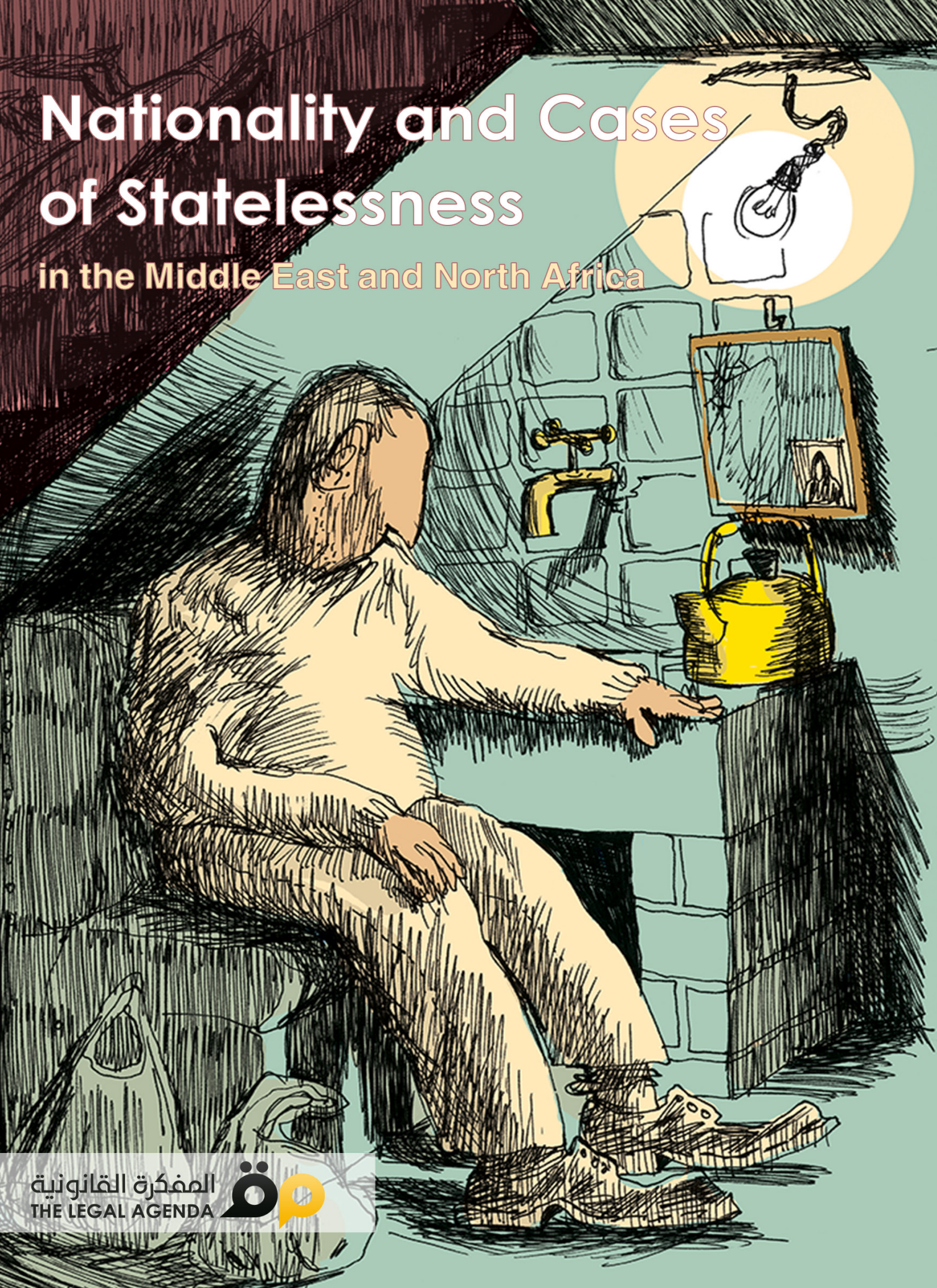


Nationality and Cases of Statelessness

in the Middle East and North Africa





Nationality and Cases of Statelessness in the Middle East and North Africa

Soumaya is a Syrian woman and used to be an accountant. Today she lives in Lebanon as a refugee. She has three children, and a deceased husband. She has no job. As you can imagine, the situation is not currently easy for Soumaya. Whilst trying to bring bread to the table at the end of her last pregnancy, she was not preoccupied with the idea of registering the birth of little Sami when he was born. Nor did she bring documents from Syria to show who her husband was, as she was overwhelmed with the demands and needs of life in exile and displacement.

Although she did not know this before the birth of Sami, Syrian law does not allow her to give her nationality to her child. This is because she is a woman. She has no documents to prove that her new-born is the son of a Syrian male citizen. She herself is a citizen of Syria, an inhabitant of Lebanon, a victim of the conflicts in the region, and now a woman who has to grapple with how to deal with a child who holds no nationality anywhere.

Conflicting laws, discrimination, and administrative discrepancies have left hundreds of thousands of people across the Middle East and North Africa in the same position as Sami, with no nationality. The MENA region is home to some of the largest populations of stateless persons worldwide.



This book was prepared in partnership with Tilburg University and the Open Society Foundations in the scope of the MENA Nationality and Statelessness Project.

Nationality and Cases of Statelessness in the Middle East and North Africa

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Introduction

Soumaya is a Syrian woman and used to be an accountant. Today she lives in Lebanon as a refugee. She has three children, and a deceased husband. She has no job. As you can imagine, the situation is not currently easy for Soumaya. Whilst trying to bring bread to the table at the end of her last pregnancy, she was not preoccupied with the idea of registering the birth of little Sami when he was born. Nor did she bring documents from Syria to show who her husband was, as she was overwhelmed with the demands and needs of life in exile and displacement.

Although she did not know this before the birth of Sami, Syrian law does not allow her to give her nationality to her child. This is because she is a woman. She has no documents to prove that her new-born is the son of a Syrian male citizen. She herself is a citizen of Syria, an inhabitant of Lebanon, a victim of the conflicts in the region, and now a woman who has to grapple with how to deal with a child who holds no nationality anywhere.¹

Conflicting laws, discrimination, and administrative discrepancies have left hundreds of thousands of

¹ - Interview with Soumaya in Beirut, 10th November 2015

people across the Middle East and North Africa in the same position as Sami, with no nationality. The MENA region is home to some of the largest populations of stateless persons worldwide. UNHCR statistics show that there are 444,237 persons confirmed to be under its statelessness mandate in the region.² However, UNHCR statistics account for less than one third of the estimated global stateless population, and real number of stateless people in the region is likely to be significantly higher. No comprehensive statistics on statelessness exist in the individual states. Furthermore, stateless Palestinians – the largest Palestinian community in the world – have not been included in this statistic due to their specific legal status and position as they are under UNRWA and therefore excluded from UNHCRs protection mandate.

Burdened with statelessness, numerous families are left with an additional layer of vulnerability in their lives as they try and endure other problems such as poverty, displacement and conflict. To top all of this, there are few protective frameworks in place for stateless persons in the region – the lack of nationality means that stateless persons are never eligible to vote and often unable to access many fundamental rights such as healthcare, owning

2 - UN High Commissioner for Refugees (UNHCR), UNHCR Global Trends 2013: War's Human Cost, 20 June 2014

property, education and employment. Indefinite detention, severe marginalisation and vulnerability to child recruitment and early marriage can also result from this problem. However, the varying causes of statelessness (both historic and new) when coupled with regional geo-politics have convoluted the issue to such an extent that any solution appears too distant and complicated to be achievable. However, as this report shows, such solutions are not necessarily too complicated, and there are many mechanisms to both prevent and reduce statelessness in the MENA.

For example, the initial development of nation States, and ultimately nationality laws, in the MENA region came at a time of socio-political chaos. Independence from colonial powers was being fought for, borders were being drawn up, and with an emerging power vacuum, populations began to face a growing nationalistic pan-Arab philosophy. Against this setting, states were faced with the challenge of establishing their own distinct national character. The majority of States adopted legislation and policies that were heavy in racial, gender and ethnic discrimination in the granting of their nationality. Several ethnic minority communities for example, such as the Kurds in Syria and Iraq were denationalized, a step that simply removed them from the citizenry. Women across the region were not given the right to transmit their

nationality to their own children. More recently, the naturalization and denaturalization of stateless populations and individuals for political reasons has become a common point of discontent in the waves of demonstrations and calls for reform that have swept through the region.

The situation has become more complex due to recent changes which came about as a result of what was once named the Arab Spring: the uprisings that arose and spread across the Arab world in 2011. The movement originated in Tunisia in December 2010 and has since effected Egypt, Libya, Syria, Yemen, Bahrain, Kuwait, Saudi Arabia, and Jordan. With this current instability and turmoil in the region, which is challenging social, political and economic trends, many States are being forced to re-evaluate who the nationals of their country are. We have seen cases of stateless persons themselves placing their right to citizenship at the forefront of their demands.³

It was against this backdrop that the need for this report was established. Although there is an understanding of the separate trends and communities in the region, a comparative report that offered a more holistic and broad discussion of the issue as a regional one,

3 - See for example, Thomsons Reuters, Kuwait clamps down as stateless Bidoons call for citizenship, 2014 at <http://www.trust.org/item/20140226122324-yd0no/>

especially in the context of changing dynamics of the region, was not available. This report therefore attempts to go into detail on the various statelessness issues that the region faces.

Chapter 1 begins by exploring the concepts of nationality and statelessness, what both of these mean in the regional context and also under international laws and standards. Chapter 2 will then go on to discuss the origins of nationality law and its influences, providing information on what movements and ideologies resulted in the often discriminatory nationality laws and practices that we have in place today. Chapter 3 will then shine a light on one of the most prevalent forms of discrimination in the region – laws that discriminate against women in the transmission of their nationality. In addition to showing the causes and consequences of this discrimination, it will also highlight some good practices. Alongside this broad framework, historical and topical case studies will present the development of situations of statelessness that are being addressed and factors that are causing new cases of statelessness.

Chapter 1: Nationality and Statelessness

This report centres on the discussion of two legal concepts: nationality and the status of lacking any nationality, i.e. statelessness. To aid in the interpretation of nationality policy and situations of statelessness in the MENA as presented in the rest of the report, this chapter outlines core elements of the theoretical framework upon which this research rests. As such, it provides details of relevant definitions, before exploring some challenges surrounding the use of terminology in the MENA region. The chapter then offers an overview of relevant international and regional law standards, as well as accompanying mechanisms, such as human rights monitoring bodies with pertinent mandates.

1.1 Definitions

Nationality, as used in this report, is a term that refers to a specific type of legal bond between a person and a state. In Arabic, it translates as *jinsiya*. Nationality is perhaps most easily understood as a form of membership, to which an individual can be admitted by the state. It is for each state to determine who its nationals are and, for this purpose, it will adopt regulations for the acquisition and loss of nationality in a nationality law. Once the legal bond comes into being, the national and the state then enjoy certain rights and duties towards one another

on the basis of this bond, as determined by domestic and international law. It is important to note that there is another word which is in common use and often serves as a synonym for nationality: citizenship. Although in certain legal contexts or specific country situations, the two may have distinct meanings, often in reports on statelessness, nationality and citizenship are used interchangeably and both refer to the aforementioned legal bond with a state.⁴ That is also how the terms will be used in the present report.

A stateless person is someone “who is not considered as a national by any state under the operation of its law”.⁵ Statelessness is therefore a term which describes the absence of the legal bond of nationality with any state. This definition of a stateless person is established in the Convention relating to the Status of Stateless Persons which was adopted by the United Nations in 1954. As such, it is firmly grounded in international law. Many other international and regional conventions,⁶ as well as soft law instruments such as Human Rights Council resolutions, which have been adopted since also reference statelessness, but none sets out to (re)

4 - See further on the definition of nationality and citizenship, as well as the uses of these terms, A. Edwards, “The meaning of nationality in international law in an era of human rights” in A. Edwards and L. van Waas (Eds) *Nationality and Statelessness under International Law*, Cambridge University Press, 2014.

5 - Article 1 of the 1954 Convention relating to the Status of Stateless Persons.

6 - Including in article 7 of the Covenant on the Rights of the Child in Islam, 2005.

define it, thereby implicitly deferring the question of definition to the 1954 Convention. The International Law Commission of the United Nations has also described the definition found in the 1954 Convention as customary international law,⁷ implying that it is to be upheld by all states regardless of whether they are a state party to this treaty or not. This means that in assessing the problem of statelessness in countries in the MENA region – even where they have not acceded to the 1954 Convention, as many have not – this definition forms the basis for such an assessment and is to be interpreted in light of the guidelines which have been developed for that purpose by the Office of the United Nations High Commissioner for Refugees (UNHCR), the UN agency formally mandated by the General Assembly to assist states to address statelessness.⁸

In determining whether a given person is stateless, it is important to consider both the content and the operation of relevant nationality law(s) – i.e. not just whether a person would appear to be a national in accordance with the letter of the law but also whether the person is considered as such by the

7 - International Law Commission, Articles on Diplomatic Protection with commentaries, 2006.

8 - Now collectively available as UNHCR, Handbook on Protection of Stateless Persons, 2014.

requisite state when it interprets and applies this law.⁹ Moreover, in identifying whether a person or group is stateless it is not relevant how the person came to be without a nationality or whether the person could (re)acquire the nationality of a state in future, it only matters whether the person has a nationality or not at the present moment.¹⁰ Finally, it should be pointed out that in much of the available literature on statelessness, people who fall within the definition of a stateless person as set out under international law have frequently been described as being *de jure* stateless. A distinct concept, “*de facto* statelessness”, has emerged as a label for a wide variety of situations in which a person does hold a nationality but this is, in some way, ineffective. There is, however, no agreement as to the scope of this latter concept, nor is there an international legal framework for addressing cases of *de facto* statelessness. As such, it remains a contested notion. This report deals exclusively with statelessness as defined under international law and as set out above.

Having dealt with the definition of the two concepts which are central to this research project, namely

9 - UNHCR, Handbook on Protection of Stateless Persons, 2014 at page 12.

10 - Ibid, at page 20. On the other hand, the availability, for example, of a procedure by which a person can easily (re)acquire nationality may have an impact on the extent to which such a person is owed protection on the ground of his or her statelessness by a third state.

nationality and statelessness, it remains to comment briefly on a third notion which can also be found in this report. This is the idea of a person being “at risk of statelessness”. Ultimately, the objective of the international community, when it comes to statelessness, is to ensure that this phenomenon is eradicated and everyone is able to enjoy their right to a nationality as protected under human rights law.¹¹ To achieve this, effort must be made to resolve existing cases of statelessness, but also to prevent new cases from arising. It is in this context that the notion of risk of statelessness is helpful. Someone who is at risk of statelessness would not currently meet the definition of a stateless person, but his or her circumstances mean that there is a considerable chance that statelessness will arise if preventive action is not taken. An example which is commonly given in this context is the risk of statelessness that emerges where a child lacks birth registration, because this is an official act by the state recognising the place of birth and parentage of a child – precisely those facts which are usually critical to the acquisition of nationality at birth. While not every child without a birth certificate is stateless, nor even necessarily so under threat of statelessness as to be considered “at risk”, there are situations in which this risk becomes real – for instance where lack

11 - See further section 1.3 below.

of registration is compounded by contexts such as migration or family separation.¹² At the same time, a whole population category may be identified as being at risk of statelessness following an analysis of the nationality law which reveals particular gaps: for instance, where women are not entitled to transmit their nationality to their children, any child who is born to a national woman and a stateless or absent father is at risk of statelessness. In this manner, it is possible to identify and discuss solutions for situations which may lead to statelessness, without waiting for them to run their course. This makes the notion of “at risk of statelessness” a helpful tool for analysis which is also used, where relevant, in this report.

1.2 Terminology

Unlike in English, Spanish¹³ or French¹⁴, in Arabic there is no specific word for “statelessness”.¹⁵ The terminology which is widely used in Arabic translations of international documents and reports relating to

12 - UNHCR, Conclusion on Civil Registration, No. 111 (LXIV)-2013, 17 October 2013.

13 - Apadridia.

14 - Apatride.

15 - Arabic is not unique in this – there are other languages which have also never developed a specific term for statelessness. See, for instance, G. Gyulai, Statelessness in the tower of babel – how do you say stateless in your language? European Network on Statelessness, 20 June 2012, available at: <http://www.statelessness.eu/blog/statelessness-tower-babel-%E2%80%93-how-do-you-say-stateless-your-language>.

statelessness is *adim aljinsiya*.¹⁶ It is also the wording used in, for example, article 7(2) of the Covenant on the Rights of the Child in Islam. This translates to “lacking nationality” and is a literal description of what statelessness is, rather than a stand-alone legal concept that is uniformly utilised across the Arab world. As such, this phrase can be traced in nationality legislation in the MENA region – such as in article 8 of the Tunisian nationality law which grants nationality to a person born in the country whose parents are *adim aljinsiya*. Nevertheless, it is not very common in domestic law. Instead, the predominant translation for statelessness in nationality laws in the region is *la jinsiya laho*, which is similarly a description of the phenomenon as opposed to a distinct legal term: it simply means “does not have a nationality”. This can be found, for instance, in article 3(4) of the Jordanian nationality law which provides for conferral of nationality from a Jordanian mother to her child if the child’s father is *la jinsiya laho* and in article 3(c) of the Syrian nationality law which grants nationality

16 - See, for instance, UN Committee on the Rights of the Child, List of issues in response to the second periodic report of Kuwait, CRC/C/KWT/Q/2, 10 May 2013, available at: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-KWT-Q-2_ar.doc; UN Report, The Excluded, 2007, available at: <http://www.un.org/arabic/events/tenstories/2007/theexcluded.shtml>; Frontiers Ruwad, Invisible citizens. A legal study of statelessness in Lebanon, 2009, available at: http://www.frontiersruwad.org/pdf/FR_Stateless_BOOK_Arabic_2010.pdf.

to a person born in the country whose parents are la jinsiya laho.

In practice, there are also other terms in use across the region, which have emerged in relation to specific groups. A prime example is the term Bidoon – an abbreviated form of bidoon jinsiya, which translates to “without nationality”. This word is widely used to describe a particular group of stateless people in the Gulf who, for various reasons, were never able to access nationality in their ancestral homeland. Another distinct set of terminology for statelessness has emerged in the specific contexts of Lebanon and Syria. There, many stateless people are referred to as maktoum al kayd (in Lebanon) or simply the maktoumeen (in Syria). Maktoum is another way to express “without” in Arabic, while al kayd can best be understood as referring to “registration”, i.e. “without registration” or “unregistered”. While there is no direct reference in this phrase to nationality, this label is used in reference to people who are stateless in these countries. Indeed, all of the aforementioned groups are equally stateless, they have simply been bestowed different labels in Arabic. These domestic terms have also subsequently permeated the discussion of these stateless groups in other languages: i.e. the Bidoon of Kuwait are widely known and described as such within the international arena.

Furthermore, governments have regularly adopted their own language for referring to these communities, which is distinct again from the set of terminology presented above. For example, in keeping with the authorities' rhetoric that the stateless people (Bidoon) in Kuwait are actually foreigners, hiding their nationality in a bid to access Kuwait's generous welfare system, they are described as "illegal residents" – for instance, in the title of the governmental committee established to study their situation and in any official statements with regard to this stateless population. In Syria, avoiding the language of statelessness, the government introduced two categories for those affected: *maktoumeen*, as explained above, and *ajanib*. The latter translates to "foreigner" in English. The use of such terminology is problematic in that it serves to further disenfranchise the stateless because it serves to obscure or even refute the true situation (i.e. statelessness) of those concerned, making it more difficult for them to assert their rights and need for protection as people who have been denied nationality.¹⁷

17 - See, for instance, the news story that came to light in July 2013 around a leaked document from the Kuwaiti "Central Agency for Illegal Residents" which reportedly explained that the authorities were deliberately avoiding the use of the word stateless as follows: "The term stateless will obligate Kuwait to grant rights to those illegal residents according to international agreements. Those are people hiding their original documents to get the Kuwaiti citizenship". Bedoon Rights, Leaked document: head of Central Agency fears the term "stateless", 24 July 2013, available at: <http://www.bedoonrights.org/2013/07/24/leaked-document-head-of-central-agency-fears-the-term-stateless/>.

Self-identification is also an important concept. Stateless populations across the region often do not identify as stateless and do not sympathize with the term that they have been assigned. According to research carried out by Marie-Luhd¹⁸ for instance, the term 'Bidoon' created problems for the community themselves. Many of those stateless in Kuwait "avoided coming out as Bidoon" as this meant "being treated as less than human, or worthless or cheap" and "they themselves considered 'Bidoon' as a stigma", which then rendered it more complicated for the affected population to create a rights based movement based on this demeaning identity.¹⁹ Moreover, since there were different reasons for Bidoon to be left out of citizenship, "the heterogeneity that characterizes the Bidoon community had implications for their ability to organize and mobilise"²⁰. This suggests that the term bidoon assigned to this population has added another dimension to the divisions that already engulfed this community. As an alternative many suggested the term "Kuwaiti Bidoon" to be used both locally in Kuwait and internationally, because they wanted to emphasise their connection and belonging to the State of Kuwait. This emphasizes the point that the stateless often make that the failure

18 - Lund-Johansen.Marie, Fighting for Citizenship in Kuwait, 2014, access at <https://www.duo.uio.no/handle/10852/43302>

19 - Ibid p.40

20 - Ibid p.40

of a state to recognize that a people belong, does not mean they do not.

Overall then, the MENA region lacks a common language on statelessness which may have contributed to the fact that these groups are often discussed in isolation of one another and there is little sense of a shared cause between the Bidoon of the Gulf and the Maktoumeen of Syria. This can obstruct opportunities to address the issue regionally and has also created several additional problems in the statelessness discourse in the region. Often, there is a misunderstanding as to what the word stateless means. Even when there is an attempt to inject the internationally recognised and apparently neutral term *adim aljinsiya* into the discourse, it can be met with some resistance as the affected population express their unwillingness to be called stateless – believing it to be attacking their identity as people who belong to the country in which they live in.²¹ Additionally, the largest stateless group in the world, the Palestinians, have rarely been discussed in the context of debate on solving “statelessness”. In the discourse on their situation in different states and in the region generally, it is apparent that the severe

21 - This lack of understanding was highlighted in 2013 where there was an attempt in Kuwait, using the First Conference for the Stateless in Kuwait; Situation and Solutions conference to push for the usage of this word, but was met with resistance

problem that they are not considered as a national by any state is not one that is viewed as a priority in strategizing on possible solutions.

Meanwhile, with a growing movement to put the issue of statelessness on the global agenda and more and more international organizations and States making concrete efforts to address the issue, the Middle East and North Africa region is in danger of falling behind. For example, at a ministerial meeting organized by the United Nations High Commissioner for Refugees in Geneva in December 2011, governments from around the world pledged to take action to address statelessness by acceding to the UN statelessness conventions, taking various forms of action within their territory or even promoting solutions to statelessness through their foreign policy. The only region where no country made a pledge to address statelessness was the MENA – despite the fact that numerous MENA states did participate actively in this meeting and make pledges with regard to other areas of cooperation with UNHCR.²² Moreover, with the exception of the stateless populations in Kuwait and Syria, rarely have situations of statelessness from the MENA region featured in the work the international

22 - UNHCR, Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons, 7-8 December 2011, available at: <http://www.unhcr.org/4ff55a319.html>.

human rights mechanisms, suggesting that those who are concerned about their plight have not succeeded in employing the language of and navigating the channels for international engagement on the issue.

As already suggested, there may therefore be some connection between the lack of a common language for statelessness and the lack of a unified or collective response. Rarely has collective pressure been applied to the respective governments to address the situation of statelessness in their countries, since the lack of nationality is not seen as a unified problem by the affected population and the organizations working with them. This is both because of a lack of understanding of the issue and the lack of solidarity in terms utilized. Although many Kuwaiti citizens for instance working on the issue use the term stateless and Bidoon as they believe this will build understanding and momentum regionally universally to the groups plight, one Kuwaiti Bidoon reflects the opinion of many among his community, that their statelessness problem was 'a pure formality [elaborating] that the situation of the Kuwaiti Bidoons was not comparable to that of other stateless populations in the world and he did not identify with any such group".²³

23 - Lund-Johansen.Marie, Fighting for Citizenship in Kuwait, 2014, p.76

Additionally, there is little evidence of a feeling of a unified struggle between different stateless groups in the region. The stateless populations of the Gulf, for example, would be unlikely to perceive their situation or problems as mutual to the stateless in Lebanon or in Egypt, despite sharing the same legal status for the purposes of international law and the protection of the same international standards. Even within one country, there is often little unity within the stateless persons themselves. For instance, in Lebanon, the Palestinians do not see their situation as common with that of the country's other stateless people – and vice versa.²⁴ This can even have the effect of suppressing the needs of smaller, less organised or less vocal stateless populations – for example in Kuwait there are also other stateless people in the country besides the group known as Bidoon, but they cannot identify themselves with the discourse surrounding the Bidoon and face even greater marginalisation.

It would be exaggerated to suggest that a common terminology would immediately herald a mutual understanding of the problem of statelessness across the region, cultivate a sense of community between

24 - This is clearly apparent from the interviews with the different groups affected by statelessness in Lebanon – and the different stakeholders pressing their cause – undertaken in the course of doctoral research by Jason Tucker in 2012. J. Tucker, *Challenging the Tyranny of Citizenship: Practices of Global Citizenship of those Addressing Statelessness in Lebanon*, doctoral thesis completed in 2013 (on file with the author).

stateless populations in different countries or lead to the development of regional mechanisms for addressing statelessness. For instance, in Europe and the Americas, where there is generally a common language for statelessness, as well as a firmer foundation of relevant international and regional legal obligations on states and a highly developed NGO community, it was only in 2012²⁵ and 2014²⁶ respectively that a region-wide civil society alliance against statelessness was established. Nevertheless, there remains a real risk that the MENA region will drop behind in terms of its response to statelessness if a shared understanding of the problem – if not also a shared language – is not developed as the issue continues to attract greater attention. It would be worthwhile further exploring what barriers exist in respect of forging broader regional collaboration to address statelessness in the MENA and adopting strategies to break down these barriers. This would greatly facilitate the opportunities for collective action and the sharing of experiences and good practices – a method which has, for example, already proven useful in the MENA region in the context of efforts around the assertion of women's equal nationality rights.

25 - This is the European Network on Statelessness. For details see www.statelessness.eu.

26 - This is the Americas Network on Nationality and Statelessness. For details see <http://www.americasns.org/>.

1.3 International and regional legal frameworks

States have long taken an interest in addressing the issue of statelessness through the conclusion of international agreements. This has manifested itself in the development of two sets of standards: (1) to prevent and reduce cases of statelessness by placing certain (minor) limits on states' freedom to regulate the conditions for acquisition and loss of nationality and (2) to guarantee the enjoyment of fundamental rights for people who nevertheless end up stateless. These two distinct, yet mutually reinforcing bodies of international law will be presented briefly in the following paragraphs.

With the advent of human rights law, since the adoption of the 1948 Universal Declaration of Human Rights, the right to a nationality is recognised worldwide as a fundamental right of the individual.²⁷ As such, there is an onus on states to do what they can to avoid statelessness. This fact should by no means be understood to imply that states have lost their authority to regulate access to nationality as

27 - The Universal Declaration of Human Rights determines that "everyone has the right to a nationality" (article 15). This sentiment has since been expressed, in one form or another, in virtually every major human rights instrument adopted since 1948, including the almost universally-ratified Convention on the Rights of the Child (article 7).

they see fit. Rather, this sovereign right is limited in particular cases where statelessness would otherwise result, in the interest of the person concerned and of the world community of states.²⁸ Such limits exist at the level of the United Nations – for instance, on the basis of the right of every child to “acquire a nationality” (Convention on the Rights of the Child, article 7), as well as the prohibition of racial discrimination in the enjoyment of nationality rights (Convention on the Elimination of All Forms of Racial Discrimination, article 5diii) and the equal enjoyment of nationality rights by persons with disabilities (Convention on the Rights of Persons with Disabilities, article 18). Within the United Nations framework, a dedicated instrument has also been adopted to help states to guarantee the right to a nationality and to avoid statelessness: the 1961 Convention on the Reduction of Statelessness. This convention sets out concrete safeguards for states to incorporate into their nationality laws, to ensure that children who would otherwise be stateless are able to acquire a nationality and that, as far as possible,

28- That the avoidance of statelessness is in the interest of states is evident from the effort that has been taken, since the era of the League of Nations, to agree rules whereby conflicts of nationality laws resulting in statelessness are dealt with. The existence of statelessness presents a challenge for the international community, given certain key international functions of nationality, such as the right to enter and reside in one's state of nationality. As such, statelessness may lead to issues relating to the territorial integrity of states, but may further impact international relations where it contributes to tension, displacement or conflict.

the renunciation, loss or deprivation of nationality in later life does not leave a person stateless.²⁹

Around the world, regional instruments also include norms relating to the right to a nationality. This is the case for the MENA region as well, where a number of treaties expressly recognise the right to a nationality. Some of these are also explicit in their instruction that statelessness should be avoided, especially among children, even providing pointers as to where the responsibility for this lies. For example, in accordance with the Covenant on the Rights of the Child in Islam, adopted in 2005, states shall “make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory”.³⁰ This point of departure – that states are responsible for preventing statelessness where a child is born on their territory or to one of their nationals – echoes the norms which have developed at the level of the UN, in particular in the 1961 Convention on the Reduction of Statelessness.³¹

29 - For a more detailed explanation of the purpose and content of the 1961 Convention on the Reduction of Statelessness, UNHCR, Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness, September 2010, available at: <http://www.refworld.org/docid/4cad866e2.html>.

30 - Emphasis added. Article 7, second section, Covenant on the Rights of the Child in Islam.

31 - See its articles 1-4 and the 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.

Extracts relating to the right to a nationality in regional instruments relevant to MENA states³²

Covenant on the Rights of the Child in Islam (2005), Article 7:

A child shall, from birth, have the right to [...] have his nationality determined.

[...] States Parties to the Covenant shall safeguard the elements of the child's identity, including [...] nationality [...] in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

The child of unknown descent or who is legally assimilated to this status shall have the right to [...] nationality.

Arab Charter on Human Rights (2004), Article 29:

1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.

2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.

32 - See also the Resolution of the Asian African Legal Consultative Organisation on "Legal identity and statelessness", 8 April 2006, at para 3: "Encourages the Member States to review nationality legislation with a view to reducing and avoiding statelessness, consistent with fundamental principles of international law".

3. No one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.

African Charter on the Rights and Welfare of the Child (1990), Article 6:³³

[...]

3. Every child has the right to acquire a nationality.

4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Also contained in these regional instruments – and in their international counterparts – are some further standards relating to the enjoyment of nationality. For example, the Covenant on the Rights of the Child in Islam explicitly refers to the right of a child of unknown descent to a nationality, where the 1961 UN Convention on the Reduction of Statelessness similarly provides for the acquisition of nationality by what it terms as “foundlings” (article 2).³⁴ The Arab Charter on

33 - See also the Resolution on the Right to Nationality, passed by the African Commission on Human and Peoples' Rights in April 2013, available at: <http://www.achpr.org/sessions/53rd/resolutions/234/>.

34 - Foundling is a term which describes an abandoned child who is “found”

Human Rights reaffirms that no one shall be arbitrarily deprived of their nationality, as outlined already in the Universal Declaration of Human Rights in 1948. As such, a person may only have their nationality withdrawn in situations which are regulated by law and never on discriminatory grounds.³⁵ Moreover, states should seek to avoid statelessness in the context of loss and deprivation of nationality.³⁶ Also in the Arab Charter on Human Rights, states are encouraged to ensure that women have the right to pass their nationality to their children – a norm which is outlined in stronger terms at the UN level in article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women.³⁷

With respect to ensuring that the fundamental rights of stateless people are protected, in spite of their lack of nationality, a wide range of instruments at both the UN and regional levels are again relevant. Indeed, the very development of human rights law is premised on the enjoyment of rights as a matter of human dignity, regardless of a person's nationality or statelessness. This means that the vast majority of those rights which

and whose parentage or other origins are unknown.

35 - See, for example, the succession of UN Human Rights Council resolutions on arbitrary deprivation of nationality, including A/HRC/RES/20/5 of 26 July 2012, available at:

36 - See also articles 5-9 of the 1961 Convention on the Reduction of Statelessness.

37 - Article 9(2) unequivocally states that "States Parties shall grant women equal rights with men with respect to the nationality of their children".

are found in instruments such as the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights or the Arab Charter on Human Rights, are for everyone, including stateless people. There are just a few treaty-based exceptions, where particular rights may be reserved to nationals, such as with regard to the right to participate in government. Otherwise, nationals and non-nationals – including stateless people – should enjoy human rights, without discrimination.³⁸

In order to assure that stateless people ensure a minimum standard of treatment, the United Nations has also developed an instrument aimed specifically at the protection of the stateless: the 1954 Convention relating to the Status of Stateless Persons. This provides us with the definition of a stateless person – as already discussed above – and outlines which rights are to be provided to people who meet this definition. Among its provisions are a number of special measures which are designed to ease some of the problems which stateless people often encounter precisely due to their lack of any nationality. For example, it provides for the issuance of identity and travel documents to the stateless, which will help to alleviate many of

38 - For a more detailed discussion of the rights of nationals versus non-nationals, as well as the meaning of discrimination in the context of distinctions based on nationality, see OHCHR, The rights of non-citizens, 2006.

the day-to-day difficulties that they would otherwise face in effectuating their rights. The Convention also requires states to facilitate, as far as possible, the naturalisation of stateless people – i.e. making it quicker and easier for stateless people to acquire a nationality and thereby resolve their statelessness.³⁹

There is no equivalent to the 1954 Convention Relating to the Status of Stateless Persons at the regional level in MENA – no instrument specifically designed to address the needs of those who are stateless. Nevertheless, in a 2006 resolution, the Asian African Legal Consultative Organisation (AALCO)⁴⁰ has called for action to protect stateless people, where it:

[...] encourages the Member States to raise awareness about the problem of statelessness and to actively cooperate in the identification of problems of statelessness paying particular regard to establishing identity and acquiring relevant documentation for women, children and families in instances of displacement, migration or trafficking;

39 - For a more detailed explanation of the purpose and content of the 1954 Convention relating to the Status of Stateless Persons, UNHCR, Protecting the rights of stateless people: the 1954 Convention relating to the Status of Stateless Persons, September 2010.

40 - AALCO membership includes: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen.

[...] Urges Member States in general and those Member States, which have the presence of stateless persons in particular, to take the necessary legal and institutional measures to ameliorate the precarious situation of stateless persons.⁴¹

As such, this is an issue which has been shown to be of concern to states in the region. Moreover, in recognition of their central role in establishing a framework for the prevention of statelessness and protection of stateless people, the Asian African Legal Consultative Organisation has, in the same resolution, invited its member states "to consider the possibility of acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness to address the plight of stateless persons in an effective way".⁴² For the MENA region in particular, this is a welcome and necessary encouragement: at the time of writing only Libya and Tunisia were state parties to both the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons, while Algeria was a state party to just the latter of these two.

41 - Resolution of the Asian African Legal Consultative Organisation on "Legal identity and statelessness", 8 April 2006, paras. 4 and 5.

42 - Ibid, para 6.

Despite the dearth of accessions in the MENA region to the dedicated UN statelessness conventions, all MENA countries have international obligations relating to the avoidance of statelessness and the protection of the rights of all people within their jurisdiction – including stateless people. Indeed, all MENA states are parties to a multitude of international and regional human rights instruments that guarantee the enjoyment of fundamental rights and freedoms for everyone within the state's jurisdiction, regardless of nationality or statelessness. This is important not only for understanding the framework within which the domestic legal systems of these states are operating and what content should be reflected in their laws, but also because these international commitments introduce an added layer of accountability with regard to the manner in which MENA countries are dealing with statelessness. Attached to the United Nations human rights regime, in particular, are mechanisms for the monitoring and supervision of state policy. Thus, each of the core human rights instruments, such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, has a “treaty body” which periodically reviews state practice against the standards set in these conventions. This reporting mechanism is a valuable source of information on the manner in which states are implementing – or not – their international

obligations and some of the material which is used in the review process is included in the analysis in the forthcoming chapters. Moreover, under the auspices of the Human Rights Council of the United Nations, a Universal Periodic Review (UPR) procedure has been established whereby all states are held to account for their law, policy and action in all areas of human rights. This process, too, provides a welcome insight into where states could be improving their response to nationality questions and statelessness. At the regional level, it should be noted that the majority of instruments that are relevant to MENA states are not accompanied by a formal supervisory mechanism – with the exception of those adopted by the African Union and applicable to a number of the countries in North Africa – severely limiting the opportunities for in-region monitoring of states' human rights commitments.⁴³

A final issue to raise in the context of the international framework relating to statelessness is the role of the Office of the United Nations High Commissioner for Refugees (UNHCR). As will become apparent over the course of this report, UNHCR is a significant source of information on statelessness and of guidance concerning how this phenomenon could or should

43 - The African Charter on the Rights and Welfare of the Child, for instance, has a Committee of Experts

be addressed. This is because the agency has been mandated by the UN General Assembly to assist states in dealing with statelessness, both through promoting accessions to and implementation of the two UN statelessness convention, as well as through a range of other activities to help states effectively address the issue.⁴⁴ Generally, both within the MENA and around the world, UNHCR is better known for its refugee mandate – and as the “UN Refugee Agency” – however it has taken significant steps over the past few years to operationalise its responsibilities towards statelessness, including through creating a dedicated budget line for its statelessness work and by increasing the level of dedicated staffing on statelessness. In respect of the latter, it is worth noting that as of 2012, a regional statelessness officer has been posted in the MENA region to provide assistance to UNHCR offices in undertaking activities on statelessness. Several of the offices in the region also have a statelessness focal point who is helping to develop, guide and track UNHCR’s work at the national level.

Efforts towards the further operationalization of UNHCR’s statelessness mandate and generating increased visibility for the issue generally have been

44 - Some historical background on the development of UNHCR’s mandate, as well as information regarding its areas of activity can be found in UNHCR, Action to address statelessness: A strategy note, March 2010, available at: <http://www.refworld.org/docid/4b9e0c3d2.html>.

given a further and significant impulse through the launch of the #ibelong campaign on 4 November 2014. This global campaign is directed towards the ambitious goal of ending statelessness by 2024 and UNHCR has elaborated a 10-point action plan to achieve this aim.⁴⁵ With a significant stateless population in the MENA as well as many “gaps” in MENA country's policy when reviewed against the 10-point action plan – such as the presence of gender discrimination in several states' nationality laws – there is much work to be done in the region to achieve the milestones set out in the #ibelong campaign.

⁴⁵ - For details of the #ibelong campaign and to access the 10-point action plan, see <http://ibelong.unhcr.org/> .

Chapter 2: Origins and influences of nationality laws

Nationality is a specific legal bond between a person and a state. It is most easily understood as a form of membership, whereby the state sets the conditions of belonging in accordance with its own interests and values. Once someone is recognised as a member, this legal bond of nationality brings an accompanying set of rights and duties on the part of both the state and the individual. Given that the terms of membership – the conditions for acquisition and loss of nationality – are laid down in each state's own domestic legislation, understanding the content of this law is a key step in building a picture of who enjoys nationality and who is excluded.

Every country's nationality law is informed by the specific domestic context in which it has developed. Yet many of the factors which influence the content of nationality legislation will also be common to several countries or even a whole (sub)region. In the case of the Middle East and North Africa, it is possible to identify some common historical, cultural and political influences which are shared by various countries or relevant to the region as a whole. This has contributed to numerous similarities in the way in which the acquisition and loss of nationality is regulated, including in the identification of these states' original body of nationals. This chapter describes some of the principal characteristics of MENA nationality laws and the environment in which they operate, reflecting

on the emergence of the MENA's contemporary nationality laws and what factors have influenced their content. In the next chapter of this report, a detailed comparative analysis will therefore be provided of how access to nationality is regulated across the MENA region.

2.1 Historic and traditional influences on MENA countries' nationality policy

Existing publications have dealt, in detail, with the origins of nationality law in the Middle East and North Africa.⁴⁶ Extracting details from rather than seeking to duplicate this information, what follows here is a very brief overview of some of the principal historic and traditional influences on nationality policy in the region. These are essentially threefold: the legacy of the dissolution of the Ottoman Empire, the enduring imprint of French and British nationality law left following colonial and mandate rule and the role of the region's dominant cultural/societal (Arab) and religious (Muslim) perspectives on the content of nationality law.

