 11 April 2021]

right to a legal identity for granted through the issuance of birth certificates, national identity cards, passports, and other documents¹⁸. This reveals how crucial civil status documentation is for IDPs can be, in terms to freedom of movement, the right to marry and the right to register a child, to protect its legal identity. They also show how closely the lack or loss of civil status documentation is linked to a heightened risk of statelessness. It is very challenging for a person to establish legal identity and to acquire a nationality without an officially recognized birth certificate or equivalent birth registration documentation. Persons without birth registration documentation or who have not been registered may be denied access to essential services including education and healthcare; they can face early marriages; they may be more vulnerable to illegal adoption, military recruitment, child labour and trafficking. The lack of birth registration or the absence of documents does not, on its own, make a person stateless, but it creates a high risk that people will not be considered nationals by any state.

Section Four: Mapping the legal framework on legal identity for IDPs and returnees:

The right to be recognised as a person before the law is in all major international human rights instruments. The fact that Sustainable Development Goal (SDG) 16.9 states that by 2030 there should be ‘legal identity for all’ makes it extra important to explore the issue of legal identity in armed conflict.¹⁹ This goal starts from birth registration. This article demonstrates that there is much to be worked out, in terms of deciding how the problem can best be

18- Clutterbuck, M., Cunial, L., Barsanti, P., & Gewis, T. (2018). Establishing legal identity for displaced Syrians. Forced Migration Review. Available at <https://www.fmreview.org/syria2018/clutterbuck-cunial-barsanti-gewis> [accessed 11 March 2021]

19- The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by all United Nations Member States in 2015 as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. The 17 SDGs are integrated—that is, they recognize that action in one area will affect outcomes in others, and that development must balance social, economic and environmental sustainability, at: <https://sdgs.un.org/goals> [accessed 21 April 2021]

solved in crisis-affected environments. Any solution must be delivered in a manner that not only provides everyone with a legal identity at birth but that is sensitive to the more multidimensional aspects of legal identity that accompany an individual through their life.²⁰

Every child has the right under international law to be registered at birth, as States have a duty to register all births that occur in their territory. This obligation on States is established by widely ratified international human rights treaties, including the **International Covenant on Civil and Political Rights**²¹ and the **Convention on the Rights of the Child**²². Both require States to proceed with registration immediately after birth and without discrimination of any kind, irrespective of the child's legal status or that of the parents.²³ **The Universal Declaration of Human Rights** affirms the right of every individual to recognition as a person before the law, which is linked to legal identity and established, *inter alia*, through registration of birth.²⁴ Birth registration is also essential to the implementation of safeguards for children who would otherwise be stateless, including the safeguards contained in the **1961 Convention on the Reduction of Statelessness**.²⁵ The principles of

20- Op.Cit. Tull, K. (2019). Civil Documentation for Internally Displaced Persons (IDPs) in Protracted Displacement. P.04.

21- International Covenant on Civil and Political Rights (ICCPR), Article 24(2); Convention on the Rights of the Child, Article 7(1). See also, UN Human Rights Committee, CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, at: <http://www.refworld.org/docid/45139b464.html> ; and UNHCR, Conclusion on civil registration No. 111, 2013 (17 October 2013), at: <http://www.refworld.org/docid/525f8ba64.html> [accessed 17 April 2021]

22- UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 23 April 2021]

23- UN Human Rights Committee, General Comment 17 on Article 24 (Rights of the Child), 7 April 1989, at: <http://www.refworld.org/docid/45139b464.html> [accessed 18 April 2021]

24- The UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 23 April 2021]

25- UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at:

equality and non-discrimination are central to the implementation of universal birth registration because children who are vulnerable and marginalized are also more likely to be unregistered.²⁶ **The UN Committee on the Rights of the Child** has formulated simple birth registration standards for securing the registration of all children: a *universal*, well-managed registration system that is *accessible* to all and *free* of charge.²⁷

The **UN Committee on the Rights of the Child** has also emphasized the ‘importance of facilitating late registration of birth and ensuring that children who have not been registered have equal access to health care, protection, education and other social services’.²⁸ This obligation is further outlined in the **Guiding Principles on Internal Displacement**. It requires States to facilitate the issuance of new documents or the replacement of documents lost during displacement without imposing unreasonable

