

Discriminatory Nationality Laws in Jordan and Their Effect on Mixed Refugee Families

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INTRODUCTION

Women in Jordan are not equal citizens in the eyes of the law. Unlike their male counterparts, Jordanian women do not have the ability to pass their citizenship to spouses or children. Because Jordan has the highest per capita percentage of refugees in the world,¹ the problem is particularly pronounced. The large number of foreigners in the country means that discriminatory nationality laws directly affect more than 65,000 Jordanian women² and as many as 500,000 children.³

Jordanian women hold nearly many of the rights attendant to citizenship, with several notable exceptions: among these is the ability to pass their nationality. In other words, should a Jordanian woman marry a foreigner, her husband and children will not enjoy Jordanian nationality or citizenship rights. The same is not true for Jordanian men, who can easily pass their nationality to foreign wives and children. The effect of this discriminatory law is devastating for Jordanian women, whose “foreign” husband and children are not granted any of the rights attendant to citizenship. These “foreign” family members can only reside in the country if they are granted residence permits, and are not eligible for free public education or

¹ See Géraldine Chatelard, *Jordan: A Refugee Haven*, MIGRATION INFORMATION SOURCE (Aug. 2009), <http://www.migrationinformation.org/feature/display.cfm?ID=794>; *Fact Sheet: Iraqi Refugees in Jordan and Syria*, HUMAN RIGHTS FIRST (Aug. 1, 2007), www.humanrightsfirst.org/wp-content/uploads/pdf/irp-jordan-syria.pdf.

² See *7aqqi: My Mother is Jordanian*, KING HUSSEIN FOUNDATION, <http://www.7aqqi.com/default.aspx> (last visited Apr. 28, 2012).

³ CATHERINE WARRICK, *LAW IN THE SERVICE OF LEGITIMACY: GENDER AND POLITICS IN JORDAN* 106 (2009).

employment within the Kingdom. Even worse, the country's discriminatory nationality laws result in statelessness for children born to Jordanian mothers and non-Jordanian fathers. More fundamentally, the nationality law reflects a "basic outlook toward women as having incomplete legal competence."⁴

Although patrilineal nationality laws are common throughout the Middle East and North Africa, they are particularly harmful in Jordan because of the many foreign-born people who reside there. As scholars have noted, "discriminatory nationality laws... might have a marginal impact among static, perhaps isolated, populations, but will be of major significance in countries where sizeable numbers of immigrants, such as workers, refugees and students have intermarried."⁵ This is true of Jordan, which is home to more than 2 million refugees.⁶ In fact, government officials note that more than 500,000 people are affected by these inequitable nationality laws.⁷

This paper examines Jordan's discriminatory nationality laws, particularly as they apply to refugee populations within the kingdom. It describes the source and history of Jordanian nationality laws, and discusses international law surrounding the passage of citizenship. Throughout the paper, I argue that Jordan's nationality law is contrary to the Kingdom's treaty obligations, as well as general principles of international law. Accordingly, I recommend that the Kingdom amend its nationality law to bring it in compliance with international law.

This paper proceeds in four parts. Part I offers a background of the current law in Jordan. It includes information on the Kingdom's refugee populations, who are disproportionately affected

⁴ AMIRA EL-AZHARY SONBOL, *WOMEN OF JORDAN: ISLAM, LABOR, & THE LAW* 40 (2003).

⁵ Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 Va. J. Int'l L. 643, 693 (1990).

⁶ See *Jordan-UNRWA*, UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINIAN REFUGEES (Dec. 31, 2010), <http://www.unrwa.org/etemplate.php?id=66>.

⁷ See WARRICK, *supra* note 3, at 106.

by discriminatory nationality laws; additionally, it gives a brief history of Jordan's laws regarding nationality. Part II proceeds by examining the international law surrounding the passage of citizenship. To this end, it examines treaty law, general principles of international law, and municipal cases regarding women's nationality. Part III offers several recommendations for those seeking to challenge/change the Kingdom's discriminatory nationality laws. Finally, Part IV offers a brief conclusion.

I. BACKGROUND

a. Jordanian Nationality Law

Women in the Hashemite Kingdom of Jordan are unable to pass Jordanian nationality to their children. The country's laws regarding citizenship are laid out in Law No. 6 of 1954 on Nationality, as well its 1987 amendment.⁸ Article 3 of the law provides that the following groups qualify for Jordanian nationality:

(3)Any person whose father holds Jordanian nationality; (4)Any person born in the Hashemite Kingdom of Jordan of a mother holding Jordanian nationality *and of a father of unknown nationality* or of a Stateless father or whose filiation is not established; (5)Any person born in the Hashemite Kingdom of Jordan of unknown parents, as a foundling in the Kingdom shall be considered born in the Kingdom pending evidence to the contrary⁹

Thus, nationality is afforded to children of Jordanian *men* wherever they are born, or to children who are born *within the country* to a Jordanian mother *and* a stateless father. Mothers cannot, therefore, confer nationality upon their children. This patrilineal configuration is reinforced in Article 9, which states that “the children of Jordanian men shall be Jordanian wherever they are born.”¹⁰ There is no equivalent provision for the children of Jordanian mothers. Thus, a child

⁸ See Law No. 6 of 1954 on Nationality (Jordan, last amended 1987), at art. 3, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b4ea13> [accessed 18 April, 2012].

