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AFRICA CITIZENSHIP AND DISCRIMINATION AUDIT: THE CASE STUDY OF EGYPT

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**AFRICA CITIZENSHIP AND
DISCRIMINATION AUDIT**

THE CASE STUDY OF EGYPT

OPEN SOCIETY JUSTICE INITIATIVE

Report by

**The Center for Migration and Refugee Studies
(CMRS)**

**(Previously the Forced Migration and Refugee Studies Program
(FMRS))**

The American University in Cairo

The Center for Migration and Refugee Studies (CMRS), previously known as the Forced Migration and Refugee Studies program (FMRS), at the American University in Cairo (AUC) was established in 2000 as a program of education, research, and outreach on refugee issues and was developed in 2008 into a regional center that encompasses all forms of international mobility, whether voluntary or forced, economic or political, individual or collective, temporary or permanent. CMRS offers an MA in Migration and Refugee Studies (MRS) in addition to a Graduate Diploma in Forced Migration and Refugee Studies. Its research program includes a systematic and comparative inventory of the situation regarding migration and refugee movements across the MEA, as well as in-depth studies of emerging issues in the region. CMRS' outreach includes disseminating knowledge on migration and refugee issues beyond the university's gates, as well as providing a range of educational services to refugee communities.

This report summarizes the relevant laws, policies, and practices pertaining to access to citizenship in Egypt as well as the rights of non-citizens in Egypt. The report was the outcome of CMRS' partnership in a project implemented by the Open Society Institute covering 12 African countries with the objective of improving access to rights and justice for non-citizens in Africa. This report on Egypt was completed in May 2005.

The report consists of two chapters prepared by three researchers and edited by CMRS' research coordinator Kasia Grabska. The first chapter by Tarek Badawy and Abdallah Khalil gives the essence of the nationality law and discusses the laws pertaining to non-citizens in Egypt, with particular focus on refugees. The second chapter by Amal Abdel Hadi presents a case study of gender-discrimination as relating to the nationality law. Each of the chapters makes a set of recommendation regarding the nationality law as well as laws affecting non-citizens in Egypt.

TABLE OF CONTENTS

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF CONTENTS | 3 |
| CHAPTER 1 | 4 |
| RIGHTS OF FOREIGNERS AND ACCESS TO CITIZENSHIP | 4 |
| BY TAREK BADAWY AND ABDALLAH KHALIL | 4 |
| SUMMARY | 4 |
| THE EGYPTIAN LEGAL SYSTEM | 4 |
| Sources of law in Egypt..... | 4 |
| Legislation | 4 |
| CITIZENSHIP, NATIONALITY AND NATURALIZATION | 7 |
| Derivative acquisition of nationality | 10 |
| Withdrawal of citizenship..... | 11 |
| Developments..... | 13 |
| RIGHTS OF CITIZENS AND NON-CITIZENS – ‘DISCRIMINATORY TREATMENT’? | 14 |
| Freedom of Religion..... | 14 |
| Residence..... | 17 |
| Property Ownership..... | 19 |
| Adjudication..... | 21 |
| Right to Work..... | 21 |
| Other Rights | 22 |
| SPECIAL GROUPS OF NON-EGYPTIANS: REFUGEES | 23 |
| a. Palestinian refugees | 23 |
| b. Political Refugees (Constitution Refugees)..... | 24 |
| c. Refugees recognized in accordance with the 1951 Refugee Convention Relating to the Status of Refugees and its 1967 Optional Protocol and the 1969 OAU Convention..... | 25 |
| RECOMMENDATIONS AND CRITIQUE | 28 |
| a. Nationality Law | 28 |
| b. Expulsion..... | 29 |
| c. Education and work..... | 29 |
| BIBLIOGRAPHY | 29 |
| CHAPTER 2 | 34 |
| ENGENDERING THE EGYPTIAN LAW ON NATIONALITY | 34 |
| BY AMAL ABDEL HADI | 34 |
| SUMMARY | 34 |
| INTRODUCTION - NATIONALITY A GENUINE CONNECTION OF EXISTENCE, INTERESTS AND SENTIMENTS | 34 |
| GENERAL DISCRIMINATION IN THE EGYPTIAN LEGISLATION: | 35 |
| INTERNATIONAL DEMOCRACY AND NATIONAL DISCRIMINATION | 35 |
| HISTORY OF THE LAW OF NATIONALITY IN EGYPT: | 37 |
| DEFENDING PATRIARCHY | 37 |
| Law 26/1926..... | 37 |
| Law 19 / 1929..... | 38 |
| Law 160 /1950..... | 38 |
| Law 391 / 1956..... | 39 |
| Law 82 / 1958..... | 40 |
| Law 26 / 1975..... | 40 |
| Finally: A New Law | 41 |
| PUBLIC DISCOURSE | 42 |
| The Official Debate on Nationality: Defending the status quo..... | 43 |
| The NGOs Struggle: A case of persistence and success..... | 46 |
| Constitutional Court: The final nail..... | 48 |
| CONCLUSIONS | 49 |
| RECOMMENDATIONS | 49 |
| ANNEX 1 | 51 |

CHAPTER 1

RIGHTS OF FOREIGNERS AND ACCESS TO CITIZENSHIP

BY TAREK BADAWEY AND ABDALLAH KHALIL¹

SUMMARY

This chapter will explain the relevant laws that affect foreigners in Egypt and how Egyptian laws determine the rights and obligations of non citizens. Since the report is intended to cover the ways in which foreigners in Egypt are legally distinguished from nationals, the author will explain how domestic laws affect non-Egyptians in the areas of citizenship and naturalization, property ownership, residence, freedom of religion, and accessing employment and other services.

This chapter starts with a brief introduction to the Egyptian legal system in order to prepare the reader for an analysis of the law. More detail will be found in an annexed document. Although some laws impede non-Egyptians from exercising a number of rights that are available to Egyptian nationals, their existence might in some cases be justified; the right to work is but one example. Alternatively, the author believes that some laws need to be reconsidered in their entirety. For instance, the 1975 Nationality Law should be more up to date with the current political situation and modern human rights standards. Fortunately, it was partly amended in 2004.

THE EGYPTIAN LEGAL SYSTEM

Sources of law in Egypt

There are four sources of law in Egypt. According to Article 1 of the Egyptian Civil Code, legislation is the first source of law. Absent relevant legislations, judges should have recourse to custom, followed by the principles of the Islamic *Shariaa*'. If none of these sources exist, judges must operate following the principles of natural law and the rules of justice.² Going through these sources in detail is beyond the scope of this paper, as such, only the first source of law in Egypt will be discussed.

*Legislation*³

Legislation in Egypt is ranked in order of importance. First, the Constitution (*Al- tashri' al-asasi* or *al-tashri' al dusturi*, simply known as *al-dustur*) is the supreme law of the land and cannot be overturned. Laws deemed contrary to the Constitution should always

¹ The information contained in the chapter was extensively researched by Dr. Abdallah Khalil as well as Tarek Badawy, the author of this chapter.

² The Egyptian Civil Code, article 1. Also see S Gabr, *Al-Madkhal Lederaset al-Qanun, Al-Guz' al-Awal: Nazareyet al-Qanun (Introduction to Legal Studies, Part One: The Theory of Law)*, Gehaz Da'm wa Tawzi' al-Ketab, Cairo University, Cairo, 2000-2001, pp.125-126.

³ For a simplified explanation of the functioning of the legislative system in Egypt, see *ibid*, p.136-149. This section is a summary of what is explained in the pages referred to in this footnote.

be amended. The second type of legislation in order of importance consists of what are referred to as 'laws' or 'ordinary laws' (*Al-tashri' al-'adi*, or *al-qanun al-'adi*). The Egyptian Parliament (*Maglis al-Sha'b*) is the main enactor of these laws. Articles 109-113 of the 1971 Constitution explain the process following which 'laws' or 'ordinary laws' are ratified.

In exceptional circumstances, and subject to Parliament's approval, the President of the Republic may enact 'ordinary laws', which are considered as important as the ones passed by the Parliament. These conditions are listed in Articles 108 and 147 of the 1971 Constitution.

The third type of legislation is called a decree (*Al-tashri' al-far'i*, or *al-lawa'eh*). Decrees are secondary sources of legislation and are passed by the executive body of the State. Decrees are divided into the following categories:

- Executive decrees (*Al-lawa'eh al-tanfizihiya*), generally issued by the President of the Republic or by Ministers in the government following an empowerment by the President (Article 144 of the 1971 Constitution).
- Organizational decrees (*Al-lawa'eh al-tanzimiya*) that deal with the organization of public facilities and governmental departments. Only the President of the Republic may enact such decrees (Article 146 of the 1971 Constitution).
- Police decrees (*Lawa'eh al-dabt*, or *lawa'eh al-bolice*) for the protection of public security, public health, and public peace in society. Only the President of the Republic may issue such decrees (Article 145 of the 1971 Constitution).

The hierarchy of legislation is important for identifying which type of legislation has precedence over others. The Constitution, also known as Constitutional legislation, cannot be modified unless the Constitution itself is amended following the required procedures. It lies entrenched at the top of the legal hierarchy. No law may contradict the Constitution. The same rationale extends to lower types of legislations. Ordinary laws can only be amended by ordinary laws issued by Parliament or the President in exceptional circumstances, or by the Constitution. In the same vein, decrees can only amend decrees and can be modified by higher legislations such as ordinary laws and the Constitution.

Draft laws need to be published in the Official Gazette to have the force of law. They become binding laws one month after the day following their publication in the Official Gazette, unless another number of days is specified (Article 188 of the 1971 Constitution). It is worth mentioning that domestic courts cannot apply international conventions before their ratification by Parliament and publication in the Official Gazette in the same way specified in Article 188 (Article 151 of the 1971 Constitution). Once the requisite procedures are followed, international conventions become ordinary laws and override previous ordinary laws and decrees that cover the same subject. They may also be amended by the Constitution and by other ordinary laws passed by Parliament or, in exceptional circumstances, by the President of the Republic.

It is important to note that since Egypt is a *civilist* jurisdiction, the concept of *stare decisis* does not apply. Court decisions are not binding on other courts that deal with

similar cases. However, they may be used as guiding principles. The only exception is that of the Constitutional Court.

Against this background, the following part of this chapter will examine the treatment of non-Egyptians under Egyptian law. As demonstrated above, the report will mainly focus on citizenship and naturalization, property ownership, residence, freedom of religion, and access to employment and other services – for example education and health are key areas. The examination of these forms of differentiation between Egyptians and non-Egyptians will be conducted in light of the Constitution, ordinary laws, and Ministerial decrees–It is equally important to interpret Egyptian laws in light of the international conventions to which Egypt is party. As demonstrated earlier in this section, international treaties and conventions become part of domestic law following their ratification and publication in the Official Gazette; by virtue of their publication they become ‘ordinary laws.’ A list of the relevant international conventions dealing with non-discrimination as well as rights of non-citizens is therefore provided for guidance:

- The International Covenant on Civil and Political Rights (ICCPR), published in the Official Gazette on 14 April 1981.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), published in the Official Gazette on 14 April 1981.
- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), ratified in October 1981.
- The International Convention on the Elimination of Racial Discrimination (ICERD), following Presidential Decree Number 369 of 1967, published in the Official Gazette on 11 November 1972.
- The Convention on the Rights of the Child (CRC), published in the Official Gazette on 14 February 1991.
- The 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol, published in the Official Gazette on 26 November 1981.
- The Convention on Migrant Workers, ratified in July 2003.
- The 1981 African [Banjul] Charter on Human and Peoples’ Rights, published in the Official Gazette on 23 February 1992.

Surprisingly, there exists no relevant Arab instrument that is applied in domestic law. Neither the Arab Refugee Convention, nor the Arab Charter on Human Rights came into force due to the low number of signatures. In addition, Egypt signed –yet never ratified– the Hague Convention on Conflict of Nationality Laws. However, Egypt follows the Convention’s basic guidelines. For example, Egypt never imposes its nationality on any person, which is arguably in accordance with Article 6 of the Convention.

Egyptian law contains various Articles that stipulate non-discrimination. Examples include Article 11 of the Constitution, which calls for equality between man and woman. Also, Articles 8 and 40 of the Constitution guarantee equal opportunities and equality before the law for all citizens without discrimination whatsoever. Furthermore, international conventions such as ICERD, CEDAW, ICCPR, ICESCR, CRC, and the African [Banjul Charter], as ratified and published in Egyptian law, all contain clauses

that encourage and promote non-discrimination. As such, Egyptian law, whether enacted by the legislature or ratified according to Article 151 of the Egyptian Constitution, bans all forms of discrimination

CITIZENSHIP, NATIONALITY AND NATURALIZATION

Nationality is generally acquired through the following means:

Primary means:

- By blood (*jus sanguinis*), when the person is born to a father who is a national. In the past, nationality was transferred through the paternal line only. With the fortunate rise of movements calling for equality between the sexes, many countries extended the right to transfer one's citizenship to mothers regardless of the father's citizenship.
- By birth (*jus soli*), when the person is born within the territory of the State, regardless of the nationality of the parents.
- By naturalization, when the person obtains the nationality of a state some time after birth following a request of naturalization.

Granting citizenship to a person is considered part of the sovereign right of a State. Nonetheless, it is subjected to limitations that have been confirmed by many international tribunals.⁴ It is commonly agreed in international law that nationality cannot be imposed on people without their consent.⁵

The Egyptian law on nationality⁶ respects the wishes of citizens to acquire other citizenships⁷ and retain their Egyptian one provided they follow certain procedures (see Annex). Moreover, it does not impose the Egyptian nationality on any person, no matter how long he lived in the country. Nevertheless, with the exception of foreign wives of Egyptian nationals, obtaining the Egyptian nationality is rather difficult as applicants must fulfill strict requirements.

