

حملة إنهاء حالات انعدام الجنسية في مصر

THE CAMPAIGN TO END STATELESSNESS IN EGYPT

BOSTON
UNIVERSITY

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THE CAMPAIGN TO END STATELESSNESS IN EGYPT

February 2022

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Support for this publication was provided
by the Open Society Foundation

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I. Introduction

Egypt is home to over a hundred million people and hosts an unknown number of refugees and migrants, with estimates of several million.¹ Among them are potentially hundreds of thousands of individuals who are stateless or at risk of becoming stateless.² As many basic human rights and social entitlements – such as access to employment, education, and healthcare – are linked to citizenship and legal status, the ongoing problem of statelessness in Egypt leaves a large number of people vulnerable to violations of their rights. It is important to note that Egypt is party to numerous international and regional human rights agreements that incorporate obligations to protect the right to a nationality.

Egypt has taken meaningful steps to address statelessness – foremost among them are Egypt’s recent changes to its nationality law. Following a civil society-led advocacy campaign, Egypt reformed (in 2004 and 2011) its gender-discriminatory nationality law by extending citizenship to children born to Egyptian mothers, affecting what one source estimated to be between 400,000 to over one million children born to foreign fathers.³ Egypt subsequently enshrined these reforms in the 2014 Constitution,⁴ and has played an important role in promoting more gender equal nationality laws at the regional level through the League of Arab States (LAS).⁵ Moreover, Egypt has a very high birth registration rate, frequently cited as covering

¹ *Population, Total – Egypt, Arab Rep.*, WORLD BANK (2019), <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=EG> (last visited Oct. 28, 2021). There are no official estimates of the refugee and migrant populations in Egypt, with some sources estimating there to be five million. See ELENA HABERSKY, AMIRA HETABA AND CLAIRE McNALLY, THE AMER. UNIV. IN CAIRO, *REFUGEE ENTITLEMENTS IN EGYPT*, 1, n.4 (2020) (hereinafter AUC, *REFUGEE ENTITLEMENTS IN EGYPT*). See also Omer Karasapan, *Who are the 5 million refugees and immigrants in Egypt?*, BROOKINGS INST. (Oct. 4, 2016) (noting that the Egyptian Government has stated that it “hosts 5 million refugees and immigrants” with a key component of that figure being Sudanese); see *Egypt 2019 Humanitarian Compendium Introduction*, INT’L ORG. FOR MIGRATION, <https://humanitariancompendium.iom.int/appeals/egypt-2019> (last visited Nov. 5, 2021) (“Egypt now holds 5 million refugees of various nationalities”); Michael Kagan, *Troublesome Refugee Statistics and the Case of Sudanese in Egypt*, RSD WATCH (Jan. 15, 2014) (discussing methodological and political issues with refugee statistics in Egypt).

² There are also no publicly available reliable statistics on stateless persons or populations at risk of statelessness in Egypt, in part because statistics on statelessness are “inherently challenging, both methodologically and politically.” See INST. ON STATELESSNESS AND INCLUSION, *STATELESSNESS IN NUMBERS: 2019 AN OVERVIEW AND ANALYSIS OF GLOBAL STATISTICS 4-5* (July 2019). The Government of Egypt has reported on a nearly annual basis that there are a small number of stateless individuals in Egypt – in 2018, for example, the Egyptian government reported there were only four individuals who were stateless. In 2010, Egypt claimed there were sixty stateless persons, and by 2016 that there were only 19. *Id.* These officially recognized stateless persons are likely to refer to Armenians who came to Egypt following or during the First World War and had not been granted Egyptian nationality. *Id.*

³ See EIRWEN-JANE PIERROT, U.N. HIGH COMM’R FOR REFUGEES [hereinafter UNHCR], *NEW ISSUES IN REFUGEE RESEARCH, A RESPONSIBILITY TO PROTECT: UNHCR AND STATELESSNESS IN EGYPT* 3 n.6 (2012) (citing M. LYNCH, *REFUGEES INT’L, LIVES ON HOLD: THE HUMAN COST OF STATELESSNESS*, (2005)). See also WOMEN’S REFUGEE INT’L, *OUR MOTHERLAND, OUR COUNTRY* n.18 (2013) (“NGOs fighting for the [2004] amendment say that a quarter of a million households, encompassing an approximate one million children, were of Egyptian mothers.”).

⁴ See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, arts. 6, 80, 18 Jan., 2014 [hereinafter CONSTITUTION OF EGYPT].

