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POLITICAL SCIENCE ■



LEGITIMACY &  
CITIZENSHIP  
in the Arab world  
*Research at LSE* ■

# Legal Obstacles to the Participation of Syrian Refugees in the Presidential Elections

written by a group of researchers

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**Cover photo:** Al-Zaatari Camp for Syrian refugees, 2015. Taken by Mandel Ngan, Reuters

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## About Legitimacy and Citizenship in the Arab World

Legitimacy and Citizenship in the Arab World is a project within the Civil Society and Conflict Research Unit at the London School of Economics. The project looks into the gap in understanding legitimacy between external policy-makers, who are more likely to hold a procedural notion of legitimacy, and local citizens who have a more substantive conception, based on their lived experiences. Moreover, external policymakers often assume that conflicts in the Arab world are caused by deep-seated divisions usually expressed in terms of exclusive identities. People on the ground see the conflict differently and often perceive it as collusion against the general populace.

The project aims to bridge these gaps and advance our understanding of political legitimacy, thus improving policymaking and constitution writing to achieve sustainable peace and state-building in the Arab world. It also investigates how exclusive identities are deliberately constructed by ruling elites as a way of deflecting democratic demands and hindering the prospects of substantive legitimacy.

The project is carried out by a team of Syrian and Lebanese researchers and experts, led by Dr Rim Turkmani.

For more information visit the project's website: <http://dustoor.org/>

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# Legal Obstacles to the Participation of Syrian Refugees in the Presidential Elections

This summary provides a synopsis of the policy paper issued in Arabic by the Legitimacy and Citizenship in the Arab World project at the London School of Economics and Political Science, which examines the legal obstacles to the participation of Syrian refugees in the upcoming presidential elections.

The repercussions of the war in Syria spilled over the borders into countries in the region and the entire world, with an unprecedented wave of Syrian refugees. There are around 6.6 million Syrian refugees in 126 countries across different continents. This has made Syria the number one country of origin for refugees in the world since 2014.

The upcoming presidential elections in spring 2021 are taking place amid a local, regional and international political division over the feasibility and legitimacy of holding those elections, the issue of the participation of Syrian refugees in these elections, whether in terms of nomination or election, comes to the fore. This paper discusses the legal obstacles to this participation and proposes ways to overcome them. It is important to address this topic since analyzing the legal obstacles to Syrian refugee participation in the elections is completely absent in light of highlighting political positions while ignoring legal dimensions, in addition to the absence of analyzing this participation in terms of human rights and political legitimacy.

The elections are also closely linked to the international position on political settlement in Syria, where Article 4 of UN Security Council Resolution 2254, which is currently the main reference for the peace process in Syria, states that one of the desired peace steps is the “support for free and fair elections ... with all Syrians, including members of the diaspora, eligible to participate”. This was previously set forth in the 14 November 2015 International Support Group for Syria statement made in Vienna, which clearly states, “Free and fair elections would be held pursuant ... to the highest international standards of transparency and accountability, with all Syrians, including the diaspora, eligible to participate.”

The paper examines the importance of the participation of Syrian refugees in the elections as their participation is directly linked to the issue of legitimizing any political arrangement or settlement for the post-conflict phase. In addition, elections provide a direct opportunity for victims of the conflict to participate in choosing their post-conflict leadership. It also contributes to enhancing the opportunities for return, reconstruction, and re-establishing political identity of the individuals. The paper also examines the international legal framework that regulates this matter and its link to Article 25 of the International Covenant on Civil and Political Rights.

The Syrian constitution, General Election law and executive instructions do not

refer to refugee participation in the electoral processes. Syrian legal texts are absolutely devoid of any reference to the presumption of refugee participation, specifically in any Syrian elections. Their participation is limited to the presidential elections alone, as these are the only elections in which the law permits the participation of “Syrians abroad”, a term that is used to accommodate all Syrians who are outside Syrian lands at the time of the elections, including, of course, refugees.

## 1. Legal obstacles to the participation of Syrian refugees as candidates

The restrictions that prevent any Syrian refugee from running for president stem from the following conditions stipulated in the constitution and election law:

1. The Syrian constitution stipulates that a presidential candidate may not hold any nationality other than the nationality of the Syrian Arab Republic. This precondition is controversial given the large number of Syrian refugees who, due to the Syrian war and the ongoing refugee situation for more than ten years, have been forced or sought to acquire the nationality of a foreign country to enable them to live their lives normally after failing to garner protection and care from their country of origin. Thus the requirement of “not holding any other nationality” will constitute a real obstacle that may deprive the majority of refugees of the opportunity and the right to run for the presidency.
2. The Syrian constitution stipulates that a presidential candidate “must have resided in the Syrian Arab Republic for a period of no less than ten continuous years of permanent residency upon submission of the candidacy application.” While this precondition may be justified and logical under normal circumstances, its application in the Syrian context will lead to depriving all Syrian refugees of the right to run for president. Maintaining this precondition will also deprive refugees of running for president for ten years following their return to their homeland.
3. The Syrian constitution stipulates that a presidential candidate must be “enjoying his civil and political rights and not convicted of a heinous crime even if he is acquitted. He must also not be deprived of exercising the right to vote.” The problem here is that many charges and accusations have been directed against many refugees and dissidents accused of committing crimes or actions linked to the war and opposing the regime. They were referred, in presence or in absentia, to regular, exceptional or terrorism courts that were established specifically for this phase. Many rulings have been issued, most of which fall within the framework of crimes that will forever deprive the perpetrators of the possibility of running for president.
4. Under the provisions of the Syrian constitution, an application for candidacy for the presidency is not accepted unless the candidate has a written support for his candidacy from at least thirty-five members of parliament. It is almost impossible for any refugee or dissident to currently obtain these approvals since the government has complete control over members of parliament, given that the opposition did not participate in the 2020 parliamentary elections.