Before proceeding, it is worth explaining who exactly is an Egyptian in accordance with the primary means of citizenship acquisition. According to the 1975 Nationality Law No. 26,

⁴ See P Weis, *Nationality and Statelessness in International Law (Second Edition)*, Sijthoff & Nordhoff, The Netherlands, 1979, Chapters 5 and 10.

⁵ E Thabet, *Mubtada' al-Qawl fi Osoul 'Elakat al- Ra'aweya (Introduction to the Principles of Citizenship)*, Gehaz Da'm wa Tawzi' al-Ketab, Cairo University, Cairo, 2001, pp.117-118. It can also be construed by the Hague Convention., see Article 6: "Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired *without any voluntary act* on his part may renounce one of them with the authorization of the State whose nationality he desires to surrender..." [Emphasis added]. See Hague Convention on Conflict of Nationality Laws, 1930, <http://law.dal.ca/kindred.intllaw/conflictfnationality.htm>, accessed on 20 April, 2005.

⁶ Law No. 26 of 1975 with regards to Egyptian citizenship.

⁷ This right can also be construed from Article 52 of the Constitution: "Nationals have the right to emigrate temporarily or permanently; the law organizes this right and the procedures and conditions of leaving the country."

Article 1- Egyptians are:

First- Those who settled in Egypt prior to 5 November 1914 and who were not citizens of foreign states, who remained residents of the country until the coming into force of this Law [and their offspring]

Second- He who on 22 February 1958 was an Egyptian citizen in accordance with Law No. 391 of 1956

Third- He who obtained the nationality of the United Arab Republic in accordance with the provisions of Law No. 82 of 1958 on the Nationality of the United Arab Republic:

One should, under all circumstances, keep his Egyptian citizenship until the application of this law. Zionists are excluded from the application of the provisions of this law.

Article 2- An Egyptian is:

- 1- He who is born to an Egyptian father.
- 2- He who is born, in Egypt, to an Egyptian mother and an unknown or stateless father.
- 3- He who is born, in Egypt, to an Egyptian mother and his legal lineage to his father has not been established.
- 4- He who is born in Egypt to unknown parents; the foundling is considered to have been born in Egypt if the opposite has not been proven.

It is clear that Egypt does not apply the *jus soli* principle. To acquire Egyptian citizenship at birth in accordance with the 1975 Nationality Law, one must either have an Egyptian father or an Egyptian mother and a stateless or unknown father, provided the act of birth occurs on Egyptian territory (a compromise between the *jus soli* and *jus sanguinis* principles). The only exception to this rule is when a person is born in Egypt to unknown parents, until the identity of the parents is revealed.

Unlike many countries, and prior to the latest amendment to the law, Egypt did not grant its nationality at birth to those born to Egyptian mothers and non-Egyptian fathers whose nationality was established. Whether the child was born in Egypt or abroad made no difference. In order to avoid statelessness, the Egyptian legislature permitted the Egyptian mother to pass on her citizenship to her children born out of wedlock or to unknown or stateless fathers, provided the children were born in Egypt (Articles 2(2), 2(3)).

These requirements were heavily criticized by Egyptian academics. For example, Professor Enayet Thabet, Professor of Law and head of the Department of Private International Law at Cairo University, explained that the Egyptian legislature feared that if the Egyptian woman's child were born abroad, either out of wedlock or to an unknown or stateless father, he would grow-up lacking the sense of belonging or loyalty to the

country. He argued that the legislator should have stipulated that the mother be a resident of Egypt regardless of where birth takes place, as it could happen unexpectedly while the mother is temporarily out of the country. If the mother resides in Egypt, the fact that the child is born abroad will not affect his sense of belonging, for the mother will most likely return to the country and the child will grow-up in Egypt among Egyptians.⁸ He proceeded by making an interesting statement:

If [the legislator] is afraid of the child's lack of loyalty should his mother be a resident of a foreign country, as he will grow-up away from Egypt, such possibility also exists when the [Egyptian] father resides abroad. And if [the legislator] does not assume that the risk of lack of loyalty is present in the case of those who are born abroad to Egyptian fathers [who do not live in Egypt], then there is nothing to make him think otherwise of the mother, since her influence on the child is equal, if not greater, than that of the father.⁹

The Egyptian legislator did not wish to prevent those who were born abroad to Egyptian mothers, either out of wedlock or to stateless or unknown fathers, from obtaining the Egyptian nationality. He made acquisition of citizenship possible subject to the following conditions:

- That the son/daughter request to become Egyptian within a year of reaching the age of consent (21 years), provided they make Egypt their regular country of residence, and
- That the Minister of Interior does not object to their request for a period of one year following the submission of the request (Article 3).

Needless to say, this provision should have been changed, for it subjected the child who was born out of wedlock to discriminatory measures such as statelessness, and placed him under the mercy of the Minister of Interior, who had the power to reject his application. It is true that the Minister's negative decision could be appealed at the administrative courts (State Council, or *Maglis al-dawla*);¹⁰ nevertheless, it was unclear why should people be punished and denied all the rights of citizens simply because they were born abroad. Thankfully, in 2004, the 1975 Nationality Law was amended, giving more rights to all those born to Egyptian mothers. This will be discussed in detail below as well as in the third chapter of this report.

Egyptian law also facilitates the naturalization of those of Egyptian origin (Article 4, (First) and (Second)) and of any non-Egyptian born in Egypt, whose father was also born in Egypt provided he belongs to the majority population of an Arab or Islamic country

⁸ E Thabet, *Qira'a Muta'aneya fi Tashri' Tanzim Ra'awayat al-Dawla al-Misriya (Reading of the Legislation Organizing Citizenship in the Egyptian State)*, Gehaz Da'm wa Tawzi' al-Ketab, Cairo University, Cairo, undated, p.19.

⁹ Ibid, p.20. Also see E Thabet, supra n.5, pp.28-30.

¹⁰ The terms administrative courts, State Council and Council of State will be used interchangeably in this text.

(Article 4, Third). This latest requirement is intended to promote integration as Egypt is both an Arab and an Islamic State.

Derivative acquisition of nationality

Although Egypt does not adopt the *jus soli* principle, it facilitates the naturalization of those who are born in Egypt to non-Egyptian parents provided they fulfill certain requirements (See Annex).¹¹ First, they cannot apply before the age of 21. This being said, it is important to clarify that the applicant need not live in Egypt for 21 years before he applies for citizenship. He simply needs to be a regular resident of Egypt at the time he turns 21 regardless of the length of time he spent in Egypt prior to reaching this age.¹² Moreover, the applicant should apply for citizenship within one year from the day he turns 21 otherwise he loses the right to become a citizen following the requirements of Article 4 (Fourth). In this case, he will have to apply according to the procedures stipulated by Article 4 (Fifth).

In addition, the applicant needs to be mentally and physically fit. A handicap should not prevent a person from applying for citizenship if he can support himself and avoid becoming a burden on society. Furthermore, he needs to be of good reputation, have no serious criminal record, know Arabic, and have a legitimate source of income.

Two points merit clarification before examining Article 4 (Fifth). The fact that the legislator demanded that the applicant know Arabic is meant to ensure his ability to integrate in Egypt and establish a link with the country. Residence at the time of application is also stipulated in order to strengthen that link. This is in line with the International Court of Justice's jurisprudence with regards to effective nationality.¹³ One might wonder how can a person that was born in Egypt and lived abroad until the age of consent before moving back in order to apply for citizenship have a strong link to the country.

It could be argued that the legislator took emotional and practical factors into consideration. The emotional factor is inspired by the *jus soli* principle and aims at facilitating the naturalization of foreigners who were born in Egypt and who feel a strong emotional tie to the country. This tie is manifested by the effort they made to reside in Egypt at the time they were 21 or, if they were residing abroad, returned to live in Egypt. The practical criterion is that of requiring that the applicant know Arabic. Unless a foreigner born in Egypt grows-up in an Arab country, there is little chance for him to have learned Arabic except if he made an effort to take language classes. The combined effect of the return to the country of birth and knowledge of the language demonstrate a strong potential for integration in Egypt and an effective tie to the country. Non-Egyptian

¹¹ Law No. 26 of 1975, Article 4 (Fourth). See Annex for the text of the law.

¹² E Thabet, *supra* n. 8, p.53.

¹³ For a good case on effective nationality see ICJ Jurisprudence in *Nottebohm (Lichtenstein v. Guatemala)* 1951-1955. Second Phase, Judgment, 6 April 1955, <http://www.icj-cij.org/icjwww/idocuments/isummaries/ilgsummary550406.htm>, accessed on 26 April 2005.

Arabs who are born in Egypt on the other hand have much better chances of integrating and would only need to reside in the country at the time they reach the age of consent.

One of the most difficult requirements to fulfill is that of having a legitimate source of income. Unemployment rates are high in Egypt and priority in employment is always given to Egyptians. As it will be explained below, foreigners who wish to work in Egypt need a work permit, which is not easy to obtain. For a foreigner born in Egypt to be naturalized in accordance with Article 4 (Fourth), he must be aged between 21 and 22 be a regular resident of the country, fluent in Arabic, and most importantly, have a work permit and be employed. Those who are exempted from having a work permit still need to be employed.

If a person is not born in Egypt and wishes to become a citizen, he will fall under Article 4 (Fifth).¹⁴ Two things merit clarification if an applicant wishes to become Egyptian according to Article 4 (Fifth). First, the applicant should enter the country legally and legalize his stay for 10 years.¹⁵ Any period spent in Egypt illegally will most likely be deducted from the required 10 years and might give the Minister of Interior the right to reject the application. The decision can then be appealed at the State Council. Needless to mention that legalizing residence is contingent upon having a work permit, or enjoying special or temporary residence rights. Other than this, the non-Egyptian will face difficulty in obtaining or renewing his residence permit. Second, unlike those who fall under Article 4 (Fourth), applicants under Article 4 (Fifth) are not bound by a deadline before they are eligible to submit the application for citizenship. What is required is that they spend 10 consecutive years in the country. The applicant should also fulfill the other criteria stipulated in Article 4 (Fourth), which are difficult to meet, especially when it comes to obtaining a work permit.

The Egyptian legislator also facilitated the naturalization of foreign wives of Egyptian nationals, whereby they may obtain citizenship two years after they submit an application for naturalization, provided the Minister of Interior does have any objections. The application for naturalization may take place at anytime after the marriage takes place (Article 7); however, this right is not granted to non-Egyptian spouses of Egyptian women, who must follow the criteria stipulated in Articles 4(Fourth), or (Fifth). It is recorded that between 1986 and 2004 the Minister of Interior refused to grant Egyptian citizenship to 7 women married to Egyptians, all for reasons related to national security, yet no detailed explanation was given.¹⁶

Withdrawal of citizenship

The law permits the revocation of citizenship from those who obtained it within 5 years of their naturalization if it is established that they committed acts that constitute a threat to the interests of the State or demonstrated signs of disloyalty to the country. The

¹⁴ Law No. 26 of 1975 with regards to Egyptian citizenship.

¹⁵ E Tahbet, *supra* n.8, p.70.

¹⁶ A Khalil, *Halat Isqat wa Zawal Al-Genseya Al-Misriya. (Cases of Revocation and Loss of Egyptian Citizenship)*, 2005, p.5. [On File with Author].

revocation criteria are enumerated in Article 15, and could be summarized in the commission of a felony or a crime that is degrading to honor, being indicted by a court of law for having committed a crime against the security of the State, and ceasing to be a resident of Egypt for two consecutive years. Revocation in these cases can only take place during the five years following naturalization. Nationality may also be revoked during the ten years following naturalization if it is discovered that the applicant resorted to fraudulent means in order to obtain Egyptian citizenship.

Article 16 permits the withdrawal of citizenship of any Egyptian regardless of the means of acquisition if:

- 1- He obtained another citizenship by a means other than the one stipulated in Article 10.¹⁷
- 2- He accepted to enroll in a foreign State's Military without receiving a permit from the [Egyptian] Minister of Defense.
- 3- He was a regular resident of a foreign State and was sentenced for committing a crime against the security of the [Egyptian] State while being abroad.
- 4- He accepted, while he was abroad, employment with a foreign government or a foreign or international agency, and continued to work for it despite the Council of Ministers' issuance of a justified order for him to resign from the position if continuing to work in this position jeopardized the higher interests of the State. The citizen is given a period of 6 months to leave his position from the day he is informed of the order.
- 5- His place of regular residence is abroad and he joins a foreign agency whose role is to work on the destruction of the social and economic structure of the Egypt by force or by any other illegal means.
- 6- He worked for a State or foreign government at war with Egypt, or with whom diplomatic ties have been severed, and his work could negatively affect the State's military, diplomatic, or economic position or jeopardize any other national interest.
- 7- He was described as a Zionist at any time.¹⁸

Article 18 explains how citizenship may be returned to those who lost it through withdrawal or revocation. The Minister of Interior has the authority to restore the Egyptian nationality to those who had it revoked during the first five years following their acquisition of Egyptian citizenship. The President of the Republic, on the other

¹⁷“It is not permitted for an Egyptian to obtain a foreign nationality without the Minister of Interior' permission; otherwise he will be considered an Egyptian citizen in all forms and situations provided the Council of Ministers does not decide to revoke his citizenship in accordance with Article 16 of this Law. The Egyptian will lose his citizenship if he obtains a foreign one after receiving permission from the authorities.

However, it is permitted that the applicant's request to obtain a foreign nationality contain a demand expressing his wish to retain the Egyptian citizenship for himself, his wife, and his children. If he expresses his wish to keep his Egyptian citizenship during a period that does not exceed one year following his naturalization, he and his family will keep their Egyptian citizenship despite their naturalization.

¹⁸ Law No. 26 of 1975. Article 16.

hand, can order the restoration of citizenship at any time before the five-year period elapses.

