

# Convergence of Gender Equality in Citizenship Rights and a Child's Right to Education: The Cases of Jordan, Kuwait, and Lebanon

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## A. INTRODUCTION

This chapter focuses on national gender discrimination policies with regards to citizenship in Jordan, Kuwait, and Lebanon and its relation to a child's right to education. Gender discrimination, with respect to national citizenship laws, remains prevalent in North Africa and the Middle East. These countries also have large numbers of children that are either denied or lack access to primary and secondary education. The supporting evidence for this chapter relies upon surrounding scholarly work, United Nations (UN) and International Governmental Organizations (IGOs) studies and reports, and anecdotal evidence. My thesis is that national discriminatory laws that restrict a woman's ability to pass on their citizenship, particularly in Jordan, Kuwait and Lebanon, contribute to violations of a child's right to education as protected by the Convention on the Rights of the Child.

First, I will address the contribution of scholars, IGOs, and Non Governmental Organizations (NGOs) to the existence and impact of

national discriminatory laws, with specific references to Jordan, Kuwait, and Lebanon. I will also outline the international conventions that are currently in place that specifically prohibit such national discriminatory laws as well as those that protect a child's right to education. Then, I will give treatment to the current situations that exist in Jordan, Kuwait, and Lebanon. Within each case study, I will outline its current nationality and citizenship laws and their impact on the child's right to education. Finally, I will explain why these nationality and citizenship laws should be amended to comply with the states' international obligations and that the advocacy groups of gender equality and children's access to education should combine their resources to achieve even a result that will benefit both groups.

Throughout this chapter, the terms nationality and citizenship are both used at times. While nationality is not a universal requirement for citizenship, the acquisition of nationality is one of the universal tenants that leads an individual to being able to declare a right to the legal benefits of citizenship. When a state denies an individual their right to a nationality, they often are also denying them their legal claim to the rights of citizenship. In granting the right to citizenship, many states do so through their Nationality Laws, which set forth the situations in which an individual may be granted the rights of citizenship, often through birth. This is the case for Jordan, Kuwait, and Lebanon. Each of these states' systems confer the benefits of citizenship to children that carry the nationality of the state. As discussed in this chapter, only fathers that are citizens are granted the unrestricted right to pass on their nationality and citizenship to their children. These leaves mothers who are citizens of these states discriminated against with regards to their ability to pass on their nationality and citizenship to their children, where the father is not also a citizen of the state.

A state's relationship with its citizens is derived through its designed nationality and citizenship laws. While nationality denotes being a member of a state, the granting of citizenship identifies the existence of a legal relationship between the individual and the citizen. Such relationship then produces certain rights and responsibilities that

the state pledges to be retained by the individual. A segment of these rights includes civil rights that an individual possesses through the conferral of citizenship by the state. These civil rights may include access to health care, property rights, right to education, marriage, access to social benefits, right to travel among others. Under most state systems, citizenship is conferred either by at least one parent of the child or through being born in that state. Where citizenship is conferred from the parent(s), children adopt the citizenship of the parent(s) and the corresponding civil rights that the state has pledged to its citizens. However, several states continue the practice of discriminating between men and women in their ability to pass citizenship to their children. Under such discriminatory nationality and citizenship laws, women who marry a non-citizen and their families face significant hurdles and challenges that men who marry a non-citizen do not. One of these challenges includes the ability of the child to access educational opportunities, as they are deemed a non-citizen even when their mother is a citizen and they are born inside the territory of the state. These discriminatory nationality and citizenship laws and their impact on a child's right to education violate the states' obligations to several international treaties, including Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), in which the states are parties to.

The impact of these discriminatory nationality and citizenship laws are currently exacerbated due to the influx of refugees and migrant populations in the Middle East region. In 2015, there were two million registered Palestinian refugees in Jordan (Faour, 2017, p. 287). In Lebanon, Palestinian refugees, nearing half a million make up a large portion of children that are deemed non-citizens by Lebanon and denied access to free public education (Faour, 2017, p. 284).

While there has been substantial research on the impact of these discriminatory nationality and citizenship laws, such focus has been on the impact as a whole, rather than its relation to a single effect. Similarly, much research has been given to the issue of ensuring a

child's right to education. This chapter looks to combine both sets of research and propose an alternative approach of solving each issue by combining the efforts of both advocacy groups and pushing both groups' focus towards amending the nationality laws to remove any reference to gender discrimination. Such an approach will provide an immediate avenue for access to education for children who are currently deemed 'foreigners' under the current discriminatory regimes.

This chapter analyzes the central thesis through the lens of a body of literature that analyzes national discriminatory laws and their impact on a child's right to education, such as those in place in Jordan, Kuwait, and Lebanon. I rely primarily on the work of INGOs and NGOs such as United Nations High Commission for Refugees (UNHCR), United Nations International Child's Emergency Fund (UNICEF), Equality Now, and others that have created numerous reports and studies on this subject. Additionally, I rely on scholars' work on the correlation between human rights and citizens' rights and the effect of human rights related treaties and conventions. There is a body of scholarship that calls for Jordan, Kuwait, and Lebanon to amend their nationality laws and to remove their reservations to international treaties which would place obligations on the state to eliminate their discriminatory practices. For instance, the UNHCR calls for Jordan to remove its reservation to Article 9 of CEDAW, which prohibits discrimination in nationality laws based on gender. In addition, I use these scholars' reports for findings and anecdotal evidence of the impact on a child's right to education. I use this body of scholarship as a foundation for my investigation and to support my thesis.

