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The American University in Cairo

School of Global Affairs and Public Policy

**GENDERED NATIONALITY GENDERED NATION: ANALYZING GENDER EQUALITY THROUGH THE
2004 NATIONALITY LAW REFORM IN EGYPT**

A Thesis Submitted to the

Department of Law

**in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Marwa Salem Baitelmal

December 2012

The American University in Cairo
School of Global Affairs and Public Policy

GENDERED NATIONALITY GENDERED NATION: ANALYZING GENDER EQUALITY THROUGH THE 2004 NATIONALITY
LAW REFORM IN EGYPT

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Marwa Salem Baitelmal

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Master of Arts in International Human Rights Law
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DEDICATION

This thesis is dedicated to the women of the Arab Spring who in an inspiring show of comradery took to the streets and joined the wars, endured all forms of violence and atrocities; sacrificed themselves, their sons and daughters; their families for the revolution, all the while, they continue to fight their own battle for equality.

The American University in Cairo

School of Global Affairs and Public Policy
Department of Law

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REFORM IN EGYPT

Marwa Baitelmal

Supervised by Gianluca P. Parolin

ABSTRACT

Nationality law holds a particular political agenda; it has the ability to dictate our membership within a nation and our relationship with the state. Essentially, it is through nationality law that we are extended membership within the enlarged community of the nation. As such, the law carries with it the ability to create the insider while in turn creating the outsider. This distinction becomes blurred when negotiating belonging for women who fall within this gap of the internal/external divide. Women, when forced to negotiate with the nationality law, find themselves as partial members. Their nationality is of a conditional one, finding that their completion within a patriarchal hegemony is ultimately through a male counterpart, obstructing her ability to place herself at equal standing. Further, we see how law dictates a limited membership for women when their right to filiation and family unity is provisioned with the inclusion of a male member. This shows true in the case of women in Egypt, where nationality law has conditioned her membership as an unequal one. Therefore, at a moment in history where states are re-evaluating laws and reforming national membership, it is essential to examine the 2004 law reform in Egypt, which can serve as a litmus test towards understanding the limitations the reform has had in achieving equality for women. Therefore, by demonstrating its inability to achieve gender equality by realizing that the Egyptian woman's membership is limited, and her rights to forming a family unit, the freedom to choose a marriage partner without the fear of excluding family members are provisional. As such, the aim here is to shed light on the 2004 reformed nationality law in Egypt which has drawn approving attention for its positive move towards gender equality. Instead, it is important to deconstruct the various aspects of the 2004 nationality law that will then demonstrate the continued disadvantage and inequality imposed upon the Egyptian woman despite the reform.

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Aisha is an Egyptian woman married to a Palestinian man, together they resided in Libya, where they had their first child who was only an infant of several months when, Aisha fell ill. Aisha was in the need of immediate medical attention and decided that it would be better provided in her home country. Aisha, her infant child and her Palestinian husband traveled to the borders of Libya and Egypt only to be stopped by Egyptian immigration officers. Aisha was welcomed to Egypt, however her Palestinian husband was not. Aisha's newborn child was also not welcomed into the country given that the father is Palestinian. An immediate decision had to be made, return with her family to Libya and forsake the much needed medical treatment, or leave her infant child with her husband and continue alone into Egypt or which was suggested by the officer, Aisha's Palestinian husband can divorce her right there in order to facilitate for Aisha to take the fatherless child across the border with her.¹

I-INTRODUCTION

It is through nationality law that we conceptualize belonging, the inclusion and exclusion of the individual within the amplified community of the nation. It is through this ideation, albeit a political process, that determines those who belong and those who remain externalized. The relationship between women and the nation is no stranger to this process, where membership and association has long been negotiated and renegotiated at each historically significant moment draws new boundaries. Author Chao-ju Chen makes reference to Peter Fitzpatrick who draws on three dimensions to this complex relationship between law and the nation, "Nation produces law, law enforces nation and law mediates between the universal claims of the nation and particularities within the nation."²

Concurring with this statement, one can show that nationality law determines to a great extent where women are placed within the community and their conceived participation and role within the nation itself, especially if these

¹ Although narrated as a factual account the case remains a third party narrative, where there may be discrepancies with the actual real life account. The names are fictional to preserve the privacy and integrity of this family.

² Chao-ju Chen, *Gendered Borders: The Historical Formation of Women's Nationality under Law in Taiwan*, 17 Positions: East Asia Cultures Critique, 289, 290 (2009).

laws do not provide her with equal standing. There is a particular decisive and determining power of the law, as Chen points out; in so much as it is the law which dictates membership to the nation, drawing national boundaries that shape women's overall relation to the nation and the state.³ Accordingly, nationality law becomes the determining power that may include women into full membership, while allowing her to extend this membership by widening the imaginary borders nationality law draws to include her family within the national boundaries of membership.

In 2004 Egypt issued a reformed law which for the first time in its modern history gave the Egyptian mother the right to pass on her nationality to her children using the principle of *jus sanguinis*. This reform came after mounting pressure to recognize the nearly one million children born to Egyptian mothers and foreign fathers, who reside in Egypt, have become affiliated with the land, yet find themselves living outside the peripheral of Egyptian membership due to exclusion through nationality law.⁴

Nationality law serves as a baseline towards equality in national membership. If we were to examine this within the context of Egypt, a historical narrative and analysis of the evolution of nationality law will demonstrate that the law itself places women at an awkward position with limited belonging, as the law itself is discriminatory on several levels towards women. Essentially, woman's nationality in Egypt is a dependent one, dependent on her father or husband, where her own nationality is ultimately negotiated through either. Further, given the consequences should

³ *Id.* at 291- 293 (“Decisive and determinative power of the law in choosing members of the nation and in drawing national boundaries shapes women's overall relations with the nation as an unequal one, as an inequality that is informed by women's subordinate status in the nation” The author continues to list the inequalities that immediately apparent from such framework. one: Women's nationality is understood to be a dependent on the male relative. Two: the ability to pass on nationality onto children is gendered and limited. Three: the legal regulation of naturalization determines who will be admitted to the community along gender lines, i.e. Female citizen's foreign husband may be denied access to naturalization.”) *Id.*

⁴ This number is but a rough estimate but seems to be consistent with the many references and sources available that have roughly estimated between 800,000 to about one million potential Egyptian children from Egyptian mothers and foreign fathers. The law was a result of various efforts from NGO's and working groups that brought to light the ongoing consequences facing children of Egyptian mothers who are married to non-Egyptian men. As a result in 2001 former Egyptian President Hosni Mubarak made an official announcement in the NDP the need to reform the law to establish the right of blood through maternal decent. Following this announcement local NGO's in conjunction with the National Institute for Motherhood and Child pushed forward a draft law for the reform. This initiative was official lead by former First Lady Suzan Mubarak. See, Valentine M. Moghadam, *Governance and Women's Citizenship in the Middle East and North Africa*, 12 COMP STUD OF S. ASIA, AFRICA AND THE MIDDLE EAST (1999).

she choose an alien husband placed restrictions on her freedom of choice in a spouse. Although this has changed to a large extent after the 2004 law reform where the children are now embraced as members by granting filiation rights through the mother, however, there continues to exist restrictions that this paper seeks to explore in detail. Ultimately, the Egyptian woman as an equal member of the nation is deprived of the fundamental right to create a family unit in her own right, by restricting the very principle of *jus matrimonii*, thus preventing the Egyptian woman from extending nationality to her foreign husband. Given that the law acts as a gatekeeper barring those who do not belong, we can recognize that belonging is not bargained through the female members. Thus, even despite reform inequalities persist within the law as well as within the practice that places the Egyptian woman as disadvantaged and an unequal before the law.

The reform comes highly acclaimed internationally as well as by local feminist activists, human rights groups and Egyptian mothers alike; whereby The Convention on the Elimination of all form of Discrimination Against Women (hereinafter CEDAW) documents the law as one of its success stories after 30 years in form.⁵ Nonetheless, the purpose of this paper is to shed light on the reformed law, analyzing the depth of its equality within the written law, its application and in the daily realities of the Egyptian woman. The aim is to identify the gaps, while examining to what extent the reformed law and its application has achieved the intended equality. Thus, to determine the success of such initiatives, Egypt as such is used here as the litmus test, investigating the general initiatives of reform within the Arab world.⁶ To do so however, it becomes important to ask the fundamental questions of what role does nationality law play in constructing the unequal status of women in Egypt? To what effect does this have on her

⁵ CEDAW, *30 Years Success Stories*, available at: http://www.unifem.org/cedaw30/success_stories/#egypt

⁶ Social consequences and acceptance are an important factor to examine when considering the legal reform towards gender equality. It is important to note for example that the nationality law reform came as an overall package of other gender equality laws tackling personal status that were introduced at the same time. Amongst these were the *khula* law, setting the age of marriage for the women, as well as greater initiatives towards protection of women in the anti-trafficking law, all backed heavily by former First Lady Suzan Mubarak. Since the revolution the *Khula* law and age of marriage have returned to debate where many Islamic groups are calling for their removal.

family the very fabric of society? And why is nationality important in the dialogue for women's rights and equality in the case of Egypt?

This paper aims to demonstrate that despite the 2004 nationality law reform, the Egyptian woman continues to hold limited access as a member before the law and the nation. Where it will be demonstrated that the reformed law not only continues the practice of inequality in membership, but also legitimizes this practice through law, which is in direct conflict of Egypt's international obligations as well as its local legislation. Ultimately, examining the outcome of the 2004 reform when the law is renegotiated and the scope of equality is allegedly expanded, while, reflecting on the realities inequality in law places on those who must bear the consequence.

Part I of this paper seeks to establish an insight into the terms used to identify and define nationality and what it means within a gendered context. Doing so by means of breaking down the very concepts which define our understanding, while examining essentially, what nationality means to equality for women and how this plays out specifically for women in Egypt. Part II will look at nationality, equality and what the law says about the family unit, all within an international law context. Presumably how international legal norms and human rights law seek to tackle the various aspects of nationality and equality beyond the state level. As such, an examination of the international and regional regimes which address the various issues of concern and most importantly what measures Egypt has taken in participating within these mechanisms, if at all. Part III, provides a historical narrative of the Egyptian nationality law highlighting the significant moments of inclusion and exclusion of women within this process. Demonstrating how these historically relevant periods have dictated the legal norms which legitimized a perpetuation of inequality for the Egyptian woman. Part IV, offers a more in depth analysis of the nationality reform law of 2004, what this means to the Egyptian woman, her own membership and that of her family in light of this new membership status. The aim is to demonstrate the relevant characteristics that continue to mitigate the spirit of reform in light of the continued gendered boundaries.

II. GENDERED NATIONALITY IN LAW AND PRACTICE

Law creates the boundaries by which the national is bound, identifies and is identified within a community. Thus, it is essential to disentangle the web of law and practice in order to translate the ongoing gender dialogue from theory into a practical understanding of our realities today. We can use nationality and its provision of rights as the entry point for this understanding. Essentially, an consideration as to how equal nationality may be inserted into policies and practice to help attain greater rights and equality for women. The significance lies in the conceptualization of boundaries created by nationality law which draws an imaginary line between the outsider and those who belong and are protected within. Establishing how women are identified within these boundaries of the state and how membership and equality is etched out of the law.

A. Drawing the link between law and the nation⁷

Author Chen rightfully questions, “What is the relationship between law and the nation?”⁸ The author continues by revealing that there exists mass scholarship on theories of law and that of the nation, but seldom is it explored how these two theories relate to one another.⁹ The importance here being to examine where women are then negotiated at this intersecting point.

We can easily recognize that nationality law has a particular historical and political narrative and this is true for every nation-state created and Egypt is of no exception. Nationality law acts as the gatekeeper, it works to establish a distinction between those who we want to belong and those who we want to keep out in light of the nation-state project. Although managed through law, nationality is essentially a political tool, reflective of certain state agendas;

⁷ Nation and State There is a clear distinction between the nation a population and the State as a political apparatus. Thus any reference to the nation within the text is reference to the population and or society as a whole. While reference to the State is to describe the authoritative power or political structure. The two terms will not be used interchangeably and a clear distinction between the two is essential in reading the text.

⁸ Chen, *supra* note 2, at 290.

⁹ *Id.*

it is no wonder that women oftentimes bear the consequence. In order to understand the role nationality law plays in creating the national and how this translates to equality for women we must first breakdown the various concepts and terminology that are used to construct our understanding of the national. Essentially it is important to understand how these concepts manifest into nationality law, and particularly most relevant here, the reformed law emphasizing how this translates to the Egyptian woman, her family and home and the everyday struggle.

1. Nationality/citizenship¹⁰

It is important to make clear the distinction between nationality and citizenship which oftentimes are used interchangeably in scholarly writing. Although the distinction between the national and the citizen are somewhat blurred within disciplines, for the purpose of this paper it is essential to mark a clear identifiable difference in function between the two. Author Bronwen Manby using the two terms interchangeably throughout his published work on Citizenship Law in Africa, describes the concept as follows;

“Citizenship/Nationality: “Citizenship” is a term commonly used in the social sciences to indicate different types of belonging to a political community and the rights that such belonging brings with it. Citizenship in law is defined somewhat differently, where the legal bond between the state and the individual is at the core of its meaning.”¹¹

This combination perhaps can be attributed to the function of citizenship which encompasses the political and civil activity of the individual, which pursues belonging to the state by means of nationality. In the pure ancient perception, the citizen was assumed to combine both the inclusionary elements of the national, i.e. membership within the community, as well as the active citizen, of one who engages in politics (participatory in decision making

¹⁰ Nationality and citizenship will not be used interchangeably by this author, instead each will be used to define or reference the particular concept alone. Unless referring to particular scholarly work which does not make this distinction in which the integrity of the work will be maintained and referred to as intended by the author.