<https://www.refworld.org/docid/3ae6b39620.html> [accessed 23 April 2021] and Article 7(2) of the Convention on the Rights of the Child also requires State parties to ensure the implementation of a child’s right to birth registration and to a nationality, in particular where the child would otherwise be stateless. See also UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness (21 December 2012), HCR/GS/12/04, at: <http://www.refworld.org/docid/50d460c72.html> [accessed 21 April 2021]

26- Office of the UN High Commissioner for Human Rights (OHCHR), Strengthening policies and programmes for universal birth registration and vital statistics development, A/HRC/33/22, 2016, at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/22 [accessed 21 April 2021]

27- UN Committee on the Rights of the Child (CRC), General Comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para. 25, at: <http://www.refworld.org/docid/460bc5a62.html> [accessed 21 April 2021]

28- CRC, General Comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para. 25, at: <http://www.refworld.org/docid/460bc5a62.html>. See also: UN Human Rights Council (HRC), Birth registration and the right of everyone to recognition everywhere as a person before the law: resolution adopted by the Human Rights Council, 24 March 2017, A/HRC/RES/34/15, at: <http://goo.gl/NeAgN3> ; HRC, Birth registration and the right of everyone to recognition everywhere as a person before the law: Report of the Office of the United Nations High Commissioner for Human Rights, 17 June 2014, A/HRC/27/22, at: <http://www.refworld.org/docid/53ff324e4.html> ; HRC, The right to a nationality: women’s equal nationality rights in law and in practice: resolution adopted by the Human Rights Council, 18 July 2016, A/HRC/RES/32/7, para. 8, at: <http://www.refworld.org/docid/57e910044.html> ; HRC, Strengthening policies and programmes for universal birth registration and vital statistics development, 1 July 2016, A/HRC/33/22, at: <http://www.refworld.org/docid/57e13b2a4.html> [accessed 22 April 2021]

conditions, such as the return to the area of habitual residence in order to obtain these or other required documents. The documents listed include those needed for the enjoyment of civil and political rights, protection against arbitrary arrest and detention, freedom of movement, and the right to vote, as well as economic, social and cultural rights, including education, adequate housing, and health care.²⁹

Registration of births is a constitutional and legal duty and the right of the new-born. The 2012 **Constitution of the Syrian Arab Republic** affirms that the State has the duty to protect children, as stipulated in article 20, paragraph 2, of the Constitution: “The state protects and encourages marriage, works to remove the physical and social obstacles that hinder it, protects motherhood and childhood, cares for young people and provides them with the conditions to develop their talents”. Syria also acceded to the International Covenant on Civil and Political Rights in 1969 and entered it into force in 1976.³⁰ Moreover, Article 12 of the Covenant stipulates that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his/her residence and shall be free to leave any country, including his/her own.³¹ Civil registration and documentation, have a legal dimension fully enshrined in national law and international instruments ratified

29- Principle 20 of GPID, at: <https://www.refworld.org/docid/3c3da07f7.html> [accessed 03 March 2021]

30- OHCHR, UN Treaty Body Database, Ratification Status for Syrian Arab Republic, at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=170&Lang=EN [accessed 23 April 2021]

31- Article 4 of the same Covenant stipulates that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin, at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [accessed 22 April 2021]

by the Syrian Arab Republic³² as well as in other recognized compilations of legal principles.³³ The **Syrian Civil Status Law**—Legislative Decree No. 26 of 2007, as amended by Law 20/2011, Decree 69/2012, Decree 70/2012, Law 24/2015 and Law 4/2017 and recently was replaced by Law No. 13 of 2021 outlines the roles and responsibilities of the civil registry, the key procedures for obtaining a birth certificates, death certificates, family booklets as well as the required national identity card. The second chapter will analyse the new civil status law No. 13 of 2021 as well as the legislative decree No. 07 of 2021 considering their impact on enhancing access to legal identity and civil documentation in the Syrian context.

Chapter Two: Impact analysis of the national legal developments to facilitate access to legal identity:

The Directorate of Civil Affairs in the Ministry of Interior in the Syrian Arab republic is the authority in charge of the registration of birth, death, marriage, divorce and the correction of records, in addition to issuing identity cards and family booklets for Syrian nationals. The Civil Registry Centre shall register the citizens' records electronically and add to them the newly occurring civil status events, whether occurring inside the State or abroad, and provide documents thereof; and provide personal identification cards and family booklets to the citizens in accordance with the provisions of this Law. The civil records of the civil registry shall have legal probative value and shall serve as a source of population statistics of all forms. During the displacement and return context, the main legal concerns include, but are not limited to the issuance of identity cards and family booklets, lineage and marriage

32- Date of ratification: Convention on the Rights of the Child (15 July 1993), International Covenant on Civil and Political Rights (21 April 1969), Convention for the Elimination of Discrimination Against Women (28 March 2003).

