

Lebanese Women and Discriminatory Legislation: The Case of Nationality Law

■ Lina Osseiran Beydoun

Women's Committee, Foundation for Human and Humanitarian Rights – Lebanon

Background: Nationality Law from an International Perspective

Nationality is a legal relationship between the individual and the state, but goes beyond that to provide individuals with a sense of belonging, security, and protection, and determines the individual's ability to fully exercise all his/her citizenship rights. Nationality and citizenship are, therefore, interrelated and intertwined.

The right and need of every individual to acquire a nationality has been recognized and emphasized in international law. The Nationality Treaty (The Hague, Holland, 1930) tackled the issue of nationality and urged all states to regulate it. While recognizing the right of countries to determine the criteria for granting nationality, each according to its own laws, this treaty urged all countries to do so within the recognized principles of the nationality law and in accordance with international treaties. The Universal Declaration of Human Rights (UDHR, 1948) in its preamble affirms "faith in the fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women..." Article 2 reaffirms equality of all rights and freedoms set forth in the Declaration without distinction of any kind. Furthermore, the International treaties of 1966, the International

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) assert the equality of human beings, and their civil, political, social, economic and cultural rights.

Lebanon ratified all the above treaties along with the Treaty on the Rights of the Child of 1989, which states in Article 6 that "the child shall be registered immediately after birth and shall have the right from birth to a name and a nationality. Countries who signed the treaty are to ensure the implementation of granting these rights 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."

Women had to wait for a few decades before their full equal rights were embodied in the jewel of the international treaties on women, namely the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979). The issue of nationality right is specified in Article 9 (1) which declares that states parties shall grant women equal rights with men in acquiring, changing or retaining their nationalities. They are to 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 her husband. Article 9(2) states that: "States parties shall grant women equal rights with men with respect to the nationality of their children."

Nationality law in Lebanon

Background

Much of the Lebanese discriminatory legislation against women, including the nationality law (1925),¹ preceded the above cited recent developments. The Lebanese Constitution (1926) stipulates equality between all Lebanese citizens. However, it did not devise a body of laws that reinforces equality between the sexes and prohibits discrimination against women.

Discrimination in favor of men has historically been widespread, sparing few systems. It reflects the 'wealth' of inherited social and cultural biases, that have contributed to the perpetuation of discrimination against women. In Lebanon, discriminatory laws against women fall mainly within the following main categories: (a) family laws (marriage, divorce, custody, inheritance, guardianship, trusteeship over children); (b) legal provisions of the penal laws concerning crimes of honor and adultery; (c) discriminatory labor laws; and (d) nationality laws, the subject of this paper.

Lebanon ratified CEDAW² with reservation to Article 9(2) concerning nationality. As a consequence, Lebanese law deprives Lebanese women of their basic right to pass Lebanese nationality to their children. This contradicts the principle of equality between citizens, enshrined in the Lebanese Constitution and emphasized in the international treaties to which Lebanon has acceded.

By and large, all nationality laws fall into two categories:

1. Jus Sanguinis (law based on blood);
2. Jus Soli (law based on land).

The first category, Jus Sanguinis, is favored by overpopulated crowded countries where population increase is not compensated for by the growth in national income. On the other hand, countries that possess vast areas of land and a tiny population tend to favor the Jus Solis law which gives nationality on the basis of birth and on residence within the country, owing to the requirements dictated by the economy and by defense considerations.

Undoubtedly, Lebanon falls within the first category, not only because it is densely populated, but more importantly because it wishes to maintain its delicate confessional balance. Moreover, we should not underestimate the role of the overwhelming patriarchal values that

shape a score of behavioral patterns that cast their shadows on nationality law.

Lebanese nationality law stipulates that nationality can be passed to children through the father only, in his capacity as head of the family. Alternately, children of Lebanese women and non-Lebanese fathers cannot acquire Lebanese nationality, even if they are born on Lebanese soil. There are, however, two exceptions to this law: (a) if the child's father is unknown or stateless; and (b) if the father was deceased when the child was underage, in which case he/she may acquire Lebanese nationality through his/her naturalized mother. Ironically, the right to pass citizenship is denied to indigenous Lebanese widows while it is granted to naturalized Lebanese widows!

Lebanese nationality law also permits a Lebanese man married to an alien to pass his nationality to his wife one year after she submits an application to get Lebanese citizenship, granting her full citizenship rights. The Lebanese woman, however, is denied the right to pass her nationality to her husband or her legitimate children, unless through a presidential decree.³

Although the laws of most modern states are such that nationality is granted through place of birth or by virtue of descent, or through both, tribal forces, lineages and patrilineal family-based structures have remained prominent, a fact which negatively affects the rights of women as individual citizens.⁴ This applies to Lebanon and to most countries of the Arab world. Thus, the laws and codes of the state continue to work in favor of reinforcing gender inequality and the exclusion of some people from nationality, by maintaining the view that the family (headed by the man) and not the individual is the basic unit of society. It is within this context that the role and impact of women as mothers and wives is relegated to the private sphere and confined within its scope.

