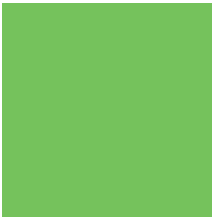
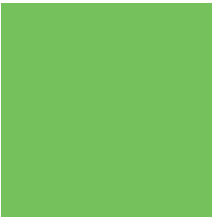
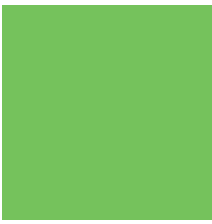
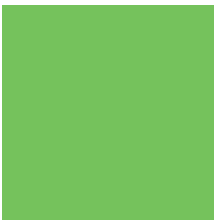




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COMPARATIVE  
REPORT  
2017/03

NOVEMBER  
2017

# REGIONAL REPORT ON CITIZENSHIP: THE MIDDLE EAST AND NORTH AFRICA (MENA)



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Global Citizenship Observatory (GLOBALCIT)  
Robert Schuman Centre for Advanced Studies  
in collaboration with  
Edinburgh University Law School

**Regional Report on Citizenship: The Middle East and North Africa (MENA)**

RSCAS/GLOBALCIT-Comp. 2017/3

November 2017

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Printed in Italy

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)

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Research for the 2016/2017 GLOBALCIT Reports has been supported by the European University Institute's [Global Governance Programme](#), the EUI Research Council, and the British Academy Research Project CITMODES (co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

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# Regional Report on Citizenship

## The Middle East and North Africa (MENA)

*Zahra Albarazi*

### 1. Introduction

This report will introduce some of the most fundamental concepts, trends and challenges with regard to nationality in the Middle East and North Africa (MENA). This region has always had a complicated relationship with the notion of nationality and which individuals and groups to determine as nationals. This is because states were formed and created in the same century that the region experienced substantial geo-political and social turmoil. Therefore, the understanding and definition of who is and who is not a member of each state has been challenging, and needs to be understood in its historical context. While each country has grappled in its own way with the development and implementation of domestic nationality legislation and policies, but there are some recurrent trends that resonate across the region.

In Arabic, the word nationality translates as *jinsiya*. There are other Arab terms of nationality that refer to concepts such as identity, belonging and nationality, but the term *jinsiya* refers to the concept of a legal bond between an individual and a state, which is the term this report will focus its analysis on.

This report considers the multifaceted reality of nationality in the following countries: Algeria, Morocco, Tunisia, Libya, Egypt, Jordan, Lebanon, Syria, Qatar, Saudi Arabia, the United Arab Emirates (UAE), Yemen, Iraq, Iran, Israel, Bahrain and Kuwait. It begins by discussing the regional dynamics in the history of nationality regulation, particularly with regards to the questions of colonial history, migration, conflicts and more recent regional turmoil. It goes on to give a comparative analysis of the current laws on the acquisition and loss of nationality, included in the GLOBALCIT comparative databases.<sup>1</sup> This covers the main modes of acquisition and loss of nationality. Although the report discusses the region's laws and policies, it does not address how these are implemented in practice - which may paint a very different picture – and this should be kept in mind when contextualising the analysis.

At the outset of the report, it is important to note that one consequence of the gaps and flaws in nationality laws is that the region hosts one of the largest populations of stateless

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<sup>1</sup> See <http://eudo-citizenship.eu/>

persons in the world.<sup>2</sup> The United Nations High Commissioner for refugees (UNHCR), for example, reports a total of 444,237<sup>3</sup> persons under its statelessness mandate in the region.<sup>4</sup> The actual figure for the number of persons who lack any nationality in the MENA region is actually much higher, including because this figure does not include the millions of stateless refugees and dispersed Palestinians.<sup>5</sup>

## 2. Regional Dynamics in the History of Citizenship

This first half of the report sets the scene in terms of nationality law development in the MENA region by offering a broad reflection on how the contemporary nationality laws emerged and which factors have influenced their development and content. It will discuss how colonialism, and mostly independence from colonial powers, influenced the way legislation was created, how the creation of the state of Israel and the subsequent wave of pan-Arab ideology fed a particular understanding of belonging, and how the recent regional geo-politics has furthered the political manipulation of nationality in the region. .

### 2.1. The legacy of colonialism

For many decades British and French mandates ruled the region.<sup>6</sup> This history left a lasting legacy in the region, including by heavily influencing the legislative systems that we see today. Not only were legal scholars from the region trained in French and British legal schools, the content of colonial legislation was maintained when new laws were drawn up after independence and it was the colonial power that crafted the legislation which remains in place. The concept of ‘double ius soli’, for example, - where individuals can obtain nationality if they were born in a state and a parent and/or grandparent were also born there - was a French concept

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<sup>2</sup> A stateless persons is someone who is ‘not considered a national by any state under the operation of its law,’ as defined in Article 1 of the 1954 Convention on Statelessness

<sup>3</sup> This figure does not include the state of Iran which UNHCR includes in a separate region, where currently there is an absence of a figure

<sup>4</sup> In 1974 GA resolutions 3274 XXIX and 31/36, the Office of the High Commissioner was designated, pursuant to Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, as the body to which a person claiming the benefits of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the appropriate authorities.

<sup>5</sup> For more information on statistical information on statelessness in the MENA see the MENA chapter of ISI, *The Worlds Stateless*, 2014 <http://www.institutesi.org/worldsstateless.pdf>

<sup>6</sup> This follows from Ottoman rule, which also influenced the understanding of nationality in the region but which falls out of the scope of this report. For more information on this please see G. Parolin, *Nationality in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009.

that is today found in many North African states, such as Tunisia.<sup>7</sup> Additionally, the nationality legislation of both the French and British colonial powers at the time treated men and women differently with respect to acquisition and transferral of nationality. Post-independence, all Arab countries adopted this gender-discriminatory approach to nationality and no country allowed equal opportunity to both genders in terms of acquisition and transferral of nationality.<sup>8</sup> The new MENA states' nationality laws immediately disadvantaged women in their nationality legislations due to their colonial influence. Still today, more than half of the 25 countries worldwide where women cannot pass their nationality to their children on an equal basis to men are found in the MENA region.<sup>9</sup>

The colonial effect on nationality regulation is much stronger than just influencing the content of legislation. The map of the MENA region, as we know it today, is in fact relatively new. In 1920 for example, the French announced the creation of the new state of Lebanon, the territory of which had been officially under its mandate. Five years later it was actually the French High Commissioner who issued the Lebanese nationality law to this newly created Lebanese state – Decree No. 15 on Lebanese Nationality<sup>10</sup> – which is still the same problematic law in place today.

Following on from this, at the gaining of independence and the end of protectorate and mandate rule, a division of the different territories and the creation of new states and borders that had never previously existed took place.<sup>11</sup> Many areas suddenly found themselves as a new state having to comprehend what that means. Led by rulers with lack of expertise in and experience with implementing a large bureaucratic apparatus, states faced the challenge of drawing up their own nationality regulation, which meant they had to determine who did and who did not belong to that new state, and then to implement this by documenting their populations accordingly.

