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Women's Citizenship Rights in Lebanon

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I. Introduction

For a long period of time, and compared to other countries in the region, Lebanon has been considered a pioneer regarding women's rights, where, early on, women were granted economic, civil and political rights and played important roles in the society where they held significant positions such as teachers, doctors, journalists, judges and ministers.

Lebanon had achieved several important milestones towards gender equality, including granting political rights to women in 1953, giving married women the right to choose their citizenship in 1960, allowing women to be elected in local councils in 1963, abolishing the requirement of a husband's permission to travel in 1974, establishing equal retirement ages and social security benefits for men and women in 1984, allowing women to practice commerce without the husband's permission in 1994 and lately, repelling honor crimes¹ in 2011, in addition to other laws consecrating the principle of equality.

However, Lebanon has not yet succeeded in granting full equal citizenship to women. Despite the equal constitutional guarantees given to both men and women and despite the fact that Lebanon has signed most of the UN treaties pertaining to human rights, women still do not enjoy the same equal rights as men. The most flagrant transgression of women's rights is their inability to grant their Lebanese nationality to their foreign husbands and their children.

Before proceeding, it is necessary to point out the distinction between the terms "Nationality" and "Citizenship". Nationality is defined as the legal relationship between an individual and a State. In many cases, nationality is the legal basis for the exercise of citizenship. Although frequently used interchangeably with Nationality, the term Citizenship has a wider meaning, and denotes a status bestowed on full members of a community². The right to citizenship is a basic right for all people because it has a remarkable influence on the political, administrative, and socio-economic aspects of life. Citizenship rights have been directly linked to certain fundamental rights, many of which are only guaranteed to citizens of a country, such as the freedom of movement and residence within the country; the right to leave and return to one's own country; the right to nationality; the right to own property; the right to participate in politics and government; the right to vote and the right to hold public office.

International law requires only that there be a "genuine connection" between a person and the State for the transfer of nationality. The most commonly recognized objective criteria are (i) birth in the territory of the State, irrespective of the nationality of the parents (*jus soli*), or (ii) descent by birth to a national of the State or through ancestral claims (*jus sanguinis*). Some States adopt one of these positions; most implement a combination of the two. Another manner to acquire the nationality of a State can be through naturalization. This is generally claimed through some link created subsequent to birth, such as residence in the State for a specified period of time, or the establishment of a permanent domicile in the State.

The concepts of nationality and citizenship have traditionally been "gender discriminatory" but have later evolved. As for Lebanon, the reasons behind the lack of progress in achieving equal citizenship rights is related to many factors, such as the political insecurity of the country, the recurrent conflicts and wars but most importantly, the demographic configuration of its religious appurtenance in addition to our dominant patriarchal society. In this context, even if the idea of equality is semi-unanimously accepted, the fear of the public from an eventual naturalization of a large Palestinian community is delaying, if not impeding, the necessary advancement of women and accordingly, the amendment of such discriminatory law.

Nowadays, with the evolution of women's status worldwide and the recent amendments of laws in the region, one cannot ignore the legal-given right of Lebanese women with foreign spouses to grant their nationality to their husbands and children. It is even a God-given right, knowing that women are the ones to bear and give life, thus it should be only natural for them to pass on their nationality to their offspring. On a more practical level, the denial of citizenship rights generates severe consequences, negatively influencing the lives of thousands of people on a daily basis.

1. Article 562 of the Lebanese Criminal Code.

2. United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women, "Women, Nationality, and Citizenship" Women 2000 and Beyond, June 2003, pp. 2-3.

In light of the above considerations, this paper tackles citizenship rights of Lebanese women married to foreigners, from an international human rights perspective at first, as consecrated over and over by multiple conventions and treaties; to move afterwards to a more practical approach in exposing the provisions of the Lebanese Constitution, the nationality law and regulations, while pointing out the consequences and challenges in addition to the movements of the civil society facing such trials. The analysis used in addressing this topic is based on the Lebanese legal texts and regulations in addition to international treaties and conventions, reports, statistics and legal and social studies.

II. International context

The international agreements and the international judicial jurisprudence have always recognized each State as being sovereign and independent and therefore grants each State the right to define its own nationality laws, based upon its own national interests and considerations with no interference, thus consecrating one of the principles of international public law: the principle of sovereignty.

However, the presence of domestic laws governing the acquisition and loss of nationality does not exclude regulation by international laws and States are often obligated to follow both. Multilateral instruments such as treaties and declarations have set standards which impact, once signed and ratified by a State party, the acquisition and retention of nationality.

Furthermore, all member States of the United Nations have an obligation to endorse the constitutional guarantees of basic human rights that are compatible with international law. In the same spirit, the Vienna Convention on the Laws of Treaties provides that every treaty in force is binding upon its parties and must be performed by them in good faith. The Convention also provides that no State party may invoke national laws as justification for its failures to perform a treaty.

As a member of the United Nations, Lebanon has ratified several of its treaties and has become bound by them, whereas other instruments are not compulsory to Lebanon but still serve as a guideline for international standards, which need to be followed, for Lebanon to be considered in line with the international community.

A. Binding Documents

This section will outline the relevant provisions of the international human rights instruments, including those related to the equal treatment of men and women in matters of nationality, approved or ratified by Lebanon and considered as an integral part of its domestic laws³.

(a) Universal Declaration of Human Rights (UDHR), 1948

The UDHR declares that *“all human beings are born free and equal in dignity and rights”*⁴. It also States that *“everyone is entitled to all of the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*⁵.

More importantly, Article 15 of the Declaration recognizes that *“everyone has the right to a nationality. No one shall be arbitrarily deprived of their nationality nor denied the right to change his nationality”*. It further States that men and women of full age, without any limitations based on race, nationality, or religion, have the right to marry and found a family, the natural and fundamental unit of society, which is entitled to protection by society and by the State⁶.

3. The binding aspect of these international treaties is due to the provisions of the Lebanese Constitution, which will be detailed in the National Context on p. 9.

4. UDHR, Article 1.

5. *ibid*, Article 2.

6. *ibid.*, Article 16 (1) and 16 (3).

(b) UN International Covenant on Civil and Political Rights (ICCPR), 1966⁷

Article 3 of the ICCPR provides that States parties are obliged to undertake measures to ensure the equal enjoyment by men and women of all civil and political rights set forth in this Covenant⁸. Article 16 further provides that everyone shall have the right to recognition everywhere as a person before the law Article 26 provides that all persons are equal before the law, without any discrimination⁹. The ICCPR recognizes the family as the natural and fundamental group in society and emphasizes the obligation of States parties to protect it. Article 24 (2) and (3) of the Covenant also obligates States to guarantee that “every child shall be registered immediately after birth” and shall “[have] the right to acquire a nationality”. Furthermore, it recognizes that within this territory of the State, everyone has the right to liberty of movement and freedom to choose her/his place of residence¹⁰.

Lebanon ratified the Covenant on Civil and Political Rights on November 3, 1972 without any reservation¹¹.

