



## **MEETING REPORT**

### **Regional Expert Meeting on the Human Rights of Stateless Persons in the Middle East and North Africa**

Amman, 18-19 February 2010

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#### **I. BACKGROUND ON STATELESSNESS, UNHCR AND OHCHR INVOLVEMENT**

The 1948 Universal Declaration of Human Rights (UDHR) set in train a series of major improvements in the area of protection of the human rights of all individuals. But while the UDHR established the right of every person to a nationality, millions of people worldwide do not possess the legal bond of a nationality with any state. They are stateless. In principle, international law ensures to stateless persons the enjoyment of human rights. The reality is different, though, and there is much that remains to be done to ensure the full enjoyment of all human rights by stateless persons. In the Middle East and North Africa region, hundreds of thousands of stateless persons face significant obstacles in the enjoyment of their inalienable human rights precisely because they are stateless.

In the MENA region, the concept of nationality or citizenship is directly linked to the process of state formation, as well as to cultural norms and values. The establishment of new political boundaries after the collapse of the Ottoman Empire and ensuing armed conflicts are among the factors that resulted in displacement and in making people stateless. With modern State formation in the region, freedom of movement across the boundaries, whether regulated or not, enabled nomadic tribes to live in more than one country for parts of each year without formally acquiring the nationality of any. Conversely, nomads and others also benefited from the policy of some States to distribute passports in some instances.

Statelessness is perpetuated nowadays partly as a result of national legal provisions and administrative practice concerning the acquisition, change or loss of nationality which do not respect and ensure the right to a nationality. Nationality laws denying women the right to pass on nationality to their children, lack of safeguards against statelessness at birth and administrative decisions on nationality and citizenship, including punitive withdrawal of nationality, are often cited as the most important factors rendering persons stateless. Failure to register children at birth is also a contributing factor in some States. Restrictive approaches to naturalization and confirmation of nationality have tended to perpetuate statelessness. Nationality or citizenship status should generally bear no consequence on the exercise or enjoyment of human rights. However, the reality in the region is different.

The United Nations High Commissioner for Refugees (UNHCR) is mandated to prevent and reduce statelessness and protect the rights of stateless persons. The Office of the High Commissioner for Human Rights (OHCHR) is mandated to promote and protect all human rights for all persons, including stateless persons. These mandates are thus complementary and the two UN agencies work together to highlight the issue and develop common and cooperative strategies to ameliorate the situation of stateless persons in the MENA region.

## **Legal Framework**

Statelessness can be categorized into:

- a) *de jure* statelessness as defined in article 1 of the 1954 Convention relating to the Status of Stateless Persons.
- b) *de facto* statelessness, including persons who formally possess a nationality but where it is ineffective.

The rights of stateless persons are enunciated in a number of international instruments. Article 15 of the Universal Declaration of Human Rights (UDHR) guarantees the right to a nationality as a fundamental human right. Specific standards designed to ensure the right to a nationality are set out in the 1961 Convention on the Reduction of Statelessness and, to a lesser degree, in the 1954 Convention relating to the Status of Stateless Persons, the primary focus of which is to ensure minimum standards of treatment for persons who are already stateless. The civil, cultural, economic, political, and social rights of stateless persons are enunciated in other international human rights instruments signed and ratified by many States. These include, *inter alia* the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention for the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of All Migrant Workers and Members of their Families. Several General Assembly resolutions also provide additional safeguards and the concluding observations of treaty bodies as well as their decisions on individual complaints have tackled statelessness repeatedly. At the regional level, the right to a nationality is recognized in the Covenant on the Rights of the Child in Islam, in the new Arab Charter on Human Rights (art. 29) and has also been emphasized by the Asian-African Legal Consultative Organisation (AALCO).

The domestic legislation of some States in the region seeks to prevent statelessness and several States have taken steps to eliminate legislative loopholes leading to statelessness. While it is possible to identify a number of good practices by States, as well as useful input from lawyers or NGOs supporting stateless persons, as noted above, safeguards in national legislation tend to be incomplete and efforts need to be carried out in all countries, preferably in a concerted manner, as some situations or categories transcend State borders.

## **A regional research process**

To address these issues the UNHCR and OHCHR regional presences in Beirut and at headquarters shared responsibility for organizing and funding a research-action process. As a first step, the two agencies commissioned two studies to be undertaken by independent experts, which would bring together existing information on the issue and

identify knowledge gaps. The countries covered are the ones included in the current definition of the MENA Region at both UNHCR and OHCHR, i.e. Mauritania, Morocco, Algeria, Tunisia, Libya, Egypt, Occupied Palestinian Territories, Lebanon, Syria, Jordan, Iraq, Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman and Yemen. OHCHR contributed with a review of the international and regional norms and standards related to the human rights of stateless persons, including the right to a nationality. . At country level this took the form of a legal review of legislative texts relevant to statelessness in Lebanon, Syria, Bahrain, Kuwait the United Arab Emirates and Egypt and an assessment of their compatibility with international norms and standards. The study also identified protection gaps and highlighted recent attempts to address and protect the rights of stateless persons. A searchable thematic data-base with all these texts was developed and will constitute the foundation for a comprehensive research tool covering the entire MENA region. With input from its offices in a number of countries in the region, UNHCR presented the results of an overview of statelessness in the Middle East and North Africa<sup>1</sup>, in terms of magnitude, populations and human rights protection. This review identified the major stateless populations in the region and set out the consequences of statelessness and overall degree of enjoyment of civil, cultural, economic, political and social rights of stateless persons. UNHCR also presented good practices with regard to the prevention and reduction of statelessness and the protection of stateless persons.

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### **The expert meeting**

The second stage of the joint UNHCR and OHCHR research-action process was the convening of a regional expert meeting on 18-19 February 2010 in Amman on *The Human Rights of Stateless Persons in the Middle East and North Africa Region*. The event was designed to provide opportunities for discussion informed by the preliminary research findings in the two studies and identification of follow up activities for each of the conveners and other partners. As such, the meeting sought to contribute to strengthening OHCHR-UNHCR involvement in the issue of the rights of stateless persons, including by:

- (a) Disseminating reliable data on the characteristics and dimension of statelessness and the rights of stateless persons in MENA countries and agreeing on a follow-up research.
- (b) Assessing gaps related to enjoyment of rights and acquisition of nationality between current national legislation, administrative procedures and practices, and regional and international norms and standards.
- (c) Contributing to changing the perception of stateless persons as “outsiders” or statelessness as exclusively a security concern and introducing issues of protection and enjoyment of human rights (civil, cultural, economic, political and social) to the debate.

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<sup>1</sup> Covering the following: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Occupied Palestinian Territories, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates and Yemen.

- (d) Reviewing current approaches of Governments, local administrations and communities, national human rights institutions, NGOs and activists to the problem of statelessness;
- (e) Identifying and evaluating practices of local, national, regional and international actors.

With these objectives in mind, the meeting brought together more than 30 experts from the region, who participated in their personal capacity, to share their views on the subject-matter of the consultation, review past work and develop a common approach. In addition to representatives from the two conveners the participants included representatives from other agencies of the UN system, lawyers working on nationality cases, experts from national human rights institutions or relevant parliamentary committees, key figures from national and international civil society initiatives relating to statelessness and academics with a proven record of relevant research and the ability to share their knowledge with operational actors. This diverse selection of experts facilitated the discussion of the role of different stakeholders according to their responsibilities and margin of action: local and national authorities, judiciary, social agencies, parliaments, NGOs and inter-governmental organizations including the UN system. A summary of proceedings can be found in Annex 2 and the recommendations and suggestions for future strategies are detailed below.

### **An ongoing UNHCR and OHCHR commitment to statelessness**

The process in which the meeting is inscribed is understood to be a long term one, possibly lasting five to ten years. OHCHR and UNHCR agree that each organization will bring its own distinct mandate – promotion and protection of all human rights for the former and prevention and reduction of statelessness and protection of stateless persons for the latter – and its own working methods, network of contacts and advocacy methods to the process. Whenever the two organizations find points of convergence or overlaps in their mandate they could act jointly, in other cases coordination will be in order.

As Radhouane Nouicer, Director of UNHCR Regional Bureau for the Middle East and North Africa, explained, *“it is unfortunate, it is sad, that hundreds of thousands of people, human beings, our brothers and sisters, are born and die in the region without having enjoyed the pride of belonging to a state. They come and go unnoticed. A loud and sound wake-up call should be sent to governments and decision-makers. This will require tireless effort and close cooperation, but it must start now. As far as UNHCR is concerned, we will remain actively engaged and we will work more closely with other UN partners (OHCHR, UNICEF and others) and with civil society institutions in this regard.”*

For his part, Fateh Azzam, OHCHR Middle East Regional Representative, noted that *“in a world based on state sovereignty and states’ obligations to protect, we cannot sit still while hundreds of thousands of people fall through the cracks. The right to a nationality should be enjoyed by all in implementation of the right to self-determination and to resolve long-standing historical and political conflicts. However, even as we wait for*

*states to have the courage and the political will to act, stateless persons must be guaranteed the full range of human rights, including the right to work, health, education, movement, expression, assembly and other civil, economic, social and cultural rights. For OHCHR, human dignity is inherent, and all human rights are to be enjoyed by all, including stateless persons. We are committed to working with you to make this a reality.”*

## II. RECOMMENDATIONS AND FUTURE STRATEGIES

The following are the recommendations and suggestions for future strategies that were the outcome of discussions at the *Regional Expert Meeting on the Human Rights of Stateless Persons in the Middle East and North Africa* (Amman, 18-19 February 2010).