An example of where this led to difficulties was in Kuwait. The current Kuwaiti nationality law came into force in 1959 and pre-dates its independence from Britain (in 1961) and its constitution (which was signed in to law in 1962). With a new nationality law, the government of Kuwait had to identify who its citizens were. They opened up a registration process for individuals, however, due to various reasons such as the individual or family not understanding the importance of registering for nationality, or nomadic families not having sufficient proof of where they had been settling, a large number of people were not able to / did not register, and therefore were excluded from the nationality process. This left a substantial proportion of the population without access to Kuwaiti nationality, which the state is yet to resolve and therefore, more than half a century later, tens of thousands of these individuals remain stateless.<sup>12</sup> Kuwait is just one example of how the break-up of the region and the

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<sup>7</sup> Article 7 of Le Code de la nationalité tunisienne 2011 states that anyone born in Tunisia to a father and a grandfather also born there will acquire Tunisian nationality

<sup>8</sup> G. Parolin, *Nationality in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009.

<sup>9</sup> However the colonial influence was not directly true in the case of Iran where Iran's nationality law was enacted under the Pahlavi monarchy in 1929.

<sup>10</sup> M. El-Khoury and T. Jaulin, *Country Report: Lebanon*, EUDO Nationality Observatory, September 2012, available at: <http://eudo-nationality.eu/docs/CountryReports/Lebanon.pdf>.

<sup>11</sup> For more information on this see Cole, Juan RI, and Deniz Kandiyoti. "Nationalism and the colonial legacy in the Middle East and Central Asia: Introduction." *International Journal of Middle East Studies* 34.2 (2002): 189-203.

<sup>12</sup> For more information on the Bidoon of Kuwait see Human Rights Watch, *Prisoners of the Past*, 2011, see <https://www.hrw.org/sites/default/files/reports/kuwait0611WebInside.pdf>

emergence of new states after the colonial era left huge problems in terms of the formation of state citizenries.<sup>13</sup>

## 2.2. Palestine and Israel

Alongside colonialism, one of the most substantial occurrences that would have a lasting effect on nationality systems across the region was the establishment of the state of Israel in 1948. Amidst the various other consequences the creation of this new state brought to the region, there were two other major ones: 1. the regulation and perception of the nationality of those living in Israel and Palestine and how it affected nationality questions for those living in, migrating to and displaced from Israel and Palestine, and, 2. the spill-over influence on the regulation of nationality by other states in the region

Firstly, after the creation of the state of Israel, a new nationality policy was needed to establish who would comprise the new state's citizenry. The approach adopted by Israel had the effect of including many individuals who had no physical links to the territory of Israel (i.e. had not been born or were not resident there but who had migrated from abroad), whilst excluding many who did. In effect, the nationality policy of Israel operated to exclude many non-Jews with links to the territory - Palestinian Christians and Muslims who had ancestral links to the region. What it did in return to create its citizenry with a Jewish identity was to bring in persons from across the world to make them nationals under the concept of Aliyah, which is the immigration of Jews from the diaspora - wherever in the world they live - to the Land of Israel, and who are given immediate citizenship. The provisions allowing Aliyah are still in place in Israeli nationality law today, where any Jewish person in the world could immigrate to Israel and become immediate citizens.<sup>14</sup> To highlight this, due to the policy of Jewish return under the concept of Aliyah the region of Israel now hosts approximately 43% of the world's Jewish population.<sup>15</sup>

Secondly, the massive displacement of the Palestinian population following upon the formation of Israel – just under one million people<sup>16</sup> - has had significant ripple effects on nationality policy in the region as a whole. The large-scale and protracted displacement of Palestinians to the neighbouring states (and around the world) makes them one of the world's most entrenched refugee populations. Today, the number of Palestinians registered with the United Nations Relief and Works Agency (UNRWA) is close to 5.5 million.<sup>17</sup> The impact of the presence of hundreds of thousands of Palestinian refugees in countries like Jordan, Lebanon,

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<sup>13</sup> An other example is Lebanon, see vanWaas L, Citizenship, Statelessness and the Numbers Game in Lebanon, 2014 access at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2550734](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2550734)

<sup>14</sup> Israel: Law No. 5710-1950, The Law of Return, 5 July 1950, available at: <http://www.refworld.org/docid/3ae6b4ea1b.html>

<sup>15</sup> DellaPergola, Sergio, Sheskin, Ira, eds. "World Jewish Population, 2014". Current Jewish Population Reports. The American Jewish Year Book (Dordrecht: Springer), 2014

<sup>16</sup> McDowall, David; Claire Palley (1987). The Palestinians. Minority Rights Group Report no 24. p. 10. ISBN 0-946690-42-1.

<sup>17</sup> UNRWA is the UN body mandated to protect and assist Palestinian refugees. This figure does not include Palestinians living in countries where UNRWA does not work (such as Iraq and the Gulf). See 'UNRWA in Figures', available at: [http://www.unrwa.org/sites/default/files/2014\\_01\\_uif\\_-\\_english.pdf](http://www.unrwa.org/sites/default/files/2014_01_uif_-_english.pdf)

Egypt, Iraq and Syria<sup>18</sup> on the rules regulating access to nationality in those states is significant. In many of these countries, because generation after generation were born there, Palestinians have come to make up a considerable percentage of the population.<sup>19</sup> This created demographic and challenges to services, in countries where a very delicate confessional balance existed and who have had limited infrastructure. In reaction to the influx of large numbers of displaced Palestinians, countries in the region adopted the Casablanca Protocol which set out certain rules for the treatment by these states of Palestinians on their territory and which, with a view to protecting the right of return for Palestinians stated that they should get various rights while “retaining their Palestinian nationality”. States in the region have interpreted this as excluding them from naturalisation.<sup>20</sup> The exclusion of Palestinians from naturalisation procedures therefore is evident in the practice of MENA states, although it is only Iraq that specifically excludes Palestinians as part of the letter of its law, saying that “Iraqi nationality shall not be granted to Palestinians as a guarantee to their right to return to their homeland”.<sup>21</sup>

Alongside the inability of Palestinian refugees to obtain any nationality, their presence has deeply affected the regulation and perception of nationality legislation for other populations too. As well as leaving Palestinians in a situation of intergenerational statelessness, their large presence in these countries also affects nationality legislation in less direct ways. Discrimination and exclusiveness in these nationality laws may be justified through the fear of Palestinians being able to naturalise. In Lebanon for example, the main justification (which is widely accepted by the population) of the prohibition on mothers to transmit their Lebanese nationality to their children is that it is needed to prevent the children of Palestinians married to Lebanese women from accessing Lebanese nationality.<sup>22</sup> This idea is also present in Egypt where, when the removal of this same discrimination was enacted, Egyptian women married to Palestinian men were initially specifically excluded from the reform.<sup>23</sup> The creation of Israel also effected the nationality of Jews in the neighbouring countries. After the creation of Israel, the situation of Jews who resided in many of the neighbouring countries changed. Some of them opted to leave their countries to live in Israel, and would become Israeli citizens. Thenceforth, some countries adopted denationalisation processes where those who emigrated would lose their nationality of origin. In other countries expropriations and denationalisation were implemented in order to make Jews leave.<sup>24</sup>

<sup>18</sup> In 2010 – before the Syrian crisis – the number of Palestinian refugees registered in each country was: Jordan – 1.99 million; Lebanon – 455,000 and Syria – 496,000. See UNRWA, Statistics 2010, November 2011, available at: <http://www.unrwa.org/userfiles/2011120434013.pdf>.