⁵ Remote Interview with UNHCR (Apr. 15, 2021).

approximately 99% of its population.⁶ Yet systemic barriers to citizenship faced by both ‘undocumented’ Egyptian nationals and refugee, displaced, and migrant populations, demonstrate the gap between current domestic law and the reality of statelessness in Egypt, in comparison to its international and regional obligations.

Statelessness is an ongoing global problem; in 2014 the United Nations High Commissioner for Refugees (UNHCR)⁷ launched the #iBelong Campaign with the goal of ending statelessness by 2024.⁸ UNHCR’s goal is to mobilize states, international and regional intergovernmental organizations (IGOs), and civil society organizations including international non-governmental organizations (INGOs) and non-governmental organizations (NGOs), to act to prevent statelessness. In 2019, the High-Level Segment on Statelessness recorded over 360 pledges to combat statelessness, including pledges by 252 states.⁹ Despite its work addressing statelessness within the LAS, Egypt made no such pledge, as the sole country to do so from the Middle East and North Africa (MENA) region was Mauritania.¹⁰ Notwithstanding the severity of the issue of statelessness in the MENA region, until recently this was the only region yet to establish a formal statelessness network. The research of the International Human Rights Clinic at Boston University School of Law (IHRC) and this resulting Report continues the IHRC’s past country studies of Lebanon and Jordan, with the goal of mapping similarities in the issues and legal structures that underpin statelessness in the region. This Report contributes to a deeper understanding of statelessness problems faced in Egypt, and sets out proposals for reform in the broader context of statelessness in the MENA region.

Although this Report examines statelessness in Egypt with respect to all populations, important research has recently been conducted on the subject of statelessness among refugees and migrants in Egypt.¹¹ This Report builds on that research and places particular emphasis on

⁶ EL-ZANATY AND ASSOCIATES [EGYPT] & EGYPT MINISTRY OF HEALTH AND POPULATION, EGYPT DEMOGRAPHIC AND HEALTH SURVEY 2014 197-198 (2015) [hereinafter MINISTRY OF HEALTH AND POPULATION, EGYPT DEMOGRAPHIC AND HEALTH SURVEY 2014].

⁷ UNHCR is the UN agency in charge of registering refugees (other than Palestinians), with the aim of providing humanitarian assistance and protection, and promoting permanent solutions for refugees, including resettlement to a third country. Susan Akram, *The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan*, 30 INT’L J. REFUGEE L. 406, 409-10 n.6 (2018).

⁸ *Global Action Plan to End Statelessness: 2014-2024*, UNHCR 1, 2 (2014), <https://www.unhcr.org/54621bf49.html> (last visited June 4, 2021).

⁹ *Results of the High-Level Segment on Statelessness*, UNHCR, <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/> (last visited May. 5, 2021).

¹⁰ *Id.* See also BOSTON UNIV. SCH. OF L. INT’L HUM. RTS. CLINIC, THE CAMPAIGN TO END STATELESSNESS IN JORDAN 2 n.4 (2021) [hereinafter BU IHRC, CAMPAIGN TO END STATELESSNESS IN JORDAN].

¹¹ See, e.g., The AMER. UNIV. IN CAIRO, CTR. FOR MIGRATION AND REFUGEE STUD., PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT (June 2021) [hereinafter AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT]; BRONWEN MANBY, LONDON SCH. OF ECON., PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEES: BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO (June 2019) [hereinafter MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO]. Important research has also been conducted on the issue of statelessness and the Palestinian population in Egypt. See OROUB EL-ABED, UNPROTECTED: PALESTINIANS IN EGYPT SINCE 1948 (2009) [hereinafter EL-ABED, PALESTINIANS IN EGYPT SINCE 1948].

mapping vulnerabilities to statelessness among non-migrant/refugee populations with a focus on ‘undocumented Egyptian nationals,’ as well as those who are legally stateless.

A. Problem Statement

Egypt is a party to a number of international conventions that guarantee the right to nationality and citizenship, including the Convention on the Rights of the Child (CRC), the Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Furthermore, Egypt is a party to a number of regional treaties that guarantee the right to nationality and citizenship, including the Arab Charter on Human Rights (Arab Charter), the African Charter on Human and Peoples’ Rights (African Charter), the African Charter on the Rights and Welfare of the Child (ACRWC), and the 1969 Refugee Convention of the Organization of African Unity (1969 OAU Refugee Convention). Despite the protections afforded by these international and regional instruments, Egypt’s nationality laws and civil registration regime do not adequately ensure that all persons entitled to a nationality in the country are able to access it, leaving many populations either stateless or at risk of statelessness. This results in many segments of the population deprived of essential human rights and social entitlements.