According to the principles of the unity of the spouses and the affiliation of the wife to the husband adopted by Lebanon, a woman married to an alien acquires the nationality of her husband, and not the other way round. The rationale behind this principle of dependent nationality considers the family as one unit where the important decisions affecting the family reside with the husband only.

As states have the right to draw their own nationality laws in line with their own national interests, as stipulated by international law, the argument forwarded by the Lebanese government to justify its reservations with respect to Article 9 of CEDAW is that Lebanon is protecting the Palestinian refugees from any form of settlement in Lebanon that would jeopardize their right to return to

Palestine. If this is the case, why does the Lebanese government refrain from promulgating a new law that grants Lebanese women the right to pass their nationality to their children, with the exception of those married to Palestinians? Is it fear of being accused of passing a racist law? If this is the case, then the racist property law of 2002, which deprives the Palestinians living in Lebanon of ownership rights, has already set a precedent. Another possible unvoiced rationale for this law lies in the desire to maintain the delicate demographic balance between the various sects in Lebanon.

Ramifications of the Lebanese Nationality Law

The ramifications and problems of withholding nationality from the husband and children of Lebanese women are varied. Luckily, we have before us a serious recent study (2004) undertaken by the Gender, Citizenship and Nationality Program in the Center for Research and Training on Development (CRTD) and the United Nations Development Program. The study had its limitations and challenges, but by focusing on the collection of qualitative data and carrying out interviews with married women, it reflected certain general patterns:

1. There is a general lack of awareness among women, cutting across class lines and educational levels, of the problems entailed by their marriage to non-nationals.
2. The shock the women received and the intense feeling of humiliation precipitated by curtailing their rights as citizens was also underlined in this study.

One woman said that it had not occurred to her that her children's right to nationality was a questionable issue until she had her first child. Her first painful contact with reality occurred when she and her husband were unable to register their children in the national civil registration records. Registering their children at the embassies of their father also entailed problems. In some cases, this was due to the absence of the father or to severed diplomatic ties between the governments involved. The study also revealed that uneducated and lower-income women fared the worst and those married to Europeans were the best off.

In Lebanon, as elsewhere, the concept of nationality is viewed from within the political framework. However, in the case of Lebanon, it has wider implications due to the question of the Palestinian refugees and the political concern to preserve the demographic imbalance. Though recorded data in Lebanon between 1995-2002 indicated that the majority of mixed marriages in which the women are Lebanese and the men are not, involve Arab husbands (61 per cent), marriages to Palestinian men registered the lowest rate (1.9 per cent), thus showing the weakness of the argument in support of the existing nationality law and of the reservations concerning Article 9(2) of CEDAW.

Citizenship and nationality rights are associated with a host of other basic rights embodied in the UDHR. For example, having freedom of movement conditional on the father's approval entails the family members' living like outlaws, at times, or traveling without identity cards or passports, in cases where the father is absent, deceased, or the couple is divorced.

This problem is exacerbated by the need of families to regularly renew their residency permits or to acquire return visas, which entails a great deal of red tape and humiliation. The problem is further aggravated when the countries involved have strained relationships. Economic, social, as well as property and inheritance rights of children and husbands are among the leading problems. Moreover, non-national children and husbands are prohibited from working in either the public or private sectors. This is coupled with other constraints, such as prohibiting foreigners from holding jobs that the Lebanese are qualified to perform. Consequently, some resort to illegal jobs or to low-income jobs to cope with this situation. Owing to their status as foreigners, the children and husbands are restricted from owning property. Thus, they and their families have to resort to roundabout and costly measures. Over and above all these limitations, marriages to Palestinians involve further difficulties such as restrictions on education, employment and the acquiring of property, thus making the lives of such families doubly arduous.

The psychological impact of such discrimination on the children and families victimized by it are devastating. The family is subjected to constant tension in its attempt to make ends meet and to overcome the legal constraints. Tension leads to discord at home and often the (Lebanese) wife has to bear the brunt of it. She is often seized by feelings of regret and, at times, fears that the frustrated husband may take the children away to his country of origin.

Naturally, many families adopt a number of different measures to cope with such problems, such as bypassing laws or using personal connections (clientalism), which are behavioral patterns that already prevail in Lebanon. To obtain basic human rights for their families some desperate mothers are prepared to forgo their sense of dignity by claiming that their children are illegitimate, in order to be able to give them Lebanese nationality.