33- Key rights include the right of all human beings to recognition as a person before the law; the right of all children to a name, identity, birth registration and nationality; the right of children to know and be cared for by their parents; the right of women to enter into marriage only with their free and full consent; and, more broadly, the right of all persons to family life and family unity.

authentication, birth registration and housing, land and property (HLP) issues including property registration and seeking damages.

This chapter highlights the impact of the national legal developments for IDPs and returnees to access to civil documentation and legal identity. Reference will be made to the Legislative Decree No. 07 of 2021 which provided exemptions from fees and fines for delayed civil events. The new Syrian Civil Status Law No. 13 of 25 March 2021 will be touched upon.

Section One: Exemption of delayed civil fines, Legislative Decree No. 7 of 2021

On 11 April 2021, the Syrian president Bashar Al-Asad issued the Legislative Decree No. 07 of 2021 which read as:” Syrian citizens, and the like, who have delayed registering civil status events, or obtaining the national identity card or the family booklet shall be exempted from the fees and fines provided for in the legislative decree No. 13 of 2021. This legislative decree shall be in force for six months as of its effective date”.³⁴

Analysing the legislative decree No. 07 of 2021, it exempts from the financial burden on Syrian nationals whether they are inside Syria or abroad, and those registered Palestinians inside Syria, to obtain the identity and family cards and recording their civil status incidents considering the fact that it is possible that nationals IDPs may have refrained from registering the civil incidents (birth, death or marriage) as a result of his financial hardship. For instance, the fine for delay in obtaining the family and personal cards is estimated at 7,000 SP, and that the fine for delaying the registration of the event, whether it is “birth, death, marriage or divorce” ranges from 5,000 to 20,000 SP. All these fines are included in the exemption decree. The decree will be implemented directly after its publication in the official gazette, and then it will be circulated to

34- Article 01 of the Legislative Decree No. 07 of 2021, available at: <https://www.sana.sy/?p=1357264> [accessed 13 April 2021]

all directorates and centers of the civil registry.³⁵ As of writing this paper, the executive orders have not been issued yet. This legislative decree shall be in force for six months as of its effective date”.³⁶

The legislative decree No. 07 of 2021 is not the first step taken by the Syrian authorities to facilitate IDPs access to civil documentation and legal identity. It builds upon the Legislative Decree (LD) No. 11 of 02 July 2019 issued by the Syrian president Bashar Al-Asad related to exemption of fines and fee for the IDPs as well as for the returnees for one year from July 2019 until July 2020.³⁷ The executive orders issued under decision No. 308 of July 2019 by the Minister of Interior indicated that Syrian citizens, and the like, who have delayed registering civil status events, or obtaining the national ID card or the family booklet shall be exempted from the fees and fines based on the following criteria:

1-The citizen shall be originating from the areas that have been subjected to terrorist acts. Such areas shall be determined by the Central Administration of Civil Affairs. Or from citizens who have been displaced in or out the Syrian Arab Republic. The case of internal displacement shall be proved by residence permit ‘Sanad Iqama’ or police investigations\ police report. The external displacement is confirmed by a departure statement issued by the Immigration and Passports Department, a passport, police investigations\ police report or the receipt of civil status documents from outside the country.

35- The Head of Civil Affairs Directorate confirmed that pointed out that any citizen, or the like, can be directly exempted from the fines upon approaching the civil registry to register the civil incident that she/he was late in registering, indicating that the decree includes Syrian citizens, whether in Syria or abroad, including those of similar status, i.e. registered Palestinians. Al-Watan Newspaper, Issue No. 3457, 11 April 2021, available at: <https://alwatan.sy/archives/254452> [accessed 13 April 2021]

36- Article 01 of the Legislative Decree No. 07 of 2021.

37- Article 01 of the Legislative Decree No. 11 of 2019 read as: “Syrian citizens, and the like, who have delayed registering civil status events, or obtaining the national ID card or the family booklet shall be exempted from the fees and fines provided for in LD No. 26 of 12 April 2007 if the delay was due to their areas being subject to terrorist acts, or their displacement in/out of the Syrian Arab Republic caused by such terrorist acts”. The full text is available at: <http://www.sana.sy/?p=972031> [accessed 14 April 2021]

2-The civil events covered by the provisions of this decree shall take place after the date of 15/03/2011.