- **Broad partnerships should be developed by identifying and mobilising stakeholders at local, national, regional and international levels that take into account the capacities, mandates and interests of each potential actor.**

At the local / national level, participants discussed the engagement of all stakeholders including government authorities, local officials, parliamentarians and key decision-makers; the affected population, including children, women, the elderly, and community leaders; lawyers, judges, bar associations and legal aid providers; academics and research centres; religious leaders and faith-based organisations; civil society organisations; National Human Rights Institutions (NHRI) and the media. At the regional / international level, this list was supplemented by internationally operating NGOs and research centres; regional, sub-regional and international organisations such as, *inter alia*, the Gulf Cooperation Council, the League of Arab States, the Conference of Islamic States, the African Union, the Inter-Parliamentary Union and the Arab Inter-Parliamentary Union; and the UN system.

- **In mobilising stakeholders, priority should be given to empowering members of the affected populations to play an active part in processes, activities and decisions that concern them.**

Mention was made of several successful initiatives to encourage individuals from affected populations to come forward and prepare them to present their own case to the media, to government officials and other stakeholders. There was also a call to find ways to allow such persons to participate in future meetings of this kind as well as in relevant follow-up activities.

- **Efforts should be made to “mainstream” statelessness within the UN system, including by raising the awareness of UN agencies to how the statelessness issue intersects with specific organisational mandates.**

There was broad recognition for the potential for the UN system to provide critical support in addressing statelessness in the region. OHCHR and UNHCR reaffirmed their commitment to help – and where appropriate lead – other stakeholders in this context, including through raising the issue within UN Country Teams and possibly United Nations Development Assistance Frameworks (UNDAF) in the region.

- **National and regional civil society actors should, together with the United Nations, advocate a two-tiered approach: on one hand, the prevention and**



**reduction of statelessness and, on the other hand, the protection of human rights of stateless persons.**

There was broad agreement on the suggestion that all stakeholders advocate a common strategy following a two-tiered approach where a systemic solution to statelessness should be followed and the promotion and protection of the human rights of stateless persons should be strengthened. This latter effort would include the promotion of amendments to current legislation and administrative practices as a means to ensure the enjoyment of human rights. There was also emphasis that in protracted cases of statelessness, states should enable those individuals or groups to improve the protection of their human rights in accordance with their international human rights obligations.

- **National and regional civil society initiatives should be supported and further information-sharing encouraged.**

A number of planned and ongoing civil society initiatives for research and advocacy at both national and regional level were discussed and there was a call for increased efforts to share information on activities and outcomes, as well as specifically on methodologies.

- **Parliamentarians should be recognised as key stakeholders and encouraged to increase their engagement in the issue of statelessness.**

It was proposed that UNHCR's annual training event with members of the Transitional Arab Parliament and the League of Arab States would focus on statelessness, thereby presenting an important opportunity to raise the issue with parliamentarians.

- **Demystifying and depoliticising statelessness should be a priority in the design of research, advocacy and awareness-raising activities.**

Dispelling the perception of statelessness as a complex and politically sensitive issue can be achieved through the involvement of a broad range of stakeholders which approach statelessness from within their specific mandates and spheres of interest (e.g. children's rights, access to justice, gender equality). Experiences and best practices from states outside the region can also be raised to show that other countries are struggling with the same questions, thereby extracting these issues from their immediate national / regional political context. A focus on positive developments within the MENA region will further validate encouraging global trends and show stakeholders what steps can be taken. Participants also suggested that more could be done to "give statelessness a face" by recounting personal histories and the difficulties faced by stateless persons as part of public information or advocacy campaigns – a technique that was successfully employed to engage the media, for instance, in the regional campaign to promote gender equality in nationality laws.

- **Regional research should be strengthened in order to fill current knowledge gaps, specifically by developing a harmonised methodology for the preparation of individual country studies.**

Detailed country-studies that present the legal framework and offer an in-depth situation analysis are needed to better understand how statelessness manifests itself in the region. A harmonised framework for analysis will help to ensure that country reports contain consistent, comprehensive and comparable information which can then be used to analyse cross-cutting regional themes. Such a framework could be built by considering: the model used by European Democracy Observatory on Citizenship for country studies on acquisition and loss of nationality in Lebanon, Egypt and Morocco; the UNHCR tool *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*; OHCHR's *The Rights of Non-Citizens* booklet and the methodology used by the Open Society Institute for its study of citizenship laws in Africa.

- **Where common themes are identified, stakeholders should consider the added value of regional coordination, cooperation and information-sharing as a complement to a local / national strategy.**

The consideration of different situations of statelessness during the meeting led to the observation that, although there are some common themes, there is also a great diversity in the background to and situation of the various stateless populations, challenging the appropriateness of a regional approach. However, cooperating to address the issue at the regional level does not negate local and national initiatives and can, in fact, provide significant added value. The region-wide campaign to reform MENA countries' nationality law to introduce greater gender equality in the enjoyment of nationality rights was discussed as a prime example of this dual approach and how it can contribute to concrete successes.

- **Wherever possible, strategic litigation should be pursued to build the body of jurisprudence in the region on the prevention and reduction of statelessness and the protection of stateless persons.**

The suggestion was also raised that, should such a case emerge, it would be worthwhile for civil society organizations to bring appropriate cases before the African Commission on Human and Peoples' Rights in order to also encourage the further development of relevant international jurisprudence.

- **Stakeholders should raise the question of statelessness, as appropriate, in the context of the Universal Periodic Review and UN Treaty Body reporting mechanisms in order to raise the profile of the issue in the region.**

Forthcoming sessions of the Universal Periodic Review mechanism will consider several MENA countries. Stakeholders can actively track and pursue such opportunities to place the situation of stateless persons in these countries on the international human rights agenda. In addition, the periodic reporting processes of the following treaty bodies are

particularly relevant: the Committee on the Rights of the Child, the Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on the Elimination of All Forms of Discrimination Against Women.

### **III. SUMMARY OF PROCEEDINGS**

#### **Regional Expert Meeting on the Human Rights of Stateless Persons in the Middle East and North Africa**

Amman, 18-19 February 2010

##### **1. Opening session**

###### *International standards and terminology*

The meeting was opened by OHCHR and UNHCR experts, presenting participants with an overview of international legal standards and principles relating to the human rights of stateless persons. A stateless person was defined as someone who is not considered a national by any state under the operation of its law, while a finding of statelessness relies on an assessment of both the content of national law and its practical application by the state. It was argued that their right to a nationality is a fundamental right and should be upheld in strict observance of the principle of non-discrimination. The responsibility of states was to be understood as their legal obligation to guarantee human rights to all persons on their territory or subject to its jurisdiction without discrimination. Finishing up the introductory presentations, participants were reminded that the task at hand was primarily related to identification of gaps in national legislations and administrative practices in different countries. Secondly, the challenge would be to classify possible options to tackle those gaps and how to ensure that all countries in the region live up to their existing international legal obligations.

The subsequent discussion following the presentations focused primarily on two areas of concern. First, discussions deliberated upon whether there is a clear and uniform understanding of the relevant terminology. Participants pointed out that the notions of “nationality” and “citizenship” can describe different modes of belonging in the Arab region, as well as in other areas of the world. However, it was recognised that the terms were used interchangeably in the international legal context and could be considered to describe the legal bond between a person and a state, unless otherwise specified. Secondly, participants posed the question whether the existing international legal framework is comprehensive in terms of standards relating to the avoidance of statelessness and the protection of stateless persons. One idea raised was to advocate for a new instrument to update the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and specifically address new challenges which have been identified since their adoption. Others expressed their conviction that, taken as a whole and provided that international standards are properly applied, the international legal framework as it currently stands is sufficient to cover all relevant concerns. In particular, mention was made of the role of regional instruments and core principles such as non-discrimination in addressing areas in which single

instruments such as the 1961 Convention on the Reduction of Statelessness may, if seen in isolation, exhibit a number of gaps.

### *Presentation of the background papers*

The objectives and methodologies underlying the two background papers prepared by consultants for the meeting were discussed. The OHCHR paper presents a legal analysis for six selected countries with a supporting database of relevant legal instruments, while the UNHCR study comprises a desk review of the situation of stateless persons in all 18 countries of the region. The primary objective of both papers was to consolidate existing information on the incidence, status and treatment of stateless populations and to identify areas in which information is currently lacking. The consultants outlined some of the difficulties that they faced in gathering information, in particular due to the limitations involved in gaining access, language, long-distance, to sources from multiple countries. They also raised some concerns about the accuracy and reliability of information related to the use of secondary sources, contradicting reports, misrepresentation of facts and difficulties with verification of information. They also raised as an issue of concern, the lack of information on legal safeguards and policy decisions, statistics, protection issues and best practices..