Research demonstrates that the majority of cases of citizenship withdrawal took place because the person violated Articles 10 and 16(1) of the Law on Nationality. It is reported that between 1998 and 2003, 26 individuals lost their citizenship because they obtained foreign nationalities without the consent of the Egyptian government. Moreover, between 1986 and 2004, 7196 individuals lost their citizenship after being allowed to obtain foreign nationalities and abandon the Egyptian one.¹⁹ On the other hand, it is reported that between 1986 and 2005, 819 persons had their citizenships restored following a decision/decreed issued by the Minister of Interior in accordance with Article 18 of the Nationality Law.²⁰ Since the Minister's decree is of an administrative nature, it is possible for a person to appeal the decision at the Council of State.²¹

Developments

On 14 July 2004, a positive development in Egypt's citizenship law took place, allowing those born to Egyptian mothers to obtain Egyptian citizenship regardless of the status of their father or their place of birth. Law No. 154 of 2004²² amended Article 2 of the 1975 Nationality law and cancelled Article 3, which stipulated that a child born to an Egyptian woman out of wedlock or to a stateless or unknown father could not be an Egyptian citizen at birth unless he was born in Egypt.

The Minister of Interior issued Decree No. 12025 of 2004 explaining the process of application for citizenship in the case of those born to Egyptian mothers and non-Egyptian fathers.²³ Although not officially stipulated, children of Egyptian women married to Palestinians are prevented from obtaining Egyptian citizenship (see chapter 3 for more detail).

It is clear that there is a degree of discrimination against foreign men married to Egyptian women, as they are not eligible for expedited naturalization. Although the new law facilitates naturalization of children born to non-Egyptian fathers, the application of the law places considerable constraints in terms of access to this right (see chapter 3 for further discussion).

¹⁹ A Khalil, *supra*, n.16, pp.2-3.

²⁰ *Ibid*, p.4.

²¹ *Ibid*, p.5. For examples of cases, see Case No. 1946, Year 47 of the Judicial Year, Technical Office No. 42, Session dated 10 December 2000; and Case No. 1947, Year 47 of the Judicial Year, Technical Office No. 42, Session dated 10 December 2000; and other cases. All cited in *Ibid*, p.5.

²² Law No. 154 of 2004, Official Gazette, Vol 28 bis (a), 14 July 2004, p.11.

²³ Minister of Interior issued Decree No. 12025 of 2004. Al-Waqa'e' Al-Masreya (Egyptian Proceedings) Vol. 166 bis, 26 July 2004, p.2.

RIGHTS OF CITIZENS AND NON-CITIZENS – ‘DISCRIMINATORY TREATMENT’?

The following sections will be dedicated to exploring the possibilities of exercising and accessing various rights by non-Egyptians. Examples include freedom of religion, the right to reside in the country, the right to work, and the right to education and health services. The term non-Egyptians refers to foreigners who have chosen Egypt as their place of residence, including migrants, refugees, and long-term residents. Some nationalities enjoy privileged status in Egypt either due to special bilateral relations between Egypt and their States or as a result of political circumstances. The Sudanese and Palestinians are arguable the most privileged in theory.

According to the 1976 *Wadi El Nil* (Nile Valley) Treaty between Egypt and Sudan, Sudanese citizens had unrestricted access to residence, employment, education, health services and ownership of property, which was tantamount to their enjoyment of a status similar to that of citizens. The same treatment was offered to Egyptians residing in Sudan. Following the assassination attempt in June 1995 against President Hosni Mubarak during his visit to Addis Ababa-(which was carried out by Sudanese extremists), the treaty between Sudan and Egypt was revoked. This marked a change not only in the lives of the Sudanese residing in Egypt, but also in asylum procedures with UNHCR (until 1995 few Sudanese felt the need to apply for refugee status even if they came to Egypt to escape persecution in Sudan). To be able to reside legally in Egypt, the Sudanese needed a visa and a residence permit. Similarly, their access to education and employment was restricted. The new Four Freedoms Agreement came into force to heal the wounds created by the assassination attempt against the Egyptian President. It gives Sudanese nationals the freedom of movement, residence, the ownership of property, and the right to work. The same treatment is granted to Egyptian nationals in Sudan. The implementation of the treaty is however still questionable and contingent upon the political developments in Sudan. However, one can argue that the brotherly relations between the two neighbors have been restored.

Freedom of Religion

Laws applicable to Egyptians with regards to religious freedom are also binding on foreigners as religion plays a major role in defining public order. According to Article 46 of the Egyptian Constitution, “The State shall guarantee the freedom of belief and the freedom of practice of religious rites.”²⁴ The law in Egypt does not ban conversions, and does guarantee a degree of religious freedom. However, a closer look at the Constitution and domestic jurisprudence will reveal that this right is not absolute. Article 2 of the

²⁴ Article 46 of the Constitution of the Arab Republic of Egypt, 1971. Quoted from <http://www.religiousfreedom.com/>, accessed on 22 April 2005.

Constitution states that “Islam is the Religion of the State. Arabic is its official language, and the principal source of legislation is Islamic Jurisprudence (*Shariaa*’).”²⁵

A proper reading of the Constitutional text requires analyzing each Article in light of the other. It is the understanding of the Egyptian legislator and judiciary that the freedom of thought, conscience and religion is available insofar as the Islamic *Shariaa*’ allows. In other words, practicing freedom of religion is guaranteed, provided it does not contradict the Islamic *Shariaa*’.

Islamic *Shariaa*’ only recognizes three monotheistic religions: Islam, Christianity, and Judaism.²⁶ The practice of any other religion in Egypt is curtailed by the Constitution²⁷ and could sometimes, as will be demonstrated below, be considered contrary to public order and morals, hence illegal.

Egypt’s interpretation of religion is different from that of the Human Rights Committee.²⁸ This raises an important question concerning the government’s flexibility with regards to conversion. Four scenarios may be found:

- Conversion from any religion to Islam.
- Conversion from Christianity to Judaism, or vice versa.
- Conversion from Christianity or Judaism to a religion other than those recognized by the Islamic *Shariaa*’.
- Conversion from Islam to another religion, whether monotheistic or not.

The first scenario is the most common in Egypt. The government generally welcomes such decision but does not engage in forced conversion. However, there are some reports that pressure is made on non-Muslims to convert. To make his conversion official, the non-Muslim can go to Al-Azhar mosque or the registry office and express his wish to convert to Islam following the required procedures. He will later be given a document that proves his conversion.

Nothing in the law prevents a Christian from converting to Judaism or vice versa. This type of conversion is a Constitutional right. If a Christian or Jew attempts to convert to a religion other than the three monotheistic ones, it will most likely be met with strong objections, as it will arguably be considered an unconstitutional act.

²⁵ H Mukhtar, *The Constitution of the Arab Republic of Egypt*, Al-Nesr Al-Zhahabi, 2002.

²⁶ Adherents to these religions are called *Ahl al-Ketab* (people of the Book)

²⁷ The Egyptian Supreme Court explained that Article 46 of the Constitution applies to the three monotheistic religions only. Supreme Court, Session of 1 March 1975, Case No. 7, Year 2 of the Judicial Year [Compilation of decisions of the Supreme Court], Vol 1, p 228. Case Regarding Bahais, quoted in N Bernard-Maugiron. *Le Politique à L’Épreuve Du Judiciaire: La Justice Constitutionnelle en Égypte (The Political put to Test of the Judiciary: Constitutional Justice in Egypt)*, Bruylant, Belgium, 2003, pp.190-191. Also see A Khalil, *Al-Wad’ Al-Qanuni Lelaganeb wa Al-Lage’een fi Misr fima Yata’alaq Behazr el-Tamiiz (The Legal Status of Foreigners and Refugees in Egypt with regards to the Prohibition of Discrimination)*, unpublished, pp.4-5.

²⁸ Human Rights Committee, General Comment 22, The Right to Freedom of Thought, Conscience and Religion (Article 18), 1993, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument), accessed on 26 April 2005.

Muslims in practice are not allowed to convert to other religions. Although there is no text in the law that penalizes conversions from Islam to other religions, its illegality could be inferred from Article 2 of the Constitution. National jurisprudence is in line with this interpretation. For instance, The Council of State rejected a person's attempt to change his name and religion from Islam to Christianity and did not recognize Bahai marriages.²⁹

In the same vein, as confirmed by the Supreme Constitutional Court, the Bahai religion is illegal in Egypt, and its partisans are considered to be acting in violation of Egyptian law; disbanding their religious ceremonies and centers is hence not against the Constitution.³⁰ Perhaps a new interpretation of the law is required.

Against this background, in April 2004, an historic judicial decision drifted towards a different path. The International Religious Freedom Report documented that:

In April, an administrative court issued a verdict allowing a Christian woman, who had converted to Islam and later converted back to Christianity, to recover her original (Christian) name and identity. Some legal observers believed the case would constitute a significant precedent as the Government has generally refused to acknowledge citizens' conversions from Islam to Christianity. The court's written verdict noted "...the Constitution guarantees equality among citizens...without any discrimination based on race, sex, language, or faith. The State also guarantees freedom of thought and religious faith in accordance with Article 46 of the Constitution...[the State] is legally committed to register the woman's real religion and is not allowed under any circumstance to use its assigned powers to force the woman to remain Muslim."³¹

Despite the Court's decision, it is unlikely that Egyptian authorities will change their policy at the moment. The administrative court's dictum does not bind other courts; yet one cannot deny that the judgment might spearhead a revolution in legal reasoning insofar as freedom of religion is concerned.

The Egyptian government is always aware of the limitations that *Shariaa'* can place on certain rights. Consequently, upon ratification of human rights conventions, the government enters reservations or declarations whose words are generally along the lines of 'Egypt will be bound by the convention provided it does not contradict the principles of Islamic *Shariaa'*, or 'Egypt will not be bound by the provisions that contradict Islamic *Shariaa'*.' For example, when Egypt ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) it explained that:

²⁹ Constitutional Judiciary on 25 March 1980. Case No. 2011. Year 33 of the Judicial Year, quoted in A Khalil, *supra* n.27, pp.4-5. For other cases of differential treatment based on religion, see A Khalil, *supra* n.27, pp.4-5 and accompanying notes.

³⁰ See A Khalil, *ibid*, p.5, footnote 3.

³¹ International Religious Freedom Report 2004, 15 September 2004.

<http://www.state.gov/g/drl/rls/irf/2004/35496.htm>, accessed on 21 April 2005.

...Taking into consideration the provisions of the Islamic Shariaa' and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it...³²

One of the reasons the Egyptian legislature is keen on adopting the principles of Islamic *Shariaa'* as the main source of legislation is the predominantly Muslim character of the State. Islam is the religion of the majority of Egyptians. In various sectors of society, sympathies for the Muslim Brotherhood exist, and although the Brotherhood is an illegal organization in accordance with Egyptian law, strong support for it can be found amongst Egyptians. Any attempt on the part of the Egyptian government to allow Muslims to convert to other religions will likely lead to a situation of civil unrest. Many Muslims will object and extremist organizations would be likely to use such discontent to excite the population. On this note, it is worth mentioning that it is still difficult to obtain a permit in order to build a church.

Although freedom of religion is a non-derogative right in accordance with Article 4 of the International Covenant on Civil and Political Rights (ICCPR), restrictions on the right to manifest one's own religion are permitted if they "are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."³³ In Egypt, allowing conversion from Islam to other religions is arguably both against the law, since the Constitution is the supreme legislation (see section entitled 'Egyptian legislation' above), and might cause instability in the country.

The passage quoted above might reflect the beginning of a new era of religious freedom in Egypt. Perhaps, in a few years, judges and legislators will have a different interpretation of the Constitution in a manner that will pave the way for more religions to be recognized in the country. At the moment, it is rather premature to predict any future developments.

Residence

Foreigners are required to have a residence permit to be able to live in Egypt. Besides visas (tourist or student visas) that are required from foreigners who want to spend a specific amount of time in the country, three types of residence permits exist.

Law No. 89 of 1960 outlined the types of residence permits to which non-Egyptians may be entitled. Article 1 of the Law defines the foreigner as anyone who does not have Egyptian citizenship³⁴ (United Arab Republic at the time).³⁵ Furthermore, Articles 17-20 explain the characteristics of each type of residence, which can either be special, normal,

³² International Covenant on Economic Social and Cultural Rights (ICESCR), 1966, <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty5.asp>, accessed on 21 April 2005.

³³ Article 18(3) of The International Covenant Civil and Political Rights (ICCPR), 1966, http://www.unhchr.ch/html/menu3/b/a_ccpr.htm, accessed on 21 April 2005.

³⁴ Egyptian citizenship is defined by Law No. 26 of 1975, as amended in 2004 – see the discussion in the previous sections.

³⁵ Law No. 89 of 1960 regarding entrance, exit, and residence of foreigners in the United Arab Republic. Note that this law came into force during the union between Egypt and Syria (UAR), hence the term 'the Egyptian territory,' and 'the Syrian or Northern Territory.'

or temporary (Article 17). Articles 18-20 explain who qualifies for which type of residence permit.

In 1996, the Minister of Interior issued a decree similar to the one mentioned in Article 20 (see Annex). In the decree, the Minister specified who is eligible for residence permits for periods that vary between three and five years, subject to renewal.³⁶ Following this decree, it was confirmed that foreign investors and refugees, whether recognized by UNHCR or the ones accepted in accordance with Article 53 of the Constitution, are to be granted residence permits for a period of five and three years respectively, subject to renewal.³⁷ The asylum process will be explained in the section entitled 'Refugees' below.

The classification of the types of residence permits is important in two aspects. First, special residence permit holders can have their residence renewed automatically upon request. Second, the Minister of Interior has no right to object to the request for renewal of the residence permit or expel special residents unless they fall under the ambit of Article 26 of Law No. 89 of 1960 which states:

It is not permitted to expel a foreigner who possesses a special residence permit unless his presence in the country could threaten internal or external peace and national security, or the national economy, or public health, public morals, public peace, or if he was a burden on the State. Expulsion should only take place after the case is submitted to the Committee mentioned in Article 29, and following its approval.

