

**Briefing on *Qatar, Iraq and Bahrain* for the Committee on the Elimination of Discrimination against Women (CEDAW) 57<sup>th</sup> Pre-session Working Group, 29<sup>th</sup> July – 02 August 2013**

The Women's Refugee Commission and Tilburg University Statelessness Programme have prepared the following statement on State policy in respect of Article 9 of CEDAW.

**Gender discrimination in nationality laws**

Historically, most countries had elements of gender discrimination in their nationality laws. With a view to protecting the unity of a family, it was deemed to be in the family's best interest if all members possessed the same nationality. The nationality of women therefore followed that of their husband and the nationality of children was determined by that of their father. However, with a growing focus on human rights and gender equality, the perspective on nationality changed and women were recognised to hold equal nationality rights with men. The adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 was a key milestone in this regard, with the inclusion of Article 9 which stipulates equal rights of men and women to confer nationality to their children. Over the past few decades, under the influence of this change of mind-set and of CEDAW, the majority of states have made their nationality laws gender neutral.

Today, discriminatory legislation remains in 29 states worldwide, 14 of which can be found in the Middle East and North Africa (MENA).<sup>1</sup> Gender discrimination manifests itself in these nationality laws as provisions which do not allow women to acquire, change, retain or pass on their nationality to their children and/or their spouses on an equal basis to men.

**The impact of discriminatory nationality laws: statelessness**

One of the consequences of this enduring discrimination is that it can render children of national women and non-national fathers stateless. There are many circumstances in which the inability of women to pass on their nationality may expose children to statelessness, including:

- where the father died before the birth of the child;
- where the father is unknown;
- where the father is stateless and has no nationality to confer;
- where the father holds a nationality but is unable to confer it
- where the child is born abroad or out of wedlock;
- where the father is unable or unwilling to take the necessary steps to secure a nationality for the child.

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<sup>1</sup> UN High Commissioner for Refugees, *UNHCR and CRTD. A Regional Dialogue on Gender Equality, Nationality and Statelessness : Overview and Key Findings*, January 2012, available at: <http://www.refworld.org/docid/4f267ec72.html>

The impact of the resulting statelessness on individuals and families is severe. Stateless persons can face restrictions on their access to fundamental rights such as formal employment, public healthcare, state education, social welfare, official documents, judicial process and the right to own and inherit property.

### **The impact of discriminatory nationality laws: family life**

Research recently conducted by the Women's Refugee Commission in the MENA region has shown that where families are affected by statelessness due to gender discrimination in the nationality law, this also has a dire effect on family unity.<sup>2</sup> These findings directly undermine the very justification for the discrimination. Rather than serving to protect the family unit, laws which do not recognise women's independent nationality rights have the effect of breaking up families by restricting their healthy development and putting great strain on their structure.

The interference with family unity begins right at the beginning with obstacles for stateless persons in marrying or starting a family. These obstacles vary from having no documentation, to being repeatedly rejected by potential suitors because of their status. Due to increased risk of detention and deportation, the physical unification of a family is often threatened, and due to the lack of property and inheritance rights, the financial stability of a family is at constant risk. There is even pressure in some countries for parents to divorce to resolve their situation, adding to the psychological strains put on a family.<sup>3</sup> Additionally, stateless persons and groups become impoverished as well as institutionally and socially isolated, leading to a heightened risk of local or national tensions.

### **The MENA region and the countries under review**

Due recognition should be given to the fact that the MENA region has seen a wave of reform of nationality laws during the last decade to make them less discriminatory. Other legislative and policy initiatives have been put in place to ensure that children of national women have access to fundamental rights. Thus, in both North Africa and the Gulf Cooperation Council, positive progress has been made. However, despite ongoing national and international efforts to advocate for further reform and improved implementation of the relevant laws, there is still a long way to go to ensure that families are protected through the nationality legislation and children are not put at risk of being rendered stateless.

The remainder of this statement is devoted to comments and recommendations relating specifically to the three MENA countries currently under the review of CEDAW. Iraq, which recently reformed its nationality law to recognise women's right to transmit nationality to their children, is discussed first. This is followed by Bahrain and Qatar which both retain highly discriminatory nationality laws. It is important to note that all three of these countries maintain a reservation to article 9 of CEDAW.

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<sup>2</sup> Women's Refugee Commission, *Our Motherland, Our Country*, June 2013. This report, alongside the two video advocacy clips and the photo essay can be found here ; <http://www.womensrefugeecommission.org/component/content/article/143-misc/1656-the-women-s-refugee-commission-launches-new-report-on-statelessness?highlight=YToxOntpOjA7czoxMzoic3RhdGVsZXNzbnVzcyI7fQ==>

<sup>3</sup> For example Article 5.2 of the Kuwaiti nationality law states that the Minister may allow the nationality to be given to: 'any person [upon his attaining his majority who was] born to a Kuwaiti mother and who has maintained his residence [in Kuwait] until reaching the age of majority and whose foreign father has irrevocably divorced his mother or has died.'