Participants were unanimous as to the need for further study of statelessness in the region and they shared the consultants' assessment that finding accurate and reliable information is a significant challenge. Participants agreed that effective research engages *all* available processes and actors and that information could first be compiled on a country-by-country basis before being further consolidated into one regional, or several thematic, analytical studies. There was also broad agreement that the focus should not be limited to a consideration of national legal texts, but should include governmental decrees, administrative practices and judicial rulings as well as information on implementation on the ground. Further research also has to include the identification of remedies and strategies, which could help inform a roadmap to move ahead.

## **2. Identification of statelessness**

### *Categories of stateless persons*

A broad categorisation of situations of statelessness was introduced on the basis of the underlying causes of statelessness. Among the main groups that can be discerned in this manner are those populations whose statelessness has resulted from: state succession and registration practices at the time of independence or transfer of sovereignty; arbitrary deprivation of nationality; technical gaps and discriminatory provisions in legislation (in particular on grounds of gender) administrative obstacles such as onerous documentation requirements for birth registration and proof of nationality; and difficulties experienced by migrant workers, refugees and persons who have been trafficked in retaining or proving their nationality and in ensuring that their children acquire a nationality. The MENA region has examples of stateless persons from each of these basic categories, which can be further subdivided into a number of more specific causes of statelessness.

For instance, arbitrary deprivation of nationality may take the form of collective denial or withdrawal of nationality on ethnic or religious grounds, or that of individual denaturalisation for political reasons.

In the ensuing discussion, participants on the basis of their individual competencies, made reference to specific groups of stateless persons including; populations such as the Bidoons, ethnic minorities such as the Kurds, migrant workers and refugee populations and in particular the situation of Palestinian refugees, throughout the region.

The invited expert from UNRWA described the situations in which Palestinians are confronted with statelessness following the mass displacement in 1948. Palestinian refugees remained in Palestine, were displaced regionally or joined the international Diaspora. As the situation persisted, many remain stateless, while some have been given other nationalities. Emphasizing UNRWA's protection mandate, it was underlined that statelessness in no way should prevent individuals from the enjoyment of their fundamental rights. Considering the difficulty in accessing accurate information however, UNRWA explained that a new system has been launched which will provide a more accurate picture regarding the situation of Palestinians across state lines and their level of access to and enjoyment of human rights.

Participants added to the discussion and brought further light to the situation of Palestinian refugees and other stateless groups in the context of different country situations versus their acquisition of rights. A point was also raised to those situations of statelessness where individuals fall outside group categories. These situations may be more difficult to target by international actors and possibly more effectively assisted by states. The inherent difficulty however, was recognized, as the identification of both stateless groups and individuals, as they are unregistered by default and ultimately difficult to both identify and to quantify.

### *Identification methodologies*

In the following deliberations, a number of proven and potential methodologies for identifying stateless populations and persons at risk of statelessness were raised. UNHCR described the experience that it has gained with survey techniques in other areas of the world and explained how similar efforts could be undertaken, in consultation with the relevant government(s), in MENA countries. It was underlined that states tend to be in favour of such measures as they are interested in knowing who is residing in their territory. Indeed, UNHCR and UNFPA have a Memorandum of Understanding stating that when technical assistance is provided to national authorities in the preparation of a census, this will include a call to capture information that will enable the identification of statelessness. In fact, all Gulf Cooperation Council (GCC) countries are conducting a population census over the course of 2010 and such a census could help to identify and quantify statelessness within a country's borders. Further suggestions were also made for identification efforts within specific thematic contexts, such as identifying stateless persons and individuals at risk of statelessness, including among persons who have been

detained (in particular in immigration detention), by asking the authorities for information regarding the grounds for detention of non-nationals. Peace processes, voter registration exercises and refugee repatriation efforts may be further avenues for identifying statelessness. Individual registration was also put forward as an identification method and the opportunities presented by and limitations inherent in this approach were discussed.

Participants discussed a number of ideas for further identification efforts in the region. Those populations and situations about which relatively little is currently known – such as the position of children of (irregular) migrants and the situation of persons in detention – may be worthy research priorities that would bring a fresh understanding of the issue of statelessness as it manifests itself in MENA countries. A call was made for the examination of not only the concrete causes of statelessness for any individuals or groups identified, but also the underlying reasons (historic, political, societal, financial, etc) for the initial and ongoing exclusion of these persons. In addition, the importance of establishing a detailed profile of affected populations was acknowledged, including by identifying differences within these groups in terms of status, documentation, background, protection concerns and other elements, in order to tailor an appropriate response. Finally, participants recognised that greater effort must be made to share methodologies for the identification of statelessness, with identification techniques from within and outside the region brought together to generate a broad overview of potential methodologies, from which a selection can be made according to the dynamics of the particular country or situation under study.

### **3. Prevention and reduction of statelessness**

#### *Good practices, bad practices*

In discussing the content and application of nationality laws in the region, participants raised examples of good practices that help to prevent statelessness as well as practices that can be a direct cause of statelessness. Since good practices can inform the content of – and advocacy strategy for – reform in those countries which are lagging behind in terms of safeguards against statelessness, experts also drew on their knowledge of situations outside the MENA region. They raised, for instance, two examples of policies that currently enjoy widespread recognition in Africa: the double *jus soli* rule (nationality granted to the second generation born on state territory) and the policy of attributing nationality *jus soli* to a child who was born on state soil and still resides there upon attaining the age of majority. Another interesting practice that was extracted from the African context – including Morocco and Algeria – is that of allowing individuals who have resided in the country for a certain period of time and have always been treated as a national to obtain official confirmation of their nationality without the need to furnish further evidence (*possession d'état de national*). This means that problems relating to proof of nationality can be avoided, even where individuals lack various forms of documentation. On the other hand, the downside to such a policy may be the exclusion of certain groups for political considerations, based on grounds such as colour, ethnicity or religion. Several participants also made reference to the reversed argument to the

*possession d'état de national*, called the *centre of life* argument; the revocation of residency rights or citizenship of those who left the country for a time, due to studies abroad or other reasons, using the argument that they moved their *centre of life* elsewhere. This also potentially leads to situations of statelessness.

Looking specifically at the laws and policies of many MENA countries, participants agreed that they provide some important guarantees against statelessness while also exhibiting a number of shortcomings. While legislative safeguards do exist in national legislation in the region, weaknesses lie in their level of implementation. More concretely, as most countries have ratified international treaties, including the ICCPR, which renders a state legally bound to allow a child who would otherwise be stateless to acquire nationality by virtue of birth on the state's territory, the legal provision is rarely applied by administrative authorities. This is the outcome where the law provide for the conferral of nationality to a child whose mother is a national if the child's father is unknown or is stateless – a policy that will avoid statelessness in some cases but not in others- as the situation is dependent on the situation of the father rather than the actual exposure of the child to statelessness.. Thus, in many countries there are areas in which the state can be applauded for its efforts to avoid statelessness, while there is also still room for improvement in terms of further legislative reform or improved implementation of the relevant safeguards.

#### *Positive trends in the region*

Having established that many MENA states do have legislative safeguards for the avoidance of statelessness in place but that implementation may be problematic, participants noted that one positive development within the region is the opening up of new avenues to monitor and ensure the correct application of these nationality laws through recourse to the courts. The 2004 amendment to Egypt's nationality law whereby a woman was given equal right to give her nationality to her children, should her husband or the father of her child be stateless, for example, not only brought about increased gender equality, but also established the jurisdiction of the courts in cases relating to nationality attribution. While in Lebanon (1950-60) numerous wealthy Palestinians were given the Lebanese nationality either by decree or by ministerial decisions, resolving a stateless situation for some individuals, but not systemically. Participants discussed possibilities for developing jurisprudence on the prevention and reduction of statelessness through strategic litigation – an activity which is already being pursued through legal aid programmes in some countries in the region but which could benefit from the further careful selection of key cases. In this context, participants also recalled how courts played a key role in addressing statelessness elsewhere, such as for the Urdu- speakers/ Biharis in Bangladesh.