46 - See, for instance, N. Butenshon, U. Davis and M. Hassassian (eds), *Citizenship and the State in the Middle East. Approaches and Applications*, Syracuse University Press, 2000; G. Parolin, *Citizenship in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009.

Much of what is described in this project as the Middle East and North Africa and now comprises a multitude of nation-states once fell within the Ottoman Empire. As such, the region was united under one sovereign and one legal system. As the concept of nationality emerged and took increasing hold across the world as a means of regulating the membership of people within a state, the Empire adopted its own rules on affiliation in the Ottoman Nationality Law of 1869.⁴⁷ With the entry into force of this law, anyone residing in the territory of the Ottoman Empire was recognised as a national, regardless of their racial or religious affiliation.⁴⁸ Subsequently, Ottoman nationality was passed from parent to child or could be acquired by application by those who were born on Ottoman territory after reaching the age of majority, or by naturalisation after five years' residence. There were also provisions on renunciation, loss and deprivation of nationality – thus all the ingredients of a contemporary nationality law. As the Ottoman Empire broke apart and finally fell, the influence of this law across the MENA region remained. It served not only as one

47 - This law is known as the Tabiiyet-i Osmaniye Kanunnamesi (or TOK).

48 - Prior to this law, religion played a major part in determining a person's status within the Ottoman state, with Muslims (of any ethnicity) enjoying a privileged position of subject-hood and non-Muslims enjoying inferior rights. U. Davis, *Citizenship and the State. A comparative study of citizenship legislation in Israel, Jordan, Palestine, Syria and Lebanon*, Garnet Publishing Limited, 1997; M. Campos, *Ottoman Brothers. Muslims, Christians and Jews in Early-Twentieth Century Palestine*, Stanford University Press, 2011.

of the blueprints on which contemporary MENA states' nationality laws were later modelled, but also had a direct influence on who went on to enjoy the nationality of many of the countries to emerge following the Ottoman dissolution. Thus, previous enjoyment of Ottoman nationality was highly relevant to the question of inclusion in the original body of nationals of countries from Saudi Arabia, to Iraq, to Egypt.⁴⁹

The second major influence on contemporary nationality laws in the MENA was that of the foreign legal systems that encroached parts of the region through a mix of colonial, protectorate and mandate rule. There were two main players in this: France and Britain. Algeria, Mauritania, Morocco and Mauritania, for example, all spent a period under French colonial rule and there the influence of the French legal system on the nationality codes of these states following their independence was significant. The French Mandate for Syria and Lebanon, established under the auspices of the League of Nations following the end of World War I, led to the introduction of the French legal model in this part of the MENA as well. Indeed, following France's proclamation of the Lebanese state, it was the French High Commissioner

49 - G. Parolin, *Citizenship in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009, from page 71.

who issued Decree No. 15 on Lebanese Nationality – comprising the rules which to this day regulate acquisition and loss of Lebanese nationality.⁵⁰ Furthermore, it should be noted that French law had also been a significant source of inspiration for the Ottoman Nationality Law of 1869 and was thereby an indirect influence for the emerging nationality codes across other parts of the MENA region, while many Arab scholars also completed their doctoral studies in France and contributed to the feeding of French thought into the region. Therefore, there is for instance a bias for basing acquisition of nationality on descent (*jus sanguinis*) and the inclusion of rules based on the doctrine of “double” *jus soli*⁵¹ stemmed in part from these French connections and from their presence in the French Civil Code of the time.⁵² The manner in which British law and legal thought spread to the MENA region was similar, in particular through the British occupation of Egypt, the establishment of a British Mandate under the League of Nations over Iraq, Palestine and Transjordan, and colonial rule in the Persian Gulf (including what is now UAE, Kuwait, Bahrain, Oman and Qatar). A comprehensive study of

50 - M. El-Khoury and T. Jaulin, Country Report: Lebanon, EUDO Citizenship Observatory, September 2012, available at: <http://eudo-citizenship.eu/docs/CountryReports/Lebanon.pdf>.

51 - See section 2.2 below.

52 - G. Parolin, *Citizenship in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009, from page 77.

how the respective French and British perspectives on nationality impacted the initial post-independence nationality acts of MENA states – or indeed their influence throughout the world – remains, to the best of our knowledge, outstanding and goes beyond the scope of this study. However, it is clear that there was a strong “foreign” influence in the drafting of contemporary MENA states’ first nationality acts, the backbones of which are largely still in place today.

Not with standing the impression made by the Ottoman, French and British approaches to nationality, the development of modern MENA states’ nationality law was also influenced from the very beginning by factors which are specific to the region. Arguably the strongest of these are the Arab culture or social structure and the predominance of Islam.⁵³ There is therefore a fusion of legal models. For instance, in Oman, the legal system is based on English common law but the Constitution also identifies Sharia as the basis for the country’s legislation. Within Arab, Muslim society, there is a strong emphasis on familial or tribal ties, as well as a social and religious conception of these structures as patriarchal and patrilineal. This has influenced the adoption and retention of certain

53 - See for a detailed discussion of the notion of citizenship under Islam, N. Salam, “The emergence of citizenship in Islamdom” in Arab Law Quarterly, Vol. 12, No. 2, 1997.

nationality rules.⁵⁴ This is particularly evident with regard to the position of women under the region's nationality laws.⁵⁵ The importance attributed in some MENA countries to the Arab and Muslim identity is also visible in, for example, the conditions for naturalisation, whereby being an Arab or Muslim, or from an Arab or Muslim country, is either a requirement for naturalisation or ticket to facilitated procedures.⁵⁶ It is also an influence that is evident in some MENA countries' provisions delineating the original body of nationals and policies of "Arabisation" which had a detrimental impact on the enjoyment of nationality in several MENA states, as will be seen in the next sections. The Arab conception of the state has an effect on the application of nationality rules in practice, contributing for instance to discriminatory practices against sub-Saharan immigrants and their children. For example, in Morocco, where women are now entitled to pass nationality to their children, problems have been encountered in the implementation of this important reform where the father in question is sub-Saharan.⁵⁷ The "Judaisation", meanwhile, of the new

54 - N. Butenschon, U. Davis and M. Hassassian (eds), *Citizenship and the State in the Middle East. Approaches and Applications*, Syracuse University Press, 2000, from page 49; G. Parolin, *Citizenship in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009, from page 29.

55 - A comprehensive discussion of this can be found in chapter 4 of this report.

56 - This is addressed in section 3 of this chapter.

57 - See for instance the research findings in Women's Refugee Commission, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the*

state of Israel, including through nationality laws that excluded non-Jewish residents, left many resident Palestinian Muslims and Christians without access to the state's nationality and continues to contribute to statelessness within Israel today.

At the same time, Arab and Islamic traditions prevalent in the region also provide significant opportunity for tackling some of the challenges with regard to statelessness.⁵⁸ The central concept of "Ummah", or community, contributes to a culture of inclusivity which has been beneficial to the treatment of some stateless groups within the region. For instance, the reception and long-term hosting of large numbers of Palestinians in many countries and of Muslims from Myanmar's Rakhine State in Saudi Arabia (a group commonly known as the "Rohingya") is an expression of the solidarity with people from the same ideological background, regardless of nationality, that is inherent in the notion of Ummah. Similarly, the facilitation of travel for stateless individuals, including Kuwait's Bidoon, for the purposes of Hajj,⁵⁹ as well as the sense of public outrage at the exclusion of Bidoon children from the well-regarded Koranic recital competition in

Middle East and North Africa, June 2013.

58 - See also G. Parolin, *Citizenship in the Arab World*. Kin, Religion and Nation State, Amsterdam University Press, 2009, from page 112.

59 - See, for instance, US State Department, 2012 Human Rights Reports: Kuwait, April 2013, available at <http://www.state.gov/documents/organization/204580.pdf>.

Kuwait, can also be considered as expressions of the inclusiveness of religious ties regardless of nationality status.⁶⁰ But also with regard to the enjoyment of nationality rights, the role of the culture and religion can be a very positive one. A concrete example is the inclusion of the right to a nationality in both the Arab Charter of Human Rights⁶¹ and the Covenant on the Rights of the Child in Islam.⁶² This means that countries in the region are committed to protecting nationality rights not just through relevant commitments to UN instruments but also through their own region and context-specific normative frameworks. The central importance which is placed on the development of a family and the protection of the family unit within Arab culture and Islamic traditions may also be an avenue for the strengthening of nationality rights. For example, marriage is a religious duty in Islam and serves to fulfil half of a Muslim's religious duties. Recent research conducted in the MENA demonstrates the detrimental effect of gendered nationality policies and of statelessness on the ability to marry, start a family and maintain the family structure, thereby suggesting that the improvement of nationality policy

60 - Issue brought up by both Kuwaiti and Bidoon interviewees during meetings conducted by Z. Albarazi in the context of field research in Kuwait for the Women's Refugee Commission project on the impact of gender discrimination in nationality laws, March 2013.

61 - Article 29.

62 - Article 7.

will serve to further one of the most fundamental objectives of society in the region.⁶³ Finally, it is not just the philosophy of the Arab culture or the teachings of Islam that can offer a positive contribution towards addressing some gaps and challenges with regard to MENA nationality policies, but prominent individuals representing these communities may also be important advocates for change. For instance, vocal support for the naturalisation of Kuwait's Bidoon was expressed by the prominent and respected Saudi Sheikh Dr Salman Al-Oudeh and the late Syrian Mufti Al-Habashi was a supporter of the call for the amendment of that country's nationality laws to grant women equal nationality rights with men.

Rendering the Palestinians Stateless

When discussing the historic grounds of statelessness in the region, it would be necessary to understand the causes behind the creation of the biggest stateless group in the world, the stateless Palestinians. The problem of the Palestinians is complex: it is one of the world's most protracted situation of statelessness, those affected are spread across the region and around the globe and the traditional

63 - Women's Refugee Commission, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013.

solutions pursued with regard to statelessness do not seem viable to address their case. The concept of Palestinian nationality is also inextricably linked to the larger issue of Palestinian statehood. Furthermore, the statelessness of the Palestinians has not only had severe consequences for the lives and communities affected, but the whole political discourse surrounding nationality laws in the MENA region – including on the introduction of norms that would prevent statelessness more broadly, to the benefit of others individuals and groups - is heavily dominated by the Palestinian problem.

The rendering of millions of Palestinians stateless came at a volatile and tumultuous time in the region. At the establishment of Israel, two factors are of critical importance to note: the emphasis that was adopted by this new State on the Jewish nature of their country and the large-scale displacement of Arab populations from the state's territory. Both of these were to render millions stateless, both through their displacement and their inability to obtain the citizenship of the new State. Furthermore, the majority of displaced Palestinians eventually found themselves in the neighbouring countries. Although many in the first wave of displacement were able to obtain nationality, mostly as Jordanians, in 1965 the Arab League attempted to address the stateless Palestinian refugee issue through the Casablanca

Protocol where a regional no naturalization policy was adopted. This protocol emphasised that Palestinians should retain their Palestinian identity. It set out criteria on the treatment of Palestinian refugees – i.e. which rights should be guaranteed to Palestinians, including access to employment and the right to leave and enter their country of residence – all “whilst retaining their Palestinian nationality”, which most states interpreted as a prohibition against naturalizing Palestinian refugees.

Therefore, as a result of the discriminatory Israeli nationality legislation⁶⁴ and actions, displacement, and the continuing policy of no-naturalisation by States in the region, there are millions of stateless Palestinians across the MENA. Their treatment and access to rights in the region, although varying, has often been dire. Exact statistics are, again, difficult to determine. The total number of Palestinians registered with UNRWA is just under 5.5 million. However these are not all stateless (as some have acquired a foreign nationality) and then there are those who are not registered with UNRWA. Estimates have stated that approximately 5 million stateless Palestinians worldwide.⁶⁵

64 - See for example article 2 of Israel: Nationality Law, 5712-1952, 14 July 1953, available at: <http://www.refworld.org/docid/3ae6b4ec20.htm> that specifies Jewish emigrants to Israel are automatically Israeli

65 - For more information please see p127 Institute on Statelessness and

2.2 MENA countries' original body of nationals

In terms of understanding the way in which nationality laws operate and affect people's lives today, the main focus of analysis is the set of conditions under which nationality is conferred at birth, can be acquired in later life by a non-national and can be renounced or withdrawn. An exploration of these rules provides an insight into how people can become or cease to be a member of one of the world's current nation-states. However, an important step precedes this, in that each of these nation-states had to first come into existence at some point in the past and to claim, at that moment, an 'original' body of nationals. Thus, for example, when the modern state of Lebanon emerged, who were the first Lebanese nationals? After all, for a state to exist, a permanent population is needed and this must be delineated in much the same way as that the territorial boundaries of the state must also be established. Who belongs to the original body of nationals is a question that is therefore answered by each states' first rules on nationality. In the nationality laws of MENA states, these rules can often still be found (often in the opening provisions),

Inclusion, The Worlds Stateless, 2014, access at <http://www.institutesi.org/worldsstateless.pdf>

since many of these nationality act have remained in force since the emergence of the state, albeit commonly subject to various amendments over time.

Before looking at the substance of these rules, it is important to consider why they may be of interest. The definition of modern states' original body of nationals is an act that necessarily took place in the past, yet the repercussions of a particular approach to this question can be felt for many years or even generations. This is true of some MENA countries where the manner in which the original body of nationals was identified led, in parallel, to the emergence of the phenomenon of statelessness within the their borders. Some of these situations have yet to be fully resolved and instead statelessness has become protracted, with the problem even growing to encompass new generations, as will be seen below.

A common method of demarcation of a state's original body of nationals is on the basis of residence. Thus, people who are residing on the state's territory when its first autonomous nationality law enters into force – or at another moment that is considered critical in the formation of the state – are bestowed nationality. However, in many cases, the 'coincidence' of residence on a particular date is not, in itself, sufficient for the acquisition of nationality. In practice, a prolonged period of residence may be required,

such as in the United Arab Emirates. There, the legislation adopted after independence from British rule in 1971 establishes that the original body of UAE nationals will be comprised of Arabs who maintained their ordinary residence in one of the Emirates since 1925 or before.⁶⁶ In a similar vein, Yemeni law constructed the country's original body of nationals from "those settled in Yemen who will have resided in the territory for at least fifty calendar years by the time this law enters into force".⁶⁷ In reality, demonstrating proof of residence on a particular day or during a particular timeframe may be cumbersome, especially if documentary evidence is required that was not readily available – or not equally available to all of the state's inhabitants – during the period in question. This may lead to people not being recognised as nationals by the state under the operation of its law, even though on first sight they would seem to meet the criteria for nationality. Where they do not enjoy a connection to any other state – or cannot satisfy the conditions for nationality elsewhere because they were not residents at the crucial moment – this can leave people stateless. The Lebanese experience

66 - Article 2. It is of interest to note that the law was amended on this point just a few years after the original UAE nationality act was adopted in 1972. Acknowledging that it was important to include the nomadic population of UAE within the country's citizenry, a slight modification was made to this provision in 1975, changing the phrase "continued to reside" to "continued to have ordinary residence" to allow make allowances for the nomadic lifestyle.

67 - Article 2.

demonstrates these challenges where an incomplete census exercise which left a large number of people unregistered and undocumented subsequently influenced who was recognised as meeting the criteria for the enjoyment of Lebanese nationality, thereby leaving many thousands stateless. Over time, this statelessness has become a protracted and inter-generational problem for many in Lebanon, despite various initiatives to reduce the numbers.⁶⁸ This illustrates how critical it is to prevent statelessness from arising in the first place, given how enduring its effects can be.

Additional and alternative eligibility criteria may be set alongside residence requirements for a person to be admitted as a national with the coming into force of the country's first nationality law. In Libya, for instance, in addition to having been resident on the 7th of October 1951,⁶⁹ acquisition of Libyan nationality was also conditional either 10 years residence on that date, or birth on Libyan soil, or birth abroad but to a parent who was born on Libyan soil. While this residence period is shorter and therefore potentially easier to establish, there may still be similar challenges in practice with regard to proof of residence and/or, in this case, proof of place of birth. Moreover, where

68 - See further chapter 3.

69 - The date of entry into force of the country's constitution.

eligibility criteria for nationality are cumulative, they can serve to exclude and possibly leave stateless individuals who, although resident on the pivotal date, do not satisfy the further requirements. A common condition that is supplementary to residence in several MENA countries is the previous possession of Ottoman nationality. As already touched upon above, the decline and dissolution of the Ottoman Empire was a key event in the shaping the regional map. Thus, for example, the original nationality law of Iraq (dating from 1924), stated in article 3 that:

“All persons who on the 6th day of August, 1924 were Ottoman subjects and were habitually resident in Iraq are hereby declared to have ceased to be Ottoman subjects and to have acquired Iraq nationality on that date.”

The Saudi legislation was also premised on the need to regulate the emergence from Ottoman rule but takes a more nuanced approach. It houses a provision relating to acquisition of nationality by former Ottoman nationals (both those resident on Saudi soil at the time and those abroad who are members “of the indigenous people of the land”)⁷⁰ as well as a stipulation that nationality is conferred to “any person who was not an Ottoman subject and was residing in

70 - Article 4a and 4b.

the territories of the Kingdom of Saudi Arabia on 1332 H, corresponding to 1914 G. and whose residence in these territories extended up to 22/3/1345 H without acquiring any foreign nationality before this date".⁷¹ Although the same difficulties may arise with regards to proof, this latter provision should allow the state to confer nationality such that statelessness is avoided.

Finally, it is of interest to note that with the initial delineation of who belongs and who does not, the first elements of discrimination can also be traced in the identification of a state's citizenry. One clear example of this is the Jordanian nationality law, adopted after the establishment of the State of Israel which had compelled thousands of Palestinians to seek refuge in Jordan. In order to include this Palestinian population as nationals, Article 3.2 of the Jordanian nationality law identifies the following as Jordanian:

"Any person who, not being Jewish, possessed Palestinian nationality before 15 May 1948 and was a regular resident in the Hashemite Kingdom of Jordan between 20 December 1949 and 16 February 1954".

In Kuwait, there is another form of religious discrimination. Kuwait had defined its nationals

71 - Emphasis added. Article 4c.

already in 1928 as someone who was from the ruling family or was resident in Kuwait or was born on the Kuwaiti soil to an Arab or Muslim father. In addition to the obvious religious discrimination, this classification began to implement a sense of hierarchy between the different classes of citizens which is still very prominent today. The nationality law, which was then passed in 1959, went on to state that:

“Original Kuwaiti nationals are those persons who were settled in Kuwait prior to 1920 and who maintained their normal residence there until the date of the publication of this Law.”

As in the case of Lebanon (described above), it was the practical effect – rather than the formal content – of this provision which left an as yet indelible impression in Kuwait. Many people were either unable to prove that they had satisfied this residence requirement, while others (who may have been able to) did not take the necessary steps to register with the authorities to ensure recognition of their nationality and have since had any such claims denied.⁷² This led to the exclusion of a significant population which has since

⁷² - Human Rights Watch, *The Bedoons of Kuwait: Citizens without Citizenship*, 1995; Refugees International and Open Society Justice Initiative, *Without Citizenship. Statelessness, discrimination and repression in Kuwait*, 2011; and Human Rights Watch, *Prisoners of the Past. Kuwaiti Bidun and the Burden of Statelessness*, June 2011.

come to be known as the “Bidoon” and continue to live in and pass on their statelessness.⁷³

2.3 Other pivotal events affecting the enjoyment of MENA countries’ nationality

As the example of Lebanon illustrated, ensuring that the delineation of its original body of nationals by a state at the time of its formation or independence does not leave anyone stateless is a challenging but crucial first step to staving off problems in this area. Even if successful in this, statelessness may still arise as a result of the subsequent day to day operation of the rules regarding the acquisition and loss of nationality when there are insufficient safeguards in place. Such scenarios will be described from section 2 onwards when this chapter starts to explore the content of MENA’s nationality laws in detail. To complete the picture, it is necessary to acknowledge that nationality policy can also be subject to change, in accordance with political and societal developments. As such, new and potentially severe problems could arise at any time and indeed did in several MENA countries over the last half-century.

73 - See further chapter 3.

Perhaps the greatest culprit when it comes to the origins of nationality problems in the MENA region have been policies informed by a philosophy of Arabisation which was embraced by several MENA governments, at one time or another, during the second half of the twentieth century. Under such policies, the identity of the states in question was (re) asserted as that of an Arab nation and those who did not fit within the authorities' concept of Arabness became the object of increased and increasingly institutionalised discrimination and marginalisation. In certain extreme cases, nationality policy was used as a mechanism to target non-Arab groups and exclude them – politically, legally and sometimes physically – from the state. Such policies were seen in Syria, Iraq, Mauritania and Libya.

In Syria, it was the country's minority Kurdish community whose presence contrasted with the purported Arabness of the state and whose ethnic and cultural identity was subject to a range of suppressive measures. In 1962, an arbitrarily conceived and conducted one-day population census in a region predominantly inhabited by Kurds resulted in the exclusion of a vast number of this community from Syrian nationality. Through this measure, statelessness came into existence in the country – those who became “Ajanib” (foreigners) or “Maktoumeen” (unregistered) through the census enjoying neither

Syrian nor any other nationality – and remains a significant challenge there today.⁷⁴ In Iraq, a Decree passed in 1980 (No. 666) formed the legal basis through which the country's own Arabisation efforts led to large-scale statelessness. This Decree led to the withdrawal of nationality from between 300,000 and 600,000 Feili Kurds and Arab shi'ites,⁷⁵ many of whom were subsequently also forced to flee the country and lived for decades in exile in neighbouring Iran.⁷⁶ Mauritania's black population fell victim to that state's assertion of its Arab identity as a response to ethnic conflict at the end of the 1980s. Some 75,000 Black Mauritians were stripped of their nationality and expelled from the country in 1989-1990 and a further 15,000 nomadic Mauritians outside the state's territory at that time also came to have their nationality disputed.⁷⁷ This situation is now also being

74 - See further chapter 3, as well as H. Montgomery, *The Kurds of Syria. An existence denied*, Europäisches Zentrum für Kurdische Studien [European Centre for Kurdish Studies], Berlin, 2005; Chatham House, *The Syrian Kurds: A people discovered*, Middle East Programme, January 2006; UK Home Office, *Country of Origin Information Report – Syria*, 10 October 2007; S. Kawakibi, *Les Kurdes en Syrie ou les Kurdes syriens? a report for the Euro-Mediterranean Consortium for Applied Research on International Migration*, No. 12, 2009; and the separate report produced under this MENA Nationality and Statelessness Research Project, *The Stateless Syrians*, May 2013.

75 - UNHCR, *The situation of stateless persons in the Middle East and North Africa*, October 2010, available at: <http://www.refworld.org/docid/4cea28072.html>.

76 - Today, this nationality policy has been reversed and there is a concerted effort to ensure that those affected are able to reacquire Iraqi nationality. See further chapter 3.

77 - B. Manby, *Struggles for citizenship in Africa*, in particular chapter 4 on "Mass denationalisation and expulsion", Zed Books, London, 2009; UNHCR, *The situation of stateless persons in the Middle East and North Africa*, October 2010.

addressed through arrangements for the return and reinstatement of nationality for this group.⁷⁸ Finally, in Libya under the former Gadaffi regime, policies of Arabisation and ethnic purification had a detrimental effect on all non-Arab minorities in the country. One group affected was the Tebu, a traditionally nomadic sub-Saharan tribe with long-standing ties to Libya who suffered discrimination, forced evictions and displacement since the 1970s.⁷⁹ Their enjoyment of Libyan nationality became problematic with the passing of a Decree in 1996 that declared the ID-card holders of a particular area to be foreigners, mainly affecting the Tebu people. The current status of this population remains unclear.⁸⁰

The second type of development, or perhaps rather event, that has had an impact the enjoyment of nationality in the MENA region is the transfer of sovereignty over territory and its knock-on effects for the populations concerned. Since the fall of the Ottoman empire and retreat of colonial powers from the region (as described earlier in this chapter), there

78 - See further chapter 3.

79 - Minority Rights Group International, Libya country information as updated August 2011, available at <http://www.minorityrights.org/4171/libya/libya-overview.html#current>; Amnesty International, Urgent Action: Forced Eviction Libya, 31 March 2010; Summary of Stakeholders' submissions to the Universal Periodic Review of Libyan Arab Jamahiriya, A/HRW/WG.6/9/LBY/3, 15 July 2010, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LY/A_HRC_WG.6_9_LBY_3_Libya.pdf.

80 - See chapter 3.

have not been relatively few instances of a change of sovereignty over territory that have had significant or lasting effects in terms of statelessness.⁸¹ Neither the short-lived existence (1958-1961) and subsequent dissolution of the United Arab Republic, a political union between Egypt and Syria, nor the unification of North and South Yemen in 1990 appear to have generated problems for the enjoyment of nationality or led to statelessness.

Nevertheless, there is one major exception in this regard, which relates to the situation of the Palestinians. The origins of their statelessness lie in the end of the British authorities mandate over Palestine, followed by the emergence of the state of Israel which was accompanied by massive population displacement and Israel's implementation of a nationality policy to the exclusion non-Jews with links to the territory (Palestinian Muslims and Christians). All of this, of course, against the important back-drop of the non-emergence of a fully-fledged Palestinian state with a territory over which it can exercise sovereignty. Thus, in one sense, the root of Palestinian statelessness is an inadequate response to a situation of state succession – although the reality is far more complex

81 - By comparison, in Europe, for instance this has been a far more significant cause of statelessness, with large-scale problems arising after the dissolution of both the USSR and Yugoslavia.

than this. More recently, Jordan's disengagement from the West Bank led to new problems of statelessness among persons of Palestinian origin who had previously enjoyed Jordanian nationality. When, in 1988, Jordan announced the full severance of administrative and legal ties with the West Bank (already under the occupation of Israel since 1967), Jordanians of Palestinian origin who were resident there lost their Jordanian nationality and were once again stateless. Since then, what has been described as an arbitrary policy of revocation of nationality from other Jordanians of Palestinian origin living in Jordan has left thousands more stateless as an enduring, knock-on consequence of this historic political event.⁸²

Meanwhile, a more recent political event just outside the MENA region is also likely to be generating new cases of statelessness among populations present in MENA countries. Problems have arisen with regard to the regulation of nationality following the independence of South Sudan which have left many groups of Sudanese, South-Sudanese or mixed origin at risk of statelessness. Among those likely to be most affected by the new arrangements are those who

82 - Human Rights Watch, Stateless Again. Palestinian-origin Jordanians deprived of their nationality, February 2010, available at: <http://www.hrw.org/sites/default/files/reports/jordan0210webwcover.pdf>; A. Younes, Revoking citizenships: The future of Palestinians in Jordan, Al Arabiya News, 10 September 2012, available at: <http://www.alarabiya.net/views/2012/09/10/237182.html>.

had left Sudan, as refugees or migrants, and taken up residence abroad.⁸³ People of Sudanese and South-Sudanese origin can be found in significant numbers in several MENA countries, most particularly Egypt.⁸⁴

2.4 Contemporary influences on MENA countries' nationality policy

Much has already been said in the preceding sections about the historic, cultural and political influences on MENA countries' nationality policy. Before proceeding to review the content of that nationality policy, a few more comments are nevertheless due with regard to the contemporary setting in which the region's nationality laws operate. There are, indeed, a number of particularities relating to the MENA region – or sub-regions within this broad geographic area – which other parts of the world do not generally have to contend with and which continue to have an impact on the regulation of nationality.

First of all, the demographic reality of several MENA countries presents a considerable challenge, not least in those countries which host Palestinian populations.

83 - Open Society Institute (OSI), *The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws*, June 2012, available at: <http://www.refworld.org/docid/50b61ca32.html>.

84 - See UNHCR, *A responsibility to protect: UNHCR and statelessness in Egypt*, January 2013, available at: <http://www.refworld.org/docid/510fa7562.html>.

As already indicated above, the Palestinian situation is complex and has many dimensions to it. One of these dimensions is the effect of large-scale and protracted displacement on the nationality policy of the receiving states. In other words, the impact that the presence of hundreds of thousand Palestinian refugees in countries like Jordan, Lebanon and Syria⁸⁵ on the regulation of, in particular, acquisition of Jordanian, Lebanese and Syrian nationality. While there are plenty of other countries in the region and around the world which have also found themselves serving as a refuge to large displaced populations, the Palestinian situation is one of the world's most long-standing and entrenched refugee caseloads.⁸⁶ Moreover, more than many other refugee situations, the political dimension of the Palestinian problem also weighs in heavily. Thus, the various host countries have been reluctant to allow the Palestinian population within their territory the chance to acquire nationality, due both to the demographic impact this would have – i.e. the effect on the make-up of the body of nationals – as well as the belief that this may undermine the Palestinian cause by affecting claims

85 - In 2010 – before the Syrian crisis – the number of Palestinian refugees registered in each country was: Jordan – 1.99 million; Lebanon – 455,000 and Syria – 496,000. See UNRWA, Statistics 2010, November 2011, available at: <http://www.unrwa.org/userfiles/2011120434013.pdf>.

86 - Consider, for instance, also the unique arrangements for the support of this population through a dedicated UN Agency: UNRWA.

to a right of return in the event of the establishment of a fully-fledged Palestinian state. These sentiments have affected naturalisation policies and their implementation with respect to persons of Palestinian origin, as well as other nationality matters, including the question of a national woman's right to pass her nationality to her children (where this could also affect the nationality of children of a Palestinian man). As such, the presence of these large Palestinian groups has contributed to rather restrictive nationality policy – any proposals for more inclusive rules have been readily struck down on the basis that these are neither desirable nor tenable given the Palestinian presence.⁸⁷

Another demographic issue that is highly specific to the MENA region is the phenomenon of a citizenry that is outnumbered in its own country. In several of the GCC countries, the number of migrant workers present in the territory at any given time is far higher than that of the nationals of the state. For example, the estimated population of Qatar currently stands at 1.7 million people,⁸⁸ of which the actual citizen population only constitutes approximately 225,000,⁸⁹ meaning that close to 87% of the population are not nationals. This migrant labour force is made up of a

87 - See, for instance, *Les apatrides, otages de l'équilibre confessionnel et du dossier palestinien*, L'orient le Jour, 8 December 2009 [Lebanon].

88 - Qatar Statistics Authority, December 2011.

89 - H. Eakin, *The strange power of Qatar*, 2011.

relatively small number of highly skilled foreigners and very high numbers of migrant workers with lower-skilled level jobs in construction and domestic work. Most are from developing countries in South Asia, South East Asia and Africa, staying on short-term, employee-sponsored work contracts.⁹⁰ While the country is heavily dependent on this foreign work-force, hosting such a disproportionately large number of foreigners has clearly impacted on how the Qatari state and society view and guard their citizenship. Thus, similar to the Palestinian question elsewhere in the region, such situations in which the body of nationals is a minority in its own country have also contributed to restrictive policies towards naturalisation and other modes of acquisition of nationality. The concern is that a more inclusive approach could quickly threaten the cultural authenticity, heritage and social fabric of Qatar. These fears have led to the imposition of strict time-limits for migrants to stay in the country, which means that very often the question of access to citizenship is simply not relevant. However, it is evident that even those who extend their contracts and end up working and living in Qatar for a longer period do not have the opportunity to participate in or integrate into Qatari society and the nationality

90 - A. Kapieszewski, "Arab versus Asian migrant workers in the GCC countries" in S. Roper (ed.) *Labour migration to the Gulf: Understanding variations of the Kafala system*, Eastern Illinois University, 2008.

policy in place in the country is an extension of this restrictive approach.

Another demographic question which influences today's nationality policy in the MENA region relates to the desire to maintain a particular – possibly constructed – confessional balance. This is very clearly the case in Lebanon, which has struggled throughout its history to unite a diverse community characterised by no less than 18 official religions. Rather than challenging the country's demographic divisions and installing a shared identity, Lebanon has developed a complex political system based on the proportional representation of different sects. Certain key positions are reserved for members of specific religious groups: the President must be Christian Maronite, the Prime Minister Sunni Muslim, the Speaker of Parliament Shia Muslim and so on. This was considered the best approach to stave off sectarian conflict. However, it has also served to reinforce the dividing lines between the confessions and to heavily politicise citizenship policy. Under such a system, demography matters and the attribution of citizenship becomes part of a numbers game. The question of whether a particular individual should be recognised as a citizen becomes somehow inseparable from his or her religious affiliation and whether this would distort the confessional balance. Thus, from the very first act establishing the Lebanese citizenry to any contemporary debate

on citizenship policy, a recurring theme has been how the granting or withdrawal of nationality might affect the demographic make-up of the population and whether this could serve to undermine the delicate political framework. It is against this very backdrop that many thousands have faced a wall of exclusion and been left to battle for survival as stateless people in Lebanon. Moreover, the same concerns surrounding any potential impact on the demographic make-up of the country have formed and continue to form an insurmountable hurdle in any effort to amend Lebanon's nationality law, such that it remains virtually unchanged since first adopted by the French High Commissioner in 1925.⁹¹ The careful monitoring and manipulation of the confessional mix through decisions on nationality is also reportedly one of the driving factors behind policy in Bahrain. It has been reported that "efforts to naturalise stateless persons in Bahrain have been met with severe criticism by opposition groups which have claimed that these measures comprise a deliberate attempt

91 - See, for instance, Lebanon: Law does not recognise children of Lebanese females, *The Daily Star*, 8 March 2006 [Lebanon]; Lina Abou-Habib, Director of Collective for Research and Training on Development – Action (CRTD-A), Nationality and statelessness: Challenges and progress towards citizenship for all, presentation at Panel Discussion organised by the United States Mission to the United Nations, New York, 8 November 2007; No ID, NOW Lebanon, 9 March 2009 [Lebanon]; Lebanon: Women Battle for Citizenship Rights, *Inter Press Service*, 6 June 2009 [Italy].

by the government to manipulate the country's demographics".⁹²

Closely related to demographic issues are certain economic considerations underlying the choices states make with regard to the conditions for acquisition and loss of nationality. Again, the GCC sub-region is relatively unique here as most countries can be classified as "rentier states", deriving the vast majority of their national income from the revenue produced from natural resources, most significantly oil. Thus, in countries such as Kuwait, Qatar and UAE, it pays to be a national, because of the share in this natural wealth that is distributed among the body of citizens – as opposed to the more familiar state model in which citizens share the burden of taxation. In these countries then, nationality is a highly prized and protected domain, with stringent conditions that must be met to qualify and benefit from its privileges. Where statelessness exists, side by side with the wealth of a rentier states' citizenry, such as in the case of the Kuwaiti Bidoon, the contrast is all the more stark for this economic discrepancy

92 - UNHCR, The situation of stateless persons in the Middle East and North Africa, October 2010; citing International Crisis Group, Bahrain's Sectarian Challenge, Middle East Report No. 40, 6 May 2005; Freedom House, Freedom in the World 2009 – Bahrain, 16 July 2009; US State Department, 2008 Country Reports on Human Rights Practices – Bahrain, 25 February 2009; G. Parolin, Citizenship in the Arab World. Kin, Religion and Nation-State, IMISCOE Research, Amsterdam University Press, 2009.

between those who have difficulty working, cannot own property or access credit and those who receive regular cash pay-outs from the country's oil revenue simply by virtue of their nationality. Other, altogether different, economic considerations come into play in the nationality policy elsewhere in the MENA region, such as Lebanon and Yemen, which both have a large emigrant Diasporas. In such circumstances, it can be in the state's interest to protect the link between the emigrant (or his foreign wealth) and the country of origin through the passing on of nationality by descent into perpetuity, plus generous provisions relating to the (re)acquisition of nationality by people of Lebanese or Yemeni ancestry. Such considerations may also help to explain the increased tolerance of dual nationality and the distinct lack of interest by many states to enforce rules relating to the loss of nationality in the context of long-term residence abroad or the failure to apply for permission to acquire a second nationality.

A different type of influence on nationality policy in the MENA region and one which should not be underestimated today, is that of international standards and of the international community. As demonstrated in chapter 1, state sovereignty in the field of nationality law is now restricted by a number of specific limits set by international law, including those relating to non-discrimination and the avoidance

of statelessness. These standards can be found not only in a range of United Nations instruments to which a varying number of MENA states have become parties, but also in regional conventions such as the Arab Charter on Human Rights and the Covenant on the Rights of the Child in Islam. One area in which the emergence and promotion of international standards relating to nationality and statelessness has had an obvious impact is in the removal of gender discrimination from nationality laws. As discussed in detail in chapter 4, pushed by strong civil society advocacy and motivated by such instruments as CEDAW and the international spotlight which it brought to the issue, laws have been reformed in numerous MENA countries over the past decade – in particular in North Africa – to grant women equal rights with men to pass their nationality to their children, when once this was an area of firmly entrenched gender discrimination.

Lastly, no discussion of the contemporary influences on law and policy in the MENA region could be complete without considering the effects of the Arab Revolution. For nationality policy, as undoubtedly also with some other issues too, the Arab Revolution has so far been a double-edged sword. On the one hand, it has heralded hitherto unprecedented opportunities for movement on two of most protracted situations of statelessness in the world: the stateless Kurds in Bahrain

and the Bidoon in Kuwait. Early on in the Syrian crisis, with the stateless community participating actively in demonstrations against the regime, a decree was passed to allow the naturalisation of a large number of stateless Kurds in the hope of quelling any further protest from this group. As a result, Syria actually topped the chart for the reduction of statelessness in 2011 when, according to the government, some 79,000 people acquired nationality.⁹³ Kuwait's stateless community, similarly inspired by the events around the region, also took to the streets in protest against their situation. There, a true policy shift has yet to be achieved, but the level of interest in the plight of Bidoon has reached new heights and new actors have been drawn in to champion their cause,⁹⁴ as continued demonstrations with significant media coverage keep the pressure on the state to explore solutions. In Egypt and Jordan too, there is evidence that the setting of the Arab Revolution has reportedly also contributed to the empowerment of groups affected by the country's nationality laws. In Egypt, this helped to address the final gap in terms of discrimination against women in the transmission of nationality to their children – namely in cases where

93 - UNHCR, Note on Statelessness, EC/64/SC/CRP.11, 4 June 2013, available at: <http://www.refworld.org/docid/51d2a884.html>.

94 - See, for instance, the activities by Group29, <https://group29q8.org/?p=940>.

the father is Palestinian.⁹⁵ In Jordan, this activity also surrounds the campaign for gender equality in nationality rights but it has yet to lead to policy reform.⁹⁶

On the other hand, the Arab Revolution is also the context in which there has been an increase in the use of powers of denationalisation for political ends, including the silence political opponents⁹⁷. Moreover, inherent in the very ideology of the Arab Revolution and its call for more effective participation of the populous in political decision-making, is an increased tension on the nexus of nationality. With plenty of new elections and a potentially more effective democratic system coming into place, nationality becomes far more meaningful and important because it is the ticket to participation in the post-Revolution forms of government. As such, there may yet be further changes to nationality policy stemming from the Arab Revolution.

95 - Press release issued by CRTD-A following the adoption of Decree 1231 and published on the website of the Women's Learning Partnership at: <http://www.learningpartnership.org/lib/post-revolution-egypt-establishes-right-women-married-palestinians-pass-nationality-children-1>

96 - In Jordan, a struggle for gender equality, New York Times Online, 30 November 2011, available at: http://www.nytimes.com/2011/12/01/world/middleeast/in-jordan-a-struggle-for-gender-equality.html?pagewanted=all&_r=0.

97 - This is the case, for instance, in Bahrain and UAE. See Human Rights Watch, Bahrain: Don't arbitrarily revoke citizenship, 8 November 2012, available at: <http://www.hrw.org/news/2012/11/08/bahrain-don-t-arbitrarily-revoke-citizenship>; Z. Albarazi, Denationalising Bahrainis, ousting the opposition, 16 November 2012, available at: <http://statelessprog.blogspot.nl/2012/11/denationalizing-bahrainis-ousting.html>.

Chapter 3:

Comparative analysis of nationality laws

Although every country's nationality law is unique in its details, the overall mechanics are largely similar and all share certain common features. Understanding the general system of nationality laws therefore simplifies the process of reading, analysing and comparing their content. First of all, it is helpful to realise that the conferral – and withdrawal – of nationality is based on the existence – or presumed severing – of a link between the person and the state. The two principal connections that underlie nationality policy are familial (i.e. a family member is already a national) and territorial (i.e. birth or long-term residence within the borders of the state). Criteria based on different combinations and permutations of these two links can be found in every nationality law in the world. Secondly, many nationality laws also include other criteria that are deemed to represent “belonging”, including racial, cultural, religious or linguistic conditions.⁹⁸ A third common feature of nationality laws are those stipulations that relate to the desired quality or expected behaviour of the state's nationals. In other words, concepts such as good behaviour, honesty, loyalty and allegiance have made their way into both provisions relating to acquisition of nationality (e.g. naturalisation criteria) and those dealing with the withdrawal of nationality

98 - Note that some criteria of this nature may now be considered to violate international standards of non-discrimination.