Among the populations of stateless persons or those or at risk of statelessness are the *in situ* communities in Egypt.¹² Some of these populations are considered ‘undocumented nationals’ that is to say, persons who, due to discriminatory nationality laws or administrative gaps and practices, are effectively denied the ability to fully document and prove their legal claim to nationality in Egypt. Though some may not be formally considered stateless, they have particular vulnerabilities in documentation and legal identity status.¹³ They include: (a) children whose parents cannot complete the birth registration process; (b) children who are, or are considered to be born outside of marriage including from customary marriages, child marriages, or from rape; (c) children living in the street; (d) abandoned children/foundlings; (e) individuals belonging to religions unrecognized by the Egyptian state, in particular, the Baha’is; and (f) certain populations in Egypt’s border regions, including Bedouin populations and communities born in the Hala’ib Triangle. Refugee, displaced, and irregular migrant populations in Egypt are particularly at risk of statelessness, including Syrians, Sudanese, Ethiopians, Eritreans, Iraqis,

¹² See Caia Vlieks, *Contexts of Statelessness: The Concepts ‘Stateless in Situ’ and ‘Statelessness in the Migratory Context’*, in UNDERSTANDING STATELESSNESS 35, 35 (Tendayi Bloom et al., eds., 2017) (noting that *in situ* conceptions of statelessness includes stateless populations who are in their own country, i.e., having significant and stable ties with a country).

¹³ See WENDY HUNTER, UNDOCUMENTED NATIONALS BETWEEN STATELESSNESS AND CITIZENSHIP 5 (2019). See also BU IHRC, CAMPAIGN TO END STATELESSNESS IN JORDAN, *supra* note 10, at 3 (in the context of Lebanon and Jordan, the IHRC has used the term ‘unperfected citizenship’ to refer to “persons whose parents could not complete the birth or marriage registration processes and remain officially unregistered.”).

and Somalis who lack effective citizenship in their home countries, as well as Palestinians.¹⁴ Though the causes of vulnerability in legal identity for each of these populations varies, many of them face common barriers to accessing and/or documenting their nationality.

B. Methodology

The Report relies on legal and factual research on issues of statelessness in Egypt conducted from September 2020 to January 2022. The research for this Report included extensive desk research and analysis of the laws, policies, and practices of Egypt, research and analysis of international and regional law, and review of reports, studies, and other materials from NGOs, INGOs, and IGOs. Interviews were conducted with key organizations, lawyers, and academics. Experts who were consulted and interviewed are involved in research, providing legal aid to, and/or advocating for: stateless persons and refugees; Egyptian nationals facing barriers to documenting their nationality status; denationalized persons; persons facing discrimination in nationality laws; and populations that are historically and practically marginalized in Egypt.¹⁵

The IHRC also co-hosted a workshop with the American University in Cairo Center for Migration and Refugee Studies (AUC CMRS) in April 2021 to bring together stakeholders for a discussion addressing: (1) populations in Egypt that are stateless or at risk of statelessness; (2) ongoing gender discrimination in Egypt's nationality laws; (3) the effects of Egypt's nationality law upon a child's right to a nationality and ability to access civil registration; and (4) next steps in research and advocacy to establish a statelessness network in the MENA and resources for such a network. A second conference, hosted by CMRS and featuring some of the research presented in this Report, was also held in December 2021, bringing together stakeholders and researchers to address issues of statelessness across the MENA region. This conference also formally launched the Statelessness Platform and Network on Research and Advocacy on Statelessness in the MENA.

This Report is organized as follows. Part II provides the relevant legal, historical, and demographic context related to nationality and statelessness in Egypt. Part III examines Egypt's domestic laws concerning nationality and civil registration, and Egypt's international and regional legal obligations to protect against statelessness. Part IV analyzes the gaps in Egypt's

¹⁴ See *infra*, Part IV.E. This Report does not address Egyptians who are outside of Egypt and may face risks of statelessness due to reasons other than policies of the Egyptian state, in particular irregular migrant workers who may face challenges due to their documentation status in other countries. See, e.g., Ibrahim Awad and Nourhan Abdel Aziz, *Egyptian Irregular Migration in the GCC Countries*, in SKILFUL SURVIVALS IRREGULAR MIGRATION TO THE GULF 225, 238 (Philippe Fargues and Nasra M. Shad eds., 2017).