## **B. NATIONALITY LAWS AND GENDER**

First, treatment will be given to scholarship and studies regarding the existence, reasoning, and impact of discriminatory nationality laws. Catherine Warrick has stated that nationality law is implemented in order to legally define the requirements of citizenship to the state (Warrick, 2009, p. 97). Through the conferral of citizenship upon an individual, the state creates a relationship with the individual, which

contains the legal basis of claims of rights and duties between the parties. Several states house a system in which women are discriminated against with regard to their ability to pass on their citizenship to their children. These nationality laws only allow citizenship to be passed on through the father and not the mother. Warrick asserts that the deliberate unequal treatment of women in these laws is intended to pursue certain cultural and political interests within the state (Warrick, 2009, p. 97). As a result, women who marry non-citizens cannot pass on their citizenship to their children or spouses, even where the child is born within the territory of the state, a limitation that is not placed upon men. In the Middle East, this practice has been rooted in the state's cultural and political traditions that restrict the rights of women in areas in which the male's rights are not. For example, in the 1950s, Jordan, Iraq, Saudi Arabia, Yemen, Egypt, Libya, Lebanon, and Syria looked to ameliorate the differences in the region with regards to nationality laws. The following agreement proclaimed that Arab women would automatically acquire the nationality of their Arab male spouse, if he was from a different Arab country, with no provision implemented for Arab men (Warrick, 2009, p. 102).

Currently, in the Middle East, citizenship of the child remains almost absolutely determined by that of the father. While the Middle East does not share a common culture, language, or even similar vision of Islam, the predominant religion, it does share a common system of extending citizenship through the male and not the mother (Joseph, 1996). One explanation for this is that male dominated citizenship regimes emerge from an emphasis on the family unit. In the Middle East, many of the current legal systems are based upon those that existed while the region was under colonial rule which reserved full civil and political rights only for males (Al Barazi, 2017, p. 94).

The existence of the gender discriminatory nationality laws can also be explained by how the state views the creation of its relationship with the citizen. In most Middle Eastern states, citizens are not only viewed as individuals but also as members of communities recognized through family units, religious sects, ethnic, or tribal groups (Joseph,

1996). This view is derived from the fact that these states have submitted personal status laws under the guidance or control of religious codes. Primarily relying upon Islamic law, the personal status law views women's rights as citizens primarily through their role as mothers and wives in order to uplift the importance of the family unit (Joseph, 1996). As a result of this structure, the majority of countries in the Middle East are viewed as limiting freedoms with regard to political rights and civil liberties (Faour, 2017, p. 280).

Under a system where citizenship is inherited solely through the father, many issues arise for the children of women who marry individuals from a different state. One of the most significant issue that arises is that children may end up stateless. The United Nations High Commissioner for Refugees, the UN's refugee agency, has proclaimed that nationality laws that do not grant women equality with men in conferring citizenship to their children create a vacuum of statelessness for children born to mothers not married to a citizen of the state. The risk of this is increased in Middle Eastern countries that have seen a dramatic increase of migrants in the recent years due to surrounding political unrest and military conflicts (Faour, 2017, p. 280). In particular, the civil unrest in Syria, Iraq, and Palestine has resulted in an estimated million migrants in Jordan, while migrants constitute nearly half the population of Lebanon (Faour, 2017, p. 280). In each instance, the result is an influx of children and families that will need to be supported by state agencies and resources. In these communities, civil registration laws also can lead to increased statelessness of children. When a child is unregistered at birth, the parents lack further evidence of the child's nationality (Fisher, 2015, p. 3). In Lebanon, children are required to be registered within one year of their birth, otherwise they must go through the court system to seek their status as a citizen (Fisher, 2015, p. 3). This process can be more difficult for refugee population living below poverty in camps separated from typical hospitals and state departments that accept and process the registration applications. In addition, this further discriminates against children of unwed parents that choose to not register the birth of the child as a

result of fear of criminal adultery laws and societal repercussion (Fisher, 2015, p. 4).

According to the UNHCR, in states' that limit a mother's ability to pass on their citizenship to the child, statelessness can occur where: the father is stateless, where the laws of the father's country do not permit him to confer nationality in certain circumstances such as when the child is born abroad, where a father is unknown or not married to the mother at the time of birth, where a father has been unable to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children, or if he has abandoned the family (UNHCR, *Background Note*, 2014).

There has been slow improvement within the Middle East. In 2003, Palestine was the first Arab country to give women the right to pass on citizenship, followed by Egypt, Algeria, Morocco, Yemen, Tunisia and Libya (Zambarakji, 2012). In 2012, Saudi Arabia implemented new laws that would allow citizenship to be granted to children of Saudi women married to non-Saudi men, but only where other limited circumstances were met (Zambarakji, 2012). Additionally, in November of 2015, numerous states met in Cape Town, South Africa, to discuss the causes of statelessness. This ended with the convening parties issuing an appeal to champion gender equal nationality laws, in partnership with the Global Campaign, an effort they viewed as most important to reduce statelessness (Global Campaign).

Other countries have yet to change their laws. Lebanon, Bahrain, Jordan, Kuwait, Oman and Syria all have nationality laws that limit a women's right to pass on their citizenship to their child (Zambarakji, 2012). This causes the child to be deemed a foreigner in the eyes of the state. As foreign nationals, these children must pay non-citizen prices for state universities and are denied the ability to enter certain professions, such as law, medicine and engineering (Zambarakji, 2012). Many countries in the Middle East only commit to providing free public education to citizens, while some require noncitizens to obtain

special permission from a state agency before receiving free access to public school (Faour, 2017, p. 280). The impact on a child's access to education is extremely concerning. Richard Pierre Claude has described education as "mankind's most effective tool for personal empowerment" (Pierre Claude, 2005, 37). Education is also critical to the production and development of a universal system of social, economic and cultural human rights (Pierre Claude, 2005, 37).

Lack of education has also been directly linked to other human rights violations. The U.N. Committee on Economic, Social & Cultural Rights found that a lack of educational opportunities for children leads to a greater chance of experiencing other human rights violations (Gartner, 2013, p. 5). Additionally, the Committee found a direct correlation between primary school enrollment levels for girls and major reductions in child marriages (Gartner, 2013, p. 5), a problem that is intertwined to the roots of gender discrimination in nationality laws.