<sup>19</sup> For example in Jordan estimates are that 60% of the population are from Palestinian origin, and in <http://www.washingtoninstitute.org/policy-analysis/view/jordan-and-palestine>, and just under half a million live in Lebanon see UNRWA, Where we work, 2014 access at <https://www.unrwa.org/where-we-work/lebanon>

<sup>20</sup> A. Kassim, “The Palestinians. From Hyphenated to Integrated Nationality” in *Citizenship and the State in the Middle East. Approaches and Applications*, N. Butenschon, U. Davis and M. Hassassian (eds), Syracuse University Press, 2000; A. Shiblak, “Stateless Palestinians” in *Forced Migration Review*, Issue 26, September 2006.

<sup>21</sup> Article 6(2) of Iraq nationality law of 2006

<sup>22</sup> See The Lancet, Lebanese perceptions of citizenship rights for children of Lebanese mothers and Palestinian fathers: a cross-sectional survey, Volume 390, S7, 2017.

<sup>23</sup> This exclusion was later removed from the law. Some data on the number of children of Egyptian women and Palestinian men to benefit from the new policy over the course of 2011, as well as details of some of the difficulties in terms of the implementation of this policy, are available at <http://eudo-nationality.eu/nationality-news/530-new-policy-on-egyptian-nationality-for-children-of-palestinian-fathers>.

<sup>24</sup> For more information on this situation please see Carole Basri, *The Jewish Refugees from Arab Countries: An Examination of Legal Rights - A Case Study of the Human Rights Violations of Iraqi Jews*, 26 Fordham Int'l L.J.



### 2.3. Pan-Arabism

In the post-colonial period and after the state of Israel was created, a power vacuum was left in the region alongside a feeling of a need for solidarity and establishing a shared identity.<sup>25</sup> This led to promoting an Arab national identity in the region, which was particularly popular during the 1950s and 1960s and constituted a belief that Arabs were of one nation and that countries across North Africa and the Levant should unite. During this period the identity of many of the states as an ‘Arab nation’ was confirmed<sup>26</sup> with increased institutional and societal discrimination against those not considered as Arabs. In some domestic contexts, nationality policy became a component of this ideology, with subsequent discrimination against non-Arabs. In most cases, the embodiment of this ideology in nationality law was relatively innocuous, such as offering facilitated naturalisation to citizens of other Arab countries, which still is common practice in many of the regions’ nationality laws. However, in other situations, identifying who was and who was not considered a citizen was decided on an ethnic basis, with far more severe consequence. Non-Arab groups were sometimes excluded and denationalised, which happened on a massive scale in Libya<sup>27</sup> and Iraq,<sup>28</sup> as well as Syria and Mauritania, as described below.

Take the example of Syria, which was one of the main advocates of pan-Arab ideology in the 50s and 60s. In 1962 an exceptional census took place in the Kurdish Northern region of Syria Alhassakah was ordered to take place by the authorities. The census aimed to verify who was a citizen of Syria in that region which was predominantly a Kurdish region. However, for many reasons this census was strongly flawed and carried out in an arbitrary manner. Therefore, this census stripped some 120,000 Syrian Kurds – 20 percent of the Syrian Kurdish population – of their Syrian citizenship overnight. As descendants of those who lost citizenship inherited this stateless status, the number was estimated to be approximately 300,000 before the start of the Syrian war.<sup>29</sup> In Mauritania in the 1980s, the mainly Arab government also began to undertake a policy of Arabisation which would deeply effect its large proportion of non-Arab population. In 1989, the authorities denationalized and deported an estimated 70,000-80,000 black Mauritians who ended up in Senegal and Mali.<sup>30</sup> Both of these examples are only two of some of the major examples of the de-nationalisation of groups *en masse* who were not of Arab ethnicity that took place across the region.

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656, 720 (2003) and Michael M. Laskier, Egyptian Jewry under the Nasser Regime, 1956-70. Middle Eastern Studies, Vol. 31, No. 3 (Jul., 1995), pp. 573-619.

<sup>25</sup> See for example Hinnebusch, R, The Politics of Identity in Middle East International Relations, International Relations of the Middle East, Oxford University Press, 2013

<sup>26</sup> For more information on Pan-Arab ideology, see Choueiri, Youssef, Arab Nationalism – A History: Nation and State in the Arab World, 2011 Wiley-Blackwell publishers.

<sup>27</sup> VanWaas, L, *The Stateless Tebu of Libya?*, 2013, access at <http://www.refworld.org/pdfid/52aace474.pdf>

<sup>28</sup> ReliefWeb, ‘The Faili Kurds of Iraq: Thirty Years Without Nationality,’, 2010, access at <https://reliefweb.int/report/iraq/faili-kurds-iraq-thirty-years-without-nationality>.

<sup>29</sup> For more information on this see Z. Albarazi, The Stateless Syrians, May 2013 access at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2269700](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269700)

<sup>30</sup> For more information see, Open Society Foundations, Fear and Statelessness in Mauritania, 2011, access at <https://www.opensocietyfoundations.org/voices/fear-and-statelessness-mauritania> and Manby, B, *Citizenship Law in Africa: A Comparative Study*, 2016, access at: <http://www.refworld.org/docid/56a77ffe4.html>

## 2.4. Restrictive nationality strategies

A specific challenge in the Arab Gulf relates to how increasingly rich countries became increasingly exclusive as to who they included as their citizenry. In the UAE, Saudi Arabia, Kuwait, Oman, Qatar and Bahrain, the non-citizen population outnumbers the citizen population that live on the territory. Additionally, as rentier states they have, to varying degrees, generous welfare systems for their citizens – having the nationality of one of these countries brings great financial advantages. This is a reason for these states to view nationality as a very exclusive status and limit access to it accordingly.

Among the Gulf states there are also some of the few countries in the region that have amended their nationality laws to make them progressively less inclusive over time. For example, in Kuwait, there have been several amendments to the Kuwaiti nationality law since its coming into force in 1959, notably in 1980, 1982, 1994, 1998 and 2000. The amendments have made the regulation of nationality progressively more restrictive – such as by adding a prohibition for non-Muslims to apply for naturalisation and restricting the circumstances in which women can transfer their nationality to their children.