According to Article 29, the Expulsion Committee is composed of the following members:

- a. Deputy from the Ministry of Interior.
- b. President of the legislative department for the Ministry of Interior at the Council of State.
- c. President of the legislative department for the Ministry of Foreign Affairs at the Council of State.
- d. General Director of the Immigration, Passports, and Nationality Office.
- e. Director of the consular department at the Ministry of Foreign Affairs.
- f. A representative from the Office of General Security.

Other residence permit holders may have their request to renew their residence permits denied and may be expelled at any time if the Minister of Interior believes it is in the best interest of the State (Article 25).³⁸ It is argued by the majority of scholars that the Minister of Interior enjoys extensive, yet not absolute, discretion

³⁶ Decree No. 8180 of 1996, cited from A Khalil, *Al-Tashri'at al-Misriya zat al-'Elaqa Bellage'een (Egyptian Legislation Related to Refugees)*, paper presented at the Judges Conference on 'Refugees and the Law in Egypt' on 4-5 May 2004, Judges Club, Cairo, p.35.

³⁷ Ibid, p.35.

³⁸ Case 555 Year 7 of the Judicial Year, Session dated 7/2/1964, quoted in A Wafa, *Al-Markaz al-Qanuni lel-Aganeb fi al-Qanun al-Moaqaran wa al-Qanun al Misri (The Legal Status of Foreigners in Egyptian and Comparative Law)*, Gehaz Da'm wa Tawzi' al-Ketab, Cairo University, Cairo, 2004, p.112.

to expel those who he believes should not be on Egyptian soil.³⁹ Others believe that, in practice, normal and temporary residence permit holders could be expelled at any time without judicial supervision, which would constitute a violation of Article 13 of the ICCPR.⁴⁰

Property Ownership

Egyptian law differentiates between two types of property: immovable property (*Al-oqarat*), such as lands and buildings (*Al-Mabany*), and movable property (*Al-Manqulat*), which in addition to material objects, includes patents, industrial and intellectual property. Non-Egyptians have different ownership rights depending on the nature of the property.

1. Immovable property:

The Egyptian legislator differentiated between agricultural lands: vacant lands, buildings (the word 'building' as used in this text encompasses any construction, such as villas and apartments, etc...), and desert lands.

a. Agricultural lands (*Al-aradi al-zera'eya*):

Egypt was always a predominantly agricultural State prior to the wave of industrialization that took place during the Nasserite era (1954-1970). Land ownership was a symbol of wealth and pride for Egyptians. At a time when Egyptians suffered from capitulations, many foreigners owned large pieces of land on which Egyptian farmers worked. Consequently, there have been attempts to ban foreigners from owning agricultural lands prior to the end of the transitional phase following the coming into force of the Convention regarding the Abolition of the Capitulations in Egypt signed in Montreux.⁴¹ As a result, Law 37 of 1951 entered into force and prevented non-Egyptians from owning agricultural lands. However, exceptions to such ban were made, allowing non-Egyptians to own agricultural lands if the ownership rights were transferred through legal inheritance (*Al-mirath*) and will (*Al-waseya*). In addition, the law did not apply retroactively and allowed non-Egyptians to retain their legal possession of the agricultural lands they owned before the coming into force of this law.⁴²

Shortly after the nationalization of the Suez Canal in 1956, a wave of nationalism prevailed in the country, which was perhaps exacerbated by the Tripartite Aggression by Great Britain, France, and Israel. In 1963, Law No. 15 of 1963 was enacted, banning non-Egyptians from owning any agricultural lands, even those which they owned prior to the application of this law. Palestinians were the only non-Egyptians exempted from these

³⁹ A Wafa, *ibid*, pp.112-114. Jurisprudence also supports this view, see the Administrative Court Decision dated 18 December 1956. Cited in A Wafa, *ibid*, p.114.

⁴⁰ A Khalil, *supra* n.27, p.21.

⁴¹ A Wafa, *supra* n. 38, p.153.

⁴² Law No. 37 of 1951.

limitations⁴³ until this privilege was withdrawn from them with the ratification of Law No. 104 of 1985. The situation remains unchanged to this day.

b. Vacant lands and buildings (*Al-aradi al-fada' wa al-mabany*):

It took the legislator more time to prevent non-Egyptians from owning these types of immovable property. However, with the enactment of Law No.81 of 1976, foreigners were banned from possessing empty lands and buildings. This limitation was mitigated by a few exceptions:

- If the non-Egyptian assumed possession following legal inheritance.
- If the possession is rooted in the provisions of Law No. 43 of 1974 that deals with International and Arab investment.⁴⁴
- If the land or building belonged to a diplomatic or consular mission or residence of the head of the mission, provided it is applied on the basis of reciprocity or belonged to an international agency or organization.
- If the property is used for the foreigner's personal residence or private activity, subject to other conditions.

In 1996 Law No. 230 of 1996 was decreed, allowing foreigners to own a building, subject to three conditions:

1. That the non-Egyptian own up to a maximum of two buildings for the purpose of residence for him and his family or his private business after receiving a permit from the relevant Egyptian authorities.
2. That the area does not exceed 4,000 square meters.
3. That the building not be considered an historic monument, vestige, or remnant.⁴⁵

Foreigners also have the right to own vacant lands and buildings following legal inheritance, for diplomatic purposes, and the 1989 Law No. 230 on Investment.⁴⁶ The exception made for investors aims at guaranteeing the government's discretion to grant permits to foreigners who could contribute to the development of the country.

c. Desert lands:

Desert lands cannot be owned by non-Egyptians.⁴⁷

2. Moveable Property:

Egyptian law does not prohibit foreigners from owning immovable property so long as it does not threaten national interests. For instance, a non-Egyptian cannot own an Egyptian ship or be a member of any company that operates Egyptian ships.⁴⁸ However, other property rights are guaranteed.

⁴³ Law No. 15 of 1963. A Wafa, supra n.38, pp.154-155.

⁴⁴ See case No. 1199 of year 52 of the Judicial Year. Session of 27 November 1986, quoted in A Wafa, ibid, p.161, footnote 106.

⁴⁵ The law allows the Prime Minister to make exception regarding the first two requirements. See Law No. 230 of 1996.

⁴⁶ See A Khalil, supra n.27, p.6.

⁴⁷ Law No. 143 of 1981.

⁴⁸ A Khalil, supra n.27, p.6.

It is not clear what the status of Sudanese citizens is with regards to certain types of property ownership in particular. As will be explained below, Egypt and Sudan signed the so-called Four Freedoms Agreement which enables the Sudanese, *inter alia*, to own property in Egypt. It came into force as part of Egyptian law in September 2004. According to Article 3(2) of the Agreement, Sudanese citizens in Egypt have the right to own lands and buildings. No similar exceptions exist for people of other nationalities.

Adjudication

Egyptian law allows foreigners to access domestic courts without any discrimination and without having to pay a *caution judicatum solvi*. It is a constitutional right that is available to everyone irrespective of their nationality. Article 68 of the Egyptian Constitution states that access to Court is a right that is “guaranteed to all the people”. The Supreme Constitutional Court confirmed this in one of its judgments.⁴⁹

Right to Work

Due to the high unemployment rates in Egypt, in order to protect its domestic labor force from unwanted international competition, the government places restrictions on the right of foreigners to work. The restrictions are not absolute; rather, non-Egyptians must fulfill certain requirements. Article 27 the Law No. 12 of 2003 stipulates that foreigners may access the labor market in Egypt, provided it is based on reciprocity. In addition, the Minister of Labor may specify the cases in which the foreign worker can be exempted from the reciprocity requirement. Reciprocity does not guarantee automatic access to the Egyptian labor market, but it recognizes *prima facie* eligibility to apply for a permit. Put differently, citizens of States that prohibit Egyptians from working on their territory cannot obtain work permits in Egypt.

Work permits are also contingent upon other factors: First, the non-Egyptian needs to have a valid residence permit, or apply for one and obtain it.⁵⁰ Second, he must also fulfill other requirements that are listed in Decrees No. 136 of 2003, and 357 of 2004 (See Annex).

The Law also exempts a number of people from obtaining work permits, including:

- a. Those who had been exempted from this requirement following an international convention to which Egypt is party. The latest example is that of Sudanese citizens who, by virtue of the coming into force of the Four Freedoms Agreement, do not need a work permit.

⁴⁹ Decision No.98. Year 4 of the Judicial Constitutional Year. Session No. 5, March 1994, quoted in A Wafa, *supra* n.38, p.176. Also see Decision No.99. Year 4 of the Judicial Constitutional Year. Session of 4 June 1988. Published in the Official Gazette on 23 June 1988. 25th edition.

⁵⁰ A Al-Borai, *Al-Wagiz fi Qanun al-‘Amal (Treaties in Labor Law)*, Dar al-Nahda al-‘Arabeya, Cairo, 2003, pp.331-332.

b. Administrative staff in Consulates, Embassies, and International Agencies, Foreign correspondents, and some others.⁵¹

Besides the requirements stipulated by the law, there are certain occupations that non-Egyptians cannot practice. The so-called ‘liberal professions’ are only restricted to Egyptians, unless the rules and regulations of these occupations allow for exceptions. Examples of liberal professions include engineering, medicine, and legal practice.

No one may practice law in Egypt unless they join the Bar Association, whose membership is restricted to Egyptians. Exceptions may only be made to Arab lawyers subject to the rules of reciprocity. Similar restrictions exist in pharmacy, dentistry, medicine, and veterinary medicine.⁵²

Under no circumstances will discrimination in salaries based on race, origin, language, religion, or creed be tolerated,⁵³ and no employment contract may be terminated for reasons of color, gender, social status, family responsibilities, pregnancy, religion, or political opinion.⁵⁴

Other Rights

Healthcare

According to widespread practice as well as a ministerial decision dated February 2005, foreigners have the right to access public primary health care and to receive the same treatment as Egyptians. The implementation of this decision is however highly dependent on bureaucratic procedures, which often hinder the execution of laws. In addition, according to human rights organizations (EIPR – see chapter one), it is reported that non-Egyptians suspected of suffering from HIV/AIDS are denied treatment and are often deported back to their countries of origin.

Education

Egyptian law on education is vague at best. The 1981 Law No. 139 on education as amended in 1999 deals exclusively with Egyptian children, leaving non-Egyptians out of the ambit of its application.⁵⁵ Also, those who have written about the subject cannot agree on one conclusion. Taking Law No. 139 into account, Dr. Abdallah Khalil,⁵⁶ Court of Cassation lawyer, Legal Researcher with UNDP, and one of the contributors to this report, supports the view that public education is unavailable to non-Egyptian children. Professor Ashraf Wafa of Cairo University believes that primary education is granted to

⁵¹ See Article 2 of Ministerial Decree No. 136 of 2003 with regards to the conditions and procedures of issuing work permits to foreigners.

⁵² A Khalil, supra n.16, pp.10-11, and A Khalil., supra n.27, pp.25-26.

⁵³ Article 35 of Law No. 12 of 2003 (Labor Law).

⁵⁴ A Al-Borai, supra n.50, p. 714-716.

⁵⁵ A Khalil, supra n.16, p.27 and supra n.27, p.12.

⁵⁶ Abdallah Khalil conducted extensive research for this report.

foreign children on the basis of custom.⁵⁷ Moreover, the author of this chapter has previously argued that the right to education is, in theory, granted to all children in Egypt on a mandatory basis, regardless of their nationality, following the entry into force of Law No.12 of 1996 on the Rights of the Child.⁵⁸ He adds that, unlike the 1981 Law on education, Law No. 12 of 1996 does not distinguish between citizens and non-citizens. Furthermore, its enactment followed the ratification and publication of the Convention on the Rights of the Child (which forbids discrimination between children for any reason) in the Official Gazette, making it part of domestic law.⁵⁹ This view seems to be supported by the Supreme Constitutional Court,⁶⁰ the highest Court in Egypt whose role is to supervise the constitutionality of certain laws. However, practice might favor Khalil's view, especially in regards to refugees, who are hardly able to overcome administrative barriers.

University education is also available to non-Egyptians. However, students need to pay fees that range from £1,000 to £2,500 per year.⁶¹

SPECIAL GROUPS OF NON-EGYPTIANS: REFUGEES

There are no detailed laws other than the Refugee Convention that explain the rights and obligations of refugees in Egypt; all the laws that apply to foreigners cover refugees. However, one of the major differences between refugees and other groups of non-Egyptians is that the former cannot enjoy the protection of their States should they face problems in Egypt.

There are three categories of refugees in Egypt: namely Palestinian refugees, refugees in accordance with Article 53 of the Egyptian Constitution (Constitution Refugees), and Convention refugees.

a. Palestinian refugees

There are at least 70,000 Palestinian refugees in Egypt.⁶² Because of the historical ties between Palestinians and Egypt, they were granted privileges from the Egyptian

⁵⁷ A Wafa, *supra* n.38, p.46.

⁵⁸ See T Badawy, *The Right of Refugee Children to Education in Egypt*, (unpublished), 2004, p.7.

⁵⁹ The Convention on the Rights of the Child was published in the Official Gazette on 14 February 1991 (The Official Gazette, Vol 7, 14 February 1991).

⁶⁰ See N Bernard-Maugiron, *supra* n.27, p.331.

⁶¹ See Executive Charter of Law No.49 of 1972 dealing with University Organization, issued following Presidential Decree No. 809 of 1975. (Article 275 (Fifth)). Quoted in A Khalil, *supra* n.27, pp.27-28.

⁶² Palestinian refugees in general are defined as

“- Refugees who were registered by UNRWA and were regarded as legitimate refugees by the states in which they reside (the five field operations).