After emphasizing the importance that education plays in the role of promoting human rights, Richard Pierre Claude then examined the history of the right to education in international instruments. One of the earliest international texts recognizing a child's right to education, was articulated in the Universal Declaration of Human Rights (Article 26) (Pierre Claude, 42). The first section of Article 26 contains the substance of the right, reading: *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.* This right to education was linked to three specific goals: (1) the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms; (2) the promotion of understanding, tolerance and friendship among all nations, racial or religious groups; and (3) the furthering of the activities of the UN for the maintenance of peace (Pierre Claude, p. 39). Examining the first goal, full development of the human personality, Pierre Claude explains that the right to education is articulated as a



“social right, a social good and responsibility of society as a whole” (Pierre Claude, p. 40). The *right to education* has been secured through ratification of an international convention by almost every country in the world (Gartner, 2013, p. 5). The International Convention on Economic, Social, and Cultural Rights, ratified by 160 countries, declares in Article 13, that primary education shall be compulsory and available to all (Gartner, 2013, p. 5). In addition, indirect costs of primary education, such as compulsory levies on parents, are also in violation with the convention (Gartner, 2013, p. 5; U.N. Comm. Econ. Soc. & Cultural Rights, Gen. Comment No. 11).

However, even with these human rights treaties in place, there is debate regarding whether their implementation is an effective tool to combat human rights violations. On the one hand, scholars—most notably David Gartner—assert three primary reasons for why human rights obligations are enforced: the democracy thesis, constitutional thesis, and international non-governmental organization thesis. These theories assert that 1) democracies are more likely to enforce human rights treaties; 2) human rights are most effectively enforced through state constitutional protections; or 3) human rights enforcement is correlated to the number of INGOs that operate within the state (Gartner, 2013, pp. 2–3). Each of these theories focuses on the actions of the state internally and not on its participation in international human rights conventions and treaties. A growing argument is that states that have ratified the most human rights treaties are the most likely to violate these treaties (Gartner, 2013, p. 1). With respect to Jordan, Kuwait, and Lebanon, each is a signatory to many human rights treaties yet still are hosts to substantial violations of human rights, such as right to a nationality and a child's right to education. As noted by David Gartner, this may also be explained by the fact that most human rights treaties include few effective enforcement mechanisms. One recent enforcement mechanism was put in place with regards to the Convention on the Rights of the Child. On December 19, 2011, the Committee approved a third optional protocol on a communications procedure (OPIC), which allow individual children to submit

complaints regarding specific violations of their rights under the Convention (Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, 2012). Other international agencies also have not proved to be effective with regards to securing implementation of this universal right to education. David Gartner asserts that UNESCO, which serves as the lead UN agency on education, has not contributed significantly to legal enforcement of the right (Gartner, 2013, p. 6). Lack of enforcement also lies with the UN Human Rights Council, which established the position of the Special Rapporteur on the right to education. The Special Rapporteur conducts studies, reports, and investigations of member states with regards to their level of compliance with the right to education. While these studies and reports are very informative and valuable to the international community, there have been few actions taken by the UN Human Rights Council that have effectively implemented the recommendations of these reports (Tomagevski, 2005, p. 225).

## **C. INTERNATIONAL COVENANTS**

Where the child is not granted citizenship while simultaneously denied the same access to educational opportunities as citizens of the state, certain international conventions protecting the child's right to education are also implicated. The primary source of this right is articulated in the Convention on the Rights of the Child. Under the Convention on the Rights of the Child, Article 2 states that: "State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind . . ." (Convention on the Rights of the Child, Article 2). Further, Article 7 requires that a child "shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality . . . . States Parties shall ensure the implementation of these rights . . . in particular where the child would otherwise be stateless" (Convention on the Rights of the Child, Article 7). The Convention also envisioned the creation of the Committee on the Rights of the Child, a body of independent experts

that monitors and implements the Convention on the Rights of the Child (Convention on the Rights of the Child, Article 43).

With regards to the Middle East, the Arab Charter on Human Rights also serves as a tool to protect a child's right to education. The Charter, came into effect in 2004, guarantees the right to education in Article 40 and 41. It creates similar obligations as outlined in the Convention on the Rights of the Child. The Charter, in Article 41, guarantees the right to education and obliges State parties to provide for free compulsory education, on-going education, and adult education (Arab Charter on Human Rights, 2004, Article 41). Article 40 deals with guarantees of the right to education of persons with disabilities (Arab Charter on Human Rights, 2004, Article 40).

Additionally, the UN Human Rights Council appoints an individual expert to serve as the UN Special Rapporteur on the Right to Education. Currently, Kishore Singe (India) serves the role (International Human Rights Mechanism). He is tasked with examining and reporting back the situation within a country regarding a child's right to education (International Human Rights Mechanism). In the issued reports, the countries' achievements and challenges are noted along with a description of conclusions and recommendations to improve upon a child's access to education. These reports are submitted annually to the Human Rights Council and to the General Assembly. Importantly, he can also receive individual complaints concerning violations of the right to education. After receiving the complaint, the UN Special Rapporteur will communicate with the respective country to address the complaint and discuss what actions are being taken to redress the situation (International Human Rights Mechanism). This mechanism is important to securing the right to education as it allows individuals and members of civil society to engage with the government and UN to identify problems and solutions to securing the right to education within the state.

There are several other human rights treaty bodies that monitor states' actions with regards to complying with the treaty that mandates

their authority. Each adopt general comments which serve as binding interpretations of the treaties' provisions and some may receive individual complaints in cases of violations of the treaty provisions. Several of these UN treaty bodies serve as relevant authority to ensuring the right to education. The UNHR Office of the High Commissioner summarizes the role of these bodies as follows: Committee on Economic, Social, and Cultural Rights (monitors implementation of the International Covenant on Economic, Social and Cultural Rights); Committee on the Rights of the Child (Monitors implementation on the Convention on the Rights of the Child); Committee on the Elimination of Discrimination against Women (monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women); Committee on the Rights of Persons with Disabilities (monitors implementation of the Convention of the Rights of Persons with Disabilities); Committee on Migrant Workers (monitors implementation on the Convention of the Rights of Persons with Disabilities); and the Human Right Committee (monitors implementation of the International Covenant on Civil and Political Rights) (International Human Rights Mechanism).