(e.g. denationalisation in response to a crime against the state). The aforementioned elements can be found to a greater or lesser extent in all nationality laws worldwide, including in the MENA, although what weight is given to each and how they are translated into concrete provisions can vary significantly.

This chapter is dedicated to exploring and comparing the details of the region's nationality laws. It is accompanied by an annex in which the comparative analysis of some of the central rules relating to the acquisition and loss of nationality are set out in the form of analytical tables. The chapter looks at how the broad concepts of connectedness, belonging and loyalty have been transposed into individual provisions, in particular in regulating acquisition of nationality (at birth and later, through naturalisation) and in stipulating the conditions for the change or withdrawal of nationality. This comparative analysis offers the reader an insight into the main trends in nationality policy in the MENA, while identifying examples of strengths or good practices, as well as gaps or potential problems in these laws – paying special attention to where nationality provisions offer protection against or expose people to the risk of statelessness. After dealing with these main components, the chapter also comments on the specific issue of discrimination in nationality policy in the region as well as on procedural features of

MENA's nationality laws. Furthermore, it is important to note that the letter of the law is only half the story. In order to ascertain whether a country is successfully pre-empting or addressing statelessness, it is also necessary to consider how the law is interpreted and applied in practice by the competent authorities of the state. While such practice is much harder to grasp and may in fact vary base by case, the analysis of this chapter closes with a section that comments on some of the most significant challenges that have been identified in terms of the implementation of the MENA region's nationality laws. Finally, a conclusion summarises the main findings of the chapter and offers some recommendations with regard to how the nationality law regimes in the MENA could be strengthened in order to better respond to the challenge of statelessness.

3.1 Acquisition of nationality at birth

In the MENA region, and worldwide, the vast majority of people acquire their nationality at birth. A new life brought into the world means a new person to be attributed to one state or another. This process tends to occur without the need for any intervention by the parents or the state. The new-born, by virtue of certain facts of birth, is granted nationality automatically because he or she meets the conditions laid down in

the law that allow for this. For the majority of people, this is also the end of their nationality story in the sense that they will continue to enjoy the nationality of the same state throughout their lifetime, perhaps even perceiving this to be an immutable part of their identity. This is indeed one of the reasons why statelessness is such an unknown and unfamiliar phenomenon – many people have simply never considered the possibility that someone could be left without any nationality nor stopped to imagine what impact this might have on their lives.

Nevertheless, since different states maintain different regimes with regard to conferral of nationality at birth, this can create complications. In some instances, a child may be “claimed” more than once – i.e. he or she may, by virtue of the facts of birth, meet the terms for membership of more than one state and acquire dual or even multiple nationality. In other situations, a child may remain “unclaimed”, failing to meet the conditions for acquisition of nationality set by any state. In the latter scenario, the child will be left stateless. In the following sections, the regulations relating to acquisition of nationality at birth in the countries of the MENA are set out and a commentary is provided on where these regulations contain gaps that can and do result in cases of childhood statelessness.

3.1.1. Nationality by parentage (jus sanguinis)

The countries of the MENA region are united in their preference for the doctrine of jus sanguinis: nationality is transmitted through the “bloodline”, from parent to child. This is the main method of acquiring a nationality at birth in the region. As such, precedence is given to the familial link – the family bond with a person who is already a national – as the decisive condition for membership of the state. This approach sits comfortably in both the religious and cultural setting of the MENA, which places great emphasis on the role of the family and great value in the ties of kinship, as well as notions of tribal belonging.⁹⁹

All MENA countries recognise the paternal jus sanguinis in their nationality laws, reflecting the traditional perception that a person’s political identity is determined through the paternal line of descent.¹⁰⁰ Thus, a father can pass his nationality to his children, whether they are born within the country or abroad. In almost all cases, the acquisition of the father’s nationality happens automatically and will not require any action on the part of the state or

99 - G. Parolin, *Citizenship in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009.

100 - S. Joseph, “Gendering Citizenship in the Middle East” in S. Joseph (ed.) *Gender and Citizenship in the Middle East*, Syracuse University Press, 2000, at pages 17-18. See also N. Hijab, “Women Are Citizens Too: The Laws of the State, the Lives of Women”, United Nations Development Programme – Regional Bureau for Arab States, 2002.

the family. The only exception is Libya where, if the child is born outside the country to a Libyan father, a registration procedure must be completed before Libyan nationality is conferred.¹⁰¹

Rules incorporating maternal jus sanguinis are less commonplace in the MENA. Although the picture has been changing rapidly over the past decade, currently, still less than half of the countries in the region offer children an unconditional right to acquire their mother's nationality. Gender discrimination in nationality laws thus remains a significant issue in the region.¹⁰² Only Algerian, Egyptian, Moroccan and Tunisian nationality laws clearly provide for the transmission of nationality from mother to child on the same terms as from father to child (i.e. automatic and regardless of the child's place of birth). In Yemen, an amendment fully recognising the maternal jus sanguinis was passed in 2010, but only entered into force following published in the state's Official Gazette in mid-2013 and it is unclear to what extent it has been implemented to date. Iraq and Libya similarly provide for maternal jus sanguinis, but there is an internal inconsistency in their laws due to the

101 - Article 3(c), Law No. 24 on the Libyan Nationality, 2010.

102 - To compare the MENA region to the rest of the world, see UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness 2014, 8 March 2014, available at: <http://www.refworld.org/docid/532075964.html>.

retention of other provisions which previously allowed women to only pass on nationality in the exceptional circumstance that the child's father was stateless (both countries) or unknown (Iraq). It is therefore unclear whether the child of an Iraqi or Libyan mother will always be recognised as a national.¹⁰³

In all other MENA countries, women do not yet enjoy equal rights with men, with respect to the nationality of their children, despite this being prescribed by international human rights standards.¹⁰⁴ Children born in Mauritania to a Mauritanian mother do automatically receive this nationality, but those born to a Mauritanian mother abroad will need to complete a registration procedure. In all other MENA countries, as shown in Table 1, women can also only pass on their nationality in exceptional circumstances. The most common of these is where the father is unknown or paternal affiliation has not been established – usually meaning where the child is born outside marriage. The second most widely regulated circumstance in which a mother can transmit her nationality is where the father has none to offer, i.e. he is himself stateless. It must be recognised, however, that this is insufficient to prevent all cases of statelessness among children.

103 - In Libya, the "Executive Ordinance" required for the implementation of the new maternal *jus sanguinis* provision (article 11 of the law) has also not yet been issued.

104 - Among which, article 9(2) of CEDAW.

There are many situations in which the father is known and has a nationality and yet the child may be unable to enjoy the father's nationality – including, for instance, where the father is unable or unwilling to complete any necessary administrative procedures or where the law of the country of nationality of the father does not allow *jus sanguinis* transmission of nationality beyond the first generation born abroad.

Finally, Saudi Arabia and Kuwait both have unique maternal *jus sanguinis* provisions in place: children born in Saudi Arabia to a Saudi mother are entitled to facilitated naturalisation upon reaching the age of majority,¹⁰⁵ while children of Kuwaiti mothers are also entitled to facilitated naturalisation if they are still resident in the country at majority and the father is deceased or has divorced the mother.¹⁰⁶ It is important to note that these are both discretionary procedures and thus, provide no guarantee that an application will lead to acquisition of nationality. Moreover, although the entitlement to nationality is based in large part on the person's facts of birth, nationality is not granted at birth, but rather only after reaching adulthood. This means that, if no other nationality has been acquired, the person will spend their whole childhood stateless.

105 - Article 7, Saudi Arabian Nationality System, 1954.

106 - Article 5.2, Kuwait Nationality Law, 1959.

3.1.2. Nationality by birthplace (jus soli)

The jus soli doctrine, the other major mechanism for establishing nationality at birth whereby the child's place of birth is decisive, is less popular in the MENA region. That a person's connection will be strongest with the state in which he or she is born and that this should be acknowledged through the conferral of nationality is a sentiment far more alive in other parts of the world, especially the Americas. None of the countries in the MENA has a blanket jus soli provision which would grant nationality to everyone born on the state's territory.

Nevertheless, that such a territorial connection could open up a pathway to nationality is recognised in numerous clauses of MENA laws, in particular in the form of so-called "double" (and even "triple") jus soli rules, as shown in Table 2. In seven countries in the region, two or three successive generations of birth on state soil may lead to an entitlement to nationality. Thus, a child born in Mauritania to a parent who was also born in Mauritania can acquire nationality upon completion of a registration procedure.¹⁰⁷ In Yemen¹⁰⁸ and Tunisia,¹⁰⁹ acquisition of nationality by birth on state territory is automatic, but only if the child's father

107 - Article 9(1), 1961-112 Law on Mauritanian Nationality.

108 - Article 4(c), Yemen Nationality Law No. 7, 1990.

109 - Article 7, Tunisian Nationality Code (Decree No. 63-6), 1963.

(and in Tunisia also the child's paternal grandfather) were also born in the country. Oman has a similar provision, but in addition to having been born in Oman, the child's father must also be stateless.¹¹⁰ Bahrain's law also provides for conferral of nationality to a child born in Bahrain, if his or her stateless father was also born in Bahrain, but the father must also have made Bahrain his place of permanent residence.¹¹¹

In Iraq, the law also requires that the child and his or her father were both born in the country, but it provides for a discretionary application procedure rather than automatic conferral of nationality. The Egyptian provision is similar but has the further requirement that the father originate from a country in which Arabic is the principal language and Islam the religion.¹¹² Lastly, in Morocco the law has a simpler non-discretionary registration procedure attached to its own double *jus soli* provision. It requires either that the father was also born in Morocco and that he originate from an Arabic-speaking Muslim country, or that both parents were born in Morocco and remain permanent residents there.¹¹³ Although both the Egyptian and Moroccan laws have added some criteria of “belonging” alongside the familial and

110 - Article 1(4), Omani Nationality Law, 1962.

111 - Article 5(a), Bahraini Citizenship Act, 1963.

112 - Article 4(3), Law No. 26 concerning Egyptian Nationality, 1975.

113 - Article 9(1), Moroccan Nationality Law (Decree No. 1-58-250), 1958.

territorial connections, it is worth pointing out that neither of the provisions concerned explicitly requires the father to speak Arabic or be a Muslim, but rather it is sufficient that he is from a country where this is the norm.

It is, furthermore, of interest to note that birth on state territory generates an entitlement to facilitated naturalisation under a number of MENA nationality laws. Egypt, Mauritania, Saudi Arabia and Yemen all provide for different conditions to be met by someone born in the country who is seeking to naturalise, as opposed to someone who has immigrated subsequently.¹¹⁴

3.1.3. Safeguards for otherwise stateless children

States are, in principle, free to set the conditions for acquisition of nationality, including by choosing whether to grant nationality at birth on the basis of the *jus sanguinis* or *jus soli* doctrine, or a mixture of the two.¹¹⁵ However, international law sets certain limits to this freedom, including where it provides that every child has the right to acquire a nationality. The child's right to a nationality is recognised in several major

¹¹⁴ - See Table 8.

¹¹⁵ - Article 1 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws.

human rights instruments that are widely ratified in the MENA region, among which is the Convention on the Rights of the Child, as well as in relevant regional treaties.¹¹⁶ Article 7 of the Covenant on the Rights of the Child in Islam, for instance, determines that:

A child shall, from birth, have the right to [...] have his nationality determined; States parties shall [...] make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

These international standards demand that, regardless of the regular rules in place, states include within their legislation the necessary legal safeguards to prevent childhood statelessness. In practice and as indicated in the provision cited above, such safeguards should include both *jus soli* and *jus sanguinis* elements, as needed, to ensure that any child who is connected to a state by birthplace or parentage is not rendered stateless. Thus, for example, while a state may choose to generally confer nationality by way of *jus sanguinis*,

116 - Article 7 of the Convention on the Rights of the Child protects every child's right to acquire a nationality – it has been ratified by all MENA states. Article 24 of the International Covenant on Civil and Political Rights has a similar provision, as does article 6(3) of the African Charter on the Rights and Welfare of the Child, relevant for a number of countries in the MENA region. Note that this latter instrument also goes on to determine that "States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws".

it should exceptionally provide for the possibility of *jus soli* acquisition of nationality in those few instances that a child would otherwise be left without any nationality.¹¹⁷

Turning to the content of MENA states' nationality laws, the picture is very mixed in terms of the incorporation of such safeguards for children who would otherwise be stateless. On the one hand, the region's strong *jus sanguinis* tradition means that, in many cases, nationality will be transmitted into perpetuity for successive generations, even if the children, grandchildren and great-grandchildren in question are born (all) outside the territory of the state. Nevertheless, this picture is tainted by the fact that so many MENA states, as already outlined above, restrict their *jus sanguinis* rules to the paternal bloodline only. It is true that of those states which generally only allow fathers to transmit their nationality, several have included a special clause that is directed towards the avoidance of statelessness, allowing women to transmit their nationality if the father of their child is stateless himself (and therefore, by definition, has no nationality to offer). Yet such safeguards are short-sighted in their focus on the statelessness of the father,

117 - See also the detailed safeguards against childhood statelessness elaborated in the 1961 Convention on the Reduction of Statelessness, in particular articles 1 and 4. Note that, at the time of writing, only Libya and Tunisia were state parties to this international instrument.

rather than the threat of statelessness for the child, for it may be that the father does hold a nationality and yet the child is unable to inherit it. Moreover, the child of a Kuwaiti, Lebanese, Qatari, Saudi Arabian or Syrian mother will fail to acquire her nationality even if the father in question is stateless. None of these countries has any significant safeguard in place for the avoidance of statelessness among children who are descendants of a female national¹¹⁸ – although children of a male national will always receive nationality.

There are also significant legal gaps when it comes to safeguards that provide nationality to a child who is born on state territory and would otherwise be stateless. Some such children will benefit from the general *jus soli* provisions outlined in the previous section. But many of these have a rather narrow scope and the preference for a double *jus soli* rule means that the first generation of children born in these states' territory will not be protected from statelessness under these clauses. Only two countries in the MENA region have in place the "perfect" legislative safeguard against childhood statelessness within their borders:

118 - The only situation in which women holding one of these nationalities can transmit it to her children is where the father is unknown, although even this is not possible in Qatar.

Lebanon¹¹⁹ and Syria.¹²⁰ Both of these provide for the automatic conferral of nationality to any child who is born on their territory who does not acquire any other nationality at birth. Nevertheless, these provisions can be considered essentially defunct, since they are virtually never applied in practice.¹²¹ Nowhere else is there a blanket safeguard in place that would allow any otherwise stateless child born in the country to acquire a nationality – in spite of the fact that there are two states parties to the 1961 Convention on the Reduction of Statelessness in the MENA which contains this explicit obligation.¹²² The only other relevant provision which can be found and which should go some way to mitigating statelessness for children born within the region is that which confers nationality to any child born within the state whose parents are stateless. Yet even this narrower safeguard is only in place in three countries: Syria,¹²³ where it is also a defunct provision given that statelessness remains an inherited status in this country, as evidenced in the experience of the stateless Kurds;¹²⁴ Tunisia,¹²⁵

119 - Article 1(2), Decree No. 15 on Lebanese Nationality, 1925.

120 - Article 3(d), Syria Nationality Law No. 276, 1969.

121 - See for further comment on the gaps between law and practice in MENA nationality policy section 5 below.

122 - These are Libya and Tunisia, neither of which have incorporated the safeguard which the 1961 Convention prescribes to grant nationality to otherwise stateless children born in the territory in their nationality laws.

123 - Article 3(c), Syria Nationality Law No. 276, 1969.

124 - See Z. Albarazi, *The Stateless Syrians*, May 2013, available for download at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269700.

125 - Article 8, Tunisian Nationality Code (Decree No. 63-6), 1963.

where an additional residence requirement for the parents further restricts the effect that this provision will have in preventing statelessness and where this standard falls clearly short of Tunisia's international commitments under the 1961 Convention on the Reduction of Statelessness; and Algeria,¹²⁶ where an otherwise stateless child will acquire nationality if born in the country only if the father is unknown. Given these significant gaps, the MENA region is lagging behind in effectuating its commitment to prevent childhood statelessness. Resolving this situation does not require a significant overhaul of nationality policies in the region, but rather the introduction and implementation of some very simple safeguards that would apply in the exceptional circumstance that otherwise a child will be stateless, as outlined in relevant international conventions.

3.1.4. Foundlings

International law takes a special interest in the conundrum of so-called “foundlings”. This term refers to a child (sometimes interpreted as an infant or even a new-born), that is quite literally “found” and whose origins and parentage are unknown. Given that the line of descent cannot be established – nor,

¹²⁶ - Article 7(2), Algerian Nationality Code, Ordonnance No. 70-86, 1970.

definitively, the exact birthplace in many cases – crucial facts of the child's birth which are needed to determine his or her nationality are unclear. Unless this is dealt with through a specific clause in the state's nationality law, the child will remain stateless. Thus, since as early as 1930, international instruments have provided explicitly for the acquisition of nationality by foundlings.¹²⁷ The Covenant on the Rights of the Child in Islam echoes other international treaties in explicitly asserting that “the child of unknown descent [...] shall have the right to a nationality”.¹²⁸

The general rule prescribed by international law and transposed into domestic nationality legislation is that any child of unknown parents shall acquire the nationality of the country of birth. Where a foundling's place of birth is not established, he or she shall be presumed to have been born in the territory of the state (i.e. unless there is evidence to the contrary). Here, the countries of the MENA region present a strong and united front: all have included the prescribed protection against statelessness for foundlings within their nationality law.¹²⁹ For this, MENA states are to be commended, although it

127 - See article 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws and, later, article 2 of the 1961 Convention on the Reduction of Statelessness.

128 - Article 7 of the Covenant on the Rights of the Child in Islam.

129 - See table 3.

is unfortunate to see that abandoned children are protected from statelessness while other children born in the state may be left without a nationality (in some cases even if their mother holds the country's nationality), although the right to a nationality is a fundamental entitlement of all children.

3.2 Acquisition of nationality by naturalisation

Besides acquisition of nationality at birth, the other major route to becoming a national is through naturalisation. This is a procedure that is initiated through an application by the individual seeking nationality, usually in adulthood, leading to the conferral of nationality by the state if all prescribed conditions are met – in principle. In the context of most naturalisation procedures, the relevant authorities of the state enjoy the discretion to decline an application even if the basic requirements have been satisfied. How wide this margin of discretion is will vary from state to state, sometimes having a significant impact on an individual's real prospects of naturalisation. Nevertheless, the starting point for the question of when a person is eligible to naturalise is the set of criteria outlined within the nationality law which form the minimum benchmark that a prospective applicant must meet. In the sections

below, the general naturalisation criteria of MENA states are compared, before also exploring the circumstances in which access to naturalisation is facilitated – i.e. for which groups are the conditions lowered or the procedures simplified? Subsequent paragraphs also look at the particularities of MENA states' policies towards the naturalisation of persons of Palestinian origin and towards the attribution of political rights following naturalisation. As is the case throughout this chapter, the commentary provided is especially mindful of the question of how these provisions interact with the problem of statelessness, in this case how particular naturalisation criteria may contribute to the resolution or the entrenchment of statelessness.

3.2.1. General naturalisation criteria

While MENA nationality laws share a similar overall approach to naturalisation and many common criteria, there is a wide divergence in the details of the naturalisation requirements set. The primary connection between an individual and the state which lays the foundation for naturalisation is a territorial one, established through long-term residence within the country's borders. All MENA states prescribe a minimum period of residence as one of the conditions for eligibility for naturalisation.

Yet here, already, a great variety of standards can be seen. At one end of the scale are Jordan, Morocco, Saudi Arabia, Syria and Tunisia – Jordan requiring four years of residence and the others setting the bar at five years. At the opposite end are Kuwait, Oman, UAE, all prescribing 20 years' residence, as well as Bahrain and Qatar which both demand a minimum of 25 years. The remaining MENA countries have all taken the middle ground, most requiring ten years of residence within their borders before a person can apply for naturalisation, while Algeria asks for seven.¹³⁰ This huge disparity, especially between the lower and upper ends of the scale (4 years versus 25), is an immediately tangible demonstration of the fact that becoming accepted as a full member of the state is a far easier feat in some parts of the region than others. Overall, the tendency is for countries of North Africa and the Levant to have a more “welcoming” approach to the legal integration of newcomers through naturalisation, while the GCC countries are largely reluctant to expand their body of nationals in this manner.

With regards to the other criteria that must be met by a person seeking to naturalise, as shown in Table 7, there are four further conditions that are especially

¹³⁰ - See table 7.

common. The first of these is knowledge of the national language, which is in most cases Arabic. This requirement is about demonstrating “belonging” to the state, in the sense of an affinity to its population and their culture. The exact formulation of this condition varies somewhat from one state to another, with some requiring fluency (e.g. Egypt and Jordan) and others being satisfied when the applicant can demonstrate “sufficient knowledge” (e.g. Syria and Mauritania). The further three most common criteria relate not to connectedness nor belonging, but to the desired qualities or expected behaviour of a would-be national: they relate to the applicant's social, economic and physical attributes. Thus, the applicant is often required to be of “good character” and/or have a clean criminal record, have sufficient income to sustain him or herself (or, in Bahrain, a similar intent is expressed as ownership of real estate) and be in a state of good mental and/or physical health.

This last condition appears problematic in some instances, such that it may violate international norms relating to the rights of persons with disabilities. Article 18 of the Convention on the Rights of Persons with Disabilities establishes that persons with disabilities are to enjoy, on an equal basis with others, the right to acquire and change a nationality. Yet, in Syria for example, a person who has “any diseases or

disabilities" is ineligible for naturalisation.¹³¹ In Tunisia, an applicant for naturalisation may not have a "physical state making them a burden or danger to the community",¹³² which may also be interpreted to the detriment of persons with certain disabilities. This type of clause not only violates international standards of equal treatment, it may form a real obstacle to naturalisation, including where the applicant is stateless and this procedure would otherwise offer a solution. Meanwhile, in Mauritania, not only are there criteria within the naturalisation provisions that discriminates against persons with disabilities, but if a person who has successfully naturalised is subsequently found, within a year, "to be physically or mentally disabled", this nationality can be withdrawn – even if this renders the person stateless.¹³³

Other, less common, preconditions for naturalisation may also pose an insurmountable obstacle for some individuals and can block the route to nationality for stateless people resident in the country. For instance, in Kuwait, "belonging" is defined not just on linguistic, but also religious grounds: an applicant must know the Arabic language and be Muslim in order to naturalise – preventing any non-Muslim from acquiring

131 - Article 4(c), Syria Nationality Law No. 276, 1969.

132 - Article 23(4), Tunisian Nationality Code (Decree No. 63-6), 1963.

133 - Articles 19(1) and 14, 1961-112 Law on Mauritanian Nationality, 1961.

Kuwaiti nationality.¹³⁴ Moreover, an applicant for naturalisation in Kuwait must also render a service or hold a qualification which is needed in the country, further restricting the circle of individuals who may be eligible.¹³⁵ Comparable conditions can be found elsewhere. Yemen requires that an applicant for naturalisation be either Arab or Muslim,¹³⁶ showing how the country's conception of its own identity has put its stamp on nationality policy. It should be noted that such criteria which preclude people of other ethnicities or religions from being able to naturalise sit at odds with international law, in particular article 5(diii) of the International Convention on the Elimination of All Forms of Racial Discrimination and the *jus cogens* norm which prohibits racial discrimination. Syria, on the other hand, shares Kuwait's requirement that a person can only naturalise if they hold experience or qualifications that benefit the country¹³⁷ – a more utilitarian view of naturalisation policy. In Libya, among the many naturalisation conditions set are an age-limit (the applicant must be under 50 years old) and the catch-all of “any other conditions deemed relevant to the public interest”,¹³⁸ which gives the authorities free reign in restricting access

134 - Article 4(3) and 4(5), Kuwait Nationality Law, 1959.

135 - Ibid, article 4(4).

136 - Article (5), Yemen Nationality Law No. 7, 1990.

137 - Article 4(e), Syria Nationality Law No. 276, 1969.

138 - Article 9(6) and 9(7), Law Number 24 on the Libyan Nationality, 2010.

to naturalisation and refusing applications. Finally, the Qatari nationality law establishes a naturalisation quota: a maximum of 50 people per calendar year will have their applications approved.¹³⁹

3.2.2. Facilitation for specific groups

As shown above, the regular requirements for naturalisation are rather onerous in many MENA countries and should these be the only terms under which someone can seek to acquire nationality (other than at birth), some may find that they will never be eligible. However, it is common for nationality laws to offer a simplified or facilitated route to nationality for specific individuals, whereby certain conditions are waived or lowered. This is also the practice in most MENA states. There are two circumstances in which the majority of MENA nationality laws will make it easier for a person to obtain nationality than under the regular naturalisation procedure: in the event that the applicant is married to someone who already holds nationality or where the applicant has rendered exceptional services to the state.¹⁴⁰ It should be noted that in almost all cases, the facilitation for a spouse of a national is only applicable to the non-national wife of a male national – the non-national husband of a

¹³⁹ - Article 17, Qatari Nationality Law No. 2, 1961.

¹⁴⁰ - See table 8.

female national will often have to meet the regular naturalisation conditions regardless of this familial connection to the state. The other two circumstances in which some MENA countries facilitate naturalisation is for individuals who were born on state territory and for people who are themselves Arab or who come from an Arab country. Wherever a stateless person falls into one of these categories, he or she will be able to benefit from the facilitated procedure, which can improve the chances of successfully acquiring nationality.

Importantly, international law calls on states to facilitate the naturalisation of stateless persons as an independent category. This serves the common interest of ensuring that everyone enjoys the right to a nationality as set out in a multitude of human rights instruments at UN and regional level. Such a provision can explicitly be found in article 32 of the Convention relating to the Status of Stateless Persons, to which Algeria, Libya and Tunisia are all state parties. Yet, not a single nationality law in the MENA region recognises this principle and stateless people are subject to the same naturalisation conditions and procedures as anyone else seeking to acquire nationality. Only in Yemen is there the possibility that a more loosely-formulated article may be invoked to the benefit of stateless people: article 6 of the Yemen Nationality Law allows for a reduction of the qualifying

period of residence (from 10 years to 5), if there is an “urgent reason” for obtaining nationality. It is unclear whether this clause would be interpreted such that a stateless person will be offered this facilitated path to naturalisation, especially given that the nationality law generally does not make special provision for the prevention or resolution of statelessness. The unfortunate conclusion is therefore that the stateless long-term residents of any MENA country will face the same conditions – and obstacles – as any other person who wishes to acquire nationality by naturalisation. As such, they may be forced to wait many years before becoming eligible to apply and, even then, the other requirements may prove insurmountable. For instance, demonstrating sufficient income could be problematic, given the difficulties in accessing education and employment as a stateless person.¹⁴¹ Furthermore, especially given the absence of statelessness determination procedures in any MENA state, it is also questionable whether a stateless person would be deemed identified as such and/or be able to secure lawful residence, as required to actually qualify for naturalisation. Overall, the prospects for naturalisation as a means to resolve a person’s statelessness in the MENA region are rather poor.

141 - See, for instance, UNHCR, The situation of stateless persons in the Middle East and North Africa, October 2010.

3.2.3. Refusal to naturalise Palestinians

The on-going struggle for a full-fledged Palestinian state and the dispersal of several million Palestinian refugees across the MENA region (in particular Jordan, Lebanon, Iraq, Syria and Egypt), forms the backdrop for an interesting anomaly in naturalisation policy: the deliberate exclusion of an identified group from access to nationality. In 1965, the League of Arab States adopted an agreement – commonly known as the “Casablanca Protocol” – which set out certain rules for the treatment by these states of Palestinians on their territory. The Protocol provides for the enjoyment of rights relating to employment, freedom of movement and travel documents by Palestinians, while “retaining their Palestinian nationality”. Thus, although not explicitly provided for in the Protocol, a policy of non-naturalisation of Palestinians is widely seen as derived from this agreement. It is informed by the widely-held belief that to grant nationality to Palestinians in their country of exile would be to undermine their right of return and their claim to their original homeland.¹⁴² While it is true that a solution to the Palestinians’ statelessness depends largely on

¹⁴² - See, for instance, A. Kassim, “The Palestinians. From Hyphenated to Integrated Citizenship” in *Citizenship and the State in the Middle East. Approaches and Applications*, N. Butenshon, U. Davis and M. Hassassian (eds), Syracuse University Press, 2000; A. Shibliak, “Stateless Palestinians” in *Forced Migration Review*, Issue 26, September 2006.

the question of full Palestinian statehood and the implementation of a Palestinian nationality law, the non-naturalisation of Palestinians is an interesting phenomenon which can sometimes contribute to hardship for persons of Palestinian origin who would otherwise have qualified for nationality – including families who have lived for generations in other parts of the region.

The exclusion of Palestinians from naturalisation procedures – and other modes of acquisition of nationality – is most evident in the practice of MENA states. Currently, only Iraq explicitly disqualifies Palestinians from naturalisation in its nationality law:

*“Iraqi nationality shall not be granted to
Palestinians as a guarantee to their right to return
to their homeland”.*¹⁴³

In the same vein, however, the opportunity to naturalise has generally not been extended to Palestinians in other MENA states either. Nor, despite their statelessness, have they benefited from relevant safeguards that aim to prevent the perpetuation of statelessness – in particular, those present in the laws of Lebanon and Syria which should allow an otherwise stateless child born in the country to acquire

¹⁴³ - Article 6(2), Iraqi Nationality Law No. 26, 2006.

nationality.¹⁴⁴ In Egypt, when the nationality law was amended in 2004 to allow Egyptian women to transmit nationality to their children on the same terms as men, children of Palestinian fathers were initially excluded. It was not until 2011, following further advocacy and public protest, that a supplementary decree was passed that gave children of Egyptian women and Palestinian men the entitlement to Egyptian nationality. Even thereafter, the implementation of this policy remained a challenge.¹⁴⁵ In Jordan, although many Palestinians were initially extended nationality, decades later mass denationalisation has plunged thousands back into statelessness.¹⁴⁶ Thus, as a result of the overriding reluctance of host states to incorporate Palestinians into their body of nationals, the vast majority face intergenerational statelessness and the prospect of naturalisation channels being opened up to them by their host states remains poor.

144 - See, for instance, on the exclusion of Palestinians from Lebanese nationality, M. el-Khoury, T. Jaulin, Country Report: Lebanon, EUDO Citizenship Observatory, September 2012.

145 - Some data on the number of children of Egyptian women and Palestinian men to benefit from the new policy over the course of 2011, as well as details of some of the difficulties in terms of the implementation of this policy, is available at <http://eudo-citizenship.eu/citizenship-news/530-new-policy-on-egyptian-citizenship-for-children-of-palestinian-fathers>. Interviews conducted with affected families in early 2013 yielded reports of on-going barriers to the claiming of Egyptian nationality where the father is Palestinian, in particular for those born before the 2011 decree. See Women's Refugee Commission, Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa, June 2013.

146 - See, among others, Human Rights Watch, Stateless Again. Palestinian-origin Jordanians deprived of their nationality, 2010.

3.2.4. Naturalisation and political participation

As described above, naturalisation can be far easier to achieve in one state than another and it may also be facilitated or obstructed for particular groups. However, once an applicant is successful, naturalisation results in a person's inclusion as a full member of the political community of the state. Yet, in the next section, the circumstances in which a nationality acquired by naturalisation may be withdrawn will be set out and it will become apparent that a nationality acquired by naturalisation is generally more precarious a status than a nationality acquired by birth. Moreover, when exploring the effects of naturalisation in terms of an individual's ability to exercise the political rights attached to membership of the state, there are also indications that to be admitted to a body of nationals through naturalisation is not necessarily an immediate guarantee of full and equal participation.

In fact, in the MENA region, there are a multitude of restrictions in place with regards to the enjoyment of political rights by (newly) naturalised nationals. Across all countries in the MENA, there is, at a minimum, a waiting period between naturalisation and eligibility to full political participation – i.e. to holding the political rights enjoyed by those who were nationals from birth. The time period in question differs from

one state to another, while some of the restrictions imposed on political rights for naturalised nationals are permanent. Thus, in the UAE and Qatar for example, naturalised citizens are indefinitely barred from taking part in the political process. Article 16 of the Law No. 38 of 2005 on the acquisition of Qatari nationality 38/2005 states that “naturalised Qataris shall not be entitled to participate in elections or nominations, or be appointed to any legislative body”. The same provision of the Qatari nationality law also regulates access to employment in the public sector for naturalised citizens as follows:

“Naturalised Qataris shall not be equated with Qatari nationals in terms of the right to work in public positions or work in general until five (5) years after the date of naturalisation”.

A less prohibitive example but still highly restrictive is that found in the law of Kuwait. Kuwaiti nationality law, in Article 6, provides that a person who acquires nationality by naturalisation must subsequently wait 30 years before being eligible to vote in any Parliamentary election and will never have the right to stand as a candidate for or be appointed as a member of any Parliamentary body. In effect, although a national, a naturalised Kuwaiti has very limited opportunity to participate in the country's political system. At times, there is added discrimination between naturalised

citizens themselves. Yemen for example, in Article 23 of its nationality law provides that

“A Muslim foreigner who has acquired the Yemeni Nationality in accordance with Articles (4, 5, 6, 9, 11) shall not have the right to exercise the political rights designated for Yemenis until after fifteen years of his acquiring the Yemeni nationality. He moreover may not be elected to, or appointed in, any parliamentary body until after the lapse of the period specified above”.

It is not clear, on the other hand, what political rights are provided to a non-Muslim naturalised national.¹⁴⁷ As such, Yemeni law appears to add a new layer of discrimination grounded on religion.

Various forms of political participation may also be regulated differently. In Jordan, the law establishes different waiting periods for different public positions. Article 14 states that

“A person who acquires Jordanian nationality shall be deemed to be a Jordanian in every respect, but he may not hold any political or diplomatic position or any public office prescribed by the Council of Ministers and may not become a

¹⁴⁷ - Recall that under Yemeni law, a person must either be a Muslim or Arab to naturalise, as per the conditions laid out in article 5.

member of the State Council for at least ten years after acquiring Jordanian nationality. He shall be eligible for nomination to a municipal or village council or to trade union office only after a period of at least five years has elapsed as from his acquisition of Jordanian nationality".

Egypt has a similar system with different waiting periods: under article 9 of the Egyptian nationality law, a naturalised national cannot “exercise political rights” during the first five years following naturalisation and cannot be elected or appointed to a parliamentary body during the first ten years. However, through explicit waivers, the law places less restrictions on the participation of the newly naturalised in religious institutions and it allows further exemptions to the aforementioned waiting periods to be granted by Presidential Decree in individual cases. Nevertheless, the overall picture in Egypt and around the MENA region is that a successful application for naturalisation, while leading to the enjoyment of nationality, does not immediately bring all of the expected benefits of nationality and there may be a further, sometimes lengthy, wait before the naturalised national can fully participate in public life.

3.3 Renunciation, loss and deprivation of nationality

Nationality is not necessarily a fixed status. Under international law, a person enjoys the right to change his or her nationality,¹⁴⁸ should the desire and opportunity arise. A common way to do this is to take up a new nationality through naturalisation – as outlined above. In such circumstances, a person may want to give up his or her original nationality, or may be compelled to do so by the laws of the respective states if they do not tolerate dual nationality. At the same time, a person may also have their nationality revoked for a variety of reasons relating broadly to the (presumed) lapse or change of allegiance and/or to behaviour that is considered unbefitting of a national. In the sections below, MENA's rules relating to voluntary renunciation of nationality, loss and deprivation of nationality and the question of whether the withdrawal of nationality has an effect on the status of dependents, are outlined. Again, particular attention is paid to the question of whether these rules provide enough protection against statelessness.

¹⁴⁸ - Article 15 (2) of the Universal Declaration of Human Rights; article 29(3) of the Arab Charter of Human Rights.

3.3.1. Voluntary renunciation of nationality

Where someone chooses to give up their nationality, at their own initiative, this is termed “renunciation”. The principal reason that a person would voluntarily renounce their nationality is because they have acquired – or are in the process of acquiring – a different nationality, i.e. in the context of a change of nationality. People are sometimes also motivated by other circumstances to renounce, for instance in order to avoid certain duties which are attached to their nationality (commonly taxes or military obligations) or for personal or political reasons.

While voluntary renunciation of nationality is an act initiated by the individual, it is the state which sets the conditions under which this is possible, by laying these down in its nationality law. When assessing these rules in the MENA region, the first thing to note is that not all countries explicitly foresee the possibility of renunciation of nationality. Given that the law remains entirely silent on this point in the countries concerned, it is unclear how these states would respond to an individual's request to renounce his or her nationality. In a number of them, the point is arguably resolved by a different but related provision in the law which sets out that, where a person acquires a foreign nationality, their old nationality is automatically lost through this act. In other words, the

voluntary acquisition of a new nationality effectively operates as the voluntary renunciation of the original nationality.¹⁴⁹ If this is the only circumstance by which a person can give up their nationality at their own initiative, such an arrangement provides a strong guarantee against statelessness.¹⁵⁰ However, it may also serve to constrict a person's ability to change nationality, in practice, where the state of intended naturalisation requires prior renunciation of the original nationality.

Approximately half of the countries in the MENA region have a provision in their nationality law which is dedicated to renunciation. Of these, all but four only allow a person to renounce their nationality if there is no threat of statelessness – i.e. renunciation is only possible if the person already holds or has been assured of acquiring another nationality. For example, in Lebanon, the requisite provision deals specifically with renunciation in the context of marriage to a foreigner, stating: “The Lebanese woman marries a foreigner remains Lebanese until she requests the striking off of her registration in the census records on account of acquiring the nationality of her

149 - See, for instance, Article 11 and 15(c), UAE Federal Law No. 17 Concerning Nationality and Passports; Article 11, Kuwait Nationality Law, 1959.

150 - Note that article 7 of the 1961 Convention on the Reduction of Statelessness provides that nationality shall not be renounced unless the person has or acquires another nationality.

husband".¹⁵¹ Nevertheless, in Bahrain, Iraq, Jordan and Qatar, it is possible to voluntarily renounce nationality even where statelessness results.¹⁵²

3.3.2. Loss or deprivation of nationality

Nationality can also be withdrawn without a request by or even the consent of the individual concerned. Technically, this can happen in two ways. Firstly, it may be the direct and automatic consequence of particular circumstances arising – for instance, absence from the state for a defined period of time – which are outlined in the law as grounds for the loss of nationality. In such cases, the nationality of the person lapses, *ex lege*, without any intervention by the state. Secondly, the law may delineate certain circumstances in which the state is empowered to deprive a person of nationality. In these instances, nationality is only withdrawn if and when the state actually takes the decision to strip a person of nationality in accordance with one of these provisions. Often it is within the authorities' discretion to determine

151 - Emphasis added, article 6. Note that Lebanon also provides for the automatic lapse of nationality where a Lebanese national voluntarily acquires a new nationality (article 8).

152 - In Algeria, this is also possible in the following specific circumstance: where nationality was acquired by a child through the naturalisation of his or her parent. In such cases, the child can renounce Algerian nationality within 2 years after attaining the age of majority, even if this leads to statelessness (articles 18(4) and 17(2)). See further Table 4.

that it will not take action in a particular case and the person will retain nationality. In practice, establishing a power of deprivation appears to be more common in this region than providing for automatic loss of nationality. Yet, it is not always easy to distinguish from the language of the law whether a particular article provides for loss or deprivation of nationality and therefore how it will operate in practice.

In this chapter, the focus is not on whether a particular clause provides for loss or for deprivation, but on what the criteria are under which a person may be stripped of their nationality – since this offers a picture of how varied the circumstances are under which a person's nationality may be threatened. As already mentioned, the grounds for both loss and deprivation of nationality tend to relate broadly to the (presumed) lapse or change of allegiance and/or to behaviour that is considered unbefitting of a national. In the MENA region, the three most common grounds are where the person commits an act/crime that threatens the security of the state, renders services to a foreign state or is discovered to have acquired the nationality through fraud. For instance, with respect to withdrawal of a nationality which has been fraudulently obtained, all MENA states with the exception of Algeria, Lebanon and Tunisia have legislated for this possibility. Thereafter, the withdrawal of nationality in response to a demonstration of

allegiance to a foreign or enemy state and in response to the commission of a serious non-political crime are the next most commonly recognised grounds. Most MENA countries have legislated for the loss or deprivation of nationality in several of the aforementioned circumstances. As shown in Table 5, Bahrain, Morocco, Qatar, Saudi Arabia and UAE allow the state to withdraw nationality on all of the these grounds.

