

Systematic Housing and Land Rights Violations against Syrian Kurds

Habitat International Coalition's Housing and Land Rights Network remains deeply concerned over the continuity of measures by the State of Syria to dispossess its Kurdish population, resulting in the violation of a bundle of economic, social and cultural rights. The Kurdish community of Syria comprises approximately 10 per cent of the total Syrian population. They have been the target of discriminatory policies, laws and practices since the first declaration of state emergency following the coup d'état in 1962.

While discrimination against the Kurds in Syria has longer roots, marginalization and official discrimination increased after independence in 1946, and especially during the 1950s and 1960, at the height of Arab nationalism. That state ideology continues to dominate Syrian legal and political institutions and is particularly ungenerous toward Syrian non-Arab minorities.

The Kurds of Syria have suffered acutely from a lack economic development and restrictions on social and cultural expression. Key to this process was an extraordinary 1962 census in Syria's northern al-Hasaka Governorate, where the majority of Kurds traditionally have lived.

In the interim between the September 1961 collapse of the Egyptian-Syrian union (United Arab Republic) and the first Ba`th Party coup (March 1963), the conservative interim government issued Decree No. 93, calling for a census to be carried out in al-Hasaka "in one single day." This hasty exercise took place under the ethnocentric Arab nationalist vision of Governor Sa'id al-Sayyid, whose partisans characterized small-holding Kurdish farmers as "invaders." Anyone who could not produce family records on the census day would be denied entry into the registry, and all entries and appeals were reviewed ultimately by a "Supreme Committee" (Article 7 of Decree No. 93). Anyone in the area not registered as Arab Syrians would be considered "foreigners" (*ajānib*). This process stripped more than 120,000 Kurds of their Syrian citizenship.¹ (With few exceptions, Kurds were the only non-Arab persons treated in this way.)

Thus, shortly after the entry into force of the Statelessness Convention,² Syria created an entire class of stateless persons. However, the State never has sought to expel or "repatriate" Syrian Kurds to other countries. Nor has Syria ratified or signed the Statelessness Convention. Also, whereas the children of a marital union between two Kurdish *ajānib* are qualified also as *ajānib*, Syria is in violation of its treaty obligations under the Convention on the Rights of the Child to a nationality, as well as the other rights arising from full citizenship.³

The state has created another, related stateless category of those Kurds unregistered in 1962: *al-maktūmīn*. No Syrian government has sought to expel or "repatriate" such class of persons, despite the presumption that they have arrived illegally in Syria from an identifiable other country.

A union between two *maktūmīn* qualifies their children also as *maktūmīn*. The child of a recognized Syrian man and a *maktūma* woman becomes classified as a citizen. However, prohibiting a Syrian women citizen and her child the right to pass on the mother's nationality, if she were to marry a *maktūm* man, the child would be *maktūm*.

Under customary international law, everyone has the right to a nationality and the right to not be arbitrarily deprived of her or his nationality. The State of Syria systematically violates these rights for hundreds of thousands of Syrian Kurds.

Available statistics vary as to the number of persons treated as *maktūmīn* and *ajānīb* in Syria, and reliable official statistics are generally unavailable. However, the Syrian government reported in 1995 that the number of *ajānīb* in the country were only 67,465. Another source places the number at approximately 200,000 registered *ajānīb* and 80,000–100,000 *maktūmīn* in 2004, although Syrian officials dispute this estimate.⁴ The most-recent available statistics indicate, for al-Hasaka Governorate alone, over 154,000 people (See table below.)

Consequences of Constructed Statelessness

The stateless Kurds in Syria (*maktūmīn* and *ajānīb*) are subject to systematic persecution by Syrian governments, which situation has escalated in recent years. Their constructed status—outside of citizenship—makes them subject to a range of economic, social and cultural rights violations. Premised on their status as noncitizens, Syrian Kurds are unable to own land, housing or businesses, which impedes their rights to an adequate standard of living.⁵

Those people are unable to obtain official documents. They cannot travel abroad. They have no access to public employment and are discriminated in their access to health and education. They do not benefit from the public distribution of subsidized food.⁶

The access to subsidized food is particularly crucial in light of the recent land losses by administrative means, as well as the loss of food security and food sovereignty due to drought apparently brought about as a function of climate change. (See below.)