## D. ANALYSIS

I will now examine the current situations in Jordan, Kuwait, and Lebanon. These three countries were chosen as each have in place nationality and citizenship laws that discriminate against women. Each of these nationality and citizenship laws will be detailed, examining their effect on women and their children. Further, discussion will be given to how these nationality and citizenship laws specifically violate the states' international obligations—as each state discussed is a party to CEDAW, the ICCPR, and ICESCR—even where the state has issued a particular reservation. Additionally, I will note any recent attempts made by state actors to amend the nationality and citizenship laws of the state.

Due to these systems, the children of mothers who marry non-citizens, even when born inside the territory of the state, are deemed

non-citizens in the eyes of the state. As non-citizens they are not given the same access to educational opportunities and resources as citizens of the state. Each of the states discussed are a party to the Convention on the Rights of the Child. This differential treatment of allocating educational opportunities and resources between citizens and non-citizens, within the state, is in violation of the states' obligations under the Convention on the Rights of the Child. Evidence of limited educational opportunities for non-citizen children, also demonstrated through different testimonials of impacted families, will show how this international obligation is being violated.

After each situation in Jordan, Kuwait, and Lebanon is given treatment, I will highlight the different attempts to solve this issue. In doing so, I will argue that each set of advocacy groups and resources, regarding ending gender discrimination or securing child's right to education, in these countries and others, should combine their efforts to end such discriminatory nationality and citizenship laws. Only by amending these laws will women be treated equally as men in ability to transfer their citizenship and secure fully equal treatment by the state in terms of educational access and resources for their children.

## **1. Jordan**

### ***a. National Citizenship Laws***

The citizenship laws in Jordan prohibit a woman from passing on her citizenship, except in limited circumstances, making the citizenship of a child in Jordan determined almost absolutely by that of the father. The Jordanian Nationality Law of 1954, Article 9, provides that the 'children of a Jordanian are Jordanian, wherever they are born' (Warrick, 2009, p. 102). A Jordanian is defined in Article 2 as 'every person possessing Jordanian nationality in accordance with the rules of this law' (Warrick, 2009, p. 102). Although the definition appears to include all Jordanian persons, it has never been understood to include Jordanian females. This is shown through Article 3 of the Nationality Law, which states: "The following shall be deemed to be Jordanian

nationals: . . . (3) Any person whose father holds Jordanian nationality; (4) Any person born in the Hashemite Kingdom of Jordan of a mother holding Jordanian nationality and of a father of unknown nationality or of a Stateless father or whose filiation is not established (Jordanian Nationality Law of 1954, Article 3).

Due to this, the children of a Jordanian female, who marries a non-Jordanian, cannot acquire the citizenship of their mother, except in limited circumstances. These limited circumstances include instances where the father is unknown, where the child would be otherwise stateless, or the father is of unknown nationality (*Background Note on Gender Equality*, 2014). While these exceptions cover some of the instances where the child would be deemed stateless, not all circumstances are covered, and these limited exceptions are rarely implemented in practice (Women's Refugee Commission, 2013). When exceptions for naturalization of a non-Jordanian husband or the child exist, approval is subject to the discretion of the Council of Ministers and applications may only be filed in person in the capital (*Jordan: Give Women*, 2016). In 2011, there were an estimated 66,000 Jordanian women married to non-Jordanians (Women's Refugee Commission, 2013), and in 2014, an estimated 82,000 Jordanian women married to non-Jordanians with 365,000 children (Abuqudairi, 2014).

On July 1, 1992, Jordan ratified CEDAW, making it a legally binding instrument in the Jordanian legislature (Nasser, 2010). However, Jordan submitted a reservation to Article 9 of CEDAW upon its ratification and Jordan claims it is not bound by this provision (CEDAW Reservations, 2010, Jordan). Such a reservation was submitted in part because the treaty obligation would have provided a ground for a successful court challenge to the gender disparity in its domestic citizenship law (Warrick, 2009, p. 104). The Ministry of Foreign Affairs claims that its' reservation was not based on a desire to disparage women but was related to its' political concerns with the amount of refugees that have entered into Jordan from the Middle East (Whitman, 2013). This argument falls flat though as their citizenship policies continue to treat women citizens as second-class citizens.

Another potential tool to overturn the Nationality law could be found in the Jordanian Constitution, where Article 6(1) guarantees equal rights to all Jordanians (Warrick, 2009, p. 13). However, Catherine Warrick notes that an interpretation of this Article as support for gender equality has not been successful (Warrick, 2009, p. 13) and that constitutional challenges are rarely used as a basis to challenge such laws (Warrick, 2009, p. 17). Jordanian courts have also stated that statutory laws trump constitutional guarantees, making the constitutional argument even less applicable. In one decision, the Court of Cassation upheld the government's power to restrict 'insulting' speech despite constitutional provisions about freedom of expression (Decision No. 171/96, 1996).

Some improvements have been made recently. According to Elizabeth Whitman, on January 12, 2014, the Jordanian government approved certain rights, including residence permits and improved access to state medical care facilities, education and work in the private sector, to foreign spouses and children of Jordanian women (Equality Now, 2016). On January 4, 2015, regulations were issued that allowed children of Jordanian women married to foreigners to apply for special identification cards (Husseini, 2015). The Director of the Civil Status and Passports Department, Marwan Qteishat, claims that the IDs will allow these children access to certain governmental benefits, such as free healthcare and education, that the children were not previously eligible for (Husseini, 2015). However, there have been limits on their availability and there remain reported difficulties in obtaining the identification cards (Azzeh, 2016). For example, the extension of benefits such as free primary education is limited to children of Jordanian mothers who have resided in Jordan for a minimum of five years (*New Privileges for Jordanian Women's Children*, 2015). The identification certificates that have been issued have been described as "useless" in securing any benefits (Husseini, 2016). Further, many of these pledged benefits have yet to be implemented and no changes have been proposed to amend nationality law (Equality Now, 2016). Prime Minister Abdulla Ensour had previously clarified that the proposal "is

not a step towards granting full citizenship” for the individuals (Abuqudairi, 2014). Activists also view these benefits as ‘insufficient’ as they are not codified in law, thus subject to removal without notice (Abuqudairi, 2014).