Among the less common but nevertheless noteworthy circumstances in which MENA's laws may provide for the loss or deprivation of nationality are the following:

- Long-term absence from the territory of the state (i.e. long-term residence abroad): Egypt, Libya, Qatar, Syria, UAE and Yemen. This is based on the notion that the connection with the state of nationality has faded and a new tie of allegiance is being formed elsewhere.
- Failure to fulfil military obligations: Morocco and Tunisia. Being prepared to defend one's country is a common duty attached to nationality and the failure to fulfil military obligations may therefore be read as a sign of disloyalty. In both of these states, this ground for revocation of nationality only applies to naturalised nationals.

- Dismissal from public service for reasons relating to honour or honesty: Kuwait and Qatar. As with the failure to fulfil military obligations, this provision can only be invoked against naturalised nationals and is likely also an expression of the idea that a display of disloyalty will be penalised by the withdrawal of this naturalisation.
- Terrorism: Morocco. With the latest amendment to the Moroccan nationality law, passed in 2007, one new ground for deprivation of nationality was introduced – conviction for an act of terrorism.¹⁵³ While it is likely that a person convicted of terrorism could have been deprived of his nationality on one of the previously existing grounds in the law, the authorities evidently felt the need to add this explicit clause.¹⁵⁴

More problematic are an isolated selection of further loss and deprivation provisions that allow for withdrawal of nationality on grounds that are prohibited under international law:

- Religion: In Kuwait, nationality can be deprived – or rather, naturalisation voided – if a person

153 - Article 22(1c). See also D. Perrin, Country Report: Morocco, EUDO Citizenship Observatory, October 2011, available at <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=Morocco.pdf>.

154 - See further Table 6 of the annex.

renounces Islam or “behaves in such a manner as clearly indicates his intention to abandon Islam”.¹⁵⁵ Not only does this contravene the fundamental right to freedom of religion, the vague language of the provision also leaves it open to abuse and to arbitrary decision-making. In Oman, a person can be stripped of nationality on the grounds of being an atheist or of belonging to an “anti-religious group”.¹⁵⁶ As with the Kuwaiti provision, this article is both contrary to basic human rights standards and formulated in worryingly broad terms.

- **Disability:** A person who acquires Mauritanian nationality by naturalisation may subsequently be deprived of that nationality if, within a year from the date of naturalisation, he or she is found to be “physically or mentally disabled”.¹⁵⁷ This goes against the equal right of persons with disabilities to acquire and change nationality, as set out in article 18 of the Convention on the Rights of Persons with Disabilities.
- **Political beliefs:** In Egypt, the nationality law gives the state the authority to deprive a person of nationality “if, at any time, he is assumed to be a

155 - Article 4(5), Kuwait Nationality Law, 1959.

156 - Article 13(2), Omani Nationality Law, 1962.

157 - Article 14, 1961-112 Law on Mauritanian Nationality, 1961.

Zionist".¹⁵⁸ Such an act is also likely to amount to the arbitrary deprivation of nationality, resting as it does on political grounds¹⁵⁹ and again, formulated in a vague manner such that it is unclear under which circumstances exactly it could or would be invoked.

In Qatar and Libya, the articles in the law which regulate deprivation of nationality create a different kind of challenge. Rather than authorising deprivation on what would be considered a prohibited ground under international law, they appear to effectively give the competent authorities *carte blanche* in determining when to withdraw a person's nationality. Under Qatari law, the Minister has the discretion to withdraw nationality from anyone "if it is in the public interest".¹⁶⁰ In Libya, nationality can be deprived in any situation where the decision is "justified" by General Security.¹⁶¹ Under international law, the withdrawal of nationality must have a clear legal basis if it is not to be deemed arbitrary (and therefore prohibited).¹⁶² It can be questioned whether such broadly formulated powers of deprivation would satisfy this, given the absence of legal security on the

158 - Article 16(7), Law No. 26 concerning Egyptian Nationality, 1975.

159 - See, for instance, article 9 of the 1961 Convention on the Reduction of Statelessness.

160 - Articles 11 and 12, Qatari Nationality Law No. 2, 1961.

161 - Article 14, Law Number 24 on the Libyan Nationality, 2010.

162 - See, among others, article 29(1) of the Arab Charter of Human Rights.

part of the individual to know or be able to predict under what circumstances – or in response to what behaviour – nationality might be withdrawn.¹⁶³

Two key things stand out in the analysis and comparison of all these legal provisions. Firstly, that someone who has acquired nationality by naturalisation is much more exposed to the subsequent withdrawal of that nationality than someone who acquired nationality by birth. In some cases, this vulnerability of naturalised persons to withdrawal of nationality is mitigated by the establishment of a maximum period (usually several years) following naturalisation during which nationality can be deprived on the various grounds prescribed, but after which this nationality also becomes more secure. In Egypt, for instance, nationality can be withdrawn from someone who has acquired it through naturalisation within five years from the date of acquisition if the person commits a crime, but within up to ten years from the date of acquisition if it is found that this was based on forgery or false statements.¹⁶⁴ Nevertheless, there are roughly twice as many clauses that provide for the withdrawal of

163 - See also UNHCR, Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions"), March 2014.

164 - Article 15, Law No. 26 concerning Egyptian Nationality, 1975.

naturalised nationality than there are provisions that extend to people who acquired nationality by birth.

Secondly, none of MENA's nationality laws include a safeguard to prevent a person from being rendered stateless through the loss or deprivation of nationality. This is a serious concern and here the region's nationality laws fall far short of the standards set by international law with regard to the avoidance of statelessness—in particular the 1961 Convention on the Reduction of Statelessness, ratified in the MENA region by Libya and Tunisia. There many more circumstances in which a state can withdraw a person's nationality and render them stateless than those exceptionally tolerated under the 1961 Statelessness Convention.¹⁶⁵ For instance, this convention does not allow for the deprivation of nationality in response to a serious non-political crime if this would result in statelessness, while 11 MENA countries have legislated for this possibility – including, notably, Tunisia, which is a state party. Moreover, those provisions of MENA's nationality laws which are basically aligned with the clauses of the

165 - Under the terms of the 1961 Convention on the Reduction of Statelessness, loss or deprivation of nationality can only result in statelessness in the following circumstances: a naturalised person subsequently takes up residence abroad for more than 7 years; a national born abroad who is not present in the state upon attaining majority or a person has acquired nationality by fraud or misrepresentation. In addition, a state can, upon accession to the 1961 Statelessness Convention, retain the right to deprive a person of nationality, including to render them stateless, in the following circumstances: where he or she has committed specific acts inconsistent with a duty of loyalty or has made an oath or formal declaration of allegiance to another State.

1961 Statelessness Convention – i.e. invoke generally permissible grounds for deprivation – tend to also extend the powers of deprivation of the state beyond what the convention permits. Although the 1961 Statelessness Convention recognises that a person who acquires nationality through naturalisation but subsequently resides for an extended period abroad may be deprived of his or her nationality, even if statelessness results, the minimum duration of the absence from the state which can be set is seven years. In Egypt, by comparison, nationality acquired by naturalisation may be withdrawn after just two years of absence, if no acceptable reason is given for this absence. Moreover, it should be noted that the 1961 Statelessness Convention and broader human rights law both call for due process and the right to an effective remedy where a decision is taken to deprive a person of their nationality. The right to appeal is especially important if statelessness results from such a decision – yet only six MENA countries provide for this in their laws.¹⁶⁶ Overall, in view of the widespread international recognition and regional reaffirmation of the right to a nationality, it is surprising and highly regrettable just how lacking MENA's laws are in safeguards that would protect a person from

¹⁶⁶ - See further section 4.2 of this report.

losing or being deprived of nationality such that they end up with none.

- **Denying citizenship to deny a voice.**

In 2013, faced with increasing opposition amid the waves of uprising in the region, the State of Bahrain passed a law allowing for those convicted of “terrorist” crimes to be stripped of their nationality. With no real definition of what terrorism means, this immediately raised concerns over how this would be translated and implemented. Unfortunately, what happened over the next few years justified those concerns - the strong abuse of citizenship in order to manipulate control was leading to waves of denationalization of those who opposed the ruling powers. The country's main opposition group in the country, Al-Wefaq, stated that at least 187 people have lost their citizenship by September 2015 since the law was passed,¹⁶⁷ and the numbers continue to rise. The majority of those denationalized were political opponents and many have been left stateless.

Although Bahrain received the most media attention, the trend of stripping the citizenship of dissidents

¹⁶⁷ - The Express Tribune, 12 Bahrainis Jailed, Stripped of Nationality, November 2015, access at <http://tribune.com.pk/story/991954/12-bahrainis-jailed-stripped-of-nationality-over-bombings/>

happens elsewhere as well. Using the similar justification of 'threats to nationality security', the Emirates have denationalized tens of its own citizens. These decisions are without appeal as it is illegal to file a plea against the Ministry of Interior's decision - revoking citizenship was an implementation of the Presidential decision. Revocation decisions are not subject to appeal in Kuwait either.¹⁶⁸ In Kuwaiti nationality law, individuals and their dependents can be stripped of citizenship on various grounds, including if it "involves the higher interests of the state or its foreign security," or the individual has "promoted principles that will undermine the social or economic system of the country." In 2014 alone, 33 Kuwaitis lost their citizenship based on this broad and ambiguous criteria. Again, in both Kuwait and the Emirates, the figures continue to rise.¹⁶⁹

The Gulf region as a whole has always had a unique position with regards to its relationship with nationality. The use of citizenship as a political and/or demographic tool – not just to exclude certain groups, but also the reverse - is not a new concept. In the years that followed Kuwaiti independence in

¹⁶⁸ - Financial Times, UAE revokes citizenship of seven Islamists, 2011, access at <http://www.ft.com/cms/s/0/1b8b4e84-2bf0-11e1-b194-00144feabdc0.html#axzz3uxSxLQ81>

¹⁶⁹ - Human Rights Watch, Kuwait: Government Critics Stripped of Citizenship, 2014, access at <https://www.hrw.org/news/2014/10/19/kuwait-government-critics-stripped-citizenship>

1961 for example, batches of naturalisations became a topic of dispute. After the departure of the British, the Emir had to search for support from elsewhere, and needed to find a mechanism to ensure the allegiance of new allies. "Prior to the elections in 1967, 1971 and 1981, the emir naturalized thousands of tribe members in order to bolster his own support".¹⁷⁰

3.3.3. Effect of loss or deprivation of nationality on dependents

In many MENA countries, the loss or withdrawal of nationality can also affect the spouse and/or minor children – especially, again, where this nationality was acquired by naturalisation. In such cases, only Morocco and Tunisia make this conditional on the spouse and children in question not being rendered stateless. Thus, elsewhere, a woman may be rendered stateless if her husband is denationalised and children may also be stripped of their nationality in conjunction with an act affecting the parent. In Egypt, Kuwait, Oman, Saudi Arabia and UAE, for example, the revocation of naturalised nationality can extend to the spouse in particular circumstances, even potentially rendering them stateless. This stands

¹⁷⁰ - Lund-Johansen.Marie, *Fighting for Citizenship in Kuwait*, 2014, p.30
access at <https://www.duo.uio.no/handle/10852/43302>

at odds with article 9 of CEDAW, the first paragraph of which compels states to ensure, among others, that the “neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband”. In these states, children can also be stripped of their nationality in conjunction with a parent who is denaturalised and they, too, may be left stateless in the process. This is also the case in certain circumstances in Bahrain, Jordan and Libya – and in the first two of these, a nationality acquired by birth may also be affected. All such provisions which allow the effect of loss or deprivation of nationality to extend to a spouse or child without a safeguard to avoid statelessness contravene article 6 of the 1961 Statelessness Convention. Where the effect is on a child, they may also raise questions under article 8 of the Convention on the Rights of the Child which protects the child’s right to preserve his or her identity, including nationality.

3.4 Further common elements of MENA countries’ nationality laws

In the preceding sections, the conditions set by MENA countries for the acquisition and loss of nationality were presented in some detail. As such, the bulk of

the region's substantive nationality provisions has now been dealt with. Nevertheless, a few further comments are due. Firstly, it is important to draw out from the above discussion a number of elements of MENA nationality policy that raise serious questions when set against international legal standards of non-discrimination. Secondly, it is worthwhile looking at some procedural questions surrounding nationality policy, including such matters as the issuance of proof of nationality (when and by whom) as well as the availability and effectiveness of an appeals mechanism should an individual assert that the nationality rules have been applied incorrectly or arbitrarily. These issues are dealt with in the following paragraphs.

3.4.1. Discrimination

By virtue of its very purpose, nationality law makes distinctions between “us” and “them” – a process which involves ascertaining which people are deemed to be connected to the state, belong to its political community, share its values and be worthy of full membership, including assumption of the rights, benefits and responsibilities associated. This is a context in which it can be all too easy to rely on distinctions and qualifying criteria that run counter to international standards of equal treatment. In the

foregoing discussion of the conditions for acquisition and loss of nationality in MENA countries, several examples of provisions that directly discriminate or have the potential to lead to discrimination have already been pointed out. When drawn together, in the MENA, there are four particularly problematic areas of policy, which have a varying prevalence across the region: gendered nationality rules; ethnic criteria for access to nationality; religion-based prerequisites for access to or a grounds for loss of nationality; and conditions relating to mental and physical health that may operate to discriminate against persons with disabilities.

By far the most common form of discrimination present in MENA states' nationality laws is that on the ground of gender. In almost every country in the region, nationality policy is biased in favour of men, bestowing on them greater privileges with regards to the retention and transmission of nationality than women enjoy. Only Algeria places men and women on an entirely equal footing in its nationality law. Elsewhere, as shown above, there is wide-spread gender discrimination in the conferral of nationality *jus sanguinis*: in the majority of MENA countries, a child is still only entitled to inherit nationality from his or her mother in certain exceptional circumstances, whereas nationality can always be passed from father to child. Even more common are gendered

provisions on access to nationality following marriage: apart from Algeria (as already mentioned), the route to nationality for a non-national woman who marries a national man is far less burdensome than that for a non-national man who marries a national woman. On the other hand, it is encouraging to see that none of MENA's current nationality laws contain provisions that would leave a woman stateless by automatically stripping her of nationality if she marries a foreign man – nationality is only lost, in those countries which provide for it, in the event that she actually acquires her foreign husband's nationality. Nevertheless, given that it is such a prevalent issue in the region, the background to and consequences of such gendered nationality policy, as well as the context and content of recent reforms to remove discriminatory provisions in several countries, is explored in greater detail in chapter 4.¹⁷¹ It suffices to say here that the MENA has a long way to go before its laws fully catch up with the contemporary perspective of women's independent nationality rights and with international standards, including those in CEDAW and the Convention on the Rights of the Child.

171 - See also Women's Refugee Commission, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013; Z. Albarazi and L. van Waas, "Transformations of nationality legislation in North Africa" in Isin, E., and Nyers, P. (eds) *The Routledge Handbook on Global Citizenship Studies*, Routledge, 2014.

Far less of a problem in the MENA region today is direct discrimination on the grounds of ethnicity within countries' nationality policy. Only one state, Yemen, explicitly requires that an applicant for naturalisation be either Muslim or Arab – excluding anyone who does not satisfy one or other of these demands.¹⁷² Although there is much contention over whether there is such a thing as an Arab ethnicity, the retention of this condition in addition to requirements relating to the level of proficiency in the Arabic language,¹⁷³ suggest that it should not be equated with mere linguistic affinity. As such, there is a risk that in the application of this standard, the division is drawn along (perceived) ethnic or tribal lines. It can be questioned whether this is in accordance with international law, including the Convention on the Elimination of All Forms of Racial Discrimination. Similar questions may be raised with regard to the nationality laws of Bahrain and Kuwait, which facilitate naturalisation for people who are Arab, over others (again, without further defining the term Arab and while clearly establishing a separate criterion of Arabic language proficiency). Elsewhere, facilitated naturalisation for those with a close cultural affiliation to the country – which can be recognised as a legitimate ground for preferential treatment – is organised through the privileging of people who

172 - Article 5, Yemen Nationality Law No. 7, 1990.

173 - Ibid, article 5(5).

are “from an Arab country”,¹⁷⁴ which arguably does not raise a suggestion of ethnic bias. This would seem to be a more appropriate way to formulate an entitlement to facilitated naturalisation under the law. Meanwhile, it is important to flag here that the absence of nationality rules that directly discriminate on the grounds of race or ethnicity has not spared the region, in practice, from the problem of racially motivated nationality policies. An obvious example of such problems is the long-standing and largely continuing exclusion of many Kurds from nationality in Syria.¹⁷⁵ This and other situations of arbitrary deprivation and denial of nationality have led to the region being so heavily blighted by statelessness. Again, an analysis of the letter of the nationality law, while important to understand how a country's policy is framed and what opportunities a person has to enjoy a nationality, offers an incomplete picture of the manner in which nationality is actually – or has historically been – attributed in practice.

The third form of discrimination that was noted in the analysis of MENA's nationality laws is that grounded on religion. Islam is the predominant faith in the region and has the status of official religion in many

174 - For example, Articles 5 and 6, UAE Federal Law No. 17 Concerning Nationality and Passports, 1972.

175 - See Z. Albarazi, *The Stateless Syrians*, May 2013.

MENA countries. Although most nationality laws have succeeded in 'secularising' nationality, some retain religious criteria. Thus, it was shown that in Kuwait, only Muslims are eligible for naturalisation. As noted in the previous paragraph, Yemen requires an applicant for naturalisation to be either Arab or Muslim. Furthermore, in the foregoing section on loss and deprivation of nationality, it was noted that religious beliefs – or a change of religion – may lead to the withdrawal of nationality. This was found to be the case in Kuwait, where being a Muslim is a prerequisite for naturalisation and a person who subsequent to their successful acquisition of nationality renounces Islam risks forfeiting their naturalised Kuwaiti nationality. In Oman, atheism or “belonging to an anti-religious group” was noted to be a ground, under the law, for deprivation of nationality. In each of these cases, religious considerations have crept into the terrain of nationality policy and have even been formally codified. Elsewhere in the region, religion has also played a significant role and discrimination has pervaded nationality policy, albeit more covertly. For instance, in Lebanon, maintaining the country's (perceived) confessional balance has long been the most significant consideration in debates surrounding and implementation of nationality policy.¹⁷⁶ In

176 - See, for instance, “Lebanese Citizenship: Given arbitrarily” in The Monthly, Information International, Issue 94, May 2010; G. Hourani, The 1994 Naturalisation

Saudi Arabia, being of Muslim faith is reported to be an implicit requirement for naturalisation, given that good behaviour – an explicit condition in the nationality law – must in practice be proven by a certificate signed by the Imam in the person's place of residence.¹⁷⁷

While discussing the pervasion of religion into the sphere of nationality policy, it is also worth noting the influence of Islamic Shari'a law within the overall domestic legal systems of MENA countries. In much of the region, Shari'a dominates the areas of family law and personal status law, which can have a knock-on effect for the enjoyment of nationality. A clear example of this is the absence, in many countries, of a legal framework for adoption. As such, most nationality laws make no provision for the acquisition of nationality through adoption – itself an unrecognised legal concept.¹⁷⁸ This may create problems for the enjoyment of nationality by children who have been abandoned, if their parentage is unknown but they are also unable to benefit from the legal provisions guaranteeing a nationality for foundlings. In Lebanon,

Decree, EUDO Citizenship paper, 2011, available at: <http://eudo-citizenship.eu/docs/LEB-1994NaturalizationDecree-GuitaHouraniNov2011.pdf>.

177 - G. Parolin, *Citizenship in the Arab World*. Kin, Religion and Nation State, Amsterdam University Press, 2009, page 103.

178 - For instance article 7(3) of the Covenant on the Rights of the Child in Islam states that "the child of unknown descent [...] shall have the right to guardianship and care but without adoption".

for example, concerns have been flagged regarding the enjoyment of nationality by some children living in orphanages and the absence of a regime for formal adoption and the attendant acquisition of nationality may leave children stateless.¹⁷⁹

The fourth area of discrimination in MENA nationality laws is that against persons with disabilities. Here too, it was seen that conditions relating to mental and physical health featured among naturalisation criteria, but could also lead to deprivation of nationality. This is a severely understudied question in nationality policy worldwide and there is little information on the implementation of the pertinent legal provisions in the MENA region. Nevertheless, given that the equal enjoyment of the right to a nationality for persons with disabilities is clearly established under international law, the fact that at least five MENA countries (Algeria, Libya, Mauritania, Syria and Tunisia) maintain legislation that could be interpreted to bar persons with disabilities from naturalisation is of serious concern. This is an area which is deserving of further attention and study, with a view to ensuring that such discrimination against persons with disabilities is removed.

179 - Interviews conducted by researcher Z. Albarazi in two Lebanese orphanages in 2011.

3.4.2. Procedural questions

Having deconstructed and compared the substance of MENA's nationality laws, it is of interest to look at some of the procedural features of this legislation. Perhaps the most immediate procedural question is to what extent a right of appeal is recognised where an individual is negatively affected by a decision relating to his or her nationality. For example, if the state uses its powers of deprivation to strip someone of their nationality, does the person in question have the opportunity to challenge that decision? Access to an effective remedy is of critical importance, as evidenced by some of the jurisprudence emerging in the region.¹⁸⁰ Yet just six countries in the MENA region guarantee a right to appeal against decisions relating to the enjoyment of nationality: Algeria, Egypt, Iraq, Lebanon, Morocco and Tunisia. It should be noted that none of the GCC countries are among those that permit such an appeal. As such, there is no system of checks and balances in these states that will help to prevent the authorities from stepping beyond their powers or rendering a decision arbitrarily. This is in spite of some examples of provisions that appear to be geared towards

180 - See, for instance, the analysis of case law relating to nationality in Lebanon in Frontiers Ruwad Association, *Invisible Citizens: Humiliation and a life in the shadows. A legal and policy study on statelessness in Lebanon*, 2011.

ensuring due process. For instance, in Saudi Arabia, where the state has identified behaviour, such as the rendering of services to a foreign state or other similar grounds, which are grounds under the law for withdrawal of nationality: “the Saudi national shall be warned about the consequences of his deed in a proper manner three months at least before issuance of the decree of withdrawal of the Saudi Arabian nationality”.¹⁸¹ Yet it is not apparent that the individual would be able to take action to spare him or herself from denationalisation, contest the authorities’ assessment of the situation or appeal against the subsequent issuance of the decree of withdrawal of nationality. The value of this type of provision is therefore unclear. Certainly, the absence of jurisdiction for the courts in nationality matters in the majority of MENA countries is of serious concern given the manifold problems that are seen in practice with regard to the implementation of nationality law – as touched upon in section 5 of this chapter.

In the case of Kuwait, one of the common complaints with regard to the protracted situation of statelessness faced by the Bidoon is the lack of any procedure to review nationality cases or to compel the competent authorities to take a decision on

181 - Article 13, Saudi Arabian Nationality System, 1954.

pending applications (many of which have already been awaiting a response for years). Despite being a form of administrative action, nationality decisions are expressly excluded from the jurisdiction of the administrative courts.¹⁸² This, however, seems to contradict a provision in the Kuwaiti Constitution stipulating that “Kuwaiti nationality shall be determined by law and nationality may not be forfeited or withdrawn unless within the limits of the law”,¹⁸³ which would suggest that decisions on the withdrawal of nationality at least should be subject to some form of appeal in order to review compliance with the law. Moreover, there is jurisprudence to suggest that not all nationality questions are non-justiciable in Kuwait. In November 2007, the Court of Cassation ruled that the administrative circuit is competent to decide on a complaint regarding the refusal to issue a nationality certificate to a person who has already acquired nationality by operation of the law (in the case in point, a daughter of a Kuwaiti national father).¹⁸⁴ It therefore appears that where the case concerns the confirmation of nationality through the issuance of the requisite documentation, rather than a dispute over access to nationality itself, there may be a role

182 - See article 20 of Law No. 20 (1981) on the establishment of administrative courts, as referenced in Human Rights Watch, *Prisoners of the Past. Kuwaiti Bidun and the Burden of Statelessness*, June 2011, at page 18.

183 - Article 27, Kuwait Nationality Law, 1959.

184 - Case 219/2006 decided on 27 November 2007.

for the courts. It may therefore be plausible for some Bidoon to bring their situation before the courts, if the assertion is not that they should be entitled to acquire nationality, but that they are being refused documentation recognising the nationality that they obtained under the law, i.e. on the basis of residence in Kuwait from 1920 to 1959 or as the descendant of a man who qualified thus. Even if such cases would be admitted to the courts, there would be a significant challenge to provide satisfactory proof of this residence so long after the fact (i.e. through documentation or witness testimony). Regardless of the extent to which such an avenue may prove successful, it is encouraging to see that access to the courts with regard to nationality complaints is not, perhaps, entirely off limits. Elsewhere in the GCC there have also been some isolated examples of appeals procedures being invoked with respect of nationality decisions, in particular the deprivation of nationality. Seven Emirati nationals stripped of their nationality for speaking out against the authorities in 2011 managed to have their case reviewed by the courts, but to no avail – the ruling confirmed that the state had acted within its powers.¹⁸⁵

185 - Gulf Centre for Human Rights, UAE: Revocation of citizenship of seven human rights defenders and deprivation of basic rights, 16 January 2012.

A closely linked procedural question is how much discretion is allowed to the authority responsible for issuing decisions on nationality. Measuring discretion from the letter of the law is not easy – a lot will depend on practice. However, provisions using terms like “can” and “may” (rather than “will”) with regard to, for instance, the conferral of nationality clearly leave room for the relevant authority to decide whether to do so in a particular case, or not. The greater the margin of discretion, the more legal certainty may become an issue, because it is difficult for potential beneficiaries to predict how the law will be applied to them. An area in which there is traditionally greater discretion is with regard to decisions on naturalisation and this is clearly also the case in the MENA region. In fact, some of the nationality laws admit that the requisite authority has absolute discretion in this regard. For example, in Saudi Arabia, “the Minister of Interior, in all cases, may refuse granting Saudi Arabian nationality to aliens, who have fulfilled all the conditions, which are prescribed [for naturalisation]”.¹⁸⁶ Elsewhere, this is not explicitly stated in the law but is a matter of policy. For instance, in Lebanon, the Ministry of Interior explains that “it is not definite that a foreigner who meets [the conditions for naturalisation] will be

186 - Article 10, Saudi Arabian Nationality System, 1954.

granted Lebanese nationality".¹⁸⁷ This means that a decision not to approve a request for naturalisation can never be challenged and need apparently not even be motivated. Access to nationality through naturalisation may therefore be a challenge. At the same time, there have also been positive developments in this regard. For example, in Qatar, the law used to simply decree that the Emir was empowered to grant naturalisation at his discretion and no criteria were set out, but a 2005 amendment brought in eligibility guidelines for naturalisation such that there is now more clarity on what a person would need to do to qualify. More troublingly however, in some MENA states, unfettered discretion appears to also extend to decisions on the withdrawal of nationality. As identified earlier, in Qatar and Libya, nationality may be withdrawn in the "public interest" or where "justified" respectively.¹⁸⁸ The law leaves significant scope for abuse of power here and in neither country is there a safeguard specifying that statelessness may not result nor can a decision be appealed.

187 - Ministry of Interior, General Questions, available at <http://www.moim.gov.lb/ui/Fa-Details.aspx?faqid=352>, as cited in Frontiers Ruwad Association, *Invisible Citizens: Humiliation and a life in the shadows. A legal and policy study on statelessness in Lebanon*, 2011, at page 70.

188 - See section 3.2 above.

A final procedural question that can be raised here is that of proof of nationality, i.e. what constitutes evidence that a person enjoys a nationality under the law and, more importantly, where does the burden of proof to produce this evidence lie? Several of the laws in the region deal explicitly with this question. For instance, in Kuwait, article 19 of the nationality law informs that “the Head of the Departments of Police and Public Security shall issue to every Kuwaiti national a certificate of Kuwaiti nationality after investigation has been made to establish his right to such nationality in accordance with the provisions of this Law”. Subsequently, article 20 adds: “in every case, the burden of proof shall rest upon one who claims Kuwaiti nationality”. The Yemeni nationality law also puts the burden of the proof of nationality in the case of individuals wishing to confirm or restore their nationality according to article (27) which stipulates that:

*The burden of proof falls upon whoever claims to be holder of the Yemeni nationality or submits that he is not.*¹⁸⁹

This condition has been perceived as arbitrary by some stateless persons who complained about the

189 - Articles 27, Yemen Nationality Law No. 7, 1990.

difficult process of restoring their citizenship.¹⁹⁰ Such complaints are rejected by governmental officials who state that the capacity of the government is so limited, that it cannot search for evidence on behalf of those who want to obtain citizenship. A Yemeni judge had also interpreted the burden of the proof on the applicant with reference to an Islamic principle “the proof falls on the shoulder of the claimant”.¹⁹¹ The government of Yemen, however, made some legislative reforms over the last decade to facilitate the acquisition of the Yemeni nationality via amending nationality legislation of 1990.¹⁹² This has been seen as a good step forward and it is expected to be followed by further legislative reforms in the upcoming constitutional reform in Yemen, which was expected by 2014.¹⁹³ It is important to keep in mind that successfully safeguarding the enjoyment of a nationality and the avoidance of statelessness can be achieved through substantive reform but can also be facilitated through a review of procedural questions relating to nationality.

190 - A group discussion with some refugees, lawyers and stateless persons held on 24th of September 2012.

191 - Justice Jamal Alhubaishi, Focus Group Discussion on stateless persons held on 24th of September 2012

192 - Yemen passed three amendments to its nationality law between 2003 and 2010 to facilitate acquisition of Yemeni nationality.

193 - An interview with Mr. Anis Abdalla Alaqaby, Saba News Agency, conducted on the 2nd of July 2012.

3.5 Nationality law versus nationality practice

Perhaps the greatest challenge when it comes to assessing a state's performance in terms of its nationality policy, or indeed to establishing whether there is a problem with regard to a particular group or individual's enjoyment of nationality,¹⁹⁴ is that the letter of the law can be only half of the story. The competent authority of the state in question must interpret and apply the law, a process that can yield unpredictable results. For instance, the relevant authorities may have divergent views on the interpretation of particular terms or conditions. Where decision-making powers have been decentralised, the competent authorities may not be aware of recent amendments to the law, such that they continue to apply the old and familiar regulations in practice. The competent authorities may, alternatively, have very good knowledge of the law and interpret it appropriately, yet not be in a position to apply it in practice due to, for instance,

194 - To determine whether a person is stateless, i.e. not considered as a national by a state under the operation of its law, (article 1 of the 1954 Convention relating to the Status of Stateless Persons) requires a careful analysis of how a state applies its nationality laws in practice, in that individual's case. In some cases, an objective analysis of the law would lead to the conclusion that the person is a national, but the state may not in practice follow the letter of the law, so the analysis must be based on how the competent authorities interpret the law. See UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.

procedural problems. For instance, they may be aware that a child born to a female national is entitled to nationality if the child's father is stateless, but not know how to or have a procedure for establishing this statelessness, such that this safeguard is not invoked. The authorities can also be aware of the operation of the law, but due to disinterest, discriminatory attitudes or corrupt practices, the law is nevertheless applied arbitrarily and decisions are taken which are at odds with the letter of the law. Furthermore, the law may – as described above – grant the authorities a certain margin of discretion with regards to the interpretation and application of its terms, which can also serve to make state practice diverse and unpredictable.

In sum, given these and other potential stumbling blocks, there can often be gaps between law and practice. This may be to the benefit of people who would otherwise be stateless – for instance where provisions for loss of nationality, such as in the event of long-term residence abroad, are ignored and those who would be affected according to the letter of the law actually continue to be treated as nationals. Equally, state practice may aggravate problems of statelessness where the law in question should provide protection and guarantee the right to a nationality but this is not what happens on the ground. While this research was not comprehensive enough to offer a full picture of state practice with regard to nationality

policy in each of the MENA states – this, indeed, being an area in which a further study would be worthwhile – some basic observations are provided below.

3.5.1. Acquisition of nationality

It was shown above that comprehensive safeguards allowing for the conferral of nationality to otherwise stateless children have yet to fully pervade the MENA region. In most countries, there are some provisions designed to reduce the risk of statelessness among children but these are insufficient to guarantee the enjoyment of the right to a nationality in all circumstances. Perhaps the most disappointing discrepancy between law and practice then, is where those countries which do have an inclusive safeguard are failing to implement it. Lebanon and Syria both provide in their nationality law for the acquisition of nationality by any child born on state territory who does not acquire another nationality at birth. However, neither country's nationality practice reflects this safeguard and statelessness is passed on from one generation to the next. Stateless Kurds are labelled *ajanib* (foreigner) or *maktoumeen* (unregistered) by the Syrian authorities, rather than recognised as stateless, creating an excuse not to apply the safeguard against statelessness for their

children.¹⁹⁵ It is a similar story in Lebanon where the stateless known as *kayd al dars* (nationality under study) or *maktoum al kayd* (unregistered) also find that the general practice is to consider these statuses as hereditary rather than to protect the next generation from statelessness. Only in a limited number of court rulings have children born to a *kayd al dars* or *maktoum al kayd* father won the right to Lebanese nationality on the ground that they were born in the state and have not acquired another nationality.¹⁹⁶ Meanwhile, in both Syria and Lebanon, children of Palestinians are also excluded from benefiting under the safeguards on the grounds of preserving their Palestinian 'nationality'. Similarly, countries such as Jordan, which have special provisions that allow for the acquisition of the nationality of the mother if the father is stateless frequently do not implement this and children of Palestinian fathers, in particular, are excluded.

In Iraq, the apparent internal inconsistency in the country's nationality law has created problems in its implementation. Article 3 of the law clearly indicates

195 - See for the ramifications in terms of the growth of the stateless population in Syria over time, KurdWatch, 'Stateless Kurds in Syria: Illegal invaders or victims of a nationalistic policy?' March 2010. access at http://www.kurdwatch.org/pdf/kurdwatch_staatenlose_en.pdf.

196 - Frontiers Ruwad Association, *Invisible Citizens: Humiliation and a life in the shadows. A legal and policy study on statelessness in Lebanon*, 2011, from page 59.

that any child born to either an Iraqi mother or father acquires nationality, regardless of the place of further facts of birth. Article 4 goes on to state that “the Minister may consider Iraqi any person born outside Iraq to an Iraqi mother and an unknown or stateless father”. Instead of being treated as obsolete because of the contradiction with article 3, in practice this provision has been applied such that it has narrowed the interpretation of article 3. Thus, where a child is born to an Iraqi mother abroad, nationality is only conferred if the authorities are satisfied that the father is unknown or stateless. There are also signs that, even in these circumstances, access to nationality is problematic because it is difficult to satisfy the burden of proof with regard to the status of the father. This practice heightens the risk of statelessness for children born to Iraqi women abroad, despite the law not initially appearing to be problematic on this point.

Another problem that is in evidence in the region when it comes to the implementation of rules relating to the acquisition of nationality is the obstruction caused by certain administrative or logistical arrangements. For instance, in Egypt, the law now allows women to confer nationality to their children. When this rule came into effect in 2004, it was introduced with retroactivity, such that children born before the relevant legal reform could also benefit and claim their Egyptian mother's nationality. However, to acquire nationality

in this manner, an application process must be completed and the lodging of the application must take place at one particular office which has been identified for this purpose in the heart of Tahrir, Cairo. This makes it very difficult for families living far from the city to claim nationality for their children, given the time and cost of making the journey to the office. The onset of the Arab Revolution in Egypt, the political instability in the country and the repeated demonstrations in precisely that part of Cairo made access to this procedure even more complicated. As such, there are likely to be many children who qualify for Egyptian nationality under the law but who have yet to acquire it in practice because they have not completed the necessary application procedure.

Lebanon offers another example of administrative hurdles that are affecting the acquisition of nationality by children. There, problems arise from the intrinsic relationship between birth registration and the recognition of Lebanese nationality. Where, for whatever reason, a child's birth is not registered within 30 days after birth,¹⁹⁷ subsequent registration incurs a fine which can act as a deterrent. Repeated late registration may lead to a more severe sanction as it becomes a matter for criminal law, whereby

197 - The period prescribed by the Personal Status Registration Act of 1951.

punishment could include imprisonment (article 498 and further in Lebanese Penal Law). If there is a delay of more than a year after the child's birth before registration is sought, this can only be achieved through a complicated, costly and demanding court procedure, which is often unsuccessful. Those who have not succeeded in having their birth registered are known as *maktoum al kayd* (unregistered).¹⁹⁸ Although Lebanese law does not make acquisition of nationality by a child conditional upon the registration of his or her birth, the practice is different. Regardless of any formal entitlement under Lebanese nationality law, the *maktoum al kayd* are not recognised as Lebanese citizens by the state and discussions on the resolution of their legal status will often take shape as a debate on naturalisation. Here, the gap between nationality law and nationality practice is contributing to the expansion of statelessness within the country.

In Lebanon then, birth registration and recognition of nationality are closely entwined and a child who lacks a birth certificate and is unable to remedy this, can be left in a position where he or she is not recognised as a national as a consequence. In general, however, the lack of birth registration should not be equated with a

198 - See, for instance, F. Rida, Unregistered persons in Lebanon: Thousands were never born according to official state documents... and they never died, *Al Hayat*, 12 August 2007.

lack of nationality, i.e. statelessness. Nor should every child who lacks a birth certificate be considered at real risk of statelessness. Yet, lacking proof of the facts of birth can make it difficult for a person to establish their claim to a nationality and when combined with other factors – such as migration, state succession or belonging to a population that experiences discrimination – may lead to them not being considered as a national by any state.¹⁹⁹ Birth registration therefore remains an important tool in the prevention of statelessness and where there are problems with access to this procedure, problems of non-recognition of nationality may follow.

With the Syrian conflict causing vast numbers of the refugees to flee to Lebanon, a new problem related to this complicated civil registry system has developed. Syrian personal status law sets out that registration abroad is to be conducted under the jurisdiction of the State in which the Syrian is in. Due to the complexity of the procedure explained above, the difficulty that refugees face in ensuring that they have all the necessary documents (especially as they are considered 'illegal immigrants' in Lebanon) and with refugees not prioritizing registration, this is

199 - See also UNHCR, Birth Registration: A Topic Proposed for an Executive Committee Conclusion on International Protection, 9 February 2010; UNHCR, Conclusion on civil registration, No.111(LXIV)-2013, 17 October 2013.

proving very difficult for many. UNHCR has stated that: 'With the continued arrival of refugees from Syria, the number of stateless persons in Lebanon and persons at risk of statelessness has risen. Some refugees arrive in Lebanon with unconfirmed nationality, or without documents proving their nationality. [...] Stateless from Syria may lack nationality due to gaps in Syria's national legislation or lack of access to civil registration procedures.'²⁰⁰ The inability therefore of both the Lebanese and the new and growing community of Syrian refugees in Lebanon to register is becoming an epidemic. Although official statistics are unavailable it has been estimated that up to 75 per cent of new-born Syrian refugee children have not been registered.²⁰¹ Not being able to confirm that they are Syrian through documentation will mean that they will become a Lebanese statelessness problem in the future.

An example of prevention – the Norwegian Refugee Council (NRC) in Lebanon:

The Information and Counseling Legal Assistance programme (ICLA) of NRC in Lebanon has been providing information, counselling and legal assistance on civil documentation, including birth registration,

200 - UNHCR Lebanon Statelessness Update March 2014

201 - UNHCR, The Future of Syria, Refugee Children in Crisis, 2014, access at <http://unhcr.org/FutureOfSyria/executive-summary.html>

to refugees – both Syrian and Palestinian, from Syria. To achieve this they have utilized community centres, various forms of community outreach (eg. Radio broadcasts) and run mobile legal clinics and mobile information sessions throughout the country. By February 2015, over 145,000 individuals had received ICLA services (including information and/or legal assistance) with regard to birth registration in Lebanon²⁰².