Thereafter, a number of further positive trends evident in the region in terms of the prevention and reduction of statelessness were discussed. Most prominent of these is the reform of nationality legislation in Egypt, Morocco, Algeria and Iraq to introduce greater gender equality in the enjoyment of nationality rights – a measure which has served to both lower the risk of future statelessness and resolve some existing cases of statelessness



through retroactive application of the law and application procedures for individuals who were born before new laws came into force. This series of reforms reflects a similar trend at the global level and there is an ongoing and active campaign in place throughout much of the MENA region to promote the correct implementation of the reforms and to advocate for similar amendments to the nationality policy in other states. Participants also pointed out that some countries have taken steps to reduce statelessness by naturalising substantial numbers of stateless persons within their territories through specific decrees. The examples discussed included Lebanon, Bahrain, United Arab Emirates and Oman. Nevertheless, it was noted that these policies do not prevent new cases which can still arise under unresolved gaps in the legislative safeguards against statelessness. Participants also briefly discussed efforts that are underway to prevent and reduce statelessness in the context of repatriation of refugees in the MENA region. Particular examples of positive steps in this regard are the agreements reached in the context of the return of refugees, to Mauritania and to Iraq, which provide an avenue for confirmation of nationality in order to avoid statelessness among these populations. Summarizing the session, participants drew the conclusion that while statelessness is widespread, there is cause for concern with regards to other groups and individuals standing at risk of being rendered stateless in the future. There was agreement that there is a need to look past some of the concrete causes of statelessness to the underlying core issues and to map out the situation in-depth. In addition there was a consensus for considering statelessness/citizenship versus access to- and enjoyment of rights from an action point and advocacy perspective as a potential for alleviating the current for stateless populations.

#### **4. Human rights of stateless persons: status and documentation**

##### *Ambiguity and diversity of statuses*

The fourth session opened by recalling the importance of identifying stateless persons and addressing the status of such individuals in order to ensure access to the full range of rights, including those connected specifically to the status of stateless person. Overall, participants noted a severe lack of attention to status determination in the MENA region – despite the accession of three MENA states to the 1954 Convention relating to the Status of Stateless Persons – and a corresponding ambiguity surrounding the legal status of many stateless persons. In part as a result of this and in part due to other factors, participants explained that the stateless population in a particular state may be comprised of different persons or groups who hold different statuses. The situation of stateless persons in Syria and Lebanon were put forward as examples of this phenomenon. In both countries, stateless persons may enjoy one of two different statuses: a registered status as “foreigner” (*ajnabi*) in Syria or “nationality under study” (*kayd al dars*) in Lebanon which reflects the fact that they are non-nationals, but does not specifically identify individuals as stateless or an entirely undocumented or unregistered status (*maktoumeen* or *maktoum al kayd*). These two distinct statuses lead to different protection situations and will require different responses. Participants also expressed their concern that stateless persons enjoy a status similar to illegal immigrants in a number of MENA countries. On the other hand, participants pointed out that some countries have put in

place specific arrangements for dealing with the status – and documentation – of Palestinian refugees, whereby their access to and enjoyment of fundamental rights may be facilitated.

#### *Access to and impact of personal documents*

The extent to which stateless persons enjoy access to personal documentation in MENA countries depends in part on their status, and in part, on other factors. Participants raised the importance of efforts by local officials to offer basic identity papers to those stateless individuals whose status is most vulnerable and who do not enjoy access to official civil registration. Mention was also made of a “security card” issued in one country to stateless persons in lieu of regular identity documents. Although such papers do not secure access for stateless persons to the full range of rights and government facilities, they may enable stateless children, for instance, to attend school and may afford some protection against arbitrary detention. Participants noted, however, that there were divergent practices with regard to the recognition of these documents by service providers and that there is also no uniform policy with regards to the actual issuance of such documents. It was further noted that the question of access to documentation for stateless persons is closely related to the question of access to documentation generally, including documentation verifying an individual’s status as a national. As such, situations of statelessness and of a *risk* of statelessness (due to lack of proof of nationality) can overlap within the overall category of undocumented persons. When a person is undocumented, priority must be given to the acquisition of paperwork that confirms his or her status as a national, rather than issuance of a stateless person document.

Access to formal identity documents and other paperwork such as civil registration, national identity cards, driving licenses and travel documents typically occurs in a similarly ad hoc manner. In some instances, stateless persons are able to secure such documents whereby the field relating to nationality is left blank or contains a clear statement that the individual is not a national of the state of issuance. In other cases, access to some or all of these documents is reported to be severely problematic. Participants pointed out that while substantial attention is paid to the issue of birth registration and its importance in the prevention of (further) statelessness, the need to ensure marriage and death registration is often overlooked. Marriage is a pivotal moment in the lives of stateless persons and if states do not take appropriate action at this juncture, this can contribute to the perpetuation of statelessness. Additionally, participants recalled the key function that death registration can play in the realisation of inheritance rights but also in the context of nationality law which may make special provision for children in the event of the death of one or both parents, helping to avoid statelessness. Promoting the registration of all marriages and deaths is a simple yet effective means of taking action to prevent statelessness.

### **5. Human rights of stateless persons: ensuring the enjoyment of the full range of rights**

#### *Non-discrimination and the protection of stateless persons*

Non-discrimination is a core international principle and human rights law deals with the treatment of nationals and non-nationals alike – recognising distinctions in the enjoyment of rights by these two groups as legitimate in only limited, exceptional cases. Nevertheless, the reality is that stateless persons across the globe find themselves unable to access their basic rights and freedoms in broad contrast to the human rights obligations of states. In the MENA region, participants noted that problems may be further exacerbated as the notion of human rights for all has yet to be fully realized and access to a variety of government services may be deemed a question of privilege rather than an inherent right, with the possession of nationality seen as key. Participants noted, however, that intermediary or ad hoc solutions do exist in practice, in particular for groups within stateless populations such as children, as many countries in the region have taken informal or formal steps to facilitate the enjoyment of essential rights such as the right to education and/ or health services. Nevertheless, participants expressed concern that statelessness often continues into adulthood, at which point the problems experienced are magnified if nothing has been done to address the status of such persons earlier.

Looking at long-term solutions, participants acknowledged that some situations have become protracted and may not be ripe for immediate and full resolution through conferral of nationality. As a result, the question was raised as to whether promoting the enjoyment of human rights by stateless persons should be the primary focus of efforts to address statelessness in the region. Participants suggested a two-tiered approach where one hand a systemic solution to cases of statelessness should be advocated in the long term. Moreover, emphasis should also be given to the promotion and protection of the human rights of stateless persons in all situations. In that respect, governments should be encouraged to introduce amendments to current legislation and administrative practices to ensure the enjoyment of the fundamental human rights of stateless persons, in accordance with their international human rights obligations.

The promotion of a human rights-based approach, may contribute to the protection of the human rights of stateless persons and, in the long term, the possible prevention of further statelessness and reduction of cases over time. Debating the approach further, participants agreed that the promotion and protection of human rights and fundamental freedoms for stateless persons would be one way for stateless persons to become better informed about their own situation and rights and secondly more actively engaged in claiming their rights, including their right to a nationality. At the same time, participants recalled the fundamental importance of preventing new cases of statelessness because this allows hardship to be avoided and can often, in fact, be achieved through simple and low-cost measures. Furthermore, participants reaffirmed that where, for instance, there is an opportunity to confirm an individual's status as a national, such as through procedures for the issuance of personal documentation, this should continue to take precedence over the documentation of the individual as stateless in order to ensure access to a core bundle of rights as described above. In such circumstances, prevention and reduction techniques must be favoured over a focus on the protection of stateless persons as stateless persons. Moreover, efforts to promote the protection of stateless persons as stateless persons may serve to strengthen sentiments that they are in some way “outsiders”, while they will

often, in fact, have the same strong links to the country of habitual residence as those persons who do possess the nationality. Overall then, the approach to a particular situation of statelessness must be carefully tailored according to the specific circumstances and needs identified. Regardless, it should be kept in mind that the ultimate goal is to ensure the enjoyment of the right to a nationality by all and thus the reduction of statelessness.

#### *Core concerns for stateless persons*

Participants discussed a variety of concrete rights or access to rights that are of particular concern for stateless persons throughout the region. Issues participants felt had not received due attention to date, included the right to enjoyment of family life, which may be jeopardised by the difficulties stateless persons experience in registering births and marriages as well as by physical separation due to detention, deportation or denial of the right to return to one's place of habitual residence for a stateless family member. Another recurring theme was the enjoyment of economic, social and cultural rights, in particular access to employment, education and healthcare. Here, difficulties may be encountered at various levels, depending on the country as well as on the status and documentation of the individual concerned. For instance, stateless children may be able to access primary schooling, but be barred from taking official examinations and therefore be effectively barred from education beyond a certain level. It was noted that, in some instances, problems had been addressed to a certain extent through charity initiatives developed to fill a gap in government-provided services which targeted stateless persons as a vulnerable group. While these efforts are to be commended, participants also recognised that such initiatives did result in a formal or structural improvement in the status of stateless persons. It was noted, however, that these measures do not exonerate states from their international human rights obligations.

Within the context of access to and enjoyment of human rights, access to justice was considered in some detail. It was underlined that while it remains the states' prerogative to decide the conditions upon which it provides citizenship it is obliged on the other hand to provide a remedy mechanism in those instances where a person is denied such a right, in particular in those instances where an individual is otherwise rendered stateless. Participants mentioned that stateless persons should be able to make use of the same remedies as citizens when denied rights available to other members of the population. However, remedies may be limited and there are reports of access to justice being denied to stateless persons, in particular where such individuals lack any personal documentation. Concern was expressed that the piecemeal solution of individual complaints has so far failed to contribute to systemic reform.

