

# **Institute on Statelessness and Inclusion and European Network on Statelessness**

## **Joint Submission to the Human Rights Council at the 35<sup>th</sup> Session of the Universal Periodic Review**

### **Turkey**

#### **Introduction**

1. the Institute on Statelessness and Inclusion (ISI) and the European Network on Statelessness (ENS) make this joint submission to the Human Rights Council at the 35<sup>th</sup> Session of the Universal Periodic Review on the challenges pertaining to citizenship, statelessness and the enjoyment of fundamental human rights in Turkey.
2. This submission focuses on arbitrary deprivation of citizenship by Turkey, the denial of consular assistance to citizens living abroad and statelessness among Syrian refugees in the country. It draws heavily on a Policy Brief published by ISI in 2017, on the arbitrary deprivation of nationality and denial of consular services to Turkish citizens.<sup>1</sup>
3. ISI<sup>2</sup> is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 40 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 34<sup>th</sup> UPR Sessions.
4. ENS<sup>3</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 140 members in 40 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments.

#### **Previous UPR of Turkey under the First and Second Cycles**

5. Turkey was previously reviewed during the 8<sup>th</sup> and 21<sup>st</sup> sessions of the UPR, in 2010 and 2015 respectively. During both cycles, Turkey did not receive any recommendations relating to the right to a nationality and statelessness directly. However, in 2015 it did receive a recommendation by Equatorial Guinea to “pursue the process already undertaken of children’s civil registration”, which it accepted.<sup>4</sup>

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<sup>1</sup> See [https://www.institutesi.org/policy-brief-Turkey-arbitrary-deprivation-of-nationality\\_2017.pdf](https://www.institutesi.org/policy-brief-Turkey-arbitrary-deprivation-of-nationality_2017.pdf)

<sup>2</sup> For more information about the Institute on Statelessness and Inclusion, see: [www.institutesi.org](http://www.institutesi.org).

<sup>3</sup> For more information about the European Network on Statelessness, see: [www.statelessness.eu](http://www.statelessness.eu).

<sup>4</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (2015), A/HRC/29/15, para. 148.110.

## Turkey's International obligations

6. Turkey acceded to the *1954 Convention on the Status of Stateless Persons* in 2015, however, is not a signatory to the *1961 Convention on the Reduction of Statelessness*.
7. Turkey has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others the *International Covenant on Civil and Political Rights* (see article 24.3), the *International Covenant on Economic, Social and Cultural Rights* (see articles 2.2 and 3), the *Convention of the Rights of the Child* (see articles 2, 3, 7 and 8) the *International Convention on the Elimination of All Forms of Racial Discrimination* (see article 5(d)(iii)), the *Convention on the Rights of Persons with Disabilities* (see article 18), the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (see article 29). Furthermore, the right to a nationality is included in Article 15 of the *Universal Declaration on Human Rights*.
8. Turkey is not a party to the *1961 Convention on the Reduction of Statelessness* or the *1997 European Convention on Nationality*. While the right to nationality is not directly included in the *European Convention on Human Rights*, it does include provisions relevant in the Turkish context, such as those on the right to fair trial (see article 6) and on “no punishment without law” (see article 7), as well as private and family life (see article 8).
9. In addition, and on the basis of article 29 mentioned under the CMW, in 2016, the Committee on Migrant Workers recommended that Turkey ensure that all children of migrant workers are registered at birth and issued with personal identity documents in line with Target 16.9 of the Sustainable Development Goals and to accede to the *1961 Convention on the Reduction of Statelessness* and the *1997 European Convention on Nationality*.<sup>5</sup>

## National Law

10. Turkey's nationality law *No. 5901 (12/6/2009)* is primarily based on the principle of *jus sanguinis*, according to which nationality is based on descent, with additional provisions based on the principle of *jus soli*, according to which nationality is based on birth on the territory. The additional *jus soli* provisions grant Turkish nationality to children born in Turkey but acquiring no citizenship of any State by birth through his/her foreign mother or father; or a child found in Turkey is deemed born in Turkey unless otherwise proven:

Article 8 – (1):

*“A child born in Turkey but acquiring no citizenship of any state by birth through his/her alien mother or father is a Turkish citizen from the moment of birth”.*