In Morocco, women married to sub-Saharan African men can face hurdles in registering the birth of their child.²⁰³ Although the law provides for access to birth registration for all children born in the territory and the rules on acquisition of nationality are such that if the mother is Moroccan, the nationality or origin of the father is irrelevant, problems do occur in practice when these families approach the authorities. It would appear that discriminatory attitudes on the part of some civil registry officials makes them reluctant to carry out the birth registration procedure. Wider problems experienced in their interactions with the state may also put the family off attempting to register the birth to begin with. While, again, this should not

202 - Norwegian Refugee Council, Birth Registration Update, The Challenges of Birth Registration in Lebanon for Refugees from Syria, 2015, access at http://www.nrc.no/arch/img.aspx?file_id=9192763&ext=.pdf

203 - Women's Refugee Commission, Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa, June 2013.

affect the child's enjoyment of Moroccan nationality if the mother is a Moroccan national, in practice it may contribute to a situation in which the competent authorities do not recognise the child in question as Moroccan. Similar challenges arise in the MENA region more widely in the context of the registration of births and recognition of nationality of children born out of wedlock. In Iraq, for example, women have enjoyed the right to pass their nationality to their children since a reform of the nationality law in 2006, but problems remain with regard to illegitimate children. The repercussions of an unmarried woman approaching the authorities to register a child can be severe, including the possibility of imposition of a criminal penalty. As such, she may decide not to register the birth or, when attempting to initiate the procedure, she may be turned away by the authorities. The social stigma attached to extra-marital children in much of the MENA region can indeed present a major hurdle to the registration of these births and may lead to difficulties establishing nationality for those concerned. Moreover, although many MENA countries have special provisions to allow women to confer nationality on their children if the father is unknown or his paternity has not been substantiated²⁰⁴ – designed to protect children, including those born

204 - In those states which have yet to recognise, more broadly, the right of women to pass nationality to their children.

out of wedlock, from statelessness – the social stigma surrounding such situations can similarly obstruct the operation, in practice, of this important safeguard.²⁰⁵

Turning to the question of state practice with regards to the acquisition of nationality in later life, it is of interest to note some trends surrounding naturalisation procedures. Among the problems that have been reported with regard to access to naturalisation in practice – over and above the challenge of meeting the sometimes stringent eligibility criteria set by the law – are: naturalisation quota (i.e. a maximum number of acceptances per year); complicated and expensive procedures, with lengthy waiting times for a decision on an application; and the active use of the state's discretion to deny naturalisation to otherwise qualified individuals.²⁰⁶ For instance, one report indicated that in Lebanon, 100% of the 4,000 applications received in 2003 were refused.²⁰⁷ With regard to the implementation of the naturalisation decree passed by Syria in 2011, there were similar complaints of lengthy procedures – even before the

205 - See, for instance, Women's Refugee Commission, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013.

206 - See UNHCR, *The situation of stateless persons in the Middle East and North Africa*, October 2010, from page 34.

207 - Immigration and Refugee Board of Canada, *Lebanon: Whether a child born in Dubai, United Arab Emirates, of a Jordanian father and a stateless Palestinian mother born in Lebanon has the right to reside in Lebanon; whether Lebanese authorities would deny them permission to remain in Lebanon*, LBN43284.E, 11 January 2005.

onset of the Syrian crisis – as well as reports that the success of an application could be dependent on your “wasta” (i.e. personal influence or connections), as much as whether you were eligible.²⁰⁸ In Kuwait, thousands of stateless Bidoon have had naturalisation requests “pending” for years, or even longer, without a definitive response from the authorities.²⁰⁹ The naturalization process in Saudi Arabia is based on a points system: the minimum points are 23 that should be met by the Saudi nationality applicant. Thus, for instance, an applicant who holds an academic degree is given 8 points, a Masters 9 points and PhD 10 points (or 13 if the PhD is in medicine or engineering). If the applicant's mother is a Saudi national, the award is 3 points, the same if mother and grandfather of the mother are Saudi nationals. After collecting the minimum of 23 points, the competent committee examines the application and decides either to grant or reject the Saudi nationality. Although offering a greater measure of clarity about what is expected, in practice the points system is such that it is almost impossible for a stateless person (Bidoon) in Saudi

208 - According to interviews conducted during a field mission that was undertaken by one of the project consultants in the Kurdistan Region (KR) of Northern Iraq during the summer of 2012.

209 - One report mentions that “Over the last 12 years more than 80,000 applications for nationality have sat before the Kuwait government's ‘Bidoon Committee’.” Refugees International, Kuwait: Bidoon nationality demands can't be silenced, 6 March 2012, available at: http://www.refintl.org/sites/default/files/030512_Kuwait_Bidoun_Nationality%20with%20letterhead.pdf.

Arabia to meet these requirements – they often have no proof of residence, have been unable to access higher education or prove the origins of their family members. Nor is there an opportunity for a person to contest their rejected application for naturalisation in Saudi Arabia. In other words, MENA states' naturalisation practices can be highly challenging, often unpredictable and are especially problematic in those states with large stateless populations where a pathway to naturalisation is most needed.

3.5.2. Renunciation, loss and deprivation of nationality

State practice in respect of renunciation, loss and deprivation of nationality is more difficult to assess, not least because much of the information on these questions is anecdotal at best. In some cases, it would appear that MENA state practice in this area is quite lax. For example, the nationality law of Syria gives the authorities the power to withdraw nationality from a person who has resided abroad (in a non-Arab country) for more than three years if he or she has failed to respond to a notification to return.²¹⁰ In practice, it would appear that this provision is largely obsolete as – even before the current crisis – there

210 - Article 21(g), Syria Nationality Law No. 276, 1969.

are large numbers of Syrian expats dispersed around the world who continue to maintain and even pass on their nationality while living abroad. Similarly, it is unclear to what extent the power to deprive Egyptian nationality based on the assessment that the person in question is alleged to be a "Zionist" is actually in active use today. As such, although the potential for loss or deprivation of nationality is significant under many of the MENA's nationality laws – i.e. can be invoked in a wide range of circumstances – the risk that nationality will be withdrawn in practice may be less great.

On the other hand, there are also plenty of instances in which these provisions are put into practice. For instance, with a view to restricting dual nationality, some states have implemented initiatives to withdraw nationality from those who are also nationals of another country. For example, in Kuwait, in 2010 it was reported that "the interior ministry has drawn up a list of 2,000 Kuwaitis who might also have the nationality of another Gulf country [and] if the records prove that they are dual citizenship holders, they will be summoned to explain the violation of the law and the Kuwaiti nationality could be withdrawn".²¹¹ In Qatar,

211 - Dual nationality holders could lose Kuwaiti citizenship, Gulf News, 25 April 2010, available at: <http://gulfnews.com/news/gulf/kuwait/dual-nationality-holders-could-lose-kuwaiti-citizenship-1.617523>.

the pretext that they were dual nationals formed the grounds for the deprivation of nationality from 6,000 members of the Al Murra tribe in 2004-2005²¹² – most reportedly having their nationality reinstated a few months later.²¹³ According to some sources, around 100 to 200 of those affected by the denationalisation remain stateless today.²¹⁴ Also in Qatar, the National Human Rights Commission shares publically the number of people who, on an annual basis, have come to them with issues on deprivation of nationality, which in the 2008 report is referred to as “Seeking Restoration of Citizenship” and in subsequent reports as “Denationalization” or “Seeking Cancellation of Denationalization”. The number of people who solicited the NHRC’s assistance under this category were 108 in 2008, 46 in 2009, and 26 in 2010.²¹⁵ The report indicates that the NHRC follows processes to act on the behalf of the complainants but does not provide further details on specific cases dealt with,

212 - More than 5,000 Qatari nationals lose citizenship, DPA, 2 April 2005 [Germany]; United States Department of State, 2005 Country Reports on Human Rights Practices – Qatar, 8 March 2006; Amnesty International, Amnesty International Report 2006 – Qatar, 23 May 2006; Minority Rights Group International, World Directory of Minorities and Indigenous Peoples – Qatar: Overview, 2007.

213 - Qatar ‘resolving citizenship cases’, Aljazeera, 25 June 2005, available at: <http://www.aljazeera.com/archive/2005/06/2008410102128481615.html>.

214 - Amnesty International, Amnesty International Annual Report 2013 – Qatar, 23 May 2013; Human Rights Watch, World Report 2013: Qatar, 2013.

215 - National Human Rights Committee, Annual Reports 2008, 2009, and 2010.

nor on the grounds for withdrawal of nationality invoked by the state in these cases.

The power to deprive nationality in response to acts of disloyalty or threats to the security of the state has found new expression in the context of the Arab Revolution. In both Bahrain and UAE, there have been examples of high-profile deprivations of nationality from political opponents or others voicing dissent. For example, in November 2012, Bahrain ordered the withdrawal of nationality from 31 individuals who were accused of “undermining the security of the state” – a ground for deprivation of nationality under article 10 of Bahrain’s nationality law. Just a few days later, courts in the UAE rejected an appeal lodged by seven Emirates whose nationality had been withdrawn due to their commission of acts “threatening the security of the state”. These practices have been described as “setting a worrying precedent” in a region which is currently characterised by on-going political turmoil.²¹⁶ Moreover, in such instances, it is evident that the state will and does proceed with the withdrawal of nationality regardless of the potential for creating statelessness.²¹⁷

216 - Z. Albarazi, Denationalising Bahraini's: ousting the opposition, 16 November 2012, available at: <http://statelessprog.blogspot.nl/2012/11/denationalizing-bahrainis-ousting.html>.

217 - See for a number of other examples of the withdrawal of nationality from individuals and groups within the MENA region, UNHCR, The situation of stateless persons in the Middle East and North Africa, October 2010, page 8.

3.6 Concluding observations

The nationality laws in operation in the Middle East and North Africa make very interesting material for a comparative study: there are some clear trends in the way the rules on acquisition and loss of nationality have been formulated, as well as some very unique particularities – both in individual countries in the MENA and in the region as compared to other parts of the world. In respect of the general trends in the region it is apparent, for instance, that *jus sanguinis* (nationality by descent) is the preferred means of attributing nationality at birth, while *jus soli* provisions (nationality by birthplace) are more rare and subject to various further conditions.²¹⁸ There are also broad similarities in the approach to naturalisation. Although the exact eligibility conditions do vary – for instance, there are significant differences when it comes to the length of residence required for naturalisation – most MENA countries set a similar mix of language, good character, income and physical/mental health requirements. Another commonality in the MENA region is that most states enjoy considerable powers when it comes to the loss and deprivation of nationality. With the exception of Lebanon, where the grounds established in the law for loss and

218 - Compare Table 1 with Table 2 in the annex to this report.

deprivation of nationality are limited, through the MENA states can withdraw nationality in a range of circumstances – the most “popular” of which being where the person commits an act/crime that threatens the security of the state, renders services to a foreign state or is discovered to have acquired the nationality through fraud. Another trend here is that a nationality acquired by naturalisation is much more vulnerable – more prone to subsequent loss or deprivation – than a nationality held from birth.

Looking more closely at trends in the region from the perspective of the avoidance of statelessness, it is possible to identify some good practices. In particular, a safeguard to ensure that foundlings are able to secure a nationality is present in the law of every country in the region.²¹⁹ Rules providing for the automatic loss of nationality of a woman if she marries a foreigner have been abolished throughout the region, which this helps to lower the risk of statelessness in the context of marriage. Many countries also have a clause which prevents the voluntary renunciation of nationality if the person concerned would thereby be left stateless.²²⁰

219 - See table 3.

220 - See table 4.

Nevertheless, these positive trends are rather overshadowed by the considerable gaps that endure. Generally speaking, in the rules relating to the acquisition and loss of nationality, there is little regard for the avoidance of statelessness. Just two countries, Syria and Lebanon, have a safeguard in place which confers nationality to any child born in the territory who would otherwise be stateless.²²¹ Rather remarkably, these are not the two states which are parties to the 1961 Convention on the Reduction of Statelessness and hold a clear obligation under international law to provide such a safeguard – and in practice it would appear that the safeguard which is in place in Syria and in Lebanon is rarely implemented. Across all of the region's nationality laws, where the grounds on which nationality may be lost or deprived are set out, there are no safeguards whatsoever which curtail the withdrawal of nationality if that would lead to statelessness.²²² Where a state in the MENA region deprives a person of his or her nationality, there is also little opportunity for recourse to a court in order to challenge this decision for being unlawful or arbitrary. In most MENA countries, decisions relating to nationality are not subject to administrative or

221 - See table 2.

222 - See table 5. Compare this with the safeguards in place in, for instance, European nationality laws, as analysed in the EUDO-Citizenship Database on Protection Against Statelessness, available at: <http://eudo-citizenship.eu/databases/protection-against-statelessness>.

judicial review. Furthermore, gender discrimination remains in place in many of the nationality laws in the region and this is causing new cases of statelessness to emerge among children who thereby have no entitlement to their mother's nationality, even if they are also unable to acquire a nationality from their father. While not unique to the MENA region, gender discrimination in nationality laws is a more prolific problem there than in other parts of the world.²²³ Interestingly, gender discrimination is even present in some of the jus soli-based rules in place in MENA countries for the acquisition of nationality at birth.²²⁴

Another worrisome trend in the MENA region is the establishment of stringent and in some cases distinctly problematic naturalisation requirements. A number of countries require two decades or more of residence before a person is eligible to apply for naturalisation. Some limit naturalisation to persons who hold qualifications which are needed in the country, bar anyone who is a non-Muslim from naturalisation or set a maximum annual quota for naturalisation. These and other criteria, such as income and health requirements, can make it very difficult for anyone to naturalise. Moreover, in practice, in those countries

223 - See UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness 2014, 8 March 2014, available at: <http://www.refworld.org/docid/532075964.html>.

224 - See table 2.

with large stateless populations, it is evident that naturalisation is not a readily available option and statelessness is instead an enduring problem.²²⁵ Many MENA countries have also barred access to their nationality for a specific category of persons – against the difficult and complex backdrop of emerging Palestinian statehood, those of Palestinian origin are often largely refused access to nationality in their host state.

In a region which is already plagued by significant statelessness problems,²²⁶ there are clearly a number of ways in which MENA countries could better equip themselves to prevent and reduce statelessness, through some simple changes to their nationality laws. Safeguards to ensure that all children who would otherwise be stateless can acquire the nationality of the country where they are born, in accordance with international and regional standards such as those in the Covenant on the Rights of the Child in Islam, should be put in place across the region. Safeguards are also needed in the context of loss and deprivation of nationality to avoid statelessness

225 - Consider the problem of protracted and intergenerational statelessness among some Kurds in Syria, various populations in Lebanon and Bidoon in the Arab Gulf states (such as Kuwait).

226 - UNHCR reported close to 450,000 persons under its statelessness mandate in the MENA region at the end of 2013 – a figure which does not include stateless refugees or stateless persons of Palestinian origin. See UNHCR Global Trends 2013.

resulting. Furthermore, procedural protections must be strengthened in respect of nationality decisions, at least where deprivation of nationality is concerned, to avoid arbitrary decision-making. MENA states should also, as a matter of priority, review and revise their nationality laws on any and all points of discrimination, whether that be on the grounds of gender, religion or disability. Such provisions evidently run counter to international standards. Finally, it should not be forgotten that for nationality laws to truly protect people from statelessness, they must also be implemented fully and fairly. While this chapter only scratches the surface of nationality practice in the MENA region, it has already identified signs of a large gap between the terms of the law and the practice on the ground. There is, in short, a real rule of law problem in respect of nationality matters. In some cases, the non-implementation of certain legal provisions, such as with regard to loss of nationality, may work in favour of protecting persons from statelessness. Yet there are also cases of non-implementation of safeguards that are needed to ensure that everyone enjoys a nationality and this is highly problematic. A comprehensive review of domestic decision-making and jurisprudence in respect of nationality and statelessness can provide a helpful foundation for states to assess where legislative or policy reform is

needed and where closer scrutiny and correction of nationality practice is required.

3.6.1. Addressing statelessness in the region through UN human rights mechanisms

The UN Human Rights Framework offers a range of mechanisms and procedures through which statelessness and the rights of stateless persons can be addressed.²²⁷ Broadly speaking, there are UN Charter Bodies, which “derive their establishment directly from the UN Charter and have broad mandates and universal scope/jurisdiction, such as the former Commission on Human Rights, which drafted and adopted the Universal Declaration on Human Rights and most subsequent human rights treaties.”²²⁸ The UN General Assembly and Human Rights Council are Charter Bodies, as is the Universal periodic Review (UPR), which was established by the Council. The various Special Procedures (Special Rapporteurs, Independent Experts, Special Representatives and Working Groups) are also Charter Bodies, some

227 - For more detailed overviews of the UN framework, see the overview on Human Rights Bodies prepared by the Office of the High Commissioner for Human Rights, available here: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

228 - European Network on Statelessness, Protecting stateless person from arbitrary detention: a regional toolkit for practitioners, 2015, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Defention_Toolkit.pdf

of which hear individual cases. The Human Rights Treaties have their own Committees – Treaty Bodies – which are monitor implementation of their treaties. “While the international human rights treaties themselves are legally binding instruments, the powers of the bodies established under them are not correspondingly strong, limited to making country specific concluding observations and adopting thematic general recommendations/comments. Even where such bodies have powers of investigation and/or to hear individual complaints, they can make recommendations which – while carrying significant authority, are not binding on the state. However, over the years, the work of UN HR Treaty Bodies has become increasingly authoritative.”²²⁹

As such, these mechanisms are an important forum through which to raise statelessness – both in order to protect stateless persons and reduce statelessness, but also to ensure the issue works its way up the international human rights agenda and awareness is raised. As there is no justiciable human rights framework in the MENA region (unlike Africa or the Americas or Europe), the significance of the UN Framework is greater. Bringing statelessness related concerns to the attention of the UPR and Treaty Bodies

229 - Ibid.

and generating strong recommendations from them, is a way to complement national level advocacy for protection and change.

This section looks at how statelessness has been addressed by various UN human rights mechanisms over the recent past. It focuses primarily on the UPR and on two treaty bodies whose mandates are particularly relevant to statelessness – the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW).

3.6.2. The Universal Periodic Review

The human rights performance of every state is scrutinised by the international community in four year cycles of the UPR. As the UPR is not based on a particular treaty, it can cover a wide range of issues and is a very flexible mechanism. Furthermore, recommendations under the UPR are made to states under review by fellow states, and not by expert independent bodies. Consequently, it can be a more political process than the Treat Bodies. Perhaps for these two reasons, the outcomes of this process are not always consistent or predictable. Also, as a relatively new mechanism (the UPR is in its Second Cycle, the first having run from 2008 – 2011) all parties using the mechanism have had to feel out

the most effective way to use it. Not surprisingly, the more mainstream human rights issues have received more attention through the UPR than statelessness. However, a marked increase has been seen, and in the most recent 23rd Session (November 2015), over 50 recommendations related to statelessness or the right to a nationality were made.²³⁰

- **First Cycle UPR (1-12th sessions, 2008-2011)**²³¹

Under the First UPR Cycle, 35 recommendations relating to nationality and statelessness were made to 12 MENA countries: Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Oman, Qatar, Saudi Arabia, UAE and Yemen. Kuwait received the most recommendations (11 recommendations in the 8th Session). While the majority of these recommendations were rejected by the state under review, close to a third of them were accepted, signifying political will to act on some statelessness related situations. The majority of the recommendations (more than 20) related to removal of gender discrimination from the nationality

230 - See Institute on Statelessness and Inclusion, UPR 23rd Session & Statelessness: brief overview of outcomes, November 2015, available at: http://www.institutesi.org/UPR23_stateless.pdf.

231 - For a more detailed analysis, see UN High Commissioner for Refugees (UNHCR), Compilation of recommendations relating to statelessness made during the first cycle (1st - 12th sessions) of the Human Rights Council's Universal Periodic Review, 11 July 2013, available at: <http://www.refworld.org/docid/51dfaf484.html>

law. For example, Germany recommended that Jordan “Review its Nationality Law in order to ensure that a Jordanian mother married to a non-Jordanian man has the right to confer her nationality to their children”; Japan recommended that Jordan consider the “amendment of the Jordanian Nationality Act with respect to the right of children to a nationality, as the law currently does not allow a Jordanian mother married to a non-Jordanian man to confer her nationality to her children”; Mexico recommended that Libya “In line with the recommendations of the Committee on the Elimination of Discrimination against Women, adopt a national plan to eliminate stereotypes regarding the role of women in society, and speed up the reform process to guarantee equality between men and women, including with regard to the transfer of nationality”; and France recommended that Oman: “Deepen its efforts to eliminate discrimination against women and respect the rights of the child by reforming the Nationality Law to enable Omani mothers to transmit their nationality to their children, regardless of the nationality of their father”. Recommendations also focussed on improving human rights enjoyment and promoting access to nationality for existing stateless populations acceding to the UN statelessness conventions and addressing birth registration gaps. For example, Slovakia recommended that Kuwait “Recognize the

right to Kuwaiti nationality of those persons who have been left stateless due to the nationality law in 1959, and provide for the same enjoyment of their human rights as to other citizens".

• **Second Cycle UPR (13th – 23rd session so far; 24-26 sessions to be held in 2016)**

As this Cycle has not yet been completed, it is not possible to fully analyse it.²³² However, the Second Cycle has seen a marked increase in statelessness and nationality related recommendations, with well over 70 having been made. Recommendations were made to at least 9 countries: Algeria, Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, UAE. As with the First Cycle, the most common issue on which recommendations were made was on gender discrimination in nationality laws. Indeed, in the 23rd Session, over 20 such recommendations were made to Oman and Lebanon alone.²³³ Other issues covered were the protection of stateless persons and finding

232 - For an analysis of the 13 – 16th sessions, see UN High Commissioner for Refugees (UNHCR), Compilation of recommendations relating to statelessness made during the Second Cycle (13th - 16th sessions) of the Human Rights Council's Universal Periodic Review, 11 July 2013, available at: <http://www.refworld.org/docid/51dfb0ee4.html>. See also, Institute on Statelessness and Inclusion, UPR 23rd Session & Statelessness: brief overview of outcomes, November 2015, available at: http://www.institutesi.org/UPR23_stateless.pdf.

233 - Institute on Statelessness and Inclusion, UPR 23rd Session & Statelessness: brief overview of outcomes, November 2015, available at: http://www.institutesi.org/UPR23_stateless.pdf.

solutions to existing stateless populations (for example, Kuwait received over 10 Recommendations in relation to the human rights of the Bidoon and addressing their statelessness, including a recommendation by Switzerland to “Regularize as soon as possible the protracted situation of the stateless Bidouns in conformity with its international obligations and commitments and accede to the Convention relating to the Status of Stateless Persons”); and acceding to the statelessness treaties. Reflecting political developments in the region, there were also recommendations on the arbitrary deprivation of nationality leading to statelessness.

3.6.3. The Committee on the Rights of the Child

The Convention on the Rights of the Child has been universally ratified in the region. Therefore, its Committee is an extremely relevant forum to through which to address statelessness in the region. This is particularly so because Article 7 CRC obligates states ensure the implementation of the right to a nationality, “in particular where the child would otherwise be stateless.”²³⁴ Article 7 is further bolstered by Article 2 (non-discrimination) and Article 3 (best interests of the child) which are guiding principles of the Convention.

234 - Convention on the Rights of the Child, Article 7(2)

The Institute on Statelessness and Inclusion, in an analysis of the recommendations made by the CRC in relation to the content and scope of the right of every child to a nationality under Article 7, has shown that in its first 22 years, the Committee made over 25 recommendations to states in the MENA region.²³⁵ Some of these recommendations have been extremely detailed and comprehensive, such as the 2015 Concluding Observations and Recommendations of the Committee to Iraq.²³⁶ The Committee has touched on a range of issues, sometimes collectively. For example, in relation to Jordan, the Committee has stated that it “remains concerned that children of Jordanian mothers still cannot acquire the nationality of their mother if she is married to a non-Jordanian national, a situation which may result in statelessness and which leads such children and their families to be discriminated against and to suffer economic difficulties, as they are considered illegible, for instance, for subsidized education and health care. The Committee notes with serious concern that, despite the assurances given by the delegation of the State party during the dialogue,

235 - Institute on Statelessness and Inclusion, Factsheet: every child has the right to a nationality, 2015, available at: http://www.institutesi.org/CRC_nationality_factsheet.pdf. See also, Institute on Statelessness and Inclusion, Realising the right of every child to acquire a nationality: an analysis of the work of the Committee on the Rights of the Child, Draft policy paper, 2015, available at: http://www.institutesi.org/CRC_nationality_paper.pdf.

236 - CRC/C/IRQ/CO/2-4, 30 January 2015, Para 31 – 33.

corroborated and credible reports indicate that dozens of Palestinian children and families residing permanently in Jordan have had their Jordanian nationality withdrawn during the reporting period."²³⁷ The Committee has also looked at discrimination on grounds of disability, stating in relation to Yemen that it is "concerned at a discriminatory provision against children with disabilities contained in article 4 (b) of the Nationality Act No. 6 (1990), according to which one of the prerequisites for children born in the State party to foreign parents to acquire Yemeni nationality, once they have attained majority, is not to have a disability."²³⁸

3.6.4. The Committee on the Elimination of all forms of Discrimination Against Women

The CEDAW is also an important treaty, though not as widely ratified as the CRC. The Committee has made statelessness and nationality related recommendations to a number of countries in the region including Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon and Libya.

Article 9 of the Convention prohibits discrimination women in their ability to acquire, change, retain and

237 - CRC/C/JOR/CO/4-5, 13 June 2014, Para 25.

238 - CRC/C/YEM/CO/4, 31 January 2014, Para 39.

confer their nationality. 27 countries in the world still discriminate against women in their ability to confer their nationality to their children, with the MENA region having the largest number of such countries. However, many countries in the MENA have also reformed their laws to address such discrimination in the recent past. The Committee has commended such developments, stating in relation to Algeria for example: “The Committee notes with appreciation that the State party has withdrawn its reservation to article 9, paragraph 2, following the amendment of the Nationality Code in 2005 giving Algerian women the right to transfer their nationality to their children born to a foreign father... The Committee welcomes the ... amendment to the Nationality Code in 2005, allowing children to take their mother’s nationality, in line with the principle of gender equality (article 6) and enabling a man to acquire Algerian nationality through marriage to an Algerian woman (article 9 bis)”.²³⁹ Equally, where states have failed to address gender discrimination in their nationality laws, the Committee has made strong recommendations. For example, the Committee has recommended that Bahrain, “Recalling its previous recommendation (CEDAW/C/BHR/CO/2, para. 31) and in the light of the State party’s commitment during its most recent

239 - CEDAW/C/DZA/CO/3-4, 22 March 2012, Para's 7-8.

universal periodic review, the Committee urges the State party to expedite the amendments to the Nationality Law to bring it into full compliance with article 9 of the Convention, and to withdraw its reservation to article 9 (2). Furthermore, it recommends that the State party consider acceding to international instruments to address the situation of stateless persons, including the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness"²⁴⁰. Importantly, this recommendation is demonstrative of the manner in which the different human rights mechanisms draw on each other.

240 - CEDAW/C/BHR/CO/3, 9 March 2014, Para 34.

Chapter 4:

Gender

discrimination in

the enjoyment of

nationality rights

Instead of inheriting his mother's Lebanese nationality, nine-year old Adel is stateless, like his father and grandfather before him. Under Lebanon's laws, nationality is passed from father to son, through the paternal blood line. Women do not enjoy the same right to transmit their nationality. For now, Adel is enrolled in school, but his family is unsure how long he will be able to keep attending, since there will come a day when his lack of nationality stops him from progressing (e.g. because he is barred from public exams) or he is simply sent home. Adel's Lebanese mother is determined to do everything in her power to help her son complete his education, to give him the best chance of a bright future. His father is less optimistic: since Adel, like him, won't be able to access formal employment due to his statelessness, schooling is not important. Indeed, today, Adel's father sees little hope for his family:

*I have lost faith in anything happening to improve my situation now. It has been like this forever. We can either worry every day, worry because we cannot improve our lives or do anything to change it. Or we can just accept this is our lives. I have chosen to accept.*²⁴¹

241 - Interview with Adel's family in Bekaa Kafra, Northern Lebanon, 2011. Note that Adel's grandfather's statelessness stems from his lack of registration in the 1932 census in Lebanon, which left him without nationality. See for further details of statelessness in Lebanon the separate discussion paper L. van Waas,

Adel's story and his father's sense of disempowerment are repeated in countries across the Middle East and North Africa, where statelessness is being perpetuated from one generation to the next with the help of a gendered approach to nationality rights which is preventing women from passing on their nationality to their children. Without a change in policy, when Adel is older and if he finds a Lebanese wife of his own, he is doomed to pass on the same problems – and perhaps, with it, his father's feelings of hopelessness – to his own children.

This chapter delves into the detail of MENA countries gendered nationality laws – an issue deserving of particular attention because the region is currently lagging behind other parts of the world in securing equal nationality rights for women. Although there has yet to be a quantitative study of the number of people whose lives are affected by gendered nationality laws across the MENA region, the scope of the problem is evident: twelve of the 27 countries worldwide in which women do not enjoy the same rights with respect to transmission of nationality to their children can be found in MENA²⁴² and

Citizenship, statelessness and the numbers game in Lebanon, MENA Nationality and Statelessness Project, 2014, available for download at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2550734.

242 - UNHCR, Background note on Gender Equality, Nationality and Statelessness, 8 March 2014, available at: <http://refworld.org/docid/532075964.html>.

gendered nationality laws in fact remain the norm rather than the exception in the region. The chapter demonstrates how such policy is contributing to the creation, perpetuation and prolongation of statelessness and looking at the impact on women and their families. It also looks at how a gendered bias to nationality rights first took root across the MENA, seeking an answer to the question, posed here by a Yemeni woman but equally resonant among women in countries across the region: “why are the children of a Yemeni woman considered as though they were the fruit from another tree?”²⁴³ Importantly, the chapter subsequently explores the progress made to date in achieving a more gender neutral approach to nationality, including by considering how relevant legal reform processes took shape in a number of MENA countries, the role of women’s rights movements in these contexts and the techniques employed in lobbying for change. Finally, the chapter considers some of the obstacles and opportunities on the road to successfully de-gendering nationality policy across the MENA region.

243 - UNHCR, UNHCR and CRTD-A Regional Dialogue on Gender Equality, Nationality and Statelessness, January 2012, at page 5, available at: <http://refworld.org/docid/4f267ec72.html>.

4.1. In what way are MENA nationality laws gender biased?

Gender inequality manifests itself in several ways in the nationality laws of MENA states. It is particularly apparent in the rules relating to the acquisition of nationality at birth and those dealing with the enjoyment of nationality following marriage (or divorce), but can also be traced in states' regulation of other nationality questions. Only Algeria's current nationality legislation is fully gender neutral and does not disadvantage women in any of its clauses. All other MENA countries have some form of gender bias in their laws, although the severity of this bias varies significantly from one state to another – as discussed below.

4.1.1. Gendered jus sanguinis

One of the core problems encountered within MENA's nationality laws is a gendered approach to the jus sanguinis transmission of nationality. All countries in the region favour the conferral of nationality at birth on the basis of descent (jus sanguinis), rather than place of birth (jus soli). In other words, children are granted nationality if a parent is already a

citizen.²⁴⁴ In the majority of MENA states, the law recognises paternal jus sanguinis, such that men can pass their nationality to their children automatically and regardless of where the children are born (i.e. on the state's territory or abroad). Women, on the other hand, are often only entitled to transmit their nationality in certain exceptional circumstances. The most common of these are:

- when the father is unknown;
- when paternal affiliation has not be established or recognised (i.e. child born out of wedlock);
- when the father is stateless.²⁴⁵

However, even in such cases, children can face a range of obstacles in practice before their acquisition of their mother's nationality is assured. These difficulties include, among others, the social stigma surrounding illegitimate children which means that these births often go unregistered, and the children left entirely undocumented, leading to difficulties in proving the entitlement to nationality under the law. A further challenge is the lack of a framework in any MENA country for the determination of statelessness, such

244 - See chapter 2 for further information on the trends and features of MENA's nationality legislation.

245 - See table 1 for an overview of exactly which of these rules are in place in each country.

that it may be difficult to demonstrate that a child's father is stateless and the child is therefore entitled to his or her mother's nationality.

The most restrictive, or gender-biased nationality law can be found in Qatar, which doesn't allow for the transmission of nationality through the maternal line of descent in any circumstances. Thereafter, Kuwait, Lebanon, Oman, Qatar, Syria and Saudi Arabia recognise women's right to confer nationality in the least different circumstances. Interestingly, Kuwait's law has actually regressed in this area. The law was amended in 1980 to effectuate the removal of the sub-clause which allowed Kuwaiti women to transmit their nationality to their children in the event that the father is stateless. Today, maternal *jus sanguinis* is only recognised where the father is unknown.

At the other end of the scale, the following MENA countries have a clause in their laws recognising both maternal and paternal *jus sanguinis*: Egypt, Algeria, Morocco, Tunisia, Yemen, Iraq and Libya. In each of these countries, women hold the autonomous right to transmit their nationality to their children, regardless of the further circumstances of the birth. The most recent of these reforms to go into effect was that in Yemen where, after several years of ambiguity with an amendment passed but not yet officially published, the new gender neutral nationality rules

were formalised through their publication in the country's Official Gazette in mid-2013. However, it is not evident whether Yemen has taken steps to ensure that the law reform is widely known or fully implemented. Moreover, serious questions also surround the current validity and enforceability of the maternal *jus sanguinis* provisions in the last two states listed – Iraq and Libya. The nationality laws of both these countries have a significant internal inconsistency, housing a provision within their laws that recognises both paternal and maternal *jus sanguinis* equally, yet also keeping the clauses which explicitly and exceptionally allowed women to transmit their nationality to a child where the father is unknown or stateless intact.²⁴⁶ It is therefore questionable to what extent Iraqi, Libyan and Yemeni women are now able, in practice and in all circumstances, to confer their nationality to their children. It was unfortunately not possible to access information on the present state practice in any of these countries.

Somewhere between the gender equal *jus sanguinis* policies of countries like Algeria and Morocco, and the highly gendered rules of those such as Kuwait and Syria, lie some interesting hybrid cases – i.e. there

246 - In both nationality laws, this is article 3a. Note that Iraq also continues to maintain its reservation to article 9 of CEDAW which prescribes equality between men and women with regard to nationality rights, including the right to transmit nationality to their children.

has been an expansion of the special circumstances in which a mother can pass on her nationality, but this still stops short of granting her equality with men. According to the 1984 amendment of the Saudi nationality act, a child born to a Saudi woman, on the territory of Saudi Arabia, has the right to a form of facilitated naturalisation upon reaching majority, but subject to the discretion of the Minister:

Individuals born inside the Kingdom from Non-Saudi father and Saudi mother may be granted Saudi Citizenship by the decision of The Minister of Interior in case of the following conditions:

- a. Having a permanent Resident Permit (Iqama) when he reaches the legal age.
- b. Having good behaviour, and never sentenced to criminal judgment or imprisonment for more than six months.
- c. Being fluent in Arabic.
- d. Applying for the citizenship after one year of reaching the legal age.²⁴⁷

247 - Article 8 of the Saudi Citizenship Act. Cited here is the English translation of this policy, as provided by the Ministry of Interior at: http://www.moi.gov.sa/wps/wcm/connect/121c03004d4bb7c98e2cdfbed7ca8368/EN_saudi_nationality_system.pdf?MOD=AJPERES.

Moreover, in 2007 Saudi Arabia reportedly introduced measures to further simplify the acquisition of citizenship at the age of majority by the sons of Saudi mothers – improving their position but adding a new element of gender bias in Saudi policy.²⁴⁸ In the United Arab Emirates, legal reform passed in 2011 recognises the right of any child (boy or girl) to apply for nationality when they reach 18 if they have an Emirati mother. However, in both Saudi Arabia and UAE, these procedures appear to be discretionary rather than an automatic entitlement to nationality, so the authorities may refuse the application – whereas the child of a Saudi or Emirati man automatically acquires his nationality and immediately at birth.

4.1.2. Gendered jus soli

Although the *jus sanguinis* doctrine is the predominant method of conferral of nationality at birth, several MENA states also allow for *jus soli* acquisition of nationality in certain circumstances.²⁴⁹ Somewhat surprisingly, even these *jus soli* provisions are often biased against women. For instance, a person born in Iraq can apply for nationality if his or her father was also born in Iraq (double *jus soli*, through the paternal

248 - H. Mokhtar, Saudi women demand equal citizenship rights, Arab News, 7 March 2007, available at: .

249 - See table 2 for full details of the rules in place in each country.

line only).²⁵⁰ Similarly, a person born in Bahrain can acquire nationality if his or her father is stateless and has made the country his place of permanent residence.²⁵¹ More remarkable still is the discovery that some North African countries that recently achieved such progress in de-gendering their nationality laws with respect to their jus sanguinis provisions retain a gender bias in respect of their jus soli rules. Thus, Egypt, Morocco and Tunisia all have special rules on access to nationality for a person born in the territory whose father was also born there. In the case of Tunisia, two generations of paternal descent are actually required for the jus soli acquisition of nationality, thus a person's father and paternal grandfather must both have been born in the country.²⁵² Thus, even following the significant reforms that have been passed in these countries in recent years, full gender equality in the enjoyment of nationality rights is still some way off.

250 - Article 5 of the Iraqi Nationality Act.

251 - Article 5a of the Bahraini Citizenship Act.

252 - In the case of Tunisia, the paternal grandfather must also have been born in the territory, demonstrating a gendered approach to a triple jus soli. Article 7 of the Tunisian nationality law. See also article 4(3) of the Egyptian nationality law and article 9(1) of the Moroccan nationality law.

4.1.2. Gendered rules on nationality and marriage

Gendered rules on the nationality rights of spouses are also commonplace in the MENA. It is far easier for a foreign woman marrying, say, a Jordanian man to acquire his nationality than it is for a foreign man marrying a Jordanian woman:

Maysar is 42 years old. She approached the Ministry of the Interior in 2011 to apply for naturalisation for her husband. The officer in charge refused to give her the application form before questioning her about her marriage, blaming her for marrying a non-national. Masyar, who has seven children, does not want her daughters to marry non-nationals, to ensure they will not suffer the hardships she has had to face. Her husband works in the construction industry illegally since he cannot afford the fees for the work permit.²⁵³

In fact, only Algeria and Iraq have a gender-neutral clause on facilitated access to naturalisation or another simplified means of acquiring the nationality

²⁵³ - Equality Now, Campaign to end sex discrimination in nationality and citizenship laws, 2013, at page 7, available at: <http://www.equalitynow.org/sites/default/files/NationalityReport.pdf>.

following marriage to a national.²⁵⁴ In all other MENA states, it is only the foreign wife of a male national who can benefit from these special rules. Where a foreign man has married a national woman, they must revert to the regular procedures for naturalisation and fulfil all of the conditions prescribed.

The case of Bahrain illustrates just how extreme the consequences of this gender bias can be. A foreign woman who marries a Bahraini man becomes eligible for Bahraini nationality – through this family link – after just five years of marriage. In contrast, a foreign man who marries a Bahraini woman must fulfil the regular requirements for naturalisation, which include twenty-five years or residence in the country.²⁵⁵ In Lebanon meanwhile, a foreign woman is entitled to acquire nationality by way of a simple declaration, just one year following the date of registration of her marriage to a national - and there is no discretion on the part of the authorities to refuse the application.²⁵⁶ Here too, in the reverse scenario, a foreign man can only hope to naturalise through a discretionary procedure and is only eligible after five years of marriage and only if he has had uninterrupted residence in Lebanon

254 - In Oman, there is facilitated access to nationality for both spouses, however in the event of a foreign woman marrying an Omani man, the facilitation is far greater. See article 4 versus article 2.2 of the Omani Nationality Law 1962.

255 - Article 6(1) of the Bahraini nationality law.

256 - Article 5 of the Lebanese nationality law.

during this time.²⁵⁷ The laws of other MENA countries each have their own permutation of the same overall approach. In a sense, the discrimination against women is a disadvantage for the man: he does not have an equal right to facilitated acquisition of nationality upon marriage. However, in practice, these policies tend to place women in a more vulnerable position and reinforce the secondary status of female citizens in society. Women are expected to move to, live in and take up the nationality of their husband's country. Where the family is trying to build a life in the woman's country of nationality, they face many practical problems because it can be very difficult for the husband to take up nationality, such as the difficulty and cost of having to secure and continually renew permission to reside.

At the same time, it is positive to note that no MENA nationality law provides for the automatic change of nationality of a woman upon marriage. The acquisition of her husband's nationality is a voluntary act in all states. Even more importantly, the marriage of a national woman to a foreign man does not lead to automatic loss of nationality – such rules have been abolished across the region over the past few decades.²⁵⁸ Today, a woman will only forfeit her

257 - Article 1 of the Lebanese Law on Naturalisation, 27 May 1939.