¹¹ BRONWEN MANBY, CITIZENSHIP LAW IN AFRICA: A COMPARATIVE STUDY ix (Open Society Institute 2009).

for communal wellbeing).¹² However, as we transitioned from the city-state to the nation-state the community evolved into a much more complex legal and political structure.

With the Westphalian model came the birth of the nation-state and a new paradigm of territorial sovereignty, it then became necessary to reflect or define the place of the national within its boundaries. The scholarship surrounding these Westphalian ideals grew in volume and complexity; ultimately separating the national from the citizen where membership to the state was found through nationality law and become the pre-requisite to that of actively engaging as a citizen in political and social activities.¹³

However, our understanding of belonging has shifted and the all encompassing individual as a combined national/citizen as had previously been understood in ancient establishments no longer satisfies the evolved circumstances. Instead, the national precedes the citizen as a recognized member belonging to a community, which then allows for citizenship privileges, activities, rights and duties. Additionally, with the creation of the nation-state came contemplations of the state's role and function, as well as, the individual and communal role within the nation-state structures.

¹² See, ARISTOTLE, THE POLITICS BOOK 1, (trans., Benjamin Jowett, Batoche Books Kitchener 1999) (according to Aristotle, the human could not be fully human unless he ruled himself).

¹³ Iseult Honohan, *Freedom as Citizenship: The Republican Tradition in Political Theory*, 2 THE REPUBLIC 7, 9 (2001) (“The term republic itself comes from the Latin, *res publica*, the public concern; as Cicero put it, the republic is the people’s affair: ‘*res publica res populi*.’[...] Notwithstanding this basic influence, [...] many elements which frame the republican thinking the intrinsic value of membership and participation in a political community; freedom, contrasted to slavery, as a political achievement, guaranteed by the rule of law and ‘mixed’ government; the need for a virtuous citizenry, shaped by laws as well as good institutions; the state as a bounded community of citizens who share common goods, distinct in form from family and voluntary associations.” As such have all been derived and influenced by the likes of Aristotles and Cicero writing and philosophy.). *Id.* at 9-10.

See also, Piotr Perczynski, *Citizenship and Associative Democracy*, Workshop: Innovation in Democratic Theory, European Consortium of Political Research Annual Joint Sessions (1999) (The author explains that the Ancient citizenship ideals have stood the test of time where the republican citizenship theory evolved directly from Aristotle’s teaching of citizenship and the imagined ideal of man in virtues and his relation to the state. As such it remains the oldest and most classical theory. The republican theory emphasizes the double function of citizenship in which is very much in tune to the ancient political thought, the idea being of governing and being governed at the same time, or as summed by Perczynski, simply self-government. Very much in tune with Aristotle’s teaching, the republican theorists imagine the citizen as an active political being exercising ‘his’ civic duty, or as Aristotle presented it, manifesting his humanity. As such it is evident that the republican theory has clear antecedents in the classical world of Greece and Rome which was then crystallized in republican theoretical thought.). *Id.*

While the International Law Commission has addressed the question of nationality and has made a distinct separation between nationality and citizenship, there continues to be discrepancy to this approach within scholarly writing.¹⁴ The ILC has defined nationality as “the status of a natural person who is attached to a State by the tie of allegiance”¹⁵ Today the distinction between nationality and citizenship is often consciously lost by many writings on the topic, although the distinction should be made clear so as efforts towards reform for each remain relevant. Ultimately, today nationality and citizenship can distinctly be divided into the former being the determination of membership within a nation while the later being an active member through participating in civic duties entitled within this membership. Authors Shamim Meer and Charlie Sever in their work define citizenship as such;

“Citizenship is about membership of a group or community and about the rights and responsibilities conferred by that membership. Citizenship can therefore be a relationship with the State and/or a group, society or community. Citizenship is both a status – or an identity – and a practice or process of relating to the social world through the exercise of rights/protections and fulfillment of obligations.”¹⁶

While citizenship has been negotiated in great depth by feminist scholars, scholarship remains somewhat silent on the aspect of nationality and its inclusion and exclusionary elements. Although nationality is addressed through various mediums at both the international and domestic level, either through statelessness, rights of the child or married women, there seems to be a lack of recognition when immersing within the debate toward nationality itself and gender equality in the law. As such, the significance of distinguishing between nationality and citizenship allows for an in depth approach to nationality law and the gender divide it creates. Consequently, nationality holds the power of including as well as excluding the individual.

¹⁴ See, Manley O. Hudson, *Nationality, Including Statelessness*, 2, Y.B. INT'L L. COMM'N DOC. A/GN.4/50 (“The ILC has made this distinction “The terms " nationality " and " national " have to be distinguished from similar, but not necessarily synonymous terms such as " citizenship " and " citizen ", " subject ", " ressortissant ", etc. A person may be a national of a State without having its citizenship.”).

¹⁵ *Id.* at § 2 ¶ 1.

¹⁶ SHAMIM MEER AND CHARLIE SEVER, *GENDER AND CITIZENSHIP* 6. (2004) available at <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Citizenship-report.pdf>

2. Inclusion/exclusion

“The concept of membership by definition means that some are included while others are excluded; and for a large number of people the world over, citizenship [nationality] has been about exclusion.”¹⁷ We cannot underestimate this statement, nor disregard the realities in which it represents. The simple fact is that law constructed to produce the member in turn identifies those whom it has determined do not belong. It is aimed distinctly towards a targeted group who fit a specific profile, excluding the less worthy from elite membership of the nation. Author Jean L. Cohen explains that, “Citizenship forms a special tie and a specific identity: it includes some while excluding others and it is always based on particularistic considerations regarding access to membership.”¹⁸ Cohen continues by confirming, “Indeed citizenship itself is a special and privileged status of membership in a socially esteemed category.”¹⁹ Consequently, those who remain without nationality remain less fortunate, as such, as Cohen points out there is an elite status in belonging that is the driving force behind the need to belong.²⁰

The state holds complete autonomy over nationality law which is in fact a political process. Thus, “this provides the state with the right to determine citizens according to their independent will and interests.”²¹ States in turn determine its members through a legal selective process, albeit based on a particular political agenda; this selective political process is precisely what places women on the receiving end, bearing the consequences of the exclusionary mechanisms in law. Law in which alienates women as full members by conditioning their membership through male counterparts creates them as semi-outsiders.

¹⁷ *Id.* (emphasis added)

¹⁸ Jean L. Cohen, *Changing Paradigms of Citizenship and the Exclusiveness of the Demos*, 14 INTERNATIONAL SOCIOLOGY 245, 250 (1999).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Lina Abu-Habib, *Citizenship and Nationality in the Arab Region*, 11 GENDER AND DEV. 66, 67 (2003) (“International legal bodies and agreements give states the right to set their own regulations regarding the process of granting nationality. They also provide states with the right to specify who their citizens are, according to their independent will and interests.”). *Id.*

Author Pocock has warned feminists who choose to make the inclusion argument by means of citizenship (i.e. nationality) to be weary of the exclusionary alternatives.²² Where pushing for reform by means of greater inclusion based on nationality will always widen the scope of potential exclusion. It is the very essence of the inclusion criteria invoked by many feminist that may counteract these efforts resulting in exclusion. Authors Meer and Sever, make note of the exclusionary mechanism in the law while further highlighting the impact of internal exclusion and its various levels which leaves particular social groups wanting of full inclusion. As such the authors emphasize in light of these layers, that essentially membership is layered and conditional.

“Exclusion and marginalization from full citizenship are not only about being an outsider in a geographical sense. Groups such as women, ethnic minorities and the poor can fall outside full citizenship... The roles and relationships within societies dictate who is “inside” and who is “outside” and which activities are valued. They lead to different types and levels of exclusion from the advantages that membership incurs. Gender roles and relations are one such power relation”²³

Based on the distinction between those included and those excluded and the multilayer inclusion, nationality remains an ongoing dilemma facing women as a result of the continued inequality that has left women as both included members, while partially excluded, given that inclusion is negotiated by a male member and not independently.

There are layers of belonging and inclusion in which there remains a customary practice that places patriarchy at the summit. This is true in the case of Egypt where the woman must negotiate her inclusion through a male member. Although it may easily be argued that in fact the Egyptian woman through nationality is equally included within the controlled boundaries of the state. However, examining the nationality law which dictates this belonging it becomes obvious this is not the case at all. In fact until very recently the Egyptian woman acquired her own nationality either through her father or later through her husband. Further, as a mother, she was initially unable to pass on nationality to her children, where in turn they were perceived as outsiders, essentially excluding them from

²² J.G.A POCOCK, *The Ideal of Citizenship Since Classical Times*, in THEORIZING CITIZENSHIP, 29, 32 (Ronald Beiner ed., 1995).

²³ MEER & SEVER, *supra* note 15, at 6.

membership. Although the reformed law has amended this reality to a large extent, there remain exclusionary mechanisms within the law which continues to marginalize the foreign spouse from attaining membership through the Egyptian woman.

Author Chao-ju Chen has rightfully pointed out, “women are the producers of the national.”²⁴ As already discussed above, nationality creates members, determines those who are included and excluded. However, what does this mean for women and in this specific case the Egyptian woman and her family? To answer these questions we must take the argument one step further, and it is important to recognize that not all those ‘produced’ by the Egyptian woman become nationals nor are they accepted, and thus remain outsiders. For the purpose of equality in provisions of membership within Egypt, such clear distinctions and restrictions upon membership rights demonstrates the continued inequality that prevails. Prior to reform the Egyptian mother unable to extend nationality to her children, not only placed limitation to her own nationality, but also drew a distinct line cutting the family into the included mother and the excluded children. Although the 2004 reform now includes as Egyptian nationals, the children born to the Egyptian mother and foreign father, extending the boundaries of membership that much further; the reality remains that the family is divided where the father remains an outsider. In light of gender equality, the inequalities of membership between the female and male Egyptian nationals continues to prevail, given the ongoing reality that the Egyptian man may de facto creates an all inclusive family unit without limitations nor excluded members. And as has already been mentioned this is not the case for the Egyptian woman. It is through the criteria of inclusion and exclusion that we are then confronted with the reality of inequality in the law and essentially how this translates to the realities faced by families who fall within the exclusionary criteria and inequality, as it is essentially they who pay the price.

²⁴ Chen, *supra* note 2 at 291.

B. Nationality as a Measure of Equality

Nationality is not only about inclusion, but also about rights, it is “the right to have rights.”²⁵ The most important aspect when looking at nationality is to first understand what does nationality do? What does it mean to be a national? Answering these questions allows us to understand why nationality is essential towards attaining equality. Nationality holds an array of effects and purposes; it establishes affiliations of an individual to the nation-state - rights and duties, draws border between states, creating the insiders and the outsiders. Further, however, nationality embodies a package of rights necessary to combat inequality. Nationality law that is not inclusive but instead addresses each gender separately perpetuates inequalities and creates layers of inclusion and membership.

Nationality law restricts the Egyptian woman’s right to choice; essentially her freedom to choose a marriage partner given the reality of the law which dictates that her alien husband will remain indefinitely excluded or must apply to be naturalized through regular means instead of an expedited process based on *jus matremonii*. This is distinctly different from that of the Egyptian male whose marriage to a foreigner provisions the foreign wife’s acquisition of Egyptian nationality within two years of her marriage. Thus, the evident inequality in the reformed law not only restricts the Egyptian woman’s freedom of choice to select a husband by preventing *jus matrimonii* through the Egyptian woman, but also limits or prevents her from the right to create a family unit in her own right. Author Nadia Hijab maintains that, “By not allowing women to pass citizenship on to their children (or their spouses), most Arab states cement the linkage between religious identity, political identity, patrilineality[sic], and patriarchy – that is, between religion, nation, state, and kinship.”²⁶ As such, the continued restraining power of the state limits the Egyptian woman’s ability to confidently identify herself as an equal member belonging to the nation, instead she is an incomplete member that carries disadvantages while bestowing hardship upon her family should she attempt to

²⁵ LISA C. STRATTON, *The Right to Have Rights: Gender Discrimination in Nationality Laws*, 22 MICH. J. INT’L L. 523 (2000-2001).

²⁶ Nadia Hijab, *Women Are Citizens Too: The Laws of the State, the Lives of Women*, 4 Regional Bureau for Arab States United Nations Development Program (2001).

practice the freedom and independence of choice. Thus, nationality is not only a legal process, but encompasses an array of additional features. It becomes the politics of belonging and participation, acceptance and inclusion.

C. The Principles of *Jus Soli* and *Jus Sanguinis*

When acquiring nationality at birth states will invoke the principles of *jus soli*, by land, or *jus sanguinis*, by descent through blood. These principles are invoked either separately or a combination of the two. Nonetheless, states almost unanimously invoke these principles to the extent that the ILC has questioned their binding force by means of customary practice. In regard to these principles the ILC have concluded:

“This uniformity of nationality laws seems to indicate a consensus of opinion of States that conferment of nationality at birth has to be based on either, on *jus soli* or on *jus sanguinis*, or on a combination of these principles. It may be a moot question whether this rule merely constitutes usage or whether it imposes a duty on States under customary international law.”²⁷

Most countries establish nationality through either means of *jus soli* where an individual obtains nationality by simply being born in the country on its soil.²⁸ Or by means of descent from the parents who are nationals by means of *jus sanguinis*, or oftentimes through a combination of both.²⁹ Applying both principles concurrently allows for greater flexibility in attaining nationality. Conversely, a law that was to apply the principle of *jus sanguinis* alone would exclude those individuals born to migrant parents.³⁰ This is true in the case of Egypt, although in no way unique to Egypt alone, where migrant and refugee communities are excluded from easily acquiring nationality due to the restrictions imposed by the principle of *jus sanguinis*. Where Egyptian naturalization process is difficult, children born on Egyptian soil from non-Egyptian parents will not be entitled to the nationality, unlike say the United States or Canada. While on the other hand an application of *jus soli* alone would leave those whose parents

²⁷ Hudson, *supra* note 13 at 8 § 3.