An area in which difficulties in accessing a remedy may be most acute is in the context of detention and deportation. Stateless persons have encountered problems both within the region and upon migration to other parts of the world, whereby detention may be arbitrary, repeated and/or long-term. As a possible example of good practice, attention was drawn to encouraging jurisprudence from within the African human rights system which recognised a person's right to challenge his or her deportation in a court as well as

to challenge the finding that he or she is not a national (which may underlie a deportation order).

## **6. Closing remarks**

In closing, the convenors expressed their gratitude for the contribution of all participants to the rich substantive and informative exchanges which took place in a pleasant and cordial atmosphere. They summarised the outcome of discussions in terms of the identification of several gaps and the agreement of a number of realistic and achievable recommendations, before reminding participants that this meeting marked only the beginning of what will be a long process. The convenors called for a commitment by all participants to keep the issue alive, to echo the suffering of the affected populations and to make their voices heard.

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## **IV. BACKGROUND PAPER UNHCR**

### **The situation of stateless persons in the Middle East and North Africa**

This paper provides an overview of the situation of stateless persons in countries in the Middle East and North Africa (MENA).<sup>2</sup> The paper provides a description of how the laws, policies and practices of MENA countries have impacted on the incidence and treatment of stateless persons within their borders. It also outlines examples of best practices and recommends a means to build on these positive examples to address and reduce statelessness and its accompanying problems throughout the region.

This paper has been drafted at the initiative of UNHCR, to inform discussions during the regional expert meeting on statelessness convened jointly by UNHCR and OHCHR (18-19 February 2010, Amman). The research was conducted by Laura van Waas, International Consultant with the Statelessness Unit of UNHCR's Division of International Protection (DIP). This paper was produced with the assistance of the European Union. The views expressed are those of the author only and do not necessarily reflect the views of UNHCR, OHCHR or the European Union.

The information provided in this paper has been extracted from existing documents, reports and studies. Please note that the verification of information compiled from these sources remains the responsibility of the respective author(s).

### **Introduction to statelessness in the MENA region**

Worldwide, the number of stateless persons is believed to be in the millions and there is no region which is unaffected – including MENA. Statistics are largely imprecise, absent or contested, but available evidence suggests that the problem is widespread and of a substantial scale. Within the MENA region, there are several sizeable stateless populations, including several hundred thousand Bidoon in the Gulf region and over 200,000 stateless Kurds in Syria and Lebanon. There are also numerous smaller groups throughout the region, while nationality law and practice in some countries heightens the risk of further statelessness. Since the possession of a nationality is of both legal and practical relevance in accessing all sorts of rights and facilities, statelessness can have a severely detrimental impact on the lives of the individuals concerned. Stateless persons face a myriad of obstacles in areas ranging from international travel to access to work and education. Moreover, the negative effects of statelessness are not limited to the persons

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<sup>2</sup> Covering the following: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Occupied Palestinian Territories, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates and Yemen.

immediately concerned, but may also affect their families, the wider community, the state and even inter-state relations. For instance, statelessness can obstruct the enjoyment of family life and has been identified as a root cause of displacement and conflict.

MENA states have already expressed their commitment, through ratification of a range of international human rights instrument, to address statelessness and its consequences. All MENA countries are, for instance, state parties to the Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Elimination of All Forms of Racial Discrimination. Many have also ratified the International Covenant on Civil and Political Rights. Although some countries have entered reservations to provisions pertaining to (certain aspects of) the right to a nationality, taking on these international obligations shows widespread acceptance of the principles of equality and non-discrimination and commitment to protect and ensure human rights.

There are a number of regional agreements to which various MENA states are parties which also provide a foundation for promoting the enjoyment of rights and which recognise the right to a nationality. These include the Arab Charter on Human Rights, the African Charter on the Rights and Welfare of the Child and the Covenant on the Rights of the Child in Islam. Indeed, the League of Arab States stipulates in its Charter that one of the purposes of the League is the close cooperation of member states on nationality matters. It can further be noted that the Asian-African Legal Consultative Organisation, of which all but four MENA countries are members, adopted a resolution on statelessness in 2006. So, even though the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness have attracted just 3 and 2 accessions respectively within the MENA region, the aforementioned international and regional agreements lay a firm foundation for both protecting the rights of stateless persons and avoiding statelessness by promoting the right to a nationality.

### **State formation, national identity and statelessness**

State succession has long been major sources of statelessness, including in the MENA region. The nationality acts adopted following the establishment of MENA countries as we know them today delineate the terms of membership – access to nationality – of the state. These provisions for granting or recognising nationality were heavily influenced by conditions at the time and in some instances, there was a confluence of factors which resulted in cases of statelessness. For example, since the concepts of nationality and of controlled borders were previously unknown to certain (nomadic or tribal) sectors of the population, some persons failed to appreciate or prioritise the need to register to acquire citizenship and remained without nationality. Others were unable to satisfy the practical requirements in order to be registered as citizens or were excluded with a view to securing a particular sectarian or demographic balance at the defining moment of state formation.

Apart from historical conditions, restrictions remain in place in several countries which continue to create situations of statelessness. Where the state has included ethnicity or

religion in its conceptualisation of national identity, this can influence opportunities for acquiring or retaining citizenship and cause statelessness. States may use nationality policy as a way to subdue any perceived threat to domestic security or stability or to preserve the country's demographic balance. This can lead to individual or group denationalisation for reasons varying from criminal acts to "disloyalty". The same motivations have also contributed to restrictive naturalisation policies and hesitation on the part of states to fully resolve the situation of stateless persons within their jurisdiction.

Some states have taken steps to tackle these causes of statelessness. In Egypt, for example, measures were recently put in place to address the difficulties that had been experienced by the country's small Baha'i community for many years, by guaranteeing that members of religious minorities also have access to personal documentation, thereby strengthening the state's efforts to prevent statelessness. In regard to security concerns, the region also provides examples of laws which successfully marry the desire to exclude from membership of the state those individuals who are deemed to be a threat, while ensuring that this does not lead to statelessness. Algeria, for example, permits the loss of nationality on various grounds, but has a safeguard in place to prevent statelessness from occurring in such situations. Algerian law also provides the additional protection of the right to a judicial remedy in decisions affecting nationality.

### **Women, nationality and statelessness**

At the global level, women have traditionally found themselves in a disadvantaged or dependent position under nationality law. There is a growing global awareness, however, that gender discrimination in nationality law is in violation of international standards. The MENA region is an area of the world in which the reform of nationality laws to reflect these international standards has unfortunately been slower to arrive. The international community, through for instance the UN treaty bodies, has expressed concern at gender discrimination in the nationality laws of many MENA countries and the heightened risk of statelessness that results from such policies – especially for children of mixed-nationality parentage. Civil society groups have launched a region-wide campaign to amend such discriminatory legislation which affects a significant number of people. In Lebanon alone, approximately 17,860 Lebanese women are married to non-Lebanese and the children born to these unions will be at heightened risk of statelessness since they cannot acquire their mother's nationality under Lebanese law. Many MENA countries have now pledged their commitment to reform their nationality laws.

In fact, the campaign for a woman's equal enjoyment of nationality rights has seen a number of real victories over the past decade, whereby several countries have adopted amendments to introduce gender equality in their laws and even taken steps to address any situations of statelessness that had arisen under the former legislation. Egypt reformed its law in 2004 to allow a child born to an Egyptian mother to acquire nationality regardless of the father's status or the child's place of birth. The amendment can be invoked retroactively, by application, for children born before its entry into force. Algeria and Morocco followed suit, passing reforms in 2005 and 2007 respectively – again with retroactive effect. Iraq's 2006



nationality law also provides for gender equality in the transfer of nationality from parent to child. The new Algerian law is the best example of efforts to bring legislation into compliance with international standards because it also grants Algerian women the right to transmit nationality to their spouse on the same terms as Algerian men. This provides a further avenue for preventing and reducing statelessness. More limited steps, but nonetheless reflecting efforts to avoid statelessness have been taken in Yemen and Saudi Arabia. Both countries recently introduced measures to allow children to acquire nationality from their citizen mothers in certain limited circumstances, going some way to improving safeguards against statelessness.

### **Statelessness and migration**

Problems relating to nationality and statelessness have surfaced in the context of numerous migratory movements involving MENA countries. There are the Bedouin whose nomadic way of life impeded their access to citizenship during the period of state formation, leaving some stateless. Children born within both nomadic communities also find themselves at heightened risk of statelessness, because birth registration rates are generally understood to be much lower within such communities. Birth registration is essential for ensuring every child's right to acquire a nationality because it documents place of birth and parental affiliation, thereby proving a child's entitlement to the nationality of a state by either *jus soli* or *jus sanguinis*, under the applicable law. Thus, lower rates of birth registration lead to an increased risk of statelessness.

Just as birth registration coverage tends to be poorer within nomadic communities, so too are registration rates for children born within migrant or displaced populations – of which there are many in the region – thereby underlining the need to take further steps to ensure that such families can access birth registration through both the host state and through embassies. In Morocco for instance, UNHCR is working with local partner Organisation Marocaine des Droits Humains to help children born within refugee communities acquire birth certificates in order to reduce their exposure to statelessness. At the same time, the continued adherence of many MENA countries to the principle of perpetual allegiance, whereby nationality can be transmitted *jus sanguinis* even between successive generations born outside the territory of the state, is helping to avoid statelessness among children born to migrant parents from MENA countries.