Land Deprivation

The Syrian government in Damascus already had begun in the 1960s with the confiscation of many Kurdish families' lands. Many land-owners alongside the borders of Syria with Turkey and Iraq were dispossessed at that time, in order to make way for the creation of the so-called "Arab Belt," 15 km wide and 350 km long. That policy forms an unbroken pattern, continuing until today.

The first decree that restricted the constitutional right to own property is the Legislative Decree No. 193 of 1952. Inspired by the ultranationalist Muhammad Talib Hilal,⁸ the decree identified "the risks that arise from suspected people having property adjacent to the border," (1) prohibits the building on, transfer or improvements on land located in the border areas, including leases, joint ventures or contracts for agricultural investment over more than three years, and (2) prohibits all contractors and contracts that require agricultural investment to bring farmers, workers or experts from other districts or countries, without first obtaining a centrally approved license. Issuing such a license became bureaucratically cumbersome and a Ministry of Agriculture denial is final and not subject to appeal. Arabs, Chaldeans, Syrians, Armenians and Assyrians have access to these licenses. However, to date, no Kurdish person ever has succeeded to obtain such a license.⁹

Kurds in al-Hasaka Governorate, 2008⁷	
al-Jawadiya	14,800
al-Qahtaniya	7,651
al-Qamishli	12,500
al-Hasaka	20,000
al-Malikiya	48,200
`Amudah	28,000
al-Darbasiya	11,400
Ra's al-`Ayn	10,000
Tall Tamir	632
al-Ya`rubiya	768
Tall Hamis	385
Total	154,336

The decree invalidates any previous contracts and neutralized any attempt to enforce terms of a previous contract, invalidated any contract by an alias and invalidated any subsidiary conditions. This obligates the Attorney General to (1) annul the registered contracts that are contrary to these provisions, and (2) enforce penalties to punish any official, title holder, or contractor in

contravention of these provisions. The geographical scope of these 1952 conditions was: (1) the Qunaitra area and the entire al-Zawaya area, and (2) areas within 25 kilometers of the Turkish border.

A special decree followed Decree 193 to redefine the border area to include the town of al-Hasaka and, by extension, the entire al-Hasaka Governorate. This obliged everyone to obtain the license for these transactions, but the underlying reason of this is to recognize all of the land of al-Hasaka as a border area. This is 100 kilometers inside the border, and is inhabited by Kurds, and so this has the effect that Kurds would not be denied tenure in property over a wider area.

A few months after Decree 193 entered into force, an exchange of communications between the Ministry of Justice and the Directorate General of Estate Interests determined that the decree applied only to agricultural land, and that only such land should come under this license.

Law 41 of 2004 replaced Decree 193, but continued in the same vein. It established the penalty for offenses at maximum two years imprisonment and a fine of 100,000 Syrian pounds. The previous decree allowed the purchase of lots or buildings that are within the city plan as before. However, the licenses were intended for agricultural land only, distinguishing Law 41 from Decree 193.

In 10 September 2008, Syrian President Bashar al-Asad issued Decree No.49 to amend Law No.41 as it related to property in the border areas. In its application, Decree No. 49 has led both directly and indirectly to the deprivation of Kurdish citizens' rights to adequate housing and to property, especially land as a source of livelihood and culture.¹⁰

Its first article prohibits the trade of property, mortgages, insurance, concessions, other franchises, or lending arrangements of a duration longer than three years, or that affect any legal rights concerning lands in the border area (including all of al-Hasaka) without central government permission, whether they are within or outside of a city plan, with or without a building on it, agricultural or nonagricultural land. The process remains prohibitively burdensome, and contracts outside these rules are deemed invalid. Decree 49 prevents the Courts from accepting any application to ratify a real estate sales contract, unless accompanied by the license. Contravening article 30 of the Syrian Constitution, the decree is retroactive and forces the dismissal of all pending cases in which the plaintiff (buyer) failed to produce the necessary license. Any current real estate sales without a license could be sent to auction as if no owner existed. It applies the licensing requirement also to rental properties for leases of more than three years. Decree 49 also prevents local councils from arranging municipal contracts for three years or more for shops, housing and agricultural property without obtaining a license in advance.

Kurds in Syria are effectively prevented from obtaining the requisite permits. Therefore, Decree 49 has derogated further their rights to housing, equitable land access and agricultural, as well as many other forms of livelihood.