²⁸ Manby, *supra* note 10, at 32

²⁹ *Id.*

³⁰ *Id.*

are nationals unable to attain nationality should they be born outside of their country of origin.³¹ In Egypt the strict application of the principle of *jus soli* alone is only applicable for children born in the country but the parents remain unknown, where the law dictates that this will hold true and Egyptian nationality will be attributed to the child until and if the parents become known.³² Further, this law holds only for children of unknown parents and not if the parents are stateless, where “there are believed to be from 400,000 to over one million stateless individuals in the country.”³³

With each nationality law established during Egypt’s history, what remained constant throughout was the principle of *jus sanguinis* or decent through blood that was guaranteed and invoked through paternal decent. Meaning that nationality was to be inherited through the bloodline of the father, this remained the sole means in which *jus sanguinis* was applied in Egypt until the 2004 law reform. However, the exception to this was in the case where the potential father is not available or unknown, then the child would obtain nationality through *jus sanguinis* based on maternal decent, the blood line of the Egyptian mother. Although elements of *jus soli* were also a factor where the child born to an Egyptian mother and unknown father must be born on Egyptian soil in order acquire nationality, thus in reality a combination of the two principles were invoked in such cases.

Traditionally in Egypt, nationality was predominately established by means of invoking the principle of *jus sanguinis*, through the paternal bloodline. However historically, nationality through *jus soli* was established as an alternative within Egyptian legislation, particularly applied in cases of a child born on Egyptian soil to unknown parents. However, *jus soli* is also invoked in conjunction with the principle of *jus sanguinis* through the mother as per article 3 of the 1973 Egyptian Nationality Law when in cases of a child born to an Egyptian mother and

³¹ *Id.* at 2-3.

³² *Law No. 26 of 1975 Concerning Egyptian Nationality* [Egypt], Official Journal No. 22, 29 May 1975, art. 3.

³³ Manby, *supra* note 10, at 32

unknown father on Egyptian soil.³⁴ Largely however, we can conclude that until the 2004 law reform the principle of *jus sanguinis* only applied in Egypt in regards to paternal decent and *jus soli* was used to address a particular gap as an exception and not the general rule.

³⁴ *Law No. 26 of 1975 Concerning Egyptian Nationality*, *supra* note 31, at art. 3 (Article 3 of the 1975 Egyptian nationality law, which was later amended in the 2004 reform, referred to the right of a child born to an Egyptian mother and unknown father on Egyptian territory the right to the Egyptian nationality. For the child born to the Egyptian mother and unknown father outside of Egyptian territory, the child if so wishes can apply to nationality sanctioned by Ministry of Interior after reaching the age of majority and having resided in Egypt.)

III. NATIONALITY IN INTERNATIONAL LAW AND HUMAN RIGHTS LAW

“Individuals have a right to nationality but states are not obliged to comply.”³⁵ Historically nationality from an international law perspective has been deemed a matter of sovereign domestic affairs.³⁶ This remains fundamentally true as demonstrated by the unique range of laws adopted by states as a means in which to acquire nationality. However, international law has evolved well enough to exhibit greater authority regarding nationality and the right there to. Author Ruth Lister refers to state control over nationality as a continued grip of power, despite the weekend state in light of globalization.³⁷ As such, international law has yet to dictate a definite nationality law upon which states are obliged to apply when determining membership within their national boundaries.³⁸ Nonetheless, international law has evolved well enough to establish the framework to ensure protection of individuals residing within a state’s territory from falling outside the peripheries of inclusion. However, the matter remains inexplicit from an international human rights perspective given the lack of authority to prescribe a comprehensive nationality law upon states.

³⁵Stratton, *supra* note 24, at 523.

³⁶ See, Nationality decrees issued in Tunis and Morocco, Advisory Opinion, 1923P.C.I.J. (ser. B) No. 4, at 57 (Feb. 7) [hereinafter *Nationality Decree*] (British and France dispute nationality within the French Zone and its application to British Subjects. The Case was referred to the Permanent Court through the League of Nations for an Advisory Opinion. The Court ruled that nationality was of state sovereignty but with limitations.).

³⁷ Ruth Lister, *Citizenship Towards a Feminist Synthesis*, 57 FEMINIST REV. 28, 37 (1997) (“The image of a weakened nation-state caught in a pincer movement between globalizing and localizing forces is a common refrain in the contemporary citizenship literature, although one should not exaggerate the demise of its power, not least its power still to exercise control over membership and citizenship.”).

³⁸ (This evolution can be traced quite distinctly within international law, where initially the Universal Declaration of Human Rights established in Article 15 the right to nationality. This basic concept was later developed and elaborated on in various conventions addressing equality and the right to retain nationality, eventually transcribing into a series of conventions that aimed to address particular problems created by domestic law, in such cases of statelessness, loss of nationality by married women and lack of nationality for children born under particular circumstances. However, it was not until the formation of the Convention on the Elimination of all forms of Discrimination Against Women that this was addressed in particular to gender, campaigned to eradicate such exclusions and discrimination within domestic law.) See, Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), at art. 15.

A. The Question of Nationality in International Law

Given the nature of international law, the end power is the state, ultimately dictating, 'the how' and the 'to who' nationality will be disseminated within its territory. Prescribing not only the laws of inclusion within its jurisdiction, but also choosing to opt out of certain provisions under international law, states approach nationality as with all other aspects within international law with the sound understanding that it is bound by only that to which it consents.

However, international law, particularly human rights law, has sought to overcome this particular constraint by addressing nationality from various vantage points, be it a universal approach, gender discrimination, elimination of statelessness or through the rights of the child. A survey of these international human rights doctrines will demonstrate that in fact, although perhaps not necessarily recognized, nationality is a common theme throughout many of these doctrines. However, what seems to be missing from emphasis in international law when discussing gender equality within state membership is the right to equally form a family unit. What service does the right to a nationality provide if not to address the deeper components and consequences the lack of causes? Accordingly, a missing component in the analysis of nationality is the family unit. How domestic nationality laws creates the outsiders, a status maintained through border control and excessive documentation that ultimately contributes to the breakdown of the family, essentially the recognized core foundation of any society. Consequently, the woman's inability to pass on her nationality to her husband dictates greater hardship, potentially breakdown the family unit, while perpetuating inequalities despite reform. International law has addressed the topic of nationality as a basic right even within the context of gender equality, however a main components that seems to be missing is the right to form a family unit which becomes a core component when addressing nationality and gender equality.

The International Law Commission (hereinafter ILC) conducted an in depth study about the matter of nationality within the context of international law in regard to statelessness. In addition the ILC sought to examine existence

within international law any legal underpinnings to limit the states' sovereignty over the matter of nationality or to identify constraints within the jurisdiction of the state.³⁹ The ILC concluded that nationality law remains within the jurisdiction of the state in so much as it does not conflict with any international treaty obligations.⁴⁰ This conclusion was observed prior by Article 1 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, stating, "It is for each State to determine under its own laws who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality."⁴¹ As a result, leaving to the state, full authority to include and exclude as it sees fit.⁴² We can however conclude that overall states hold complete hegemony over nationality and will continue to do so in so long as the international legal system is distinguished by state consent.

B. Human Rights Law

Human rights law today has become a tool of emancipation, invoked to establish ones rights, whence nationality becomes the vehicle in which to attain these rights from the state. The reverse side to this argument is that by establishing belonging through nationality, a selective process by means of law, a border is created around those who belong, while in return keeping out those who do not. Consequently, the alien or the outsider is created. Nationality, in essence, is the membership embodied by the individual belonging to the state, in which the state has obligations to provide and protect the people's basic human rights.

³⁹ See, Nationality Decree *supra* note 35 (The court held that "solely within the domestic jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of this Court, in principle within this reserved domain.").

⁴⁰ Hudson, *supra* note 13.

⁴¹ *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*, League of Nations, 179 L.N.T.S. 89 (12 April 1930) art. 1

⁴² *Id.*

As such, feminist seeking to gain greater justice for women have realized that by invoking international human rights standards as a means to equality, recognition must first be established, and this recognition is by means of nationality within the state.⁴³ One of the identifiable problems with international human rights law when addressing topics of equality for women is that it is generic; addressing women of all race, socio-economic backgrounds as a one size fits all approach to gender equality.⁴⁴ Although it is necessary to point out that in order to attain a universal approach to greater gender equality at a global level this form of diluted language is not unique to women rights, but common in the language of international human rights law as a whole. International law is removed from the realities on the ground that it becomes impossible to imagine a relationship between the struggling women in the home and those of the policy makers and representatives in Geneva or New York. The very nature of international law -in which human rights law is a growing discipline within this framework-, is its historical traditional organization. International law came about to organize states (and avoid war). Human rights law was later inserted within this system to hold states responsible for gross violations within their territory.

International human rights law has aimed to not only protect humans from massive atrocities by the state, but also to address the natural rights of man epitomized initially within the text of the Universal Declaration of Human Rights (hereon UDHR). By collaborating with the UDHR, the system has sought to ensure that these rights are applied non-discriminatorily to both genders equally. Ensuring first and foremost that ‘Everyone is entitled to all

⁴³See generally, CAROLE PATEMAN, THE DISORDER OF WOMEN: DEMOCRACY, FEMINISM, AND POLITICAL THEORY 118 (Stanford University Press 1989) (Not all feminists invoke the public private dichotomy as a means in which to seek equality, as Patman points out, “not all feminist, [...] are liberals; ‘feminism’ goes far beyond liberal-feminism. Other feminists explicitly reject liberal conceptions of the private and public and see the social structure of liberalism as a political problem, not a starting point from which equal rights can be claimed.”] *Id.* at 119.

⁴⁴ A certain school of feminist thought which is becoming more mainstream today as feminist re-evaluate the means and methods as to which to attain gender equality is the universal approach to equality based simply on women is categorical and broad the needs and wants of one particular women is not necessarily those found in another. Look at simply the diversity amongst need between women in the Scandinavia and those within the Islamic world. Although this may not necessarily be the ideals this author takes on the matter it is nonetheless important to recognize the divide and acknowledge the difference in needs and necessity for women.

the rights and freedoms set forth in [...] [the] Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁵

The protection of the family and recognizing the family as the basic and core unit of society is provisioned in many of the international instruments from the UDHR to the 1951 Refugee Convention; it is evident that the protection of the family as a unit is a fundamental responsibility across the board through not only protection but reunification. Thus, nationality and the right to a nationality becomes provisioned as a basic requirement to the protection of the family and equally addressed within the law.

Nationality as a right is embedded within the majority of international human rights treaty bodies. Article 15 of the UDHR guarantees that ‘everyone has a right to a nationality’.⁴⁶ Where article 16 (3) of the UDHR upholds the family as the ‘natural and fundamental group unit of society and is entitled to protection by society and the State.’⁴⁷ Further, article 16 addresses the equal right to marriage without restriction or discrimination and the equal right to ‘found a family’.⁴⁸

Although neither the International Convention on Civil and Political Rights (hereon ICCPR) nor the International Convention on Economic, Social and Cultural Rights (hereon ICESCR), speak directly to the right of nationality, the ICCPR does make reference to the child and the right of nationality in this regard in spirit of protection and the family.⁴⁹ However, article 10 (1) of the ICESCR reiterates the provision in UDHR regarding importance of the

⁴⁵ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), at art. 2 [hereinafter *UDHR*].

⁴⁶ *Id.* at art. 15.

⁴⁷ *Id.* at art. 16 ¶ 3.

⁴⁸ *Id.* art. 16 (Article 16 reads as follows: “1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. 2. Marriage shall be entered into only with the free and full consent of the intending spouses. 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”).

⁴⁹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) at art. 24 [hereinafter *ICCPR*] (Article 24 reads as follows: “1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.”).

protection of the family as the fundamental unit of society.⁵⁰ This is equally addressed in the ICCPR under article 23 which makes similar reference to the family, its protection and freedom of choice in marriage.⁵¹ CEDAW guarantees more explicitly the equality for women under articles 9 and 16 in the right to nationality, marriage and the family unit.⁵² Where article 9 of the Convention sets out to eliminate discrimination by placing nationality rights of women from member states as equal to those of men.^{53 54} As such, it aims at preventing previous practices of discrimination, such as prohibiting filiation rights through the mother, revoking nationality based on a woman's marriage to a non-national or forcing the husband's nationality upon the wife. Essentially, the article aims at preventing the breakdown of the family unit, a fundamental provision under international human rights law, as a result of national laws that discriminate against women.

⁵⁰ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, Article 10 ¶ 1 (Article 10 (1) reads as follows: "The States Parties to the present Covenant recognize that: 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.").

⁵¹ ICCPR *supra* note 48, at art. 23 (Article 23 reads as follows: "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.").

⁵² See Convention on the Elimination of All Forms of Discrimination Against Women 1, Sept. 3, 1981, 1249 U.N.T.S. 13, 16 [hereinafter *CEDAW*] 9 and 16, (Article 16 reads as follows: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.").