### ***b. Children’s Access to Education***

One substantial impact of Jordan’s Nationality law is on the children of Jordanian mothers who cannot acquire their mother’s citizenship. Due to this, they are viewed as non-citizens of Jordan, despite whether they were born in Jordan or have lived in Jordan their entire lives. As non-citizens, they do not receive the same educational opportunities or resources as citizens of Jordan. In its 2014 Concluding Observations, the Committee on the Rights of the Child stated that it remained concerned over the fact that children of Jordanian mothers could still not acquire the citizenship of their mother, when married to a non-Jordanian father, which has led them to be ineligible for subsidized education (Concluding Observations of Jordan, 2014, p. 6). The committee also noted that children of Jordanian mothers and non-Jordanian fathers suffered from discriminatory practices, citing widespread violence against these children, with regard to attending State elementary and secondary schools and were ineligible for free public education (Concluding Observations of Jordan, 2014, p. 13).

Children, that are not citizens of Jordan, may be allowed to attend public schools if they have residency permits and security and health clearances (Warrick, 2009, p. 104). While the Jordanian government has pledged to provide primary and secondary education free of charge to all students in Jordan, families still bear additional costs in order to send their children to school. These costs were recently found to be 27 JOD (\$38.13) per household, per month, to cover transportation and education materials (Access to Education, 2015). These additional costs can be too much for these families, as the fathers (who are non-citizens and work opportunities are limited) suffer from additional restraints regarding work opportunities and may have an increased difficult time to meet these additional costs, especially when compared to a family



household with a Jordanian male as the father who is able to pass on his citizenship to his family. Since the father is a non-citizen, he must obtain a work permit, which also requires payment of a fee, before his children can attend public school (Whitman, 2013). This problem is further complicated because in certain job sectors, work permits are not issued to non-citizens (Whitman, 2013). This disparity can also be seen through a Jordanian child's access to kindergarten. While only 33% of Jordanian children attend kindergarten, 88% attend private kindergarten (Access to Education, 2015). UNICEF notes that the high percentage of children attending private kindergarten reflects a level of inaccessibility for non-Jordanian children, whose families may not be able to afford these private institution fees (Access to Education, 2015). The relationship between financial resources and education is also reflected in mathematics levels of Jordanian girls. In 2009, 57% of girls from richer households were at or above level 2 in mathematics, compared to 16% of girls from poorer households (Education in Jordan, 2012).

Additionally, these children's ability to access education is only growing worse as the number of refugees increases in Jordan. In 2015, there were two million registered Palestinian refugees in Jordan (Faour, 2017, p. 287). Of those two million registered Palestinian refugees, only those that hold Jordanian passports with a national ID have full access to public education (Faour, 2017, p. 287). In addition, since 2011, over half a million Syrian refugees have entered into Jordan (The Future of Syria, 2013, p. 43). In 2013, 56% of the Syrian refugee children were not receiving formal schooling (The Future of Syria, 2013, p. 43), and in 2015 still only half of all Syrian children in Jordan were in school (Faour, 2017, p. 290). This will continue to be an issue as the more Syrian refugees increase in number, the chances of Jordanian women marrying Syrian males increases. In such cases, as shown above, their children could not acquire their mother's citizenship and will continue to suffer from the lack of access to education. There is an understanding within Jordan that this is an issue. To address the large influx of Syrian children into the Jordanian education system, the

Ministry of Education budget was increased by 17% (Access to Education, 2015).

Testimonials of individuals in Jordan, suffering from these discriminatory citizenship laws help provide further context for the problems faced. Sana, a Jordan national married to an Egyptian man with six children who are deemed stateless, describes here situation as: *“If I had known that there would be these problems, I would never have married my husband. Why are my children to blame for a mistake I made? I made a choice to marry someone who doesn’t have the same nationality as me. Now my kids can’t access education or healthcare . . .”* (Women’s Refugee Commission, 2013). Um Ziad, a Jordanian, describes the situation of her nephew, whose mother was Jordanian and father a stateless Palestinian: *“He was a great student, really, really clever, but he couldn’t go to university here or afford private universities in Jordan because he was stateless, so his father sent him to study in Gaza. His Jordanian residency permit ran out while he was there, so he sent it to his mother to renew it. His mother went to renew it but instead it was rejected as there were questions raised as to how he had entered Gaza. They revoked his residency and refused to address his situation. He is now living in Gaza with no documentation at all. He has been stuck there for eight years not being able to return.”* Unfortunately, situations such as these are all too common under the Jordanian system, where Jordanian mothers and their non-citizen children face constant challenges in accessing education.

## 2. Kuwait

### a. National Citizenship Laws

The citizenship laws in Kuwait also discriminate against a women’s right to pass on her citizenship to her children. Kuwait Nationality Law, Article 2 states that “Any person born in Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national” (Kuwait Nationality Law, 1959, Article 2). In certain limited instances, Article 3 allows for a child born to a Kuwaiti mother to acquire Kuwaiti citizenship where the father is unknown or where the paternity of the father has not been established (Kuwait Nationality Law, 1959,

Article 3). This is subject to recommendation by the Minister of the Interior, a practice that rarely occurs (Women's Refugee Commission, 2013). Under these laws, a Kuwaiti mother cannot pass on her citizenship to her child on an equal basis as a male Kuwaiti citizen. Like Jordan, these provisions would seem to contrast certain provisions of the Kuwait Constitution, such as Article 29 which prescribes equality before the law, but equality has not been understood to include gender (Women's Refugee Commission, 2013). While also a party to CEDAW, Kuwait maintains a reservation Article 9.2, as the gender equality provision runs counter to the Kuwaiti Nationality Act, which prohibits a child's citizenship being derived by his mother (CEDAW Reservations, 2010, Kuwait).