This perception of exclusivity can also be seen in other parts of the nationality law. The stringent naturalisation requirements of the Gulf legislations demonstrate this. For example, to become an Emirati an individual would have to reside in a ‘continuous and statutory manner in the member Emirates for a period not less than thirty years’.<sup>31</sup> The prohibition on dual nationality, as an element of all nationality laws in the Gulf sub-region and Iran – which is not present in other countries in the region that often financially rely heavily on their emigrant diaspora – further highlights the state’s understanding of the exclusivity of their nationality. The high inward migration from around the world – in the Emirates for example approximately 7.8 foreigners live alongside 1.4 Emirati citizens – coupled with stringent naturalisation requirements can become problematic. Illiberal features of other laws, such as marriage permission systems, in the Gulf<sup>32</sup> – can exacerbate the problems within these restrictive citizenship regimes.

## 2.5. The Arab Spring and its aftermath

In 2010-2011, a wave of change began to sweep across the MENA region that would again transform the geo-political dynamics of the region. The so-called ‘Arab Spring’ that swept many countries would lead to popular demonstrations, regime changes and civil conflicts and in most of the situations to power vacuums and crises. What this turmoil also did was highlight how states in the region would and could use nationality as a political tool to serve their agendas. The

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<sup>31</sup> Article 8 of United Arab Emirates: Federal Law No. 17 for 1972 Concerning Nationality, Passports and Amendments Thereof.

<sup>32</sup> For more information on some of the other problematic laws in the Gulf that relate to access to nationality see Fisher, B, Statelessness in the GCC: Gender Discrimination Beyond nationality Law, ISI working paper series, 2015/01, access at [http://www.institutesi.org/WP2015\\_01.pdf](http://www.institutesi.org/WP2015_01.pdf)

exclusion of particular groups or persons from the nation-state, through the manipulation by states of its ‘citizenry’ is not a new phenomenon. Exclusion or inclusion based on a perceived lack of loyalty to the nation-state in support of a political agenda has been particularly rife in the MENA region since 2011. Both the stripping of citizenship from the disloyal, and the granting citizenship to secure loyalty have been frequently used measures.

The situation in Bahrain highlights the former policy. In the spirit of the Arab spring, Bahrain witnessed protests over several months, with individuals and groups calling for reforms. The authorities cracked down hard on these protests using a range of oppressive means.<sup>33</sup> One of the methods of oppression employed is that of denationalisation. Since the start of the protests, the authorities have revoked Bahraini citizenship of hundreds of individuals who had been a part of the rising opposition, including human rights activists, political opponents and religious leaders.<sup>34</sup> With the ruling family from the minority Sunni population, these individuals were predominantly individuals from the Shia population and in many cases their denationalisation has left them stateless.<sup>35</sup> This use of denationalisation spread to other countries in the Gulf, and the threat of removal of nationality has reduced the space for political opposition and silenced much dissent.<sup>36</sup>

On the other side of the spectrum, the situation in Syria shows how the offering of citizenship can be used in pursuit of a political agenda just as the revocation of citizenship. As discussed above in section 1.3, hundreds of thousands of Kurds were left stateless due to state policy in the 60s. In 2011, with protests beginning to spread across Syria, the government tried to appease protestors from the Kurdish region by offering citizenship to some of those who had been left stateless for decades. Although this only included a section of those stateless and there were fundamental flaws in implementation, it still shows how the government planned to use the offer of citizenship to encourage loyalty and quell disloyalty.<sup>37</sup>

Another consequence of these turmoils is the changing shape of territories and governance. Developments for which it is too early to understand their citizenship implications, have created many territorial areas in the region which are no longer under the control of the recognised state authorities. Examples of this include the non-state controlled areas of Libya, Syria and Iraq. This situation has led to serious documentation issues – individuals unable to access civil registries as these do not exist, confusion over which documents may be regarded as

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<sup>33</sup> See for example Human Rights Watch Country Report Bahrain, 2016, access at <https://www.hrw.org/world-report/2017/country-chapters/bahrain>

<sup>34</sup> *ibid*

<sup>35</sup> For more information on this please see the UPR submission of the Institute on Statelessness and Inclusion and Americans for Democracy and Human Rights on Bahrain, 2017, at [https://www.upr-info.org/sites/default/files/document/bahrain/session\\_27\\_-\\_may\\_2017/js10\\_upr27\\_bhr\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/bahrain/session_27_-_may_2017/js10_upr27_bhr_e_main.pdf)

<sup>36</sup> See The Economist, To silence dissidents, Gulf states are revoking their citizenship, 2016, access at <https://www.economist.com/news/middle-east-and-africa/21710679-many-are-left-stateless-result-silence-dissidents-gulf-states-are>

<sup>37</sup> See Mcgee, T, Statelessness Displaced: Update on Syria’s Stateless Kurds, ISI Working Paper Series, 2016, access at [http://www.institutesi.org/WP2016\\_02.pdf](http://www.institutesi.org/WP2016_02.pdf) and BBC News, Syria’s Assad grants nationality to Hasaka Kurds, 2011, access at <http://www.bbc.com/news/world-middle-east-12995174>

legitimate etc<sup>38</sup> – alongside other endemic problems, such as sexual violence which has led to children being born in precarious situations without legal links to their often unknown fathers.<sup>39</sup>

Syria provides a clear and worrying example of how these conflicts and huge displacements, coupled with discriminatory laws and procedures, are leading to nationality issues. Two relevant problems concern the discriminatory nationality laws and access to civil registration. For the former, mass displacement creates situations in which it often cannot be established who the father of a child is, i.e. the marriage may never have been registered or the documents were lost, the fathers are unknown or their whereabouts are unknown, etc. Where there is no legal or physical proof as to who a child's father is, the child may have no nationality, as a Syrian mother cannot her nationality to her child. Additionally, various factors impede access to birth registration in host countries as well as in Syria – often due to procedural complications and costs – therefore many children are being born with no proof as to where they were born or who their parents are, the two factors on the basis of which they might be able to access nationality in the future.<sup>40</sup>

## 2.6. Conclusion

The above analysis is not an exhaustive account of what has shaped nationality legislation and policy in the Middle East and North Africa. However, it highlights some of the most significant developments in the last century that have affected this area of law and state-building. To start with, after the colonial carving-up of the region, newly independent states struggled to define their national identity and with it to determine who are their nationals. There have been several impactful events in the region that have prompted states to reconsider their approach to the regulation of nationality and these have led to its instrumentalisation in some contexts. The establishment of Israel and displacement of Palestinians, the temporary flirtation with a pan-Arabic ideology and the recent turmoil that has engulfed the region have all had their bearing on how those in power have defined who is in and who is out. The overall picture is of a region with significantly flawed nationality laws, where reactionary practices have regularly placed the nationality of undesirable groups under threat.