⁵³ *Id.* at art. 9 (Article 9 reads as follows: "1. State parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her that nationality of the husband. 2. State Parties shall grant women equal rights with men with respect to the nationality of their children.").

⁵⁴ *Id.*

Further, article 7 of the International Convention on Rights of the Child (CRC) guarantees nationality to the child.⁵⁵ Egypt has signed and ratified all above mentioned Conventions. A general declaration was submitted for both the ICCPR and ICESCR regarding conflict with *sharia'ah*. Egypt has submitted reservations to CEDAW particularly articles 2, 16, and 29 (2), where reservation to article 9 although initially submitted has been withdrawn.⁵⁶ Further, Egypt initially submitted reservations to CRC mainly those concerning adoption, but has also since withdrawn its reservation in 2003.⁵⁷ Overall however, no reservations towards nationality, family or equality have been placed. Considering the 2004 reformed law in Egypt and as a result the withdrawal of its reservation to article 9 of CEDAW a false perception of compliance is established. Whereas noted previously this is viewed by the CEDAW commission as a great accomplishment, further examining the reformed law through a gendered lens the basic essence and spirit of equality with regards to nationality and the protection of the family unit are missing and Egypt remains non-compliant.

Additionally, various other international collaborations such as Draft Convention on the Elimination of Statelessness 1954 followed by the Conventions on the Reduction of Statelessness 1961 as well as the Convention on the Nationality of Married Women 1957 to name a few. Although not as widely accustomed, they nonetheless continue to address the question of nationality, recognizing the difficult circumstances faced by those who happen to fall outside of the created framework that organizes our world today. Nonetheless, these efforts continue to make nationality and its related consequences a topic of continued relevance and importance.

What remains evident is, that under the current international mechanisms and human rights doctrines, despite the advancement of the individual into a quasi form of legal status at the international plane within the human rights

⁵⁵ Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959) at art 7 [hereinafter *CRC*] (Article 7 reads as follows: “1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”).

⁵⁶ Egypt’s reservations to CEDAW available at, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

⁵⁷ Egypt’s reservations to articles 21 and 22 of CRC.

context, – the current system does not afford nationality explicitly to any particular state. As such, an appeal for the right of nationality as a means in which to maintain the family unit and ensure non-discriminatory exclusion and family separation continues to be a power maintained exclusively by the state.⁵⁸ In sum, meaning that international law does not have the authority to bestow upon any individual the nationality of any particular state, which would otherwise be considered an encroachment on state sovereignty. Nonetheless, there have been great efforts by the international community to establish basic principles that address concerns at an international level.⁵⁹ These established principles include the prevention of statelessness and ensuring family protection which in turn requires states to grant nationality to children born in its territory, prohibiting discrimination in the attainment of nationality based on ethnicity or gender.⁶⁰

Further, with the advancement of the international human rights system today, individuals can challenge states discriminatory nationality provisions essentially when the family unit is at threat.⁶¹ This may be done by means of claiming nationality and family protection through other provisions within human rights law, such as non-discrimination and freedom of movement as optional ways to address nationality.⁶² This inconsequential practice is exemplified in the case of *Aumeeruddy-Cziffra v. Mauritius*.⁶³ In this case, 20 Mauritius women, three of whom were actually married to foreigners, appealed to the Human Rights Committee challenging the State of Mauritius for violation of provisions of equality as accorded within the ICCPR, on the grounds of sexual discrimination as a consequence to newly amended Immigration and Deportation Act introduced by the government. The women sought to prevent the potential deportation of their foreign spouses based on the newly introduced amendments. Essentially, the women submitted communication to the Human Rights Committee where the Committee found the

⁵⁸ U.N. Division for the Advancement of Women, *Women, Nationality and Citizenship*, WOMEN: 2000 AND BEYOND, 12 (2003).

⁵⁹ Manby, *supra* note 10, at 9.

⁶⁰ *Id.*

⁶¹ U.N. Division for the Advancement of Women, *supra* note 57, at 3.

⁶² *Id.*

⁶³ *Shirin Aumeeruddy-Cziffra et al v. Mauritius* U.N. Doc. CCPR/C/OP/1 at 67 (1984).

State of Mauritius to be in violation of certain provisions to the ICCPR.⁶⁴ As such we see how it is possible, albeit perhaps not the ideal, to use various provisions within the human rights framework to challenge the limitations states place on the nationality of women. Moreover, what is most important is to realize the hardship many women and families face based on unequal nationality laws that places restrictive boundaries within the family, where some members are included while others remain outsiders, ultimately breaking down the very fabric of society, the family which as we have seen, international human rights law has emphasized the importance in maintaining.

C. Regional Mechanisms

Although regional mechanisms, mainly in the African region seem to carry little weight, it is nonetheless necessary to at least make reference to what these regional bodies say about nationality, equality and the family if even in brief. First, the most significant and relevant regional treaty body is The African Charter on Human and Peoples' Rights. Though an extensive instrument that addresses many human rights issues and is in fact considered progressive even by international standards, despite this the Charter remains silent on the right to a nationality. Nonetheless, the Charter recognizes the family as the core unit of any society, where article 18 upholds the protection of the family while also addressing gender equality within the family.⁶⁵ Egypt has both signed and ratified the Charter, published in the Official Gazette in 1992, however, placing reservations to several articles including article 18 concerning the family.⁶⁶ The Protocol to the Charter on the Rights of Women in Africa also

⁶⁴ *Id.*

⁶⁵ African [Banjul] Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, [hereinafter Banjul Charter] art. 18 (Article 18 reads as follows, “ 1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. 2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions. 4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.”).

⁶⁶ Egypt's Reservation to the Banjul Charter, *available at*, <http://www.achpr.org/instruments/achpr/#eg> (“Having considered the African Charter on Human and Peoples' Rights, the Arab Republic of Egypt signed the said Charter on 16 November 1981 and attached hereto is the following instrument of ratification: Having accepted all the provisions of the African Charter on Human and Peoples' Rights with the approval of the People's Assembly and with the reservation that article 8 and paragraph 3 of article 8 and paragraph 3 of article 18 be implemented in accordance with the Islamic Law[...] We hereby declare acceptance and ratification of the said Charter.”).

does little to the advancement of women on the nationality front. The African Charter on the Rights and Welfare of the Child dictates similar provision to that of the CRC, where article 6 (4) distinguishes the child's right to a nationality.⁶⁷ In terms of family unity, article 25 ensures that children are not unduly separated from either parent except by court order.⁶⁸ Author Bronwen Manby who in a comprehensive work, survey's the nationality laws of Africa criticizes The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa stating that The Protocol not only "goes against the grain of international norms by not mentioning a woman's right to pass citizenship to her husband [...] [but that it also] [...] provide[s] for national law to override the treaty's provision for nondiscrimination in granting citizenship to children."⁶⁹

Despite the efforts to eradicate gender inequalities through international and regional mechanisms against provisions and national legislation which discriminate against women particularly nationality law, the practice of discrimination and inequality within domestic law continues to prevail. Although, many Arab states have reformed their nationality laws or are in the process of doing so, these reforms continue to hold restrictions and limitations upon the woman and her relationship to the nation, the state and essentially her family, which offers confirmation of state control over women's autonomy.⁷⁰ Such disadvantages in filiation rights not only genders nationality itself in favor of the male, but also carry serious consequences for the family as a whole.

⁶⁷ See, The African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990) at art. 6 (Article 6: Name and Nationality:

1. Every child shall have the right from his birth no a name.

2. Every child shall be registered immediately after birth.

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.).

⁶⁸ *Id.* at art. 25.

⁶⁹ Manby, *supra* 10, at 10.

⁷⁰ Lebanon does not grant the woman the same rights of the man to pass on their nationality to their children or alien spouse. Instead the children of a Lebanese mother and foreign father remain non-nationals within Lebanon. An amendment in 2011 merely gave the alien spouse and children the right to reside in the country and work easing some of the logistical paperwork and fees for residency yet continues to deny their access to free healthcare and education. Qatari nationality law also follows the same path of that of Lebanon.

IV. CREATING THE EGYPTIAN THROUGH LAW

The national is etched out of law and defined by practice. Nationality law defines and distributes membership within the nation, and is created to reflect a very particular political moment in history. The aim is essentially to create a precise individual who will reflect and benefit from the surrounding factors that define law. Within Egypt the surrounding factors that necessitated various takes on nationality law included self-determination, aspirations of statehood, and eventually securitization due to surrounding hostilities. Each state has a particular historical narrative that can be found when tracing its nationality laws, as ultimately it is a reflection of the surrounding environment which in turn dictates the conditions of membership. Within this overall structure family has played a definite role.

A. Family and the Modern Nation-State

Historically within the region family and kinship ties were the determination of the insider and the outsider “The kin bond is vivified by kin solidarity (*casabi-yah*), which is – according to *ibn Khaldun* (d. 1406AD) – the fundamental bond of human society and the basic motivating force of history.”⁷¹

Human rights mechanisms emphasize the importance of the family unit, in which case is the fundamental unit of a society, in the Arab world this also holds true, where kinship or the family is particularly significant within the society.⁷² However, the family reference in each case refers fundamentally to two distinct and separate characterizations. Where the family unit referenced under human rights mechanisms refers particularly to the nuclear family, in the Arab world such reference is actually the larger kin, the extended family. It is what determines the individual and is essentially the basis of the long lasting tension within the traditional Arab communities and the modern state, ultimately how to translate nationality as an abstract individualized concept into

⁷¹ PAROLIN, *supra* note 30, at 26.

⁷² Suad Joseph, *Patriarchy and Development in the Arab World*, 4 GENDER & DEV. 14,16 (1996).

a traditionally long established family based society. Although Egypt's history does not follow the same narrative of tribalism and kinship communities as social and political orders in the past like that of its neighboring countries, nonetheless, the family constitutes the society and nationality is etched out of the family. Given this reality it becomes important to note that despite the emphasis on family and family unity, breaking down the family unit or a lack of consideration of this unit should it be formed by the female member holds very little value, if at all. Generally, gender inequalities persist in theories and practices of nationality all over the world. In most cases, it is excused as a practice with a long legal and social tradition or one sanctioned by religious customs and values or both.⁷³ Author Mary Ann Tetreault explains that perhaps the reason for this inequality in the Middle East lies in the stagnation of the development of Islamic law, where the 'doors' of *ijtihad* were closed over 500 years ago.⁷⁴ While this may hold partially true it is not necessarily entirely correct. Although, the basic concept of the influence of Islam is corroborated by Parolin in which he reinstates that the Arab civilization certainly interacted as well as was initially influenced by the Roman and Persian Empires, by which we see this particular influence by Roman philosophy and teaching on the relationship between the "state" and the individual.⁷⁵ However, this influence was eventually replaced with the creation of the Islamic empire and Islam's influence on this relationship.⁷⁶ Bassam Tibi states: "An Arab communal identity and kinship tie existed long before the introduction of Islam, long before the introduction of the State and citizenship and in both cases has prevailed."⁷⁷ While this is more true to some

⁷³ MARY ANN TETREULT, *Gender, Citizenship, and State, Citizenship and the State in the Middle East*, CITIZENSHIP AND THE STATE IN THE MIDDLE EAST: APPROACHES AND APPLICATIONS 70, 78 (Nils August Butenschon et al. Syracuse University Press, 2000).

⁷⁴ *Id.*

⁷⁵ See generally, PAROLIN, *supra* note 70 at 19-21 ("Although by the time the Arab civilizations came about and their interactions with the Roman and Persian Empire it is undoubtful that the concept of the polis the relationship between the state and the individual was influenced by Roman teaching and philosophy [] However, with the development of the Islamic empire the concept of citizenship as influenced by the Romans eventually parted ways."). *Id.*

⁷⁶ *Id.*

⁷⁷ BASSAM TIBI, *The Simultaneity of the Unsimultaneous: Old Tribes and Imposed Nation-States in the Modern Middle East*, TRIBES AND STATE FORMATION IN THE MIDDLE EAST 127, (Philip S. Khoury, Joseph Kostiner ed.) ("From a comparative vantage the classical Islamic state and the modern nation-state, in spite of their essential differences, seem to share the feature of opposing the tribes, be they the structurally based ones of the past or the communal solidarity groups of the present."). *Id.*

Arab countries than others, it can be generally agreed upon at minimum, that patriarchy power authority was widely established collectively amongst Arab societies as a customary norm.

While it is neither this paper's place nor purpose to explore or being to decipher the patriarchal power dynamics within the Arab society, nor how it came about, it is essential to examine the dynamics of power and family within the context of equality for the purpose of analysis. Principally, what is important from this analysis is the family division, the emphasis on the family as a basic fundamental unit of society however; the laws lack of protection of the family unit through power of the woman is contradictory to the very essence of the social norms and traditions. Where it appears as though the family unit created through the mother is of no or little value, and in essence if this holds true, we can begin to understand this to be the very basis of inequality within nationality law.

B. Birth of a Nation

*"Men are the citizens; women birth children."*⁷⁸

Nationality law has been a main contributor towards the creation of individual national identity, and in turn a determining factor in the individual's relation to the nation and ultimately the state. And to no exception, nationality has been a key concept for the formation of the modern nation-state and the Egyptian national.⁷⁹ The Egyptian nationality law has evolved together with the evolution of the country itself. In each historically significant moment a new or amended law was put forth, essentially reflecting a particular political reality of the time.⁸⁰ In sum however, Egypt's nationality law has always relied on the basic affiliation to the nation and the land and a

⁷⁸ Chen, *supra* note 2, at 296.