⁹ *Id.*

¹⁰ *Id.* at art. 9

born to a non-Jordanian man is not considered a citizen in the eyes of the law, regardless of whether his mother is a national or not.

Just as women are unable to pass Jordanian citizenship to their children, they cannot confer nationality upon their foreign spouses. The same is not true for men, whose foreign wives can attain Jordanian nationality merely by a written statement to the government. This is laid out in Art. 8, which states in pertinent part:

(1) Subject to the approval of the Minister of Internal Affairs, a foreign woman who marries a Jordanian national may acquire Jordanian nationality if she so wishes by making a written statement to that effect: (a) Three years after her marriage if she is an Arab; (b) Five years after her marriage if she is not an Arab.¹¹

There is no synonymous provision for foreign husbands of Jordanian women. As such, women within the Kingdom are forbidden from passing nationality to their non-native spouses and even their native children.

The Kingdom's discriminatory nationality law is very harmful to women for several reasons. First, it makes them second-class citizens in the eyes of the law: "it underlies the fact that the direct relationship between the citizen and the state is based on the type of citizen, a male, rather than on a citizen per se. Accordingly, that citizen is the one entitled to a direct relationship with the state and through *him* the relationship of the *lesser* citizen is mediated."¹² In addition, there are very serious practical concerns that are wrought by the law. For example, the foreign spouse and children of a Jordanian woman cannot live within the Kingdom unless they

¹¹ *Id.* at art. 8

¹² Alba Amawi, *Gender and Citizenship in Jordan*, in *GENDER AND CITIZENSHIP IN THE MIDDLE EAST* 158, 164 (SAUD JOSEPH ed., 2000).

have secured a residence permit, which is very hard to secure.¹³ Additionally, they are not eligible for employment, public education, or public healthcare services.¹⁴

b. Justification for Jordan's Nationality Law

There are three main justifications given by proponents of Jordan's nationality law. First, it is argued that patrilineal nationality is mandated by Sharia law, the Islamic legal code. Second, proponents of the law assert that it is necessary for the wellbeing of the country. According to this view, granting nationality to foreign husbands of Jordanian women would deplete national resources. That is, "foreign" families of Jordanian women would drain money from social welfare programs and other government services. Third, proponents of the law assert that it protects the family; according to this theory, families become divided when there is more than one national allegiance. Each of these justifications is examined in turn.

In a memorandum published by the Ministry of Foreign Affairs, Jordanian officials justified the Kingdom's nationality laws by appealing to Sharia law.¹⁵ This justification was affirmed by at least one Islamic Sheikh, who claimed that the law is required by Sura 33, verse 5 of the Koran.¹⁶ Referring to children of Muslim parents, this verse says "Call them by the names of their fathers: that is [more just] in the sight of God."¹⁷ However, many scholars argue that this passage of the Koran does not require discriminatory nationality laws. These scholars point out that Sharia does not address the issue of nationality, but rather that of "*Nassah*," "which is

¹³ *Id.* at 162 ("The children of a Jordanian woman, however, cannot acquire her nationality or residency status. Consequently, these children are deprived of all rights, including enrollment in the school system, social entitlements, and/or political rights. Indeed, they are not even registered in their Jordanian mother's passport, which is stamped 'Children are not included due to the different nationality of the father.'").

¹⁴ These practical consequences are further explored *infra*.

¹⁵ See Amawi, *supra* note 12, at 163.

¹⁶ Abdul Aziz Khayyat, *Women in Society: In Islam and Christianity*, Paper presented at the Third Symposium in Cooperation with the Pontifical Council for Interreligious Dialogue, p. 8 (the Vatican), 24-26 June, Rome, Italy. (1992).

¹⁷ THE KORAN, *sura 33, verse 5*.

establishing paternal linkages of a child to his father and not to the mother.”¹⁸ So according to them, this verse says nothing of nationality, but only speaks to establishing paternal linkages through a common surname. These scholars further assert that the principle of *Nassah* is covered elsewhere in Jordanian law, which mandates that a child’s surname should be that of his/her father.¹⁹ Thus, “paternal linkages based on blood ties to the father would not be denied if the mother passed her citizenship to the child who holds the surname of the father.”²⁰

The government’s assertion that Sharia justifies its nationality law is further belied by the history of that law. Rather than being a product of Sharia, Jordan’s nationality law actually adopted western conceptions of citizenship at the time. The Kingdom’s 1954 law was “modeled after British Nationality Laws in which nationality stemmed from the establishment of paternity.”²¹ Likewise, earlier nationality laws in the Middle East had their origin in the Ottoman Civil Code, which was modeled after French and Belgian patrilineal conceptions of nationality.²² Thus, “Islam is used as an excuse to justify a situation that had no bearing on Muslims before the creation of the present nation-state system.”²³

The second justification for Jordan’s nationality law – that granting citizenship to the “foreign” families of Jordanian women would lead to a depletion of national resources – is likewise without merit. The government maintains that a change in its nationality laws would be politically unwise “because of... the fear of increased constraints on the state’s meager resources.”²⁴ However, commentators have noted that allowing women to pass their nationality

¹⁸ See Amawi, *supra* note 12, at 163.