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<sup>38</sup> For more discussion on some of the issues regarding civil registration and documentation procedures in non-state controlled areas of Syria for example see IRC, *Identify Me: The Documentation Crisis in Northern Syria*, 2016, access at <https://www.rescue-uk.org/report/identify-me-documentation-crisis-northern-syria>

<sup>39</sup> See Lees, S, *Born of the Islamic State, Addressing Discrimination in Nationality Provisions through a Rule of Law Framework*, ISI Working Paper Series, 2016.08 access at [http://www.institutesi.org/WP2016\\_08.pdf](http://www.institutesi.org/WP2016_08.pdf)

<sup>40</sup> For an in-depth look at the nationality issues arising because of the Syrian conflict see ISI, NRC, *Understanding Statelessness in the Syria Refugee Context*, 2016, access at <http://www.syrianationality.org/pdf/report.pdf>

## **The right to a nationality in regional instruments relevant to MENA states**

The following international conventions are widely ratified in the region. Several regional conventions are also included, however regional enforcement mechanisms to accompany these instruments are generally lacking. These conventions include important provisions regarding nationality law:

### **Covenant on the Rights of the Child in Islam (2005), Article 7:**

A child shall, from birth, have the right to [...] have his nationality determined.

[...] States Parties to the Covenant shall safeguard the elements of the child's identity, including [...] nationality [...] in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

The child of unknown descent or who is legally assimilated to this status shall have the right to [...] nationality.

### **Arab Charter on Human Rights (2004), Article 29:**

1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.

2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.

3. No one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.

### **Resolution of the Asian African Legal Consultative Organisation on "Legal identity and statelessness" 2006**

3: "Encourages the Member States to review nationality legislation with a view to reducing and avoiding statelessness, consistent with fundamental principles of international law."

### **African Charter on the Rights and Welfare of the Child (1990), Article 6:<sup>41</sup>**

[...]

3. Every child has the right to acquire a nationality.

4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

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<sup>41</sup> See also the Resolution on the Right to Nationality, passed by the African Commission on Human and Peoples' Rights in April 2013, available at: <http://www.achpr.org/sessions/53rd/resolutions/234/>

### 3. Comparative overview of current nationality laws in the MENA region

Having developed a historical understanding of how nationality is perceived in the region, this section will focus on the current laws that define access to nationality. Each country in the MENA region has developed its own domestic nationality laws, and no two look the same. This section, however, highlights some of the common trends of nationality legislation that can be seen across the region, or within particular sub-regions, with a focus on how an individual can acquire and lose nationality in the MENA region.

#### 3.1. Acquisition of nationality

##### *Ius sanguinis*

*Ius sanguinis* pertains to the concept of obtaining nationality through a familial link – in other words blood ties to a country. It is also a system that fits well with the understanding of familial and tribal kinship, and the importance attributed to ancestry, in most of the countries in the region.<sup>42</sup> *Ius sanguinis* acquisition of nationality features in the MENA states in the rules attributing nationality at birth (i.e. by descent).

The vast majority of people in the MENA acquire their nationality by descent at birth, automatically and with no state discretion. All countries recognise paternal *ius sanguinis* in their nationality laws, meaning that a child of a male citizen is a citizen. It is irrelevant where the child is born, whether within the country or abroad. That it happens automatically means there is no need for registration of the child or any action by the state. The exception is Libya, where for a child who is born abroad a registration procedure must be completed before he or she is recognized as a national.<sup>43</sup>

With regards to maternal *ius sanguinis*, where the mother transfers the nationality, the rules are much more complicated. Israeli, Algerian, Egyptian, Moroccan and Tunisian nationality laws are the only ones that clearly allow for the transmission of nationality from mother to child on the same terms as from father to child, with the North African countries having reformed in the past 20 years. This means again that acquisition of nationality is automatic and it is irrelevant where the child is born. In all other countries, the situation is more complex, for a variety of reasons. In Iraq and Libya the laws provide for maternal *ius sanguinis*, but there is an inconsistency in the laws due to the retention of older discriminatory provisions. In Iraq and Libya, there is also only maternal *ius sanguinis* but only if the child is born in the respective country. Moreover, a number of other countries also set birth on the territory of the state as an additional condition that must be met for a mother to automatically transfer her nationality to her child – this is the case in Yemen and Mauritania. For example, children born to a Mauritanian mother abroad will need to complete a registration procedure, unlike a child born to a Mauritanian father abroad.<sup>44</sup> In all other MENA countries, restrictions imposed on the transmission of nationality by women to their children are much more substantial and affect

<sup>42</sup> See G. Parolin, *Nationality in the Arab World. Kin, Religion and Nation State*, Amsterdam University Press, 2009.

<sup>43</sup> Section 3 Law Number 24 for 2010/1378

<sup>44</sup> Portant code de la Nationalité Mauritanienne, 1961

children born inside as well as outside a country. Women can also only pass on their nationality in exceptional circumstances in all of the remaining countries – apart from Qatar, where mothers can never transfer their nationality under any circumstances. The most common of the exceptions under which a mother can transmit her nationality is where the father is unknown, the father is stateless or paternal affiliation has not been legally established (i.e. where children are born out of wedlock, or when for one reason or another it is been difficult to provide any proof). Some countries have a few of these criteria, some have all.

In some countries, such as UAE, Saudi Arabia, Iran and Kuwait, there are unique maternal *ius sanguinis* provisions in place, where children born in these countries are entitled to facilitated naturalisation upon reaching the age of majority. In each country, this comes with additional criteria that need to be met. However, across all of them, these decisions are left to the state's discretion, so it is not an automatic or certain entitlement for children of female citizens.

### *Ius soli*

*Ius soli*, the second mechanism for establishing nationality is through territorial links to the state – in other words, links with the soil. This method is less central to nationality policy in the region, although it still does exist in varying forms across all the legislation. *Ius soli* acquisition of nationality applies in three contexts: where birth in the country allows access to nationality, in the context of special provisions for foundlings, and in the form of residence requirements for naturalisation and those conferring nationality by marriage

Birth in the country: The *ius soli* doctrine of a child obtaining nationality because they are born in the state's territory is not very common in the MENA region. No country in the region has a *ius soli* provision which would grant nationality to everyone born on the state's territory, irrespective of who their parents are. However, most countries do in some way connect birth in the country to a system for acquiring the nationality of that country. One of the most common is the “double” or “triple” *ius soli* system, which can be found in several countries in the region. This means that two or three successive generations of birth on the territory may lead to the right to acquire nationality. One example of this is in Mauritania, where if a child is born to a parent (whether their mother or father) who was also born in Mauritania they are able to apply for a nationality.<sup>45</sup> In Yemen, this is automatic for double *ius soli* – but only through the father; and in Tunisia it is triple paternal *ius soli* – where the acquisition of nationality by birth on state territory is automatic, but only if the child's father and the paternal grandfather were born in the country.<sup>46</sup> In Iraq, the law stipulates paternal double *ius soli*, however it is a discretionary application procedure and therefore not an automatic conferral of nationality. In other countries there are even more additional criteria, for example in Morocco where, for its double *ius soli* provision a registration procedure – that is not discretionary – must be fulfilled, and requires either that the father who was born in Morocco, also originate from an Arabic-speaking or a Muslim country, or that both parents were born in Morocco and are permanent

<sup>45</sup> Portant code de la Nationalité Mauritanienne, 1961, Article 9(1).