⁷⁹ PAROLIN *supra* note 70, at 80 ("Indigenous nationality only complemented Ottoman nationality, [...] and the Egyptian was treated internationally as an Ottoman subject. When Egypt ceased to be an Ottoman province, the indigenous status turned into full-fledged nationality, but legislation regulating Egyptian nationality was only adopted in the late 1920s after the country reached full independence.). *Id.*

⁸⁰ It is interesting to observe how the evolution of the nation-state in the 20th century and the emphasis on identity and the creation of the patriot was directly reflected in the nationality law a country, recognizing that not only did states use nationality law as a means of selective membership it creates the community by establishing the distinctive outsider.

collective identity, creating a communal belonging while simultaneously aiming at distinguishing the outsider, those who did not belong.

As Egypt transition from Ottoman rule to an independent nation-state, this process was supported if not steered by the establishment of its nationality law. Ultimately, the law determined the Egyptian, crafting from it a national identity whilst creating the insider by which then drawing out the outsider. However, it was not until the two world wars, decolonization and independence as well as indirect historical events that actually directly influenced and helped establish the national and the nation-state.⁸¹ Such narrative particular to nationality and the creation of the modern Egyptian within the law is further particularized when examining it through a gendered lens. It is through this vantage point that we realize that gendered discrepancies in nationality law exist both in law and in practice from the onset.

With the decline of the Ottoman Empire at the turn of the century and in an attempt to reform and revive what was left of a dying empire, an Ottoman nationality was introduced, albeit delayed, in an attempt to establish a secular Ottoman affiliation.⁸² However, with the fall of the Empire and the transition into statehood, nationality became reflective of a new found autonomy and later independence. In an attempt to practice some form of sovereignty, autonomous Egypt issued the New-Decree that dictated the means and conditions in which nationality was attained for newly considered Egyptians, “Egyptian nationality was first regulated by the Decree-Law (marsu[̄] m bi-qa[̄] nu[̄] n) of 26 May 1926, the main purpose of which was to sort out the status of former Ottoman subjects in the country.”⁸³

⁸¹ PAROLIN *Id.* (Somehow, the two World Wars, the establishment of nation-states and the patriots’ common struggle for independence all contributed to creating modern forms of solidarity and a sense of belonging to a new political community: the nation-state.)

⁸² PAROLIN, *supra* note 70, at 75 (“By the turn of the 20th century, Arab lands – where religious affiliation was the only known form of membership beyond the kin group – suddenly witnessed the rise of two new forms of secular membership, an overarching Ottoman nationality and a local indigenous one. Ottoman and local legislation introduced a secular nationality.”). *Id.*

⁸³ PAROLIN, *supra* note 70, at 80 (“the 1926 Decree-Law referred to 5 November 1914 as the watershed for Egyptian nationality. Diplomats at the peace conferences had regarded the day the Allies entered into war with the Ottoman Empire as the day Ottoman

As Parolin points out, “When Egypt ceased to be an Ottoman province, the indigenous status turned into full-fledged nationality, but legislation regulating Egyptian nationality was only adopted in the late 1920s after the country reached full independence.”⁸⁴

It was here that the first true Egyptian national identity was documented and regulated under Law No. 26 of 1926 establishing the full terms in which a person is considered an Egyptian national or the conditions on which an individual may wish to obtain nationality.⁸⁵ Initially, Law no. 26 dictated nationality based both on the principles of *jus Sanguinis* and *jus soli*, although the only definite means remained by *jus sanguinis* through patrilineal descent.⁸⁶

Decree-Law of 27 February 1929 reinstating the most prominent provisions of the 1926 Decree, yet further articulated in greater detail those who were now covered within the new nationality.⁸⁷ Yet, as a general note the first Egyptian nationality law was a lot more tolerant of foreign nationals claiming Egyptian identity and was much more flexible in terms of naturalization requirements, with the change of the political environment both internally as well as regionally, greater restrictions were later put in place for those who aspired to naturalize in Egypt. The initial nationality law of 1929 was a direct reflection of this particular social and political reality at the time.⁸⁸

Women under Egyptian law were initially perceived to be an annex of the husband and would thus follow the nationality held by him. Consequently, based on the principle of family unity, Decree Law 19 of 1929, Article 14

suzerainty over Egypt and Cyprus had ended. Ottoman subjects residing in Egypt on or after 5 November 1914 and up to the coming into force of the 1926 Decree-Law were to be considered Egyptian nationals de plein droit.”). *Id.*

⁸⁴ *Id.* at 80

⁸⁵ *Id.*

⁸⁶ ‘abd-al-hamyd mahmūd ‘alī ūah , *d ūr al- ūm al-masryah wa al-‘arabyah wa al-ajnyah fi naql al-jansyah ila abna ‘h ā*, Dar al-matbū‘at al-jām ‘yah (2005).

⁸⁷ PAROLIN, *supra* note 70, at 81 (“The pre-eminence of *jus sanguinis* was upheld (art. 5), while a particular case of double *jus soli* was introduced for the child born in Egypt of a foreign father born in Egypt but ethnically belonging to the majority of the population of a country whose language was Arabic or whose religion was Islam (art. 6(4)). Even if it was not an application of *jus soli*, birth in Egypt entitled the individual permanently residing in Egypt to claim Egyptian nationality at the age of majority (art. 7). The 1929 Decree-Law included provisions on naturalization (art. 8-11), loss and deprivation of nationality (art. 12-13) and the nationality of married women (art. 14”).*Id.*

⁸⁸ PAROLIN, *supra* note 70, at 81.

deprived the Egyptian woman of her Egyptian nationality upon marrying a foreigner, whereas the foreign woman married to an Egyptian man found that the Egyptian nationality was imposed upon her.⁸⁹ Accordingly, law not only solidified patriarchal hegemony but also recognized the second-class status of the Egyptian woman. Where the principle of family unity was in fact upheld however, it was in favor of the husband as head of household in which all affiliations would essentially be derived from him and disseminated to the family. In which case, the woman had very little formal contribution to the family; ultimately she neither dictated the name of the family, the religion, nor nationality. Her own nationality at this point was conditional.

From early on there was a strong sense of Arab and religious sentiment within the initial nationality law that essentially dictated the attributes of what would later become the Egyptian identity.⁹⁰ As Egypt struggled for independence with the rise of the anti-colonial movements, while then embarking on the nation-state building process, at this point the modern Egyptian national was born and with it emerged identifiable gendered tension in nationality in law and in practice.

While the 1929 Nationality Decree-Law served its purpose for a very specific moment in Egyptian history it was later replaced in full by Law 160 of 1950.⁹¹ This new nationality law interjected the previous naturalization of foreigners and in fact limited membership into the Egyptian nationhood based on *double soli*, however, allowing foreign women married to Egyptian men the right to disavow their husband's nationality.⁹² A slight separation from the imposed state sponsored patriarchy over the family unit came in the form of article 9 of Law 160 of 1950, which

⁸⁹ *Id.* (“An Egyptian woman married to a foreigner was deprived of her Egyptian nationality provided that her husband’s national law granted her the husband’s nationality, whereas the foreign woman marrying an Egyptian had Egyptian nationality imposed upon her (art. 14(1-2)).” *Id.*

⁹⁰ *Id.* (Although it would seem rather premature to assume that at this very moment in history a true Egyptian or national identity was at play in full force, it can be argued that it wasn’t until full independence that actually hit the region as a whole that an Egyptian identity came to play which was later fully articulated under Nasser as an Arab identity.).

⁹¹ *Id.*

⁹² *Id.* ([M]ade use of earlier legislation but sensibly limited the access to Egyptian nationality to foreigners by repealing the double jus soli (al-mīlā d al-muda‘af). It also abandoned the principle of unity of nationality within the family by allowing a foreign woman married to an Egyptian to waive Egyptian nationality (art. 9)). *Id.*

offered autonomy, albeit minimal, to the foreign woman married to an Egyptian man by offering her the right to waive the Egyptian nationality, rather than be imposed upon her as was dictated by previous law.⁹³ Nonetheless, Law 160 remained silent with regards to the Egyptian woman and did very little to renegotiate her status as an equal member within the nation.

A bloodless coup d'état in 1952 brought Gamal Abdel Nasser to power corresponding to a general Arab nationalist aspiration which swept the region at the time. Nasser himself was a direct advocate if not instigator of this wave, and the Egyptian nationality law played tribute to this sentiment when it was once again reconstructed, restricting further who was to become a member within the Egyptian State. Given the political atmosphere at the time, the aim was to create an independent Egyptian patriot with greater attachment to the land and the nation based on Arab and religious denominators.⁹⁴ However, within this very distinct period of regional paranoia with the declaration of the State of Israel in 1948 it is no wonder that the new law 391/1952 sought to secure Egyptian borders by limiting and regulating the insider through Egyptian nationality even further. As Parolin points out, Law 391 aimed at securing and protecting the national community and the Egyptian borders, thus Article 1 of the new law sought to protect the country against Zionist infiltrators and treason against Egypt.⁹⁵ Article 1 further attests that nationality will be withdrawn from those who prove to be a threat to state interests or security.⁹⁶ As such, in light of the general atmosphere nationality law sought to maintain a continued regulation of women, prohibiting filiation rights should she marry a foreign national, while also maintaining her foreign spouse as an outsider, this in turn allowed for state

⁹³ *Id.*

⁹⁴ *Id.* at 81-82 (“Just after the 1952 Revolution, a new law on Egyptian nationality (Law 391/1952) was passed. Its purpose was to require a stronger attachment to Egypt (i.e. continued residence from 1 January 1900, regardless of Ottoman nationality) and to secure the protection of the national community (hima[̄] yat al-jama[̄] cah al-watani[̄] yah) from disloyal nationals, like Zionists and others convicted for treason (khiya[̄] nah) against Egypt (art. 1). Nationality could be withdrawn to protect the security and integrity of the state (bi-qasd hima[̄] yat amn al-dawlah wa-sala[̄] - matiha[̄]), and nationals who left the country for six months, with no intention to return to Egypt, lost their Egyptian nationality (art. 19). The 1952 legislation increased the discretionary powers of the government with regard to the acquisition and deprivation of nationality.”) *Id.*

⁹⁵ *Id.* at 81.

⁹⁶ *Id.* (“Its purpose was to require a stronger attachment to Egypt (i.e. continued residence from 1 January 1900, regardless of Ottoman nationality) and to secure the protection of the national community (hima[̄] yat al-jama[̄] cah al-watani[̄] yah) from disloyal nationals, like Zionists and others convicted for treason (khiya[̄] nah) against Egypt (art. 1). Nationality could be withdrawn to protect the security and integrity of the state (bi-qasd hima[̄] yat amn al-dawlah wa-sala[̄] - matiha[̄]”).

control over her personal affiliations. Consequently, the Egyptian nationality law drew tight and controlled borders around the insider, strictly aimed towards preventing infiltrators, i.e. the outsider from penetrating the fortress.

However, through a basic examination of the law and what it sought to achieve one can easily identify the gendered inequalities embedded within the law. The state of securitization which shaped the 1952 nationality law sought to only restrict filiation and exclusion through the Egyptian woman married to a foreigner and did not address equally the male Egyptian married to a foreign woman. In which case, the early established inclusion of the foreign woman within Egyptian membership through her Egyptian husband was maintained in the 1952 law despite the increased security measures and restricted membership. Consequently, continuing the practice of restriction noticeably particular to the Egyptian woman by maintaining the previous legal practice of exclusion within the family by drawing clear distinct discriminatory borders that cut right through the family unit; a reality that continues to this day.

In 1958 following a brief union between Egypt and Syria an amendment to the nationality law was introduced which sought to expand the boarders of inclusion by dictating new nationality provisions which now included Syrians as members in light of the union between the two countries.⁹⁷ Although the Union was short lived, the 1958 nationality law remained enacted until the introduction of a new nationality law in 1975. It is also important to note here that the Egypt Constitution introduced in 1971 guaranteed to uphold the principle of gender equality.⁹⁸

Given the union was short lived a new nationality law introduced in 1975 which once again did very little to ensure the inclusion of women and enhance her membership in the nation, although just a few years prior, in 1971 the Egyptian Constitution guaranteed equality among men and women explicitly dictated under article 11, while other

⁹⁷ There was a short period between 1958 to 1961 where the United Arab Republic law was introduced which sought to place the individual of this union within the encompassment of nationality. However after Syria separated from the Union, Syria reinstated a separate nationality law however, Egypt maintained this along with the 1952 but applied it only to Egyptians until their replacement 1975 law.

⁹⁸ Abu-Habib, *supra* note 20, at 67 (In a comparative study Habib examines the nationality law of seven Arab States, the author concludes that amongst all countries examined in the study there is a clear contradiction between the constitutions and law on nationality which discriminates against women, regarding the nationality of women and their right to pass it on to their husbands or children despite the fact that all Constitutions contain a commitment to gender equity; yet the nationality laws contradict this.).

provisions within the Constitution make similar stipulations by means of employment and access to education amongst others. Despite this however, the newly presented nationality law did very little to adhere to equality and maintained discriminatory measures against women in regards to nationality.