11. Turkey's nationality law *No. 5901 (12/6/2009)* regulates the revocation of citizenship in its articles 29 and 30:

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<sup>5</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations (2016) CMW/C/TUR/CO/1

Article 29:

a) *Of the persons, who have rendered services, which are incompatible with the interests of Turkey, for a foreign state, despite the fact that they are notified to cease this task by the overseas representative offices abroad, by the directors of provincial public administration in Turkey, those who do not voluntarily cease this task within the given reasonable time not being less than three months.*

b) *Persons, who voluntarily continue to render any kind of services for a state, which is at war with Turkey, without the permission of the Council of Ministers.*

c) *Persons who voluntarily render military service for a foreign state without obtaining permission.*

Article 30:

1) *Revocation of Turkish citizenship shall be effective from the date on which the decision of the Council of Ministers is published in the Official Gazette.*

2) *Revocation decisions are personal and shall not affect the spouse and children of the person concerned".*

## **Arbitrary deprivation of nationality<sup>6</sup>**

12. On 20 July 2016, the Turkish Government declared a state of emergency in response to the failed military coup earlier that month. A number of emergency regulations have been passed since, including Decree (KHK) 680, which was published on 6 January 2017. Article 75 of the Decree establishes procedures for the deprivation of nationality for Turkish citizens living outside of Turkey, by stipulating that the following paragraph be added to Article 29 of the Turkish Citizenship Law:

*"(2) In cases where investigation or prosecution has been carried out on the grounds of the crimes stated in the Turkish Penal Code dated 26/9/2004 and numbered 302, 309, 310, 311, 312, 313, 314 and 315 of the Turkish Penal Code, citizens who cannot be reached because of not being in the country shall be notified to the Ministry for the revocation of their citizenship within one month after investigation by the public prosecutor or by the court during the proceedings. In the event that they do not return to the country within three months despite the announcement made in the Official Gazette by the Ministry of Interior, the Turkish citizenship of these persons may be deprived by the proposal of the Ministry and the decision of the Council of Ministers."*

13. When Turkey announced the state of emergency, it issued a notice to the Council of Europe under Article 15 of the European Convention on Human rights, and to the UN Secretary General under Article 4 of the ICCPR, in which it announced that it derogated itself from certain human rights obligations. However, as numerous UN experts have stated, this is "lawful only if there is a threat to the life of the nation, a condition that arguably is not met in this case", and that "one cannot avoid, even in times of emergency, obligations to protect the right to life, prohibit torture, adhere to fundamental elements

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<sup>6</sup> This section is based on the Institute on Statelessness and Inclusion, *Policy Brief: Arbitrary deprivation of nationality and denial of consular services to Turkish citizens*, July 2017. Available at: [https://www.institutesi.org/policy-brief-Turkey-arbitrary-deprivation-of-nationality\\_2017.pdf](https://www.institutesi.org/policy-brief-Turkey-arbitrary-deprivation-of-nationality_2017.pdf). This submission does not provide updated information on this issue, beyond 2017. This is an area that ISI is following up on, and will aim to release further, more updated information in the near future.

*of due process and non-discrimination, and protect everyone's right to belief and opinion".*<sup>7</sup> The continued renewal of the state of emergency, three years after the failed coup, is a matter of significant concern.

14. Further, Following the declaration of the emergency, amendments were made to the Constitution, minimizing the possibility for judicial scrutiny of decrees and government legal actions. For instance, Article 148 of the Constitution, which was amended, now provides that *"presidential decrees issued during a state of emergency shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance"*. The result is that nationality deprivation decisions that are issued during the state of emergency cannot be challenged before the courts.
15. According to the Turkish Criminal Code - Law Nr. 5237 the crimes listed in the Decree 680 'Offences against National Security' and 'Offences against the Constitutional Order and Operation of Constitutional Rules' are not themselves punishable through the revocation of nationality. Further, it is important to note that those affected are merely under investigation for these purported crimes. Their failure to return to the country and surrender themselves to the authorities – known for widespread arbitrary arrests, detention and torture – may result in them being stripped of their nationality, even though they have not been convicted of any crime.<sup>8</sup> In essence, Decree 680 penalises the failure to cooperate with a criminal investigation with the deprivation of nationality.
16. The UN Secretary General stated that, for the withdrawal of citizenship not to be arbitrary,