<sup>46</sup> Le Code de la Nationalite Tunisienne 2011, Article 4(c), Article 7.

residents there.<sup>47</sup> The Egyptian law requires that the father originate from a country in which Arabic is the principal language and that Islam is the principal religion.<sup>48</sup>

**Foundlings:** The term foundling refers to a child that is in effect found (has been abandoned), and whose place of birth and parents are unknown. As such, the authorities are unable to determine either of the two significant characteristics that would indicate a nationality for the child: neither a *ius soli* nor a *ius sanguinis* link may be evident. Therefore, in many countries, additional safeguards exist in the nationality law for foundlings, to ensure that they are able to acquire a nationality. The MENA region is positive in this regard: all nationality laws have included the right of any foundling found on their territory to obtain a nationality. Although some laws slightly differ as to what age a foundling may be, when a foundling is born anywhere in the MENA region and the place of birth is not established, all laws stipulate that they shall a national. This safeguard is understood to be implemented in all countries fully – apart from in one circumstance where in practice exceptions seem to be being made. In countries where hosting a large refugee population (mostly from conflicts in neighbouring countries), at times when there is a child who is found, but in an area where many of the displaced reside, there will be no implementation of the foundling safeguard as there may be a belief that the child’s parents are from the displaced population and not nationals.<sup>49</sup>

### ***Naturalisation***

**Ordinary Naturalisation:** Eligibility for naturalisation is usually tied to a specific period of residence in the territory – long enough to allow the state to consider that the individual “belongs” and therefore has the right to apply to be a national.<sup>50</sup> The requirements for naturalising in the MENA region differ greatly from country to country – this difference can be seen for example in the minimum period of residence set out by MENA states that would render an individual eligible to apply. For example, in Israel acquisition of nationality as a Jew is automatic and does not require any residency, whereas for non-Jews there is a minimum of three years residence. In other countries, such as Jordan, Morocco, Iran, Tunisia and Syria the legislation requires a minimum of between four to five years of residence, whereas Algeria and Egypt require between seven and ten years. However, most of the countries of the Gulf, such as Kuwait, Bahrain, Oman, Qatar and the UAE, have residency requirements of between 20-30 years. This disparity can be explained by the restrictive approach to nationality that is prevalent in the Gulf region (see Section 1.4 above), whereas in other sub-regions there has been more of an open and welcoming approach to naturalisation at the time of independence and creation of nationality legislations. Most countries in the Gulf sub-region also have quotas on the number of naturalisations that can occur yearly. For example, article 17 of the Qatari nationality law stipulates that a maximum of 50 persons can be naturalised per year.

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<sup>47</sup> *Code de la nationalité Marocaine (2011) Article 9(1).*

<sup>48</sup> Law No. 26 of 1975 Concerning Egyptian Nationality, Article 4(3).

<sup>49</sup> See, ISI, NRC, Understanding Statelessness in the Syria Refugee Context, 2016 access at <https://www.nrc.no/globalassets/pdf/reports/understanding-statelessness-in-the-syria-refugee-context.pdf>

<sup>50</sup> What is also important to note is that naturalisation is not an option at all in Lebanon, the state which arguably has the most delicate demographic balance, where a foreigner may become Lebanese only through marriage to a male citizen.



Despite the disparities, there are many requirements that recur in most naturalisation procedures. All states expect the applicant to have some knowledge of the national language. However, the level of required fluency in the language differs from country to country. For example, Jordan and Egypt require the applicant to be *fluent* in Arabic, whilst others such as Mauritania and Syria only state that a *sufficient knowledge* of Arabic is needed, and in Israel the applicant needs to have ‘*some*’ knowledge of Hebrew. Some laws stipulate specific standards for the social behaviour of the applicant. This is often expressed in the need to not have a criminal record or to be of ‘good character’ or – as in the case of Saudi Arabia – to have a note from local leaders that would certify an individual’s good character. Having a sufficient income or employment to sustain oneself is also a frequent requirement, where in Bahrain this is even expressed as a requirement to own real estate. In Syria, a person can only naturalise if they have experience or qualifications that benefit the country<sup>51</sup> and in Kuwait the applicant must also render a service or hold a qualification which is needed in the country.<sup>52</sup>

MENA nationality laws discriminate not only against women. Another frequent criterion found in naturalisation requirements across the region is that an individual should be mentally, and sometimes also physically, fit. Some legislation discriminates thus against the mentally and/or physically disabled. In Syria for example it states that anyone who has “any diseases or disabilities” is excluded from naturalisation<sup>53</sup>, but the majority of these situations can be found in North African states. In Tunisia no-one in a “physical state making them a burden or danger to the community”,<sup>54</sup> can naturalise. A similar criterion is found in Mauritania, but there this restriction goes even further. If a person who has successfully naturalised is subsequently found within a year “to be physically or mentally disabled”, her or his nationality can be withdrawn, even if this renders the individual stateless.<sup>55</sup>

In Kuwait, naturalisation requirements can be based on religious grounds as applicants must be Muslim in order to naturalise and non-Muslims will not be able to apply.<sup>56</sup> The same exclusion exists in Yemen, where the criteria requires that an applicant for naturalisation must be either Arab or Muslim.<sup>57</sup> Age discrimination is found in Libya, where the applicant has to be under 50 years according to section 9 of the law.

Facilitated naturalisation for certain ethnic or religious groups is a common feature of MENA nationality laws. As discussed above, many countries offer facilitated naturalisation – in most cases through shorter residency requirements – for individuals who are Arab or who are from Arab countries. In several countries, including Egypt, Saudi Arabia and Yemen, facilitated access is provided to individuals who were born in their country.

There are also several nationality laws in the region that have more ‘exceptional’ criteria for obtaining a nationality. In many of the gulf countries, such as Qatar<sup>58</sup>, individuals may be granted nationality by the Emir’s decision even if they do not fulfil any of the criteria. This

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<sup>51</sup> Legislative Decree 276, 1969, Article 4(e).

<sup>52</sup> Kuwait Nationality Law 1959, Article 4(4). Kuwait’s requirement is that a person can only naturalise if they hold experience or qualifications that benefit the country,<sup>52</sup> suggesting a more utilitarian view of naturalisation policy.

<sup>53</sup> Legislative Decree 276, 1969, Article 4(c).

<sup>54</sup> Code de la nationalite Tunisienne, 2011, Article 23(4).

<sup>55</sup> Loi portant code de la nationalité mauritanienne, 1961, Articles 19(1) and 14.

<sup>56</sup> Kuwait Nationality Law 1959, Article 4(3) and 4(5).

<sup>57</sup> Law No. 6 of 1990 on Yemeni Nationality, Article (5).

<sup>58</sup> Article 11

privilege is often reserved for individuals who have or can offer exceptional services to the country. Another example is article 6 of the Yemen Nationality Law, which allows for a reduction of the qualifying period of residence (from 10 years to 5) if there is an “urgent reason” for obtaining nationality.

Acquisition by marriage: The second type of naturalisation in the laws of the MENA states concerns the rules relating to obtaining nationality through marriage. In most countries in the region, women can acquire nationality when they marry a national man, the women may, but do not have to, choose. The specifics of this process and what additional criteria are in place vary. For example, in Iran nationality will be immediately acquired at the time of marriage, while in Oman it is only after 10 years of marriage and only if the couple have a son. When it comes to national women who have married foreign men, however, the situation is far more complicated. In Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen, married woman cannot transfer their nationality to foreign spouses on an equal basis with married man. In most cases the residency requirement for the foreign man is much longer, and there are often additional requirements too – such as earning a good income.