¹⁹ See Jordanian Civil Code, art. 38. See also Amawi, *supra* note 12, at 163.

²⁰ See Amawi, *supra* note 12, at 164.

²¹ *Id.* at 160-61.

²² See EL-AZHARY SONBOL, *supra* note 4, at 38.

²³ *Id.* at 40.

²⁴ See Amawi, *supra* note 12, at 164.

would result in a net *economic benefit* to the country.²⁵ These commentators recognize that affected families are *already* living within the Kingdom; they argue that allowing these family members to work would result in a net gain of JD 10 million (~\$14 million) to Jordan's economy.²⁶ According to the experts, this gain would come from improved human capital, increased tax revenue, consumption, and investment.²⁷ Therefore, the justification proffered by Jordan's government has no basis in fact. Furthermore, this justification by itself does not explain why the law needs to be discriminatory. If the country were truly concerned about depletion of resources, the notion of Jordanian men marrying foreign women would be considered equally problematic, which it is not.

The third justification given for the nationality law is also illusory. This justification holds that Jordan's nationality law is necessary for the wellbeing of the family.²⁸ It rests on two assumptions, both of which are false: first, it presupposes that family harmony is weakened when there is allegiance to more than one nationality, second, it assumes that the husband should determine the family's nationality.²⁹ The first premise has no discernible basis – in fact, dual-nationality can be seen as advantageous in many cases. Furthermore, Jordanian law already provides for dual-nationality.³⁰ “Clearly the state is not, in general, interested in preventing ‘a [family’s] acquisition of two nationalities, since its own law... provide[s] for exactly this circumstance.”³¹ The second premise is equally false: were the law truly concerned about the

²⁵ *Children of Jordanian Mothers, Foreign Fathers Suffer Social Exclusion*, INFORMATION & RESEARCH CENTER – KING HUSSEIN FOUNDATION (Oct. 12, 2011), <http://www.irckhf.org.jo/pages/newsstory.aspx?newsID=256> (last visited Apr. 30, 2012).

²⁶ *Id.*

²⁷ *Id.*

²⁸ See WARRICK, *supra* note 3, at 105.

²⁹ Karen Knop & Christine Chinkin, *Article: Remembering Chrystal Macmillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 558 (2001).

³⁰ *Jordan Fact Sheets – Embassy of the United States Amman, Jordan*, UNITED STATES STATE DEP'T, http://jordan.usembassy.gov/acs_dual_nationality.html (last visited Apr. 30, 2012).

³¹ See WARRICK, *supra* note 3, at 105.

wellbeing of the family it would provide citizenship in the country of *residence* rather than making families find their rights in a foreign country – the husband’s country of origin.³² Thus, it is not true that the husband’s home-state citizenship is automatically better for the family.

Therefore, the three proffered justifications for Jordan’s nationality law are without merit. Scholars who have studied the topic agree that Jordan’s nationality law is based on a “masculinity-based nationalism.”³³ According to them, this masculinity is found throughout Jordanian law.³⁴ The most notable examples are the nationality law, the passport law, the family registry book, and the personal status law.³⁵

c. A Country of Refugees

Discriminatory nationality laws are particularly harmful in Jordan because of the sheer number of foreign-born people within the country. As scholars have noted “discriminatory nationality laws... might have a marginal impact among static, perhaps isolated, populations, but will be of major significance in countries where sizeable numbers of immigrants, such as workers, refugees and students have intermarried.”³⁶ This is true of Jordan, where *at least* 1/3 of the total population is foreign-born.

The vast majority of foreigners in the Kingdom are refugees who have been displaced from their country of origin for various reasons. As of August 2010, Jordan had the highest per

³² For another discussion, see WARRICK, *supra* note 3, at 105 (“the cases in which the issue of maternally-transmitted nationality has become most salient involve children born and continually resident in Egypt, for whom Egyptian nationality and the consequent access to public facilities and civil rights would be preferable to the foreign nationality of their fathers.”).

³³ Amawi, *supra* note 12, at 163.

³⁴ *Id.* at 164.

³⁵ *Id.*

³⁶ Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT’L L. 643, 693 (1990).

capita percentage of refugees in the world.³⁷ The Kingdom currently hosts more than 2 million registered refugees;³⁸ this number is particularly remarkable when one considers that the country's total population is only 5.97 million.³⁹ The refugee population in Jordan is composed primarily of Palestinians – numbering *at least* 2 million⁴⁰ – and Iraqis, numbering *at least* 46,000.⁴¹

Because of its significant refugee population, the number of people directly affected by the country's discriminatory nationality laws is exceedingly high. Experts note that Jordan's discriminatory nationality laws directly affect more than 65,000 Jordanian women and as many as 500,000 children.⁴² Considering that the total population of Jordan is only 5.97 million⁴³, the percentage of people affected by the law is exceedingly high (about 10.5% of the total population).⁴⁴

d. Problems Faced by Refugees (and Foreigners) in Jordan

Because they do not acquire the mother's citizenship upon marriage, refugee husbands and their children are considered non-citizens. This poses very serious issues for the family:

³⁷ See Géraldine Chatelard, *Jordan: A Refugee Haven*, MIGRATION INFORMATION SOURCE (Aug, 2009), <http://www.migrationinformation.org/feature/display.cfm?ID=794>; *Fact Sheet: Iraqi Refugees in Jordan and Syria*, HUMAN RIGHTS FIRST (Aug. 1, 2007), www.humanrightsfirst.org/wp-content/uploads/pdf/irp-jordan-syria.pdf.