258 - For instance, in the United Arab Emirates, the 1975 reform of the

original nationality if she takes up her husband's, in the event that the state seeks to restrict dual nationality.

*Other direct and indirect forms of gender bias in
MENA nationality laws*

Although the aforementioned rules demonstrate the most obvious and direct forms of gender bias in MENA's nationality laws, some other provisions may also be problematic either in their formulation or in their effect. Firstly, in a handful of MENA countries, women may suffer the consequences of their husband's actions if this leads to loss or deprivation of nationality.²⁵⁹ For example, in Egypt, if the wife acquired her nationality in conjunction with the naturalisation of her husband, she may have to forfeit it if her husband is subsequently stripped of his Egyptian nationality on the ground of long-term residence abroad, a crime against the state, a serious non-political crime or discovery of fraud in the naturalisation procedure.²⁶⁰ Since she may have since lost her nationality of origin, such action on the part of her husband may even leave a woman stateless. In yet more MENA countries, the loss or deprivation of nationality from the father can also

nationality law brought in safeguards to protect women from statelessness in the context of marriage, by asserting that they shall not lose UAE nationality unless they have taken up their husband's nationality and moreover recognising that she may also choose to keep her UAE nationality following marriage.

259 - These include Egypt, Kuwait, Morocco, Saudi Arabia and UAE.

260 - Article 17 of the Egyptian nationality law.

affect the enjoyment of nationality by his children.²⁶¹ They also suffer the consequences of men's actions when for one reason or another the father disclaims paternity.²⁶²

Additionally, discrimination and inequality leading to the inability of women to transmit their nationality is not limited to nationality laws. There is, for instance, a strong bias towards non-marital children in civil registration legislation and practice, as well as due to social stigma (where in many countries this would constitute an honour crime) against unwed parents and non-marital children. As Betsy Fisher argues, one obvious example of this are children born to al-Qaeda and other militants in Iraq, who forced young women into marriages which were conducted by religious ceremony and were never registered: "Because those children cannot prove their paternity or 'legitimacy,' they are not recognized as Iraqi nationals and cannot obtain birth certificates, passports, or national identification cards".²⁶³

In many of the countries there are even laws criminalizing adultery – for example in Saudi Arabia

261 - See table 5.

262 - See for example case the Saudi press (Saudi Gazette, Saudi Divorcee in Paternity Row with Ex, August 19, 2013, access at <http://saudigazette.com.sa/index.cfm/images/index.cfm?method=home.con&contentid=20130819177336>

263 - Fisher, Betsy, Why non-marital children in the MENA region face a risk of statelessness, 2015,p4 Access at <http://harvardhrj.com/2015/01/why-non-marital-children-in-the-mena-region-face-a-risk-of-statelessness/>

women may face the death penalty if they have had a child outside of marriage and in the Emirates a birth certificate for a child born outside of marriage can only be issued by a court, often after a conviction for adultery is made.²⁶⁴ Ironically it is also only in Saudi Arabia that the law actually states that mothers are allowed to register the birth of their child. In other countries it is left ambiguous as to whether mothers can carry out this procedure. Therefore even where safeguards in the nationality law do allow for non-marital children to obtain nationality from their mothers, which is the case in the majority of nationality laws, many mothers or parents will not register their children due to the stigma or fear attached to officially being recognized as having had children outside of wedlock. Fisher also argues that the prevalent practice in the region of marking children's birth certificate with the term "illegitimate" if a child born out of wedlock is registered, may mean that statelessness is avoided but the child is exposed "to a lifetime of marginalisation and discrimination," again discouraging parents from taking the step to register. Strict regulations on marriage can also be problematic. In many Gulf countries the State has to give its official permission for certain marriages (especially to foreigners) and certain marriages

264 - Ibid p2

between specific nationalities are prohibited. When individuals break these restrictions and a child is born, the transference of nationality again becomes problematic.²⁶⁵

Finally, although the formal rules are not any different for women, they may face significant disadvantage when seeking to naturalise in a MENA state, when considering the conditions which must be met. For instance, almost all laws in the region prescribe language requirements which may be more burdensome for a woman who is seeking to naturalise than for a man, given that women may have spent more time in the home and had less opportunity to engage with the community and learn the language.²⁶⁶ Of greater concern to the prospect of women successfully naturalising are the income or financial means requirements laid out in at least ten MENA countries naturalisation provisions. If such a condition must be met by the individual, rather than the household, this may be particularly difficult to fulfil given the discrimination women face in the labour market and in terms of remuneration.²⁶⁷ In Bahrain

265 - Fisher, Betsy, *Statelessness in the GCC: Gender Discrimination Beyond Nationality Law*, 2015. Access at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2702464

266 - A. Edwards, *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of*

All Forms of Discrimination against Women, Background paper prepared for a joint UNHCR and CEDAW Committee seminar, April 2009.

267 - N. Hijab, "Women Are Citizens Too: The Laws of the State, the Lives of

and Kuwait, there may be an additional obstacle: Bahrain requires the applicant for naturalisation to own real estate,²⁶⁸ while Kuwait asks that the person demonstrate that they hold a particular qualification or render particular services that are needed in the country.²⁶⁹ Again, meeting such criteria may be a real challenge for situations where women have been socially disadvantaged to men, such that these clauses operate to indirectly discriminate against women in accessing nationality. It is not therefore exclusively the discriminatory nationality laws that are creating the risk of statelessness among children.

4.2. What is the impact of gendered nationality policies and the link with statelessness?

The bias that women in the MENA region face with respect to the enjoyment of nationality rights, as set out above, can have a detrimental impact on their lives and those of their family members. As such, a gendered approach to nationality is not only a concern from the perspective of women's rights, but often leads to violations of the rights of the child and

Women", United Nations Development Programme – Regional Bureau for Arab States, 2002.

268 - Article 6(1d) of the Bahraini nationality law.

269 - Article 4(4) of the Kuwaiti nationality law.

creates an obstacle for the enjoyment of family life. This section sets out some of the common problems. It takes a closer look at how gendered nationality policy contributes to the creation, perpetuation and prolongation of statelessness, before offering some further observations on the impact of states failure to recognise the equal and autonomic nationality rights of women.

4.2.1. Creation of statelessness

One of the basic sources of statelessness is a conflict of nationality laws which leaves a child without a nationality at birth. The likelihood of a conflict of laws having such a result is heightened when nationality policy demonstrates a gender bias – i.e. where the conferral of nationality *jus sanguinis* or *jus soli* contains restrictions based on the gender. Thus, a child born to a Qatari national mother is not entitled to inherit her nationality under any circumstances and this closes one important avenue for acquisition of nationality at birth. To escape statelessness, the child must secure the nationality of either the country of birth (although Qatar does not recognise *jus soli*, so if the child is born in his or her mother's country, this does not lead to an entitlement to nationality either), or of the father's country of nationality.

Generally speaking, this will not be problematic. However, in a variety of circumstances the father may not be in a position to transfer his nationality either, leaving the child stateless. Such cases could include, among others:

- if the father is stateless himself;
- if the father is unknown;
- if the father has died and the law makes no provision for posthumous conferral of nationality the child or the family have no way to posthumously establish his paternity;
- if the father's country does not recognise transmission of nationality from father to illegitimate child and the child is born out of wedlock;
- if the father is not entitled to transmit his nationality to a child born abroad (for instance due to generational limits on jus sanguinis laws, such as those in place in Britain and Canada); or
- if the father has to complete some form of administrative or consular procedure in order to confer his nationality to the child (as is the case for many Latin American countries) and he is unwilling or unable to do so – or ignorant of such requirements.

In all of these instances, the father may hold a nationality and there may be no history of statelessness involved, yet the child is nevertheless rendered stateless. The case of 'N' who testified at the Regional Dialogue on Gender Equality, Nationality and Statelessness, in 2011, is illustrative:

N is Jordanian and met her Egyptian husband when he came to work in Amman. They were married in 1985 and over the next 12 years had 6 children. Because neither were educated they did not realise that the Jordanian law prevented her from passing on her nationality to her children and it never occurred to them to register their children under their father's nationality with the Egyptian consulate. It was only when N's husband passed away in 1997 and N had to take full responsibility for providing for her family that the issue of the nationality of her children arose.²⁷⁰

As this example already suggests and as women's rights organisations campaigning in Egypt prior to the de-gendering of its *jus sanguinis* rules also pointed out in their work, such gender discrimination in the nationality law can make things particularly

270 - UNHCR, UNHCR and CRTD-A Regional Dialogue on Gender Equality, Nationality and Statelessness, January 2012, at page 4.

hard – and generate a particularly high risk of statelessness – for already underprivileged families. For instance, “the law was particularly hard on less-educated women, frequently from rural Egypt, who married foreigners and had no resources for tracking the father or pursuing nationality claims for their children if the father abandoned the family”.²⁷¹ The combination of an unfortunate mix of nationality laws and financial obstacles also led to cases of statelessness in Morocco before the legal reform. For instance, Eric, born in Casablanca on 15 April 1961 to a Moroccan mother and a Brazilian father had no automatic entitlement to any nationality at birth. In order to secure Brazilian nationality, under the law then in force, he had to return to apply in Brazil before age 25, but his family could not afford to travel across the world for this purpose and Eric instead grew up stateless in Morocco.²⁷²

Similarly, gendered *jus soli* laws also operate to exclude people from a potential avenue for accessing nationality and increase the likelihood that they will be left without any. In all such instances, the making of a statelessness problem where there

271 - M. Freeman, Reservations to CEDAW: An analysis for UNICEF, Discussion paper, December 2009, at page 14, available at: http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf.

272 - K. Elmadmad, Les réfugiés et les apatrides au Maroc: des étrangers pas comme les autres, in regards croisés sur l'étranger, Numéro Spécial de la Revue de l'Université Moulay Ismail à Meknès, No. 3, 2001, at page 67.

was none may have a lasting effect for generations since statelessness can also easily be perpetuated if the gendered nationality laws remain in place, as discussed below.

It is important to note that those clauses found in the laws of several MENA states which exceptionally allow for the transmission of nationality through the maternal blood line in certain circumstances were actually included for the specific purpose of preventing childhood statelessness. And indeed, they should go some way to avoiding problems, if fully implemented. However, as discussed earlier in this chapter, the exceptional circumstances in which women in the MENA are entitled to transmit their nationality are generally limited to where the father is unknown, paternal affiliation has not been established or the father is stateless himself (and therefore has no nationality to pass on). As described here though, this is an incomplete identification of the situations in which a child may be unable to acquire his or her father's nationality. It is perfectly possible for the father to be known, to be recognised as the lawful father and to hold a nationality, but to nevertheless fail to transmit his nationality to his children. In other words, the special maternal *jus sanguinis* rules which are designed to prevent statelessness – and thereby go some way to quelling criticism of this gendered approach to nationality rights – are incomplete. They

rely on faulty assumptions about the functioning of nationality laws. Instead of focusing on the situation of the father, such provisions should be concerned about the position of the child and allow for conferral of nationality through the maternal line of descent wherever the child has failed to acquire another nationality, regardless of the reason that underlies this failure.

Finally, rules that allow for the loss of nationality by the wife (and children) of a man whose nationality has been withdrawn will also generate new problems of statelessness for all concerned who do not hold another nationality. Thus, a woman who followed her husband's naturalisation in, for instance, UAE and thereby gave up her nationality of origin (a common consequence where dual nationality is not recognised), could find herself stateless if the husband's naturalisation is revoked. In this manner, the combination of a gendered approach to nationality rights and the failure of MENA states to safeguard against statelessness in the context of loss or deprivation of nationality may have effects that reach beyond the individual immediately concerned and negatively impact women.

4.2.2. Perpetuation of statelessness

As seen in chapter 1, the MENA region hosts some significant stateless populations, as well as dispersed, largely isolated cases that result from a conflict of nationality laws or the migration of individual stateless people to the region. All MENA states should therefore be concerned that their gendered approach to the conferral of nationality at birth is causing the perpetuation of statelessness. Regrettably, a number of countries which have a large stateless community on their territory also fail to recognise maternal *jus sanguinis* even if the father is stateless and therefore has no nationality to offer. These include Kuwait, Lebanon and Syria. The perpetuation of statelessness is an inevitable consequence and the problem may even expand over time as every stateless male child at least is likely to, in turn, transmit his statelessness to the following generation.

Khalil Ismael is an *ajnabi* stateless Kurd from Syria,²⁷³ currently residing in Northern Iraq. His family tree illustrates how gender discrimination in Syria's nationality laws is perpetuating statelessness in a rather arbitrary pattern:

²⁷³ - See chapter 1 on MENA's stateless populations for an explanation of the terminology.

My sister who is ajnabiyya²⁷⁴ married a man with Syrian nationality. Their children were able to claim Syrian nationality [...] My uncle served in the military and has in his possession a military book. Nonetheless he lost his nationality. As a male ajnabi when my uncle married a woman with Syrian nationality, their children could not be registered at all, as their mother did not enjoy the right to pass on her nationality to her children. Consequently the children became maktoumeen.²⁷⁵

So, a gendered nationality law means that children's acquisition of nationality becomes a game of chance within mixed citizen-stateless families. Those who are lucky enough to have a citizen father will inherit his nationality and be spared from the statelessness suffered by their mother; while those whose mother is the one with citizenship are left to languish in statelessness like their father.

4.2.3. Prolongation of statelessness

Gendered nationality laws not only create but also prolong statelessness. This is particularly true where

274 - The female version of the word Ajnabi.

275 - Testimony from interviews conducted by a research consultant for the MENA Nationality and Statelessness Project with displaced Kurds from Syria, in the Kurdistan Region (KR) of Northern Iraq during the summer of 2012.

the gender bias is found in the rules relating to access to nationality following marriage and, of course, naturalisation. This can be demonstrated by the case of Adel, whose situation is highlighted in the opening paragraph of this chapter. Under Lebanese law, as a stateless man, he has little hope of remedying his situation. A foreign woman who marries a Lebanese man is entitled to acquire nationality “upon request [...] after one year from the date of registration of the marriage in the Civil Status Office”, without any further conditions.²⁷⁶ Thus a stateless woman would be able to resolve her situation following a period of marriage to a Lebanese national man. There is no equivalent position for the reverse scenario, so Adel – whose wife of more than a decade is indeed a Lebanese national – remains stateless. In this instance, although it is the woman who lacks equal rights, it can actually be men who experience disadvantage by such a manifestation of gender discrimination in the nationality law. Adel’s sisters, who married Lebanese men, have no problems because both they and their children were able to acquire his nationality.

When it comes to access to naturalisation as a means of resolving statelessness, some comments have already been made about the difficulties that

276 - Article 5 of Decree No. 15 on Lebanese Nationality, 19 January 1925.

women may face. These relate, for instance, to language, financial means, property or qualifications requirements, which will often be more difficult for a woman to satisfy. As such, indirect forms of discrimination in the naturalisation conditions imposed by states may cause the prolongation of statelessness among women by obstructing the pathway to independent acquisition of nationality by naturalisation. Facilitated acquisition of nationality through marriage to a national is a demonstrably easier route but this fact, in itself, may make women more prone to becoming involved or trapped in abusive relationships with a view to remedying their statelessness situation.²⁷⁷

4.3. What is the broader impact of gendered nationality laws?

Where gender discrimination has caused, prolonged or perpetuated statelessness, all of the difficulties that this status causes for a person's ability to exercise their fundamental rights come into play.²⁷⁸ However, even if statelessness does not result, the inability of a woman to transmit her nationality to her children or her spouse,

277 - A. Edwards, Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination against Women, Background paper prepared for a joint UNHCR and CEDAW Committee seminar, April 2009.

278 - See also chapter 2.

can cause severe practical problems for her and for all of the members of her family. The following sections take a closer look at the impact of gendered nationality laws, commenting first on the scale of the problem in the MENA region and then looking at the issue from the perspective of the women affected, as well as the impact of these laws on children, families and – an often neglected target group – men.

4.3.1. The scale of the problem in the MENA

There has yet to be a comprehensive study of the number of people whose lives are affected by gendered nationality laws across the MENA region. Nor can statistics readily be extracted from government data sources, such as the marriage registry or population census, either because this information is not recorded or it is not readily accessible. In some cases, the scale of the phenomenon is itself a highly sensitive topic which further complicates the search for accurate data – for instance in Lebanon where concerns surrounding the demographic equilibrium and the settlement of the Palestinian population have impeded discussions on de-gendering the nationality law.²⁷⁹ However, there has been research on precisely

279 - CRTD, Denial of Nationality: The Case of Arab Women, February 2004, available at: http://www.policylebanon.org/Modules/Ressources/Ressources/UploadFile/7998_17,08,YYcrtda%20-%20Nationality%20full%20Research-Feb04.pdf; F. Charafeddine, Predicament of Lebanese women married to non-

this question of statistics several countries, at one time or another, as part of efforts to raise awareness of this problem or to lobby for legal reform. What is evident from this limited data is that throughout the MENA, mixed-nationality marriages are a reality across the region and many children are born to parents who hold different nationalities. The potential for gendered nationality laws to cause problems in such a setting is therefore significant.

In Jordan, for instance, data from the Interior Ministry estimates that the number of Jordanian women married to non-Jordanian men was 65,956.²⁸⁰ On the other hand, an earlier study by Zein Al Sharaf Institute for Development (ZENID) uncovered the figure of 14,372 as the number of marriages between Jordanian women and non-Jordanian men, through the 2004 General Population and Housing Census.²⁸¹ This figure relates to registered marriages only and those with informal or unregistered marriages would therefore have to be added to this number and may go some way to explaining the gap between

Lebanese. Field Analytical Study, 2009, at page 16, available at: http://www.undp.org.lb/communication/publications/downloads/mujaz_en.pdf.

280 - L. Nasser, Field Study. Economic, Social, Political and Psychological Implications on Jordanian Women Married to Non-Jordanians and their Families, Arab Women Organisation of Jordan, June 2010, at page 8. This is also the number cited in a 2011 study by the Information and Research Centre / King Hussein Foundation and found on the website of 7AQQL, platform dedicated to lobbying for reform of the Jordanian nationality law, <http://www.7aqqi.com/SubDefault.aspx?Pagel=186&MenuId=44>.

281 - Ibid, at pages 17-18.

the two statistics. Regardless, while the disparity between these two estimates suggests that further research is needed to clarify the number of families affected, it is clearly not an entirely marginal or negligible phenomenon. Moreover, in a study of the experiences of 191 Jordanian national woman married to a non-Jordanian man, undertaken by the Arab Women Organisation of Jordan in 2010, these families were found to have an average of three children.²⁸² This suggests that somewhere between 50,000 and 200,000 children are likely to be affected by the gendered nationality laws in Jordan alone – and in some cases the knock-on effects may last for multiple generations.

In Lebanon, a study released in 2009 estimated that over the period 1996 – 2008, approximately 18,000 marriages had been contracted between Lebanese women and non-Lebanese men. Using the average fertility rate in Lebanon, which stood at 2.3% in 2005, the study also estimated the number of children born in mixed-nationality marriages to a Lebanese woman: 41,400. Finally, recognizing that the foreign or stateless men also feel the consequences of the gender discrimination in the nationality law and their

282 - L. Nasser, Field Study. Economic, Social, Political and Psychological Implications on Jordanian Women Married to Non-Jordanians and their Families, Arab Women Organisation of Jordan, June 2010.

wife's inability to confer her nationality to either their husband or their children, the study concludes that a total of 77,400 people are affected by the current laws.

Elsewhere in the region, even in a small country like Bahrain, which has just over half a million citizens in all, the scale of the problem is not insignificant. In 2009 it was reported that the Bahrain Women Association had data on 400 women married to non-nationals who have an average of three to four children each. Furthermore, they suspected that the true number of people in this situation is double or triple this, so possibly in the region of 1000 women and 3000-4000 children.²⁸³ In its 1995 report on the Bidoon in Kuwait, Human Rights Watch estimated that some 30,000 of those who are stateless are actually married to Kuwaiti women or descended from a Kuwaiti mother.²⁸⁴ Gender discrimination in Kuwait's nationality law is therefore a considerable factor in the prolongation and perpetuation of statelessness in this community.²⁸⁵ One report that touched upon the numbers in Syria suggested that the government had massively underestimated the phenomenon with its estimate of just 1,500 Syrian women married to non-Syrian men and pointed to research by the

283 - International Development Research Centre, Research Leads to Rights Breakthrough for Arab Women, September 2009.

284 - Human Rights Watch, The Bidoons of Kuwait: "Citizens without Citizenship", 1 August 1995.

285 - See also Refugees International, Kuwait: Gender discrimination creates statelessness and endangers families, 17 October 2011.

League of Syrian Women that would put the number closer to 100,000.²⁸⁶ Furthermore gender discrimination in Syrian nationality law has become a much more urgent issue due to the conflict. Millions of individuals have fled Syria and entered neighboring countries which has created various problems in ensuring the children of Syrian women obtain nationality. One of these reasons is that Syrian husbands/fathers are often killed or go missing due to the conflict, and often documentation is lost or marriages are not officially registered. Therefore it may become difficult to establish that a child has a male Syrian father. Also, the refugee situation has meant an increase in the number of Syrian women marrying non-Syrian men abroad. As sometimes the marriage is not done officially and/or are conducted done under precarious situations, this adds to the risk of statelessness for children because there is no entitlement to nationality through the Syrian mother and this is the only link which has been formally established.²⁸⁷

Several reports also suggest that the number of national women marrying foreign men is on the rise. For instance, in the United Arab Emirates, an increase of 15% in mixed-nationality marriages involving Emirati

286 - R. Abdoush, Syrian women married to foreigners: Endless stories of suffering, Arab Reporters for Investigative Journalism, 16 July 2008, available at: <http://arij.net/node/4933>.

287 - See, for instance, UNHCR, Born in exile, Syrian children face threat of statelessness, 4 November 2014, available at: <http://www.unhcr.org/54589fb16.html>; and In Lebanon, Syrian newborns risk statelessness, New York Times, 19 December 2014, available at: http://www.nytimes.com/aponline/2014/12/19/world/middleeast/ap-m1-lebanon-syria-refugee-children.html?_r=0

women was reported between 2009 and 2010 (from 643 marriages between Emirati women and non-national men contracted in 2009 to 737 in 2010).²⁸⁸ In Morocco, one study pointed out that more Moroccan women married non-national men than vice versa and that there was a growing trend, with the number of such marriages contracted doubling between 1997 and 2001.²⁸⁹ And in Saudi Arabia, it was estimated that there were 2,000 unions between Saudi women and foreign men just in 2011. A member of the Shura Council (Saudi Parliament) suggested that there were already as many as 700,000 Saudi women married to foreigners and analysts expect there to be many more in future given the high number of unwed Saudi women over 30 who are finding it difficult to marry a man from within the Saudi community.²⁹⁰ As such, the impact of gendered nationality laws is both a region-wide and enduring concern – and the pressure to deal with it may now be intensifying simply by virtue of the weight of numbers affected.

288 - More Emirati women marrying foreigners, The National, 10 April 2011, available at: <http://www.thenational.ae/news/uae-news/more-emiratiwomen-marrying-foreigners>.

289 - CRTD, Denial of Nationality: The Case of Arab Women, February 2004, available at: http://www.policylibanon.org/Modules/Ressources/Ressources/UploadFile/7998_17,08,YYcrtdd%20-%20Nationality%20full%20Research-Feb04.pdf.

290 - Sons of Saudi women married to foreigners get privileges, Arab News, 30 January 2013, available at: <http://www.arabnews.com/saudi-arabiasons-saudi-women-married-foreigners-get-privileges>; Saudi law approves marriage with foreigners, Emirates 24/7, 28 June 2011, available at: <http://www.emirates247.com/news/region/saudi-law-approves-marriage-with-foreigners-2011-06-28-1.404884>.

4.3.2. The impact of gendered nationality laws on women

When a woman first discovers that she is unable to pass her nationality to her husband or children, this is often just the start of a difficult story for her and her family.²⁹¹ In Bahrain, where the woman is the one with citizenship and the father is a non-national, “mothers struggle to secure residence permits for their family members and dread their children reaching the age of 18 when they have to leave Bahrain unless they are students or employed”.²⁹² Moreover, “many states that limit women’s nationality in this manner do not allow children to be endorsed to their mother’s passport. If the parents are divorced, this becomes particularly problematic if the mother wishes to raise the children in another country, even with the father’s agreement.”²⁹³

291 - Most women are unaware of the limitations of and gender discrimination in the nationality law when they marry and only find out much later how their family members and family life will be affected. CRTD, Denial of Nationality: The Case of Arab Women, February 2004, available at: http://www.policylibanon.org/Modules/Ressources/Ressources/UploadFile/7998_17,08,YYcrtdda%20-%20Nationality%20full%20Research-Feb04.pdf.

292 - S. Hamada, GULF: Gender Discrimination in Citizenship Rights, Inter Press Service News Agency, 17 September 2009. Note that the size of the problem even in a small country like Bahrain (with just over half a million citizens) is not insignificant. In 2009 it was reported that the Bahrain Women Association had data on 400 women married to non-nationals who have an average of three to four children each – and that they suspected that the true number of people in this situation is double or triple this. International Development Research Centre, Research Leads to Rights Breakthrough for Arab Women, September 2009.

293 - M. Freeman, Reservations to CEDAW: An analysis for UNICEF, Discussion paper, December 2009, available at: http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf.

An NGO Shadow Report on Jordan, submitted to the CEDAW Committee in 2007, repeats these concerns before drawing out the link between gendered nationality laws and violence against women:

When viewed through a lens about domestic violence, this means that a Jordanian woman married, divorced or separated from a non-Jordanian man may find it necessary to live outside the country to be near her children, ending up isolated from the shelter of family or friends. A Jordanian wife may be compelled to risk staying in an abusive marriage with a foreign spouse rather than leave her children behind. The economic and immigration difficulties that arise from family members being unable to live as citizens in Jordan also bears a risky burden on a Jordanian mother, putting her more at risk of the factors that trigger or exacerbate domestic violence and increase her vulnerability to harm. The husband must leave and come back every 3 months, looking for work, as the wife operates as a single mother. Furthermore, the children of a Jordanian woman and a non-Jordanian man do not have access to school enrolment rights, social entitlements, and political

*rights in Jordan, even if they are born and raised there.*²⁹⁴

Other studies from the region concur that gendered nationality laws disempower women and can operate to expose them to, or trap them in, situations of domestic violence.²⁹⁵ Marriages are put under extra strain and women struggle to keep up appearances, but “if a couple is unhappy, women can be subjected to constant fear and blackmail, since their husbands can leave at any time with their children, who generally appear on their father’s passports”.²⁹⁶ In Kuwait testimonies have shown how a couple may even have pressure put on them by their children to divorce in order to resolve their statelessness situation.²⁹⁷

Moreover, by placing the whole family in a more vulnerable situation, gendered nationality laws can also put women at greater risk of abuse outside the home. As a study on

294 - Shadow NGO Report to CEDAW Committee Jordan: Evaluation of national policy, measures and actual facts on violence against women, Compiled by Arab Women Organisation of Jordan, Arab Human Right Organisation, Karama and Arab Women Media Centre, July 2007 at page 6, available at: http://www.iwraw-ap.org/resources/pdf/39_shadow_reports/Jordanian_SR_2.pdf.

295 - See also CRTD, Denial of Nationality: The Case of Arab Women, February 2004, at page 28.

296 - L. Abou-Habib, “Gender, Citizenship and Nationality in the Arab Region” in C. Sweetman (ed) Gender, Development and Citizenship, Oxfam, 2004, at page 72.

297 - Women’s Refugee Commission, Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa, June 2013

the situation in Lebanon pointed out: "The Lebanese women married to non-Lebanese men are exposed to all sorts of exploitation [...] they are forced to give in to the conditions of the employer, while the husband is incapable of obtaining a work permit that enables him to conclude correct contracts".²⁹⁸ Similarly, in respect of Kuwait, it was reported that

*the plight of [families in which the mother is Kuwaiti and the father bidoon] is similar to where both spouses are bidoon in that the couple cannot secure marriage certificates and must pay to send children to private school [and] Kuwaiti women in this situation are afraid to speak up for fear of losing the benefits that they do have, including employment in the formal sector.*²⁹⁹

The safety-net that other women can rely on for support for their families in times of hardship has serious holes in it where the children have a foreign father, as this report about a woman who is divorced from her non-national husband in Bahrain demonstrates:

Unlike other single Bahraini parents, because Ms Fadhalla's children have a foreign father she is

298 - F. Charafeddine, Predicament of Lebanese women married to non-Lebanese. Field Analytical Study, 2009, at page 23.

299 - Open Society Justice Initiative and Refugees International, Without Citizenship. Statelessness, discrimination and repression in Kuwait, 2011, at page 9, available at: <http://www.7aqqi.com/SubDefault.aspx?PageId=186&MenuId=44>.

not entitled to apply for a government house and is unable to claim financial support to look after them. As a result her only income is BD70 allowance paid by the Human Rights and Social Development Ministry and BD50 for inflation, plus hand-outs from her family. From this she has to pay a BD200 monthly rent on her flat and living expenses.³⁰⁰

A mother who holds citizenship may go to great lengths to find a solution for her children, whatever the costs. Take things into their own hands, some women claim that her children are illegitimate so that they can acquire her nationality, even if in fact the children are born in wedlock or the father is willing to recognise them.³⁰¹ Given the social stigma against illegitimate children in much of the region, this choice speaks volumes about the practical problems and humiliation that women feel that their children suffer without access to nationality. The sentiment of one Jordanian mother whose children are stateless because she was unable to confer her nationality demonstrates just how desperate and frustrating a situation this can otherwise be: "I would rather my children not be smart. It's

300 - Bahraini women back rights push, Gulf Daily News, 5 November 2011, available at: <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=317079>.

301 - N. Hijab, "Women Are Citizens Too: The Laws of the State, the Lives of Women", United Nations Development Programme – Regional Bureau for Arab States, 2002.

easier to know they are not able to succeed, rather than not allowed".³⁰²

What is evident is that women feel responsible for their family and their children's suffering.³⁰³ The realisation that they are unable to secure a nationality for their own children has a grave psychological impact on these women. When interviewed about how they felt upon finding out that their children had no right to their Bahraini nationality, 90% of women who participated in a small survey said that they felt guilty for causing the situation and very sad "because they hear from their family and from society that they are the reason for their own children's suffering".³⁰⁴ A regional research project uncovered the same story, with women expressing sentiments like "I am the reason why my daughters have no future" and "as a wife, I have known love, but [...] I do not advise any woman to marry a foreigner".³⁰⁵ The study of Jordanian women married to foreigners, mentioned earlier, revealed that 93.7% of the women interviewed felt a sense of guilt and helplessness about their situation and about the difficulties

302 - Women's Refugee Commission, *Our Motherland. Our Country*. Gender discrimination and statelessness in the Middle East and North Africa, June 2013.

303 - CRTD, *Denial of Nationality: The Case of Arab Women*, February 2004, available at: http://www.policylebanon.org/Modules/Ressources/Ressources/UploadFile/7998_17,08,YYcrtda%20-%20Nationality%20full%20Research-Feb04.pdf.

304 - International Development Research Centre, *Research Leads to Rights Break through for Arab Women*, September 2009.

305 - L. Abou-Habib, "Gender, Citizenship and Nationality in the Arab Region" in C. Sweetman (ed) *Gender, Development and Citizenship*, Oxfam, 2004.

that their children face because of it.³⁰⁶ Moreover, over 60% expressed fears about their families security and stated that they were worried that they would become separated.³⁰⁷

4.3.3. The impact of gendered nationality laws on children, families and men

The impact of gendered nationality laws is not limited to the women who are usually identified as the “victims” of such discriminatory policy. Indeed, their family members often suffer in equal measure – including children, spouses and family life as such. As already mentioned, a major obstacle in the context of mixed-nationality marriages where the husband and children are unable to acquire the woman's nationality, is securing and maintaining residence status in the woman's country. In Lebanon:

The residency problems constitute a series of endless episodes. They are a nightmare for limited-income people. Even women who are of middle social class complain about the time they spend on this issue, and express their concern regarding appointments.³⁰⁸

306 - L. Nasser, Field Study. Economic, Social, Political and Psychological Implications on Jordanian Women Married to Non-Jordanians and their Families, Arab Women Organisation of Jordan, June 2010 at page 36.

307 - Ibid, at page 35.

308 - F. Charafeddine, Predicament of Lebanese women married to non-Lebanese. Field Analytical Study, 2009, at page 23. Similar problems are reported in Jordan in Substantive Equality and non-Discrimination in Jordan: Shadow Report submitted to CEDAW Committee at the 51st Session, February

This means that it can be a challenge for families to stay together and therefore for the regular enjoyment of family life. Other stories from across the region echo the difficulties of maintaining family unity. For instance, Bahryeh in Yemen, participating in the Regional Dialogue on Gender Equality, Nationality and Statelessness in 2011, reflected: "The impacts of not being able to confer her nationality on her children became acutely apparent when she had to travel to Jordan for medical treatment – without identity documents or passports her children were unable to travel with their mother".³⁰⁹ And in the campaign for legal reform in Egypt, one of the problems that was pointed out was that "if the family resided in the father's country and the father died or otherwise left the family, the mother would have to remain in that country (with whatever nationality issues that may have presented for her) or abandon her children to return to Egypt".³¹⁰

Official separation and divorce may even be a measure to which the family resorts in order to address the nationality problems of the children – this has been reported in Kuwait, where it becomes possible, following divorce, for

2012, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWO-Mosawa_forthesession_Jordan_CEDAW51.pdf.

309 - Bahryeh has since obtained Yemeni nationality for her children, but this was only possible following her divorce from her husband and an partial amendment of the nationality law in 2003. UNHCR, UNHCR and CRTD-A Regional Dialogue on Gender Equality, Nationality and Statelessness, January 2012, at page 5.

310 - M. Freeman, Reservations to CEDAW: An analysis for UNICEF, Discussion paper, December 2009, available at: http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf.

the children to apply for their Kuwaiti mother's nationality (although this procedure is discretionary and does not always yield the desired results).³¹¹ Under the regulations in place in Kuwait, such a divorce is final and irreversible, such that the family – in the eyes of the law at least – is no longer a protected unit.

Children who fail to acquire their mother's nationality, even when they are born and grow up in her country, face a range of practical problems. Access to education and healthcare are two of the greatest challenges faced by these children. In the case of Bahryryeh in Yemen: "it was only by going through the humiliation of asking for the help of family, friends and political contacts that she was able to obtain similar entitlements given to children born to Yemeni men".³¹² In Qatar, the National Human Rights Committee investigated the unequal treatment of children of Qatari women as compared to the children of Qatari men, on account of the gendered nationality rules, also concluding that children of Qatari women who were married to foreigners faced obstacles in accessing healthcare and education – as well as later the right to work and to housing.³¹³ Given that the waiting period for

311 - Women's Refugee Commission, *Our Motherland. Our Country*. Gender discrimination and statelessness in the Middle East and North Africa, June 2013.

312 - UNHCR, UNHCR and CRTD-A Regional Dialogue on Gender Equality, Nationality and Statelessness, January 2012, at page 5.

313 - Qatar National Human Rights Committee, *Annual Report Human Rights Status in Qatar, 2010*, available at: <http://www.nhrc-qa.org/resources/userfiles/FINAL%20NHRC%20ANNUAL%20REPORT%202010.pdf>.

naturalisation is 25 years, it is a long wait before these children can hope to resolve their predicament and critical areas such as education and health may be neglected during the crucial childhood years. In Lebanon, public education and public healthcare are both off limits to the children of Lebanese women due to their lack of nationality.³¹⁴ Similar problems were raised as part of the campaign for the reform of nationality laws in those countries which have since amended their policies.³¹⁵

At times children who have failed to acquire their mother's nationality – and perhaps ended up stateless – encounter such a pattern of exclusion that this impacts on their sense of identity and self-worth. A study of the problems in Bahrain reported that children who were unable to obtain Bahraini citizenship start to be made to feel like outsiders by late primary school and are unhappy because of their exclusion, for example from clubs that only admit Bahraini's.³¹⁶ An extreme case of the dejection felt due to lack of access to nationality in Bahrain was reported in the media in 2011, when Bahraini mother-of-four Jameela Fadhalla described how her daughter attempted suicide because she thought their family's situation was

314 - F. Charafeddine, *Predicament of Lebanese women married to non-Lebanese. Field Analytical Study*, 2009, at page 23.

315 - See for instance the discussion of these campaigns in M. Freeman, *Reservations to CEDAW: An analysis for UNICEF*, Discussion paper, December 2009, available at: http://www.unicef.org/gender/files/Reservations_toCEDAW-an_Analysis_for_UNICEF.pdf.

316 - International Development Research Centre, *Research Leads to Rights Breakthrough for Arab Women*, September 2009.

only getting worse and couldn't see a way out.³¹⁷ The study conducted in Jordan in 2010 reported feelings of "deprivation", "rejection from society", "non-stability", "anger" and "inferiority" as commonplace among the children of Jordanian mothers and non-national fathers. For example, some 44% of those interviewed expressed feelings of rejection from society", despite some 95% of the same group of respondents indicating that they feel like they belong in Jordan.³¹⁸ This extract from a petition to the Jordanian Prime Minister, submitted by a group of Jordanian mothers married to non-Jordanians illustrates this further:

*The children of a Jordanian woman who is married to a non-Jordanian are subject to social harassment and ill-treatment. They often become victims of verbal and psychological attacks. They are deprived of exercising their basic rights, including the right to marry due to social discrimination and the complexities of the proceedings and approvals required. They are also deprived of social activities or joining clubs, national teams even if they are gifted.*³¹⁹

317 - Bahraini women back rights push, Gulf Daily News, 5 November 2011, available at: <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=317079>.

318 - L. Nasser, Field Study. Economic, Social, Political and Psychological Implications on Jordanian Women Married to Non-Jordanians and their Families, Arab Women Organisation of Jordan, June 2010 at page 35.

319 - "A petition to the Jordanian Prime Minister by the Group of Jordanian Mothers married to non-Jordanians who launched the campaign "My Mother is Jordanian and Her Nationality is My Right", as found in Substantive Equality and

These problems can continue into adulthood – especially given the further restrictions that are often evident in terms of employment opportunities, property and inheritance rights.³²⁰ As one mother in Syria explained: “My daughter didn’t set foot in any other country than Syria, and she’ll get her degree from here, but she won’t be able to be employed here, because she isn’t Syrian”.³²¹

Thus, in those households where the mother is the one with citizenship, the family faces obstacles in the enjoyment of services, family life, inheritance rights, opportunities to earn a livelihood, etc. Whereas in similar situations of mixed-nationality parents where the father is the one with citizenship, none of these issues arise. It is more than just a question of women’s rights – it is also clearly a broader issue of child rights and of family rights.

non-Discrimination in Jordan: Shadow Report submitted to CEDAW Committee at the 51st Session, February 2012, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWO-Mosawa_forthesession_Jordan_CEDAW51.pdf.

320 - See also L. Abou-Habib, “Gender, Citizenship and Nationality in the Arab Region” in C. Sweetman (ed) *Gender, Development and Citizenship*, Oxfam, 2004, at pages 69-73.

321 - T. Al-Sabaa, Syrian nationality laws deny Syrian women from their share of their children’s creation, Syrian Women Observatory, 19 March 2010, available at: <http://www.nesasy.org/index.php/articles-enintro-377/8814syrian-nationality-laws-deny-syrian-womens-from-their-share-of-their-childrens-creation>.

Born in Jordan. Jordanian mother. Jordanian wife. Yet still stateless.

Ahmed has a Jordanian mother and is married to a Jordanian women. They have two children who are both stateless. Below he recounts his story.³²²

“Everything you do is problematic without a national number. My children, everything they want to do is problematic. If you want to take them to the hospital and there is no number, the costs will be doubled. If I want to buy a car I have to register it in someone else’s name”. Ahmed has a car that he registered in his wife’s brother’s name, since he does have a national number.

Ahmed says when he goes to apply for jobs, as soon as they find out you don’t have a national number it becomes difficult. He says he has heard several times promises that Jordanian women will be able to confer their nationality to their husbands and children but it hasn’t happened yet, he has been hearing these rumours for about 10 years. He says he is always surprised to see foreigners working as taxi drivers, when he is not allowed despite having a Jordanian mother, despite being born and bred in Jordan. He works selling things on a pick up and says some days there is no work, like the day of the interview, because it is raining. He has heard that if you pay 50 or 60 thousand investment you may be able to get the nationality, but he knows obviously

322 - Testimony gathered by Statelessness Programme researcher Zahra Albarazi as part of a separate study of the impact of gender discrimination in nationality laws in the MENA region, commissioned by the Women's Refugee Commission and carried out in spring 2013. This testimony is included with the permission of the Women's Refugee Commission.

that will never happen. “Hope is only from God, they talk a lot but nothing has happened. We thought they would naturalize us a long time ok. They even spoke about compensation. We don’t want compensation we just want a job. Now even if I want to work as a bin man I’m not allowed, but an Egyptian can.”