Equally troubling, is that the gender discrimination in Kuwait's citizenship laws has increased over the years (Women's Refugee Commission, 2013). In 1959, the law allowed for children of Kuwaiti mother to be considered a Kuwaiti citizen if the father was stateless or unknown (Women's Refugee Commission, 2013). However, an amendment was passed in 1980 that denied citizenship to children under this category. This amendment was passed to prevent children, whose father was a Bidoon (sect of the Kuwaiti population), from acquiring Kuwaiti citizenship from their Kuwaiti mother (Women's Refugee Commission, 2013). This change affected a large segment of the Kuwait population, the Bidoon who are effectively stateless, consisting of an estimated 120,000 people, and 30,000 children of female Kuwaiti nationals (Women's Refugee Commission, 2013). This population will only increase with the continued implementation of the gender discriminatory citizenship law.

### ***b. Children's Access to Education***

This practice has impactful implications against women and their children in Kuwait. The Constitution of Kuwait (1962) and Law No. 1 of 1965 ensure that education is a right and that primary school is made free for all Kuwait citizens. The explicit reference to Kuwait citizens leaves non-Kuwait citizen children of Kuwaiti mothers vulnerable to

discrimination with regards to educational opportunities. In addition, only male citizens of Kuwait are able to acquire housing, child allowances, and welfare assistances (Joseph, 1996). In its 2013 Concluding Observations, the Committee on the Rights of the Child stated that it remained concerned that Kuwait's discriminatory practices towards women caused shortfalls with their mandate to ensure a child's right to education (Concluding Observations of Kuwait, 2013). Kuwait's inability to ensure a child's right to education is tied to Kuwait's citizenship laws. The Committee identified that many children are left stateless, and that children born to Kuwaiti mothers and non-Kuwaiti fathers are precluded from educational guarantees afforded Kuwaiti citizens (Concluding Observations of Kuwait, 2013, p. 7). The Committee also noted that girls who were married were not allowed to attend day school and automatically transferred to evening class, making it more difficult for them to access available educational resources (Concluding Observations of Kuwait, 2013, p. 8) Additionally, the Committee noted that children of Kuwaiti mothers and Bidoon fathers cannot be enrolled and thus were deprived of their right to education, due to their classification as non-citizens of Kuwait (Concluding Observations of Kuwait, 2013, p. 13). For those Bidoon children that did have access to school, the Committee noted that such schools were characterized by lower educational standards (Concluding Observations of Kuwait, 2013, p. 13). Problems for Bidoon children and others may become even more difficult as a result of a recently passed law that will require all citizens and visitors to provide DNA samples for a government database (Bioethics News, 2016). A review of the impact of the law shows that about ten percent of the Kuwaiti population will become excluded from citizenship (Bioethics News, 2016). As non-citizens, their free access to education will no longer be guaranteed.

The hardship inflicted upon these people in Kuwait is reflected by the testimony of Abdulrahmen, a stateless Bidoon, whose mother was a Kuwaiti citizen but father a Bidoon and is therefore not a Kuwaiti citizen. Due to certain jobs being made available only to Kuwaiti

citizens, he could not enter his educational field of choice. He then describes his situation as follows: *“In my job now, I get paid much less than anyone else. If I get married I won’t get any benefits. This is different from a Kuwaiti citizen who, if they marry they get financial benefits for their kids. I can’t go out and solve this situation, to leave, to have my own house, it’s very difficult . . . . We don’t want the children to suffer the same . . . . My salary is just pocket money. I’m 27 years old and my salary is just pocket money. I can’t start a family. My 400 dinars (\$560) is split between university costs and paying for the car. It’s impossible.”* (Women’s Refugee Commission, 2013).

### **3. Lebanon**

#### ***a. National Citizenship Laws***

The citizenship laws of Lebanon also limit a women’s ability to pass on her citizenship to her children. Lebanon only allows a Lebanese father to confer their citizenship in all circumstances (Background Note on Gender Equality, 2014). Women can only confer their citizenship if the child is born out of marriage and recognized by the government (Background Note on Gender Equality, 2014). The Lebanese Nationality law states, in Article 1, that “The following are considered Lebanese: Every person born of a Lebanese father. Every person born in the Greater Lebanon territory and did not acquire a foreign nationality, upon birth, or by affiliation. Every person born in the Greater Lebanon territory of unknown parents or parents of unknown nationality.” (Decree No. 15 on Lebanese Nationality, 1925, Article 1).

While a Lebanese woman cannot pass on her citizenship to her spouse or child, except in limited circumstances where the father is unknown, such a restriction is not placed on a male who marries a non-Lebanese woman. Article 5 of the Lebanese Nationality law states that “the foreign woman married to a Lebanese shall, upon her request, become Lebanese after one year from the date of registration of the marriage in the Civil Status Office.” (Decree No. 15 on Lebanese Nationality, 1925, Article 5). As shown with Jordan and Kuwait,

constitutional guarantees of equality have not been sufficient to secure equal rights to Lebanese women, as Article 7 of the Lebanon Constitution promotes the principle of non-discrimination but does not extend the principle to women (Concluding Observations on Lebanon, 2006, p. 6). Additionally, while a party to CEDAW, Lebanon maintains a reservation to Article 9.2 which sets forth equal rights amongst genders in passing citizenship to children. (CEDAW Reservations, 2010, Lebanon). These citizenship laws show a deliberate attempt by the Lebanese government to treat Lebanese women as inferior to Lebanese men in their ability to pass on their citizenship to their children or spouse. Recently, the Lebanese government rejected a bill that would have addressed the gender inequality in the Lebanese Nationality law (Nasser, 2010, p. 13). There have been some positive movements in Lebanon, such as public campaigns to promote equal gender rights as well as a 2009 court ruling (First Instance Court in Mount Lebanon) that minor children of a Lebanese woman whose Egyptian husband was deceased were entitled to Lebanese citizenship (Case of Samira, 2009). The First Instance Court in Mount Lebanon ruled that the children should be recognized as Lebanese citizens based on the principles of equality in the Lebanese Constitution. While this court decision was overturned on appeal (Van Waas, 2010, p. 12), continued active civil discourse and other similar rulings could help promote future changes in citizenship rights of women and their children.

