

Legal preparedness for return to Syria

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Preparation in terms of legal rights is crucial for Syrian refugees who are planning to return.

There can be few more difficult and complex decisions for refugees than if and when to return home after a long period in exile. When such a decision is taken, however, refugees should be supported to ensure that they are 'legally prepared' for return. This means being aware of their rights, obligations and entitlements in both host country and country of origin and having the necessary support and documentation to be able to claim their rights and navigate the challenging road home. This is a fundamental component of any returns framework, as set out in the Comprehensive Protection and Solutions Strategy for Syria drawn up by the UN Refugee Agency (UNHCR), which highlights the need for physical, material and legal safety as an integral aspect of any durable return.¹

The experiences of the Norwegian Refugee Council (NRC) in its work on durable solutions options for Syrian

refugees in Jordan and Lebanon suggest that the following elements are key to protecting the legal rights of returnees.

Legal identity and civil documentation:

Returnees need to be able to prove their legal identity, status, nationality and family lineage. Lack of legal and civil documentation may directly hamper the possibility of crossing the border and will affect returnees' enjoyment of a number of human rights. It also increases their exposure to protection threats upon return, including restrictions on freedom of movement, risk of arrest, detention, trafficking, sexual exploitation, child marriage, family separation and statelessness. Under- or undocumented refugees face significant hurdles to accessing education, health services and humanitarian and development assistance. Examples from Syria discussed

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in a previous issue of *Forced Migration Review* show the importance of knowledge of the different laws and procedures for obtaining documents in both the country of origin and in different countries.²

Authorities in host countries have demonstrated some flexibility in simplifying these civil documentation issues. For example, Jordanian authorities have declared amnesties under which informal marriages have been formalised without penalty, while courts have accepted proof of parental identity via alternative documentation such as a UNHCR asylum-seeker certificate or residency card, or have accepted photocopied rather than original documents.³ Similarly, Lebanon has shown some degree of responsiveness through time-limited amnesties on late birth registration. However, major gaps remain in access to documentation.

Border crossing: In order to return home, refugees require a valid passport, travel document or accepted form of identification. Syrian refugees can use their national identification card for travel between Syria and Lebanon but legal exit from Lebanon requires legal residency – something only approximately one quarter of Syrian refugees have because of the prohibitive cost and complex procedures involved. Furthermore, an estimated 100,000 Syrian refugee youth in Lebanon aged 15–18 are unable to apply for legal residency because they do not have a Syrian national identification card or personal civil extract, such as written confirmation of their legal identity and status, both of which must be obtained from Syria.⁴ While Lebanese authorities have exempted some categories of returnees from paying the fines associated with irregular stay, this does not apply to all and some may receive a re-entry ban.⁵ Others exiting without proof of formal residency may be detained or face problems at the border. Seventy-five per cent of Syrian refugees in Jordan do not hold a passport, although a *laissez-passer* authorising one-way return to Syria can be obtained for US\$25 from the Syrian embassy. Nevertheless, an estimated 7% of Syrian refugees in Jordan are completely undocumented and may be

unable to obtain a travel document. Moreover, even once across the border, refugees may be prevented from returning to their former host countries to complete required birth or marriage registration procedures.

Family separation: Most refugee crises give rise to a variety of complex family unification issues as families are separated and split across countries. Complicating factors include when family members go missing, marry in host countries or have children born in different countries. Over 10,000 Syrian children are estimated to have fled the country as unaccompanied minors. Refugee women whose husbands are missing and presumed dead in Syria face uncertainty as to whether or not they can legally re-marry in host countries, or claim inheritance rights, without having formal proof of their husband's death that is recognised under Syrian law. Child marriage is used by many Syrian parents of teenage daughters as a negative coping mechanism. However any children of such underage marriages cannot be registered in Jordan or Lebanon in the absence of a formal marriage certificate, regardless of where the marriage took place. Depending on when refugees left Syria as well as their age when arriving in Jordan or Lebanon, individual members of the same household may possess varying forms of identification and face different hurdles in obtaining their documents, all of which may increase the likelihood of family separation, including across borders. Patterns are emerging of some family members returning to Syria, with others staying behind in host countries.