“Without a national number you are not a human, without a national number you don’t have a weight. If you enter into a security building and you have no ID you will be questioned”, Ahmed goes on. He feels discriminated against by these institutions, amongst people, with the police. “Some of the police are great and sympathetic with our problem and some are the opposite, they don’t understand and don’t try to understand”.

“It’s impossible to get social welfare, I cannot obtain a pension when I am older. The same problem, my same life, will be the same with my children, unless things change”. Ahmed is one of 11 male siblings and six of his brothers are married to Jordanian women. “I wouldn’t reject someone without a nationality to marry my daughter, but I know lots who would. When my brother wanted to marry a Jordanian they wanted to reject him because of this problem. Because they think about the future of their children. He wants, for example, to educate his daughter but knows she won’t be able to work later, so he removed the idea of educating her. After year 10 he will keep her at home”.

Finally, an interesting and often neglected fact is that gendered laws can also have a severe impact on the lives of men. In the context of existing stateless populations, where people have prior knowledge of the inevitable problems attached to the transmission of the father's statelessness to his children under the gendered nationality laws, this influences decision-making and behaviour. For instance, knowing that he is destined to transmit his statelessness and all manner of problems to his children, a stateless man may decide against marrying and starting a family or may not find a woman who is willing to walk this path with him for fear of the future repercussions.³²³ As such, this can leave men feeling marginalised, with low self-esteem and even depression.³²⁴ These problems are less acute in girls or women who become or inherit statelessness, since they can in fact resolve their predicament through marriage and their children will be spared the same problems, so long as the partner that they find holds a nationality. The outlook then, for boys and men who end up stateless as a consequence of gendered nationality laws is especially bleak, because of the way in which those same laws will operate to perpetuate the hardship that they face. Again, this deeper understanding of the impact of gender discrimination in nationality laws demonstrates how it is a

323 - UNHCR, UNHCR and CRTD-A Regional Dialogue on Gender Equality, Nationality and Statelessness, January 2012, available at: <http://www.unhcr.org/refworld/docid/4f267ec72.html>.

324 - Women's Refugee Commission, *Our Motherland. Our Country*. Gender discrimination and statelessness in the Middle East and North Africa, June 2013.

question that goes far beyond a simple “women’s rights” issue.

Since 2011 and the break-out of the Syrian conflict a new nexus to this discrimination has emerged that is rapidly putting many children at risk of becoming stateless. Syrian nationality law of course does not allow women to transfer their nationality to their children on an equal basis to men. In a time of chaos and displacement the consequences of this discrimination have been highlighted. The conflict has left many refugee and displaced families female-headed³²⁵ - because the father has died, he is unknown, he is missing or there simply is no official documentation to prove who the father is. There has also been a rise in the number of Syrian refugee women unofficially marrying foreign men – either inside Syria with the rise of foreign fighters or as refugees with men from the host communities. With no legal proof of paternity, children born in these partnerships are placed at heightened risk of statelessness. There are therefore an increasing number of households which cannot prove their children’s links to a Syrian father, or whose children do not have a Syrian father – the only way to prove that they are Syrian. Therefore the link between gender discriminatory laws and conflict

325 - UNHCR, Syrian Refugee Women Fight for Survival as They Head Families Alone, 2014, access at <http://www.unhcr.org/53bb77049.html>

has meant that an increasing number of families are facing obstacles in ensuring they obtain a nationality for their new-born.

4.4. Why do MENA nationality laws treat men and women differently?

States have historically held the unity of nationality of the family in high regard. The theory was that it was in both the state's and the individuals' best interests if all members of a family held the same nationality. This would help to avoid a conflict of loyalties as well as various practical problems that would otherwise ensue – for instance, some family members having an automatic right of residence on the basis of their citizenship while others are subject to a state's immigration laws, or the potential difficulty of determining which country's family law or rules on inheritance to apply.³²⁶ In first regulating nationality, states were therefore more preoccupied with this aspiration of ensuring unity of nationality of the family than with notions of equality or personal choice, which helped to pave the way for the introduction of a gendered approach to nationality rights.

326 - Savitri W.E Goonesekere, "Article 9" in *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, Marsha Freeman, Christine Chinkin and Beate Rudolph (eds.), Oxford University Press, 2012.

4.4.1. A historically patriarchal and patrilineal conception of nationality

The question as to whose nationality all family members should share was answered by reliance on the patriarchal conception of society that prevailed at the time of drafting of the first major nationality laws. The principal male relative – husband or father – was deemed the head of the household and it therefore made sense that his nationality would be the decisive factor for all other family members. For instance, under the law of the big European powers in the 19th century, a woman's status was subservient to that of her husband. In Britain, married women were placed in a position of "coverture", which meant that she did not have an independent legal personality but her identity was subsumed into that of her husband.³²⁷ In France, meanwhile, women's rights were severely restricted and in marriage, the wife's status was equated to that of a minor.³²⁸ So it was that women came to hold a dependent nationality status.

327 - W. Blackstone, *Commentaries on the Laws of England*, 16th edn (1825) p. 366, pp. 454 – 9 as cited in A. Edwards and R. Govil, "Women, Nationality and Statelessness: The problem of unequal rights" in A. Edwards and L. van Waas (eds) *Nationality and Statelessness under International Law*, Cambridge University Press, forthcoming 2013.

328 - M. Zantout, *Robbed of Citizenship: French Law stripped Lebanese women of basic rights they freely enjoyed under Ottoman rule*, Daily Star, 7 August 2008.

At the same time, the enjoyment of other key elements of a person's identity traditionally followed a patrilineal pattern, thus a person's name or religious affiliation was commonly deemed to stem from their father. The idea that nationality should also be transmitted through the male line of descent sat comfortably within this broader philosophy and this served to consolidate the position that the status of the father – not the mother – is the determining factor for the nationality enjoyed by the next generation.³²⁹

In this manner, a gender bias became readily and firmly embedded in nationality legislation the world over. A woman's nationality could be automatically affected by marriage or divorce, as well as a change of nationality or even the death of her husband – while a man's nationality is not affected in similar circumstances. The nationality of a child followed that of his or her father and women were not generally given the right to pass their own nationality to their children, even if they had managed to retain it. Only exceptionally were women entitled to maintain or transmit their nationality, in particular with a view to protecting them or members of their families

329 - See further on the influence of patriarchal and patrilineal traditions on the content of early nationality laws A. Edwards and R. Govil, "Women, Nationality and Statelessness: The problem of unequal rights" in A. Edwards and L. van Waas (eds) *Nationality and Statelessness under International Law*, Cambridge University Press, forthcoming 2013.

from statelessness – any such exceptions stopping far short of acknowledging that women could hold independent nationality rights.³³⁰

4.4.2. Gendered nationality laws spread to the MENA

The foregoing perspectives on nationality rights are visible in the approach of most nationality legislation of the late 19th and early 20th centuries.³³¹ As set out in chapter 2, modern MENA countries' nationality policy was strongly influenced by the content of the nationality legislation of this era, in particular the previous Ottoman regulations and the nationality acts of the French and British colonial powers. These discriminated against women, to one degree or another, in the enjoyment of nationality rights. Thus, in the promulgation of their post-independence nationality acts, MENA countries mimicked this gendered approach to nationality.³³² The first edition of all MENA states' nationality laws therefore placed

330 - UN Division for the Advancement of Women, Women, nationality and citizenship, June 2003.

331 - The 1930 Hague Convention on certain questions relating to the conflict of nationality laws offers an interesting window into the prevailing view of women's nationality rights at the time. While setting down the first clear international law limits to state's freedom to regulate nationality and devoting much attention to the avoidance of statelessness and of dual nationality, the dependent nationality status of women is firmly entrenched within this instrument. Thus, instead of prescribing equal nationality rights for women, the 1930 Hague Convention merely seeks to limit some of the undesirable consequences of a gendered approach to nationality.

332 - G. Parolin, *Citizenship in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009.

women at a clear disadvantage. In Lebanon, the external influence on the gendering of nationality was more direct: the law which remains in force to this day is that passed by the French High Commissioner during the period of French mandate rule and therefore copied very closely the French civil code which also disadvantaged women in terms of nationality rights at that time.³³³

Although external factors evidently played their part in instilling a gendered perspective on nationality in the MENA, such a philosophy was also highly compatible with the patriarchal and patrilineal concept of the family that dominated under the region's kinship structures and majority Islamic society:

*Middle Eastern states predominately have located women within patriarchal structures as subordinate mothers, wives, children, siblings [...] The impact of patriarchy on the gendering of citizenship has been profound because kinship has permeated all domains, all spheres of life. [Moreover,] national identity in most Middle Eastern countries has been patrilineally ascribed. Political identity has come through a male genealogy.*³³⁴

333 - This is Decree No. 15 of 19 January 1925. See further M. el-Khoury and T. Jaulin, Lebanon, Country paper for the European Union Democracy Observatory – Citizenship, 2012.

334 - S. Joseph, "Gendering Citizenship in the Middle East" in S. Joseph (ed.) Gender and Citizenship in the Middle East, Syracuse University Press, 2000, at

As such, with the introduction of MENA states' first independent nationality laws, there was no reason to question the legitimacy of disadvantaging women with respect to nationality rights – in keeping with the international fashion of that time – given that this was aligned with prevailing sentiments in MENA society. Nevertheless, it is noteworthy that the original influence on the content of MENA's nationality legislation came clearly from outside the region and that inward-looking justifications for maintaining a gendered nationality policy, including by invoking Shari'a, only surfaced later when this approach was called into question by a shift in the international perception of nationality rights. To date, there is in fact disagreement among religious scholars and clerics as to the position that Islam takes on women's nationality rights and whether it obstructs or supports the bid for gender equality in this field.³³⁵ Indeed, only occasionally do religious arguments feature in the

pages 17-18. See also N. Hijab, "Women Are Citizens Too: The Laws of the State, the Lives of Women", United Nations Development Programme – Regional Bureau for Arab States, 2002.

335 - A series of consultative workshops held with Sunni and Shia Muslim women in India concluded, for instance, that "the Sharia grants both men and women the full freedom to choose or retain any nationality they want and to confer this nationality on their children. Although, in Islam sons and daughters must take on their father's name, this does not restrict their parents' right to nationality." S. Ali, *Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of CEDAW in Bangladesh, India and Pakistan*, UNIFEM South Asia Regional Office, 2006. See also, for example A. Imam, *Women, Muslim Laws and Human Rights in Nigeria*, Woodrow Wilson International Center for Scholars – Africa Programme, February 2004, at page 3, available at: http://www.wilsoncenter.org/sites/default/files/Occasional_Paper_2.pdf.

rhetoric against reform of the nationality laws – such as in October 2008, when the Syrian parliament voted against giving women the right to pass nationality to their children. Then, the authorities argued that reform would be contrary to Sharia law which they said stated that children's identity derives from the father's name and nationality. However clerics disputed these arguments,³³⁶ leading many to believe that deeper political considerations are behind the authorities' stance on the issue.³³⁷ What is clear is that many MENA countries continue to cling on tight to this patriarchal and patrilineal conception of nationality, for a variety reasons, as will be discussed below. Furthermore, it has been pointed out that within the MENA region, great importance is attached to the protection of the family, as the primary unit of society, rather than protection of the individual, which is continuing to play a part in perceptions of the function of nationality.³³⁸ In fact, though, as will also be seen later, gendered nationality laws can contribute to the break-down of family structures, rather than their protection.

336 - Including Mohammed Habbash, an Islamic cleric who was also a prominent member of the Syrian parliament, and instead backed the amendment of the citizenship law.

337 - 'Campaign to change unfair citizenship law continues,' Institute for War and Peace Reporting, 15 December 2012, available at: <http://iwpr.net/report-news/campaign-change-unfair-citizenship-law-continues>.

338 - Collective for Research and Training on Development – Action (CRTD-A), Denial of Nationality: The Case of Arab Women, Summary of Regional Research, February 2004, as cited in L. van Waas, The situation of Stateless Persons in the Middle East and North Africa, UNHCR, October 2010, available at: <http://www.unhcr.org/refworld/pdfid/4cea28072.pdf>.

4.4.3. Gender inequality becomes gender discrimination under international law

At least half a century has passed since most of the original nationality acts of post-independence MENA states were adopted. During this period, global trends demonstrate a stark shift in states' perspectives on women's rights and "gradually [...] international law began to treat women's nationality as a question of equality".³³⁹ Around the world, most countries have dramatically changed their approach to women's nationality entitlements and amended their laws to introduce greater gender equality in the acquisition, retention or transmission of nationality.

Crucially, nationality policies such as those described above, that were once evidently tolerated and even legitimised as a simple matter of justifiable gender inequality, now clearly amount to prohibited gender discrimination under international law. A critical step in this transformation was the acknowledgement that women could hold nationality rights autonomously from men. Under the Convention on the Nationality of Married Women (CNMW), adopted in 1957, contracting states agreed that "neither the celebration

339 - A. Edwards, Displacement, Statelessness and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women, Background paper for a joint UNHCR and CEDAW seminar, 2009, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife".³⁴⁰ No longer is a woman's nationality status automatically tied to that of her husband, without any regard for her own views on the matter.³⁴¹ Yet this instrument did not prescribe equality in nationality rights.

That came twenty years later through the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979. It sets out the following standard in article 9:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

340 - Article 1 of the Convention on the Nationality of Married Women, 1957, available at: <http://www.unhcr.org/refworld/pdfid/3ae6b3708.pdf>.

341 - Only three MENA states have ratified the CNMW: Tunisia (1968), Libya (1989) and Jordan (1992). It has attracted 74 state parties in all. For a complete overview of the status of ratifications to the Convention, see the United Nations Treaty Collection, available at: http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XVI-2&chapter=16&Temp=mtdsg3&lang=en.

This explicit affirmation that women hold nationality rights independently of and equal to men has been hugely influential, contributing to successful legal reform processes in countries across the world, in every region – including in the MENA.³⁴² All MENA states are now party to CEDAW, with Qatar acceding most recently on the 29th of April 2009.

Overall, however, the MENA region has been less receptive to change than some other regions and it lags behind in terms of the de-gendering of nationality policy. It also has a relatively high concentration of states that have made explicit reservations to article 9 CEDAW, as cited above – in particular with regard to the equal right of women with respect to the nationality of their children (paragraph 2). In theory, this means that these states are cannot be held to account for maintaining a gendered *jus sanguinis* regime through their CEDAW commitments. However, the CEDAW Committee outlined in its General Recommendation 21 on Equality in Marriage and Family Relations that it “requires that all States

342 - For instance, according to a 2012 survey by UNHCR, the following countries are among those which have revised their law in the past few years, to introduce greater equality for women in the enjoyment of nationality rights: Sri Lanka (2003), Egypt (2004), Algeria (2005), Indonesia (2006), Iraq (partial reform in 2006), Sierra Leone (partial reform in 2006), Morocco (2007), Bangladesh (2009), Zimbabwe (2009), Kenya (2010), Tunisia (remaining gaps addressed in 2010) and Monaco (2005, 2011). UNHCR, Background note on Gender Equality, Nationality and Statelessness, 8 March 2014, available at: <http://refworld.org/docid/532075964.html>.

parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation, in particular to articles 9, 15 and 16 of the Convention" and that "States parties should, where necessary to comply with the Convention, in particular in order to comply with articles 9, 15 and 16, enact and enforce legislation".³⁴³ Plus, following the adoption of new reporting guidelines in 2008, the CEDAW Committee has reaffirmed its specific concern at the maintenance of reservations to, among others, article 9 of the Convention and has made it clear that it "expects to have a dialogue about progress on the specific issues reserved and whether and when the reservations could be withdrawn".³⁴⁴

Furthermore, most MENA states have actually accepted other obligations with regard to non-discrimination in the enjoyment of the right to a nationality. For example, article 7 of the Convention on the Rights of the Child which guarantees the right of every child to acquire a nationality should be read

343 - UN Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation 21: Equality in Marriage and Family Relations, 4 February 1994, at paragraphs 43 and 49.

344 - Report of the Committee on the Elimination of Discrimination against Women, Forty-first Session, A/63/38 Supp (2008) as discussed in M. Freeman, Reservations to CEDAW: An analysis for UNICEF, Discussion paper, December 2009, available at: http://www.unicef.org/gender/files/Reservations_toCEDAW-an_Analysis_for_UNICEF.pdf.

in conjunction with its general non-discrimination clause, which reads:

*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*³⁴⁵

Similar guarantees can be found in the International Covenant on Civil and Political Rights.³⁴⁶ Indeed, in practice, all of the UN human rights treaty bodies have actively identified and commented on policies of gender discrimination with respect to the transmission of nationality from parent to child, as has the Human Rights Council within the Universal Periodic Review process.³⁴⁷ MENA states have frequently received

345 - Article 2(1) of the Convention on the Rights of the Child.

346 - Article 24 in conjunction with article 2, as well as the stand-alone prescription of equality before the law and prohibition of discrimination found in article 26.

347 - It is of interest to note the response of MENA countries to recommendations regarding law reform in this area during the first cycle of the Universal Periodic Review. The countries that received recommendations to amend their nationality laws and grant women equal nationality rights, namely Lebanon, Jordan, Oman, Qatar and Kuwait, all did not accept the recommendations. On the other hand, the countries that were asked to consider amending their nationality laws, namely Bahrain and UAE, or consider ratifying the two Statelessness Conventions, namely Saudi Arabia, accepted the recommendations. The softer language of the recommendation may be one of the reasons for the different reception received.

criticism for maintaining gendered laws and been urged to amend their policy. In their response, some governments have for instance claimed that these laws remain to ensure the respect of their prohibition of dual nationality.³⁴⁸ However, this does not answer why men can still transfer their nationality to their children where the mother is a non-national, nor does it acknowledge the alternative ways in this obstacle to reform can be addressed. There are many countries that prohibit dual nationality, but do not also retain gender discriminatory laws.³⁴⁹

4.5. What progress has been made towards gender equality in nationality rights in the MENA?

Across the MENA region, discrimination has now been outlawed in the majority of constitutions and states have been taking steps – large and small – to address either the content or the consequences of gendered nationality laws. In some places, this reform has been sweeping and it has been brought in with

348 - See further Z. Albarazi and L. van Waas, "Towards the abolition of gender discrimination in nationality laws" in *Forced Migration Review*, May 2014.

349 - Indonesia, for instance, reformed its nationality law in 2006 to grant women equal rights with men to confer nationality to their children. Wherever a child acquires dual citizenship by *jus sanguinis*, he or she must choose at age 18 which nationality to keep in adulthood, thereby limiting dual citizenship to the period of minority. See article 6 of the Law of the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia, 1 August 2006.

a single, fundamental amendment to the nationality law. In others, a similarly significant de-gendering of nationality policy has been achieved, but through an incremental series of reforms. Elsewhere, access to nationality on the basis of a maternal *jus sanguinis* connection has been facilitated in one way or another but has yet to become a right and women remain disadvantaged in their rights in this area. Finally, there are some countries in which the gendered nationality policy is still in place but the government has brought in certain measures that are designed to improve the legal status of those who are failing to acquire nationality, helping them to access certain rights and thereby limiting the impact of the discriminatory nationality law.

4.5.1. Major nationality law reforms and the impetus behind them

As recently as the early 1990s, no MENA country recognised an unqualified maternal *jus sanguinis*, but today such a rule has been introduced in a number of states. Tunisia – long known for “its modern legislation on women’s rights”³⁵⁰ – led the way in 1993 when it

350 - European Parliament Policy Department on Citizens' Rights and Constitutional Affairs, Gender equality policy in Tunisia, October 2012, available at: <http://www.europarl.europa.eu/committees/en/femm/studiesdownload.html?languageDocument=EN&file=78151>. See also M. Charrad, Family Law Reforms in the Arab World: Tunisia and Morocco, Report presented at Expert

took the first step towards correcting the gender bias in its *jus sanguinis* clause. The amendment passed gave children of a Tunisian mother the right to acquire her nationality during their minority, but only if joint approval is given for this by both parents (the Tunisian mother and the foreign or stateless father). In practice, many problems cropped up when women sought the father's permission in order to transmit their nationality to their child and so, in 2002, a further amendment was passed with a view to addressing some of these difficulties. This version of the law made the Tunisian mother's own approval the sole condition in case of the father's death, disappearance or legal incapacity. Finally, in 2010, the law was reformed on this point for a third time, finally removing the gender bias entirely and recognising maternal and paternal *juss anguinis* equally.³⁵¹

While the Tunisian legal reform process was incremental, elsewhere in the region progress was largely undertaken through a single amendment.

Group Meeting on 'Good Practices in Family Making Policy', New York, May 2012.

351 - Note that the reform process in Yemen was similarly phased. Article 10 of the original legislation was amended twice: on 5 March 2003 by introducing entitlement to Yemeni nationality for the children of a Yemeni divorced female who was previously married to a foreigner, then again on 21 October 2010 with the adoption of Presidential Decree No. 25. This latter amendment recognised equal rights for women to pass nationality to their children, however it has yet to be published in the Yemeni Gazette due to the events which unfolded in Yemen around that time – leading to serious questions about the current Yemeni nationality policy. Interview conducted in the context of this research project in April 2012 with a lawyer in Aden, Yemen.

In Egypt (2004), Algeria (2005), Iraq (2006) Morocco (2007) and Yemen (2013), the nationality acts were revised, through a targeted and comprehensive legislative amendment, to allow the transmission of nationality from mother to child, on the same terms as from father to child. Moreover, the North African reforms all allowed for retroactive effect, such that a child born to an Egyptian, Algerian or Moroccan mother before the date of entry into force of the new law, also had the opportunity to obtain citizenship. The Iraqi requirements still differentiate between those born inside or outside of Iraq, and remain discriminatory against mothers having children abroad. Crucially, this has reportedly led to the resolution of cases of statelessness, although the number of those who have benefited across the region is not known.³⁵² Similar amendments de-gendering the jus sanguinis regimes were also, at least formally, introduced in Libya (2010) – although it is unclear whether women are able to invoke this right in any of this latter group of countries given the ambiguity surrounding the status of the relevant articles or legislative amendment, as indicated above.³⁵³

352 - See L. van Waas, The situation of Stateless Persons in the Middle East and North Africa, UNHCR, October 2010, at pages 13-14.

353 - See supra at note 5.

It is of interest to observe how the various comprehensive reforms were achieved and what lessons can be drawn from this process that may be of value in other MENA countries or even further afield. Of overwhelming influence in the major North African reforms – Tunisia, Egypt, Algeria and Morocco – was the presence of a strong, vocal and well-organised women's rights movement. At the national level, these women's rights groups led the way in identifying the areas of gender discrimination in domestic law that were having the most detrimental impact – one of which being the nationality policy – and subsequently devising and implementing a campaign for the de-gendering of these laws. A number of components featured in many or all of these campaigns. Firstly, the gathering of data and of personal testimonies to demonstrate the impact of gendered nationality laws and dispel any myths about the issue. In Morocco, for instance, this was achieved through the establishment of 'listening centres' across the country at which women could speak freely about their situation and their stories could be recorded for use in the campaign.³⁵⁴

354 - UNHCR, UNHCR and CRTD-A Regional Dialogue on Gender Equality, Nationality and Statelessness, January 2012, at page 5, available at: <http://www.unhcr.org/refworld/docid/4f267ec72.html>.

This information was channelled into the tools needed to support a variety of broad awareness-raising and targeted advocacy activities, including leaflets, posters, websites, blogs, songs, TV or radio spots, petitions, press releases and campaign letters.³⁵⁵ It was also used as a basis for roundtable meetings and conferences to discuss the issue and its solutions.³⁵⁶ To press home the need for reform, the women's rights organisations also rallied groups of women to hold demonstrations or sit-ins in front of houses of parliament, relevant ministries or court buildings. In most cases, protests drew attention to a whole range of violations of women's rights and not just the flaws in nationality laws, making a stronger push for non-discrimination in the region. Throughout this process, effort was made to engage the mainstream media and to reach out to people through the internet by building an online presence in the form of

355 - See, for instance, the work of the 20 Ans barakat (20 years is enough!) movement in Algeria, a group specifically founded in 2003 with the mission to amend the Algerian Family Code and involved in lobbying for reform of the nationality policy (<http://20ansbarakat.free.fr/>). Media tools featured prominently in their advocacy campaign – see, for instance, a song discussing gender discrimination at: <http://www.youtube.com/watch?v=DP3XFOnCvCw>.

356 - For instance, the Association for the Development and Enhancement of Women in Egypt organised workshops in cooperation with UNDP on "Gender and Citizenship" in 2002 as part of the campaign for reform of the nationality law, as reported in the Annual Report 2005, available at: <http://www.adew.org/en/downloads/annualReport2005en.pdf>. The Association Démocratique des Femmes du Maroc organised meetings under the theme "Amendment of article 6 of the Nationality Code toward women and children's complete citizenship", including for participants from the Ministry of Justice and for the press. See for a full list of activities initiated or supported by this latter NGO during the campaign for legal reform in Morocco: <http://www.adfm.ma/spip.php?article482>.

websites and weblogs. For instance, the Association Démocratique des Femmes du Maroc combined a sit-in in Morocco with a number of interviews to not just the Moroccan media, but also the foreign media to highlight the campaign for reform of the nationality law, including TVE, Al Jazeera, Alarabia, NTV, Hija, Almanar and Radio Monte Carlo.³⁵⁷ Finally, the women's rights movement engaged in targeted lobbying of cabinet members, ministers or members of parliament, in order to create an avenue to put their case on the governmental or parliamentary agenda.

In line with the trends in the region that have been described above, the legal reform process took shape in Egypt as follows:

The citizenship law was changed in June, 2004, after a long campaign by Egyptian women's groups. The NGOs that formed the CEDAW Coalition to monitor Egypt's implementation of the Convention were critically important actors in the campaign. The campaign included field research in the provinces to document the impact of the nationality restrictions on Egyptian women and children. The campaign ultimately included collaboration with government entities and the

357 - See <http://www.adfm.ma/spip.php?article482>.

*National Council for Women, chaired by Suzanne Mubarak.*³⁵⁸

Initially, following the 2004 reform, children of Egyptian mothers and Palestinian fathers continued to be excluded from nationality – even though the law included no such proviso. The women's rights groups continued their campaign and organised further, large-scale protests:

*After the recent revolution in Egypt, women mobilized, organizing sit-ins and demonstrations in Tahrir Square. They highlighted the plight of their families, including the fact that they are denied access to basic rights such as education, work, and travel. Additionally, women brought to light the often prohibitive cost of undertaking legal action, which can reportedly reach as much as EGP 100,000 (~\$16,800) per case. These women were outraged that their children have been denied work opportunities after they complete their education, due to the difficulties they face in securing work permits--all because they are the children of Palestinian fathers.*³⁵⁹

358 - M. Freeman, Reservations to CEDAW: An analysis for UNICEF, Discussion paper, December 2009, at page 14, available at: http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf.

359 - Press release issued by CRTD-A following the adoption of Decree 1231 and published on the website of the Women's Learning Partnership at: <http://www.learningpartnership.org/lib/post-revolution-egypt-establishes-right-women-married-palestinians-pass-nationality-children-1>.

Following these events, on 2 May 2011, Egypt passed Decree 1231 in May 2011 which explicitly and unequivocally clarifies that children of Egyptian women and Palestinian men are also entitled to Egyptian nationality through the maternal *jus sanguinis* line.

The various in-country campaigns for de-gendering of the nationality policy were complemented by efforts at the regional and international levels. Regionally, the different women's rights groups engaged in coordination, cross-fertilisation of ideas and joint advocacy. The Arab Women's Right to Nationality Campaign was initiated in 2002 after this issue was identified as a common concern for women's rights organisations across the region.³⁶⁰ Regional studies were published³⁶¹ and training materials developed to help boost the knowledge and capacity of the organisations involved.³⁶² This enabled the NGOs and women's rights activists concerned to be more effective in bringing their cause to the attention of both the wider public and the international community,

360 - This was spearheaded, in particular, and CRTD-A (<http://crt-da.org.lb/project/22>) and the Women's Learning Partnership (<http://www.learningpartnership.org/citizenship>).

361 - For instance, "Women Are Citizens Too: The Laws of the State, the Lives of Women", United Nations Development Programme – Regional Bureau for Arab States, 2002.

362 - A description of some of the early activities of the regional campaign in which CRTD-A was involved can be found in L. Abou-Habib, "Gender, Citizenship and Nationality in the Arab Region" in C. Sweetman (ed) *Gender, Development and Citizenship*, Oxfam, 2004.

in order to gather support. Indeed, with this regional support, the women's rights groups involved in the movement for equal nationality rights were able to make use of a range of media for their cause, including by raising their concerns within the CEDAW country reporting process³⁶³ and presenting them at relevant international events focused on women's rights.³⁶⁴ By drawing attention to the campaigns in the international arena, added pressure was put on the relevant governments to listen to the calls for legal reform.

4.5.2. Limited nationality law reform and measures to address the impact of gendered nationality laws

Elsewhere in the MENA region, the kind of sweeping reforms described above have yet to be effected, but there has been some progress nonetheless. Two different tracks have been chosen in these countries. The first, is the partial amendment of nationality policy such that women's nationality rights have been

363 - See, for instance, Le Collectif 95 Magreb Egalité, *Rapport Alternatif: L'Algérie en la Convention des Nations Unies de 1979 sur l'Élimination de toutes les formes de discriminations à l'égard des femmes*, 2005.

364 - See, for instance, the presentation made by Lina Abou Habib of CRTD-A during a panel discussion convened by the Women's Learning Partnership in New York as part of a conference on "2020 Vision: Mobilizing for Women's Rights and Eliminating Violence Against Women" in May 2010: <http://www.youtube.com/watch?v=Sa-iCfwLLSE>.

slightly expanded. Thus, Saudi Arabia reportedly revised its laws in 2007 to further facilitate acquisition of citizenship at the age of majority by a child of a Saudi mother and non-national father. However, apparently only sons of Saudi women are eligible for nationality in this manner.³⁶⁵ This may be a deliberate and strategic choice, given what has been stated above about the disproportionately negative impact the failure to acquire a nationality can have on a boy / man given the severely limited opportunities for him to later rectify his status (while a girl would be likely to have the chance to acquire nationality through marriage). However, it is deplorable that a new layer of gender discrimination has hereby made its way into the nationality law and the fact that marriage becomes the key to citizenship can create its own problems and place women in a vulnerable position:

Mohammed Noor Baksh, a 60-year-old Pakistani driver, has been married to a Saudi woman for 27 years and hasn't traveled outside the Kingdom for the past 15 years. He has two daughters — one 21-year-old and the other 19-year-old — and a 14-year-old son. When he tried getting his children Saudi nationality, he hit a snag. Baksh's son wasn't the problem: When he turns 18 he can apply for

365 - H. Mokhtar, Saudi women demand equal citizenship rights, Arab News, 7 March 2007, available at: .

*citizenship with a strong likelihood of eventually being granted citizenship as the male offspring of a Saudi woman. The girls, however, are barred from the same process, jeopardizing their access to social benefits accorded to Saudi citizens. To get citizenship, Baksh was told they would need to marry Saudis.*³⁶⁶

The United Arab Emirates introduced a similar policy in 2011, but it allows any child (boy or girl) to apply for citizenship when they reach 18 if they have an Emirati mother and non-citizen father. Sheikh Khalifa bin Zayed, President and Ruler of Abu Dhabi ordered the formation of a committee that would determine the specific criteria for granting nationality to children of Emirati women.³⁶⁷ In early 2012, news agencies reported that over 1,000 children had become the first beneficiaries of this policy.³⁶⁸ Elsewhere, there have also been incidences of governmental discretion being used to grant children nationality based on a maternal jussanguinis link, but on a wholly ad hoc basis. For instance, the King of Bahrain reportedly issued a

366 - H. Mokhtar, Saudi women demand equal citizenship rights, Arab News, 7 March 2007, available at: <http://www.arabnews.com/node/295483>.

367 - H. Sajwani, Citizenship law for Emirati women sets good example, The National, 23 December 2011, available at: <http://www.thenational.ae/the-national/conversation/comment/citizenship-law-for-emirati-women-sets-good-example>

368 - UAE Grants citizenship to 1,117 'foreign' children, Ahram Online, 19 February 2012, available at: <http://english.ahram.org.eg/NewsContent/2/8/34901/World/Region/UAE-grants-citizenship-to--foreign-children.aspx>.

Royal Decree granted citizenship to 372 children of Bahraini women married to foreigners in 2006 and has since issued more such decrees, although it is unclear how many have benefited.³⁶⁹ These policy changes mark an historic step forward for the sub-region. However, it is important to realise that in none of these countries is there a guarantee that nationality will be granted because the authorities continue to enjoy discretion in deciding on applications.

The second option that a number of states have gone for is to adopt measures that aim to tackle the impact of gendered nationality laws by granting more rights – but not citizenship – to children whose mother is a national. For example, nationals of Bahrain are exempt from government fees for health services and public schools, while foreigners are not. However, this waiver has now been extended to stateless children, as well as to children whose mothers are nationals and where the children hold the citizenship of the father's country, thereby limiting the practical problems that are otherwise a knock-on effect of the gendered nationality law.³⁷⁰ In

369 - Mixed marriage children granted Bahraini nationality, Bahrain News Agency, 19 September 2006, available at: <http://www.bna.bh/portal/en/news/405411>; Citizenship plan for young hailed, Gulf Daily News, 27 November 2011, available at: <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=318483>; Citizenship in the Gulf – is it a gift or a right? Mideast Posts, 31 March 2012, available at: <http://mideastposts.com/middle-east-society/citizenship-in-the-gulf-a-gift-or-right/>.

370 - S. Hamada, GULF: Gender Discrimination in Citizenship Rights, Inter Press

the United Arab Emirates, with the introduction in 2011 of the new nationality policy outlined above, children of Emirati women have also been granted the same rights as Emirati nationals with regards to education and healthcare during their childhood – since they will only become eligible for nationality upon reaching 18.³⁷¹ As of early 2013, the same policy is being brought in by the Saudi government for children of Saudi women and foreign men.³⁷² Lebanon and Jordan have both also been looking at this type of measure. In 2011, the Lebanese Ministry of Labour announced that work permits would be issued to children (and spouses) of Lebanese women “which are not limited to occupations allowed to foreigners, simplifying the administrative procedures as well as allowing employers of spouses and children of Lebanese women to reclaim bank guarantees (amounting to 1.5 million LBP per person) previously blocked for that purpose”.³⁷³ The previous year, a special type of residence permit was introduced

Service News Agency, 17 September 2009.

371 - Arab Women Now, Inching towards equality, 15 February 2012, available at: <http://www.arabwomennow.com/artsculture/article/inching-towards-equality>.

372 - Kids in mixed marriages granted greater rights, Saudi Gazette, 6 February 2013, available at: <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130206152095>.

373 - The Minister of Labor issues decrees facilitating the right to work for spouses and children of Lebanese women: A beginning of a citizenship spring? My nationality is a right for me and my family, CRTD-A, 28 September 2011, available at: <http://nationalitycampaign.wordpress.com/2011/09/28/the-minister-of-labor-issues-decrees-facilitating-the-right-to-work-for-spouses-and-children-of-lebanese-women-a-beginning-of-a-citizenship-spring/>.

for the children and foreign husbands of Lebanese women, who cannot access their citizenship, but this has not fully resolved the difficulties of securing and maintaining residence in the country.³⁷⁴ In Jordan the government announced in late 2014 that it will offer equal civil rights to the children of Jordanian women as citizen children whilst stopping short of addressing their access to nationality.³⁷⁵

4.6. What are the opportunities and challenges in further de-gendering MENA's nationality policies?

The regional campaign for gender equality in nationality rights continues, with research, awareness raising and advocacy efforts now concentrating on those countries which have yet to significantly reform their nationality laws. A certain momentum has been generated by the successes achieved in the MENA region to date as well as from the broader global trend towards the recognition of equal nationality

374 - M. Mansour and S. Abou Aad, Women's Citizenship Rights in Lebanon, Issam Fares Institute for Public Policy and International Affairs, Working Paper Series #8, May 2012, available at: http://www.aub.edu.lb/ifi/public_policy/rapp/Documents/working_paper_series/20120504ifi_rapp_hrp_wps08_womens_citizenship_rights_in_lebanon_english.pdf.

375 - Jordan Times, Children of Foreign fathers, government offers equal rights, but not citizenship, December 2014, available at: <http://jordantimes.com/article/>

rights for men and women. Yet there are also some clear obstacles on the road to the full eradication of gender discrimination in this area. As such, it is possible to identify both opportunities and challenges in the further de-gendering of MENA's nationality laws, a number of which are presented and discussed below.

4.6.1. Opportunities for de-gendering MENA's nationality policies

While campaigning for reform of MENA's nationality policies has already had a significant impact, there are many more countries in which it has yet to have the desired effect. In these states, the campaign efforts are on-going and women's rights advocates are very much focused on mimicking and extending some of the strategies that have already been successful elsewhere. Thus, research into the hardships generated by gendered nationality laws continues, as does the collection of testimony that helps to portray the human face of the problem. Examples of the former have already been cited throughout his chapter,³⁷⁶ while an interesting and recent

376 - For instance, in Lebanon: F. Charafeddine, *Predicament of Lebanese women married to non-Lebanese*. Field Analytical Study, 2009; M. Mansour and S. Abou Aad, *Women's Citizenship Rights in Lebanon*, Issam Fares Institute for Public Policy and International Affairs, Working Paper Series #8, May 2012; and in Jordan: L. Nasser, *Field Study. Economic, Social, Political and Psychological Implications on Jordanian Women Married to Non-Jordanians and their Families*, Arab Women Organisation of Jordan, June 2010.

example of the latter is the work by photographer Greg Constantine – known for his ‘Nowhere People’ series which captures the lives of stateless people around the world – documenting the difficulties faced by children of Lebanese women.³⁷⁷ Through the combination of pictures and first-hand testimony, Constantine’s work is a powerful advocacy tool, with evocative quotes, such as from Amal, a Lebanese woman whose husband and daughter are both stateless: “I feel lost and with so much pain it is killing me. I can’t do anything for my children. I am Lebanese of a Lebanese father and I can’t do anything for my husband and for my children”.³⁷⁸ Also previously noted in this chapter, the Women’s Refugee Commission project that led to the report ‘Our motherland, our country’ as well as two short films, highlights in detail the impact of gender discrimination in nationality laws through testimonials gathered in Kuwait and Jordan, as well as the positive impact of reform through interviews in Morocco and Egypt.³⁷⁹ In addition, some regional research also spans countries which have yet to reform their laws.³⁸⁰ In all, there is a broad and

377 - Greg Constantine, Lebanon: Born here but not a citizen, Photo Essay for the Pulitzer Center, 19 December 2012, available at: <http://pulitzercenter.org/reporting/lebanon-stateless-gender-discriminating-citizenship-laws-women-rights-politics>.

378 - Ibid.

379 - Women’s Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013.

380 - For instance, G. Tabet, “Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria”, SHS Papers in Women’s Studies / Gender Research

growing body of information that underlines the need for a change in nationality policy and can feed into relevant initiatives.

Secondly, there are strong women's rights groups in place in several of the countries which have yet to implement significant reform and which have the ability to turn this information into campaign materials and activities. Such efforts are already in full swing in some places – in particular in Jordan and Lebanon. For example, in Jordan:

In celebrating Women's International Day and Mother's Day in 2011, AWO and Mosawa Network held a Public Hearing at the Parliament to lobby for reform of the Citizenship Law. Live testimonies raised the issue of citizenship in front of members of the Lower Houses of Parliament. The House Speaker pledged to lobby the government to find "humanitarian" solutions. During May, 2011, AWO and the national campaign: "My mother is Jordanian and Her Nationality is My Right" launched dozens of sit-ins and demonstrations in front of the Parliament under the slogans "We are full citizens", "My mother is Jordanian and her citizenship is my right," and "We are not attacking anyone, we are just demanding our constitutional

No. 4, UNESCO, July 2005.

rights". In July the demonstrations continued in front of the Royal Court in protest against the Citizenship Law, calling for amendments. The protesters appealed to King Abdullah to give Jordanian women their citizenship rights on the same basis as men. The protesters, men women and children, highlighted problems that the children of Jordanian women married to foreigners face today. The women's NGOs have managed to raise the issue to the public and governmental attention and to mobilize for action.³⁸¹

In Lebanon also, the legal reform movement is especially organised, with its online engagement alone a sign of the time and energy that is being invested in this campaign.³⁸² In both Jordan and Lebanon, the issue regularly attracts the attention of the national press, signalling that it is entering the public debate in these countries.³⁸³ Moreover, these clippings demonstrate that similar strategies of public protest and targeted advocacy towards key

381 - Substantive Equality and non-Discrimination in Jordan: Shadow Report submitted to CEDAW Committee at the 51st Session, February 2012, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWO-Mosawa_forthesession_Jordan_CEDAW51.pdf. See for recent campaign activities and updates <http://www.7aqqi.com/SubDefault.aspx?PagelId=186&MenuId=44>.