³⁸ See *Jordan-UNRWA*, UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINIAN REFUGEES (Dec. 31, 2010), <http://www.unrwa.org/etemplate.php?id=66>.

³⁹ See *Background Note: Jordan*, DEP'T ST. BUREAU OF NEAR E. AFFAIRS (Nov. 17, 2010), <http://www.state.gov/r/pa/ei/bgn/3464.htm>.

⁴⁰ U.N. Office for the Coordination of Humanitarian Affairs, 2011 U.N. Regional Response Plan for Iraqi Refugees, at 43 (Dec. 28, 2010), <http://ochaonline.un.org/humanitarianappeal/webpage.asp?Page=1932> [hereinafter 2011 Regional Response Plan, 2011]. See also Chatelard, *supra* note 37. The vast majority of the Palestinian refugees in Jordan trace their status to the 1948 war in Palestine. Therefore, they are not technically refugees under the 1951 Refugee Convention. Furthermore, many Palestinians in Jordan were granted Jordanian citizenship by King Hussein. For more information on this topic, see Christine Cervenak, *Promoting Inequality: Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status*, 16 HUM. RTS. Q. 300, 357 (1994).

⁴¹ *Id.* at 40.

⁴² See *7aqqi: My Mother is Jordanian*, *supra* note 2. See also, WARRICK, *supra* note 3, at 106.

⁴³ See *Background Note: Jordan*, DEP'T ST. BUREAU OF NEAR E. AFFAIRS (Nov. 17, 2010), <http://www.state.gov/r/pa/ei/bgn/3464.htm>.

⁴⁴ This number was calculated with the following formula. Multiply the number of Jordanian women affected (65,000) x2 to get the number of parents (husbands and wives). Then add the number of children affected (500,000). This gives you 630,000. Then divide this number by 5,970,000 to get the total percentage.

“foreign” spouses and children cannot live within the Kingdom unless they have secured a residence permit, which is very hard to secure.⁴⁵ Additionally, they are not *automatically* eligible for employment, public education, or public healthcare services.⁴⁶ Each of these hardships is examined in turn. It is important to recognize that this section describes the default position; in other words, while it is ultimately *possible* for foreigners to acquire these rights (residency, employment, public education, and healthcare), it is not automatic. Additionally, these rights are very hard to acquire – while it is *possible* to get them eventually, it is rare. The same is not true for families of Jordanian men, who are automatically granted citizenship rights.

1. No Right to Residency

“Foreign” families of Jordanian women do not enjoy the right to reside within the Kingdom. Jordan’s residence laws are governed by Chapter 3 of Law No. 24 of 1973 on Residence and Foreigners’ Affairs.⁴⁷ According to this law, foreigners cannot live in the country without first acquiring a residency permit. Residence permits are valid for one year only and may be renewed at the discretion of the Ministry of Labor directorate.⁴⁸ Therefore, even assuming that a “foreign” spouse is *able* to secure a residence permit – which, in itself is very difficult – he and his children can only enjoy residency rights for one year. In addition, these permits are very hard to acquire. To be eligible for a residence permit, one must: (a) have an employment contract with a Jordanian employer, along with certification from the Ministry of Labor that his activities are not in competition with those of Jordanians, or (b) have certification of secure and lawful source of income, or (c) have the intention and approval to invest in the Jordanian economy, or (d)

⁴⁵ Amawi, *supra* note 12, at 162 (“The children of a Jordanian woman, however, cannot acquire her nationality or residency status. Consequently, these children are deprived of all rights, including enrollment in the school system, social entitlements, and/or political rights. Indeed, they are not even registered in their Jordanian mother’s passport, which is stamped ‘Children are not included due to the different nationality of the father.’”).

⁴⁶ These practical consequences are further explored *infra*.

⁴⁷ See Law No. 24 of 1973 on Residence and Foreigners' Affairs (Jordan), at chap. 3 (Jan. 1, 1973), <http://www.unhcr.org/refworld/docid/3ae6b4ed4c.html> [accessed 10 April 2012].

