

Why Non-Marital Children in the MENA Region Face a Risk of Statelessness

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Abstract

International law guarantees each individual the right to a nationality. However, this right is not always realized in reality, and the Middle East is home to several of the world's chronic stateless populations. Problematic laws and policies in the region also result in new cases of individual statelessness. This article argues that a combination of gender discriminatory nationality laws, civil registration requirements, criminal penalties for adultery, and societal attitudes prevent or deter unwed parents from registering their children's births or transmitting nationality to their children. Reforming laws that discriminate on the basis of nationality will do much to end statelessness in the Middle East, but cannot eradicate statelessness until unwed parents and their children are no longer threatened with violence and rejection.

Introduction

In 2013, an unmarried couple in Dubai was accused of gross child abuse for keeping their eight-year-old daughter from enrolling in school or receiving healthcare and immunizations. However, the couple denied that they intended to harm the child. Rather, they claimed that they were forced to keep the child at home because if the child was discovered, they would both be sent to jail for having a child out of wedlock.² Arguably, these parents were more responsible than the dozens of unwed parents in the United Arab Emirates (UAE) who have simply abandoned newborn infants rather than face criminal penalties for bearing children out of wedlock.³ Laws that penalize adultery and discriminate against non-marital

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² Bassam Za'Za, *Unmarried Dubai Couple Deny Endangering Life of Illegitimate Child*, GULF NEWS (May 8, 2013), <http://gulfnews.com/news/gulf/uae/courts/unmarried-dubai-couple-deny-endangering-life-of-illegitimate-child-1.1180462>, archived at <http://perma.cc/SVM6-G2MT>.

³ *Solution Needed to Baby Abandonment in the UAE*, THE NATIONAL (Jan. 13, 2014), <http://www.thenational.ae/thenationalconversation/editorial/solution-needed-to-baby-abandonment-in-the-uae>, archived at <http://perma.cc/YN2V-B4UH>.

children⁴ and their parents, such as the criminalization of adultery in the UAE, risk the result of unregistered and even stateless children.

The Middle East and North Africa (MENA) region⁵ is host to many of the world's largest chronic stateless populations: the *bidoon* of the Gulf, stateless Kurds in Lebanon and Syria, and stateless Palestinians living throughout the region.⁶ But the legal systems of many Middle Eastern countries also leave children of citizens vulnerable to statelessness.

A first step toward universal access to nationality is correcting gender-discriminatory nationality laws, a yet-elusive goal throughout the Middle East.⁷ But that will likely be an incomplete solution: civil registration laws and practice, social stigma against unwed parents and non-marital children, and laws criminalizing adultery all place non-marital children at a great risk of statelessness.

Statelessness and human rights

A stateless person is someone who is “not considered as a national by any State under the operation of its law.”⁸ Statelessness is itself a deprivation of a human right—the right to a nationality—and stateless individuals frequently experience further deprivation of rights such as the right to education, freedom of movement, and family life.⁹

International law, including the Convention on the Rights of the Child (CRC), the most widely ratified international human rights treaty, requires that “each child shall be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality.”¹⁰ The International Covenant on Civil and Political Rights (ICCPR) establishes that each child “has the right to acquire a nationality.”¹¹ All states in MENA have ratified the CRC and the majority has also ratified the ICCPR.¹²

⁴ Rather than using the pejorative term “illegitimate children,” I use the term “non-marital children.”

⁵ For the purposes of this article, the MENA region comprises Algeria, Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, the Occupied Palestinian Territories, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates (UAE), and Yemen.

⁶ LAURA VAN WAAS, U.N. HIGH COMM’R FOR REFUGEES, *THE SITUATION OF STATELESS PERSONS IN THE MIDDLE EAST AND NORTH AFRICA 2* (2010), <http://www.refworld.org/docid/4cea28072.html>.

⁷ See generally UNHCR, *BACKGROUND NOTE ON GENDER EQUALITY, NATIONALITY LAWS AND STATELESSNESS 2014* (2014), <http://www.unhcr.org/4f5886306.html>.

⁸ Convention Relating to the Status of Stateless Persons, art. 1, *opened for signature* Sept. 28, 1954, 360 U.N.T.S. 117 (entered into force Jun. 6, 1960).