382 - See relevant blog, facebook and twitter accounts at: <http://nationalitycampaign.wordpress.com/>; <http://www.facebook.com/pages/It-is-my-Right-to-Give-my-Nationality-to-my-Husband-and-Children/362134357148781>; and www.twitter.com/Jinsiyati.

383 - See, in particular, the articles published in Lebanon's Daily Star newspaper.

government stakeholders are among the arsenal of weapons being used by the women's groups in these countries – as they were in the lead-up to the North African legal reforms.³⁸⁴ Petitions are also being used in both countries to gather evidence of support for the de-gendering of the law.³⁸⁵ In Jordan, the softening of government policy towards public protests as a result of the Arab Spring has heralded new opportunities for women's rights activists to take the issue to the streets:

For eight years, Nima Habashna has been garnering online support for the rights of Jordanian women to pass on their citizenship to their non-Jordanian spouses and children. When the Jordanian government — in response to the Arab Spring — scrapped an article in the Public

384 - See, for instance, Hundreds march in Beirut for Women's rights, Daily Star, 11 March 2013, available at: <http://www.dailystar.com.lb/News/Local-News/2013/Mar-11/209573-hundreds-march-in-beirut-for-womens-rights.ashx#axzz2NjvTGVKR>; and Group urges Mikati to amend nationality law, Daily Star, 8 March 2013, available at: <http://www.dailystar.com.lb/News/Local-News/2013/Mar-07/209154-group-urges-mikati-to-amend-nationality-law.ashx#axzz2NjvTGVKR>

385 - "Our children grow up recognizing only Jordan as their homeland. They breathe its air, and love its soil. They speak Arabic with a Jordanian dialect but they do not possess its citizenship" - extract from A petition to the Jordanian Prime Minister by the Group of Jordanian Mothers married to non-Jordanians who launched the campaign "My Mother is Jordanian and Her Nationality is My Right", as found in Substantive Equality and non-Discrimination in Jordan: Shadow Report submitted to CEDAW Committee at the 51st Session, February 2012, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWO-Mosawa_forthesession_Jordan_CEDAW51.pdf. A petition for legal reform in Lebanon can be found at: <http://www.change.org/petitions/aub-e-petition-to-amend-decree-no15-of-the-lebanese-nationality-law>.

*Assembly Law requiring consent to hold rallies, Mrs. Habashna took her cause offline and onto the streets. Over the past few months, she organized several protests outside Parliament, the Royal Palace and the prime minister's office.*³⁸⁶

Thirdly, these activist movements have a number of ideas they have been working with. For instance, the Constitutions of most MENA countries include an article which pronounces the equality of its citizens – in some cases also explicitly equality of the genders. Thus, in Jordan “Many legal analysts argue about the legality of this reservation in reference to the Jordanian Constitution [and] awaiting the establishment of the Constitutional Court, many activists are preparing to question the legality of the Jordanian Citizenship Law”.³⁸⁷ Another trump card which can also be demonstrated with reference to Jordan, is the support which certain prominent members of society have pledged to the cause of achieving greater gender equality under the law. Thus, Queen Rania of Jordan made a call at the 2nd Arab Women's Summit in 2002 for the empowerment

386 - In Jordan, a struggle for gender equality, New York Times Online, 30 November 2011, available at: http://www.nytimes.com/2011/12/01/world/middleeast/in-jordan-a-struggle-for-gender-equality.html?pagewanted=all&_r=0.

387 - Substantive Equality and non-Discrimination in Jordan: Shadow Report submitted to CEDAW Committee at the 51st Session, February 2012, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWO-Mosawa_forthesession_Jordan_CEDAW51.pdf.

of Arab women and the strengthening of their status in society. Across the region, in fact, First Ladies and other prominent women in society have been vocal in the wider women's rights campaigns, often offering a voice for these issues that is heard by the media.³⁸⁸

Women's rights organisations in Bahrain and Syria have also been involved in the collaborative regional reform movement for equal nationality rights. In Bahrain, "a series of workshops and seminars have brought together women's organisations, parliamentarians, members of the Shura Council and the media, which has helped to increase the support for a change to the law among both the public and officials".³⁸⁹ In 2008, it was reported that "more than 2,000 Bahraini mothers have registered with the Nationality Campaign to pressure the government to amend the law" and that the state-run Supreme Council for Women (SCW) has been engaged in lobbying with the government for solutions to the various practical problems that families encounter due to the current laws.³⁹⁰ In 2010, following another

388 - D. Ezzat, In search for gender equality. In Bahrain, a group of Arab women appeal for justice and peace, Al- Ahrām Weekly Online, Issue Nu. 820, November 2006, available at: <http://weekly.ahram.org.eg/2006/820/re71.htm>.

389 - L. van Waas, The situation of Stateless Persons in the Middle East and North Africa, UNHCR, October 2010, at page 12, available at: <http://www.unhcr.org/refworld/pdfid/4cea28072.pdf>

390 - S. Hamada, Stop hating your children: Bahrain's nationality law leaves many of its children stateless, The Wip, 23 May 2008, available at: http://thewip.net/contributors/2008/05/stop_hating_your_children_bahr.html.

seminar on the question, the Bahrain Women's Union set up a petition calling for the immediate reform of the law to grant equal nationality rights to women, which would be submitted to the speaker of Parliament.³⁹¹ While these various efforts may have contributed to the government's ad hoc initiatives of granting citizenship to select children of Bahraini women, they have yet to yield structural change. Similarly, in Syria, a range of activities had been undertaken by women's rights organisations and other NGOs to highlight the problems inherent in the gendered nationality law³⁹² and the issue has also been brought to the attention of the international community.³⁹³ One report also stated that some government bodies – the Syrian Organisation for Family Affairs and the Women's General Union – participated in a study of the issue

391 - Bahraini women seek equal nationality rights, Yemen Post, 10 April 2010, available at: <http://www.yemenpost.net/Detail123456789.aspx?ID=100&SubID=288&MainCat=11>.

392 - See for details, T. Al-Sabaa, Syrian nationality laws deny Syrian women from their share of their children's creation, Syrian Women Observatory, 19 March 2010, available at: <http://www.nesasy.org/index.php/articles-enintro-377/8814-syrian-nationality-laws-deny-syrian-womens-from-their-share-of-their-childrens-creation>; and Citizenship and gender in the Arab world, the role of women's organisations and other NGOs in highlighting citizenship and women's rights: the case of Syria, Café Thawra, 14 April 2010, available at: <http://cafethawrarevolution.wordpress.com/2010/04/14/citizenship-and-gender-in-the-arab-world-the-role-of-womens-organizations-and-other-ngos-in-highlighting-citizenships-and-womens-rights-the-case-of-syria/>.

393 - See, for instance, Syrian Women Observatory, Report on the Application of the Convention on the Elimination of All Forms of Discrimination Against Women in Syria, 20 May 2007, available at: <http://www.nesasy.org/pdf/En/E-cedaw-report-SWO-05-2007.pdf>.

which concluded that Syria should lift its reservation to article 9 of CEDAW.³⁹⁴

Beyond the countries mentioned here – Lebanon, Jordan, Bahrain and Syria – the campaign for further de-gendering MENA's nationality law seems to be less visible or structured. This is not to say that there are no opportunities elsewhere. Indeed, the issue is very much alive in these other states – even across the Gulf region where there is a far smaller presence of women's rights organisations and less political space for the type of activities described above.³⁹⁵ In Qatar, for example, following the news from UAE that children of Emirati mothers would be eligible to apply for nationality at age 18, "Qatari social networking sites were also abuzz with the debate on the issue yesterday with people lauding the UAE for taking such a step".³⁹⁶ As touched upon earlier, the Qatar National Human Rights Committee has also actively taken up the cause and made recommendations to the government regarding legal reform.³⁹⁷

394 - T. Al-Sabaa, Syrian nationality laws deny Syrian women from their share of their children's creation, Syrian Women Observatory, 19 March 2010.

395 - See, for instance, on Oman, R. Al-Talei, "Oman" in S. Kelly and J. Breslin (eds) *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, Freedom House, 2010, available at: http://www.freedomhouse.org/sites/default/files/inline_images/Oman.pdf.

396 - Follow UAE law on children's rights: citizen, MSN Arabia, 1 December 2011, available at: <http://arabia.msn.com/lifestyle/travel/187225/follow-uae-law-childrens-rights-citizen/>.

397 - Qatar National Human Rights Committee, Annual Report Human Rights Status in Qatar, 2010, available at: <http://www.nhrc-qa.org/resources/userfiles/FINAL%20NHRC%20ANNUAL%20REPORT%202010.pdf>.

There are, in addition, several initiatives outside the MENA region that may present new opportunities to achieve the further de-gendering of its nationality laws. International interest in the issue of gender discrimination in the enjoyment of nationality rights and in the problems encountered in the MENA region is on the rise. One example of this has already been touched upon above: the inclusion of Lebanon in Greg Constantine's project to highlight situations of statelessness around the world, explored from the specific angle of Lebanon's gendered nationality laws. Also mentioned already are the many calls made within the context of the human rights monitoring by the UN treaty bodies and the Universal Periodic Review system for legal reform so as to recognise gender equality in nationality rights. Equality Now has published its own campaign document promoting women's nationality rights, which includes some case studies from the MENA region.³⁹⁸ Emerging opportunities can also be introduced here. The first is the Women's Nationality Initiative established by the United States Department of State and spearheaded by then Secretary of State Hillary Clinton.³⁹⁹ Qatar

398 - Equality Now, Campaign to end sex discrimination in nationality and citizenship laws, 2013, at page 7, available at: <http://www.equalitynow.org/sites/default/files/NationalityReport.pdf>.

399 - See Hillary Clinton, Remarks at the United Nations High Commissioner for Refugees Ministerial on the 60th Anniversary of the Refugee Convention, Geneva, December 2011, available at: <http://www.state.gov/secretary/rm/2011/12/178406.htm>.

is among the countries selected as the focus for US diplomatic efforts to push for legal reform (the only MENA country currently on this list).⁴⁰⁰ The project led by the Women's Refugee Commission to further explore and highlight the impact of gender discrimination in nationality laws, with a particular focus on how this is causing statelessness and the knock-on effects of this on peoples' daily lives, provides interesting data and arguments that can be used in campaigns.⁴⁰¹ Finally in 2014 a Global Campaign for Equal Nationality Rights was established which aims to aide in eliminating gender discrimination in nationality laws through building a coalition, co-operating with national and global advocacy strategies, pushing for pledges at the Beijing +20 review, offering technical assistance to local partners and identifying champion countries which others can learn good practises from.⁴⁰² These are all particularly important issues considering that ending gender discrimination in nationality laws is Action Point 3 in the UNHCR global campaign to eradicate statelessness by 2024, a campaign also launched in 2014.⁴⁰³

400 - Women's Nationality Initiative – Fact Sheet, United States Department of State, 8 March 2013, available at: <http://www.state.gov/j/prm/releases/releases/2012/185416.htm>.

401 - Women's Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013

402 - For more information about this campaign see the website <http://equalnationalityrights.org/>

403 - UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/>

4.6.2. Challenges in the road to de-gendering MENA's nationality policies

It is clear from the foregoing paragraphs that the problem of gendered nationality rights and the manifestations of this issue in the MENA region are drawing increasing attention, comment and criticism. Yet, a gender-equal nationality policy has yet to be realised – or even formally tabled for discussion by the government / parliament – in many MENA countries. A number of challenges can be identified that contribute to the disappointing lack of region-wide reform. Furthermore, even following the successful de-gendering of the official rules on conferral of nationality from parent to child, there remain some difficulties in terms of the full implementation of these provisions, plus there are still other pockets of gender discrimination in most of these states' nationality laws.

While the Arab spring has brought new opportunities for women in Jordan to raise awareness of the issue and present their case, it also presents new challenges to the women's nationality rights campaign.⁴⁰⁴ For instance, in Bahrain, there is now less space for public protest which has been an important tool of many of these movements.⁴⁰⁵ The current crisis in Syria has

[docid/545b47d64.html](#)

404 - See above at note 134.

405 - See for one report of the climate currently facing women's rights

also inevitably disrupted any advocacy work on this type of issue, so it is a waiting game to see what the climate will be like when the situation there settles.

Where the relevant campaigns have shown some signs of headway and have even gathered some high profile support, real change remains stubbornly unforthcoming. Thus, in Lebanon, where the campaign activities highlighted above have been generating awareness and public debate for a decade now, none of the promising openings that this has led to substantive change. The case of Samira Soueidan is just one example: a Lebanese woman turned to the courts to demand the right to pass her nationality to her children, whose Egyptian father was deceased. The Court of First Instance ruled in Soueidan's favour and recognised her children's entitlement to nationality, explaining that this was in the interest of the family and further basing this judgement on the provision of the Lebanese Constitution which guarantees equality. However – and in spite of vocal protests by women's rights groups – the Public Prosecutor appealed the decision and went on to win at the Mount Lebanon Appeals Court such that this landmark ruling was

activists in Bahrain, Bahrain Center for Human Rights, International Women's Day: Bahraini women imprisoned, tortured, killed, stripped from nationality... and impunity for abusers, 7 March 2013, available at: <http://www.bahrainrights.org/en/node/5672>.

reversed.⁴⁰⁶ Similarly, on numerous occasions, the women's rights movement has created an opening to present its case regarding the nationality law to prominent members of the government, a parliamentary committee was formed as early as the mid-1990s to study the subject and several draft bills have been tabled at one time or another, yet none of these efforts have paid off.⁴⁰⁷ Throughout 2012, the women's rights groups had various opportunities to present their concerns to the authorities and reform of the nationality law was put on the agenda of the Cabinet and a new Ministerial Committee was set up by the Prime Minister. However, soon thereafter, the news came that this, again, would be a fruitless exercise. According to one source, "a member of the ministerial committee tasked with debating the issue has openly admitted the establishment of the panel was merely a placatory move".⁴⁰⁸

406 - Soueidan's case is now being appealed before the Court of Cassation. S. Abou Aad, Women's Citizenship Rights in Lebanon, Issam Fares Institute for Public Policy and International Affairs, Working Paper Series #8, May 2012. This study also notes that as early as 1972, the Lebanese Court of Cassation actually issued a decision "allowing a woman to give her Lebanese nationality to her minor children according to social and humanitarian considerations, based on the same principles of justice and equity", yet this has not impacted the policy in place nor how it is applied.

407 - S. Abou Aad, Women's Citizenship Rights in Lebanon, Issam Fares Institute for Public Policy and International Affairs, Working Paper Series #8, May 2012.

408 - Cabinet ignores women citizenship rights, The Daily Star, 29 May 2012, available at: <http://www.dailystar.com.lb/News/Local-News/2012/May-29/174947-cabinet-ignores-women-citizenship-rights.ashx#axzz2NjvTGVKR>.

The Lebanese Ministerial Committee's report also points to the principal and oft-repeated obstacles that stand in the way of reform in the country: it "rejected any proposed changes to the current law on the grounds that it would upset the sectarian balance and conflict with Lebanon's constitutional precept banning the naturalization of Palestinians".⁴⁰⁹ Thus, despite all of the research, awareness raising and other campaign efforts by Lebanese women's organisations, the authorities remain concerned about the demographic impact of granting women equal nationality rights with men and this is proving to be of overriding influence. Similarly, in Jordan, despite the concerted effort of different women's rights and activist networks, demographic considerations relating to the situation of the Palestinian population in the country and the government's stance "against the notion of the 'Alternative Homeland'", continue to overshadow at a law and policy level.⁴¹⁰ In addition,

409 - Nationality campaigners target ministers, The Daily Star, 23 January 2013, available at: <http://www.dailystar.com.lb/News/Local-News/2013/Jan-23/203420-nationality-campaigners-target-ministers.ashx#axzz2lIdWLD5c>. See also R. Maktabi, Do women count as people in Arab politics? Post-2011 democratisation in light of pre-2011 tensions around family law reform in the Middle East and North Africa Region, 2013, available at: <http://www.uio.no/english/research/interfaculty-research-areas/democracy/news-and-events/events/conferences/2013/Programme/rania-maktabi-workshop-5-oslo-democracy-conference-2013.pdf>; and the separate discussion paper L. van Waas, Citizenship, statelessness and the numbers game in Lebanon, MENA Nationality and Statelessness Project, 2014.

410 - L. Nasser, Field Study. Economic, Social, Political and Psychological Implications on Jordanian Women Married to Non-Jordanians and their Families, Arab Women Organisation of Jordan, June 2010, at page 9.

there is a more general apprehension among those in charge that a change to the law will ultimately lead to “a loss of political and demographic clout”.⁴¹¹

It is also clear that, while it is certainly important that the international community is watching this issue more and more closely, MENA states are not necessarily sensitive to external pressures – especially where these emanate from human rights bodies. Recommendations made by UN human rights treaty bodies or within the UPR process over the past decade have evidently not been implemented. For instance, in 2010, during the first UPR cycle the Netherlands urged Qatar “To review its reservations to the Convention on the Elimination of All Forms of Discrimination against Women with a view to withdrawing them, especially the reservation to the right of a child to obtain Qatari nationality from a Qatari women married to a foreign man”, but this was one of the recommendations rejected by the Qatari authorities.⁴¹² There is a general reticence to the idea

411 - In Jordan, a struggle for gender equality, New York Times Online, 30 November 2011, available at: <http://www.nytimes.com/2011/12/01/world/middleeast/in-jordan-a-struggle-for-gender-equality.html?pagewanted=all&r=0>.

412 - Human Rights Council, Report of the working group on the Universal Periodic Review: Qatar, A/HRC/14/2, 15 March 2010, at paragraph 86, recommendation 3. Similar recommendations were made by France, Slovenia, Spain, all of which were ultimately not accepted by Qatar. Ibid at paragraph 85 and Human Rights Council, Report of the working group on the Universal Periodic Review: Qatar. Addendum – Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/14/2/Add.1.

that the international community – or international law – can compel states to adopt a particular stance in their nationality policy. This is demonstrated, for instance, by the formulation of the United Arab Emirates' reservations to article 9 of CEDAW and article 7 of the CRC, which read, respectively: "the United Arab Emirates, considering the acquisition of nationality an internal matter which is governed, and the conditions and controls of which are established, by national legislation makes a reservation to this article and does not consider itself bound by the provisions thereof" and "UAE is of the view that the acquisition of nationality is an internal matter and one that is regulated and whose terms and conditions are established by national legislation".

Arguably, the campaign for women's nationality rights in the MENA region would gain more traction if it also succeeds in garnering support from regional or sub-regional bodies – in addition to those at the global level – such as the Organization of Islamic Cooperation (OIC), the Arab League or the Gulf Cooperation Council. In fact, the Covenant on the Rights of the Child in Islam (adopted by the OIC), specifically prescribes the right of a child to acquire a nationality in its Article 7 and it is evident that this right is often hindered due to gender discrimination in

nationality legislation.⁴¹³ The Arab Charter on Human Rights where equality between men and women are upheld (Articles 3 & 1), as well as the right to a nationality (Article 29) could also be a tool in supporting the push for reform.⁴¹⁴ Exploring these alternative avenues for dialogue on gendered nationality laws may offer new and much-needed opportunities for presenting the case for reform in those MENA states where this goal is still some way off.

Where legal reform has been achieved, some challenges remain – not least ensuring that the new law is implemented effectively. In some countries, the women's movements that participated in the campaign for gender equality in nationality rights also participated in awareness-raising activities once the new policy was introduced. For instance, in Algeria, the Centre d'Information en Documentation sur les Droits de l'Enfant et de la Femme (CIDDEF) produced a series of brochures following the country's amendment of its nationality act in 2005.⁴¹⁵ Or, in Egypt, it has been reported that the Forum

413 - The text of the Covenant can be found at: <http://www.oicun.org/uploads/files/convention/Rights%20of%20the%20Child%20In%20Islam%20E.pdf>.

414 - The text of the Arab Charter can be found at: <http://www.lasportal.org/wps/wcm/>

415 - An example can be found at <http://www.ciddef-dz.com/pdf/autres-publications/code-nationalite/codenationaliter.pdf>. During an interview with CIDDEF staff in February 2012, it was reported that the procedure to register children of Algerian women was simple and effective and that there were no problems of recognition of Algerian nationality for such children, so long as the mother has proof of her Algerian citizenship.

for Women in Development, a network of Egyptian NGOs dealing with women's issues that was launched in 1997 by 15 civil society organizations, is taking the lead in monitoring implementation of the nationality reform.⁴¹⁶ Nevertheless, very little information is publically available about the impact of the new laws or about remaining obstacles that women face in passing their nationality to their children. Field research for the Women's Refugee Commission in Morocco, however, quickly uncovered quite a number of cases in which women have been unable to secure citizenship documents for their children, despite these children's automatic entitlement to nationality under the new law. The problems seem to disproportionately affect children who are born out of wedlock, who are refused birth certificates on the basis that the mother has no marriage certificate to show, and are subsequently unable to acquire the ID cards issued to all Moroccan citizens.⁴¹⁷ Further study is needed to discover whether this involves a problem of non-recognition of nationality or purely of obstacles in accessing documentation, as well as to

416 - M. Freeman, Reservations to CEDAW: An analysis for UNICEF, Discussion paper, December 2009, at page 14, available at: http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf.

417 - Interviews conducted by Z. Albarazi in February 2013 in Morocco. Women's Refugee Commission, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013.

explore whether such challenges are also faced by women in other countries.

Finally, as has already been pointed out earlier in this chapter, it is important to recall that across the entire MENA region, there are still pockets of gender discrimination in the nationality laws. With Algeria as the sole exception, all MENA states still make it more difficult for a woman to confer nationality to her foreign spouse than vice versa. In addition and as also outlined above, there are still some gendered *jus soli* provisions and, during marriage, a woman's nationality is more vulnerable to being affected by the loss of nationality of her spouse than in the reverse scenario.⁴¹⁸ It is evident that traditional patriarchal and patrilineal perceptions of the family and of nationality are still a significant influence on nationality policy and there is still a great distance to go in the journey towards full gender parity in nationality rights. Yet, the first milestones have been reached and the general trend across the whole MENA region is towards recognition, if not of women's equal entitlement to nationality rights, then at least of the need to restrict to a very minimum the negative practical consequences of gendered nationality rules.

418 - See the examples in sections 1.2 – 1.4 above.

4.7. Concluding observations

Worldwide, most countries now place men and women on an equal footing when it comes to nationality rights. The problems that women historically faced with regard to acquisition, retention and transmission of nationality have been addressed through targeted amendments to the relevant laws. In this respect, there have been advances over the past decade in many MENA states, including Egypt, Morocco, Algeria, Tunisia, Iraq, Libya, Yemen, Saudi Arabia and UAE. However, overall, the region still lags clearly behind other parts of the world in this important legal reform process. Firstly, most of the aforementioned countries have stopped short of granting women full equality with men in the enjoyment of nationality rights and there are also questions regarding the validity and enforceability of some of the amendments passed. And secondly, as shown in this chapter, those MENA states not listed above all retain a highly discriminatory nationality policy, including severe restrictions on the right of women to transmit their nationality to their children. This can have a detrimental impact on the lives of citizen women who have children with foreign or stateless men – as well as on the lives of those family members – creating hardship, hampering access to fundamental rights and generating feelings of rejection, frustration and depression. Of

particular concern is how such policy can contribute to the creation, perpetuation or prolongation of statelessness.

Understanding and demonstrating the connection between these issues is one way in which the campaign for women's equal nationality rights is becoming harder for MENA governments to ignore. Indeed, with a greater emphasis on the broader impact of gendered nationality law as a human rights, child rights or family rights issue – not just a women's rights concern – it is likely that these campaigns will gain even more traction. All of the key ingredients are already in place: positive examples of reform within the region, increased attention from the international community, an increasingly expert campaign movement which is implementing ideas and lessons drawn from the countries where successes have already been achieved and a variety of new openings for raising the issue. While MENA does currently lag behind the rest of the world in recognising the nationality rights of women, if existing trends continue and if governments are able to set aside their political and demographic concerns (that research has anyway shown to be largely unfounded), the region could be set to catch up soon.

This is a crucially important time to be involved in addressing statelessness. On the global level there is momentum and resources that can be tapped into. The recently launched #ibelong global campaign for example, spearheaded by the United Nations High Commissioner for Refugees (UNHCR) aims to eradicate statelessness by 2024 and will engage further action and resources by governments, civil society, UN agencies and others to address this issue. More regionally as well, there has been increased interest in the issue by various stakeholders. In November 2015 a meeting was held in Beirut organized by Legal Agenda, Tilburg University, Open Society Foundations and Frontiers to bring in experts and practitioners from across the region to discuss the various issues. Stakeholders represented all the sub-regions of the MENA and all the varying civil society sectors. It was clear that understanding of the issue and passion to drive forward solutions to statelessness was high. Exploring and addressing the issue of statelessness in the region will help highlight those issues, expand awareness and understanding and share strategies and approaches to advocacy for the rights of stateless persons.

Annex:

Comparative

nationality law

tables

Table 1: Acquisition of nationality at birth – *jus sanguinis*

Country	Father is a national, child born in country	Mother is a national, child born in country	Father is a national, child born abroad	Mother is a national, child born abroad	Mother is a national, father is stateless	Mother is a national, father is unknown
Algeria	Art 6	Art 6	Art 6	Art 6	n/a	n/a
Bahrain	Art 4(a)	-	Art 4(b)	-	-	-
Egypt	Art 2(1)	Art 2(1)	Art 2(1)	Art 2(1)	n/a	n/a
Iraq	Art 3(a)	Art 3(a)	Art 3(a)	Art 3(a)	Art 4	Art 4
Jordan	Art 3(3)	-	Art 3(3)	-	Art 3(4) >	Art 3(4) >
Kuwait	Art 2	-	Art 2	-	-	-
Lebanon	Art 1	-	Art 1	-	-	Art 2
Libya	Art 3(a)	Art 11	Art 3(b) *	Art 11	Art 3(c)	-
Mauritania	Art 8(1)	Art 8(3)	Art 8(1)	Art 13 *	Art 8(2)	Art 8(2)
Morocco	Art 6	Art 6	Art 6	Art 6	n/a	n/a
Oman	Art 1(1)	-	Art 1(1)	-	Art 1(2) ¹	Art 1(2)
Qatar	Art 1(4)	-	Art 1(4)	-	-	-
Saudi Arabia	Art 7	Art 8 **	Art 7	-	-	Art 7
Syria	Art 3(a)	-	Art 3(a)	-	-	Art 3(b) >
Tunisia	Art 6	Art 6	Art 6	Art 6	n/a	n/a
UAE	Art 2(b)	-	Art 2(b)	-	Art 2(d)	Art 2(c)
Yemen	Art 3(a)	Art 3(b)	Art 3(a)	Art 3(b)	n/a	n/a

Unless indicated otherwise, the acquisition of nationality under the articles cited in this table is automatic, by operation of the law and without further conditions. Please note that the table offers a simplified overview of the content of the nationality

law only and does not consider any problems that may exist regarding the full and correct implementation of the law in practice.

Articles in bold indicate areas in which the law has an apparent internal inconsistency: for instance, both a general provision allowing a child to acquire nationality from its mother and a special rule allowing for this possibility in the specific circumstance that the father is stateless.

Key to symbols used in the table:

- n/a Issue not applicable because regular *jus sanguinis* rules already cover any situation in which the mother is a national of the state
- Not covered by any provision in the law
- * Non-automatic acquisition of nationality: registration or application required (non-discretionary procedure)
- ** Non-automatic acquisition of nationality: application required (discretionary procedure)
- > Child must be born in the country or meet additional requirements if born outside the country

Table 2: Acquisition of nationality at birth – *jus soli*

Country	Child born in country who would otherwise be stateless	Child born in country whose parent(s) were born in the country	Child born in country to whose parents are stateless
Algeria	-	-	-
Bahrain	-	-	-
Egypt	-	Art 4(3) < **~	-
Iraq	-	Art 3(5) **~	-
Jordan	-	-	-
Kuwait	-	-	-
Lebanon	Art 1(2)	-	-
Libya	-	-	-
Mauritania	-	Art 9(1) *	-
Morocco	-	Art 9(1) < *~	-
Oman	-	Art 1(4) < ~	-
Qatar	-	-	-
Saudi Arabia	-	-	-
Syria	Art 3(d)	-	Art 3(c)
Tunisia	-	Art 7 ~	Art 8 <
UAE	-	-	-
Yemen	-	Art 4(c) ~	-

Unless indicated otherwise, the acquisition of nationality under the articles cited in this table is automatic, by operation of the law and without further conditions. Please note that the table offers a

simplified overview of the content of the nationality law only and does not consider any problems that may exist regarding the full and correct implementation of the law in practice.

Key to symbols used in the table:

- n/a Issue not applicable because regular *jus sanguinis* rules already cover any situation in which the mother is a national of the state
- Not covered by any provision in the law
- * Non-automatic acquisition of nationality: registration or application required (non-discretionary procedure)
- ** Non-automatic acquisition of nationality: application required (discretionary procedure)
- ~ Paternal affiliation only – i.e. law requires the child's *father* to have also been born in the country
- < Additional requirements must be met

Table 3: Foundling

Country	Foundlings
Algeria	Art 7(1)
Bahrain	Art 5(b)
Egypt	Art 2(2)
Iraq	Art 3(b)
Jordan	Art 3(5)
Kuwait	Art 3
Lebanon	Art 1(3)
Libya	Art 3(c)
Mauritania	Art 10
Morocco	Art 7
Oman	Art 1(3)
Qatar	Art 2(4)
Saudi Arabia	Art 7
Syria	Art 3(c)
Tunisia	Art 9, 10
UAE	Art 2(e)
Yemen	Art 3(d)

Table 4: Voluntary renunciation of nationality

Country	Nationality can be voluntarily renounced
Algeria	Art 18 * ²
Bahrain	Art 9(1b)
Egypt	-
Iraq	Art 10(1) *
Jordan	Art 15, 16
Kuwait	-
Lebanon	Art 6 *
Libya	-
Mauritania	Art 31 *
Morocco	Art 19(1) *
Oman	-
Qatar	-
Saudi Arabia	-
Syria	Art 10 *
Tunisia	Art 30 *
UAE	-
Yemen	-

Please note that the table offers a simplified overview of the content of the nationality law only and does not consider any problems that may exist regarding the full and correct implementation of the law in practice.

Key to symbols used in the table:

- * Nationality cannot be voluntarily renounced if statelessness would result

Table 5: Loss and deprivation of nationality - common grounds

Country	Residence abroad	Services to a foreign state	Allegiance to a foreign or enemy state	Crime against state or threat to national security	Serious non-political crime	Fraud
Algeria	-	Art 23(3) ~^	-	Art 22(1) ~^	Art 22(2) ~^	-
Bahrain	-	Art 10(a)	Art 10(b)	Art 10 (c)	Art 8(2) ~^	Art 8(1) ~
Egypt	Art 15(3) ~^	Art 16(2) Art 16(4) Art 16(6)	-	Art 15(2) ~^ Art 16(3) Art 16(5)	Art 15(1) ~^	Art 15 ~^
Iraq	-	-	-	Art 15 ~	-	Art 15 ~
Jordan	-	Art 18(1) Art 18(2a)	Art 18(2b)	Art 18 (2c) Art 19(1) ~	-	Art 19(2) ~
Kuwait	-	Art 13(4) ~ Art 14(1)	Art 13(5) ~ Art 14(2) Art 14(3)	-	Art 13(2) ~^	Art 13(1) ~
Lebanon	-	-	Art 8(2)	-	-	-
Libya	Art 13(2) ~^	-	-	Art 13(1) ~^	-	Art 12 ~
Mauritania	-	Art 33(3) ~	-	Art 33(1) ~	Art 33(2) ~	Art 22 ~
Morocco	-	Art 19(5)	Art 22(3)~	Art 22(1a) ~ Art 22(1b)	Art 22(1d) ~	Art 14~
Oman	-	Art 13(3)	Art 13(4)	Art 13(5) ~	-	Art 13(1)~
Qatar	Art 12(4) ~	Art 11(1)	Art 11(2)	Art 11(3) Art 11(4)	Art 12(2) ~	Art 12(1) ~

Saudi Arabia	-	Art 13(b,d)	Art 13(c)	Art 21(b) ~^	Art 21(a) ~^	Art 22 ~
Syria	Art 21(e,g)	Art 21 (b,c)	Art 21 (d)	Art 21(f) ~	-	Art 20 ~
Tunisia	-	Art 32	-	Art 33(1,2) ~^	Art 33(3)~^	-
UAE	Art 16(4) ~^	Art 15(a)	Art 15(b)	Art 16(1) ~	Art 16(2) ~	Art 16(3) ~
Yemen	Art 18(b) ~^	Art 19(a,b,c) ~	-	Art 18(d) ~^ Art 19(d) ~	Art 18(a) ~^	Art 18(c) ~^

Please note that the table offers a simplified overview of the content of the nationality law only and does not consider any problems that may exist regarding the full and correct implementation of the law in practice. Other grounds for loss or deprivation of nationality that feature in only one or two countries in the region are listed in table 6.

Note that none of these provisions contain a safeguard such that loss or deprivation of nationality cannot result in statelessness.

Key to symbols used in the table:

- ~ Nationality can only be lost/deprived if a naturalised citizen
- ^ Time limit for loss/deprivation of nationality, i.e. only possible within certain number of years after naturalisation

Table 6: Loss and deprivation of nationality - exceptional grounds

Country	Other grounds
Algeria	-
Bahrain	-
Egypt	Believed to be a Zionist - Art 16(7)
Iraq	-
Jordan	-
Kuwait	Dismissed from public service for reasons relating to honour / honesty – Art 13(3) Renounced Islam or shown evidence of wanting to – Art 4(5) ~
Lebanon	-
Libya	"Justified decision" – Art 14
Mauritania	Found to be physically or mentally disabled – Art 14 ~^
Morocco	Terrorism – Art 22(1c) ~ Failed to fulfil military obligations – Art 22(2) ~
Oman	Atheist or belonging to an anti-religious group – Art 13(2)
Qatar	Dismissed from public position for reasons relating to honour – Art 12(3) ~ "In the public interest" – Art 11, 12
Saudi Arabia	Worked for international organisation despite order to quit – Art 13(d)
Syria	-
Tunisia	Failed to fulfil military obligations – Art 33(4) ~^
UAE	-
Yemen	-

Please note that the table offers a simplified overview of the content of the nationality law only and does not consider any problems that may exist regarding the full and correct implementation of the law in practice. The most common grounds for loss or deprivation of nationality that feature in the laws of countries in the region are shown in table 5.

Note that none of these provisions contain a safeguard such that loss or deprivation of nationality cannot result in statelessness.

Key to symbols used in the table:

- ~ Nationality can only be lost/deprived if a naturalised citizen
- ^ Time limit for loss/deprivation of nationality, i.e. only possible within certain number of years after naturalisation

Table 7: Naturalisation – eligibility requirements

Country	Residence period	Language knowledge and/or integration	Income	Good character / clean criminal record	Mental or physical health	Other
Algeria	7 years Art 10(1)	Assimilated Art 10(7)	Art 10(5)	Art 10(4)	Art 10(6)	-
Bahrain	25 years Art 6(1a)	Speaks Arabic well Art 6(1c)	-	Art 6(1b)		Must own real estate – Art 6(1d)
Egypt	10 years Art 4(5)	Fluent Arabic Art 4(4.3)	Art 4(4.4)	Art 4(4.2)	Art 4(4.1)	-
Iraq	10 years Art 6(c)	-	Art 6(e)	Art 6(d)	Art 6(f)	Palestinians excluded – Art 6(f2)
Jordan	4 years Art 12(1)	Fluent Arabic Art 12(4)	Art 12(7)	Art 12(2) + 12(5)	Art 12(6)	-
Kuwait	20 years Art 4(1)	Know Arabic Art 4(3)	Art 4(2)	Art 4(2)	-	Must be Muslim – Art 4(5) Must hold qualifications needed in country – Art 4(4)

Lebanon	5 years Art 3	-	-	-	-	-
Libya	10 years Art 9(3)	-	Art 9(3)	Art 9(4)	Art 9(5)	Must be under 50 years old – Art 9(6) Must meet any other conditions deemed relevant to public interest – Art 9(7)
Mauritania	10 years Art 18	Fluent in one of official languages Art 19(2)	-	Art 19(3)	Art 19(1)	-
Morocco	5 years Art 11(1)	Sufficient knowledge of Arabic Art 11(5)	Art 11(6)	Art 11(4)	Art 11(3)	-
Oman	20 years Art 2(2)	Read + write Arabic Art 2(1)	Art 2(4)	Art 2(3)	Art 2(5)	-
Qatar	25 years Art 2(1)	Proficient in Arabic Art 2(4)	Art 2(2)	Art 2(3)	Art 18	Annual naturalisation quota: max. 50 people – Art 17
Saudi Arabia	5 years Art 9(c1)	-	Art 9(c4)	Art 9(c2 + c3)	-	-

Syria	5 years Art 4(b)	Read + write Arabic Art 4(f)	Art 4(e)	Art 4(d)	Art 4(c)	Must hold qualifications benefiting country – Art 4(e)
Tunisia	5 years Art 20	Sufficient knowledge of Arabic Art 23(2)	-	Art 22 + 23(5)	Art 23(3 + 4)	-
UAE	20 or 30 years Art 8	Proficient in Arabic Art 8(e)	Art 8(c)	Art 8(d)	-	-
Yemen	10 years Art 5(2)	Proficient in Arabic Art 5(5)	Art 5(4)	Art 5(3)	-	Must be Arab or Muslim – Art 5

Please note that the table offers a simplified overview of the content of the nationality law only and does not consider any problems that may exist regarding the full and correct implementation of the law in practice.

Table 8: Naturalisation – facilitated categories

Country	Born in country	Married to national	Arab / from Arab country	Exceptional services to the state	Stateless persons
Algeria	-	Art 9(bis)	-	Art 11	-
Bahrain	-	Art 7(1) *	Art 6(1a)	Art 6(2)	-
Egypt	Art 4(1)	Art 6 *	-	Art 5	-
Iraq	-	Art 7 + 11 ~	-	-	-
Jordan	-	Art 8 *	Art 13(2)	Art 13(2)	-
Kuwait	-	Art 7 *	Art 4(1)	Art 5(1)	-
Lebanon	-	Art 5 *	-	Art 3	-
Libya	-	Art 10(2 + 3) *	-	Art 10(1 + 4)	-
Mauritania	Art 18	Art 16 + 18 ~	-	Art 18	-
Morocco	-	-	-	Art 12	-
Oman	-	Art 2(2) + 4 ~	-	-	-
Qatar	-	Art 8 *	-	Art 6	-
Saudi Arabia	Art 8	Art 15 + 16 *	-	-	-
Syria	-	Art 8(1) *	Art 6(c)	Art 6(b)	-
Tunisia	-	Art 13 + 21(2) ~	-	Art 12(3)	-
UAE	-	Art 3 *	Art 5,6	Art 9	-
Yemen	Art 4(b)	Art 11 *	-	Art 4(d)	Art 6 ¹

Please note that the table offers a simplified overview of the content of the nationality law only and does not consider any problems that may exist regarding the full and correct implementation of the law in practice.

Key to symbols used in the table:

- * Naturalisation facilitated for female spouses of male nationals only
- ~ Naturalisation for female spouses of male nationals is more facilitated than for male spouses of female nationals
- ¹ Naturalisation facilitated if “urgent need” for obtaining nationality, no direct reference to stateless persons as beneficiaries

(Footnotes)

1 - Stateless father must be former Omani.

2 - A child who acquires Algerian nationality through the naturalisation of a parent can voluntarily renounce this nationality within 2 years after attaining majority, even if subsequently stateless (articles 18(4) and 17(2)).