⁴⁸ *Id.* at art. 22.

unique skills for which there is no equivalent in the Kingdom.⁴⁹ Residence permits are also granted to diplomats, disabled and minor dependents of Jordanian residents, and students.⁵⁰

Very few refugees within the country possess a residence permit. For example, UNHCR notes that only 30% of Iraqi refugees in the Kingdom have attained such a permit.⁵¹ This is problematic because – among other things – the lack of a residency permit “makes it difficult and costly to obtain a work permit.”⁵² Thus, in order to attain the right to work, refugees in Jordan must first attain a residence permit. However, this creates a catch-22 for refugees. Before they can acquire a work permit, they need a residency permit; before they can acquire a residency permit, they need a work permit.⁵³

The hardships wrought by Jordan’s residency law are numerous. First, and most obviously, the law means that “refugee” families of Jordanian women do not have the automatic legal right to live with their mothers in the Kingdom. Because residency is hard to attain, many refugee families live illegally within the country. These individuals are subject to deportation by the Minister of Internal Affairs.⁵⁴ Furthermore, refugees who have not attained resident permits are not eligible for employment except in extraordinary circumstances.⁵⁵ As the next section will explain, lack of employment is devastating for refugee families.

2. No Right to Employment

⁴⁹ *Id.* at art. 26.

⁵⁰ *Id.*

⁵¹ See Regional Response Plan, 2011, *supra* note 40, at 44.

⁵² *Id.*

⁵³ See ROBERTO PITEA, CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION, TRANSIT MIGRATION: CHALLENGES IN EGYPT, IRAQ, JORDAN AND LEBANON 19 (2010).

⁵⁴ See Law No. 24 of 1973 on Residence and Foreigners' Affairs (Jordan), at chap. 3 (Jan. 1, 1973), <http://www.unhcr.org/refworld/docid/3ae6b4ed4c.html> [accessed 10 April 2012].

⁵⁵ *Id.* at 16(a) (stipulating “no Jordanian national or Jordanian company or body shall employ a foreigner unless he has a permit to reside in the Kingdom. This requirement shall not apply to experts called for a practical or technical purpose, provided that their period of engagement does not exceed three months”).

“Foreign” families of Jordanian women do not enjoy the right to work within the Kingdom. Because the husband and children are unable to work, “foreign” families of Jordanian women are often in a very precarious financial situation.⁵⁶ Without access to livelihoods, “foreigners” are dependent upon fickle and uncertain sources of income: remittances from abroad, cash assistance provided by non-governmental organizations (NGOs), and meager wages from informal employment. The harmful effects of this issue are pervasive in the lives of mixed refugee families living in Jordan. Because they have no reliable source of income, many cannot afford to meet their basic needs. For example, those who need access to tertiary healthcare – which is not widely available for free – must often go without it.⁵⁷ Additionally, there are reports that refugee children sometimes drop out of school to pursue informal employment and support the family.⁵⁸ For these reasons, access to employment has been described as the most pressing need facing refugees in Jordan.⁵⁹ It affects every facet of life for the population: social wellbeing, nutritional intake, physical and mental health, access to education, etc.

This dismal situation is exacerbated by persisting gender inequality within the Kingdom. Statistics show that women are much less likely than men to be the primary breadwinner for their families.⁶⁰ This reflects traditional conceptions of gender roles within the country. Jordanian women face many inequities regarding employment: higher unemployment rates, unequal wages, and fewer job opportunities than their male counterparts.⁶¹ This makes Jordan’s discriminatory

⁵⁶ U.N. Office for the Coordination of Humanitarian Affairs, 2011 U.N. Regional Response Plan for Iraqi Refugees, at 43 (Dec. 28, 2010), <http://ochaonline.un.org/humanitarianappeal/webpage.asp?Page=1932>.

⁵⁷ U.N. Office for the Coordination of Humanitarian Affairs, Consolidated Appeals Process (CAP): Mid-Year Review of the 2010 Regional Response Plan for Iraqi Refugees, at 1 (Jul. 20, 2010), <http://reliefweb.int/node/361563>.

⁵⁸ *Id.*

⁵⁹ See generally KARA WHITMAN, IMPROVING OUTCOMES: ASSESSING HUMANITARIAN PROGRAMS FOR DISPLACED IRAQIS IN JORDAN (2011).

⁶⁰ EUROPEAN TRAINING FOUNDATION – EUROPEAN UNION, UNEMPLOYMENT IN JORDAN, 9,49 (2005).

⁶¹ *Id.* at 9, 48 (“Women constitute 48% of the population but their economic participation rate is less than 12%. Jordan has one of the lowest female economic participation rates of all Arab countries.”).

nationality law even more inequitable: because only the wife in a mixed-refugee family is allowed to work, and because she lives in a social environment that hinders her employment opportunities, her family is often destitute.⁶²

There is very little that mixed-nationality families can do to improve their situation. Although the Kingdom provides work permits to some foreign workers – exempting them from default laws prohibiting employment of foreigners – these permits are not attainable by refugees *in practice*.⁶³ They are issued only when the work undertaken by the foreign laborer “requires expertise and skills unavailable or insufficient within the Jordanian workforce.”⁶⁴ Before obtaining a work permit, non-Jordanians must first obtain a residency permit,⁶⁵ a processing payment,⁶⁶ and often a bank security deposit.⁶⁷ Furthermore the potential employer must pay a fee before a work permit is issued.⁶⁸ Even in the rare instances where foreign employees and their Jordanian employers are willing and able to go through with this process, the application is still subject to the discretion of the Minister of Labour.⁶⁹

Furthermore, Jordanian law forbids employers from hiring non-Jordanians without residence permits. Law Number 24 of 1973 on Residence and Foreigners’ Affairs governs the employment of non-Jordanian workers. According to Law No. 24, Jordanian nationals and

⁶² See 2011 Regional Response Plan, *supra* note 56, at 43.