(c) UN International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966¹²

Article 3 of the ICESCR undertakes to ensure the “equal right of men and women to the enjoyment of all economic, social, and cultural rights”, meaning that the States parties to this treaty must recognize the right of everyone to work. Article 10 of the Covenant recognizes as well, the need for the strongest possible protection of the family, which is perceived as the natural and fundamental group unit of society.

Lebanon ratified the Covenant on Economic, Social, and Cultural Rights on November 3, 1972 without any reservation¹³.

(d) UN Convention on the Elimination of All Forms of Discrimination against Women - (CEDAW), 1979¹⁴

The most important principles consecrated by the CEDAW, recognizing women’s autonomy and equality in the acquisition and transfer of their nationality and permitting either spouse to confer their nationality to their children are found in articles 1, 2 and 9.

Article 1 of the Convention defines discrimination as “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*”. This means that, when it comes to citizenship rights, the Convention prohibits distinctions in law and discrimination based upon marital status. Furthermore, under Article 2¹⁵, State parties are obliged to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women.

7. Adopted by UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered in force on March 23, 1976.

8. ICCPR Article 3: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”.

9. Article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

10. ICCPR. Article 12: “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence (...)”

11. Lebanon ratified the Convention by virtue of Decree No. 3855 dated 1 September 1972.

12. Adopted by UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered in force on January 3, 1976.

13. Lebanon ratified the Convention by virtue of Decree No. 3855 dated 1 September 1972.

14. Adopted by UN General Assembly Resolution 34/180, 18 December 1979, entered in force on May 16, 1997

15. *ibid*, Article 2: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle (...)”

Article 9 of the Convention sets firm standards for citizenship laws and provides that States Parties must grant women rights equal to those of men in matters of nationality. States must ensure, in particular, that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically alter the nationality of the wife, render her Stateless, or force upon her the nationality of her husband. Moreover, State Parties must grant women equal rights with men with respect to the nationality of their children¹⁶.

Even though Lebanon ratified the (CEDAW)¹⁷ it made reservations on Articles 9 (2), 16 (1) (c) (d) (f) and (g) and 29 (2). Article 9 of CEDAW addresses equal rights for men and women with respect to citizenship and nationality and Article 16 commits the State to eliminate discrimination against women in matters of the family and marriage.

(e) UN Convention on the Rights of the Child (CRC), 1989¹⁸

Article 2 (1) of the CRC requires States parties to respect and ensure the rights set forth in the Convention to every child within their jurisdiction, without discrimination of any kind, notwithstanding sex, nationality, ethnicity or any other status of a child's parents or legal guardians. Article 7 (1) of the CRC declares that States parties are required to ensure that a child has, *"the right to acquire nationality"*. States parties are also obliged under Article 7 (2), *"to ensure the implementation of this right in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be Stateless"*.

Article 8 of the Convention compels States parties to respect the right of a child, to preserve his/her identity, including nationality, name, and family relations as recognized by law. They are also compelled to ensure that a child is not separated from her or his parents against their will, except when competent officials, in accordance with applicable laws and procedures and subject to judicial review, determine that such separation is necessary in the best interests of the child. In addition, as per Article 18 (1), States should ensure, to the best of their abilities, recognition of the principle that both parents have a common responsibility for the upbringing and development of the child. Article 28 of the Convention also recognizes the right of the child to education.

Lebanon ratified the Convention on the Rights of the Child on May 14, 1991 without any reservation.

We shall further discuss in details, the mandatory application of such international human rights instruments in the domestic laws, in part III: "National Context". (p. 9)

B. Non-binding documents:

In addition to the above documents being binding to Lebanon, there are several declarations and conventions consecrating women's rights such as equal nationality rights, but are not legally binding and as such, not enforceable in Lebanon. However, such documents still serve as a reference for the implementation of international standards.

16. *ibid*, 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."

17. Lebanon ratified the Convention by virtue of Law No. 572 dated 24/07/1996.

18. Adopted by UN General Assembly Resolution 44/25, 20 November 1989, entered in force on September 2, 1990.

(a) UN Convention on the Nationality of Married Women, 1957

Under Article 1 of this Convention, each member State agrees that “neither the celebration 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”. Additionally, as per Article 2 of the Convention, States parties agree that “neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the spouse of such national”. This Convention remains silent regarding the nationality of children, even if it grants women and men equal right in obtaining citizenship.

(b) UN Convention Relating to the Status of Refugees, 1951

Articles 27 and 28 of this Convention does not require States to grant their nationality to a refugee, but give the latter the right to live in the country of refuge and compels the State party involved to provide her or him with identity papers and travel documents. The State party also has a duty, under article 34, to facilitate the administration and naturalization proceedings for a refugee.

(c) European Convention on Nationality, 1997

This Convention stands on two principles: (i) the avoidance of Stateless persons and (ii) ensuring equality. Article 4(d) provides that “neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse”. Protecting against discrimination, Article 5 of the same convention stipulates, “the rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, color, or national or ethnic origin”. Article 6(4a) of the European Convention on Nationality provides that each State party shall facilitate in its internal law, the acquisition of its nationality for spouses of its nationals.

(d) Beijing Declaration, 1995

The Beijing Declaration, under Paragraph 819, reaffirms the commitment of States to “equal rights and inherent human dignity of women and men” whereas Paragraph 1320 demands “women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power as fundamental for the achievement of equality, development and peace”.

Paragraph 15²¹ of the declaration aims to provide equal rights, opportunities, and responsibilities to men and women with regard to the family. It also calls on State, under Paragraph 24²², to take measures to eliminate all forms of discrimination against women.

At national level, Lebanon formed in 1995 the National Committee for Lebanese Women (“NCLW”), which was the official body responsible of the follow up of the implementation of the resolutions taken in Beijing²³ and for realizing women’s advancement and gender equality in Lebanon.

19. Paragraph 8: “The equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declaration on the Right to Development”.

20. Paragraph 13: “Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace”.

21. Paragraph 15: “Equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their wellbeing and that of their families as well as to the consolidation of democracy”.

22. Paragraph 24: “Take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women”.

23. Decree No.13 dated 3 January 1996. On November 5, 1998, Law 720 was issued regarding the formation of the National Commission for Lebanese Women (NCLW).

III. National context

In light of the international standards, set to preserve equality between men and women and Lebanon's obligations in that regard, the Lebanese nationality law contradicts many of the international human rights instruments approved or ratified by Lebanon. We will tackle in the following section, the origin and causes of such discrimination, while reviewing the provisions of the Lebanese Constitution, nationality laws and other related laws having an impact on the status of the foreign husbands and children of Lebanese women.

A. Origin and causes of discrimination

The subject of nationality constitutes a perfect matter of discrimination. The Lebanese law still prohibits the Lebanese woman, married to a foreigner, from granting her Lebanese nationality to her husband and children.

The origins of this discrimination go back to the French colonialism period, when Lebanon was governed by the French Napoleonic Code. However, the transplantation of this Code in Lebanon was actually a step backwards for Lebanese women since its preceding Ottoman law was far more progressive in terms of women's right, under which women enjoyed a particularly advantageous position in the area of citizenship rights.