-Refugees who live in UNRWA-served areas but who were not registered with UNRWA because they were not in economic need, or because they left Palestine before 1948, or for other reasons.

- Refugees who could not register because they reside in countries where UNRWA does not operate, including Egypt, Libya, Iraq and other Arab countries.

government that refugees from other countries do not enjoy. . Nevertheless, one of the major drawbacks of being a Palestinian refugee is the near impossibility of obtaining Egyptian citizenship, unless they marry Egyptian men.

Palestinian refugees in Egypt are under the protection of the Egyptian state. Unlike other refugees, Palestinians are to some extent integrated into Egyptian society. They are given residence permits for a period of three years,⁶³ subject to renewal, and have some preferential treatment with regards to accessing the employment market.⁶⁴ For example, they are not required to pay permit fees, which can amount to 1000 LE. Second, as they are fluent in Arabic, employers may favor them over non-Arabic speaking refugees. However, the reader should not be misled by these facts as they may give a false sense of stability for Palestinians. By being permanently barred from obtaining Egyptian citizenship, Palestinian refugees are at the mercy of the Egyptian government with regards to residence permit renewals. Moreover, they are vulnerable to the devastating effects of changing laws. As explained above, Palestinians lost the right to own agricultural lands in Egypt by the coming into force of Law No. 104 of 1985. Nothing prevents the passing of similar restrictive laws in the future.

Moreover, according to the Minister of Education's Decree No. 24 of 1992 (on access of returnees and foreigners to schools), Palestinian children have the right to enroll in public schools provided their parents work with the Egyptian government, the public sector, or the Military in Egypt, or if they are retired. This distinction raises doubts with regards to the status of the majority of Palestinian children whose parents do not fall under any of the categories specified by the Decree. Accordingly, Oroub Al Abed explained that "Private schools are the only places permitted to Palestinians to get their education. Palestinians may enroll in government universities but are expected to pay foreigner's fees of 1,000 Sterling pounds. If the mother of the student is Egyptian, the student pays 10% of the fees."⁶⁵ It is highly likely that Palestinians not covered by the 1992 Minister of Education Decree are treated like other foreigners and as a result can only enroll in private schools (Article 5 of the Decree).

b. Political Refugees (Constitution Refugees)

The term 'political refugees' refers to those that were granted refugee status in accordance with Article 53 of the Egyptian Constitution:

-Displaced persons who left the West Bank and Gaza during the 1967 War. Some of these people were already registered with UNRWA, therefore UNRWA created emergency refugee camps for them in Jordan. Others never registered. The majority of the displaced arrived in Jordan Some went to Syria and others to Egypt." O Al Abed, *Palestinians in Jordan and Egypt: Holders of Travel Documents: Their Legal Rights?*, pp.1, 9, <http://www.aucegypt.edu/academic/fmrs/Research/PalestiniansinJordan.pdf>, accessed on 26 April 2005.

⁶³ Minister of Interior's Decree No. 8180 of 1996, and A Khalil, *supra* n.27, pp.35-36.

⁶⁴ See Annex.

⁶⁵ O Al Abed, *supra*, n.61, p.10.

“The State shall grant political asylum to every foreigner who was persecuted because of his defense of the interests of peoples, human rights, peace, or justice. The extradition of refugees is prohibited.”

The decision whether or not to grant a person refugee status in accordance with Article 53 lies with the Presidential Office. Those who were granted asylum on this basis were usually high ranking officials in their States. Examples include Jaafar Nimeiri of Sudan and Shah Mohamed Alireza Pahlevi of Iran.

Again, those who are accepted as ‘political refugees’ are granted residence permits for a period of three years subject to renewal.⁶⁶ In addition, their children are treated like Egyptians with regards to accessing public schools.⁶⁷ Furthermore, they are not vulnerable to the restrictive measures regarding the protection of the national employment market that other foreigners must endure. However, they need an authorization from the Presidential Office in order to access the employment market.⁶⁸

c. Refugees recognized in accordance with the 1951 Refugee Convention Relating to the Status of Refugees and its 1967 Optional Protocol and the 1969 OAU Convention

Egypt was one of three non-western States on the drafting committee of the 1951 Convention.⁶⁹ It is also party to the 1967 Protocol and 1969 OAU Convention on African Refugees (see beginning of the Chapter). On 10 February 1954, the government of Egypt and UNHCR signed a Memorandum of Understanding (MOU) and it was agreed that UNHCR was to conduct refugee status determination (RSD) functions on behalf of the government. The latter undertook the responsibility of granting residence permits to those that UNHCR believed qualified for refugee status, and as such, should be provided with protection.⁷⁰

According to Egyptian law, refugees recognized by UNHCR should be given residence permits for a period of three years;⁷¹ nonetheless, in practice, they are only issued permits for six months subject to renewal upon expiration. As of 2002, asylum seekers are also being granted residence permits for six months subject to renewal (until UNHCR reaches a decision about their status). Oftentimes, as will be explained below, refugees complain about delays in obtaining their residence permits, which may expose them to difficulties. It is not clear whether the delay is particular to refugees, or to all foreigners. Moreover, the authorities cannot renew a refugee’s residence permit without the prior consent of UNHCR and the Ministry of Foreign Affairs, which again may take some time to obtain. The residence permits that asylum seekers and refugees receive provide them with effective protection against *refoulement*. However, the ignorance of government officials

⁶⁶ A Khalil, supra n.27, p.36.

⁶⁷ Article 5(3) of the Minister of Education’s Decree No. 24 of 1992.

⁶⁸ See Articles 31 and 9(d) and of the Minister of Labor’s Decree No. 357 of 2004 regarding the conditions and procedures of issuing work permits to foreigners.

⁶⁹ T Badawy, supra n.58, p.1.

⁷⁰ Articles 2 and 6 of the Memorandum of Understanding between UNHCR and the government of Egypt. Al-Waqa’e’ Al-Masreya (Egyptian Proceedings), Vol. 25 bis (a), 30 March 1954.

⁷¹ Minister of Interior’s Decree No. 8180 of 1996, quoted in A Khalil, supra n.27, p.35-36.

of UNHCR cards oftentimes impedes the access of refugees to other rights including freedom of movement, residence, primary education, health services and access to justice and work provided a work permit is obtained.

Upon ratifying the 1951 Convention, Egypt made a reservation to the following Articles:

- 12(1) in respect of personal status;
- 20 (rationing);
- 22(1) (elementary education);
- 23 (public relief); and
- 24 (Labor Legislation and Social Security).

Egypt's main concern with these Articles was that they considered the refugee as "equal to the national...[and could] affect the discretionary authority of Egypt in granting privileges to refugees on a case-by-case basis."⁷² Such reservation minimizes the refugees' possibility of finding employment in the formal sector and accessing elementary education.

Right to education

As indicated above in the section entitled 'other rights', there are different views on whether foreign children can access elementary education in State schools. Similar questions seldom arise with regards to private schools as non-Egyptians are admitted provided they pay the fees. Refugees can hardly afford the fees needed for enrollment in private schools so public schools are their only available option.

Although in theory, the law allows foreign children to access public schools, refugees remain disadvantaged due to administrative barriers.⁷³

The obstacles that refugees face in accessing public education are caused by the lack of clear procedures regulating the selection process in schools. Moreover, the fact that schools are overcrowded and that applicants are put on waiting lists for extended periods of time makes these schools the final decision making body over who should be admitted. If they have to choose between a citizen and a refugee, priority will most likely be given to the former.⁷⁴

In 1992, the Minister of Education issued Decree No. 24 allowing Sudanese children, *inter alia*, to enroll in Egyptian schools.⁷⁵ In 2004, the Minister of Education issued another decree, which reportedly extended the application of the 1992 decree to other

⁷² See Declarations and Reservations to the 1951 Convention Relating to the Status of Refugees. As of 1 October 2004. Egypt, at 8. <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+rwwBmLeKJSpwwwwwwwwwhFqA72ZR0gRfZNtFqrpGdBnqBAFqA72ZR0gRfZNeFqcGn5nGVwBodDDzmxwwwwww/opendoc.pdf>, accessed on 24 April 2005.

⁷³ For a comprehensive explanation of the administrative barriers, see T Badawy, *supra* n.109, pp.10-14.

⁷⁴ *Ibid*, p.12.

⁷⁵ Decree No. 24 of 1992 regarding scholarships and procedures governing foreign children's access to Egyptian schools and access of Egyptian children returning to Egyptian schools from abroad. Published in the Egyptian Proceedings, Vol.54, 3 March 1992.

refugees.⁷⁶ Refugees must present certain documents such as a birth certificate, a valid passport or valid national identity document (refugee card), the original school certificate from the country of origin, and a letter from UNHCR, in addition to other documents.⁷⁷

It is rather difficult for refugees to obtain some of these documents due to the conditions under which they fled their countries of origin. Moreover, delays in obtaining valid residence permits can cause some refugee children to miss one school year. In addition, those who were denied refugee status have no chance of enrolling their children in Egyptian schools, unless they are able to obtain a residence permit. Finally, a careful reading of Article 5 of the 1992 decree will reveal that the law limits enrolment to private schools only.

Right to Access Courts

Delays in issuing residence permits decrease the refugees' chances of accessing Egyptian courts. As demonstrated earlier, foreigners have the right to access courts; however, they must have residence permits or valid visas in order to sign a power of attorney for a lawyer to represent them.⁷⁸ Delays can also subject refugees to arrest for lack of valid documents. It usually requires a few days before a refugee is released from detention following UNHCR's intervention.

Right to Work

UNHCR was finally successful in convincing the Egyptian government to strike-out the words 'work not permitted' that are stamped on refugee residence permits. This will probably increase the refugees' chances of finding employment in the future. Nevertheless in practice, employers still require refugees and asylum seekers to procure work permits prior to being hired. Since refugees are given the same treatment as other non-Egyptians, they must follow the requirements stipulated in the Labor Law (explained above); and no exceptions are made except by law or treaty. Examples include the Four Freedoms Agreement between Egypt and Sudan, which came into force in September 2004 following its publication in the Official Gazette.⁷⁹ Consequently, Sudanese citizens including refugees are no longer required to obtain work permits. This is theoretically a positive development. In practice, Sudanese refugees can hardly access the formal employment market as they are constantly asked by their employers to show their work permits.

⁷⁶ See E Dingemans. *Educational Need and Priorities for South Sudanese Refugees in Cairo*, Field Report, (FMRS report), Appendices 2 and 3, February 2002.

⁷⁷ Ibid, and Article 3 of Decree No.24 of 1992.

⁷⁸ A Khalil, *supra* n.27, p.17.

⁷⁹ Agreement Between the Government of the Arab Republic of Egypt and the Government of the Republic of Sudan on Freedom of Movement, Residence, Work, and Property. Official Gazette, Vol.37, 9 September 2004, p.2041.

RECOMMENDATIONS AND CRITIQUE

Despite the positive and commendable steps that the government undertook, numerous points merit scrutiny. Also, in order to guarantee that the human rights of foreigners, particularly refugees, are not jeopardized, changes to the procedures governing expulsion should be made. Finally, there is a need for clarification regarding whether refugee children and adults have the right to study and work in Egypt. There have been several debates on the subject and a conclusive decision is required.

Against this background, the author recommends changes to the following:

a. Nationality Law

First, the fact that the applicant for citizenship needs to be employed to secure a legitimate source of income excludes groups of potential citizens from naturalization. For example, as demonstrated above, Convention refugees cannot access the formal employment market in practice. Therefore, it is virtually impossible for a refugee recognized by UNHCR to obtain Egyptian citizenship. Opening the door to naturalization will offer refugees protection and a wish to integrate in a society to which they can contribute. By being barred from obtaining Egyptian citizenship, refugees feel a sense of isolation in their host State, which has adverse consequences on their lives and on society in general.

Second, as demonstrated above, those who are born in Egypt and wish to be naturalized must apply for citizenship within one year of reaching the age of consent. The legislator should not have given this category of applicants a deadline for application inasmuch as it did not place a similar restriction on those who apply for citizenship based on long-term residence. Also, it is unclear which procedures need to be followed for those who, at the age of 21 or 22, could not find employment because of their enrolment in an Egyptian University and, as per local custom, are financially dependent on their families.

Third, excluding foreign husbands of Egyptian wives from accelerated naturalization deserves attentions. It is likely that a foreign male that lives with his Egyptian family in Egypt would be more willing to integrate than other groups of people that are favored by the country's Nationality Law. Accordingly, the author recommends that foreign husbands be required to fulfill the same conditions that foreign wives of Egyptian men must meet (Article 7).

Fourth, the policy reason of not granting citizenship to Palestinians should be reversed. Unlike other non-Egyptians, by virtue of sharing the same language, cultural values, and of having lived in Egypt for many generations, Palestinians are the easiest category of foreigners to integrate.

Besides the unjustified discrimination against Palestinians, Egyptian nationality law does not distinguish between applicants based on race, religion, nationality, ethnic or social origin, or any other grounds. Perhaps, the only obvious reason for rejection besides being

of Palestinian origin, having a criminal record, or a serious handicap is when the applicant holds political opinions that might be deemed dangerous to the country. Examples of such opinions could be construed from Article 16, which states the terms upon which Egyptians can lose their citizenship. On this note, it is worth mentioning that excluding applicants for naturalization on the basis of their disability is particularly distasteful and constitutes a severe form of unjustified discrimination against those who may have their suffering decreased by naturalization. The Egyptian nationality would give them access to free healthcare and spare their families the trouble of having to renew their residence permits on a regular basis. In addition, it will protect them from a potential discretionary decision by the Minister of Interior to expel them from Egypt.

b. Expulsion

As explained above, foreigners with special residence permits cannot be expelled without the approval of a special committee established in accordance with Article 29 of Law No. 89 of 1960. Convention refugees also enjoy a similar type of protection as UNHCR interferes on their behalf in order to protect them from *refoulement*. Thankfully, the Egyptian authorities generally respond to these UNHCR interventions. The situation is less promising for foreigners with normal and temporary residence permits, as they can be expelled at any time following a decision by the Minister of Interior. Unlike special permit holders, it is argued that other foreigners have no right to appeal the Minister's decision.⁸⁰ For this reason the author recommends a change to the law so that every foreigner be required to appear before the special committee established under Article 29 of Law No. 89 of 1960 prior to deportation.

c. Education and work

It was explained in this chapter that there are at least three different interpretations of the existing laws on education and of how this right can be achieved. A more decisive law needs to come into force and put an end to speculations once and for all. This also applies to the right to work. As demonstrated above, in theory, Sudanese citizens have the right to work without a permit. This should be outlined in a decree issued by the Minister of Labor in order for employers to be informed about the benefits that Sudanese citizens enjoy in Egypt.

