

# **INVISIBLE CITIZENS**

## **A Legal Study on Statelessness in Lebanon**

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Preliminary Edition

## **Executive Summary**

The phenomenon of statelessness in Lebanon continues to pass on from one generation to another while nationality laws, lacking essential elements and containing many ambiguous provisions, undergo little change. Estimates place the number of stateless persons in Lebanon, without considering the Palestinian refugees, at around 80,000, among which are Kurds, Bedouins, persons whose status is "under consideration" and persons of Lebanese ancestry who do not hold Lebanese nationality like persons "unregistered at birth", in addition to certain orphans and children born out of wedlock, from the marriage of a Lebanese woman to an alien or from the unregistered marriage of two Lebanese nationals.

The lack of an official census and the absence of comprehensive references and surveys on stateless persons in Lebanon prompted Frontiers Ruwad (FR) to begin working on this subject about two years ago, highlighting the need for a legal and policy study on statelessness in Lebanon, that would bridge the knowledge gap particularly in relation to *de facto* stateless persons.

The objective of this legal study is indeed to identify the legal provisions relevant to nationality and statelessness in international and Lebanese laws, and to recommend measures to address statelessness in Lebanon with a view to grant the right to nationality and all other inherent rights to the persons who are entitled or should be entitled to it.

The study is to be followed by a field study on the different categories of stateless persons in Lebanon that will include practical recommendations on these.

### **International Legal Framework on Statelessness**

International Human Rights Law guarantees the right to nationality to every person and considers it a fundamental right from which all other rights are derived.

The international community has recognized the responsibility of every State in finding solutions to reduce the phenomenon of statelessness, elaborating several treaties on the subject of statelessness and on its reduction (the Convention Relating to the Status of Stateless Persons, 1954; and the Convention on the Reduction of Statelessness, 1961).

In its first article, the 1954 Convention Relating to the Status of Stateless Persons defined a stateless person as someone "who is not considered as a national by any State under the operation of its law". A stateless person is therefore defined negatively as one who is a national of no State according to its laws.

However the State Parties recognized that other statelessness situations might emerge where the said definition could not be applied. As a result, the final Chapter of the 1954 convention "*Recommended* that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons",

In addition to the legal framework relating to statelessness, several human rights instruments include the right to a nationality and to other inherent rights, particularly the Covenant on civil and political rights (ICCPR) and the conventions pertaining to the rights of children and women (CRC and CEDAW).

It should also be noted that all these instruments emphasize the enjoyment of the rights they guarantee without discrimination.

### **\*Lebanon's Commitment to International Conventions on the Right to Nationality and the Reduction of Statelessness**

Lebanon has yet to sign and ratify international conventions on statelessness and on the right to nationality.

However, Lebanon has already ratified a number of human rights instruments such as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child which secure the right to nationality and to the enjoyment of rights without discrimination, not to mention the Convention on the Elimination of Discrimination against Women that expressly stipulates women's right to nationality and non-discrimination against women as discrimination could impair their children's right to nationality. Although Lebanon signed the Covenant on the Rights of the Child in Islam in June 2005, the country has not yet ratified the covenant which ensures children's right to nationality.

It should be mentioned nonetheless that international human rights principles are endorsed in the Constitution, featuring in its preamble ever since the Constitutional amendment of 1990.

### **\*The Right to Nationality in Lebanese and International Laws**

This study is based on a comparison between international and national laws on the legal status of stateless persons, looking into the conditions for acquiring nationality, the causes for loss or deprivation of nationality and the means of recovering nationality.

The first question to be answered before starting analyzing these conditions is: What is nationality?

Nationality is a legal relationship between a person and a certain State or a relationship that refers this person's affiliation to a certain State. This relationship is based on protection from the State and on compliance from the person. This definition shows that the concept of nationality comprises the following elements:

- The existence of an individual with rights and obligations.
- The existence of a State with defined features and international entity.
- The existence of a political and legal relationship between the individual and the State.

This study seeks to discover the flaws in the relationship between the individual and the State in the case of stateless persons in Lebanon and the legal reasons behind such flaws in light of the abovementioned elements.