On 25 September 2008, the Syrian authorities issued Decree No. 59 on the demolition of structures built contrary to the planning law. Its Article 2 stipulates that all illegal buildings shall be demolished and the violators shall pay the expenses of the demolition and removal of the rubble. Article 7 authorizes demolishing and/or replanning of the areas under the Law No. 1 of 2003 in the provincial towns, requires application of the decree retroactively, and targets the areas that include a majority of Kurdish people.¹¹

As a further result of repeated droughts, many families have migrated from rural Syria to urban centers. In 2009, some 29–30,000 families migrated, and estimates project that number to have increased to 50,000, or higher, in 2010. As a result, some 160 villages have ceased to exist.¹² Those who have moved from the drought-affected regions are mostly small-scale farmers from al-Hasaka Governorate, the overwhelming majority of them are Kurds.

As affirmed in the UN Guiding Principles on Internal Displacement,¹³ such persons have a right to State support for their welfare and housing,¹⁴ return and rehabilitation¹⁵ without negative discrimination.¹⁶ However, the State has not manifested willingness to uphold those rights.

In fact, in Decree 2715 of 16 December 2010, the Ministry of Local Administration further prohibited officials from ratifying and sales or rental contracts to persons outside of their designated domicile. This measure, which is ostensibly is not specific to any ethnic groups, further complicates and forecloses housing options—and housing rights—for those most vulnerable to the present wave of displacements.

In May 2010, the, the Directorate of Agriculture Reform in al-Hasaka issued Resolution No.2707 on 17 March 2010. It removed the names of more than 580 Kurdish peasants from lists of those who have permission to use the land in the Dayrik area of al-Jazīra region, because they lacked legal authorization in accordance with the provisions of Law No. 41 (2004), as amended by Decree No. 49 (2008).¹⁷ The Minister of Agriculture and Agrarian Reform `Ādil Safar said, in a visit to al-Hasaka Governorate on 5 May 2010, that it was the Arab Ba'ath Socialist Party and the National Security Council, headed by Major General Hishām Bakhtiār, who made the decision. The National Security Council decided which Kurdish names to include in the list (see Annex III).¹⁸

In a continuing measure, on 10 February 2011, The Ministry of Agriculture and Agrarian Reform excluded stateless Kurdish peasants from government support in their usual cultivation of cotton under pretext that they are not citizens.¹⁹ Meanwhile, the Syrian government has raised the price of agricultural inputs as a result of the recent drought, which, in turn, has increased the suffering of Kurdish peasants in Syria.²⁰

Consistently over more than half a century, these serial measures have cut the livelihood resources of Kurds and impoverished their lives further. By removing the citizenship from the population, these methods have taken 335 villages from Kurdish people since 1974, and alienated them from their agricultural land in the entire al-Hasaka area. These consequences are the result of a knowing policy of deprivation targeting ethnic Kurdish Syrians. By pursuing a model of citizenship status subordinated to an ethnocentric State ideology, the source and consequence of the violations are not subtle, and the subject of measures required to human rights-based statecraft are no less clear.

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¹ The stateless persons in Syria out of Palestinian refugees: Arab Commission for Human Rights 2004. <http://hem.bredband.net/dccls2/r1.htm>.