⁶³ See Labour Law and its Amendments No. 8 of the Year 1996, 4113 OFFICIAL GAZETTE 1173 (Jordan), <http://www.mol.gov.jo/Default.aspx?tabid=231> [hereinafter Labor Law].

⁶⁴ *Id.* at art. 12(1).

⁶⁵ To be eligible for a residence permit, one must: (a) have an employment contract with a Jordanian employer, along with certification from the Ministry of Labor that his activities are not in competition with those of Jordanians, or (b) have certification of secure and lawful source of income, or (c) have the intention and approval to invest in the Jordanian economy, or (d) unique skills for which there is no equivalent in the Kingdom. Residence permits are also granted for diplomats, disabled or minor dependents, and students. Note the catch-22 involved (described *supra*). To get a work permit, one needs a residency permit; to get a residency permit, one needs a work permit.

⁶⁶ Labor law, *supra* note 63, at art. 23.

⁶⁷ *Id.* at art. 27.

⁶⁸ See Labor Regulation Number 36 of the Year 1977 – The Regulation of Employment Permits Fees for Non-Jordanian Workers. This fee schedule reflects a preference for Arab workers, requiring them to pay lower rates than their non-Arab counterparts.

⁶⁹ See Labor Law, *supra* note 63, at art. 12.

companies are expressly forbidden from employing foreigners who do not have residence permits.⁷⁰ Employers who violate this law are subject to hefty fines for each worker who is illegally employed.⁷¹ Given these restrictions, mixed-nationality families of a Jordanian mother are unable to improve their situation within the Kingdom.

II. INTERNATIONAL LAW REGARDING PASSAGE OF CITIZENSHIP

a. Treaty Law

Domestic laws regarding the passage of citizenship are directly addressed by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Article 9. This provision states that:

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*.⁷²

Thus, discriminatory nationality laws like those found in Jordan are expressly forbidden by the convention. This is because they do not provide women with equal nationality rights. However, Jordanian authorities claim that the Kingdom is not bound by this provision because of Jordan's reservations to Article 9.⁷³

⁷⁰ See Residence and Foreigners' Affairs Law, *supra* note 5, at 16(a) (stipulating "no Jordanian national or Jordanian company or body shall employ a foreigner unless he has a permit to reside in the Kingdom. This requirement shall not apply to experts called for a practical or technical purpose, provided that their period of engagement does not exceed three months").

⁷¹ *Id.* at art. 35.

⁷² Convention on the Elimination of All Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

⁷³ See *Reservations to CEDAW*, UN DIVISION FOR THE ADVANCEMENT OF WOMEN – DEP'T OF ECON. AND SOC. AFFAIRS, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (last visited Apr. 30, 2012). [hereinafter CEDAW Reservations]

However, it is debatable whether Jordan's reservations to CEDAW Article 9 are valid. This is because parties may not make reservations that are contrary to the object and purpose of a treaty. CEDAW's Article 28(2) adopts the impermissibility principle of the Vienna Convention on the Law of Treaties (VCLT).⁷⁴ This principle, which governs international treaty law, states that parties may not make reservations that are "incompatible with the object and purpose of the treaty."⁷⁵ This is the case with Article 9 of CEDAW, which is central to the convention's goal of ending discrimination against women. As described *supra*, nationality laws go to the heart of a person's relationship with the state; when they discriminate on the basis of gender, they make women second-class citizens. Given that CEDAW's stated object and purpose is "to adopt the measures required for the elimination of such [gender] discrimination in all its forms and manifestations,"⁷⁶ reservations to Art. 9 are impermissible under international law. This fact was noted by officials from Denmark, who objected to reservations to Art 9 saying that such reservations "[aim] to exclude an obligation of non-discrimination, which is the aim of the convention" and are "not in conformity with the object and purpose of the convention."⁷⁷

Jordan's Law No. 6 of 1954 on Nationality is in breach of the Kingdom's obligations under the International Covenant on Civil and Political Rights (ICCPR).⁷⁸ Although the ICCPR does not have a singular article dealing with discriminatory nationality laws, its provisions in the aggregate prevent the practice. According to the United Nations Human Rights Committee – a body that is tasked with administering and adjudicating matters relating to the ICCPR – the covenant requires states to ensure that "no sex-based discrimination occurs in respect of the

⁷⁴ *Id.*

⁷⁵ Vienna Convention on the Law of Treaties art. 19 UN Doc. A/Conf. 39/29, 1155 U.N.T.S. 331 (1969).

⁷⁶ See CEDAW, *supra* note 67, at pmb1.

⁷⁷ See CEDAW Reservations, *supra* note 68.