Displacement or migration may also accompany or follow statelessness, as illustrated by the movement of Bidoon from Kuwait to Iraq, the emigration of stateless Kurds from Syria, the arrival of stateless Rohingya in Saudi Arabia and the arrival of stateless refugees in various MENA states. As a consequence, countries become directly confronted with the problem of statelessness, even if they have safeguards in place to avoid the creation of statelessness within their own jurisdiction. Measures to ensure the protection of stateless persons must therefore be considered. Furthermore, where states have hosted displaced persons who are stateless, nationality considerations are critical in finding an appropriate solution to their situation. For instance, in order to facilitate the repatriation of those denationalised and exiled from Mauritania as well as stateless (Feili) Kurds from Iraq, measures have been put in place

to ensure the confirmation or re-acquisition of nationality and issuance of appropriate documentation for returning populations.

### **Status and documentation of stateless persons**

An uncertain or insecure legal status and difficulties accessing personal documentation are problems that plague stateless populations the world over. The MENA region is no exception, since most countries have no special determination procedures or status for stateless persons. As a result, stateless persons are dealt with simply under those laws that apply to other non-nationals or through a variety of ad hoc measures. This means that stateless persons are commonly subjected to the terms of a state's immigration law, with their status dependent on whether they can fulfil the criteria set for non-nationals generally rather than on their condition of statelessness. As a result, it may be difficult for stateless persons to obtain residence permits and their treatment will be affected accordingly.

A number of countries do have policies in place that benefit some stateless persons. For instance, both United Arab Emirates and Qatar make special allowances for children whose mothers hold their citizenship by providing residence plus various other privileges. This policy will benefit some stateless children in the two countries. In addition, a handful of MENA states have adopted more specific, yet still largely ad hoc rather than legally embedded, policies towards particular stateless populations within their borders which allows for some improvement in their protection situation. To that end, their treatment can be considered to be somewhere between that accorded to citizen and other categories of non-citizens. For instance, in Saudi Arabia stateless Bidoon are issued five-year residence permits.

This tendency towards an ad hoc response to statelessness has contributed to the problems encountered by stateless populations in the region in acquiring appropriate personal documentation. Without a procedure to determine their status – or without recognition of a special status at all – stateless persons may be unable to acquire identity documents that reflect their situation as stateless persons or indeed any documentation at all. Access to travel documents is especially problematic. However, there are examples whereby a state has facilitated international travel and assured the right to return for stateless persons residing within their territory. Syria offers travel documents to Palestinians on much the same terms as to the country's own nationals. This model could be applied to other stateless populations in the region. The 1954 Convention relating to the Status of Stateless Persons also provides a legal framework for the issuance and recognition of travel documents for individuals who are stateless.

### **Protection concerns of stateless persons**

A number of MENA states provide their citizens with extensive rights and privileges, from free education and healthcare to interest-free home loans. Nationality is the ticket to these benefits, to the exclusion of the stateless. Where stateless persons lack a secure legal status or

hold no personal documentation, the level of treatment that they experience may be particularly harsh. Among the most fundamental protection concerns are detention, expulsion and the denial of the right to return to their place of habitual residence – problems which, although not widely reported, have been experienced by some stateless individuals or groups in a variety of MENA countries at one time or another. In contrast, recognition of the right to return to their place of habitual residence has played a central part in two major situations of statelessness that are now moving towards a resolution: the repatriation and confirmation or re-acquisition of nationality for formerly-stateless populations from Mauritania and Iraq.

Access to housing, the opportunity to earn an adequate living, access to education and healthcare and the enjoyment of family life are all further areas in which stateless persons face significant challenges. The nature and extent of these difficulties vary from one person and one country to another. Problems may emanate from outright exclusion (e.g. property ownership, access to specific professions), from the inability of stateless persons to benefit from reciprocal agreements (e.g. social security, labour rights) or from practical impediments in accessing rights and services due to lack of the required paperwork (e.g. access to healthcare or education, ability to contract marriage).

In some areas, states have made important progress in improving the protection situation of stateless persons. Kuwait has taken steps to promote the right to work for Bidoon, including by opening up certain professions that Bidoon were previously ineligible for. Some of Lebanon's local mayors have issued "special papers", free of charge, to stateless children to allow them to register at school and obtain a diploma. In Bahrain, where nationals are exempt from government fees for health services, public schools and a number of other facilities, this waiver has now been extended to stateless children.

### **Efforts and opportunities for the reduction of statelessness**

The MENA region provides examples of stateless populations whose situation has stagnated due to lack of action to address their case as well as policies that have resulted in the perpetuation and even expansion of statelessness. At the same time, there have also been a number of significant efforts to reduce statelessness. One way in which this has been achieved, as recently exemplified in Qatar, Mauritania and Iraq, is the simple confirmation or re-acquisition of nationality for persons whose citizenship had previously been disputed or withdrawn.

A second important means of reducing statelessness has been that of tailored naturalisation campaigns, such as those adopted in Lebanon, Bahrain and United Arab Emirates. Thus, for instance, a Naturalisation Decree adopted in Lebanon in 1994 allowed in excess of 150,000 persons to acquire Lebanese nationality, including a substantial number of individuals who were previously stateless. Meanwhile, successive rounds of naturalisation over the course of the last decade have led, according to the Minister of the Interior, to the acquisition of citizenship by 7,012 people in Bahrain. Naturalisation efforts in United Arab Emirates are also ongoing, with 1294 Bidoon acquiring citizenship in October 2007 and another 51 the following year.

A third approach to the reduction of statelessness that can be identified in the MENA region is the adoption of legal reform to close gaps that may create statelessness, with *retroactive effect*. Recent examples of this practice can be found in Egypt, Morocco, Algeria and Iraq. In these countries, the nationality law has been reformed to allow women to transmit their citizenship to their children and provision has been made for the retroactive application of the amendment. A fourth reduction strategy is promoting increased social, economic or legal integration – for instance by conferring a residence status or improved access to certain facilities to stateless persons. While such measures clearly stop short of conferring citizenship, they do take a step towards the increased inclusion of a stateless population and may help to build a foundation for acquisition of nationality in the future.

Each state's nationality law may also provide avenues for the individual resolution of statelessness, in particular through naturalisation procedures. The prospects for naturalisation vary greatly from one MENA state to another, with some countries maintaining highly restrictive policies. The eligibility criteria that must be met before a person can submit an application may be discriminatory or include very stringent requirements such as a lengthy period of residence which can be especially difficult for stateless persons to meet. Tunisia, Morocco, Mauritania, Libya, Syria and Jordan provide more amenable conditions for naturalisation in this regard – requiring periods of 4 or 5 years residence.

Naturalisation criteria are not the only measure of access to citizenship. There may be additional hurdles to overcome such as a pre-set maximum quota of naturalisations for a given period or the conferral of broad discretion to decision-making authorities in deciding applications. With a wider margin of discretion, the propensity for arbitrary refusal of an application increases and the availability of a review procedure gains importance. It is therefore encouraging to see nationality laws refer jurisdiction to an administrative or judicial body to oversee the correct interpretation and implementation of provisions concerning citizenship. The new Iraqi nationality law, for instance, provides the administrative courts the authority to review decisions on the application of the law and introduces the possibility of appeal before the Federal Court. Such factors must also be weighed in to an assessment of the prospects for reduction of statelessness through naturalisation.

### **Statelessness as a concern for individuals *and* states**

Statelessness can have a detrimental impact on individuals, communities, states and even inter-state relations. An understanding of the effects of statelessness can help to motivate a response and give content to that response. Taking measures to identify, prevent and reduce statelessness, as well as to protect stateless persons, is not only vital to ensure the individual enjoyment of rights but also reflects MENA states' existing international obligations and national constitutions. Thus, at a time when several MENA countries have taken steps to improve the situation of stateless persons, close gaps in the law that may lead to statelessness and even provide for the acquisition of nationality by stateless persons – efforts which have been met with praise and support from the international community – states that choose to follow this lead will be demonstrating their own dedication to key international and

constitutional standards. Furthermore, by tackling statelessness in accordance with recognised human rights and humanitarian standards, states are helping to promote international stability and to combat displacement, including illegal and dangerous forms of migration such as trafficking.

Tackling statelessness is also a way to promote domestic stability and security. By addressing statelessness within their territories, states can help to avert a volatile situation which could otherwise flare up to the detriment of all segments of society. Indeed, by countering the marginalisation which usually accompanies statelessness, states can promote a healthy, inclusive society and unleash the full economic potential of the population. The (re)integration of stateless individuals into mainstream society and the mainstream economy is an important tool towards boosting a state's human capital. At the same time, addressing statelessness and fostering inclusion will help to alleviate the psychological strains experienced by these populations and counteract any negative effects such as isolation, depression, drug abuse or petty crime. Moreover, the recognition of rights or the attribution of nationality will not serve to create new or artificial ties but will consolidate real, existing links between stateless populations and concerned states – connections that have existed in some cases for several generations and which are already embedded in the identity and sense of belonging of the individuals themselves.