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⁸⁰ A Khalil, *supra* n.27, p.21.

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CHAPTER 2
ENGENDERING THE EGYPTIAN LAW ON NATIONALITY
BY AMAL ABDEL HADI

SUMMARY

In July⁸¹ 2004, following extended non-governmental organizations (NGOs) efforts, the Egyptian Parliament promulgated the new nationality law (Law 154/2004, which amended the old nationality law (Law 26/1975). The new amendments acknowledged the right of women, married to non-Egyptian men, to transmit their nationality to their children.

This paper attempts to analyze the Egyptian experience in amending the Nationality law from a gender perspective. The first part of the paper is an introduction that provides working definition of nationality building on main trends amongst Egyptian law scholars, and historical development of women's rights to nationality as it was addressed in the consecutive laws since the first Egyptian legislation early in the twentieth century. The second part of the paper provides an account of the debates on nationality in the past decade, with special emphasis on the year preceding the new law. This includes public debate in the media, NGOs efforts, and government position. The third part of the paper provides a brief reading of the institutional court decision on unconstitutionality of the nationality law, conclusions and recommendations for future action.

It is important to take into consideration that this paper was conducted in a very short time (around two weeks) which impacted the availability of resources particularly in the light of limited studies and statistics on the issue of nationality in Egypt particularly in English.

INTRODUCTION - NATIONALITY A GENUINE CONNECTION OF EXISTENCE, INTERESTS AND SENTIMENTS

The concept of nationality is important for both the individual and the state. It impacts the national and international spheres. Different scholars provided varying definitions of nationality with emphasis on its political and legal aspects. The majority of scholars in Egypt tend to focus on the legal dimensions while defining nationality. Some refer to nationality as "a legal relation between the individuals and the state, according to which they become members of the people of the state" (Riad, F. Abdel Moneim). Others interpret it as a legal system decided by the state to define the people in it and through which the individuals acquire what denotes their affiliation to this state (Salamh, A. Abdel Karim), or as "description of the individual denoting the existence of a legal relationship between him/her and a specific state" (Zaki, Hamed).⁸²

⁸¹ Published in the Egyptian Official Gazette, issue 28, 14th of July 2004

⁸²Cited in Commissioners Authority report on the case 115 for the Judicial year 19 (constitutional).. Constitutional Court. 2002 pp. 35-36

Yet, nationality also has a social aspect to the relation between an individual and the state, which is translated into the concept of affiliation, commitment, and loyalty. As the International Court of Justice defines it, nationality is "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with existence of reciprocal rights and duties."⁸³

Being a national of a specific country creates a set of rights and obligations for the individual. As stated in many of the international human rights documents, (e.g. the International Declaration on Human Rights: article 15, The Convention on Civil and Political Rights: article 24(3)), nationality is an essential right, a birth right without discrimination on the bases of sex, race, religion, belief, etc. Despite this, nationality laws in many countries had been, for a long time, discriminatory against women. However, the last two decades of the twentieth century witnessed a growing trend to amend nationality laws to achieve gender equality before the law, particularly after the adoption of CEDAW (Mexico 1969, France 1973, Germany 1979, China 1980, Turkey 1981, Zaire 1982, Spain 1983, Italy 1983, Belgium 1984).⁸⁴

Unfortunately, the overwhelming majority of the Arab countries, with the exception of Tunisia 1963, and very recently Egypt 2004 (I am not sure about Morocco) , still have nationality laws that discriminate to varying degrees against women's rights to nationality in full equality with men. Most of the arguments denying women's rights to pass their nationality to their children focus on the legislator's obligation to avoid dual nationality that could result from granting women the right to pass their nationality to their children, based on the assumption that it is the nationality of the fathers that matters in deciding the nationality of children. This is again built on the traditional patriarchal norms regarding women as of lower status to men, who are the "natural" heads of the families.

GENERAL DISCRIMINATION IN THE EGYPTIAN LEGISLATION: INTERNATIONAL DEMOCRACY AND NATIONAL DISCRIMINATION

Egypt has ratified most of the international covenants and conventions. In September 18th 1981, Egypt ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It was the first Arab country to ratify the convention, however, it added major reservations⁸⁵ to the convention that contradicts with its main essence, i.e. elimination of gender-based discrimination. Egypt's reservations includes a general reservation to article 2, that it is "willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Shariaa." Article 2 elaborates the state obligations to eliminate discrimination against women, particularly in legislation.

⁸³ The International Court of Justice in the *Nottebohm* case [1955] ICJ report 4. Cited in Riad, A. Fouad. *The Origins on Nationality in International Law and comparative Egyptian Law*. El Nahdah Al Arabia Publishing House. Cairo 1995. pp.19.

⁸⁴ Cited in Riad, A. Fouad. *The Origins on Nationality in International Law and comparative Egyptian Law*. El Nahdah Al Arabia Publishing House. Cairo 1995. paragraph 194 - 196 pp. 32 -2

⁸⁵ For more details on Egypt's reservations, and the concerned CEDWA Articles please refer to Annex I

In addition, specific reservations were made to article 9 (2) relating to women's rights to transmit their nationality to their children, and article 16 regarding women's equality with men in all matters relating to marriage and family relations, and article 29 regarding resolving the disputes concerning the interpretation or application of the present Convention arbitration or the International Court of Justice

The reservation to article 9 (2) displays quite clearly the gender bias. It is stated that the reservation is to prevent the child's dual nationality, since it may be prejudicial to his future. The article reads:

"It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality." (emphasis added)

Egypt's periodic reports to CEDAW always emphasize the country's efforts to abide by its commitments under CEDAW. Still, despite the longtime (more than 25 years) the Egyptian laws still contain many provisions that are discriminatory from a gender perspective. At the top of the list comes the Personal Status Law, the Penal Law and the Nationality Law. Some of these discriminatory provisions could be explained by the fact that, Egypt, as is the case with many other Muslim countries, adopts the Islamic Shariaa' as the main source for its legislation. Although this might be justified in some cases, there are other provisions that have nothing to do with Shariaa, e.g. the nationality law.

In fact, the use of Shariaa is just an excuse not to abide by Egypt's commitments under the international law. One example is the treatment of adultery under the Egyptian Penal Law. The law stipulates different punishments for adultery for men and women. The man is not convicted with adultery unless it is practiced at the marital house, and the sentence is 6 months, while the woman is for two years disregarding where she practices adultery. On the one hand, the law does not abide by the Shariaa. According to Shariaa' law, apart from the confession from the person who committed adultery, the law necessitates four witnesses who have seen the act of sexual intercourse (nearly an impossible situation). In comparison, in the positive law, it is enough to have the adulterous being caught in a situation that would give a strong impression that he/she might have committed adultery, e.g. if the woman/man is covered only by underwear. On the other hand, while the punishment (whipping) in Quran is the same for both men and women, there is a clear discrimination in the penal law as stated above, where the punishment (imprisonment) is less for men compared with women.

In addition, adultery according to Shariaa', constitutes any sexual contact outside the wedlock regardless of the marital status of both a man or a woman. In comparison, in the positive penal law, adultery is a crime only if the accused adulterous person is married. In fact, the Egyptian Penal Law does not have a provision that criminalizes consensual sex among non-married persons.

Gender discrimination in the Egyptian laws stems mainly from the patriarchal culture of the Egyptian society. All laws embark from the notion that men are the natural heads of

the families, be it the Personal Status Law, the Nationality Law or the Labor Law. For example under the Labor Law, only married men would be given allowance for marriage and for each child they have, while women do not, even if they are single mothers. On the other hand, the Egyptian Labor Law does not acknowledge parental leave; only women are allowed maternal leave. Furthermore, nurseries for workers' children are obligatory if there are 100 women employed, a matter that in addition to being discriminatory from a gender perspective, also allows for the employers not to abide by the law by not appointing more than 99 women.

Gender discrimination also occurs in the way the law is implemented. For example, men who kill their women relatives in what is known as "honor crimes" usually benefit from article 17 of the Criminal Procedures Law, thus being sentenced to lighter sentences as judges take into consideration the status of emotional rage. In comparison, women who commit similar crimes would be treated as murderers and punished with the full sentences.

Women's rights were not the major concern of the Egyptian legislator particularly when it comes to challenging prevailing norms. The Egyptian state granted women some rights: e.g. Egyptian women were the first in the region to have the right to vote and be nominated to public offices, as early as 1956, and also had the right to equal pay in the early 1960s. However, in the light of absence of a vibrant civil society and an active women's movement, these rights were restricted to the public sphere where the state needed women for its national development plans, while women's situation in the family was not challenged. It is worthy noting that the Personal Status Law issued in 1929 was not changed until 1979, despite all the rhetoric about equality between men and women. The amendments that were introduced did not address the power inequalities resulting from patriarchal norms. The same applies in the case of nationality laws. Despite the multiple amendments to keep with the changing political situation, the obvious gender discrimination was not addressed.

HISTORY OF THE LAW OF NATIONALITY IN EGYPT: DEFENDING PATRIARCHY

The history of Egyptian laws on nationality dates to the 1920s, when the first Egyptian nationality law was promulgated. Prior to that, being a part of the Ottoman Empire, Egyptians were bound by the Ottoman legislation of 1869. After independence from the Ottomans, in the early 1920s, Egypt embarked on a long journey of legislating the nationality issue, which as it will be shown was motivated mainly by the different political developments in Egypt, but consistently imposed discriminatory treatment of women.

Law 26/1926

The first legislation on nationality in Egypt was promulgated in 1926. Article 10 of this law stated that the individual is considered Egyptian if "born in the Egyptian territory or

outside Egypt (emphasis added) to an Egyptian mother as long as his lineage to his father has not been legally proven."⁸⁶

The constitutionality of this law was later challenged due to the fact that the law was promulgated in the absence of the Parliament. It was also refused by the foreigners living in Egypt as some of the law's dispositions challenged their privileges under the Mixed Law. This resulted in a confusing situation, where finally the Executive authority froze the law, but the courts used it whenever cases presented to courts fell under its regulations.⁸⁷

Law 19 / 1929

This situation led to the promulgation of a "new" law in 1929 (Law 19 / 1929), which was in essence the same as the law 26/1926. The new law was promulgated to overcome the accusations of unconstitutionality of the previous law. Many scholars consider this law as the first Egyptian nationality legislation. Article 6 (2) stipulates that an Egyptian is the one who is "born in the Egyptian territory or outside Egypt (emphasis added) to an Egyptian mother as long as his lineage to his father has not been legally proven."⁸⁸

The philosophy of the law emphasized "the nationality unity within the family."⁸⁹ Article 6 (3) stated that the foreign wife of an Egyptian husband will be considered automatically Egyptian, and article 14 (2) stated that an Egyptian woman who is married to a foreigner automatically loses her Egyptian nationality, if she has to acquire her husbands nationality.

Law 160 /1950

The period of the 1930s and 1940s, witnessed many changes that had a direct impact on the nationality issue and led to the change of the law in 1950. These included:

- The growing national liberation movement against the British occupation, particularly after world war II;
- Annulment of the law on foreign privileges in 1949, adopted few years after the beginning of the British occupation which gave specific privileges to foreigners residing in Egypt , who used to be tried before special courts (mixed courts);
- Establishment of the state of Israel, with the consequent flight of Palestinian refugees - subject of persecution by the newly established state - to the

⁸⁶ Alweo , Abdel Hamid. Acquiring Nationality through the Mother in Egyptian and Comparative laws. Dar El Nahda El Arabia, Cairo, 2005. pp. 158

⁸⁷ Riad, Fouad Origins Of Nationality In The International Law And Comparative Egyptian Law. El Nahda Al Arabia Publishing House. Cairo, 1995. paragraph 132, pp. 159.

⁸⁸ Alweo , Abdel Hamid. Acquiring Nationality Through the Mother in Egyptian and Comparative laws. Dar El Nahda El Arabia, Cairo, 2005. pp. 159

⁸⁹ Riad, Fouad Origins Of Nationality In The International Law And Comparative Egyptian Law. El Nahda Al Arabia Publishing House. Cairo, 1995. paragraph 132, pp. 159-160

neighboring Arab countries, including Egypt, and resulting in a trend of mixed marriages. Many of those refugees were considered as stateless.

Notable changes (both positive and negative) occurred in the nationality law (160/1950):

- a) the law addressed for the first time the situation of stateless fathers. Article 2 (2) stipulated that an Egyptian is one who is "born in Egypt from an Egyptian mother and a father of unknown nationality, or have no nationality (stateless)" (emphasis added).⁹⁰ Also article 2 (3) allowed for those children born outside Egypt to an Egyptian mother and a stateless father, or of unknown nationality to notify⁹¹ (emphasis added) the Ministry of Interior with their choice to be neutralized within one year after reaching the age of majority.⁹² This meant that acquiring the Egyptian nationality in such cases was not pending on the discretionary power of the state. This acknowledgement of the stateless persons could be linked to the adoption of International Declaration on Human Rights by the United Nations (1948) which stated in article 15 (1) "everyone has a right to nationality," and 15 (2) "no one shall be arbitrarily deprived of his nationality, not denied the right to change his nationality." Egypt was one of the 58 member states which adopted the declaration.
- b) the law added more restriction compared to the previous two laws, by removing the phrase "or outside Egypt" from the text of the article, i.e. imposed territorial restrictions on the transmission of the nationality of the mother to her children.
- c) as for the foreign wife of the Egyptian husband, she is no more granted the Egyptian nationality automatically, but has to express her will to acquire it (article 9).