### **Causes of Statelessness**

This study addresses the following key reasons for statelessness:

- **Conflicting laws** (for example, when the country of birth grants nationality if one of the parents has the nationality of the country (*Jus Sanguinis*) while the country of citizenship of the parents grants nationality to a person born on its territory (*Jus Soli*), leading to the statelessness of the child born on the soil of the former country to parents holding the nationality of the latter).

- **Transfer of territory** (these cases include the independence or dissolution of a State, the creation of a new State replacing a dissolved State, or the recovery of a State following a period of dissolution).

- **Marriage laws** (where marriage to an alien causes the woman to lose her nationality although she may not acquire the nationality of her husband or may not acquire it automatically, or could become stateless in the period between her marriage and acquiring the nationality of her husband).

- **Laws and practices related to children** (especially those relating to registration of births and those applicable in particular to orphans or foundlings, and laws preventing women from passing their nationality on to their children who may become stateless if the father does not hold any nationality).

- **Administrative Procedures** (where certain persons eligible to nationality may not acquire it due to charges, deadlines or the difficulty of submitting the required documents).

- **Discrimination** (where certain categories, despite their eligibility to acquire nationality, may be deprived of it based on race, color, ethnicity, religion, gender, political opinion or any other ground).

- **Jus Sanguinis** (nationality based exclusively on the nationality of the parents, often only the father, which may lead to passing statelessness through generations).

- **deprivation of nationality** (where some laws stipulate the deprivation of nationality in specified cases as a form of penalty regardless of whether the person has acquired another nationality or not).

- **Renunciation of nationality** (without prior acquisition of another nationality) **or the automatic loss of nationality by operation of law** (through the loss of actual and effective relationship with the State without the person's express statement of his wish to retain his nationality. To this may be added faulty administrative practices where the person is not notified of the need to declare this wish).

### Acquiring Nationality

Nationality provisions in Lebanon are governed by Decision № 15 issued on 19/1/1925 and its amendments.

#### **\*Nationality at birth**

Contrary to the Convention on the Reduction of Statelessness adopting the principle of *Ius soli* as the basis for granting nationality and the principle of *Ius sanguinis* as a secondary determinant, Lebanese law stipulates that

acquiring the Lebanese nationality at birth is primarily based on the nationality of the one of the parent and secondarily on birth on the Lebanese territory.

However, then principle of *Ius Sanguinis* is limited to the father alone. Indeed, Article 1 of Decision 15 of 1925 considers as Lebanese any person born to a Lebanese father regardless of the place of birth. It should be noted that acquiring the Lebanese nationality by operation of law (paragraph 1 of Article 1 of Decision 15) occurs automatically upon birth registration.

Hence, as a general rule, a Lebanese mother cannot pass on her nationality to her children. There are only two exceptions where a mother can pass on her Lebanese nationality to the child: to an illegitimate child recognized by his mother while still a minor, and to the child of an alien woman who has acquired a Lebanese nationality after the decease of the father.

The law, therefore, gives naturalized alien mothers and their minor children an advantage over Lebanese mothers and their children.

The Lebanese nationality law contradicts in its articles the text of the Lebanese Constitution and the spirit of international conventions that prohibit gender discrimination. As a matter of fact, Article 7 of the Constitution upholds the principle of "non-discrimination between the Lebanese citizens" and fosters equality among men and women.

In addition to the above, the Lebanese law states that a child born in Lebanon acquires the Lebanese nationality automatically lacking evidence that the child has acquired by birth any other nationality or, in other words, if he were to become stateless unless granted the Lebanese nationality. The same goes for a child born in Lebanon to unknown or unidentified parents.

### **\*Naturalization**

Article 32 of the 1954 Convention Relating to the Status of Stateless Persons calls upon Contracting States to "as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings".

In Lebanon, an alien may acquire nationality through naturalization in just three instances: residing in Lebanon for a specified period of time, marriage to a Lebanese woman and residing in Lebanon for a period of time following the marriage, and where the person has provided Lebanon with "estimable" services.

The State has the right of absolute discretionary decision on the granting of Lebanese nationality.