In fact, an Ottoman law dating from the early 1800's had consecrated the principle of full "*jus sanguinis*", allowing the citizenship to be inherited from both the mother and the father.

As for the actual causes behind such discrimination, besides its origin, they stem from the country's reliance on religious laws in matters pertaining to Personal Status²⁴. This leads to the application of diverse personal status laws to women in Lebanon. Moreover, the Lebanese public has an unjustified fear of allowing the naturalization of a large refugee population and of a sudden shift in the sensitive religious demographic balance of the country. In fact, the government justifies its reservations as part of a political plan to prevent the settlement of Palestinians in Lebanon, in accordance with the provisions of the Lebanese Constitution and other conventions against settlement.

This current situation is regarded by many Lebanese as humiliating for women and for Lebanon as a whole, particularly since Lebanon has long considered itself a pioneer of reforms in the Arab Countries, especially pertaining to women's rights.

B. Constitution

On May 23rd, 1926, the Lebanese Constitution and its preamble²⁵, which was incorporated to it by virtue of Constitutional Law No.18 dated 21/09/1990, consecrated the principle of equity among nationals.

Paragraph 'B' of the preamble of the Lebanese Constitution provides that:

"(...) Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception."

Paragraph 'C' asserts:

"Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination."

24. Lebanon has 18 officially recognized confessions (4 are Muslim, 12 Christian, 1 Druze, and 1 Jewish) having each its own Personal Status Laws and regulations.

25. The principles in the preamble of the Constitution are an integral part of it, and enjoy a constitutional value just like the provisions of the Constitution.

Article 7 of the Lebanese Constitution further States that all Lebanese are equal before the law. They equally enjoy civil and political rights and are equally bound by public obligations and duties without any distinction.

By virtue of the combined application of the preamble of the Lebanese Constitution and Article 2 of the Civil Procedure Code, which recognizes the supremacy of the provisions of international treaties over those of ordinary law, international treaties ratified by Lebanon are considered as applicable laws, upon publication in the Official Gazette.

Nevertheless, Lebanese women continue to face discrimination with respect to citizenship despite such legal provisions imposing equality. Gaps continue to exist between Lebanon's legal obligations under international standards and existing laws, procedures, and practices.

C. Nationality Law

As per article 6 of the Lebanese Constitution, the Lebanese nationality and the manner in which it is acquired, retained and lost, is to be determined in accordance with the law. The Lebanese Nationality Law²⁶, despite the constitutional guarantee of equality between Lebanese citizens, embodies gender discrimination at several levels, namely by restricting the bond by blood to the father and not extending it to the mother, who cannot grant her nationality to her children, nor to her foreign husband. Meanwhile, a foreign woman married to a Lebanese man becomes Lebanese one year after the marriage is registered.

The dilemma originated with article 1 of Law No.15 pertaining to Nationality, according to which, a person is considered Lebanese according to these 3 criteria:

- (a) if born to a Lebanese father.
- (b) if born in the Greater Lebanon territory and able to prove that he is not naturalized as a foreign subject;
- (c) or if born in the Greater Lebanon to unknown or Stateless parents.

Moreover Article 2 of said Law²⁷ grants illegitimate children more rights than legitimate ones, since it provides that a Lebanese mother can grant her children the Lebanese nationality if they were born illegitimately. In some cases, Lebanese mothers claimed that their legitimate children are illegitimate in order to entitle them to her nationality. Article 4²⁸ grants the Lebanese nationality to minor children of a foreign mother who was naturalized as a Lebanese and who outlived her husband, unless they reject said nationality in the year prior to reaching their majority. In this case, Lebanese law gives the foreign woman more advantages than a Lebanese woman, who cannot extend her nationality to her children from a foreign husband after his death.

The nationality law also provided that a Lebanese woman married to a foreigner shall not lose her nationality once married and will not be compelled to take the nationality of her husband²⁹. A Lebanese woman can regain her Lebanese nationality if she proves that she was a Lebanese national before her marriage to a foreigner and that her marriage is dissolved. However, this provision does not apply to her children who have to keep the nationality of their father³⁰.

Since the current situation of foreign spouses and children of Lebanese women under the current nationality law lacks equality and should be adapted to address the situation thereof, some legislations and regulations have been modified to face such discrimination and resolve some of the problems faced by Lebanese women and their families.

26. Law No.15 on 19/11/1925, as amended by law dated 11/1/1960.

27. *ibid*, Article 2: "the illegitimate child whose nationality has not been established during his minority shall have the Lebanese nationality if one of his parents in respect to whom affiliation is first established and if the proof of affiliation regarding both the father and the mother results from a single contract or a judgment, the child shall acquire the nationality of the father, should the latter be Lebanese."

28. *ibid*, Article 4: "(...) the minor children of a father acquiring the Lebanese nationality, or a mother acquiring said nationality and who remained alive after the death of the father, shall become Lebanese, unless they reject this nationality within the year following their majority."

29. Article 6 of Law No.15, as amended by the law dated 11/01/1960.

30. Article 7 of Law No.15, as amended by the law dated 11/01/1960.

For instance, Decree No. 4186 on courtesy residence dated May 31, 2010 helped partially resolve this problem by giving foreign husbands and children of Lebanese women, a courtesy residence. It granted them a three-year residence permits, provided they have been previously living in Lebanon for a year. It is to be noted that, even though the promulgation of such decree is a positive change; nevertheless, the nationality law still needs to be reformed, as it still fails to address women's citizenship rights and equality in social and political entitlements.

Moreover, new labor regulations No.122/1 issued on 23 September 2011 introduced amendments to the labor law aiming at eliminating various forms of discrimination against the foreign spouses of Lebanese women and their children. The regulations, now in force, grant work permits without the need of a sponsor to non-Lebanese spouses of Lebanese women, effectively making it easier for employers to hire non-nationals. Foreign husbands and their children can also renew their residence permits without having to pay fees, even if they hold no job. However, if the children born to Lebanese mothers and foreign fathers subsequently marry non-Lebanese citizens, they are not permitted to stay in the country even if it is the only country they have known.

On the other hand, a detrimental step to women's citizenship rights in Lebanon was taken, on December 12, 2011, when a draft law extending the reacquisition of citizenship by descendants of Lebanese emigrants was unanimously approved by the Council of Ministers. As per the provisions of this draft law, descendants of expatriates of Lebanese origin with documents supporting their Lebanese ancestry may apply for Lebanese citizenship. This draft law further emphasizes the discrimination already established by the provisions of the Nationality Law since it grants the Lebanese citizenship based on patrilineal descent.

While Lebanon prides itself for being one of the first Arab countries to ratify the CEDAW, it failed till now to withdraw the reservations on the articles granting women equal rights with men regarding the nationality of their children, leading to the amendment of its nationality law and granting full equal citizenship rights to both men and women.

IV. Consequences and challenges

The provisions of the Lebanese laws and practices contribute to challenging women's rights in Lebanon and undermining their full citizenship, exposing their children and spouses to a series of problems ranging from education, work and residence permits, healthcare, inheritance, economic, social and psychological problems.