- ² Convention relating to the Status of Stateless Persons, adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and social Council resolution 526 A(XVII) of 26 April 1954, entered into force 6 June 1960, in accordance with article 39.
- ³ Article 7, Convention on the Rights of the Child (CRC), adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990, in accordance with article 49. Syria ratified CRC on 14 August 1993.
- ⁴ As of 31 October 1995. See *Stateless Kurds in Syria: Illegal invaders or victims of a nationalistic policy?* (Berlin: KurdWatch, March 2010), p. 13.
- ⁵ Article 11, International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 3 January 1976, in accordance with article 27 status of ratifications declarations and reservations. Syria ratified ICESCR on 3 January 1976.
- ⁶ UN Special Rapporteur on the right to food Olivier De Schutter, Mission to Syria from 29 August to 7 September 2010 (preliminary remarks), at: http://www2.ohchr.org/english/issues/food/docs/SyriaMissionPreliminaryConclusions_07092010.pdf.
- ⁷ *Stateless Kurds in Syria*, op. cit., p. 13. KurdWatch obtained these statistics from most of the civil registry offices in al-Hasaka Governorate.
- ⁸ The recently deceased (9 February 2011) Muhammad Tālib Hilāl (80) was a Saudi-naturalized Syrian who served as Ba`thist head of internal security in al-Hasaka Governorate. Throughout his life, he advocated the cleansing of the region of its non-Arab—particularly, Kurdish—population. As author of the infamous Arabization pamphlet “A Study of the Jazira Province from National, Social and Political Aspects” (1963), He set out a twelve-points plan to: (1) displace Kurds from their lands to the interior, (2) deny them education, (3) hand over “wanted” Kurds to Turkey, (4) deny Kurds employment opportunities, (5) conduct anti-Kurdish propaganda, (6) deport Kurdish ‘*ulama*’ (clerics) to be replaced by Arabs, (7) implement a divide-and-rule policy against the Kurds, (8) Arab colonization of Kurdish lands (9) militarize “northern Arab belt” and deport Kurds from the area, (10) create “collective farms” for the new Arab settlers, (11) deny rights to vote or public office to nonarabophones and (12) deny citizenship to any non-Arab wishing to live in the target area. The Syrian Ba`thi regional leadership and government formally adopted Hilal’s plan in 1965. See Haitham Mana`, “`Adīmū al-Jinsīyya fī Sūriya” [Arabic] “Stateless Persons in Syria,” (Geneva: Arab Commission for Human Rights, 2004), at: <http://hem.bredband.net/dccls2/r1.htm>.
- ⁹ Support Kurds in Syria, “Decree 49: Dispossession of the Kurdish Population?” at: <http://supportkurds.org/tag/decre-49/>.
- ¹⁰ “Decree 49 - Ethnic Cleansing of Kurds in Syria,” Support Kurds in Syria. August 2010, at: <http://supportkurds.org/reports/decre-49-ethnic-cleansing-of-kurds-in-syria/>
- ¹¹ لا تزال سارية المفعول بعد مرور عامين على صدورها رغم الاعتراضات الشعبية (69/59/49) لمراسيم السوداء (10 September 2010), at: http://www.pydrojava.com/index.php?option=com_content&view=article&id=701:-495969-&catid=42:2010-08-05-11-11-39&Itemid=61. See the text of Decree No. 59 on demolishing illegal buildings, at: <http://www.legalsyria.com/ar/the-news/158----59----->.
- ¹² Freimuth, L., Bromberg, G., Mehyar, M. & Khateeb, N. Al. 2007. *Climate Change: A new threat to Middle East Security*, Friends of the Earth Middle East: Amman, Bethlehem & Tel Aviv.
- ¹³ *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 11 February 1998.
- ¹⁴ Ibid., Principles 18 and 19.
- ¹⁵ Ibid., Principles 29 and 30.
- ¹⁶ Ibid., Principles 1, 2, 3 and 4.
- ¹⁷ الحكومة السورية تنشأ حزاماً عربياً لفصل كردستان سوريا عن إقليم كردستان العراق. <http://www.peyamner.com/details.aspx?l=2&id=179938>; Support Kurds in Syria, “Land rights of Kurdish Peasants removed in Syria,” June 2010, at: <http://supportkurds.org/news/land-rights-of-kurdish-peasants-removed-in-syria/>; , at: http://ar.soparo.com/index.php?option=com_content&view=article&id=13853:2010-05-20-16-29-26&catid=34:2008-05-23-23-58-43&Itemid=192.
Land Rights of Kurdish peasants removed in Syria. Rjhelat, the Kurdish Observer (June 2010), at: <http://english.rojhelat.eu/component/content/article/358>.
- ¹⁹ برسم وزارة الزراعة ... لماذا يتم حرمان المجردين من الجنسية من دعم، The Kurdish Organization for the Defense of Human Rights, 10 February 2011, at: <http://dadhumaan.info/1890.aspx>.
- ²⁰ Syrian drought triggers rural exodus. Lina Sinjab. August 2010. <http://www.bbc.co.uk/news/world-middle-east-11114261>; World Food Program, “Syria: Over a million people affected by drought,” February 2010, at: <http://www.wfp.org/content/syria-over-million-people-affected-drought>.