## Iraq

### **Iraqi Nationality Law (2006)**

#### Article 3

A person shall be considered Iraqi if:

- a. he/ she is born to an Iraqi father or an Iraqi mother;

#### Article 4

The Minister may consider Iraqi any person born outside Iraq to an Iraqi mother and an unknown or stateless father, if he chooses the Iraqi nationality, within one year from coming of age (reaching the age of maturity), unless he fails to do so, due to difficult circumstances, provided that he is residing within Iraq at the time of application for the Iraqi nationality.

We welcome the 2006 reform of the Iraqi nationality law to allow women the right to pass nationality to their children and note that it appears to be widely accepted in the country and supported by jurisprudence. However, there remain two significant concerns with regards to gender discrimination in Iraq's nationality policy.

Article 3 of the Iraqi Nationality Law establishes the equal right of an Iraqi father and mother to transmit nationality to their children. No further conditions are placed on this conferral of nationality by descent. Nevertheless, the retention of article 4 causes difficulties in the interpretation and application of this rule by explicitly authorising the Minister to consider granting nationality to a child born to an Iraqi mother *outside Iraq*, if the father is *unknown or stateless*. This language contradicts that of the preceding article which should allow all children of an Iraqi mother to acquire nationality as a matter of right, regardless of place of birth. In practice, female nationals can only confer their nationality to their children on an equal par to men if the child is born in the territory of Iraq. This discrimination is unjustified and is furthermore in violation of Article 14 of the Iraqi constitution that stipulates equality between men and women. Additionally it has been noted that the procedural requirements for proving that the father is stateless are strict and often highly difficult to fulfil. As there are a large number of Iraqi women in the Diaspora married to non-Iraqi men, this puts many children at risk of becoming stateless.

Secondly, the retroactive implementation of the amendment must be fully reviewed. It has been noted that there was limited effort to ensure that people living in isolated regions of Iraq and families living abroad understood the retroactive nature of the law and the procedural process, so that all children of Iraqi women born before the amendment of the law could benefit from its provisions, including where these children were previously stateless.

### **Recommendations to the Government of Iraq**

- In line with its international and national obligations, remove Article 4 of the Iraqi nationality law to ensure a more gender neutral nationality legislation.
- Ensure wider dissemination of information about the reform of the law, especially to rural areas of Iraq and the Iraqi Diaspora, by continuing to raise awareness through publicity campaigns.
- Withdraw its reservation to article 9 of CEDAW.

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## Qatar

### Qatari Nationality Law (2005)

Article 1) The following shall be deemed to be Qatari Nationals: {.....}

4. Any person born in Qatar or in a foreign country to a Qatari father in accordance with the preceding Articles.

### State Report

Paragraph 213. “Reservation entered by Qatar to article 9, paragraph 2, of the Convention. Qatar entered a reservation to article 9, paragraph 2, of the Convention, which provides: “States Parties shall grant women equal rights with men with respect to the nationality of their children.” Under the Qatari Nationality Act, nationality is granted on the basis of blood ties, i.e. based on the nationality of the father. Qatari women with foreign husbands do not have the right to transmit their nationality to their children. This is to prevent people from holding dual citizenship. The exigencies of the public interest inform the approach taken to this issue, given that nationality is bound up with the discretionary power and sovereignty of the State. There are measures, however, to ensure that the children of Qatari women with foreign husbands receive the same treatment as children of Qatari nationals in the areas of education, health, employment, etc.”

### Comments

Qatar is the only country in the MENA that does not allow women to confer nationality to their children or spouse under any circumstance. This discrimination leaves children who are prohibited from accessing the nationality of their mother at risk of becoming stateless.

We refer to Qatar’s report to CEDAW paragraph 213. We are encouraged by the government’s pledge to ensure that the children of Qatari women receive equal treatment by the state to children of Qatari men in the areas of education, health and employment. However we do not believe this is enough to ensure that the fundamental right of access to a nationality are protected, or that the State is able to protect family unity with such laws. With a large stateless population in the Gulf region, including in Qatar, comprising mainly the Bidoon, Qatar’s nationality law puts children at risk of becoming stateless.