It should be noted that the Lebanese law does not exclude persons who have lost their nationality, whatever the original nationality they have lost, from being granted the Lebanese nationality, when they have the right, as a general rule, to be accorded the nationality under the same circumstances and

conditions that allow any other alien to acquire it. In practice, however, it seems that each application has to be examined separately based on its own merits. The naturalization decree issued in 1994 also appears to apply to persons "unregistered at birth" and to stateless persons.

The effects of acquiring the Lebanese nationality through naturalization also cover the wife of the naturalized person and his minor children not contingent on residency in Lebanon.

Furthermore, derivative Lebanese nationality may be acquired, albeit through different proceedings, by an alien woman married to a Lebanese man, including women of unidentified and "under consideration" nationality. In this case the alien's wife can obtain the Lebanese nationality automatically one year after the registration of the marriage; however the same provision is not valid for Lebanese women, whose alien husbands can not automatically benefit from the Lebanese citizenship but only apply for naturalization and wait for the government decision.

It should be mentioned that the nationality law allows an alien mother who has acquired the Lebanese nationality after the decease of her foreign husband to pass this nationality to her minor children.

Once more the Lebanese nationality law contradicts in its articles the text of the Lebanese Constitution and the spirit of international conventions that prohibit gender discrimination

### **Loss of Nationality**

The 1961 Convention on the Reduction of Statelessness addresses the cases of loss of nationality, particularly the guarantees that should be put in place to limit the loss of nationality. It states that the loss of nationality shall be conditional upon possession or acquisition of another nationality to avoid the creation of statelessness situations.

The Convention specifically lays down constraints on the right of the State to deprive its citizens of their nationality, calling on the State to take into consideration the possibility that the citizen may become Stateless in case of deprivation of his country's nationality. The Convention also only allows deprivation of nationality in strictly defined situations.

In Lebanon, the loss of the Lebanese nationality may be optional or mandatory. A Lebanese national may choose to renounce his Lebanese nationality in order to acquire a foreign nationality after obtaining an authorization in this regard through a decree issued by the Head of the State. A Lebanese woman married to an alien may lose her Lebanese nationality upon her request so that she could acquire the nationality of her husband; she maintains her status as Lebanese until she asks for her records to be struck from census registers. In such cases, a Lebanese person does not lose his nationality until he acquires a foreign nationality, so as to prevent statelessness. A Lebanese person may mandatorily lose his nationality by virtue of a Lebanese State decision in the cases strictly defined by the law, particularly in the event that the person accepts to hold a position offered by a

foreign government and refuses to renounce this position in spite of the Lebanese government requesting him to do so.

### **Recovering Nationality**

Paragraph 2 of Article 5 of the 1961 Convention on the Reduction of Statelessness stipulates the possible recovery of nationality by the person who has lost the said nationality under specific conditions and in defined situations.

The Lebanese law in its turn defines situations where a person who has lost his nationality can recover it. The government may at any time revoke the authorization that entails the loss of the Lebanese nationality through a Cabinet decision, restoring the Lebanese nationality to the Lebanese person. A Lebanese woman who has lost her nationality through her marriage to an alien may request to recover the said nationality.

### **Who Are the Stateless Persons in Lebanon?**

There are currently two categories of stateless persons in Lebanon: 1) *de jure* stateless persons – among whom are Palestinian refugees, Kurds, and Arab Bedouins who have no State and accordingly no nationality – and 2) persons who are legally entitled to the Lebanese nationality but hold neither Lebanese nor any other nationality for various reasons, these are *de facto* stateless persons and include, some children born outside of a legally recognized marriage, persons whose nationality is "under consideration" and persons unregistered at birth, with their numbers estimated at tens of thousands.

### **Examples of De Jure Stateless Persons in Lebanon**

**1- Palestinians:** There are three categories of Palestinians in Lebanon: refugees registered with the UNRWA and the Lebanese government, refugees registered only with the Lebanese government and not with the UNRWA, and refugees registered with neither the Lebanese government nor the UNRWA (known as non-ID Palestinians). It should be noted that Palestinians registered with the UNRWA are excluded from the application of the 1954 Convention (rights of stateless persons in their country of residence). Moreover, the League of Arab States had emphasized in a number of resolutions the importance of not granting Palestinian refugees the nationality of the Arab State in which they reside, in order to safeguard their Palestinian nationality, before passing a resolution later on in which it considered that the acquisition of another State's nationality does not conflict with their Palestinian nationality.