When women were interviewed, statements emerged that reflected their tragic situation. One said: "I am the reason why my daughters have no future." Another said: "I wish I were dead to put an end to regretting what I did to my children." Still another said: "I always

feel that I am being punished by my country for marrying the man I loved and this makes me angry.”⁵

In conclusion, it would be useful to screen and compare the nationality laws in the surrounding Arab countries. Recent attempts at democratization in some Arab countries, coupled with active women's NGO work, have resulted in some progress in nationality laws in these countries. In Algeria, the nationality law that was passed in 2005 granted women equality with men in terms of passing their nationality to their family. In Morocco the law was passed on to parliament for study, while in Egypt the government granted this right to women under certain conditions. In Tunisia, the Tunisian nationality law of 1993 was modified to allow children of Tunisian mothers and non-Tunisian fathers the right to citizenship provided that they are born on Tunisian soil and that they have their father's consent. The Jordanian government is studying the nationality law seriously in the Council of Ministers, subject to approval by the Lower House of Parliament. The UAE nationality law of 2002 granted women the right to pass their nationality only to their underage children, provided they are widowed or divorced.⁶

Sadly, Lebanon still lags behind in terms of introducing any effective changes to the nationality law. In the mean-

time Lebanese women are suffering and impatiently waiting for lifting the injustice inflicted upon them and their families. Will the positive force of change in the Arab world and the dynamic work of women's NGOs impact our nationality law soon?

Endnotes

1. The Lebanese nationality law of 1926 was based on French law which was later modified. The nationality law in France today (1973) grants full equality between the sexes.
2. For details on the Lebanese nationality law see: Laure Moghaizel, ed., 1985. *Women in Lebanese Legislations - in view of International Treaties and compared to Arab legislations* (Book in Arabic)
3. CRTD and UNDP POGAR, 2004, "Gender, Citizenship and Nationality Program - Denial of Nationality: The Case of Arab Women," Beirut, CRTD, p 9. <http://www.crtdd.org>
4. Ibid. pp. 9-10
5. Interviews held at the Foundation for Human and Humanitarian Rights, Starco bldg, Beirut, Lebanon. March 22, 2006.
6. Unpublished information collected by the United Nations Economic and Social Commission for Western Asia.

Campaign for Women's Right to Nationality in the Machreq-Maghreb Region

The Collective for Research and Training on Development-Action CRTD-A believes women's nationality rights are a prerequisite to gaining other basic universal human rights.

For this reason CRTD-A, together with its regional partners in the field of gender and development, has identified nationality as a critical issue for women in the Machreq-Maghreb region. In response to the need and interest expressed throughout the region to advocate for equal access to nationality and citizenship rights, on March 8, 2002, CRTD-A launched a new initiative entitled: Women's Right to Nationality within the scope of its regional 'Gender, Citizenship and Nationality Programme.'

In Lebanon alone, around 1375 women are married to non-nationals. Of these, 57% are married to Iraqi nationals, 14.3% to Egyptian nationals, 11% to Jordanian nationals, 5.1% to French nationals, 2.1% to British nationals, 2.1% to Syrian nationals, 1.8% to Iranian nationals, 1.6% to US nationals, 1.3% to Turkish nationals, 1.2% to Canadian nationals, 1.2% to German nationals, and only 1.1% to Palestinians.

Research conducted with women in this situation has unveiled tremendous suffering at the level of access to social and economic rights and political participation, as well as mobility and discrimination. It also indicated that women bear the brunt of the consequences at the individual, family and social level and suffer from exclusion as well as stigmatization.

For the full report, please consult the following link:
<http://www.iris-lebanon.org/inner/Gender%20and%20nationality%20regional%20report%20-%20final.Ar.pdf>
 This research was supported by UNDP-POGAR.

NGOs and Organizations Active in the Nationality Campaign

- CRTD, Lebanon
P.O.Box 165302 1100 2030
Beirut Lebanon
Tel/Fax: +961 616751/ 611079/
612924/ 615904
Email: info@crtdd.org
- FWID, Egypt
Tel: +202 5740644
Email: enas_elshafie@macmag-glip.org
- NCW, Jordan
Tel: +962 6 5560741
Email: incw@nets.co.jo
- SWL, Syria
Tel: +963 93183030
Email: garro@scs-net.org
- ADFM, Morocco
Tel: +212 6 1472387
- BWS, Bahrain
Tel: +973 1 7404967
Email: wajeeha99@hotmail.com
- CIDDEF, Algeria
Email: nadia_ait@yahoo.com