## 2. Legal obstacles to the participation of Syrian refugees as voters

The paper examines the legal mechanism that regulates the participation of Syrians abroad in the presidential elections, which requires that the election be held in Syrian embassies, provided that the name of the voter is included in the electoral register and that there is no legal impediment to exercising his right to vote. Voters must present a valid Syrian passport that has an exit stamp from any Syrian border crossing.

While these conditions are valid, in principle, under normal circumstances, they will certainly not be appropriate in the post-war phase, where there are hundreds of thousands of refugee voters who will be excluded from participating in the electoral process for various legal reasons, most notably:

1. The impediment of the electoral register: In order for citizens to enjoy the right to vote, they must be listed in the electoral register, and for refugees, who fall under the category of Syrians abroad, “it is required for the voter to register his name in the embassy and present all the required information related to his identity within a specified period.” This does not apply to large numbers of Syrian refugees whose names were not included in the electoral register in the first place as they had not reached the legal voting age before leaving Syria, or those who did not renew their data and information during the record review process and whose names will therefore not be included in the register even if they decide to exercise their right to vote.
2. The impediment of voter registration via a valid passport: the voter must present a valid Syrian passport. This poses an obstacle to a large number of Syrian refugees whose passports have expired and who do not have the ability or desire to renew them for financial, political or security reasons. This also excludes those who left the country without obtaining passports in the first place, who were part of the waves of asylum that took place through illegal outlets that required no such formal documents. Furthermore, many refugees lost their passports for various reasons or had then withheld the asylum authorities in the countries where they sought refuge. In short, this document that is a prerequisite for voting will not be available to large numbers of Syrian refugees, and will therefore prevent their ability to participate as voters.
3. Legal impediments: there should be no legal impediments that prevent voters from exercising the right to vote. This will deprive many Syrian refugees of their right given that the general election law denies those convicted of a felony, misdemeanor or breach of public trust the right to vote. This applies to many refugees who have been sentenced in absentia, whether according to the provisions of the penal code or the law combating terrorism, which are provisions that will strip them of the

ability to exercise their right to vote.

4. The impediment of leaving the country legally: A voter's passport should have an exit stamp from any Syrian border crossing. This does not apply to the majority of Syrian refugees who left the country via illegitimate crossings due to the war.

5. The impediment of voting at the embassy: This will deprive large numbers of Syrian refugees from the right to vote, either because they do not want to visit the embassy, because they fear visiting the Syrian embassies in the countries of asylum, or because the embassies are closed. Many Syrian embassies around the world closed during the years of the war.

In addition to aforementioned obstacles that fall within the category of impediments to participate in the electoral process, there is also an unwillingness from large numbers of refugees to participate in the elections for various reasons, including that they do not recognize the legitimacy of the regime and are not willing to grant it legitimacy by participating in the elections, and their lack of confidence in achieving the standards of transparency and integrity required in any electoral process that could take place in the country. Furthermore, some groups of refugees are concerned that their participation in the elections will be interpreted as their willingness to return to the protection of their home country, which could negatively affect their refugee status. This was the case in Lebanon after the massive participation of Syrians in the previous presidential elections in 2014 at the Syrian embassy. Anti-refugee political forces took advantage of that participation to attack Syrian refugees as a whole in the media and to call for their collective and indiscriminate deportation to their home country.

In order to provide solutions to the legal problems that prevent refugees from participating in the elections, several international precedents were reviewed in which refugees were allowed to participate in the elections that took place in their country of origin. This right that was previously provided to the refugees of Bosnia and Herzegovina, Afghanistan, Iraq, and South Sudan. The paper presents a detailed account of the participation of Afghan refugees in the 2004 presidential elections, as well as the participation of Iraqi refugees in the 2005 National Assembly elections.