⁹ WAAS, *supra* note 6, at 2.

¹⁰ Convention on the Rights of the Child, art. 7, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

¹¹ International Covenant on Civil and Political Rights, art. 24(1), *opened for signature* Dec. 19, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]. The

Civil Registration

Imperfect birth registration systems are one factor preventing children from enjoying the right to a nationality. Birth registration is the process by which a child's birth is recorded in a civil register by the applicable government authority, allowing verification of each child's identity, age, and status as a child.¹³ Registration protects children's access to the rights guaranteed to them under international law, including the right to education¹⁴ and the right to be free from exploitation.¹⁵ It is important to differentiate between non-registration of birth and statelessness. A child usually acquires nationality automatically, or *ex lege*, upon birth, rather than at the registration of birth.¹⁶ The birth certificate simply assists in confirming a child's nationality, as it provides proof of birth in a country's territory (*jus soli*) or by descent (*jus sanguinis*)—the two primary means by which states grant nationality at birth.¹⁷

Many children who become stateless because of non-registration are, according to the letter of the law, entitled to receive the nationality of their parents or of the place of their birth. However, when a child's birth goes unregistered, the child lacks evidence of her right to a nationality, thus creating the risk that the state (or other social institutions) may ultimately refuse to acknowledge her as its national. If authorities refuse to confirm a child's nationality, or if the State refuses to confirm the nationality of unregistered children as a matter of practice,¹⁸ the child is considered stateless.¹⁹

Discrimination against unwed parents and their children

UN Human Rights Council recently reaffirmed the duty of governments to make universal registration a reality. Human Rights Council Res. 19/9, Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law, 19th Sess., Apr. 3, 2012, U.N. Doc. A/HRC/RES/19/9 (Mar. 22, 2012).

¹² To date, Oman, Qatar, Saudi Arabia, and the United Arab Emirates have yet to ratify the ICCPR.

¹³ PLAN INTERNATIONAL, UNIVERSAL BIRTH REGISTRATION – A UNIVERSAL RESPONSIBILITY 11 (2005).

¹⁴ CRC, *supra* note 10, art. 28; International Covenant on Economic, Social and Cultural Rights, art. 13, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁵ CRC, *supra* note 10, arts. 32–36; UNICEF, BIRTH REGISTRATION RIGHT FROM THE START 5 (2002), <http://www.unicef-irc.org/publications/pdf/digest9e.pdf>.

¹⁶ U.N. High Comm. for Refugees, *Guidelines on Statelessness No. 1: The Definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons*, ¶ 27, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012).

¹⁷ LAURA VAN WAAS, NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW 153 (2008).

¹⁸ In Lebanon, if parents do not complete the complicated Lebanese birth registration requirement within one year, the children are regarded as non-nationals and must initiate a lawsuit in order to prove their nationality. During the course of the lawsuit, they are considered non-nationals. Comm. on the Rights of the Child, Third Periodic Reports of States Parties due in 2003, Lebanon, U.N. Doc. CRC/C/129/Add.7 (Oct. 25, 2005); Patricia Mouamar, *Lebanese children live and die as if they never existed*, WORLD VISION (May 12, 2014), <http://www.wvi.org/child-health-now/article/lebanese-children-live-and-die-if-they-never-existed>.

¹⁹ *Id.*

The remainder of this article establishes that the intersection of discrimination in nationality law, criminalization of adultery, and stigmatization of births outside of marriage creates a risk of statelessness for non-marital children in the MENA region. In some cases, it is impossible to register the birth of a non-marital child. Even where safeguards explicitly allow for conveyance of nationality for non-marital children, some parents will not register their children for fear of governmental or societal repercussion. Children left without confirmation of their identities, place of birth, or descent, are then left at risk of statelessness.

Nationality laws

Most countries in the MENA region convey nationality by default through the father.²⁰ Many countries' nationality laws allow women to pass their nationality if the child's father is stateless, unknown, or of unknown nationality,²¹ but these safeguards are simply not implemented in many countries and thus remain illusory. Provisions that allow children to take the mother's nationality where the father's identity or nationality is unknown,²² taken literally, mean that the mother does not know who the father is. Such provisions do not include situations in which a woman knows who the father of the child is, but is not married to the father. Thus, if a child results from adultery or even non-consensual sexual contact, the child would not take the mother's nationality because the father is not unknown.