*"international law requires that it has a clear, non-retroactive legal basis; observes due process guarantees; serves a legitimate purpose; is the least intrusive measure possible to achieve that purpose; is in accordance with international standards; is non-discriminatory and proportionate"*.<sup>9</sup>
17. Decree (KHK) 680 does not take into account the risk of statelessness, and contains no provision of any safeguard to ensure that deprivation of citizenship will not result in statelessness. It would therefore result in statelessness among the targeted group where such a process is applied to Turkish individuals that have only Turkish nationality and no other possibility to acquire any other nationality. Revoking the Turkish nationality of such individuals would render them stateless in violation of Turkey's international obligations.
18. It is also essential to note that this Decree is discriminatory both on the basis of political opinion and association, and because it only impacts on persons who are living outside the territory. In essence, it serves to keep those individuals in exile. The International Law Commission has stated that *"a State shall not make its national an alien by deprivation of nationality for the sole purpose of expelling him or her"*.<sup>10</sup> Moreover, the Decree affects not only persons subject to investigation but also their families. Individuals who are at risk of being arbitrarily deprived of their nationality are likely to be unable to transfer nationality to their children, potentially resulting in the denial of the child's right to acquire a nationality under Article 7 of the Convention on the Rights

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<sup>7</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394>

<sup>8</sup> See <https://turkeypurge.com/> for updated information on the unfolding situation in Turkey.

<sup>9</sup> UN Human Rights Council, Human rights and arbitrary deprivation of nationality: Report of the Secretary-General, 19 December 2013, A/HRC/25/28, available at: <http://www.refworld.org/docid/52f8d19a4.html>.

<sup>10</sup> International Law Commission, Sixty-fourth session, Geneva, 7 May–1 June and 2 July–3 August 2012, A/CN.4/L.797, draft article 9

of the Child.

19. As a result, the implementation of Decree 680 will result in the arbitrary deprivation of nationality of Turkish citizens, new cases of statelessness and violation of international standards.

## Steps taken pursuant to the issuance of Decree 680

20. Further to the issuance of Decree 680, the Turkish Ministry of Justice declared that it would issue a “return home” Gazette Notice naming those who were overseas and being investigated for the crimes outlined. On 5 June 2017, a “return home” notice published in the Official Gazette contained the names of 130 individuals who were issued summons to return to Turkey and present themselves for criminal investigation. Recipients of the notice were given three months to surrender themselves for investigation.
21. On 10 September 2017, a [second return home “Gazette Notice”](#) was issued by the Turkish Government, threatening 99 Turkish citizens in exile with the stripping of their citizenship.
22. ISI will aim to further update its information on the impact of Decree 680, beyond 2017. However, it is evident that those deprived of citizenship will not be able to return to their country and may not be able to leave their country of residence. Those who have no second nationality risk being rendered stateless. They will rely on international protection under the 1954 Convention Relating to the Status of Stateless Persons, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol or subsidiary protection under other mechanisms. Those who do not receive any international protection will be particularly vulnerable. In addition to the risk of being arbitrarily deprived of nationality, parents are likely to be unable to transfer nationality to their children, potentially resulting in the denial of the child’s right to acquire a nationality under Article 7 of the Convention on the Rights of the Child.

## The denial of consular services to Turkish citizens

23. There have also been reports of the denial of consular services and related deprivations for Turkish citizens living abroad. These include the cancellation and confiscation of passports, the refusal to extend the validity of passports and the refusal to provide nationality IDs or passports to children born to Turkish citizens abroad. While the full extent of these actions is not known, the table below sets out the cases that have been brought to the attention of the Institute, during the period April - June 2017.

<b>Denial of Passport or Nationality ID for new-borns</b>	Not issuing IDs for children	76
	Not issuing Passports for children	
<b>Denial of Consular Services</b>	Cancelling Adult/Child Passports	695
	Military Services	
	Power of Attorney Services	
	Not Extending Passports	

<b>Confiscation of Passport</b>		19
	<b>Total:</b>	<b>790</b>

24. Being denied consular assistance and services results in individuals being denied access to other rights, including the right to birth registration,<sup>11</sup> to obtain documents and to enter your own country.<sup>12</sup> Those denied consular services do not have access to legal recourse due to a lack of due process standards.