Regarding the participation of Afghan refugees in the 2004 presidential elections, voting was organized through the Afghan constitution, the electoral law, decisions of the Joint Afghan Electoral Management Body in consultation with the United Nations Assistance Mission in Afghanistan and the Government of Afghanistan, and through individual memoranda of understanding between the Afghan government and the governments of Pakistan and Iran regarding the conduct of elections from outside the country. The electoral administration had faced a problem in determining the eligibility criteria for participation, which is why voter registration in Pakistan included submitting identification papers and, in exceptional cases where the applicant did not have identification papers, and strict interviews. The same method

was applied to voting. As for Iran, the Joint Electoral Administration decided to remove the pre-registration requirement since government authorities were able to provide a database of refugees to be used for electoral purposes. As for the voting method, registration and voting were done in person, given that the postal infrastructure in the two host countries was unable to support voting by mail. Neither proxy registration nor voting by proxy were approved in light of the cultural context in which the elections are held and the ease with which documents are falsified.

Regarding the participation of Iraqi refugees in the 2005 National Assembly elections, voting from abroad was scheduled to take place in Australia, Canada, Denmark, France, Germany, Iran, Jordan, the Netherlands, Sweden, Syria, Turkey, the United Arab Emirates, the United Kingdom and the United States. The estimated number of Iraqis eligible to vote in these countries was approximately 1.2 million. A Memorandum of Understanding was signed between the Commission and the International Organization for Migration (IOM), according to which IOM was authorized to implement an external voting program in 14 countries. In order to determine the eligibility of voters, the electoral law and the law of the administration of the Iraqi state in the transitional period stipulated the provisions of eligibility and citizenship which were broad enough to include voters abroad. The registration procedures required applicants to present two documents to prove their eligibility, namely nationality and age, in an attempt to prevent fraud. Voting in person was agreed on, given that it was more reliable than other methods (such as mail voting). Voting procedures abroad were similar to those for in-country voting, including the use of special election ink to prevent double voting.

The cost of Afghani elections in Iran was USD 20 per voter, and USD 32 per Afghani voter in Pakistan, as pre-registration had increased the cost per voter in comparison to those voting from Iran. As for Iraqi elections, the cost per voter reached USD 92, making it the most expensive and costly voting process in the world. This is attributed to the security risks associated with the voting process and the costs of handling them.

One of the options available to the Syrian government to organize a legitimate and credible electoral process that ensures the participation of all Syrians inside and outside the country, including refugees, is to request electoral assistance from the United Nations, which provides electoral support that takes different forms depending on the national need. Since 1991, more than 100 countries have requested similar electoral assistance.

### 3. Recommendations

The paper concludes that holding any elections in Syria, now or in the future, without the participation of Syrian refugees will lead to further complications in the country, hinder the expected settlement process and impede the desired reconciliation. Any political system will lose its legitimacy. Therefore, several short term and long term proposals have been made.

**In order to overcome obstacles that prevent refugees from participating as candidates in the presidential elections, it is necessary to:**

1. Issue a real and comprehensive amnesty decree to remove legal barriers that currently exist for candidates and voters alike.
2. Temporarily suspend the ten-year continuous residency requirement for candidates for the presidential elections. This is in order to enable returning Syrians to exercise their right to run for president.
3. Suspend the prevention of dual nationality holders from running for president, and the condition that they submit proof of renunciation of their foreign nationality.
4. Amend the requirement of obtaining the support of 35 members of parliament as a condition for running for president, and temporarily replace it with the condition of obtaining the signature or authorization of 35,000 Syrian citizens. This would ensure that the candidacy process is organized and remove the obstacle facing returning refugees and dissidents from obtaining the support of members of parliament, especially since the Syrian opposition had previously boycotted the parliamentary elections.

**In order to overcome obstacles that prevent refugees from participating as voters in the presidential elections, it is necessary to:**

1. Issue an amnesty decree to remove legal barriers that currently exist for candidates and voters alike.
2. Arrange agreements with host countries and request electoral assistance from the United Nations, as previously mentioned, with a commitment to issue personal identification documents to exercise the right to vote.

3. Temporarily suspend the condition of presenting a valid passport with an official exit stamp from a Syrian border crossing, as well as voter registration and voting at a Syrian embassy; and adopt solutions that were used in similar contexts, such as the aforementioned Iraqi and Afghan cases.

Two main observations should be taken into account with regard to the previous recommendations:

The first observation is that adopting some of these recommendations requires amending the constitution itself and the electoral laws in order to amend or suspend the preconditions stipulated in the constitution.

The second observation is that the previous recommendations, with the exception of the amnesty decree, are temporary and specifically aimed at overcoming obstacles to the participation of Syrian refugees in the electoral process. They are therefore limited in terms of time, and reinstating or eliminating them in the future should be subject to widespread societal, political and legal discussion and dialogue to ensure logical and realistic options that guarantee a balance between the interests of the state and the rights of its citizens.

As for long-term recommendations, all legislation and related laws governing the electoral process in Syria must be reviewed to ensure consistency with international standards on electoral legislation, whether in terms of conditions and restrictions, mechanisms and procedures, the party conducting the electoral process, or overall oversight and transparency of the process. Electoral legislation in Syria, even under normal circumstances notwithstanding asylum issues, contains flaws, deficiencies and loopholes that make it far from conforming with international standards that should be followed.



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