### **Ways forward in addressing statelessness in the MENA region**

Much is already being done to tackle the problem of statelessness within the MENA region and there are numerous best practices which States, the UN and civil society may draw upon for further action. The civil society campaign to introduce gender equality in the enjoyment of nationality rights is a well-documented example of a carefully-tailored approach from which a number of key lessons have emerged. Among the success factors were:

- the adoption of a clear vision and strategy of action in both the mid- and long term;
- the strengthening of the campaign through a dual national and regional focus which allowed political arguments against reform at the national level to be more readily addressed;
- the investment in comprehensive research in order to present a convincing case for reform;
- the effort taken to build broad coalitions, involving a diverse range of actors to engage all parties concerned in designing and implementing a solution; and
- achievement of extensive media coverage through the presentation of statistics, personal interest stories and the use of new media technologies.

It is of interest to note that similar lessons have been learned in the context of other significant advances relating to statelessness in different parts of the world, such as in Sri Lanka, Ukraine, Nepal and Bangladesh.

Nevertheless, in considering ways forward it is helpful not only to take into account relevant best practices but also to identify any potential hurdles. In the MENA region, efforts may be

obstructed by a number of factors, including the shortage of adequate information on the subject to inform an appropriate response and the reluctance that can be shown by states to engage with civil society or the international community on the issue, which may be linked to the perception of statelessness as a highly sensitive matter which is inextricably linked to political questions..

Finding a way to further “map” the situation of stateless persons and develop appropriate strategies for tackling the issue therefore relies on a good understanding of both the best practices and the potential obstacles identified. Moreover, a concerted effort must be made to fill the present gaps in information through further studies and information exchange. In this regard, parties concerned should recognise that now is the time to act, with the issue of nationality currently attracting much attention in a number of MENA countries, including in the context of the ongoing regional campaign to grant women equal rights with men in the enjoyment and conferral of nationality. Indeed, in line with this campaign, due consideration should be given to a regional response to the issue of statelessness. An assessment of the situation of stateless persons in the region reveals that there are many shared experiences of statelessness while there are also foundations for and relevant examples of regional cooperation already in place.

Due consideration should moreover be given to the role to be played by the two UN conventions on statelessness. These instruments prescribe simple yet effective measures for the protection of stateless persons and the avoidance of statelessness, thereby offering a solid foundation for a common response to the issue. The upcoming 50<sup>th</sup> anniversary of the 1961 Convention on the Reduction of Statelessness, which will be marked with a campaign to encourage further accessions to both statelessness instruments, would be an opportune moment for MENA countries to give renewed consideration to accession to these treaties.

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## V. BACKGROUND PAPER OHCHR

### **The legal status for stateless persons in the Middle East and North Africa**

This summary distils the preliminary conclusions resulting from a longer legal review of legislative texts relevant to statelessness in Lebanon, Syria, Bahrain, Kuwait the United Arab Emirates and Egypt. It aims to shed light on the level of their compatibility with international conventions and treaties relating to reduction or prevention of statelessness and the human rights of stateless persons.

This paper has been drafted at the initiative of OHCHR, to inform discussions during the regional expert meeting on statelessness convened jointly by UNHCR and OHCHR (18-19 February 2010, Amman). The research was conducted by Jean Akl, Attorney at Law and consultant with OHCHR. The views expressed are those of the author only and do not necessarily reflect the views of UNHCR or OHCHR.

The study was not designed to be academic but rather policy-oriented, aiming to provide an understanding of the manner in which national legislators have dealt with the stateless populations in their respective countries. The longer study, still in progress, additionally aims to identify gaps in local laws, and to facilitate a pragmatic assessment of the legal environment within which future strategies and approaches to the reduction and prevention of statelessness and the enjoyment of fundamental human rights by stateless persons.

According to the 1954 Convention relating to the Status of Stateless Persons, a stateless individual is “a person who is not considered as a national by any state under the operation of its law “. UNHCR refers to two types of stateless: *de jure* statelessness, i.e. those who are not legally recognized as citizens in their country of residence or elsewhere and thus have no *legal* link to a state, and *de facto* stateless, or those who have legal claims for nationality but because of circumstances such as lack of documentation, proof, or loss of legal link, have in fact no *effective* link to their original state of nationality.

Nationality is acquired by birth in a country (*Jus Soli*), birth to a national of a country (*Jus Sanguinis*) or through naturalization through periods of residency, marriage or other criteria, such as doing service to a nation, in accordance with national laws.

Causes of statelessness differ and include being born to stateless parents, problems relating to state succession, failure to adequately apply for a nationality, laws that do not allow passing of nationality women if the father is not a national, being a refugee who loses an effective link with the country of origin, being of an internationally non-recognized state, renunciation of citizenship without the acquisition of another, difference between nationality laws, and others.

A number of problems arise for stateless persons in the exercise of their fundamental human rights, beyond the right to a nationality. Stateless persons may face severe restrictions in exercising their rights to education, work, social security, right to own property, right to travel, and many other social, economic and civil rights, as well as political rights. The level of enjoyment of those rights differs from one country to the next.

The study considered the legal situation the following initially identified groups of stateless persons, and the legislative provision in the six country subject of the study:

- Lebanon: Kurds, Armenians, Bedouin tribes and stateless Palestinian refugees
- Syria: a percentage of the Kurdish populations of north eastern and northern territories treated by the law not as Syrian but as either of Turkish or Iraqi descent, and stateless Palestinian refugees.
- Bahrain, Kuwait and the United Arab Emirates: “Bidoon”, Arabic for *bidoon Jinsiya*, [without nationality], nomads traveling across boundaries who never got citizenship in any country during the process of state formation during the 1950’s until 1970’s. Bidoon also include long-time migrant workers from Iran, Iraq, Syria and Asian or African countries who may have lost their links with their countries of origin.
- Egypt: Stateless groups include Armenians who had fled the Ottoman Empire, stateless Palestinian refugees, and unknown numbers of children born out of wedlock or whose parents fail to register them with the authorities upon birth.

Efforts have been made to deal with the stateless populations in several countries. A substantial group of stateless persons were indeed naturalized in Lebanon and Bahrain. The United Arab Emirates has recently begun to seek solutions to the stateless Bidoon through registration and case reviews. Egypt has given women the right to grant nationality to their children regardless of their father’s origin.

### **Human rights of stateless persons**

The study is premised on the requirement that human rights, as articulated in international conventions and declarations, are inherent and must be recognized and guaranteed by states to citizens and non-citizens alike. Non-compliance with the standards contained in international declarations and conventions therefore has implications concerning the stateless and the recognition of their rights and in particular, for the second or third generations born to stateless persons in those countries.

The six countries reviewed in the study do have provision for rights in their respective constitutions. While international conventions refer to "each person..." or "everyone...", nearly all of the constitutional provisions refer to the subject of such rights as the "citizen." The constitutions of Kuwait and Egypt, do occasionally refer to “person” or “anyone” instead of "citizen" in some of their provisions. Constitutional provisions take on heightened importance when they are the only or primary point of reference, especially with the lack of



legislative texts recognizing fundamental rights expressly for non-citizens (who may or may not be "foreigners"). The reference to 'citizen' consequently may be understood as excluding non-citizens such as stateless persons from the enjoyment of rights guaranteed in constitutions.

National laws of the six countries fall short of the standards in international treaties and conventions relating to statelessness. Most countries deal with their stateless populations under the laws governing foreigners or aliens. This can be noted from many texts especially those relating to labour and social security, where some laws apply the condition of reciprocity to foreigners wishing to work, even though stateless persons should in principle be exempted from reciprocity obligations. The social security law of Lebanon is a good example.

### **Civil rights**

Nationality laws of the six countries have provisions that identify who is a national and how nationality is obtained. In principle, laws have both *Jus Soli* and *Jus Sanguinis* provisions and hence, in principle also, those who are born on the territory of the State are entitled to obtain nationality. Such provisions are compliant with international conventions. However, and for various reasons, the application of these rules to Stateless persons has been seldom.

The primary principle in the six Arab countries is paternal lineage, with nationality acquired by birth from a national father. If a child cannot be clearly identified to a national father, other possibilities do arise.

Only The United Arab Emirates and Egypt have recognized, under specific conditions the right of a national mother to grant nationality to her child. The Kuwaiti nationality law for example, acknowledges the passage of nationality to children of a national woman married to a non-national if her mother is divorced and her divorce is final and irreversible.

In Lebanon, Decision No. 15 of the year 1925 stipulates in article 1 that "Is considered Lebanese one who:

- a) is born from a Lebanese father;
- b) is born in the territories of greater Lebanon and has not acquired a different nationality upon birth;
- c) is born in Lebanon from unknown parents or from parents of unknown nationality.