## Statelessness among Syrian refugees

25. In 2017, UNHCR reported 117 stateless persons in Turkey. However, as a result of the Syrian Civil War, Turkey hosts approximately 3.6 million Syrians by May 2019,<sup>13</sup> many of whom are at high risk of becoming stateless. According to the Turkish Parliament's Refugee Subcommittee, there were around 311,000 children of Syrian origin who had been born stateless in Turkey by 2018.<sup>14</sup> As Turkey does not currently provide these children unconditional birth-right citizenship, these children face denial of their right to acquire a nationality and risk being made stateless.
26. In 2014 Turkey passed a new law - *the Regulation on Temporary Protection* - applying exclusively to Syrian refugees, and providing them with temporary status and protection. Under this law, time spent in Turkey under temporary protection may not be interpreted to count towards the fulfilment of the requirement of five years' uninterrupted legal residence as a precondition for applications for Turkish citizenship by naturalisation.<sup>15</sup>
27. Discriminatory nationality legislation in Syria, which does not guarantee women the right to transmit their Syrian nationality to their children; the loss of documentation due to the Syrian conflict; and the lack of birth-right citizenship in Turkey all combine to deny children's right to a nationality and create the risk of statelessness for children born to Syrian refugees in Turkey.
28. Article 8 (1) of the Turkish Citizenship Law entitles children born in Turkey that are unable to acquire citizenship from the mother or father, to acquire Turkish citizenship at birth. However, in practice the law has not been applied adequately to Syrian children who were born in Turkey. The Turkish Minister of Interior stated in January 2019 that there were 53,099 naturalised Syrians in Turkey, including persons who arrived on residence permits prior to 2011. This figure rose to 79,894 as of March 2019.<sup>16</sup>
29. Children born to Syrian refugees face a heightened risk of lifetime statelessness particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are not sufficient. It must be noted in this regard that every

<sup>11</sup> See CRC Article 7.1.

<sup>12</sup> See ICCPR Article 12.4.

<sup>13</sup> <https://data2.unhcr.org/en/situations/syria/location/113>

<sup>14</sup> See for example: <https://www.refugeenewsturkey.org/single-post/2018/03/09/More-than-300k-%E2%80%98stateless%E2%80%99-Syrian-babies-born-in-Turkey-should-be-granted-citizenship-immediately%E2%80%9D>

<sup>15</sup> <https://www.asylumineurope.org/reports/country/turkey/naturalisation-0>

Art 11 (1) (b) of the Turkish Citizenship Law No. 5901 (12/6/2009).

<sup>16</sup> Mülteciler Derneği, 'Türkiyedeki Suriyeli Sayısı Mart 2019', 28 March 2019, available in Turkish at: <https://bit.ly/2FycEVd>.

child has a right to a legal identity and nationality, which is entrenched under Article 7 of the CRC and other instruments. This is a core principle of international law, which, if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness.

## Recommendations

30. Based on the above information, the Institute on Statelessness and Inclusion and European Network on Statelessness urge reviewing States to make the following recommendations to Turkey:

- I. Repeal Decree 680, which provides for the arbitrary deprivation of nationality of Turkish citizens living abroad, and protect the right to a nationality of all persons.
- II. Immediately cease from using deprivation of nationality as a penal measure and comply with all obligations under international law.
- III. Ensure that all Turkish citizens living abroad receive consular assistance without discrimination, in particular, the issuance of birth certificates, national identification and passports.
- IV. Take all necessary steps to ensure the right to an effective remedy for all persons who have been arbitrarily deprived of their nationality and access to consular services. This includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- V. Protect every child's right to a nationality by ensuring that existing provisions in the Citizenship Law providing for automatic acquisition of Turkish nationality at birth by children born on the territory to stateless or unknown parents, or parents who cannot pass on their nationality, are comprehensively implemented in practice without discrimination.
- VI. Take all necessary steps to address barriers to accessing birth registration in order to ensure that no child is left behind, and that Syrian refugees have easy access to and information about birth registration procedures.
- VII. Create pathways to nationality and facilitated naturalisation for stateless children in Turkey.
- VIII. Accede to the 1961 Convention on the Reduction of Statelessness.