### ***b. Children's Access to Education***

Non-citizens of Lebanon are not afforded equal access to state benefits and employment opportunities as Lebanese citizens. They are limited in access to education, health services, property ownership, and employment opportunities in professions such as engineering, law, and medicine (Faour, 2017, p. 284). The Committee on the Rights of the Child has also found that such citizenship laws are detrimental to Lebanon's ability to secure the child's right to education as it is obligated under the Convention on the Rights of the Child. In its 2006

report, the Committee noted that the Constitution and domestic laws only guaranteed equal status to Lebanese children and not foreign children (Concluding Observations on Lebanon, 2006, p. 6). The Committee also noted that parents were still being charged for costs of primary education, despite the legal guarantee of free education (Concluding Observations on Lebanon, 2006, p. 15). Additionally, student grade repetition and drop-out rates had increased (Concluding Observations on Lebanon, 2006, p. 15). It also noted concern over the decrease in enrollment in secondary education and decreases in quality of technical and vocational education and training (Concluding Observations on Lebanon, 2006, p. 16).

Nearing half a million, Palestinian refugees make up a large portion of children that are deemed non-citizens by Lebanon and denied access to free public education (Faour, 2017, p. 284). In 2010, 8% of Palestinian refugees in Lebanon (age 7–15) were found to not be enrolled in any school and many of those that were in school, were forced to attend private schools and pay the high costs of tuition (Faour, 2017, p. 284). Compounding the problem of non-citizens of Lebanon being denied access to education is that the growing number of Syrian refugee students has led to overcrowding of classrooms and put a strain on the national education system (The Future of Syria, 2013, p. 46). An education assessment in 2013, found that 80% of Syrian refugee children in Lebanon were not in school (The Future of Syria, 2013, p. 44). Currently, over half of Syrian refugee children remain not enrolled in school, with less than three percent of those aged 15–18 enrolled in public secondary schools during the 2015–2016 school year (Human Rights Watch, 2016). Most Syrian children have been out of school for at least one to two years and of those that are in school, less than 25% are receiving free public education while the remaining are paying the high costs of private tuition (Faour, 2017, p. 285). Another major obstacle to accessing school for these children is that most schools require the history of a child's education, including a report card, to be submitted along with their registration. In many

instances these documents either no longer exist or would require a dangerous return trip to Syria to obtain (Faour, 2017, p. 285).

To combat this problem, Lebanon enacted the Lebanon Crisis Response Plan and “Reaching All Children with Education” plan to provide access to education to all children in Lebanon affected by the Syria crisis (GEM Report, 2016). Under the plan, the Ministry of Education and Higher Education worked to waive school fees for all Lebanese and non-Lebanese children (GEM Report, 2016). The Ministry of Education along with humanitarian agencies have worked together to provide access to free public education to over 100,000 Syrian children (Four, 2017, p. 286). While Lebanon has taken positive steps to provide education access to non-citizens and refugees, the number of students not enrolled in school shows that the resources and implementation of policies such as the Reaching All Children with Education plan should continue to be strengthened and supported.

#### **4. Bringing It All Together**

The situations described in Jordan, Kuwait, and Lebanon have led to major sufferings of children that are not born to fathers that are citizens of the state. Due to their discriminatory citizenship laws, these children cannot acquire the citizenship of their mothers. Combined with the large influx of Palestinian, Iraqi, and Syrian migrants, these citizenship laws have led to an increased stateless population in the region. As male children are deemed stateless, the result will be more stateless children where their mothers are not able to transfer their citizenship, bringing about generations of statelessness (Al Barazi, 2017, p. 94). As non-citizens of the state, they are denied access to education at the same level as children who are citizens of the state. Both of these outcomes are in violation of the international obligations of each of these states. Jordan, Kuwait, and Lebanon are all a party to CEDAW and the ICCPR, both which require that citizenship laws be implemented without discrimination based on gender. While Jordan, Kuwait, and Lebanon have issued a reservation to Article 9 of CEDAW, this reservation, and others like it, is in direct conflict with



the purpose of the treaty and should not be given weight or authority for Jordan to be excluded from this obligation. With regards to these reservations, the Government of Denmark remarked that “said reservations are covering central provisions of the convention. Furthermore, it is a fundamental principle of international law that internal law may not be invoked as justification for failure to perform treaty obligations . . . . [T]he reservations are incompatible with the object and purpose of the Convention . . . .” (Directorate General for Internal Policies, 2011, 10). Under the Vienna Convention on the Law of Treaties, reservations are not permissible when they go against the object and purpose of the treaty (Freeman, 2009, p. 2). However, CEDAW Committee has stated that only Articles 2 and 16 are “central to the objects and purpose of the Convention” (Freeman, 2009, p. 3). Therefore, advocacy groups should petition for the CEDAW Committee to include Article 9 in part of its considerations for the objects and purpose of the treaty. This action would put greater pressure on states such as Jordan, Kuwait, and Lebanon to remove their reservations and provide an avenue for their nationality laws to be challenged in order to comply with its CEDAW obligations.

Each of these states are also parties to the ICCPR, which requires equality between men and women under Article 3 and 23. Kuwait has issued a reservation to Article 3 that such rights under Article 3 must be within the limits set by Kuwaiti law, and a reservation to Article 23 that Kuwaiti will apply its National law where conflict exists (ICCPR, 1966, Kuwait Reservations). However, neither Jordan nor Lebanon issued such a reservation and thus are bound by the provisions of Article 3. The Human Rights Committee, in its General Comment 28, stated that the obligations of Article 23, paragraph 4, that States must ensure that equal rights for both spouses exist for “the capacity to transmit to children the parent’s nationality.” (General Comment No. 28, 2000, para. 25). Thus, Jordan and Lebanon have an international obligation, under the ICCPR, to eliminate any gender discrimination with regards to their nationality and citizenship laws.

Further pressure on Jordan, Kuwait, and Lebanon to comply with their international obligations to end their discriminatory citizenship laws could come from the International Court of Justice (ICJ). The advocacy groups of gender equality and rights of the child should call on the ICJ to issue an advisory opinion on the legality of these laws. Such an opinion could give new grounds for challenges in international tribunals or national courts for the states to change their laws. Additionally, these groups should also push for a ruling from the ICJ on the legality of certain reservations to human rights treaties. There is current debate among scholars as to the legality of such reservations but consensus that they defeat the purpose of obtaining a set of universal human rights standards (Freeman, 2009, p. 2).