Children born of coercive relationships during armed conflict may also be rendered stateless.²³ In Iraq, for instance, large portions of territory have been controlled for months at various points by al-Qaeda and related militias.²⁴ Under al-Qaeda rule, militants forced young women into marriages, often without revealing their own identities. Hundreds of children were born to militant fathers and Iraqi mothers who were married in religious ceremonies but whose marriages were never documented.²⁵ Because those children cannot prove their paternity or 'legitimacy,' they are not recognized as Iraqi nationals and cannot obtain birth certificates, passports, or national identification cards. Without documentation, the children cannot enroll in school or access state services. Their mothers, as well, are subject to social stigma, seen as single mothers who have had children out of wedlock.

Adultery laws

²⁰ UNHCR, *supra* note 7, at 2.

²¹ *Id.*

²² *Id.*

²³ Michael Goodhart, *Sins of the Fathers: War Rape, Wrongful Procreation, and Children's Human Rights*, 6 J. HUM. RTS. 307, 307–309, 319 (2007).

²⁴ Leila Fadel, *Children of al-Qaeda in Iraq Pay for Sins of their Fathers*, WASH. POST (Sep. 21, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/20/AR2010092005696.html>.

²⁵ *Id.*

Second, in many countries in the region, sexual relations outside of marriage are punishable by fine, imprisonment, or corporal punishment.²⁶ Women in Saudi Arabia, for example, including foreign migrants, may face the death penalty for having children out of wedlock.²⁷ The prospect of facing criminal charges poses a significant barrier to registering a birth or applying to confirm a child's nationality. The UN Working Group on Discrimination against Women in Law and in Practice has recently concluded that "the mere fact of maintaining adultery as a criminal offence, even when it applies to both women and men, means in practice that women mainly will continue to face extreme vulnerabilities, and violation of their human rights to dignity, privacy and equality."²⁸

Of course, adultery laws impact children who result from adultery as well. In the UAE, where adultery is criminalized, parents have reportedly declined to register their children or give them access to education and health care because they fear imprisonment if their adultery is discovered.²⁹

Stigma and violence against unwed mothers

Third, unwed mothers in the Middle East often face social isolation or harassment from their family and community members.³⁰ In less common but more

²⁶ See, e.g., Penal Code (Royal Decree No. 7 of 1974), arts. 225–27 (Oman); Penal Code (Law No. 11 of 2004), arts. 1, 281–82, 284–85, 287–88, 296 (Qatar); Penal Code No. 111 of 1969 (Iraq).

²⁷ Amnesty International, *Saudi Arabia: Five Beheaded and 'Crucified' amid 'Disturbing' Rise in Executions* (May 21, 2013), <http://www.amnesty.org/en/news/saudi-arabia-five-beheaded-and-crucified-amid-disturbing-rise-executions-2013-05-21>; Neil Sears, *Saudi Princess Given Asylum in UK over Fears she Faces Execution for Having Illegitimate Child with British Lover*, DAILY MAIL (Jul. 20, 2009), <http://www.dailymail.co.uk/news/article-1200864/Saudi-princess-facing-death-penalty-adultery-given-secret-UK-asylum.html>; Gloria Jane Baylon, *Eight Saudi-Based Filipino Mothers with 11 out-of-Wedlock Children Repatriated*, BALITA (Jan. 22, 2011), <http://balita.ph/2011/01/22/eight-saudi-based-filipino-mothers-with-11-out-of-wedlock-children-repatriated/>; Xianne Arcangel, *Pinay in Saudi Receives 100 lashes after Getting Pregnant out of Wedlock*, GMA NEWS (Jul. 2, 2013), <http://www.gmanetwork.com/news/story/315556/pinoyabroad/news/pinay-in-saudi-receives-100-lashes-after-getting-pregnant-out-of-wedlock>.