A. Education

Children born to Lebanese mothers and foreign fathers face obstacles in accessing basic rights such as the right to education. Law No. 686 of 1998, which amended Article 49 of Decree No. 134/59 provides that public education is free and compulsory in the primary phase, and is a right for every Lebanese in the primary education age.

Children born to Lebanese mothers and foreign fathers are considered as foreigners, they are subject to the fees applicable to foreigners and do not benefit from the preferential rates given to Lebanese students, whether at public schools or universities. They are also denied the right to participate in the political life of universities, having no right to vote and no right to register in a political party or to be a candidate. Furthermore, entry is often made difficult, Lebanese pupils having priority over others.

As for private schools and universities, such possibilities remain a privilege to those who can afford it. Even though education fees in private establishments might not be of concern to wealthy families, the majority of Lebanese women with foreign spouses often struggle with settling the education fees of their children, thus contributing to the risk of illiteracy within poor families.

B. Work and residence permits

According to the definition of Article 1 of Law dated 07/10/1962 (pertaining to the entry of foreigners to the Lebanese territory, their residency and exit), "Any natural person who is not of Lebanese nationality is [...] a foreigner." Therefore, in order to reside and work in Lebanon, foreign husbands and children of Lebanese women need to obtain residence and work permits³¹, which initially had to be mandatorily renewed on a yearly basis and cost recurrent expenses that the families might not afford. This problem stems from the status of the spouse and the children as foreigners and the priority of Lebanese to hold most jobs, according to Lebanese Laws and regulations.

Further to the continuous demands of the civil society actors and the numerous campaigns, the Government tried to find remedies, such as the abovementioned decree on courtesy residence in addition to the provisions of labor law pertaining to the delivery of work permits. Indeed, many restrictions placed on foreigners were lifted, the amount of paperwork and fees are reduced and they are now exempted from a costly certificate of deposit and all work permit fees. Even though these two amendments brought positive change compared to the initial situation of Lebanese women married to foreigners, nevertheless, they do not definitively resolve the issue and remain confined to some aspects of the problematic.

C. Healthcare

Foreign husbands and children of Lebanese women are not eligible to benefit from public healthcare due to their status as foreigners. As for private healthcare fees, they are especially expensive in Lebanon, and are only affordable for a certain category of families. Therefore, foreign spouses of Lebanese women and their children are mostly unable to afford such costly fees. Needless to further develop the negative impact this situation has on the health status of these families, which also affects their economic situation on the long run.

D. Inheritance

In Inheritance matters, foreign husbands and children of Lebanese women do not enjoy the same inheritance rights as their Lebanese counterparts. The provisions of the law have an adverse impact on the situation of Lebanese women married to foreigners, since both the spouse and the descendants are considered as foreigners and as such are only able to acquire and inherit real eState properties in accordance with restrictive terms and conditions³².

Foreign ownership of real eState in Lebanon is governed by Legislative Decree Number 11614 dated January 4, 1969 and its subsequent amendments³³. This Law allows foreign ownership by any individual or entity of up to 3,000 square meters of land in the aggregate across the Lebanese territory, knowing that the spouse and minor descendants are considered as one individual.

However, the acquisition of real property by a foreigner exceeding 3,000 square meters is not forbidden but it requires a license issued by a decree of the Council of Ministers who enjoys a discretionary power to accept or refuse an application for License without possibility to appeal such decision.

31. There is usually an association between residency and work permits for foreigners. However, this association does not apply to all foreigners, especially Palestinian refugees living in Lebanon by virtue of asylum (Decree No.11770/1948 dated 5/13/1948). The residency status of Palestinian refugees is not necessarily associated with work.

32. As per the provisions of Legislative Decree No. 11614, real eState properties owned by foreigner cannot exceed the following limits:-3% of the total surface of the Lebanese territory-within the limits of a particular Caza: 3% of the total surface of said Caza.-within the capital Beirut : 10% of its total surface can be owned by foreigners.

33. Amended by Law No. 296 dated April 3, 2001.

The situation is even more complicated for those women married to Palestinians who are denied the right to own any property in Lebanon, thus their mothers cannot pass on to them any property or land in their inheritance³⁴.

E. Economic problems

Due to the various expenses mentioned in the above paragraphs and the ineligibility of these families to benefit from the exclusive rates reserved for Lebanese nationals, many families find themselves in an economical impasse, leading to the accumulation of debts and plunging them in a vicious economic circle which would be certainly less stringent if they had benefited from the rates and expenses applied to Lebanese nationals.

F. Social and psychological impacts

Children born and raised in their mothers' homeland with no legal rights for free education, healthcare or work eventually become excluded from society since the only country they know as home rejects them. The result can only be detrimental for them and for the society as a whole. They are doomed to be either illiterate, non-productive or forced to work in the black economy, which adversely affects, on a larger scale, the entire society they live in.

On a psychological level, children feel they belong to Lebanon more than their country of citizenship; they have lived in it all their lives and they speak the language. However, this feeling of being socially isolated without being capable of social integration may lead to a psychological frustration, and particularly accompanies some nationalities, which are victims of international strategies, as is the case with the Palestinian refugees, for example.

Finally, the lack of citizenship rights has real implications and the number of people suffering from these legislations and practices isn't reassuring. We are unable to obtain precise figures due to the lack of registration of marriages and the difficulty in obtaining accurate data from one centralized source, therefore we can only mention estimates. According to a recent study³⁵, it is estimated that, between 2005 and 2008, some 18,000 Lebanese women were married to foreign men in Lebanon and this number has certainly increased over the past years. The percentage of Lebanese women married to Arabs reached 74.7%, followed by 11.4% to Europeans and 7.5% to Americans. The number of men and women negatively affected by the current Nationality Law, as estimated by statisticians, has reached 77,400 individuals.

34. Decree No. 11614 as modified by law No. 296, prohibits persons who do "not carry a citizenship issued by a recognized State" from owning property in Lebanon. This law does not explicitly refer to Palestinians, but Article 1 of the amended Decree provides that no non-Lebanese person, either natural or juridical is entitled to acquire through a contract or any other legal deed, any real property rights in Lebanese territory and that no real right of any kind may be acquired by any person that does not carry a citizenship issued by a recognized State, or by any person if such acquisition contradicts the provisions of the constitution relating to the prohibition of settlement.

35. "Predicament of Lebanese women married to Non-Lebanese – Field analytical study" by Mrs. Fahima Charafeddine, December 2009.

V. Towards women's citizenship rights in Lebanon and overview on the region

These consequences and challenges, in addition to the awakening of a deep sense of equity, incited the civil society to take action both in Lebanon and in the region, leading to the modification of nationality laws in most of the Arab countries. The judiciary in Lebanon, in some isolated cases, went beyond the text of the law and granted women their rights, based on the principles of equity and justice.

A. Lebanese civil society and nationality rights

The civil society in Lebanon has been working towards granting women equal citizenship rights and many NGOs have been lobbying to modify the nationality law through several protests and campaigns.