Lebanese political milieus, however, have always considered that Palestinian refugees shall not acquire the Lebanese nationality based on the preamble of the Lebanese Constitution preventing "naturalization", even though the Constitution neither specifies the group that is denied the said right nor features any indication whatsoever that Palestinians must not be naturalized. Indeed, a number of Palestinian refugees have been naturalized in Lebanon throughout their presence in the country, the last of which occurring by virtue of the 1994 naturalization decree. Furthermore, gender

discrimination against Lebanese women in terms of preventing them from transferring their nationality to their children (and husbands) increases the number of stateless person cases in the event that a Lebanese woman marries a Palestinian refugee in Lebanon. The problem becomes even thornier for non-ID Palestinian refugees as they are incapable of registering their marriage and hence their children, subsequently increasing the cases of non-documentation and, naturally, statelessness.

**2- Kurds:** Besides Palestinian refugees, some Kurds have been living in Lebanon for long decades without any nationality as Kurds lack a definitive State to hold its nationality and have not acquired the Lebanese nationality. The majority of Kurds in Lebanon were stateless until the mid 1990s when they benefited from the 1994 naturalization decree. We should perhaps set apart individual cases of children under this category who were able to prove they fulfill the conditions of Article 1 like the anonymity of the parents or not acquiring any nationality by filiation at birth while being born on Lebanese soil.

**3- Bedouins – Arabs and Gypsies:** Bedouins are tribes that have customarily moved from one country to another in search of pasture for their cattle. Given the fact that, traditionally, members of this category were not asked to present any documents upon crossing borders, these tribes held no nationality. A number of Bedouins settled in Lebanon around the 1950s and the nomadic custom was abandoned. As a result, Bedouins found themselves in need of documentation in order to move within Lebanon and to travel from Lebanon to other countries. Lebanese laws, however, did not elaborate on the effects of considering the tribe Lebanese regarding the nationality of its members, nor did they provide any details concerning the proceedings that should be followed so that such persons could acquire the Lebanese nationality. It seems that a considerable number of Bedouins had been carrying "under consideration" residence permits since the 1960s, and were naturalized based on these permits in 1994. Nevertheless, a large number is still stateless for various reasons including unregistered marriages and births predating 1994 – particularly those children who had attained the age of majority by that time.

### **Examples of *De Facto* Stateless Persons in Lebanon**

In addition to *de jure* stateless persons there exist in Lebanon *de facto* stateless persons, among whom are:

**1- Unregistered Persons at Birth:** They are persons who retain no record that could affiliate them with a particular nationality. The majority of unregistered births, however, are eligible to be considered Lebanese and all they may need is simply to be registered to be recognized or declared as Lebanese nationals. Among these persons we find children born in unregistered marriages – whatever the reasons, including war which prevented the registration of many marriages – and are not registered, children born out of wedlock and are neither registered nor recognized, the children whose

parents were unregistered at birth, the children whose parents neglected to register their birth for any reason, including not being aware of the need to register children, or the children born to a Lebanese mother and alien father who is unable for some reason to register his marriage or his children in his country of origin or who holds no particular nationality... Also featuring among unregistered persons at birth are perhaps those persons who were not recorded in the 1932 census despite having resided in Lebanon since August 30, 1924.

Given the lack of relevant records, it is difficult to tally the number of unregistered persons at birth. But indicators point to the existence of a great number of unregistered births. Among these indicators are prison registers that record such cases in detention.

It should be noted that a number of unregistered persons at birth were able to acquire the Lebanese nationality, for instance in light of the 1994 naturalization decree.