Similar provision is found in the Syrian nationality law, enacted by legislative decree No. 276 of the year 1969, Article 2 of which ascribes Syrian nationality to:

- a) anyone born to a Syrian father;
- b) anyone born to a Syrian mother and his kinship to a father has not been legally proven;

- c) every person born in Syria from unknown parents or from parents of unknown nationality, and the illegitimate child is considered as being born in Syria unless it was proven to the contrary;
- d) Every one born in Syria and has not had the right to a foreign nationality through kinship;
- e) Everyone who is from Syrian Arab origin and had not applied for the Syrian nationality according to previous laws;

The *Jus Soli* principle is operable when lineage cannot be sufficient for determination of origin. Hence, stateless persons born on the territory may obtain nationality in the absence of a father, including children born out of wedlock who can be recognized as citizens by the law.

Concerning naturalization and nationality through marriage, the nationality laws also have provisions that define the naturalization conditions and regulations such as a period of continuous residency, knowing the Arabic language, being Muslim and so on. The stateless however, are rarely able to apply for naturalization because the State often views them as “illegal residents” and not originally residents or descendents of a resident of the country. This is the case of the Bidoon in Kuwait and or United Arab Emirates, for example.

Nationality laws in the six countries have provisions that relate to the loss of nationality, and include such causes for loss as marriage, treason, service in the army of another country, committing a crime after naturalization, or in several countries simply accepting another nationality.

Some of the stateless in the six countries do hold identification documents such as personal ID cards; however such cards do not signify citizenship and are only used as a reference to the holder’s name and status of “illegal resident” or "nationality under consideration" or *maktoom al-qayd* [Record Unknown].

In the United Arab Emirates personal identification cards were distributed in 2007 to those who do not have legal documents (Bidoon), to be used for daily life requirements, but not as proof of nationality. Bidoon may acquire travel documents, (“Article 17 Passports” in Kuwait), but they face difficulty in obtaining them and usually Bidoon are granted passports for one use only and after submitting a valid reason (U.A.E.: being ill and needing treatment abroad), or for final departure with no right to return.

### **Social, Economic and Cultural rights**

The exercise of many rights requires an ID card, and consequently they would be automatically denied to someone who is unable to show one. Those without IDs therefore cannot own property, cannot graduate and have a recognized degree, are unable to work or get social benefits, and others.

The right to own movable and immovable property is difficult for the stateless as it usually falls under the laws governing ownership of real estate by foreigners. In some laws (like Kuwait) the restrictions on foreign ownership is greater, as only nationals of Arab states can own property. Stateless are hence left without such right. In Lebanon, decree No. 11614 relating to real estate ownership by foreigners, stipulates in article 1 that persons of a non recognized state cannot own property. This article, intended to disallow Palestinians from owning property as a decision not to accept their permanent settlement, also indirectly affects the remaining stateless groups in Lebanon.

Civil status laws of the six countries were drafted primarily with citizens in mind. Stateless persons, particularly those without any identification documents, are therefore not benefiting from adequate civil status registration. The main problem that arises here is the inability to register births, marriages, deaths, divorces, and hence, the stateless are left without clarity of their status and may easily fall into illegality or illegitimacy.

The laws of the six countries are different in regard to the right to work and benefit from social security. In principle, it is difficult for stateless persons to access jobs whether in the private or the public sector. In Lebanon for example, a ministerial decision has restricted 73 job positions in the private sector to Lebanese only, and the laws governing various professions, especially syndicated professions, require the principle of reciprocity in hiring non-Lebanese; stateless persons of course are not nationals of a state that can provide such reciprocity.

The situation is similar in terms of access to social security, as the laws of the six countries usually stipulate for reciprocity when relating to benefiting foreigners. Hence, stateless persons, despite being exempted from reciprocity obligations by international conventions, find themselves not enjoying any social security benefits even if they do work in their country of residence.

In GCC countries, foreigners may work in public authorities if there are no nationals to fill the openings. Bidoon, however, are not allowed access to such positions since they are not considered foreigners, but neither are they citizens, so they fall in the in-between category of illegal or undocumented residents. This wasn't always the case In Kuwait since Bidoon had indeed worked for public entities and served in the police and armed forces in the 1980's. After the Iraqi invasion, however, they were expelled from those jobs due to the perception that they had collaborated with the Iraqi occupiers.

Free public education is usually restricted to citizens as per the provisions of constitutions, although several countries do allow for refugees to benefit from primary education, for example. Laws and/or ministerial decisions in the six countries clearly guarantee free education citizens. Stateless persons have to use public education facilities, paying high tuition fees if they can afford them.

As to Intellectual Property rights, in principle the copyright belongs to the author regardless of registration as per Berne Convention. However, even this convention refers to the citizen of member countries, and hence, its applicability to stateless persons is questionable.

Similarly, for industrial property rights registration is required with the IP office and one of the prerequisites of registration is submitting an ID card; the lack thereof would mean the inability of registration and hence, the deprivation of ownership rights.

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## ANNEX 1: STATUS OF RATIFICATION OF MAIN TREATIES RELATED TO STATELESSNESS

Country	Convention Relating to the Status of Refugees (1951)	Convention Relating to the Status of Stateless Persons (1954)	Convention on the Reduction of Statelessness (1961)	International Convention on the Elimination of all Forms of Racial Discrimination (1966)	International Covenant on Civil and Political Rights (1966)	Optional Protocol Related to ICCPR (1966)	Protocol relating to the Status of Refugees (1967)	Convention on the Elimination of All Forms of Discrimination against Women (1979)	Convention on the Rights of the Child (1989)	Convention on the Rights of all Migrant Workers and Members of their Families (1990)
Algeria	X	X		X	X	X	X	X	X	X
Bahrain				X	X			X	X	
Egypt	X			X	X		X	X	X	X
Iraq				X	X			X	X	
Israel*	X	X		X	X		X	X	X	
Jordan				X	X			X	X	
Kuwait				X	X			X	X	
KSA				X				X	X	
Lebanon				X	X			X	X	
Libya		X	X	X	X	X		X	X	X
Mauritania	X			X	X		X	X	X	X
Morocco	X			X	X		X	X	X	X
Oman				X				X	X	
Qatar				X				X	X	
Syria				X	X			X	X	X
Tunisia	X	X	X	X	X		X	X	X	
UAE				X				X	X	
Yemen	X			X	X		X	X	X	
Status as at	Oct, 08	Feb, 08	Aug, 08	Feb, 09	Feb, 09	Feb, 09	Oct, 08	Feb, 09	Feb, 09	Feb, 09

The date indicated for each treaty is that of adoption and not of entry into force

\*Israel is included based on its established legal responsibility in the OPT (see relevant UN Security Council Resolutions, 2004 ICJ Advisory Opinion on the legal consequences on building of a wall in the OPT and UN treaty bodies concluding observations on Israel, such as those of the Human Rights Committee in 1998)

## **ANNEX 2: FURTHER READING**

### **International standards relating to statelessness**

The 1954 Convention relating to the Status of Stateless Persons

<http://www.unhcr.org/refworld/pdfid/3ae6b3840.pdf>

The 1961 Convention on the Reduction of Statelessness

<http://www.unhcr.org/refworld/pdfid/3ae6b39620.pdf>

Extracts from human rights instruments relating to nationality and statelessness

<http://www.unhcr.org/4517da8e2.pdf>

Extracts from General Comments / Recommendations by UN Human Rights Treaty Bodies

<http://www.unhcr.org/4517ab402.pdf>

### **UN documents**

UN Secretary General 2009 Report on Human rights and arbitrary deprivation of nationality

<http://www.unhcr.org/refworld/pdfid/4b83a9cb2.pdf>

Report of the Special Rapporteur on Freedom of religion or belief, Asma Jahangir, on the Elimination of all forms of religious intolerance, June 2008

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/434/42/PDF/N0843442.pdf?OpenElement>

Report of the Independent Expert on Minority issues, Gay McDougall, February 2008

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-23.doc>

### **OHCHR and UNHCR resources**

UNHCR Executive Committee Conclusion No. 106 on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons

<http://www.unhcr.org/453497302.html>

OHCHR Special Publication on the Rights of Non-Citizens

<http://www.ohchr.org/Documents/Publications/noncitizensen.pdf>

UNHCR Action to Address Statelessness – A strategy note

<http://www.unhcr.org/refworld/pdfid/4b9e0c3d2.pdf>

Nationality and statelessness – A handbook for parliamentarians

<http://www.unhcr.org/436774c62.pdf>

## **Academic / civil society reports**

### **Further online resources**

UNHCR's dedicated statelessness website

<http://www.unhcr.org/statelessness>

UNHCR's Refworld with statelessness resources

<http://www.unhcr.org/refworld/statelessness.html>

Open Society Institute gateway to statelessness

<http://www.soros.org/indepth/stateless>

Refugees International website on statelessness

<http://refugeesinternational.org/who-we-are/our-issues/statelessness>

International Observatory on Statelessness

<http://www.nationalityforall.org/>

European Citizenship Observatory (will include studies from MENA region)

<http://eudo-citizenship.eu/>