3-The due date of the personal or family card shall be after the date of 15\03 \2011.

The executive orders stated that the required documents to prove the civil event or obtain a personal or family card shall be submitted in accordance with the applicable legal procedures. It also stated that the provisions of this decree shall be applied to the Palestinian Arabs registered in the General Authority for Palestinian Arab Refugees in Syria, with regards to the above-mentioned principles. To quantify the impact of this legislative decree, it applies to the whole Syrian territories. For instance, it includes areas in Rural Damascus in 21 districts and 08 areas in Damascus to be exempted from fines and fees.³⁸

Section Two: the new Civil Status Law, law No. 13 of 2021

On 25 March 2021, the Syrian president issued Law No. 13 of 2021; the new Civil Status Law to replace the Civil Status Law promulgated by Legislative Decree No. 26 of 2007 and its amendments.³⁹ The new law includes fundamental amendments that will contribute to the development of civil status work in line with the automation system, improve the quality of services, simplify procedures and shorten them in a faster time, and in the easiest way to reduce the effort and costs. The new law provides for an electronic compilation of personal data pertaining to the civil status of citizens, expatriates and residents along with their national

38- The researcher has only been permitted to read the areas at the premises of the Civil Registry Department. A case in point is the included areas in Damascus and Rural Damascus. The areas subject to terrorist acts in **Damascus** are: Jubar, Qabboun, Barzeh, Al-Qadam, Al-Tadamoun, Al-Abasein and karajat Al-bolman and Yarmouk camp.in **Rural Damascus**, there are 21 Districts\ Civil Registry Departments which are: Al Tal, Harasta, Dummier, Harran Al-Awameed, Al-Nashabieh, az-Zabadani, Ain Al-Fijeh, Madaya, Jirud, Ma'loula, Al-Rhaiba, Daraya, Al-Hajar Al-Aswad, Yabroud, Al-Haramoun, Sa'sa, Kafar Batna, Muliha, Babila, Qudsaya and Arbin. A total of 114 City, sub districts and communities are included within these districts.

39- Civil Status Law No. 13 of 2021 is available at: <http://www.sana.sy/?p=1344988> [accessed 15 April 2021]

numbers.⁴⁰ The digital nature of the Civil Registry database means that the national numbers of citizens and residents will result in less chances of mistaken identities due to similar names and the ability to submit recordable data at any respective center in Syria wherever convenient. In practical terms, Syrian citizens including IDPs are no longer required to return to their home province to file registration papers or request services from the Civil Registry but rather can visit any such center nearest to them to carry out such procedures, which is a stark departure from previous practices.⁴¹ Following the displacement, it has become impractical and costly for many citizens to travel to their home provinces for such administrative processes. But the appropriate use of technology is determined by the environment in which it is being utilised. The use of any technology cannot be dissociated from concerns over adequate infrastructure, energy supply, and sustainability as well as growing concerns over security, scalability, and privacy. Hence, focus needs to be given on supporting the State with restoring basic necessities such as stabilising the conflict situation, providing life-saving services and building the minimum infrastructure, before technological solutions can prove to be the most beneficial or sustained.⁴² Some positive steps have been taken to address documentation issues. A legal aid programme funded by the Office of the United Nations High Commissioner for Refugees (UNHCR) includes counselling and assistance on documentation and

40- Article 01 of Law No. 13 stated that: “the One Civil Status Office of Syria (OCSOS) is the database comprising the information of all the State citizens, in which their events shall be registered wherever they occur, and a citizen shall be represented by a single record identified by his/her national number. It shall also include the events occurring to non-Syrians on the State territory”.

41- Article 15 of Law No. 07 stated that: “When a citizen’s civil status event occurs inside the State territory, the documents proving the occurrence of the event are to be provided to any civil registry center which shall register the event immediately”.

42- In emergency situations, such as conflict, displacement or public health emergencies, establishing reliable and resilient civil registration and identity systems can prove to be challenging and call for specific coordination and collaboration with the State and partner organisations to improve the systems and services in place and prevent situations of statelessness. Sandra Sfeir (2019), Civil Registration and Legal Identity in Humanitarian Settings, London School of Economics and Political Sciences. Available at: <https://blogs.lse.ac.uk/mec/2019/05/03/civil-registration-and-legal-identity-in-humanitarian-settings/> [accessed 18 April 2021]

registration issues. It also supports the technical rehabilitation of damaged civil registry centers and departments in affected areas during the crisis.⁴³ Measures to raise awareness of the importance of personal status documentation and existing procedures and build the capacities of local non-governmental organizations to provide internally displaced persons with technical assistance and legal advice have also been important.