We will overview in the following paragraph some of the main movements, campaigns and law projects presented by the civil society over the past few years, requesting the abolishment of the existing discrimination between men and women in the scope and the barriers of the Lebanese nationality law.

We will only expose some of the main movements, among which the Lebanese Association for Human Rights which was launched in collaboration with other women's associations in 1992 to claim the right of a Lebanese woman to give her children her nationality in the event her foreign husband passes away, thereby equalizing the status of Lebanese women with the status of foreign women who became naturalized Lebanese. The claim was followed by a draft amendment to the law and by a memorandum presented to the Minister of Justice.

In 1993 a ministerial committee was established for the purpose of revising the Lebanese Nationality Law. In February 1995, the Parliamentary Committee for Justice and Administration endorsed a draft law allowing a widowed mother to grant her Lebanese nationality to her children³⁶. Many debates occurred on the conditions of such amendment between civil society, academics and politicians³⁷. A parliamentary sub-committee was formed to study the subject, to no avail until this date.

In 2005, a movement representing some 60 Lebanese NGOs was initiated by the national campaign to grant women equal citizenship rights under the campaign entitled "Because they are my children my nationality is a right for them", requesting to amend the first paragraph of article 1 of the nationality law as follows:

"Is Lebanese every person born of a Lebanese father or of Lebanese mother."

Moreover, since 2001, the Lebanese NGO Collective for Research and Training on Development-Action ("CRTD.A") has been working on gender, nationality and citizenship in the region after identifying the subject as a regional priority for intervention³⁸. The countries covered by the campaign are: Lebanon³⁹, Egypt, Syria, Morocco, Algeria, Tunisia, Yemen, Jordan and Bahrain. As a result, The campaign "My Nationality is a right for me and my family" was launched in 2006 focusing its efforts on ensuring full and equal citizenship rights for Arab women. The key strategy endorsed by the campaign was lobbying for the amendment of the nationality laws that discriminate among women in most Arab countries, especially those that present the most politically charged and challenging context. On 27 July 2011, a draft law project was presented to the representative of the government requesting full equal citizenship rights to the husband and children of a Lebanese mother.

36. The draft proposal conditioned the amendment of article 4 of the Nationality law by (i) the death of the foreign husband and (ii) the residency of the mother and her children in Lebanon for at least five years.

37. Women in personal status laws: Iraq, Jordan, Lebanon, Palestine, Syria – UNESCO, SHS Papers in Women's Studies/ Gender Research - Gihane Tabet, 2005.

38. CRTD.A partnered with UNDP-POGAR for the drafting of a regional study, which helped in raising community and public awareness. See "Lebanese Women's rights and the Nationality Law", UNDP Project Document 2001.

39. In Lebanon, the campaign has developed through several phases, action-oriented Research (2002 – 2005); awareness raising campaigns and community mobilization (2005 -2006); the lobbying and advocacy mainly regarding legal reform (2007 – 2010).

On the other hand, several law projects were submitted by political figures. In March 2006 MP Ghinwa Jalloul submitted a draft law to Parliament that would allow women to pass on their nationality to their children and spouses, giving them equal citizenship rights with men. This draft was never given the required attention under the pretenses that pressing security concerns and the Parliament's National Dialogue at that time made it difficult to give the issue the attention it deserves⁴⁰.

On April 27, 2009, former minister Mr. Ziad Baroud submitted a draft law to the Council of Ministers, in which he proposed two versions for the unique amendment of Article 4 of Law No. 15 as follows:

Version A: *"A Lebanese woman married to a non-Lebanese has also the right to grant the Lebanese nationality to her children."*

Version B: *"Notwithstanding anything to the contrary, is considered Lebanese, every person born to a Lebanese mother, provided that the nationality of the father is issued by a recognized State, and does not contradict the provisions of the Constitution pertaining the refusal of naturalization"⁴¹.*

However, Mr. Baroud's solution is partial and does not entirely resolve the citizenship predicament since the purported amendment remains limited to the children of Lebanese women and does not extend to the foreign husband who is still considered as foreigner, with all the consequences that it entails.

In 2010, MP Neamatallah Abi Nasr suggested the green card project as an alternative to granting men and women equal citizenship rights by giving a green card to children and foreign husbands of Lebanese women. The card would guarantee them only civil rights without political rights, such as the right to vote and to acquire Lebanese nationality. The civil society and women's campaigns objected strongly to MP Abi Nasr's proposal considering that it is an offense to women married to foreigners and it infringes the principles of equality.

Many politicians⁴², academicians and activists, alongside the National Committee for Lebanese Women ("NCLW") which is the official national mechanism responsible for realizing women's advancement and gender equality in Lebanon, support the nationality cause and the civil society's activities and advocate the right of Lebanese women to obtain citizenship for their immediate family members. In parallel, many international organizations such as Amnesty International and Human Rights Watch⁴³ support these campaigns and call upon the politicians to adopt their requests⁴⁴.

However, these movements faced opposition and some politicians have suggested to exclude women married to Palestinians from benefiting from any amendments to the citizenship law, pursuant to the prohibition of Lebanese Constitution regarding the naturalization of Palestinians, in order to avoid overriding their "right of return".

Unfortunately, the Lebanese Government did not respond to any of these demands is still refusing to grant women such rights until this date. Moreover, during the Universal Periodic Review (UPR)⁴⁵ session on March 17, 2011, Lebanon has accepted 41 recommendations refused 37 pertaining mainly to women's rights and specifically to the nationality

40. "Antiquated laws violate women's civil rights", by Khatoun Haidar, published in the Daily Star Newspaper on August 27, 2007.

41. In this version B, Mr. Baroud would have addressed the argument of many politicians who are against the reform by fear of the naturalization of a large number of Palestinians.

42. In a press conference with Assafir newspaper in January 2009, MP Gilberte Zouein declared that she is drafting a law amending the provisions of Law No.15 dated 1925 to become as follows: "Every child born to a Lebanese father or a Lebanese mother is entitled to the Lebanese nationality". Mr. Fouad Sinora also declared to Annahar newspaper on the 25th of September 2008 that he has already submitted a proposal in which he suggests giving the Lebanese citizenship to children born to a Lebanese woman and a foreign father, provided that they had been married for at least ten years.

43. Human Rights Watch calls on each candidate and party to adopt as part of its platform a commitment to introducing and supporting legislation that would amend the law on citizenship in a way that ensures that all Lebanese women, regardless of the nationality of their husband, can pass on their citizenship to their children and husbands.

44. The UN Committee on the Elimination of Discrimination against Women in its 40th session in 2008 regretted Lebanon's assertion that it could not, for political reasons, amend its nationality law to allow Lebanese women to pass their nationality to their children and foreign spouses.

45. The UPR is a human rights mechanism of the United Nations (UN) Human Rights Council (HRC) aiming at improving the human rights situation of 193 UN Member States. Under this mechanism, the human rights situation of all UN Member States is reviewed every 4,5 years. The result of each review is reflected in an outcome report listing the recommendations made to the State under review including those that it accepted and which it will have to implement before the next review. (for more info see: <http://www.upr-info.org/-UPR-Process-.html>.)

rights. The government Despite the several obstacles and problems faced, the civil society is still intensely promoting the citizenship rights campaigns through various activities, marches and sit-ins, conferences, workshops, media coverage, thus continuously raising the public's awareness, in addition to its ongoing struggle to amend the existing nationality laws in a way to ensure equality between men and women and the debate continues.