Law 391 / 1956

The law 391/1956 came four years after the National Army officers took over the power in 1952. However, those four years were filled with critical events having direct impact on the issue of nationality: the overthrow of the royalty in Egypt 1952, independence of Sudan in January 1956, and the nationalization of the Suez Canal Company in 1956. In the same year in November, Britain, France and Israel launched a war against Egypt. The growing feeling of national identity, in parallel to the growing anti-Royal, anti-Western and anti-Zionist sentiments left their prints on the new nationality law.

Though this law was issued in the same year where Egyptian women were granted the right to vote and be nominated for public offices with the 1956 republican constitution,⁹³ the new nationality law did not reflect a similar degree of gender equality. The abovementioned events were reflected in the new nationality law, by creating harder conditions for those born to an Egyptian mother and a stateless or unknown father out

⁹⁰ Alweo , Abdel Hamid. *Acquiring Nationality through the mother in Egyptian and Comparative laws*. Dar El Nahda El Arabia, Cairo, 2005. pp. 164

⁹¹ Egyptian Gazette, issue no. 91 (18 September 1950).

⁹² Article 23 law number 160/150, stipulates that the age of majority indicated in the dispositions of this law, will be determined by Egyptian law. Article 44 of the civil code has fixed this age of majority of 21 years.

⁹³ Published in the Official Gazette 16th of January 1956.

side Egypt. The law kept article 2 of the previous law nearly unchanged, but added that the law will have a retroactive effect, i.e. will be implemented for those born prior to issuing the law.⁹⁴

Article 3 - contrary to the previous law, those children born outside Egypt to an Egyptian mother and a stateless father, or of unknown nationality, could not acquire the Egyptian nationality automatically by just notifying the Minister of Interior. They had to apply for the Egyptian nationality to the Minister of Interior, who had the right to use his discretionary power, i.e. accept or refuse, the application. The law also, contrary to the law 391/1956, stipulated that the minor should have been resident in Egypt for at least five consecutive years before his application.

Law 82 / 1958

On the first of February 1958, Egypt merged with Syria, creating the United Arab Republic (UAR).⁹⁵ With regards to nationality, a new law had to be adopted to define the new nationality of the UAR. The new law 82/1956, however, did not bring much of a change. In fact, it was directly copied from the previous law 391/1956. The legislator substituted the word Egyptian nationality with the word United Arab Republic nationality.

The significance of the law, from the gender perspective refers to the fact that if Egyptian women (from the southern region of the Republic) were married to Syrian husbands (the northern region), their children carried automatically the nationality of the United Arab Republic. This status was changed after the dissolution of the union in 1961, and those with the UAR nationality were not considered Egyptian under the new law 26/ 1975.

Law 26 / 1975

Although Syria withdrew from the United Arab Republic in 1961, the law 82/1956 continued to govern the issues of nationality in Egypt for fourteen years, until 1975. A new constitution was adopted in 1971.⁹⁶ Article 11 stated that, “the state has the obligation to ensure women's equality with men in all aspects of life, including political, social, and economical aspects.” Article 40 stipulated that all citizens are equal concerning their rights and obligations in front of the law, without any discrimination based on gender, race, language, religion or belief. Despite that, the law 26/1975 did not apply any of the guaranties stipulated by the Constitution. Article 2 of the law was a repetition of the stipulation of the 1956 and 1958 laws. On the other hand, article 3 was

⁹⁴ Report of هيئة المفوضين بالمحكمة الدستورية العليا ص 30

⁹⁵ United Arab Republic; political union (1958–61) of Egypt and Syria. The capital was Cairo. The two countries were merged into a single entity comprising the Southern (Egypt) and the Northern (Syria) Regions, with Gamal Abdal Nasser as president. As an initial step toward creating a pan-Arab union, the republic abolished Syrian and Egyptian citizenship, termed its inhabitants Arabs.

⁹⁶ The 1971 Constitution was adopted on 11/11/1971 after being approved by a public referendum published in the Egyptian Official Gazette n.36 bis 12/9/1971. Later in 1980, the Constitution was amended.

slightly amended. With the disposition of the 1975 law, it was not necessary for the children of Egyptian mothers born outside Egypt to reside in Egypt for a five year period before attaining the age of adulthood, but it was sufficient for the claimer to make from Egypt the place of his/her usual residence, before attaining the age of adulthood (which was an easier condition to meet).

Egyptian nationality laws adopted *jus sanguinis* rule in the transmission of nationality. However, they consistently carried a gender bias against women. While the *jus sanguinis* rule was absolute in the case of men with no restriction through generations, this rule was restricted in the case of women to two situations: a) if the husband is stateless or of unknown nationality; or b) if the father is unknown.

In addition, a part from law 26/1926 and law 19 / 1929, all other Egyptian nationality laws applied the *jus solis* (territorial) rule only to women. As a result, even in the cases of unknown or stateless father, the child had to be born in Egypt.

On another level, the laws tended to get more restrictive with regards to granting the Egyptian nationality to children of Egyptian women married to non-Egyptian men, according to the provisions stipulated in the laws. More conditions were imposed, often impossible to meet. For example, whereas the early laws 26/1926 and 19/1929 granted the nationality to the children of Egyptian women married to foreigners if “born in the Egyptian territory or outside Egypt,” the following laws conditioned granting nationality by being born in Egypt.

Also, while according to the law 160 /1950, acquiring the Egyptian nationality by the children of Egyptian mothers married to a foreigner and who were born outside Egypt, was pending on their individual will, i.e. only to notify the Minister of Interior with their wish to acquire the Egyptian nationality within one year of becoming of majority age, the following laws made this right pending on the discretionary power of the Executive authority. Furthermore, compulsory residence in Egypt prior to applying for Egyptian nationality was added for the first time in 1958 (law 82 /1958).

The main assumption of the legislator and political leaders was that paternal lineage is the fundamental route for transmitting nationality to the children, while the maternal lineage is of much lower importance, which constitutes a gross violation of the principle of equality stated in articles 11 and 40 of the Egyptian Constitution (1971).

Finally: A New Law

In July⁹⁷ 2004, the Egyptian Parliament promulgated the new nationality law (Law 154/2004), which amended the old nationality law (Law 26/1975), to allow Egyptian women to pass their nationality to their children. The amendments of the new law 154/2004 included the following:

- 1- replaced article 2 in law 26/1975 by a new article (Details of the Article are provided in the previous chapter of the report)

⁹⁷ Published in the Egyptian Official Paper, issue 28, 14th of July 2004.

- 2- canceled article 3 in law 26/1975
- 3- indicated that those who were born to an Egyptian mother and a non-Egyptian father, should apply to the Minister of Interior, who should decide within a year whether to grant them the Egyptian nationality or not. Negative decision should provide specific reasons.

This change of the law was the culmination of two parallel and interacting processes: the advocacy and lobbying efforts of the civil society institutions spearheaded by the women's and human rights groups on the one hand; and the increasing litigation pleading the unconstitutionality of the law 26/1975, on the other. Though the amendments did not encompass all what the civil society institutions were calling for, yet, the amended law is considered a big step forward.

However, for children of Palestinian fathers and Egyptian mothers, the situation remains unclear and discouraging. These children will unlikely receive citizenship easily; the reason usually given is to preserve Palestinian identity as important to the overall Palestinian cause despite the fact that many of these children are born and raised in Egypt. Al-Ahram newspaper reported in September 2003 that the Ministry of Interior had began to accept requests for Egyptian citizenship from children with Egyptian mothers and that several thousand children will benefit. No mention was made of children with Palestinian fathers, although an article of the same date in Al-Sharq Al Awsat newspaper stated that Egypt will grant citizenship to children of Egyptian mothers, with an exception for children of Palestinian fathers. An article in Al-Wafd presents the problem of children born of Egyptian mothers and Palestinian fathers in a sympathetic light arguing that the situation is now one of "discrimination between Egyptian mothers simply due to the husband's nationality" and that this inequality is "unacceptable, regardless of the political context of this case" (Isma'il 2004).

PUBLIC DISCOURSE

The debate on the nationality law began with the recent evolution of the women's movement in the mid-1980s. As part of their discourse on women's rights, human rights groups including women NGOs addressed the gender discrimination in the nationality law. One of the Egyptian parties, Al Tagamoea', proposed a bill to the Parliament in 1992 to amend the law 26/1975 to guarantee women equal rights to men in transmitting their nationality to their children.⁹⁸

The UN conferences in the 1990s, particularly the Human Rights Conference in Vienna in 1993 and the Fourth World Women's Conference in Beijing 1995 provided an important milieu for advocating women' rights at both the governmental and non-

⁹⁸ Al Ahali Newspaper, 19 February 1992. cited in Hashim, Amro. The Woman And Her Questions In The Parliament And Her Legislative Role: Study Of The Khola' And Nationality Laws. Arab Woman Alliance. Cairo, 2002. pp. 33

governmental levels.⁹⁹ Since the mid-1990s, three parallel discourses on the issue of nationality can be seen. The first one involved the NGOs calling for amending the nationality law to achieve equality between men and women married to foreigners in transmitting their nationality to their children. The second discourse - the official, state discourse - supported the status quo. The third discourse, adopted by quasi governmental organizations, e.g. the National Women's Committee (NWC), was calling for a compromise that makes life easier for women married to foreigners and their children.

In 1994, the "First" National Women's Conference¹⁰⁰ addressed the issue of nationality. However, as it was implicitly understood at that time, the state was completely resisting any change of the law, as a result, the conference focused on searching for measures to provide some support to the women and their families. The conference recommended that the government supports Egyptian women married to foreigners through exempting their children from the educational fees (paid in hard currency) required from non-Egyptians. The Minister of Education issued an ordinance (353 20/12/1994) to that effect. However, it was only applied to those women who were divorced, widowed or in need.¹⁰¹ In addition, the caveat of the decree included the need for women to prove that they did not know their husbands' whereabouts.

With time, the growing advocacy by women's NGOs engaged critically with the official discourse on nationality challenging and defying it. It succeeded in attracting an increasing media attention and engaging different parties, particularly officials, in the public debate on nationality. At the same time, more court cases were threatening the constitutionality of the prevailing nationality law.

With the beginning of the twenty first century, the Egyptian Parliament became involved in the discourse on nationality through discussions of the government's reports or through proposed bills calling for amending the law 26/1975.

The Official Debate on Nationality: Defending the status quo

The government's arguments were presented in different fora, including the Parliament Committee responsible for reviewing suggested legislation,¹⁰² in the media,¹⁰³ in legal scholarly books,¹⁰⁴ but it is best summarized, and refuted, in some legal scholarly

⁹⁹ At the governmental level, Egypt, as all countries, had to show its commitments through creating a national machinery for women, the National Committee on Women was created at that time. On the other hand, the parallel NGOs fora linked to international conferences enhanced the NGOs movement around the world through their active participation in international dialogue

¹⁰⁰ The governmental National Women's Committee (NWC) convened two National Women's Conferences in 1994 and 1995. The NWC died unnoticed and was replaced in 2000 by the National Council on Women (NCW), which in turn had its "First" National women's Conference in 2001.

¹⁰¹ Egypt combined forth and fifth reports to the CEDAW Committee. January 2001.

¹⁰² Hashim, Amro. The Woman and her questions in the Parliament and her legislative role: Study of the Khola' and nationality Laws. Arab Woman Alliance. Cairo, 2002. pp 38

¹⁰³ The new nationality law, volume I & II. Al Mahrosa for publishing, Information and journalism services. Cairo. 2004

¹⁰⁴ Riad, Fouad. Pp 239-243

books¹⁰⁵ and Commissioners Authority report to the Constitutional Court.¹⁰⁶ These arguments include the following:

- State sovereignty:

Determining the domain of nationality is considered as an act of the state that demonstrates its sovereignty over its subjects, where it has a monopoly to decide the rules according to which its nationality is going to be granted or transmitted. International Law cannot interfere and oblige the state to take other measures than the one decided.

- Dual Nationality:

As the Egyptian personal status law considers the man the head of the family, the government considers that approving women's right to transmit nationality to their children will inevitably lead to the problem of dual nationality of the children, with its consequent problems on the national and international levels.¹⁰⁷

- Nationality Unity of the Family:

Building on the same assumption of the fathers as the "natural" heads of families, it becomes obvious that the children's nationality should be determined considering father's nationality and not the one of the mother's. On the same basis, foreign wives of Egyptian men are almost automatically given the Egyptian nationality if they ask for it.

- National Security:

This argument builds on the previous argument of dual nationality, assuming that the children of Egyptian women married to foreigners could be a source of threat if Egypt gets into a state of animosity with the countries of origin of their fathers.

- Over Population:

As Egypt is suffering from the problem of overpopulation, children of Egyptian mothers married to foreigners will exacerbate this problem.