Article 21 of the Qatari constitution states that

*‘The family is the basis of the society. A Qatari family is founded on religion, ethics, and patriotism. The law shall regulate adequate means to protect the family, support its structure, strengthen its ties, and protect maternity, childhood, and old age.’*

In order to uphold Qatar’s constitutional obligation to ensure the protection of the family, it is essential that the country amends its discriminatory nationality laws which are putting children at risk of becoming stateless. The justification given in paragraph 213 of the State report is that this discrimination prevents people from holding dual citizenship. Qatar should nonetheless ensure that children are not rendered stateless by this law by including a provision to allow children who would

otherwise be stateless access to Qatari nationality. Furthermore, other states that do not recognize dual nationality address this question through alternative mechanisms, for example by requiring the children to choose, at the age of 18, one of the nationalities.

As well as upholding a reservation to Article 9 of CEDAW, Qatar's discriminatory nationality laws are also in violation of many of its other international obligations under international human rights law. These include Article 26 of the ICCPR, Article 15 of CEDAW and Article 7 of the CRC.

### **Recommendations to the Government of Qatar**

- Take immediate steps to ensure that children born to Qatari mothers who would otherwise be stateless have access to Qatari nationality.
- Explore how it can remove gender discrimination from its nationality legislation whilst preserving the prohibition of dual nationality
- Withdraw its reservation to Article 9 of CEDAW

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## **Bahrain**

### **Bahrain Citizenship Act (1963)**

#### Article 4

Anyone shall be regarded a Bahraini national, if:

(A) Was born in Bahrain after the effective date of this act and his father was a Bahraini at the time of birth.

(B) Born outside Bahrain, after the effective date of this Act, and his father was a Bahraini national at the time of birth provided that this father or the grandfather was born in Bahrain.

(C) Born in Bahrain or abroad, after the effective date of this Act, and his mother, at the time of birth was a Bahraini national provided that father was unknown, without nationality or fatherhood was not substantiated.

## **Bahrain**

### **State Report**

Paragraph 117-119 "The Bahraini legislature recognises right of blood on the father's side, a position upheld by experts in private international law on the grounds that the said criterion constitutes a presumption of the affirmation of a feeling of national belonging and of the spiritual bond linking a person to the nation to which his forefathers belonged. {...}

Here, the legislature is seeking to avoid the acquisition of dual nationality by the children, as they will acquire the nationality of their foreign father, given that most of the legislation around the world upholds right of blood on the father's side.

However, the Bahraini legislature adopts right of blood on the mother's side in the case stipulated by article 4, paragraph (b) of the Nationality Act, which states that a person shall be considered to be Bahraini if born in Bahrain or abroad and the mother is Bahraini at the time of birth, with the proviso that the child is of unknown father or its relationship to its father has not been legally established.

Nevertheless, there is a wish on the part of the relevant bodies for conformity between Bahraini legislation on nationality and the Convention and a proposal to grant nationality on the basis of right of blood on the mother's side is currently under discussion."

### **Comments**

Despite much national opposition to this law, Bahrain continues to prohibit women from conferring nationality to their children or spouse. This discrimination leaves children who are prohibited from accessing the nationality of their mother at risk of becoming stateless.

We refer to Bahrain's report to CEDAW paragraph 117-119. We encourage the efforts outlined in the report to ensure that the children of Bahraini women receive equal treatment as children of Bahraini men). We particularly encourage the government's willingness to discuss the issue of equality in nationality law, and would like to emphasise the urgency of removing gender discrimination from the nationality laws. As noted in the case of Qatar, with a large stateless population in the Gulf region, including in Bahrain, compromising mainly the Bidoon, Bahrain's nationality law puts children at risk of becoming stateless.

Article 5 of the Bahraini constitution states that;

*'The family is the basis of society, deriving its strength from religion, morality and love of the homeland. The law preserves its lawful entity, strengthens its bonds and values, under its aegis extends protection to mothers and children, tends the young and protects them from exploitation and safeguards them against moral, bodily and spiritual neglect. The State cares in particular for the physical, moral and intellectual development of the young.'*

If a child is stateless, the State is unable to ensure that their physical, moral and intellectual development is protected.

The justification given in paragraph 118 of the State report is that this discrimination prevents people from holding dual citizenship. Bahrain should nonetheless ensure that children are not rendered stateless by ensuring the implementation of the provision to allow children who would otherwise be stateless access to Bahraini nationality. Furthermore, other states that do not recognize dual nationality address this question through alternative mechanisms, for example by requiring the children to choose, at the age of 18, one of the nationalities. .

As well as upholding a reservation to Article 9 of CEDAW, Bahrain's discriminatory nationality law is also a violation of many of its other international obligations under international human rights law. These include Article 26 of the ICCPR and Article 15 of CEDAW.

### **Recommendations to the State of Bahrain:**

- Take immediate steps to ensure that children born to Bahraini mothers who would otherwise be stateless have access to Bahraini nationality.
- Explore how it can remove gender discrimination from its nationality legislations whilst preserving the prohibition of dual nationality
- Withdraw its reservation to Article 9 of CEDAW
- Establish a leadership role on this issue in the GCC region.