Article 2 of Law 26 maintains that the Egyptian women's only means of filiation is in the case when the nationality of the father of the child is unknown or unable/unwilling to confirm paternity.⁹⁹ Article 3 of the law maintains that a child born abroad to an unknown or stateless father and an Egyptian mother may attain Egyptian nationality but only when the child comes of age (21) and only after approval from the Ministry of Interior.¹⁰⁰ Law 26/1975 sited further restrictions on nationality and it was within this new law that the Ministry of Interior was given autonomy to provide official consent in cases of naturalization, acquisition as well as revocation of nationality.¹⁰¹

Based on the provisions of Law 26, the Egyptian woman remained marginalized despite the vast difference in time and socialization from the period when the first Egyptian nationality law was introduced in 1926. What remained apparent was that the Egyptian woman would not be recognized as an individual equal partner, would not establish family unity in her own right, but instead a continued status of subordination as a quasi-citizen remained. Further, it is important to address the filiation rights conferred to women when in particular circumstances the father is unknown/unwilling to recognize the child. As author 'Abd al-ham īd Mahm ūd 'Al īwa, has pointed out, filiation under such circumstances does very little towards the emancipation of women, instead it places upon the woman in

⁹⁹ *Law No. 26 of 1975 Concerning Egyptian Nationality supra* note 31 at art. 2 (Article 2 reads: "Shall be considered Egyptians: 1. Those who were born of Egyptian fathers. 2. Those who were born in Egypt of an Egyptian mother, and a father whose nationality is unknown or who is stateless. 3. Those who were born in Egypt, of an Egyptian mother but their kinship to the father has not been proved legally. 4. Those who were born in Egypt of unknown parents. A foundling in Egypt shall be considered as born in it, unless otherwise proved.").

¹⁰⁰ *Id.* at art 3. (Article 3 reads: "Shall be considered as Egyptian whoever is born abroad, of an Egyptian mother, and of an unknown father, or a stateless father, or a rather whose nationality is unknown, if he chooses the Egyptian nationality, within one year from the date he comes of age, provided he shall advise the Minister of Interior of his chooses, after making his ordinary residence in Egypt, and the minister of Interior does not object thereto within one year from the date of the advice is received by the Minister.").

¹⁰¹ *See generally*, PAROLIN, *supra* note 70, at 82 ("The 1975 Egyptian Nationality Law (Law 26/1975) limited access to Egyptian nationality by narrowing the scope of jus soli and extending the residency requirements for naturalisation. The Interior Minister has to consent to the acquisition, even if cases of loss or deprivation are reduced and regulated. Under the 1975 Law, Egyptian nationality is passed on by filiation even outside the country ("perpetual nationality").

the case of an illegitimate child the sole burden alone of tending to the child.¹⁰² Where in reality this law allows for the biological father to relinquish all forms of responsibility by simply refusing to recognize the child, where the law will then turn to the mother and attribute complete responsibility on the welfare and of the child.¹⁰³ Therefore, unfortunately filiation under such context and circumstances does very little in addressing equality, and in fact aims at placing greater burden on the woman.

As such, we see through a historical survey of the Egyptian nationality law how the Egyptian woman's status and membership was from the onset dependent on that of the Egyptian man. Her place within the nation as dictated by law maintained her dependency within a conformed family unit of the Egyptian man. Where the law left very little room for the Egyptian woman to form an independent identity nor establish an independent social unit by creating a family of her own. Instead an attempt to assert such autonomy left her family legally marginalized as outsiders. Moreover, in cases an illegitimate child where social moral integrity was of concern, the law actually dictated upon the woman to carry the burden morally and legally alone.

¹⁰² ‘abd al-hamyd mahmūd ‘alī ūah, *d ūr al- ūm al-masryah wa al-‘arabyah wa al-ajnyah fi naql al-jansyah ila abna ‘h ā*, Dar al-matbū‘at al-jām‘yah (2005).

¹⁰³ *Id.*

V. 2004 Reform: Winning the Battle but Not the War

Author Celina Romany explains that ‘while a feminist perspective does not hold the "key to unlock patriarchy," law does provide a "forum for articulating alternative visions and accounts.”¹⁰⁴ Although many feminist writers will agree with Romany’s statement that perhaps it is through law that greater gender equality and realization of rights may be ascertained. If this is true, then most Arab legal feminists who tackle law as the means to attain reform are in fact on the right track. However, despite reform, nationality attributable to women continues to be conditional, “In states where nationality is determined wholly or partly by descent from a man of that nationality, a woman's legal inability to convey her nationality to her child is one of the main issues of women's equality and nationality.”¹⁰⁵ This is furthered by a woman's legal inability to form a family unit.

Although it can be argued that with the 2004 law reform and the withdrawal of its reservation to article 9 of CEDAW, Egypt is now compliant to its international obligations regarding nationality. However, we realize the reform continues to place restrictions on equality in law and practice. Egyptian women married to foreign nationals are unable to form a family unit by extending nationality to the husband a luxury enjoyed by the Egyptian man as far back as the first Egyptian nationality law was introduced. Instead, the foreign husband must apply through regular naturalization procedures rather than an expedited process based on the principle of *jus matrimonii*, thus maintaining the family unit. By excluding the husband from nationality while also in practice excluding an entire population of Palestinians although not explicitly dictated in the law, but loosely based on a historical decree from the League of Arab States aimed at protecting Palestinian identity, the Egyptian woman continued to face disadvantages thus recognizing the lack of equality in the reformed law.

¹⁰⁴ Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87, 92 (1993).

¹⁰⁵ Karen Knop & Christine Chinklin, *Remembering Chrystal MacMillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523 (2000-2001).

A. Law Reformed

For well over a decade local women's rights and feminist activists worked in coalition to bring about greater gender equality through law.¹⁰⁶ The nationality law being one example of these efforts in attempt to not only recognize women as equal legal persons to their male counterparts as dictated by the constitution, but more importantly to address the long and ongoing hardship bestowed upon them and their families as a result of their exclusion as recognized members of the state. Where children who are not recognized by the state as nationals are thus not granted access to government funded education, health care, furthered with restrictions on employment and freedom of movement among other services and rights. In general, they were deprived of their basic fundamental rights, while they most likely knew no other country, nor could they affiliate with any other land, these were Egyptian children, born from Egyptian mothers and raised to be Egyptians, yet the letter of the law dictated that they were not Egyptian.

On 14 July 2004 the new reformed law stipulating Egyptian nationality was introduced which for the first time gave the Egyptian children born to Egyptian mothers and foreign fathers the right to Egyptian nationality through the mother. Law No. 154 of 2004 simply amended Article 2 of the 1975 nationality law while cancelling Article 3 in its entirety.

However, there remains a traditional binary between man and woman that continues to hold true. The idea that the state relies on the mother to birth the national but the father to create the patriot can be used to explain why the nationality attributed under the 2004 law reform maintains a conditional and restrictive status. For example, a child born to an Egyptian mother and a foreign father is excluded from military service and enrolling in police service, as well as from holding certain government posts because as a descendant from one non-national they pose a risk to

¹⁰⁶ Many campaigns were initiated to bring to light the ongoing suffering, ADEW launched a campaign which sought to personalize the problem by sharing real life testimonials of the women and children who were suffering as a consequence of their legal marginalization as well as their social exclusion from benefits and welfare, education and health. Greater details of the testimonies will be discussed.

national security.¹⁰⁷ In an interview with Hossam Lutfy, civil law professor at Cairo University, Lutfy counters the argument of national security as unfounded by pointing out that children born to an Egyptian mother are excluded from such civil duties whereas children born of foreign mothers and Egyptian fathers are ‘allowed full civil rights’ without prejudice.¹⁰⁸

In a shadow report dated 2009 by the CEDAW coalition in Egypt, the report recognizes the 2004 reform law and the withdrawal of Egypt’s reservation to Article 9 (2), granting equal rights for both the Egyptian mother to pass on nationality to her child, as a step forward. Conversely, the report also identifies the continued challenges many families face despite the amended law. Particularly noted in the report are those who were born prior to the reform highlighting the complications that many families continue to face, mainly those born to a Palestinian father. As well as the continued exclusion of the foreign husband married to an Egyptian woman from attaining Egyptian nationality.¹⁰⁹ While also notable in the report are the high processing fees attached to issuing documentation that places a constraint on families that cannot afford to buy their nationality.¹¹⁰ Thus, post reform continues to look very much like the pre-reform situation, where despite the widening of the inclusionary borders in law on paper, the

¹⁰⁷ Reem Leila, *Citizens at last*, AL-AHRAM WEEKLY July 2004 available at: <http://weekly.ahram.org.eg/2004/697/eg10.htm> (“The new law prohibits children of foreign fathers from joining either the Egyptian army or police, or obtaining certain governmental posts. Accordingly, laws regulating police (109/ 1971, 91/1975, 92/1975, 93/1975) and army (69/1980, 123/1981) institutions have been amended to match the new nationality law. According to Ahmed Diaeddin, assistant to the minister of interior and head of the legal affairs department, the changes were expressly made “for national security reasons.”).

¹⁰⁸ Hala Sakr *A Matter of Survival*, AL-AHRAM WEEKLY, May 2001 available at: <http://weekly.ahram.org.eg/2001/532/li1.htm> (“[T]hat if national security is the concern of policy-makers, children could acquire Egyptian nationality but not be allowed into the army. “But then children born to Egyptian fathers and foreign mothers join the army and are allowed full civil rights even if their mother is Israeli. If restrictions are deemed necessary, they should be equally applied to men and women alike,” he continued.”).

¹⁰⁹ Afaf Marei, *Second Shadow Report for the CEDAW Coalition*, The Egyptian Association for Community Participation Enhancement (EACPE) (2009) (“There are still predicaments on children born before the enforcement of the law, especially those born to a Palestinian father. In addition, the Egyptian wife to a non-national husband does not have the right to attribute her nationality to the husband same as the Egyptian man. Although as of May 2011 a Decree 1231 of the Minister of Interior, Mansour al-Essawy, on 2 May 2011, granted the right to Egyptian nationality for children of an Egyptian mother and a Palestinian father. The Efforts Achieved: On the level of law of nationality, the law has been amended to grant the Egyptian mother the right to attribute her nationality to her children like men, eliminating the discrimination in the law through two articles by virtue of law No 154 of 2004 amended by law No 26 of 1975 on Egyptian nationality:

The first article: 2/1 a) Any child born to an Egyptian father or mother shall be an Egyptian national. This applies to all children of an Egyptian mother born after the enforcement of the law. The second article: Resolving the problem of those not included in the law after its enforcement, such as children born to an Egyptian mother and non-national father before the law issuance and enforcement.”).

¹¹⁰ *Id.*

reality remains that certain practicalities makes it a continued struggle to acquire nationality, while many families continue to remain outside the peripherals of these newly defined boundaries. What this ultimately means is that the real life struggles as will be demonstrated below remains a continue reality for many families within Egypt which is a direct result of the reformed law that insists on maintaining the Egyptian woman at an unequal standing.

Furthermore, although the reform is much to commend, however, in the spirit of CEDAW and the objective towards gender equality, the reform has essentially extended membership to a limited population that was once marginalized,— the children, – and not extensively, thus, ultimately the battle for gender equality in Egypt is far from over.

B. Nationality Law and the Power of Exclusion: The Consequence

“It is a matter of survival, not only a matter of rights. The humanitarian aspect must be considered.”¹¹¹

Women’s exclusion from equal membership and equal nationality is not simply a detriment to gender equality, but poses real life threats and difficulties to many families impoverished and affected by this limited inclusion. A situation not necessarily unique to the Egyptian women but to all women who remain disadvantaged by law and remain excluded, whose families remain marginalized due to her inability to form a family unit. As such, many families whose mother is Egyptian and father foreign faced hardship and continue to do so even after the reform due to the lack of full inclusion.

Tarek¹¹², whose mother is Egyptian and father of Palestinian decent with Jordanian nationality, in an interview explained that Egypt was the only country known to him, it was his only home.¹¹³ However, the difficulties faced to obtain an education, the intimidation and fear when called in by the Ministry of Interior for an interview in order to enroll in University to simply earn a college degree, along with the soaring tuition fees paying as a foreigner, as

¹¹¹ Sakr, *supra* note 106.

¹¹² Names have been changed to protect the privacy of those individuals who contributed their stories for the purpose of this research

¹¹³ Personal Interview with Tarek

well as the need to obtain an exit visa and permission for every travel abroad be it holiday or work emphasized his alien status. All this was a daily reminder for Tarek that he is an outsider, not Egyptian. All this built resentment and insecurity towards the only home he knew, which was further exasperated by witnessing his mother's ongoing sentiment of guilt as though it was her doing. In one testimony published by Al-Ahram weekly, Sohier a single mother, divorced from a Sudanese national, questioned, "Why do they [officials, policy-makers] want us to hate the existence of our own children? With all the difficulties we confront because of them, our lives become intolerable."¹¹⁴ It was only when Sohier attempted to access government facilities and enroll her daughter in a public school that she realized the true consequences of the nationality law. The accounts and testimonies are endless. These are the real consequences of the law, and to assume that law is but an abstract ideal established to organize a nation and a society is but a naïve outlook. Law trickles down to the everyday lives of people, individuals and families alike who then bear the consequence of decisions made by policy makers.

C. A Final Reflection on Reform

In a publication co-authored by two of Egypt's prominent lawyer, Hishām Ṣādiq and Muḥammad 'Ukāshah 'Abd al-'Āl an entire chapter is dedicated to the nationality law explicit to women and the 2004 law reform.¹¹⁵ The authors offer insight into the surrounding dialogue and realities under which this law came to form. The importance of this text is not only in its period relevance, but it also offers a glimpse into the narrative and legal reasoning behind the reform from a distinctly domestic legal perspective, as an indication of the overall spirit and intent towards gender equality.¹¹⁶

From the start, the authors acknowledge nationality as a political and legal tie that binds the individual to the state, by which, when the state extends the right to nationality, ultimately, it is fulfilling its own national agenda, resulting

¹¹⁴ Sakr, *supra* note 106.