- Encouraging Egyptian Women's Marriages to Foreigners:

Though the announced rationale to object to Egyptian women's marriages to foreigners is the need to avoid dual nationality, yet, this argument is in itself reflects the masculine thinking. It is better understood in the light of women's testimonies. A

¹⁰⁵ Riad, Fouad. Pp 239-243

¹⁰⁶ Commissioners Authority report on the case 115 for the Judicial year 19 (constitutional). Constitutional Court. 2002 pp. 59-74

¹⁰⁷ These include: A) Difficulties to determine the country that has the right to defend the rights of its subject. B) The subject will have to do his military obligations towards either countries, which will be a burden for him, adding to that, in case of wars, or diplomatic crises, that would lead to grave consequences. C) Can lead to a problem concerning law's conflicts on the international levels, to know the individual is subject of which law.

professional woman married to a European man said that "each time I go to the customs, when my children were young and were on my passport, the officers ask me the same questions: didn't you find a suitable Egyptian man?"¹⁰⁸

All these arguments are based on a gender-based discrimination attitude resulting from patriarchal assumptions of the superiority of men, and on "valuing the role of men in upbringing their children to be loyal to their country of origin and ignoring women's role in this upbringing."¹⁰⁹ As was indicated by many legal scholars and by activists, all these arguments apply for both men and women. In fact they apply more for children of Egyptian fathers married to foreign wives, as their children are granted Egyptian nationality automatically by the successive Egyptian nationality laws, even if they were not born in Egypt, or even if they have never lived here.

Ironically, the Egyptian law 26/1975, stipulates in article 26, that "the international conventions and treaties on nationality between Egypt and foreign countries should be enforced even if they are in contradiction with this law."¹¹⁰

On another vein, facing the pressure by advocacy of women NGOs, the official discourse began to change. In the annual conference of the National Democratic Party (NDP) in September 2003, President Mubark, chairman of the party, announced the government's intention to prepare a new nationality bill, and called for revising Egyptian legislation to eliminate all forms of discrimination against women. In addition, the President asked the Minister of Interior to grant Egyptian nationality to the children of Egyptian mothers married to foreigners, in accordance with the prevailing law.

The President's announcement and the statements by other officials, e.g. the Minister of Interior, and the Chairman of the Passports Authority, was hailed by the media,¹¹¹ and resulted in an influx of those wanting to acquire their Egyptian nationality. However, the enthusiasm that followed soon died under the actual obstacles enshrined in the articles of the law. It gave more fuel to the already ongoing campaign. The following bureaucratic hurdles are included in the law:

- a. Women have to pay around 600 LE fee for each of their children and 70 LE for each of the application papers. This is a big sum particularly for poor women, who constitute the majority of women married to foreigners.
- b. In order for their children to be able to apply for Egyptian nationality, women married to foreigners have to prove their marriage by providing the marriage contract.

¹⁰⁸ My Nationality Is My Right And My Family's Right. Documentary film. The New Woman Foundation. 2004.

¹⁰⁹ Commissioners Authority report on the case 115 for the Judicial year 19 (constitutional).. Constitutional Court. 2002 pp. 65

¹¹⁰ El Kordy, Gamal. The new amendments of the Egyptian nationality law in the scale. Al Nahda Al Arabia publishing house, Cairo, 2004. pp120.

¹¹¹ The new nationality law. Al Mahrosa for publishing, Information and journalism services. Cairo. 2004. Volume I.

- c. They also have to prove their Egyptian nationality by providing their and their fathers (the woman's father) birth certificates. The last entails a cumbersome and expensive process, as the woman needs to travel to her village/town to get her fathers birth certificate if at all possible.
- d. Other conditions include: residence of the child in Egypt for 10 successive years, the need for the child to speak Arabic language, to have a legitimate source of income, not to have been convicted before, and do not suffer any disability that would make her/him a burden to the society (article 4, law 26/1975).

In addition, children of Egyptian women married to Palestinians were denied the right to apply for Egyptian nationality. The rationale was to abide by the resolution of the Arab League (1547/1959)¹¹² calling upon Arab countries to preserve the Palestinian identity. According to the Palestinian Ambassador to Egypt, Mohamed Sobieh, this could not be a reason not to grant children of Egyptian women married to Palestinians the Egyptian nationality because they can keep both nationalities, or decide otherwise when there is a Palestinian state. He also clarified that the "resolution" referred to is not a resolution, but a mere recommendation.¹¹³

The NGOs Struggle: A case of persistence and success

The International Conference on Population and Development (ICPD) in Cairo, held in 1994 was of particular importance for the Egyptian NGOs movement especially women's movement. In preparation for the conference the Egyptian government, as the hosting country, had to establish the Egyptian NGOs forum. More than 400 Egyptian NGOs joined the NGO Forum. Task forces were created including a gender task force. The latter embarked on preparing relevant studies that began to examine discrimination within Egyptian laws, including the nationality law, as part of its preparation for ICPD and Beijing conferences.¹¹⁴

During the 1990s an increasing number of NGOs addressed the nationality law by conducting legal and social studies, and organizing seminars and conferences. In 1997 the first study was carried out by the Center for Egyptian Women's Legal Aid (CEWLA). The study was presented at the Conference on Women, Law and Development organized by the New Woman Research Center in 1997. More studies followed both by NGOs and scholars in research institutes, e.g. the study of Arab Alliance for Arab Women by

¹¹² The new nationality law. Al Mahrosa for publishing, Information and journalism services. Cairo. 2004. Volume I, p. 87.

¹¹³ Intervention in "My Nationality Is My Right And My Children's Right" documentary film. New Woman Foundation. 20004.

¹¹⁴ NGOS Report to ICPD and Beijing 1994, 1995.

Hashem,¹¹⁵ and Ghaleb presented at the Fifth Annual Conference of the National Council For Social and Criminal Research in 2003.¹¹⁶

The establishment of the NGOs' Coalition to monitor the implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW Coalition) in 1998, and the preparation of the first NGOs shadow report to the CEDAW Committee (2001)¹¹⁷ gave due attention to the issue of nationality and recommended that the government withdraws its reservations on article 9-2 of the Convention.¹¹⁸ When the government delegation presented its periodic report that year, they informed the CEDAW Committee that they are considering withdrawing some of its reservations on the Convention.

The success of the CEDAW NGOs coalition gave valuable momentum to the women's movement, leading to expanding the campaign on nationality, and gaining support from continuously widening circles of sympathizers particularly in the media. The theme for the Women's Day annual celebration in March 2002 was "Our rights without reservations." The celebration included a round table discussion with members of the governmental delegation to CEDAW, which concentrated on the withdrawal of reservations.

Year 2003 witnessed growing concerted activities by NGOs on nationality, all calling for the amendment of the law. At a national conference organized by the Association for the Development and Enhancement of Women (ADEW), women spoke to the audience about their bitter sufferings. Following, the Association's Forum for Women's Development organized a round-table discussion on the law, whereas the Arab Alliance for Women (AAW) prepared a joint study with Al Ahram Political and Strategic Studies on parliamentary discussions regarding nationality.¹¹⁹ The findings of the study were discussed in a seminar in the same year. Finally, the CEDAW NGOs Coalition organized a national workshop on nationality, which ended with an appeal calling for the change of the law.

Although the process was interrupted by the USA war on Iraq, yet the momentum was regained by dedicating the Women's Day celebration in March 2004 to Nationality under the slogan "Nationality is my right and my family's right." The celebration included screening of a video clip that addressed all the official arguments on the issue and presented testimonies of women and men relating their personal experiences. It also included views on the debate of legal experts and public figures such as women activists, writers and artists.

¹¹⁵ Hashim, Amro. The Woman and her questions in the Parliament and her legislative role: Study of the Khola' and nationality Laws. Alliance for Arab Woman. 2003.

¹¹⁶ Ghaleb, Hala. Social Change and Egyptian women's marriages to Foreigners. Fifth Annual Conference of the National council For Social and Criminal Research. Cairo, 2003. Vol. II, pp979 – 1013.

¹¹⁷ The coalition included 22 NGOs in 1998, and increased to 36 member NGOs, prepared the report collective, which in turn was signed by another 120 NGOs through two large national consultations.

¹¹⁸ Please refer to both article 9(2) and Egypt's reservation in annex no. 1

¹¹⁹ Hashim, Amro. The Woman and her questions in the Parliament and her legislative role: Study of the Khola' and nationality Laws. Alliance for Arab Woman. 2003

Constitutional Court: The final nail

At the same time, and with the support of sympathetic lawyers in the human rights and women's rights movements, women and men began resorting to courts to claim their right to Egyptian nationality. Some of these cases reached the Higher Constitutional Court contesting the constitutionality of the nationality law 26/1975. The famous case that led to the change of the law was brought to the court in 1997 by a young man born to an Egyptian mother and a Jordanian father. Earlier the mother had put a case to the court asking for the Egyptian nationality for her minor children (case 3136 for the Judicial year 45). After the elder son came of age, he put another case demanding his right to the Egyptian nationality according to both the *jus sanguinis* and *jus solis* rules. While the original case was discussed by the Alexandria Administrative Court, he appealed for the unconstitutionality of article two of the law 26/1975. His appeal was approved by the court in March 1997. In May 1999, the State Court Cases Authority presented its report to the constitutional court requesting the court

- 1- not to discuss the case as it is beyond the Constitutional Court's mandate, because the contested article is considered a political act and an issue of state sovereignty,
- 2- not to accept the appeal as it did not specify which part of article 2 is unconstitutional,
- 3- to reject the appeal on the basis that the state has the discretionary power to regulate the right to nationality according what it considers best for its own people.¹²⁰

In 1999, the Constitutional Court referred the case to the State Commissioners Authority to prepare a report on the constitutionality of the law 26/1975, or more precisely of the article 2 of that law. By January 2002, the Commissioners Authority provided a lengthy report to the Constitutional Court (76 pages). The report concluded that article 2, item 3 of the law 26/1975 is unconstitutional, and that item 2 of the same article should be dropped.

The importance of the report is derived not only from its conclusions and recommendation, but also because of its attitude towards acknowledging women's right to equality as a constitutional and human rights issue, and its referral to the international human rights law and Egypt's commitments according to the different treaties it ratified. In addition, the report made an important statement with regards to the "state sovereignty," reminding that the legislation addressing nationality should not be considered a political act beyond judicial supervision.

The report also courageously and meticulously challenged most of the arguments against women's rights to transmit their nationality to their children from non-Egyptian husbands. For example, it challenged the argument that there is a need to restrict mothers' rights to pass their nationality to their children, otherwise this will encourage Egyptian women to

¹²⁰ For more information, see the Commissioners Authority report on the case 115 for the Judicial year 19 (constitutional).. Constitutional Court. 2002 pp. 7-14.

marry foreigners. The report strongly refuted this argument by stating that the right to choose one's spouse is part of the civil and political rights, and that the legislator should not interfere with personal relations.

Interestingly, the report referred to the growing women's movements calling for equality between men and women as vital for settling the principle of equality in the international documents particularly the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).¹²¹ Hence, in July 2004, the law was amended.

Last but not least, the case was the starting point for equality between men and women which led to positive developments relating to equality as discussed in chapter 2.

CONCLUSIONS

The struggle for amending the nationality law is an important experience with many lessons to be learned and replicated in the fight for full citizenship rights and for legal change in that direction.

The variety of strategies that were used in the process, i.e. interweaving of both research, advocacy, lobbying and litigation, were vital in creating the momentum for change, and in involving expanding sections of the civil society and the media in the public debate on the issue of nationality, and on gender-based discrimination against women, which was vital in achieving change of the law.

The campaign focused for a long time on the "rights of the children" to their mothers' nationality, and not on the women's rights to their nationality except for the last year. Such focus led to the limited, though vital, success i.e. women's rights to transmit nationality to their children. The issue of women's rights to transmitting nationality to their husbands was not addressed.

Resorting to international mechanisms, shadow report to CEDAW, played a facilitating role by putting pressure on the Egyptian government. This change of the law would, most probably, have an impact in withdrawing at least some of Egypt's reservation on CEDAW, which in turn would have positive impact on the fight against gender-based discrimination against Egyptian women.

RECOMMENDATIONS

There is a need for further action:

1 – Continue advocacy for complete equality between men and women in the law so that Egyptian women can transmit their nationality also to their foreign husbands.

¹²¹Commissioners Authority report on the case 115 for the Judicial year 19 (constitutional).. Constitutional Court. 2002 pp. 42-43

2- Monitor the implementation of the law.

3- Continue advocacy so that children born to Egyptian women married to foreigners before the law was promulgated can acquire their mothers' nationality and accordingly their full rights as Egyptian citizens.

4 – Establishing support group from the families of Egyptian women married to foreigners, particularly in addressing the provisions of the law that are still discriminatory, e.g. against disabled persons. In addition, there is a need to address the procedural hindrances, e.g. high application fees, and the length of residency in Egypt before applying for Egyptian nationality.

5- Other nationality laws were implemented retroactively. In the case of the amended law, this could be achieved with continuing advocacy and litigation. Carrying out a national study on the exact size of the problem, could be an important tool for changing the law anew.

6- Establishing a database on Egyptian women married to foreigners is not only a pressing need since available numbers from different sources are contradictory, but it also would be an important tool for monitoring the implementation of the current new law and for advocacy for further change.

ANNEX 1

Egypt's reservations made upon signature and confirmed upon ratification:

In respect of article 9

Reservation to the text of article 9, paragraph 2, concerning the granting to women of equal rights with men with respect to the nationality of their children, without prejudice to the acquisition by a child born of a marriage of the nationality of his father. This is in order to prevent a child's acquisition of two nationalities where his parents are of different nationalities, since this may be prejudicial to his future. It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality.

In respect of article 16

Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia's provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.

In respect of article 29:

The Egyptian delegation also maintains the reservation contained in article 29, paragraph 2, concerning the right of a State signatory to the Convention to declare that it does not consider itself bound by paragraph 1 of that article concerning the submission to an arbitral body of any dispute which may arise between States concerning the interpretation or application of the Convention. This is in order to avoid being bound by the system of arbitration in this field.

Reservation made upon ratification:

General reservation on article 2

The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia.

Articles of the CEDAW convention to which Egypt has provided reservations:

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 9

1. States 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 the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Article 16

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.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.