### ***Procedural questions***

In all countries in the MENA region, even if all criteria are fulfilled, naturalisation often remains a discretionary procedure, which is a common feature of naturalisation processes worldwide. The discretionary nature of naturalisation decisions has, however, severe consequences for many communities across the MENA region that have been stateless for generations and have been unable to access the naturalisation procedures.<sup>59</sup> In many of the counties, the nationality law stipulates that the authority that is competent in nationality cases – in most states this is the Ministry of Interior – has absolute authority. There has been one example where discretionary powers have been curbed significantly in terms of granting nationality. The situation in Qatar used to allow the Emir to grant anyone nationality without giving any reasons. However, in 2005, there was an amendment of the law which stipulated that there must be eligibility guidelines for naturalisation and these were specified by this amendment. This made it clearer which criteria someone would need meet in order to be granted nationality. Aside from ‘exceptional nationality’ which is at times granted by the Emir, an individual has to fulfil these criteria and cannot just be granted nationality arbitrarily.

On the other hand, there is also discretion in the rejection of nationality for those who do fulfil the criteria – a practice which is much more common. An example of this is Saudi Arabia, where the Minister of Interior has complete discretion in the granting of nationality and the law states that he ‘in all cases may refuse granting Saudi Arabian nationality to aliens who have fulfilled conditions.’<sup>60</sup> There are no further guidelines as to what motivation or reasoning a rejection must follow. This is similar in most countries, where there is no legal prescription of why and when a rejection may be made. Elsewhere the law does not stipulate discretion explicitly, so this is something borne out by practise. However, terms that are commonly used

<sup>59</sup> For example the Bidoon of the Gulf and the Armenians of Egypt, who are inter-generationally stateless.

<sup>60</sup> Decision no. 4 of 25/1/1374 of Saudi Arabia, Article 10.

for authorities to grant or deny the granting of nationality, are often ambiguous, such as ‘can’ and ‘may. More troublingly is that in some MENA states instances of unfettered discretion appears to also extend to decisions on the withdrawal of nationality.

### **3.2. Renunciation, lapse and deprivation of nationality**

This section will analyse the ways in which someone may cease to have the nationality she or he once had. It will be divided into three modes of loss: renunciation, where an individual voluntarily chooses to have their citizenship withdrawn; lapse, where an individual loses their nationality automatically because of a criterion outlined by law; and deprivation, where an individual is stripped of her or his nationality through the discretion of the state.

#### ***Renunciation of nationality***

The ability to renounce citizenship, mostly in order to take up a new nationality through naturalisation elsewhere, is provided for very differently in the nationality laws in the region. Many laws do not mention renunciation at all, as for example in Iran, where there is no criterion that sets the rules for Iranians to renounce their nationality; therefore an Iranian citizen can never decide to not be Iranian. However, nearly half of the countries in the MENA region have a provision in their nationality legalisation which regulates and allows for renunciation. Most of these will only allow a person to renounce their nationality if s/he already holds or has been guaranteed the acquisition of nationality of another state. One example of this is Lebanon which states that: “The Lebanese woman who marries a foreigner remains Lebanese until she requests the striking off of her registration in the census records on account of acquiring the nationality of her husband”.<sup>61</sup> The woman therefore has to have acquired another nationality before renunciation can be completed. However, there are four countries in the MENA region where no such safeguard exists – these are Bahrain, Iraq, Jordan and Qatar. In these states it is possible to renounce the nationality even if it is not guaranteed the individual has acquired another nationality (i.e. even if statelessness results).

#### ***Lapse of nationality***

Lapse of nationality is also a possibility in many of the nationality provisions. This is where nationality is lost as a direct and automatic consequence of particular circumstances which are outlined in the law. This provision exists for example in Article 11 of the Emirati law and a similar article is in the Kuwaiti nationality law. In Syria, another type of loss is prescribed for, where Article 21 sets out that if the person has left indefinitely for a non-Arab country and has resided there for more than three years, he or she could lose nationality (although in practise this is not implemented).

Among the most common ones is the prohibition of dual nationality. Dual nationality is prohibited in the sub-region of the Gulf: in Qatar, Saudi Arabia, Kuwait, Bahrain and the

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<sup>61</sup> Decree no 15 Lebanese nationality law, Article 6. Note that article 8 of Lebanon law does also provides for the automatic loss of nationality where a Lebanese national voluntarily acquires a new nationality.

Emirates. In these cases, the laws set out that when someone acquires a foreign nationality, their old nationality is automatically lost. Renouncing a previously held foreign nationality is not a requirement in all MENA countries and for all modes of naturalisation apart from those countries where dual nationality is prohibited. In cases where dual nationality is acquired by birth or through naturalisation it is tolerated in every country apart from the five listed above.

### ***Deprivation of nationality***

In all legislation across the region, provisions exist where nationality can be withdrawn without the request of the individual concerned. In other words, the state is empowered to strip someone of his or her nationality according to a state decision. Providing for the possibility to deprive citizens of their nationality is more common in the MENA region than providing for automatic loss of nationality.

In most of the nationality laws there are different regulations in terms of deprivation of nationality for those who are naturalised (and often their families) and those who are nationals at birth. An individual or family who has acquired nationality by naturalisation is in fact much more exposed to subsequent withdrawal of that nationality, being subject to many more grounds upon which they can lose the nationality – in fact there are twice as many clauses for those who are naturalised as for other citizens. For example in Qatar, Article 12 has four criteria specifically for deprivation from naturalised persons, which includes denaturalisation due to a conviction for an honour crime. Often, there is a particular time period in which a naturalised person is subject to these additional provisions. For example, in Egypt an individual can be stripped of nationality within five years from the date of naturalisation, or within up to ten years from the date of acquisition if it is found out that naturalisation was based on forgery or false statements.<sup>62</sup>

In general, the grounds for deprivation of nationality, although differing between countries, tend to relate to issues of allegiance and behaviour that is considered disloyal. In the MENA region, there are five particularly common grounds where governments have given themselves the power to strip citizens of their nationality. These are when 1) a person commits an act or crime that threatens the security of the state, 2) renders services to a foreign state or is 3) discovered to have acquired the nationality through fraud (only Algeria, Lebanon and Tunisia have no legislation for the possibility of deprivation of fraud), 4) demonstration of allegiance to a foreign or enemy state and 5) in response to the commission of a serious non-political crime. Five countries – Morocco, UAE, Bahrain, Morocco, Qatar and Saudi Arabia – allow the state to withdraw nationality on all of these five grounds. Alongside these particularly common criteria, there are others, which are not as common but recur in several countries, such as following four: 1) for reasons relating to honour, (for example provisions in Kuwait and Qatar that apply exclusively to naturalised citizens), 2) long-term absence from the territory of the state (for example in Egypt, Libya, Qatar, Syria, UAE and Yemen), 3) terrorism, (although only Morocco has this explicitly engrained in nationality laws, other countries – such as Bahrain – have decrees or Emir decisions) and 4) failure to fulfil military obligations (Morocco and Tunisia).