²⁸ *Joint Statement by the United Nations Working Group on Discrimination against Women in Law and in Practice*, OHCHR.org (Oct. 18, 2012), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&>.

²⁹ Za'Za, *supra* note 2; *Illegitimate Child Handcuffed by Mother for 12 Yrs*, EMIRATES 24/7 (Mar. 13, 2012), <http://www.emirates247.com/crime/local/illegitimate-child-handcuffed-by-mother-for-12-yrs-2012-03-13-1.448125>; *Children Found on Beach in UAE are Illegitimate*, EMIRATES 24/7 (Mar. 5, 2013), <http://www.emirates247.com/news/emirates/children-found-on-beach-in-uae-are-illegitimate-2013-03-05-1.497295>.

³⁰ YARA ABDUL-HAMID, SAVE THE CHILDREN, CHILD RIGHTS SITUATION ANALYSIS: MIDDLE EAST AND NORTH AFRICA 77, 92, 110, 192 (2011), <http://resourcecentre.savethechildren.se/sites/default/files/documents/4886.pdf>; Ayesha Almazroui, *Single Mothers in UAE will Shoulder the Blame after Most Divorces*, THE NATIONAL (March 7, 2013), <http://www.thenational.ae/thenationalconversation/comment/single-mothers-in-uae-will-shoulder-the-blame-after-most-divorces>, archived at <http://perma.cc/R9NW-ER33>. Ilhem Rachidi, *Morocco*:

extreme circumstances, women who bear children outside of marriage may fear so-called 'honor' crimes, in which family members retaliate against women for perceived transgressions against the family 'honor.'³¹ The United Nations considers such 'honor' crimes as harmful traditional practices that seek to control women's sexual choices.³²

Human rights groups estimate that 200 women are murdered in Syria in 'honor' crimes each year,³³ along with an estimated 25 women in Jordan each year,³⁴ 89 cases documented in Kurdish Iraq in 2012,³⁵ and 66 reported killings in Lebanon between 1999 and 2007.³⁶ In 2009, Syria reformed provisions of its criminal code that granted impunity to men who commit 'honor' crimes, but imposed sentences of just two years for such murders.³⁷ In Egypt, Iraq, Jordan, Kuwait, Syria, Yemen, and the occupied Palestinian territories, sentences for attacks on women are often reduced when family 'honor' is cited as the motivation.³⁸ And it is unclear whether criminal law reform itself would be enough to stop these crimes, as the crimes may continue after states increase criminal punishments.³⁹ Reforming the law may be insufficient to protect women without changes in social norms.

Lifelong discrimination against registered non-marital children

Finally, for children who *are* registered at birth, official documentation may mark them as 'illegitimate,' exposing them not to statelessness but to a lifetime of marginalization and discrimination. According to the UN Special Rapporteur on Violence against Women, in Algeria, "[c]hildren born outside marriage...are registered and identified as such in official documents. In such cases, girls are confronted with intersecting layers of discrimination based on their legal status and

Women's Advocates Push Men to Recognize Paternity, WUNRN (Aug. 14, 2006), http://www.wunrn.com/news/2006/08_14_06/081606_morrocco_single.htm.

³¹ U.N. Hum. Rts. Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, ¶ 43–50, U.N. Doc. A/HRC/20/16 (May 23, 2012).

³² See generally U.N. ASSISTANCE MISSION IN AFGHANISTAN & OFFICE OF THE U.N. HIGH COMM'R FOR HUM. RTS., *HARMFUL TRADITIONAL PRACTICES AND IMPLEMENTATION OF THE LAW ON ELIMINATION OF VIOLENCE AGAINST WOMEN IN AFGHANISTAN* (2010), http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf.

³³ *Syria: No Exceptions for 'Honor Killings'*, HUMAN RIGHTS WATCH (Jul. 28, 2009), <http://www.hrw.org/news/2009/07/28/syria-no-exceptions-honor-killings>.

³⁴ *Jordan: Tribunals No Substitute for Reforms on 'Honor Killings'*, HUMAN RIGHTS WATCH (Sep. 9, 2009), <http://www.hrw.org/news/2009/09/01/jordan-tribunals-no-substitute-reforms-honor-killings>.