The new civil status law also reaffirms that the civil registry may be transferred to other safe locations subject to the Minister's approval upon a request by the Central Administration and under its supervision. This is in the event that the civil registry, its software or its backups are at risk of loss/damage due to disturbances, war, natural disasters or state of emergency. The Central Administration must also take the necessary measures to keep the computerized work active and reliable during emergencies.⁴⁴ In the event that the civil registers are lost or damaged, or the written/computerized records are deemed void for any procedural or technical reason, the most recent backup shall be referred to, subject to the Minister's approval, and the lost data shall be re-recorded.⁴⁵ The new civil status law states that the informant must provide a certificate proving its occurrence of any civil event along with its documents within three months as of the event's occurrence if it occurs inside the country. This amendment will help IDPs access civil registries at the nearest to avoid any financial fines in case they faced hardship to register the civil event within the previously stipulated period of 30 days⁴⁶.

43- UNHCR (2019). Global Report, at: https://reporting.unhcr.org/sites/default/files/gr2019/pdf/GR2019_English_Full_lowres.pdf#_ga=2.90002395.1934537385.1619166703-600627513.1612292315 [accessed 22 April 2021]

44- Article 09 of Civil Status Law No. 13 of 2021.

45- Article 10 of Civil Status Law No. 13 of 2021

46- Article 14 of Civil Status Law No. 13 of 2021. It is worth mentioned that article 14 of the cancelled civil status law No. 26 of 2007 (cancelled) stated that: "civil status event occurring inside Syria are to be reported within 30 days; whereas such event occurring outside Syria shall be reported within 90 days of the event".

Among the amendments several new procedural elements were introduced, which are likely to facilitate access to regular civil documentation by Syrian citizens within and outside the country. Such amendments include, inter alia, the possibility for a broader range of family members being able to request copies of civil documents for Syrians unable to access civil registries⁴⁷; and the clarification that wives, single adult children, legal custodians and their Legal representatives are entitled to obtain replacement family booklets.⁴⁸ This amendment aims to respond to the needs that emerged during the crisis, when the owner of the family booklet is not available due to their death, disappearance or flight abroad but the wife or the legal custodian of the children (e.g. an uncle or grandparents). Additionally, the amendments mention the wife explicitly, which is important as in the past, it was up to the official in the registry department to accept their application.

Additional positive amendment is that the new civil status law abolished the rule determined by article 61 of Law 26 of 2007 which determined that replacements for family booklets will only be issued once a year, irrespective of the circumstances of the case, affecting those being multiply displaced in short periods with a heightened risk of losing civil documentation. As per the new civil status law, it is possible to obtain a replacement for the family booklet more than once a year.⁴⁹ The new civil status law considered the fact that any households lose or incur damages to their family booklets more than once a year due to multiple

47- Article 22 of Civil Status Law No. 13 of 2021 stated that: "The subject of a certain record may request from the head of Centre to have any relevant civil status documents provided to him/her or to his/her ascendants, descendants, spouse, siblings and their families, i.e. their spouses and children, or to the legal representative. Official entities shall also be entitled to such right".

48- Article 56 of Civil Status Law No. 13 of 2021 stated that: "A. Each of the following shall have the right to a first-time family booklet or a replacement due to loss/damage: The husband or the wife; Single adult children, if both parents are dead or absent due to travel or imprisonment, or the father is dead and the mother has remarried, or the mother had been divorced before the father died; The legal custodian, if there are no single adult children, and in accordance with Item (2) of this Clause. Legal representatives of the persons indicated in Clauses (A) and (B) may take the necessary measures to receive the family booklet on their behalf".

49- Article 61 of Law 04 of 2017 stated that: "The replacement of a lost/damaged family booklet will be issued only once a year".

displacements. With the new amendment, many displaced households will be able to access official services or benefit from humanitarian assistance, as such documentation is required by various humanitarian actors.⁵⁰ The law requested every Syrian Arab citizen, male or female, who has completed fourteen years of age, must obtain a personal identification card from any civil registry centre in the State within one year of completing the aforementioned age. The new amendment will facilitate IDPs access to legal identity at the nearest civil registry available where they are living instead of the costly travel to their original civil registry where their civil records were first registered.⁵¹ In the event of damage/loss of a personal identification card, or correction/amendment to any of its information in the civil registry, its holder shall be required to apply for a replacement within thirty days as of the date of correction, amendment, damage or loss.