Housing, land and property (HLP) rights: As housing has often been damaged or destroyed during conflict, finding shelter and ensuring security of tenure are key considerations for refugees contemplating return.⁶ Surveys conducted in Syria highlight that the protection of property, assets or land is a key motivating factor for return. The lack of adequate housing, and other housing-related concerns such as disputed property ownership, are cited by large numbers of



NRC/Hussein Amri

Mohammed lives in Irbid in Jordan, in a rent-free apartment provided by the Norwegian Refugee Council's Urban Shelter project. Here he is talking with NRC staff about the process of acquiring civil documentation: "I had to get a new marriage certificate issued, after 17 years of being married, in order to process documents for my children and be able to register them in schools."

Syrians living in Jordan as obstacles to their return.⁷ NRC surveys conducted in Jordan indicate that only 20% of refugees possess HLP documentation for Syria such as land titles and deeds. Syrian women face particular challenges in protecting their HLP rights because of a discriminatory legal framework which limits their inheritance rights, and because of historical and traditional roles related to ownership rights – which can be further complicated by a lack of marriage, divorce and death documentation.

Roughly one third of all Syria's current legislation and regulations relevant to HLP rights have been passed by Syrian authorities since the start of the conflict, so it is of vital importance that Syrian refugees are kept up to date with developments that may affect their property rights. They should also retain copies of their HLP documentation both in hard copy and in digital form in order to safeguard against future loss of

documents – and be aware that even leases, utilities bills, building permits or court orders may be of important evidentiary value in protecting rights. Finally, Syrian refugees in Jordan and Lebanon should be informed about the procedures for obtaining a power of attorney from outside Syria, which may be necessary if selling or leasing property in Syria or if claiming inheritance rights.

Settling legal and administrative matters in host countries: Following an extended period in a host country, refugees must resolve a range of associated legal and administrative issues before they can return home. They must finalise housing arrangements, terminate leases, retrieve bonds and deal with any disputes. Employment relationships must be terminated and outstanding wages and entitlements (such as social security payments) recovered. Parents must obtain educational certificates for their

children to facilitate school enrolment in Syria. Syrian refugees typically have high levels of household debt, which may also need to be dealt with prior to return.

Access to rights and entitlements in the country of origin: Refugees' knowledge of procedures in their country of origin may be limited, particularly in a rapidly changing context such as Syria and given their often long absence. Positive recent changes by the Syrian government to raise the legal age of marriage from 15 to 16 years, for example, may have consequences for the validity of marriages of those under 16 which were entered into under Lebanese law. Some refugees will require assistance to access humanitarian assistance and government services, schools, health care and other rights and entitlements. They must be able to apply for lost or missing civil documentation from government registries and have the chance to correct wrong information. And, as returnee legal issues will often straddle borders, cooperation agreements between host countries and countries of origin (with the necessary resources to support them) will be critical.

Providing legal support to returnees

The cumulative effect of the civil documentation gap means that Syrians are growing increasingly reliant on dangerous coping mechanisms, including the use of fraudulent documents, adoption of false identities and payment of bribes. More must be done by authorities to facilitate access to documentation and to provide the necessary, updated information they require. Host countries and countries of origin should prioritise the issuance of documents, ensure the existence of effective and accessible procedures, and make available legal support. Legal aid providers can play a complementary role by advising refugees of their options, helping them access documentation, and advising them on laws, procedures and requirements on both sides of the border.

In order to ensure that refugees are in a position to make the best-informed decision about their options, they must have access

to a complete package of information and assistance, including about their legal rights and responsibilities when returning. NRC's experience in refugee movements in other contexts, such as Kenya/Somalia, the Great Lakes and Lake Chad Basin, highlights the importance of providing accurate information, legal support in obtaining documentation, and contact details of organisations who may be able to assist in both host and country of origin. Such an approach can prevent premature returns and ensure that refugees are able to access assistance and mitigate risks upon return.

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