B. Nationality rights before courts

Further to the absence of legislations clearly giving Lebanese women married to foreign husbands, the right to pass on their nationality to their minor children after the death of the father, the Lebanese Judiciary addressed this issue in some cases, by interpreting the legislative texts, giving them the meaning that corresponds to the principles of justice and equity.

On February 17th, 1972, The Cassation Court issued a decision⁴⁶, 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.

In addition, on June 16, 2009, a Lebanese First Instance Court⁴⁷ issued a judgment⁴⁸ in a case filed by Mrs. Samira Soueidan, a Lebanese woman, to obtain the Lebanese citizenship for her children whose deceased father was Egyptian. The court granted the citizenship to her children (two sons and two daughters) in a landmark decision stating the following:

"(...) the Lebanese Constitution establishes the principle of equality before the law among all Lebanese, women and men. The Lebanese woman is a man's equal partner in citizenship, obligations and rights, and has therefore the right to give her nationality to her children, should she choose to marry a foreigner (...)"

The Court based its findings, first of all, on the legal principle stating that a judge cannot under the pretext of the absence of legal texts in the case at hand reject legal action or refuse to discuss the case, for he would be guilty of denial of justice. The Court was also concerned by the protection of the "interest of the family and the relevant kinship in light of the laws in force", acting in its "quality as protector of the family and family stability." The judge considered that "if the legal rule is ambiguous or incomplete, the judge's essential mission consists in varying upon the rule or finding a new solution through legal interpretation in order to reach a just and humane solution in conformity with justice and equity to the extent possible". Moreover, when searching for a solution, and in case of absence of a text, the judge should apply a deduction method and look for the presumed intent of the legislator. The judge also based its decision on article 7 of the Lebanese Constitution, which establishes the principle of equality before the law among all Lebanese, women and men. It does not discriminate between them in terms of rights and obligations, the permissible and the prohibited.

However, the Lebanese Public Prosecutor's Office lodged an appeal, claiming that according to the Lebanese laws, women can't grant their nationalities to their children. Amnesty International has requested that Lebanese authorities immediately withdraw the appeal filed against this landmark ruling because if approved, the appeal could shatter hopes of thousands of children born to Lebanese mothers and foreign national fathers⁴⁹, arguing that certain provisions of the law are discriminatory and asked the concerned authorities to take immediate steps to review existing legislations containing discriminatory provisions against women. Unfortunately, the First Instance Judgment was overturned by appeal on the 18th of May, 2010. Plaintiff Samira Soueidan then lodged a recourse in Cassation⁵⁰ and the case is currently pending.

46. Cassation Court - 3rd Civil Chamber, decision number 10 in date of 17/2/1972.

47. The First Instance Court in Mount Lebanon presided by Judge John al-Azzi and included judges Rana Habka and Lamis Kazma.

48. A non-official translated version of the judgment taken from the Dailystar Newspaper is attached as Annex A.

49. Amnesty International, Lebanon: Give women their right to pass on nationality to their children, public Statement, 12 April 2010.

50. The Court of Cassation is presided by judge Sami Mansour and includes judges Carla Kassis, Arlette Tawil and Nabila Zein.

Dozens of women from the women's rights campaign "My Nationality: a Right for Me and My Family" attended the court's hearings to support Soueidan and many activists gathered in front of the Mount Lebanon Appeals Court⁵¹ as the court convened to decide whether or not a Lebanese woman could grant her nationality to her children. Despite the struggle of the Civil Society and the women's rights campaigns, the Lebanese judiciary still constitutes an obstacle towards the implementation of equality, which was granted by the Constitution and endorsed by the UN conventions ratified by Lebanon.

C. Overview of the progress in the Arab countries

Most Arab countries link nationality to the blood relation from the father's side, marginalizing women who face various forms of gender discrimination across the region. Due to the continuous efforts of many actors within the civil society, over the past few years, discriminatory nationality laws have been modified in some countries such as Tunisia, Egypt, Algeria, Morocco, Yemen, Libya, Palestine, the United Arab Emirates (UAE) and Kingdom of Saudi Arabia (KSA). Below is an overview of this progress granting or aiming at granting full equal nationality rights to both men and women.

Tunisia is considered a pioneer in recognizing equal nationality rights for both men and women. Since 1993, Tunisian mothers were entitled to transmit their nationality to their children (i) provided they were born on Tunisian soil, and (ii) upon a joint declaration by both parents, if their children are below 19 years of age. This law was later amended in 2010, when was considered Tunisian, (i) every child born to Tunisian father or Tunisian mother, regardless of the place of birth, or (ii) every child born to a Tunisian mother and unknown father or a father with an unknown nationality or (iii) to a Tunisian mother and a foreign father on Tunisian soil.⁵² Tunisia was followed by other Arab countries, a decade later.

In 2004, Egypt amended its nationality law, giving Egyptian women married to foreigners the right to transmit their citizenship to their children, except for those women married to Palestinians. Due to the relentless efforts of the civil society in Egypt, Decision No. 1231 was issued in May 2, 2011, giving the right to these Egyptian women married to Palestinians to transmit their nationality to their children.

In 2005, Algeria amended its nationality law⁵³, giving women the right to pass citizenship to their foreign husbands and children.

Following a long struggle for women's rights in Morocco, which resulted in the radical reform of the family laws in 2004, a new law⁵⁴ was approved in January 2007, allowing women to pass on their nationality to their children if married to non Moroccan men, followed by a lifting of the reservations previously made to articles nine and sixteen of CEDAW, and the signing of the Optional Protocol.

In October 19, 2010, Yemen joined the above Arab countries and amended its nationality law⁵⁵ by giving Yemeni women married to non Yemenis, the right to give their citizenship to their children automatically. However, this amendment failed to give the same right to the husbands of these women, which still has to obtain the approval of the Yemeni Embassy, in addition the Ministry of Interior and the Ministry of Justice⁵⁶.

In July 2010, Libya also amended its Law⁵⁷ on Nationality, by virtue of which the children born to a Libyan mother and a foreign father were granted the nationality of their mother⁵⁸.

51. Mount Lebanon Appeal Court presided by Judge Marie Denise al-Maoushi and included judges Sahnajan Hatoum and Yola Sliilati.

52. Article 12 of the Tunisian Law No. 55 amended in 19 93, 2002 and the latest amendment on the 1st of December 2010.

53. Articles 6 and 9 of the Algerian Nationality Law – Amended by Order n° 05- 01 - February 27, 2005.

54. Article 6 of the Moroccan Nationality Code - Amended by Law n° 62-06 - March, 2007.

55. Article 3 of the Yemeni Nationality Law No. 6 of 1990 - Amended by Law No. 17 in 2009 and Law No. 25 in 2010.

56. See CRTDA website

57. Article 11 of the Libyan Nationality Law No. 24 of July 2010.

58. However, according to Human Rights Watch, article 3 of said Law contradicts the provisions of article 11 since it considers as Libyan, the child born to a Libyan father or to a Libyan mother and a father who is Stateless or whose nationality is unknown. There is no mention in article 3 of children born to a Libyan mother who is married to a man who has a nationality other than Libyan.