The new civil status law also facilitates the civil registration process of Maktoom persons who are any person whose father or both parents are registered in the State civil records, or descends originally from the State, but has not been registered within the set registration deadline.⁵² The new mechanism provided by Law No. 13 is that any correction or amendment of civil status records shall only be made upon a final court ruling. The civil magistrates' court shall consider motions of correction and amendment. The court hearing the case shall request from the concerned directorate to delegate a representative to attend the hearing.⁵³ Under this amendment, any civil magistrates' court will be competent for the

50- Attention shall be paid to the fact that Article 68 of Law No. 13 of 2021 stated that a penalty of one to six months' imprisonment, or a fine of SYP 200,000 (two hundred thousand Syrian pounds) shall apply to anyone who keeps his/her family booklet after having claimed it lost and obtained a replacement; uses his/her family booklet in a manner contrary to reality after correcting or amending its information in the civil registry and before adding the changes to it.

51- Article 49 of Civil Status Law No. 13 of 2021. Once the identity card obtained, a valid personal identification card shall be deemed legal evidence of its holder's identity, and he/she must have it on him/her at all times and present it to the public authorities when required.

52- Article 01 of Civil Status Law No. 13 of 2021.

53 Article 44 of Civil Status Law No. 13 of 2021.

judicial procedures instead of the court of the original civil record which might be in another district or governorate.

On the other hand, the new law reviewed the levels of administrative fees and fines for non-compliance with application deadlines for identity cards and family booklets. It is feared that increasing their financial burden through such significantly increased fees and fines will lead to even greater exposure to risks associated with the lack of civil documentation and related vulnerabilities. It can be recognized that the increases are aimed at motivating the population to adhere more strictly to the deadlines, thereby addressing a situation where many persons are without such documentation. Similarly, fines for delayed registration of civil status events have seen significant increases, including the increase for delayed child registration.⁵⁴ For this reason, the legislative decree No. 07 was issued on 11 April 2021 to provide exemption from fees and fines provided for in the legislative decree No. 13 of 2021 within a period of six months. The exemption is initially provided for all nationals inside and outside Syria irrespective of the original civil record.

Conclusion:

This article has shown that legal identity shall be understood as a humanitarian necessity – like food and water. Solutions must start with recognition of the fundamental importance of the right to a legal identity, continue with an understanding as to why some displaced persons have been unable to obtain such documentation, and conclude with practical steps and measures to assist displaced persons and returnees to obtain such vital documentation in full compliance with the national and international law. It demonstrates the cascading problems that can stem from a lack of legal identity including including housing, land

54- Article 61 of Civil Status Law No. 13 of 2021 stated that: “A fine shall be imposed for failure to report the occurrence of a civil status event as follows: SYP 5,000 (five thousand Syrian pounds) for failure to report within the deadline set forth in Article (14) of this Law; SYP 15,000 (fifteen thousand Syrian pounds) for failure to report within a year of occurrence of the event; SYP 20,000 (twenty thousand Syrian pounds) if a maktoom fails to apply for registration within a year of reaching the age of majority.

and property (HLP) rights. The article has also explored that the long-term risk is that missing, expired or incomplete documentation could become a significant obstacle to return and other durable solutions.

The article also highlighted the positive impact of the recent national legal developments to enhance access to legal identity. Introduction of digital systems by Law No. 13 of 2021 would surely take some pressure off nationals to keep their own legal identity safe, for the duration of their lifetime. Yet it is important not to move too swiftly in this direction because digitalized systems also bring problems associated with data privacy and technical infrastructure, and these too would likely to become more profound in times of crises. On the other hand, the impact of the legislative decree No. 07 of 2021 is highly recognised in enhancing IDPs and returnees' access to civil documentation through the provision of exemption from fines and fees within a period of six month of its force. The distinguished point is the general text of this legal instrument which makes it applicable to all Syrian nationals in Syria and abroad irrespective of the original civil record. The article concluded with the need to enhance the concerted and coordinated effort by all stakeholders to facilitate the widespread confirmation of the legal identity of IDPs and returnees, allow them to access their basic rights and entitlements, support the national authorities in civil registration including through restoration of national civil registration systems to facilitate the rapid and affordable issuance of legal identity documents.

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