Again, various discriminatory provisions exist in the nationality laws, and this is also a feature of some provisions concerning nationality deprivation. The main three are the following:

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<sup>62</sup> Egyptian law no 26 of 1975, Article 15.

1. Religion: In Kuwait for example, a naturalised individual can be deprived of nationality if the persons renounces Islam or “behaves in such a manner as clearly indicates his intention to abandon Islam”.<sup>63</sup> In Oman, before the recent amendment of the law, an individual could be stripped of nationality on the grounds of being an atheist or of belonging to an “anti-religious group”.<sup>64</sup>
2. Disability: Persons who acquire Mauritanian nationality by naturalisation can be deprived of their nationality if within a year from the date of naturalisation they are found to be “physically or mentally disabled”, retroactively threatening the nationality of naturalised individuals.<sup>65</sup>
3. Political beliefs: In Egypt, the nationality law stipulates that the authorities can deprive a person of nationality “if, at any time, he is assumed to be a Zionist”.<sup>66</sup> Additionally, although the legalisations do not specifically talk about political beliefs, there are numerous examples of states using criteria such as disloyalty in order to strip individuals of their nationality if they have dissenting political beliefs.

Alongside the regular legislative provisions, nationality can be taken away from individuals through other means and processes. In the Gulf countries, there have been examples of states which have published Emirs’ decrees that state additional new emergency reasons why individuals need to be deprived of their nationality.<sup>67</sup> Additionally, in two countries – Qatar and Libya – the articles in the law that regulate deprivation of nationality are different in that the authorities are given much more discretion in determining when to withdraw a person’s nationality. In Qatar, the Minister has the discretion to withdraw nationality from anyone “if it is in the public interest”<sup>68</sup> whereas in Libya, nationality can be deprived in any situation where the decision is “justified” by General Security.<sup>69</sup>

What is important to note is that no nationality laws in the MENA region include a safeguard to prevent a person from being rendered stateless if they are deprived of their nationality.

### ***Procedural questions***

Similarly to the situation of granting of nationality, there is absolute discretion in decisions on the withdrawal of nationality in most MENA states. What is particularly important in these circumstances is analysing this issue in light of the principle of due process with regard to nationality cases, and the extent to which there is a right of appeal if an individual is affected by a decision to withdraw nationality. In the majority of nationality laws in the MENA region, there are unfortunately very few opportunities that are open to people to challenge such decisions. There are only seven countries in the MENA region that guarantee a right to appeal in their nationality laws against decisions that concern their nationality – these are Algeria, Tunisia,

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<sup>63</sup> Kuwait nationality law 1959, Article 4(5).

<sup>64</sup> The former Oman Royal decree on Omani nationality, 1994, Article 13(2).

<sup>65</sup> Loi portant code de la nationalité mauritanienne, 1961, Article 14.

<sup>66</sup> Egyptian law no 26 of 1975, Article 16(7).

<sup>67</sup> This was the case for example in Bahrain , Decree on 31 July 2013 available on the State News Agency at: <http://www.bna.bh/portal/news/573609>

<sup>68</sup> Qatar law no 38, 2005, Articles 11 and 12.

<sup>69</sup> Law Number (24) for 2010/1378 , Article 14.

Egypt, Israel, Iraq, Lebanon and Morocco. Even in these countries, there is minimal jurisprudence on nationality cases.<sup>70</sup> Although there has been a lot of discussion on this issue<sup>71</sup> – no country in the Gulf has enacted procedural guarantees although deprivation of nationality is actively practiced in the sub-region.

### 3.3. Conclusion

The analysis of nationality laws shows several things. The MENA region in general has several positive developments, notably the universal provision granting nationality to foundlings and the limited situations of lapse of nationality. There are also some points where opportunities exist for improvement, specifically removing discrimination and prohibitive criteria in the naturalisation requirements. Predominantly though, what these trends show that there is still some substantial discrimination in all laws and in many practices – especially on grounds of gender, religion, disability and ethnic identity. Furthermore, the criteria of deprivation of nationality also allow space for abusive power of discretion by authorities in virtually all of the nationality laws.

## 4. Final observations

Countries in the Middle East and North Africa have common approaches to the regulation of acquisition and loss of citizenship and some of the patterns discussed in this paper show the region to be quite distinct when compared with other regions in the world. The laws we see today and the trends that were discussed in this report are largely influenced and formed by the unique circumstances of the last century – from the post-colonial legacy, to the creation of Israel, pan-Arabism, demographic manipulation and the influence of present-day conflicts and instability. Different patterns of migration – whether worldwide ingathering of a diaspora to create the state of Israel or the recruitment of labour migrants that has created the substantive non-citizen population in Qatar, or the increasing displacement of populations across the region – all these phenomena mean that there will continue to be discussions on the relationship between migration and citizenship regulation at the regional level. It is also important to note when reading this chapter that one of the underlying dynamics seen across all of the sections on the influences and developments in nationality legislations is the interest of those in power to sustain their position through the manipulation of the state's demographic composition and the instrumental use of nationality policy to that end.

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<sup>70</sup> One of the best-known analyses of case law relating to nationality in Lebanon is Frontiers Ruwad Association, *Invisible Citizens: Humiliation and a life in the shadows. A legal and policy study on statelessness in Lebanon*, 2011.

<sup>71</sup> For example, in Kuwait there has been much discussion for many years on whether the court should oversee nationality cases. Most recently a parliamentary decision that allowed courts to review nationality cases was overturned in 2017.

The concept of nationality – because it determines who does and who does not belong – has very much been tied up with the larger geo-political factors that shape the region. Many of the legislative choices of states were first made during the early years as independent countries, or even during colonial times, and remain still valid today. In terms of acquiring nationality, *ius sanguinis* is the most prominent characteristic but there are other ways in which an individual can obtain nationality, through a territorial connection of some kind (such as long-term residence leading to eligibility for naturalisation – conditional upon meeting other criteria). The loss of nationality is also stipulated in all laws, and there is a recurrent trend of both groups and individuals being targeted in different contexts for deprivation of their nationality. There are also positive trends in the region, such as the universal safeguard against the statelessness of foundlings. Yet, an unfortunate and common practice is the prevalence of discrimination in the laws, on various grounds and including distinctions between naturalised and non-naturalised citizens.

Interestingly, the regulation of acquisition and loss of citizenship in many of these countries have been quite flexible, with regular amendments and reforms, which opens the space to potential future improvement of some of the more regressive legislation. And of course, lastly, the implementation of these laws inevitably differs significantly across countries, a factor which should be taken into account in any discussion on nationality laws, especially given the absence of jurisdiction for the courts in nationality matters in the majority of MENA countries, coupled with the historic evidence of problems arising in the practice of inclusion and exclusion in the region.

COMPARATIVE  
REPORT  
2017/03