As for Palestine, the Ministry of Interior at the Palestinian National Authority, issued in 2010, Circular No. 42 which gives, in its paragraph 4, the right to Palestinian women married to non-Palestinians, to give their children the Palestinian nationality and register them under the mother's own identity card until they reach 16 years of age⁵⁹.

In November 2011, the United Arab Emirates established a law allowing children of Emirati women married to foreigners to apply for citizenship once they turned 18, moving closer to giving women the same nationality rights as men. According to the new law, at age 18 the children of an UAE mother and a foreign father can request their mother's nationality as well as enjoy the same rights of UAE citizens even before reaching the required age for the official request⁶⁰.

In January 2012, the Kingdom of Saudi Arabia, approved the amendment of article 7 of the executive regulation governing the Saudi Arabian nationality law. The new amendments concern children born in the Kingdom to a foreign father and Saudi mother...⁶¹. It States that a committee set up by the Directorate of Naturalization will evaluate the applicant on the basis of five factors⁶², each evaluated by a certain number of points, that would enable the candidate to score the seven points needed to be considered for citizenship.

Despite the progress achieved in the above Arab countries, other countries still suffer from discrimination regarding women's nationality rights, such as Syria and Jordan, thus constituting a continuous battle field for active campaigns and activists.

VI. Conclusion and recommendations

The provisions of the Lebanese nationality law and other related regulations constitute a serious breach to women's fundamental freedoms and rights, by denying them the right to transfer the Lebanese citizenship to their children and foreign husbands, which leads to the denial of the existence of women as autonomous and independent citizen.

Denying equal citizenship rights to women violates the basic rights protected by the international law and the Lebanese Constitution. In fact, the deprivation of these rights does not only affect women but all members of her family and deny them the fundamental human rights, to live in dignity and equality. The rights to equality and non-discrimination, to family life, to choose residence and national identity as well as freedom of movement, are basic rights and represent the core principles of human rights under the international law.

Therefore, it is essential to recognize nationality as a basic right for the identity of human beings. The initiatives of the civil society, activists and politicians alone will not be effective unless the patriarchal system of values, based on gender stereotyping and traditional norms, is also challenged and redefined. The recognition of women's equal rights would serve a meaningful purpose only when the law and society work together to ensure and accommodate changes in a sustainable manner.

Unfortunately, the discrimination entailed by the nationality law in Lebanon did not receive the attention it deserves, as a general human rights issue and has in some ways become marginalized due to the political tension in the country, in connection with the demographic and religious matters, in addition to the discriminatory beliefs of the patriarchal society.

59. See CRTDA website

60. Agence France Presse (AFP).

61. Saudi Press Agency.

62. 1. If he has a permanent residence in the Kingdom when he reaches adulthood, in which case, he obtains one point

2. If he has an academic certificate not less than a secondary graduation, he gets one point.

3. If the father of the mother and her grandfather from her father's side are Saudis, he gets six points.

4. If only his mother's father is Saudi, he gets two points.

5. If an applicant has one or more Saudi brothers or sisters, he gets two points.

These considerations of power and private interests discourage the Lebanese government to revise the discriminatory nationality law despite the several international and national campaigns and demands.

Finally, we can only address the following concrete recommendations to the Lebanese Government, in order for the Lebanese women to be granted full citizenship rights with men, as follows:

- Abide by the provisions of the Constitution, and comply with Article 7 which establishes the equality of all citizens, in their rights and duties;
- Approve and implement appropriate legislation, in compliance with the international human rights treaties ratified by Lebanon;
- Lift the CEDAW reservations mainly article 9, paragraph 2 and incorporate it into domestic law;
- Ratify the Optional Protocol to the CEDAW;
- And, in particular, amend the Lebanese nationality law No.15 dated January 19, 1925 by removing articles that discriminate against women, mainly amend article 1 in order to guarantee complete gender equality without any exceptions, by considering Lebanese, every person born from a Lebanese father or a Lebanese mother.

One can only hope that Lebanon will soon reform its nationality law to reflect the equality that its Constitution mandates, and, in doing so, allow Lebanese women to enjoy the same citizenship rights as Lebanese men.

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5. UN Convention on the Rights of the Child (CRC);
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9. Decree No.16662 dated 18/6/64 as amended by Decree N. 325 dated 04/01/1971;
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ANNEX A

Decision: 200/2009

Plaintiff: Samira Soueidan

Defendant: Lebanese State

Judgment

In the name of the Lebanese people

The First Instance Court in Mount Lebanon – Fifth Chamber sitting in Jdeidet al-Metn, Civil Status. President Judge John al-Qazzi with the membership of judges Rana Habaka and Lamis Kazma,

After examining the papers, and upon confirming their authenticity ... Decides:

1. On Procedure

The plaintiff Samira Soueidan requests [the State] to consider her under-age children at the time the case was introduced Lebanese nationals, in accordance with Article 4.2 of Order 15, 1925.

Disputes over the issues of nationality and the application of the rules on nationality on individuals comes in accordance with Article 9 of Order 15 dated 19/1/1925 under the jurisdiction of the civil courts ... This court therefore considers itself competent to adjudicate the present case.

2. On Substance

The court examined the details and, after considerable deliberation, was drawn to the specificity of the situation of plaintiff Mrs. Samira Soueidan. She is a Lebanese citizen married to a foreign national, and the marriage resulted in the birth of four children, three among whom minor when the present case was introduced.

The children deserve protection in light of legal texts that govern nationality rules, some of which are obscure, and some prone to interpretation, though all generally imprecise and in need of careful appreciation.

The central question, from which derive several others, is about the rights of the Lebanese woman who is married to a foreigner, in fact and in law. With the Constitution being superior to other laws, where lies the right to equality among citizens? Why can a Lebanese man give nationality to his children while a [Lebanese] woman married to a foreigner cannot? Does it make sense that the foreign woman who is married to a Lebanese man get a better treatment than a Lebanese woman who keeps her nationality? It is reasonable that a Lebanese woman would seek an illegitimate [out-of-wedlock] status for her children since she would not be able to give them nationality if they are legitimate? What is the role of the judge in protecting the family? Is it right to leave these minors who were born and raised in Lebanon with their Lebanese mother, to suffer and be subjected to complicated procedures for residency and work permits while their mother is Lebanese and they are treated in her country as foreigners? What is the role of the judge in interpreting the legal texts which contain ambiguity and incoherence, particularly in the absence of a textual prohibition? How is the silence of legislation in this case to be treated?

To appreciate the fullness of the issue, it is necessary first to consider the general principles that govern it:

The mission of the judiciary requires, in justice and in law, attention to classification, precedent, qualification of the case, and the establishment of the proper responsibility. If the legal rule is ambiguous or incomplete, the judge's essential mission consists in varying upon the rule or finding a new solution through legal interpretation in order to reach a just and humane solution in conformity with justice and equity to the extent possible.