¹¹⁵ Hishām Ṣādiq & Muḥammad 'Ukāshah 'Abd al-'Āl, *'āhkām al-jans īa al-m srīa – dirasat muqārna*, (Dar al-fatah al-Qahira 2010). (The following section is a summary and critique of the chapter.)

¹¹⁶ *Id.*

in the formation of a true bond between the state and individual membership.¹¹⁷ From this stance we can attest to the authors' perception of the international system and the state. It is evident, based on their approach that they perceive the state in a pure Westphalian context of territorial sovereignty, and do not necessarily recognize the evolution beyond this. In the age of globalization, the United Nations and UN treaty bodies it would be rather naïve not to recognize that the pure Westphalian state model is no longer entirely relevant. Today, absolute sovereignty holds restrictions and limitations through means of state responsibility, international human rights standards, globalization and international law in general. Additionally, nationality has become readily contemplated at the international level, as we have seen above, through various UN treaty bodies and case law, placing the individual, albeit awkwardly, at the level of the international plane.¹¹⁸

Ultimately, the principle behind the deliberation of absolute sovereignty is the exclusive claim over inclusion and exclusion. Mainly, that the state is the supreme sovereign entity, a traditionalist approach of inclusion and exclusion by which many states continue to operate today. However, notwithstanding Egypt's sovereignty over nationality and inclusion, we can not entirely discredit the international legal systems' continued growing influence over the topic, which sanctions ongoing observation over state practice. Where, international law has come to acknowledge the reality of the importance of nationality and the obvious consequences selective membership based on a specific distinction comes to bear.¹¹⁹ Unfortunately however, for the time being, the right to include and exclude continues to remain under the watchful eyes of the state.

Ultimately, the authors are setting a tone and establishing where they place themselves in the overall dialogue and from which we can conclude that the state in their position, is the be all end all within the international system.

¹¹⁷ Ultimately different thoughts on the definition of nationality are entertained in a wide vary of text, in many cases as we have seen before nationality is synonymous with citizenship. What is essential to recognize however, is from a feminist perspective nationality in definition is a neutral abstract concept, yet by definition of its application is gender bias.

¹¹⁸ This is true when examining the extent of regimes and treaties which have contemplated nationality at the international level weary of exclusion and the consequences of statelessness.

¹¹⁹ International human rights law is no longer tolerant to exclusive male distinction in nationality, where many international legal doctrines now address women and nationality as a result of these exclusionary laws that have historically rendered women stateless.

In light of this traditionalist position, the authors discuss the 2004 reform and the surrounding environment which necessitated the change. These can be identified within four main themes, first, the economic environment which essentially influenced changes in the very fabric of society that eventually demanded the need to reform. Secondly, indirect cultural and traditional factors which are identified yet the authors do not necessarily directly speak to. Third, a quick reference on the question of *shari'ah* compliance towards the reform and fourth, comments on the law itself.

1. The Socio-Economic Narrative

Authors Ṣādiq and ‘Abd al-‘Āl provide a social narrative as to the reasoning behind the reform. They reason that the reform was necessary, essentially in keeping up with the times, and to address a greater social phenomenon. They concur that the 1975 law no longer fits nor reflects the current realities of economic developments in Egypt. They attest to effects of overall globalization and Egypt’s role within the international community necessitated participation in many international agreements, in turn accommodating these agreements in Egypt’s local laws in accordance to its international commitments.¹²⁰

Reflecting on the domestic developments, the authors identify economic hardship and increased globalization as the main reasons for a shift in the social order within Egyptian society. They identify marriages of Egyptian women to foreign men, which had previously been frowned upon or prevented, was now increasingly common and welcomed by families. The authors identify that the growing number of women marrying foreigners was either due to economic and financial constraints or based on an increase in foreign influence and interaction within Egypt as well as the rising number of single Egyptian women travelling abroad, as reason behind this phenomenon.

¹²⁰ Ṣādiq & ‘Abd al-‘Āl, *supra* note 113, at 170.

In regards to financial marriages, the authors Ṣādiq and ‘Abd al-‘Āl respond by stating that these marriages often times occurred out of dire economic conditions, in which the family would marry their daughters to wealthier foreigners to relieve financial constraints, which they conclude eventually ends in divorce, leaving the children to pay the price. Accordingly, the Egyptian mothers will (return to) reside in Egypt with her children who are then raised on Egyptian soil (affiliating with the land), saturated with its culture, people, and national identity, yet these children continue to be perceived as outsiders in the eyes of the law which carries greater consequences and as such the law reform was necessary to adopt to this reality. In essence this is true, however, while the authors acknowledge that the reform legalizes the status of thousands of Egyptian children, the spirit of equality which is the principle drive towards reform, is lost within their narrative and essentially we can conclude from where they stand, that any equality that came from this reform is but a byproduct. Furthered by the ideal of family unity through the mother was not necessarily the objective but rather as a means of child protection by the state.

2. Social and Cultural Tension with the Law

There exists an inevitable tension between the respect for society’s social and moral codes and the respect for the sacred institution of marriage, when the law itself contradicts the social norms of Egyptian society. Essentially, when the law provides exceptions to the paternal code for children born out of wedlock, the sanctity of marriage loses its moral primacy.¹²¹ Women with children from non-Egyptian fathers would guarantee a nationality for their children should the child be born out of wedlock. The authors acknowledge the immoral proposal the law carries and that to an extent an incentive is in fact created for women to live and bear children outside of wedlock to guarantee their children are Egyptian. However, it remains difficult to determine whether the authors seemed

¹²¹ See generally, Knop & Chinklin, *supra* note 103, at 562 (The authors note that there are many States who rely on paternal decent within their laws. Further, they note the case of *Unity Dow* where the Court concluded that the country’s Citizenship Act actually introduced a tension between respect for culture and respect for marriage because the Act made an exception to the patrilineal rule for children born outside wedlock. By permitting a single mother to give citizenship to her child, the Act created an incentive for women to live and bear children outside wedlock.) See also, *Unity Dow v. Attorney-General*, High Court of Botswana, Misc. 124/1990, June 1991 reported in (2001) AHRLR 99 (BwCA 1992).

concerned with the moral consequences this has on a society. Nonetheless, it is important to note that a further study is required to document whether such a phenomenon has actually proliferated amongst the various levels of Egyptian society or not. Although on the other hand, we must recognize that despite the need for documentation, acceptance and an identity for children born to an Egyptian mother and foreign father, it can be imagined that the moral codes of society and the risk of being ostracized at the least, of both mother and child, would pose as a greater deterrence.

Egyptian social fabrication identifies with traditional ideals of the family and family unity, and a united nationality is no exception. In the modern Arab context we see a binary between the traditional and the individual as represented in the Western liberal model of the modern nation-State. The national as an individual is encased with rights, however, there continues to remain inequalities for women when Arab constitutions hold that the family is the basic unit of society where the woman is incapable of forming this unit in her own right. This is true in Egypt where Article 9 of the Constitution states exactly that.¹²² As such women within the Arab world face a double discrepancy towards equality, given that she is neither perceived as an individual in her own nor can she form a family unit in her own right. In such case, despite reform regarding the right of filiation for the Egyptian mother, the Egyptian woman continues to be deprived of equality and forming family unity by legally preventing her from passing on her nationality to her spouse, a right that is guaranteed by law to the Egyptian man, where the questionable justification for this, is that such measures are taken as a matter of national security.

Such discriminatory laws are pertinent in a patriarchal predisposed society where it is understood that women will follow the husband or the father and in the spirit of family unity it is the male head of household who will

¹²² *Constitution of the Arab Republic of Egypt* (September 22, 1971) (last amended March 26, 2007), (Article 9 reads as follows: The family is the basis of the society founded on religion, morality and patriotism. The State strives to preserve the genuine character of the Egyptian family—with the values and traditions it embodies—while affirming and developing its character in relations within the Egyptian society.).

determine residence.¹²³ This is furthered by the political process of nationality law that dictates membership and subordinates women within the process.¹²⁴

In a research study conducted by the Collective for Research and Training on Development (hereinafter CRTD), this idea is further concurred where it is concluded that given women's dependency within the patriarchal system, it was the male figure who heads the household. And in order to avoid a nationality conflict and conflicting national loyalties within the household it was essential to allow the father to be the determining status of nationality in the home.¹²⁵

The authors Şādiq and 'Abd al-'Āl corroborate on the reality of the patriarchal family unit by suggesting that Law 26 of 1975 was initially 'not perceived as offensive' in the past, instead they praise it as a reflection of the cultural and social norms of society. It was only natural that nationality would be passed on from the father to his children

¹²³ See generally, Center for Research and Training on Development [hereinafter CRTD], Gender Citizenship and Nationality Programme, *Denial of Nationality: The Case of Arab Women, Summary of regional research*, 9 (February 2004) ("The relative role of kin-based formations in the political history and development of the sovereign nation state in the Arab World has had a crucial influence on shaping legislation and practices related to citizenship. In societies where tribal forces, lineages and patrilineal family-based structures have remained prominent, the individual citizenship of women has been negatively affected. In specific, the laws and codes of the state continue to work in favor of reinforcing gender inequality and exclusion from nationality by maintaining the view that the family and not the individual is the basic unit of society. Consequently the state is primarily concerned with the protection of the family as opposed to individual members or it. It is within this context that the rights of women generally, and nationality rights more specifically come to be expressed through their roles as wives or mothers. This is a major factor in enhancing and promoting both religious and familial control over them and rendering them more dependent on these institutions for representation and security."). *Id.* (citation omitted).

¹²⁴ Human Rights Watch, *The Women's Rights Project* (January 1, 1997), available at:

<http://www.unhcr.org/refworld/docid/3ae6a8d57.html>

("Although Article 40 of the Egyptian Constitution guarantees women equality under the law, numerous laws deny women rights that are accorded to men. Egypt's nationality law provides a striking example of women's unequal status under the law by denying women who marry non-Egyptians the ability to pass on their Egyptian nationality to their children. In February 1996, the Egyptian People's Assembly adopted an omnibus law on children but rejected draft language reforming the nationality law. An estimated 250,000 Egyptian women thus continued to suffer the consequences of unequal citizenship; they must obtain visas to allow their "foreign" children to live in Egypt and must pay for state education and health services to which Egyptian citizens are entitled. No similar restrictions are placed on male Egyptians who marry non-Egyptian women. The Mubarak government resisted efforts to reform this law and thus accord women the full benefits of citizenship. The government defended its position by arguing that a law conveying citizenship on children of non-Egyptian fathers presents a threat to security: as citizens, these children would, among other things, be required to serve in the army."). *Id.*

¹²⁵ CRTD, *supra* note 121 at 7 ("The rationale for the principle of dependent nationality derived from two assumptions. Firstly, that all members of a family should have the same nationality, as they are considered one unit and secondly that, important decisions affecting the family would be made by the husband. Moreover, in an international order in which conflict between states was deemed inevitable, permitting spouses to maintain separate nationalities was regarded as unacceptable since conflict between the couple's different states would cause divided loyalties within households. Potential for familial problems on these grounds was resolved in favor of family unity, with the wife being required to take on her husband's nationality.") *Id.*

because he was viewed as the ‘head of the household’, ‘captain of the ship’.¹²⁶ Their logic legitimizes the feminist debate and the raised concern towards women and their role within society. Feminist scholars have addressed the binary between the public/private and taken the debate one step further to include a distinction between culture and nature as the definitive force behind the exclusion of women from the ‘cultured’ space. Pre-historically women have been perceived as the bearer of children, mothers and nurturers; remaining within the private space, nurturing her child to life.¹²⁷ Whereas the father occupied the public space, negotiated with the surroundings and culture through which he instilled cultural and social norms and awareness within the child.¹²⁸ It is through the father that a child will learn to love the land and affiliate oneself with the country, creating the patriarch, but it the mother who births the national.

Such patriarchy perception of the Egyptian household is a fabricated perception of the reality, which is far from true. In the case of Egypt it is well established that a large segment of poorer households, women bear the burden of the breadwinner.¹²⁹ Consequently, as an Egyptian woman head of household whose children are not Egyptian the financial burden becomes a terrible reality to bear in which case an additional layer of subordination and hardship is placed on the woman. Where ultimately, such membership and identification of the Egyptian woman is discriminatory and marginalizes her from equal rights as a national of Egypt.

3. The Question of Shari’ah

Authors Ṣādiq and ‘Abd al-‘Āl make light of Islamic references to the nationality reform, instead they state that the reform invokes the ideals of equality as mapped out within the Egyptian Constitution, while also adhering to the

¹²⁶ Ṣādiq and ‘Abd al-‘Āl, *supra* note 113, at 107. (The Egyptian nationality law was not seen as offensive in the past as it was not perceived as bestowed upon by many who praised it by stating that the father is the head of the household, ‘captain of the boat’, as such it was only natural that he would be the one to pass on the nationality to his children regardless of the Egyptian mother.) *Id.*

¹²⁷ Sherry Ortner, *Is Female to Male as Nature is to Culture?*, 1 FEMINIST STUDY 5, 21-42, (1972).

¹²⁸ *Id.* (The author contemplates the possible theory behind female subordination lies behind the perception that prehistorically women remained consumed within the confines of the home nurturing the child as necessary dependency in the early years of infancy. However, once independent enough the child will then join the father in the public space where this space is depicted as the culture.)