⁷⁸ International Covenant on Civil and Political Rights, art. 6(1), UNGA Res 2200A (XXI) [1966], U.N. Doc. A/6316 [hereinafter ICCPR].

acquisition or loss of nationality by reason of marriage [and in respect] of residence rights.”⁷⁹ To come to this conclusion, the Committee applies subordinate equality rights in articles 2 and 3 to article 23(4), which deals with equality of rights at marriage, during marriage, and at its dissolution.⁸⁰ These articles state, in pertinent part:

Art 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Art 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Art 23(4): 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Jordan’s nationality law discriminates on the basis of gender at the time of marriage: under this law, men have the right to pass their citizenship to a spouse while women do not. This effectively makes women second-class citizens. Therefore the nationality law contravenes the country’s obligations under ICCPR.

The case law of the Human Rights Committee affirms its position that discriminatory nationality laws violate the ICCPR. In *Aumeeruddy-Cziffra v. Mauritius (the Mauritian Women’s Case)*, the Mauritian legislature passed a statute limiting the residency rights of foreign men married to female citizens.⁸¹ As a result of the statute, foreign wives of Mauritian men were considered *de facto* residents of the country; foreign husbands, however, were not automatically

⁷⁹ U.N. Human Rights Committee, General Comment No. 28 on Equality of Rights Between Men and Women (Art. 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10,P 31 (2000).

⁸⁰ See Karen Knop & Christine Chinkin, *supra* note 29, at 576.

⁸¹ *Aumeeruddy-Cziffra v. Mauritius*, Communication No. 35/1978, U.N. Human Rights Committee, Selected Decisions Under the Optional Protocol 67, U.N. Doc. CCPR/C/OP1 (1985).

eligible for residency status. Women who were affected by the law – that is, women who could not pass residency to their foreign husbands – brought a claim under the ICCPR’s Optional Protocol.⁸² The Human Rights Committee found the law to be in violation of the ICCPR, noting that “there [was] a violation of articles 2(1) and 3 of the Covenant, in conjunction with article 17(1).”⁸³

III. RECOMMENDATIONS

a. International Court of Justice Advisory Opinion

The Hashemite Kingdom of Jordan, to its credit, takes its international obligations seriously. “Numerous statements by Jordanian representatives to the United Nations make clear that in cases of conflict between Jordan’s domestic laws and its treaty obligations, the latter take precedence.”⁸⁴ Thus, were the Kingdom convinced that membership to CEDAW precluded discriminatory nationality laws, it might amend Law No. 6 of 1954. Additionally, were it clear that the nationality law was internationally illegal, individuals might have grounds to challenge it in Jordanian courts.⁸⁵

Accordingly, the international community should push for an International Court of Justice (ICJ) Advisory Opinion on the matter. To this end, states should seek a ruling on the legality and validity of reservations to Human Rights treaties generally. Such an opinion would be particularly helpful for the implementation of CEDAW, a convention that has more reservations than any other Human Rights treaty.⁸⁶ Although this opinion would not have

⁸² It is worth noting that Jordan is not a party to the ICCPR’s Optional Protocol. Therefore, citizens of the country cannot appeal to the Human Rights Committee to effect their rights under the ICCPR.

⁸³ See Aumeeruddy-Cziffra v. Mauritius, *supra* note 76, at 9.2(b)2(i)8.

⁸⁴ See WARRICK, *supra* note 3, at 104.

⁸⁵ *Id.*

⁸⁶ CEDAW at 30 – CEDAW Success Stories, UNIFEM, http://www.unifem.org/cedaw30/success_stories/ (last visited Apr. 30, 2012). The effect of uncertainty over whether reservations are valid is seen in the number of contested reservations to CEDAW. According to one source, forty-five percent of member party reservations to CEDAW have been contested by other states parties. See ANNE F. BAYEFSKY, THE UN HUMAN RIGHTS TREATY

binding legal force on states parties to CEDAW, it would carry a profound persuasive effect. For example, an ICJ opinion would give CEDAW signatories a firm basis upon which to contest other states' reservations to the treaty. Additionally, an ICJ opinion on the validity of reservations would likely lead many countries to withdraw their reservations. This is true of Jordan, which has expressed a desire to comply with its international legal obligations.⁸⁷

b. Diplomatic Pressure

Jordan has benefitted greatly from an influx of international aid money over the past decade: “with aid earmarked for refugees, donor countries have already largely contributed to improving infrastructures in Jordan and Syria, particularly in the health and education sectors.”⁸⁸ Given its dependence upon foreign aid for economic wellbeing,⁸⁹ the Kingdom is particularly susceptible to diplomatic pressure from its chief donors (most notably the United States and the European Union).⁹⁰

However, international donors have not attached any conditions to their donations; in so doing, they have missed an opportunity to increase compliance with the core terms of CEDAW. These donor countries should condition additional donations on the withdrawal of reservations to CEDAW. This issue is intimately intertwined with the purpose of aid money to the country – the improvement of life for refugee populations. Having drastically improved Jordanian infrastructure, these donors have a right to condition further aid on such improvements. Were it

SYSTEM, UNIVERSALITY AT THE CROSSROADS 73 (2001), available at <http://www.bayefsky.com/report/finalreport.pdf>.