The judge cannot under the pretext of the absence of legal texts in the case at hand reject legal action or refuse to discuss the case, for he would be guilty of denial of justice.

Jurisprudence, when looking for an appropriate solution in a complicated case, searches for the real intent of the legislator:

If the text is clear, then the intent of the legislator is accurately reflected and the judge should apply it. There is no room for interpretation in the presence of a clear text. If however the exact intent [of the legislator] cannot be derived from the text because of its obscurity, then one needs to look for the presumed intent (*la volonté présumée*).

In case of absence of a text on the case at hand, the search for the presumed intent of the legislator is required by deduction, including reasoning by analogy (*le raisonnement par analogie*), that is to give the case at hand the same treatment given to a past case when they are similar and united in the same causation; or the reasoning *a fortiori*, that is to apply to the case terms considered in another case to have a stronger causality than the case at hand, in other words when the conditions for the case at hand are more suitable for applying the law than those stipulated by the legislator, which is a logical device that emphasizes causation of stronger cases for application to weaker ones.

NB: Reasoning *a fortiori* consists in applying the solution to a case because there are stronger motives of application in the case at hand (Raymond Farhat, *Introduction à l'étude du droit*, Beryte ed., 62 [In French])

In case a solution cannot be found despite the abovementioned, then it is necessary to extrapolate general principles from legislative texts and their solution for new cases, on the basis that such principles and solutions derive from the legislator's presumed intent when enacting the law, such presumed intent which must be translated and expressed with a view to the needs and interests of a society in perpetual change ...

So with reference to the facts in the current case, it appears that:

First: The plaintiff Samira Soueidan is Lebanese, register 36/Hanin, married Mahmoud Abdel-Aziz Ahmad, Egyptian, on 04/04/1985; husband deceased on 14/11/1994 (see personal registration extract issued on 09/08/1995, marriage and death acts attached to the pleadings).

Second: Her children from the aforementioned husband for whom she requires Lebanese nationality are Faten (born on 22/06/1987), Samir (born on 25/11/1990) and Mohammad (born on 17/02/1992) (See copies of their Egyptian passports presented in the conclusions of the plaintiff on 19/04/2007).

Third: The children were minors on the date the present pleading was introduced, 7/4/2005;

Fourth: The Egyptian children do not know Egypt; they reside with their mother in Bourj Hammoud (See attestation of the Directorate of General Security presented in the conclusions of the defendant).

The application of the legal reasoning to the facts in the present case leads to the following:

Article 4 of Order 15 on 19/01/1925 and amended by the law of 11/01/1960 stipulates that "a woman who marries a foreigner acquires Lebanese nationality and that the adult children of the foreigner turned national can apply for and be granted Lebanese nationality without residency conditions, whether by decree conferring this nationality to the husband, father, mother or by special decree. Similarly, minor children of a father who acquired Lebanese nationality or a mother getting this nationality and still alive after the death of the father, become Lebanese unless they refuse it within one year of becoming adults."

In addition, paragraph 2 of the same article regulates the case of illegitimate children whose nationality is granted before adulthood, and considers them Lebanese "if [their] filiation to one [Lebanese] parent is confirmed."

Note that it is the mother who generally gives her nationality to the illegitimate child.

The aforementioned article offered two ways for the acquisition of Lebanese nationality by minors following the Lebanese nationality of the mother, but remained silent in the case of a minor born to a Lebanese mother who kept her nationality or got it back, and who was still minor when his father dies. This is a situation where proper legal logic requires an inclusion under the said article *a fortiori*, for it is not logical to consider the woman who acquires a new

nationality to be in a better situation than the Lebanese woman by birth who kept her nationality, especially in the absence of any convincing argument which would justify the lack of equality between the latter and the former.

Is it conceivable that Lebanese law prefers the foreign woman to the Lebanese women? No law can stipulate rights giving more protection to a foreigner than to a national ...

Article 7 of the Lebanese Constitution establishes the principle of equality before the law among all Lebanese, women and men. It does not discriminate between them in terms of rights and obligations, the permissible and the prohibited. The Lebanese woman is a partner to man in citizenship, obligations and rights, and has therefore the right to give her nationality to her children if she marries a foreigner, strengthening thereby the children's attachment to their mother country, securing the unity of the family's citizenship, facilitating the belonging of the family and its living together in one country, which is a fact in the case since the children of the plaintiff Samir Soueidan reside with her in Lebanon, in Bourj Hammoud specifically. They are not related their father's country other than through their Egyptian nationality.

The court in its approach to the case at hand seeks to protect the interest of the family and the relevant kinship in light of the laws in force and acts in its quality as protector of the family and family stability. Protection of the family is the main component of society from which the judge derives his power, and he rules in its name by avoiding deficiencies and gaps [in the statutory language].

Whereupon to argue against the granting of this right to the mother and the adoption of a narrow and literal interpretation of the text leads to discrimination between citizens who are equal under the Constitution, in rights and duties, in addition to discriminating between Lebanese and foreign married women, and the discrimination between children resulting from marriage and their separation in two categories, where protection and rights are for the Lebanese father and the foreign mother married to him, while the other category is ignored and denied its rights when the mother is a Lebanese national married to a foreigner, even if she retains her Lebanese nationality! With all that ensues in terms of moral pain when she is forced to deal with her minor children as foreigners to her own country, forcing her to follow the rules of residency necessary for foreigners to remain legally [on Lebanese territory].

By leaving the decision to the appreciation of the court, the appellate public prosecution in Mount Lebanon is also leaving the facts to guide the court's decision and overcome the statutory gaps or deficiencies, and removing any hurdle on its course. Public prosecution represents the public interest and intervenes for the protection of the public interest whenever endangered, on the basis of Article 8 of the Civil Procedure code.

In the light of our analysis, the children of the plaintiff Samira Soueidan who were minors at the date of submitting the present case, Faten, Samir and Mohammad Ahmad, should be considered Lebanese because their mother retained her Lebanese nationality and lost her foreign husband; unless they reject the nationality in the year that follows their reaching adulthood, a possibility not applicable presently.

Accordingly, the court decides to accept the claim of the plaintiff and to consider Faten, Samir and Mohammad Mahmoud Abdel Aziz Ahmad, Lebanese; to register them in the category of their mother in the records of Civil Status of Hanin/Bint Jbeil; and to give them Lebanese identity cards ... Therefore, the Court rules unanimously:

First: To accept jurisdiction.

Second: To consider Faten, Samir and Mohammad Mahmoud Abdel-Aziz Lebanese nationals.

Third: To register them under their mother's file in the register of Civil Status in Hanin/Bint Jbeil no. 36, to give each one of them a Lebanese identity card and to notify whomever it may concern as appropriate.

Fourth: To reject any additional and contradictory reasons.

Fifth: To charge the defendant, The Lebanese Republic, with all fees.

Judgment reached and made effective on 16/6/2009

Signed: President Qazzi, members Kazma and Habaka

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