When nationality laws that discriminate against women are in place, major problems arise with access to state primary and secondary education, especially where the children are deemed stateless due to the nationality and citizenship laws. Even where access to schools is possible, the quality of the schools and resources is less than those experienced by citizens of the state. With high costs of transportation and tuition, crowded classrooms, classes taught in a foreign language to students, and risk to safety of children, lead many parents to not enrolling their children in school. Additionally, there are issues with accessing university as these children will then have to pay the increased price of foreigners, rather than the cost afforded to citizens of the state. Further, as non-citizens the children and their fathers are required to maintain residency permits, which impose additional costs. They are also limited in their educational and vocational careers, with certain careers such as law, medicine, and engineering being the exclusive domain of citizens of the state. These problems will continue to mount, if not addressed, as the educational systems of these countries are being strained with the influx of refugees from Syria and Iraq. Further challenges that have been identified for the stateless population to overcome are isolation of stateless communities, lack of consistent legal terminology, and focus on specific populations rather than stateless people as a whole (Al Barazi, 2017, p. 97).

Since, Jordan, Kuwait, and Lebanon are all parties to the ICESCR, they can seek relief from other state parties. Where a state party to the ICESCR lacks financial resources to provide free primary education, the convention confirms that other state parties and the international community has an obligation to assist (Gen. Comment No. 11, 1999, para 9). International agencies that provide assistance to state parties include the following: International Labor Organization (ILO), United Nations Development Programme (UNDP), United Nations Educational, Scientific and Cultural Organization (UNESCO), UNICEF, International Monetary Fund (IMF), and the World Bank (Gen. Comment No. 11, 1999, para. 11). By ending the discriminatory citizenship policies and committing to complete fulfillment of their obligations to provide free education to all children, under the Convention on the Rights of the Child, these states can have greater grounds for seeking financial assistance from the legal community, through the ICESCR, in expanding their educational systems to accommodate all students, and not just citizens of the state.

Yet, the most effective way for both of these issues to be remedied is to change each state's current nationality and citizenship laws to end gender discrimination. Many of the arguments against are ineffective. For example, Jordan officials often claim that changing its laws would be a detriment to its economy as it would give access to benefits to all of the Palestinians, Iraqis, and Syrians residing in Jordan (Whitman, 2013). However, a 2012 report showed that if the children of Jordanian women married to non-Jordanian men were given permanent residency and all civil rights (as promised to Jordanian citizens), the economic benefits would outweigh the costs by more than \$12.7 million (Whitman, 2013). Further, any increase in cost could be offset by the aid from INGOs. But, this aid would come at the end of their gender discriminatory practices.

Unfortunately, politics are just as much an argument as the economics of the issue. For example, the Jordanian government has expressly stated that it does not wish to change the law due to fear of granting near half a million Palestinians in Jordan, citizenship (Warrick,

2009, p. 104). However, by focusing on extending the right to pass citizenship onto the child, rather than the spouse, this fear and concern is greatly mitigated. Additionally, when these children are born within Jordan, the state may further justify their actions by recognizing them as Jordanians, removing their association as a Palestinian. Even an emotional plea may be effective, convincing political leaders that these laws and its effects impact all citizens of the country and that any male citizen may have a daughter who marries a non-citizen, whose children will then suffer through this cycle of discrimination and lost opportunity.

These changes can be achieved through minor changes to the relevant state legislative provisions to include mothers as having the full ability to pass on their citizenship. One of the best models of such a change was implemented by Algeria in 2005. Algeria approved changes to their nationality law to ensure that Algerian women are able to pass on their citizenship to their children. Importantly, the law also has retroactive effect with previously born children being automatically considered for Algerian citizenship. (Van Waas, 2010, p. 14). By sharing research, skills and resources, regional organizations and INGOs can take successful past experiences, like in Algeria and then apply them to countries in the Middle East (Al Barazi, 2017, p. 98). While the Middle East region has shown a growing willingness to achieve gender equality in nationality laws, as several states have enacted changes in their legislation since 2000, Jordan, Kuwait, and Lebanon continue to fail with this goal. Until they change their nationality and citizenship laws, children of mothers who marry non-nationals will continue to suffer as they are denied equal educational opportunities that are afforded to citizens of the state.

## **E. CONCLUSION**

Jordan, Kuwait, and Lebanon each have in place nationality and citizenship laws in which women have a lesser right to pass on their citizenship to their children than males of the state do. This causes their children to be deemed foreigners of the state. As a result, they are

denied equal access to education as citizens of the state. Both of these actions violate the international obligations under the ICCPR, ICESCR, CEDAW, and the Convention on the Rights of the Child.

The ability to pass on one's citizenship is a crucial component to a feeling of belonging to the state. When the state establishes an individual as a citizen of the state it creates a relationship with the individual, ensuring certain rights and responsibilities for both parties. By denying women the ability to pass on their citizenship to their children, the state is explicitly stating that a women's relationship with the state is inferior to that of a man's relationship with the state. The inferiority of the relationship is then passed on to the child, through no fault of its own, by denying the child citizenship and a relationship with the state. Without such legal relationship, the child is denied access to social services that are reserved for citizens of the state. These children suffer due to lack of educational opportunities, access to health care, ability to own property, and many others. The principles of human rights cannot continue to allow this injustice to continue.

This chapter has presented the issue of discriminatory nationality and citizenship laws and their impact on a child's right to education through scholarly research and anecdotal evidence. Future research should continue to express this relationship through empirical studies that identify the impact that such laws have on these children. Through continued research, these issues will continue to stay in the international spotlight and put pressures on these states to end their discriminatory practices. In order to achieve resolution of these issues, both gender equality and child's rights advocacy groups should combine their efforts to eliminate the existence of these discriminatory nationality and citizenship laws. Only when these laws are eliminated, will states be able to fulfill their mandates to provide ALL children with access to free education.

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