¹²⁹ Lina Abou-Habib, *The ‘right to have rights’: Active Citizenship and Gendered Social Entitlements in Egypt, Lebanon and Palestine*, 19 GENDER & DEVELOPMENT 441, 448 (2011).

principles of equality invoked in Islam, ultimately that the reform does not conflict with *shari'ah* law. However, after a closer examination of the reformed law as laid out here we realize that the principle of equality as conveyed in the Egyptian Constitution is nowhere near compliant within the newly reformed law. As we have discovered above a true reform would allow for the complete freedom of the Egyptian woman to choose a spouse without restrictions placed by nationality. While also allowing the Egyptian mother with the power of unification which would draw in her family within the inclusionary borders making them also equal members of Egypt. Instead, equality remains a far reaching aspiration. Consequently, the authors reference to Islamic jurisprudence as a determining factor remains of little relevance given that the principles of equality were one, not met within the reform and two, is not necessarily stipulated within the greater context of nationality law, however, perhaps somewhat relevant when addressing women and the right to filiation. However, the authors quickly limit equality by preemptively placing comment about the general application of equality in Islam, specifically, the question of inheritance. At once referencing that inheritance was not to be questioned as there were restrictions on this area for a reason, but failed to elaborate on the reasoning. Perhaps this was not deemed the space to delve into such debate, however, moving on from the argument almost as quickly as it was referenced. In a gesture of almost appeasement, the authors then uphold that the Egyptian mother without a doubt was able to create true patriots.

The question of Islam within this text holds important, in so much as laws pertaining to women particularly the Personal Status Laws have been sanctified and frozen in time. Reforming laws that dictate marriage, divorce and child custody has proven just as difficult to negotiate with as the nationality law itself and probably more so. However, Egyptian feminists and activists have managed to bring about reform in the forms of *khula* and the minimum age of marriage both in favor of women. Yet, recently these laws are being challenged. Fortunately, in tune with the authors' dismissal of the nationality law in possible conflict with *shari'ah*, religious bodies have not paid much heed to it either.

4. Comments on the Law

Authors Ṣādiq and ‘Abd al-‘Āl reference the means in which principles of *jus soli* and *jus sanguinis* are applied, the authors affirm that the law actually reflects a legal thought process that has contemplated the best means in which to organize membership within the state.¹³⁰ Moreover, invoking these principles or rather using one in favor over the other is a method to recognize a bond between the state and those living within its territory. The authors ensure that should the established process fail to organize membership and create a bond in all cases, the authors emphasize that it is then essential to realize that this failure is an exception to the general rule, and in particular cases, thus, should not be viewed necessarily as a failure in the system itself.¹³¹

The authors describe in detail the original text of the 1975 nationality law, identifying that the principle of *jus sanguinis* was the only means considered necessary in passing nationality through the paternal lineage until the 2004 law reform when certain local developments then required reform.¹³² Despite this however, the authors go on to explain that “the Egyptian nationality law did not entirely neglect women from right of blood, as the law took women into consideration by providing association to the right of blood demonstrated in cases where the child born on the territory and the father is either stateless or unknown the child then has the right to Egyptian nationality.”¹³³ In such case both the combined principles of *jus sanguinis* and *jus soli* were invoked.¹³⁴ This contemplation in itself is cause for concern, as perceiving filiation through right of blood as equal to that of the right to land perpetuates the feminist concern over the paternal state and the exclusion of women from equal standing.

¹³⁰Ṣādiq and ‘Abd al-‘Āl, *supra* note 113, at 106. (“On another note ‘filiation’ or ‘the place of birth’ is nothing more than the evidence that which has been reached by legal talent that states have come to rely on to organize membership through nationality.”). *Id.*

¹³¹ To realize through a tie/bond between the state and the people living within its territory. And if this standard has failed in realizing this bond it is essential to realize that its failure is in specific cases present in its application and not the general rule.

¹³² Ṣādiq and ‘Abd al-‘Āl, *supra* note 113, at 106 (“The nationality law of 1975 prior to its amendment in 2004 gave the right of blood from a paternal lineage, any child born to an Egyptian father was thought to be Egyptian irrespective of place of birth be it within Egypt or outside. Where the principle of *jus soli* was invoked in cases where the child was born on Egyptian territory if the parents are unknown in protection of the child and to avoid cases of statelessness.”). *Id.*

¹³³ *Id.*

¹³⁴ *Law No. 26 of 1975 Concerning Egyptian Nationality*, *supra* note 31, at art. 3.

(Article 3 of the 1975 nationality law also dictates that in the case of a child born outside of Egyptian territory to an Egyptian mother and an unknown father the child will be granted Egyptian nationality based on the right of blood within one year of reaching the age of majority, provided that the child resides in Egypt and by permission from the Ministry of Interior. Articles 2 and 3 have since been removed under the 2004 nationality reform.).

The authors Ṣādiq & ‘Abd al-‘Āl continue to describe that the right to blood through paternal descent was enough to ensure inherent nationality for the children irrespective of the mother’s nationality. As such, establishing the criteria as ‘Egyptian’ to the mother was not a measure in which nationality was transferred to her child in cases where the father is unknown, or stateless, in which case it was enough that the child was born on Egyptian soil”¹³⁵ As a general note the nationality law pre-reform, did in fact offer children born to an unknown father the Egyptian nationality. The nationality attributed to the children born of unknown fathers was by means of *jus soli* or birth within the territory and not inherited from the mother through blood alone per se. The child born to an Egyptian mother and unknown/stateless father abroad and not on Egyptian soil would only be considered for nationality if the child upon coming to age at 21, applied for nationality which would then need approval from the Minister of Interior. As such the law did stipulate in favor of *jus soli* rather than through maternal bloodline. This has since been amended, where Article 3 of the 1975 nationality which referred to the child born to an unknown father has been removed in its entirety in the 2004 reform. Moreover, even after reform, those who were born prior to the amended law were required to submit within one year request for nationality to the Minister of Interior, in order to benefit from the newly formed law. Failure to do so meant that the children would have to undergo naturalization through regular process.

Greater discrepancy towards equality is witnessed in the initial practice towards children born to Egyptian mothers and Palestinian fathers, these children remain explicitly excluded from the reform in practice. There is nothing in the reformed law that stipulates the exclusion of children born to Palestinian fathers from enjoying Egyptian nationality through the Egyptian mother. However, based on a historical declaration issued by the league of Arab States (The Casablanca protocol of 1965), the practice has been to marginalize the Palestinian people hindering

¹³⁵ Ṣādiq & ‘Abd al-‘Āl, *supra* note 113, at 107 (According to articles 2 (2) (3) of the Egyptian Nationality law of 1975, prior to its amendment In which case if the child was born to an Egyptian mother and a known foreign father, the Egyptian nationality is not attributed to the child.). *Id.*

their local integration prospects all in the name of cultural and social preservation.¹³⁶ Nonetheless, this practice has recently been altered with a ministerial decree which sought to extend to children of Palestinian fathers and Egyptian mothers the ability to acquire Egyptian nationality.¹³⁷ This initial exclusion exemplifies the inequalities in not only the letter of the law itself, but also in its application towards women. As again there seemed to be little concern over the preservation of Palestinian identity of the woman married to an Egyptian man, in which case she was granted nationality through *jus motrimonii* through her Egyptian husband.

In general, the nationality law reform does in fact provide the Egyptian mother the right to pass on her Egyptian nationality to her children, essentially adding a new dimension to her legal status as a member of society. Other than addressing certain social dilemmas as pointed out earlier and fulfilling an internal sentiment of the maternal mother wanting to protect her children from hardship, the reform does very little for the mother as a female member of society. It maintains the role of mother as the least contested role within the patriarchal system, who is in tune with the private sphere, and perpetuates her private role even further. Other than emancipating her sons to eventually become equal members of society, albeit with certain restrictions on membership, i.e. compulsory military service, it does very little in acknowledging her role as equal member of the public domain. The authors do not acknowledge this, instead they assume that this simple reform ultimately places women at equal footing with men and while asserting that the nationality law is now compliant with the Constitution and international norms. Although it must be acknowledge that in terms of nationality and the right to filiation the mother is indeed at equal standing to that of the father; however, it is necessary to recognize that this is far from reaching equal standing as a full national member in Egyptian law and society.

Despite to the right of filiation that the reformed law has guaranteed the Egyptian woman, the question of family unity still remains. The authors Šādiq and ‘Abd al-‘Āl refer to article 40 of the Egyptian Constitution which

¹³⁶ Gianluca Parolin, “New policy on Egyptian Citizenship for Children of Palestinian Fathers” available at, <http://eudo-citizenship.eu/news/citizenship-news/530-new-policy-on-egyptian-citizenship-for-children-of-palestinian-fathers>

¹³⁷ *Id.*

upholds the principle of equality as one of the factors that directly influenced and determined the reform.¹³⁸ As such, according to the authors the 2004 law reform is on par with the Egyptian Constitution, recognizing the mother's right to pass on her nationality to her children. Although the authors refer to other socio-economic factors which helped determine the reform, there is an emphasis on the need to attain equality between the mother and the father in their right to pass on nationality to the children. It is precisely within this context that we must be wary of reform that presents itself as equality yet serves an entirely different purpose.

¹³⁸ *Constitution of the Arab Republic of Egypt*, *supra* note 120, at art. 40 (“All citizens are equal before the law. They have equal public rights and duties without discrimination on grounds of race, ethnic origin, language, religion or creed.”).

VI. CONCLUSION

Faced with a the need to make a decision that is ultimately unmerited, Aisha had no other choice;

The couple divorced and Aisha proceeded across state borders to Egypt with her child, leaving her divorced husband behind.

At that moment Aisha must have realized the shortcomings of her nationality, where she falls short as a member and ultimately her identity as a wife, mother and as an Egyptian. Forced to leave her husband behind and her child fatherless, unable to maintain family unity, she has failed her family and as a mother and wife she in turn has failed herself. As a member of her nation, Egypt has failed her. Like so many other mothers who have had to see the very fabric of their home torn apart, or having to bear witness to the hardship their children must bear due to her failure to offer them the security of her home; Egypt. There becomes one collective realization that ultimately as an Egyptian woman she may be enough woman to birth a child but never Egyptian enough to birth a complete Egyptian or form a complete family in her own right.

Although nationality and its reform is by no means the end all to the feminist debate, as there continues to exist an array of themes yet to be addressed in the plight towards equality. It does however remain as a significant entry point towards negotiating belonging within the amplified community of the nation in which all other rights may then be negotiated. The significance of this specific narrative lies in the particular moment where women are negotiating their space in the nation-state as active participants. Today, as mass uprisings spiral across the globe, in the age of globalization and movement, identity is blurred as are our borders. We are renegotiating space and boundaries and where we belong amongst the nation and within the state. In sum, who belongs and who does not? Ultimately this simple question then determines the rights of citizenship and rights of humans. Who has the right to enjoy pension funds and social services, who has the right to demand reform? Who is the national? And ultimately when the dust settles who is left standing and can call the state their own?

Women's participation in the uprising is but the periphery notion; it is the fine details of the law that determines their membership within the enlarged community. These details are examined through the actual narrative of nationality law and most significantly what reform means to women and their relationship to the nation and ultimately the consequences of the law on women and the very fabric of the family.

As such, we realize that each historically significant moment holds a parallel historical narrative for women in her relation to the state as negotiated through membership of nationality law. Thus, using nationality to emancipate women makes sense, for without, no other rights are realized and therefore nationality ought to be utilized as a means of emancipation, as a fundamental basic human right by which all other rights are attained. Further, it becomes the basic form of entry, not only to access further rights, but also in negotiating ones membership to the state.

The 2004 nationality law reform may have presented the Egyptian woman a greater motherly sentiment through the right of filiation, but it ultimately has done very little to offer her a space to renegotiate as an inclusive member on equal grounds for Egyptian membership. The amended Egyptian nationality law has done little in redrawing the boundaries to which would include the Egyptian woman; it has done little in etching out a new space for unconditional inclusion as an equal member. Instead, to conclude, the Egyptian women can now birth a national, yet must continue to fight for her own membership; they may have won the battle but their struggle continues. The aim is to offer insight into the post-reform setting and allow us to understand the impending challenges when negotiating women's place within the nation. However, as narrated previously the struggle for equal membership, equality in family unity and freedom of choice is a continuous battle where in the meantime the price of inequality towards women remains high and it is always the most vulnerable who bear the heaviest of consequence.

What is most unfortunate is as we have discovered here that often times law is written to serve a particular purpose, either to make a political statement and preserve a nation, create the perfect patriot through dictating membership.

However, it is very rarely ever witnessed by law makers the impact their letters on paper then have on a population, hitting the most vulnerable the hardest. Thus, there is a gap, not only in the law and its application but also in the abstract form of law and the realities of its applications. Moreover, many Egyptian women were never forced to negotiate with nationality law the same way other Egyptian women did. Essentially, it is not until faced with the dire consequences of movement, border crossing cross state lines, access to fundamental services such as education and health that one is then hit with the reality her simple choice to marry an alien will have on her life and ultimately her family's life permanently.

Thus, although these laws perhaps set in good faith (perhaps not) that place women at an unequal standing ultimately in the larger picture places an entire society at a disadvantage. There is a ripple effect to all decisions made it therefore is not in the interest of the state, society and the moral and ethical order of a community to hold discriminatory standards towards its members particularly based on gender, as ultimately they will collectively have to bear the consequence.

Accordingly, when negotiating standards of membership, when contemplating a reform in nationality law it is necessary to seek full inclusion, one that places both men and women at equal standing and as equal members. It is important that a reform based on equality be one that is neither restraining or provisional, but instead inclusive and unconditional. It is then that we can establish equality in membership as negotiated through nationality law and only then can we move that much closer towards a greater realization of equality.