³⁵ *89 Women Killed, 357 Burnt in Iraq's Kurdistan Region in 2012*, EKURD.NET (Feb. 17, 2013), <http://www.ekurd.net/mismas/articles/misc2013/2/state6863.htm>.

³⁶ *Lebanon: Law Reform Targets 'Honor' Crimes*, HUMAN RIGHTS WATCH (Aug. 11, 2011), <http://www.hrw.org/news/2011/08/11/lebanon-law-reform-targets-honor-crimes>.

³⁷ See generally HUMAN RIGHTS WATCH, *supra* note 32.

³⁸ See generally HUMAN RIGHTS WATCH, *supra* note 35.

³⁹ Abdel Hamid Zebari, *KRG Fails to Combat Violence against Women in Iraqi Kurdistan*, EKURD.NET (Feb. 5, 2013), <http://www.ekurd.net/mismas/articles/misc2013/2/state6835.htm>.

sex.”⁴⁰ In Saudi Arabia, identity cards for non-marital boys highlight their ‘illegitimate’ status because the identity cards, unlike the cards of their peers, do not include a family name.⁴¹

Nearly every country in the MENA region allows a foundling, or a child who is found in the country whose origins are unclear, to acquire nationality.⁴² In practice, though, the same forms of stigma attached to non-marital children will also apply to foundlings, because it is assumed that children abandoned at birth were born to unwed parents. In Jordan, the state places foundlings in orphanages, and when they ‘graduate’ at the age of 18, they are subject to extreme social stigma, seen as children ‘born of sin.’ Children of unknown parentage report that their national identity cards mark them as such and expose them to stigma from employers.⁴³ Many are forced onto the street, where they are at extreme risk of labor and sexual exploitation. These children receive nationality, but identity cards that mark their origin combined with societal discrimination prevent these children from enjoying the equality that their nationality ought to grant them.

Conclusion

The international community has advocated vigorously for an end to gender-based discrimination in nationality laws. Morocco stands as a model for the region; its family law allows non-marital children to take the mother’s family name. Morocco’s law further states explicitly that “[f]iliation to the mother produces the same effects regardless of whether the children are the result of a legitimate or illegitimate relationship,” effects that include the transmission of nationality.⁴⁴

This article, though, highlights an unfortunate truth: even if every country in the region were to allow women to pass nationality on to their children with perfect equality to men, some children will almost certainly continue to be denied a nationality as long as societal discrimination continues. A mother who faces imprisonment or possible death for registering her child’s birth is unlikely to register the child, and without documentation of the child’s origins, the child may not be

⁴⁰ U.N. Hum. Rts. Council, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk*, ¶ 40, U.N. Doc. A/HRC/7/6/Add.2 (Feb. 13, 2008); see also Comm. on Rts. of Child, Concluding Observations: Algeria, 60th Sess., May 29–Jun. 15, 2012, ¶¶ 39–40, U.N. Doc. CRC/C/DZA/CO/3-4 (Jun. 19, 2012).

⁴¹ UNICEF, *supra* note 15, at 4.

⁴² See, e.g., Bahraini Citizenship Act, amended in 1981 art. 5(b); Law No. 6 of 1954, last amended in 1954 art. 3(5) (Jordan).

⁴³ Helen Brooks, *Jordan’s Dark Side: How the Government Brands its Orphans*, ALBAWABA (Jul. 25, 2012), <http://www.albawaba.com/behind-news/jordan-orphans-protest-435520>; Laila Azzeh, *Orphans Decry ‘Years of Negligence’, Highlight Abuses*, JORDAN TIMES (Jun. 12, 2012), <http://jordantimes.com/orphans-decry-years-of-negligence-highlight-abuses>. The impact of differentiated national identification has also been noted in a Jordanian-produced documentary. Widad Shafakoj, *ID:000* (May 1, 2012), <http://www.youtube.com/watch?v=KkJnhjoWTc4>.

⁴⁴ ABDUL-HAMID, *supra* note 29.

able to prove and enjoy nationality later in life. Thus, while gender equality in nationality laws will do much to end statelessness, the international community must also turn its attention to the penalization of and stigma against unwed parents, especially single mothers, and non-marital children.