**2- The "Under Consideration" Category:** Persons whose status is "under consideration" are aliens or stateless persons who have lodged an application for acquiring the Lebanese nationality under Article 3 of Decision 15, issued in 1925 and relating to naturalization, and have not yet acquired the said nationality. The State is still studying their cases to determine whether it can grant them the Lebanese nationality. Such persons carry special residence permits from the Surêté Générale (General Security) attesting that their nationality is still under consideration.

Lebanese jurisprudence draws a clear distinction between under consideration nationalities and unknown nationalities, where "under consideration" is considered as insufficient evidence that the person holds no nationality or that he is of unknown nationality in order to apply the provisions of the nationality law .

## **Primary Conclusions and Recommendations Relevant to Statelessness**

### **Responsibility of the Lebanese State**

Based on the above overview of nationality laws in Lebanon, we may draw the following conclusions:

- Nationality regulations in Lebanon do not fully comply with international standards relating to nationality, especially relating to the mother's nationality and to nationality by birth on the territory of the state (*Jus Soli*).

- Lebanese nationality laws do not fully comply with general international standards in terms of non-discrimination as these laws are widely discriminatory, particularly against women, between nationals and aliens, and even among aliens themselves.

- Lebanese nationality laws are vague and unclear, allowing for a wide margin of interpretation and speculation leading to conflicting jurisprudence and interpretations that consequently serve to increase the ambiguity of the status of stateless persons in Lebanon at the legal level and hinder comprehensive solutions.

- A comprehensive framework governing nationality and naturalization is lacking. Most nationality laws in Lebanon were drafted in the first half of the twentieth century and have not been amended to cater to emerging and current circumstances, so much that some provisions may be considered obsolete today. Moreover, several nationality laws have been nullified by virtue of laws that were subsequently nullified, leading to more ambiguity as to the legal provisions in force. These laws are also incomplete as they overlook countless issues, particularly those of a procedural nature.

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Therefore, the study concluded that the Lebanese State should recognize its responsibility in resolving the dilemma of statelessness in Lebanon and presented recommendations to achieve this result:

1. Amend Lebanese laws in order to establish a consistent and integral body of nationality laws in accordance with international standards. This body should include specific rules pertaining to procedures and practices in order to curb the selective and discretionary implementation of laws in this regard.

2. Carry out a census of stateless persons in Lebanon and register them in order to understand and resolve their situations and keep record of all persons present in Lebanon.

3. Work on consolidating jurisprudence at the level of the Court of Cassation to end the ambiguity arising in many problematic issues.

### **Responsibility of the International Community**

The General Assembly of the United Nations, pursuant to the 1961 Convention, mandated the High Commissioner for Refugees (UNHCR) with the task of working on reducing statelessness and encouraging States to accede to conventions relating to statelessness. In this context, the UNHCR focuses its activities on the positive progress in the laws and practices of States towards resolving statelessness in their territories and preventing the occurrence of new cases of statelessness. The UNHCR field offices may also urge States to make sure that persons whose nationality issues have not yet been resolved enjoy fundamental rights and protection.

The UNHCR affirms that it is willing to offer States, in the context of technical and advisory assistance, information on how to determine nationality and the means to establish the validity of the said nationality. The UNHCR confirms that its role with respect to stateless persons is to:

- Determine cases of statelessness
- Prevent cases of statelessness
- Reduce cases of statelessness
- Protect stateless persons

It should be noted that the 1954 Convention Relating to the Status of Stateless Persons does not apply to:

1- Persons who are at the present receiving from organs or agencies of the United Nations other than the United Nations other than the United

Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance

2- Persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country

3- Persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

The status of statelessness is terminated once the person acquires an effective nationality. This may be achieved by two means:

**Local integration:** States are required – whenever possible – to facilitate the assimilation and integration of stateless persons residing in their territory through nationality legislations and practices.

**Resettlement:** Naturalization in another country where local naturalization is impossible.

Finally, it is worth mentioning that although Lebanon has not yet signed any of the international instruments relating to statelessness, it remains bound by all UN resolutions and principles pursuant to the legal commitment pledged in the preamble of its Constitution. Lebanon is also a member of the Executive Committee of the UNHCR and is consequently bound to respect its recommendations, including those pertaining to statelessness.