⁸⁷ See WARRICK, *supra* note 3, at 104.

⁸⁸ Géraldine Chatelard, *Iraqi Refugees and IDPs: From Humanitarian Intervention to Durable Solutions*, MIDDLE EAST INSTITUTE & FONDATION POUR LA RECHERCHE STRATEGIQUE – REFUGEE COOPERATION, 1 (Jun. 9, 2011) http://reliefweb.int/sites/reliefweb.int/files/resources/Full_report_109.pdf.

⁸⁹ See Géraldine Chatelard, *Jordan: A Refugee Haven*, MIGRATION INFORMATION SOURCE (Aug, 2009), <http://www.migrationinformation.org/feature/display.cfm?ID=794>; *Fact Sheet: Iraqi Refugees in Jordan and Syria*, HUMAN RIGHTS FIRST (Aug. 1, 2007), www.humanrightsfirst.org/wp-content/uploads/pdf/irp-jordan-syria.pdf.

⁹⁰ The US and the EU are two of the biggest donors in Jordan (and have a close working relationship with the country). Were these two donors to place conditions on their provision of aid, the Jordanian government would likely make concessions (it is increasingly dependent on these two donors for infrastructure improvement, etc.).

to do this, the international community could likely secure substantial gains for Jordanian women and their “foreign” families.

c. Push for Vindication Domestically

As it stands, Jordan does not currently have a clause in its constitution dealing with non-discrimination on the basis of gender.⁹¹ This is notwithstanding the fact that the Constitution already provides for non-discrimination on the basis of race, language, and religion in Art. 23: “there shall be no discrimination between Jordanians as regards to their rights and duties on grounds of race, language or religion.”⁹² During recent constitutional reforms in 2011,⁹³ women’s groups in Jordan lobbied to include the word “gender” to Art. 23.⁹⁴ Unfortunately this push was unsuccessful, and the Constitution was amended without providing equal rights to women. This was an unfortunate setback for the women’s rights movement within the country. Jordanian women’s groups should continue to push for such a provision, however. Adding the word “gender” to Art. 23 would allow them to challenge discriminatory nationality laws in Jordanian courts, and would go a long way towards guaranteeing equal rights with men.

Another domestic remedy involves adding a paragraph to article 13 of the Nationality Law, which would “grant the Council of Ministers the right to grant the children of Jordanian mothers married to non-Jordanians the Jordanian nationality if the council finds such action suitable.”⁹⁵ This approach offers merely a piecemeal solution, and could be applied only on a case-by-case basis. However, it would provide a mechanism for at least some families seeking to

⁹¹ See THE CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN, Jan. 1, 1952, Art. 23 (Jordan).

⁹² *Id.*

⁹³ These reforms were brought on by the Arab Spring, which was sweeping throughout the Arab world in 2011.

⁹⁴ See *Constitutional Reform in Jordan: Progress and Disappointments*, WOMEN’S LEARNING PARTNERSHIP FOR RIGHTS, DEVELOPMENT, AND PEACE, (Oct. 27, 2011, 12:29pm).

⁹⁵ See Amawi, *supra* note 12, at 163.

pass Jordanian citizenship through the mother. Given the current status of the law, this would likely be a welcome development to families that currently have no hope.

IV. CONCLUSION

Jordanian laws surrounding the passage of citizenship are discriminatory on their face. These laws allow men to pass citizenship automatically, but deny the same right to women. This effectively makes women second-class citizens within the Kingdom. The effects of Jordan's nationality law are devastating for mixed-nationality families with Jordanian mothers. Such families are denied the right to reside within the Kingdom, and to pursue lawful employment. Although there are theoretically methods to attain temporary work and residency permits, these methods are not available *in practice* due to complex restrictions. Accordingly, mixed-nationality families within the kingdom are left without any hope of improving their situation.

Jordan's discriminatory nationality laws are unlawful under international law. The country's treaty obligations under CEDAW and the ICCPR preclude it from discriminating on the basis of gender in its nationality law. Furthermore, Jordan's nationality law has no real justification aside from the preservation of a masculinity-based nationalism. Given these facts, Jordan should immediately change Law No. 6 of 1954, and provide women with equal rights in the realm of nationality. Such a change would bring immediate relief to the ~10% of the population effected by the inequitable law.

The international community should take steps to ensure that Jordan amends its nationality law. These include diplomatic pressure on the Kingdom to withdraw its reservations, and requests for an ICJ Advisory Opinion on the legality and validity of reservations to Human Rights treaties. Additionally, Jordanian women's groups should continue to push for a gender non-discrimination provision in article 6 of the Constitution. Should these efforts fail, Jordanian

women should seek a piecemeal solution to the problem by granting discretion to the Minister of the Interior to provide citizenship on a case-by-case basis.

There have been drastic changes in the Arab world recently with the advent of the Arab Spring. These changes have brought about progressive reforms throughout the Middle East and North Africa. It is time that Jordanian women are included within the sea change. Justice and equality demand it.