¹⁵ Limitations of the study include: (1) due to the COVID-19 pandemic, all informational interviews were conducted online; (2) interviews were conducted with experts on specific topics and with persons working with affected populations, but not directly with affected populations; (3) current quantitative data on affected populations was not always publicly available; and (4) lack of existing research specifically focused on nationality status required analyzing research on related questions, and extensive follow-up investigation.

domestic and international legal framework and the implementation of these laws. It examines the effects of these gaps on non-refugee/migrant populations. The section then analyzes gaps in the relevant legal framework for refugee populations, and the effects of these gaps on particular refugee and migrant populations. Part V illustrates some of the consequences of gaps in Egypt’s nationality law framework with regard to social entitlements, such as employment, education, healthcare, property, freedom from arbitrary detention and access to justice. The section also addresses relevant stakeholder efforts and achievements to address statelessness. Part VI concludes this Report with recommendations to reduce and prevent statelessness and to address the problems of accessing citizenship status for nationals in Egypt.

II. Legal and Historical Context

Prior to discussing the research into the current status of statelessness in Egypt, Part II.A first sets out the relevant definitions and theoretical framework used to map and analyze populations at risk in Egypt. Part II.B. examines the history and development of Egypt’s nationality law, and Part II.C. provides an analysis of the current demographics of Egypt.

A. Definition of Statelessness

The 1954 Convention Relating to the Status of Stateless Persons defines stateless persons as “a person who is not considered as a national by any State under the operation of its law.”¹⁶ Persons who fall within this definition are often referred to as ‘*de jure*’ stateless.¹⁷ In addition, the Final Act of the 1961 Convention on the Reduction of Statelessness refers to ‘*de facto*’ stateless persons; this term “is not defined in any international instrument” and is not a component of any treaty regime specific to stateless persons.¹⁸ However, UNHCR defines *de facto* stateless persons as “persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country.”¹⁹ This Report focuses primarily on *de jure* stateless and at-risk populations. The determination of whether a person is considered a national under the operation of a state’s law is “authoritatively interpreted as being both a question of fact and law.”²⁰ A person or population considered to be ‘at risk’ of statelessness would not currently meet the legal definition of stateless, but instead the

¹⁶ Convention Relating to the Status of Stateless Persons, art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117.

¹⁷ UNHCR, HANDBOOK ON THE PROTECTION OF STATELESS PERSONS UNDER THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS 5 (2014).

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5. *But see* Hélène Lambert, *Stateless Refugees*, in THE OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW 797, 811 (Cathryn Costello, Michelle Foster, and Jane McAdam eds., 2021) (arguing that ‘*de facto*’ statelessness’ is a discredited notion).

²⁰ LAURA VAN WAAS, AMAL DE CHICKERA, AND ZAHRA ALBARAZI, INST. ON STATELESSNESS AND INCLUSION, THE WORLD’S STATELESS 40 (2014) [hereinafter ISI, THE WORLD’S STATELESS].

circumstances of that person or population indicate there is a “considerable chance that statelessness will arise if preventive action is not taken.”²¹

In Egypt, stateless persons or those at risk of statelessness clearly include refugees, vulnerable migrants, displaced Palestinians, and certain populations in Egypt’s border regions. In addition, persons or populations at risk of ‘undocumented nationality’ (alternately in some literature referred to as ‘evidentiary statelessness’ or subject to ‘precarious citizenship’) may include populations that lack the means to fully prove their nationality status²² or remain unregistered with the Egyptian Government.²³ Since the strict and extensive legal requirements for Egyptian nationals to prove their nationality can leave many without documentation or the means to prove their documentation status, these Egyptian nationals effectively “have state membership but cannot prove it,” or face such significant barriers that it is nearly impossible under present circumstances to prove their membership in the state.²⁴

Egypt has not ratified either of the statelessness conventions,²⁵ but the basic definition of a stateless person is a norm of customary international law (CIL).²⁶ These conventions set out the

²¹ LEGAL AGENDA, NATIONALITY AND CASES OF STATELESSNESS IN THE MIDDLE EAST AND NORTH AFRICA 18 (2016).

²² While “there is no universally agreed upon definition of nationality,” the International Court of Justice has defined nationality as “the legal bond based on a social fact of attachment, a genuine connection of existence, interests and feelings, together with mutual rights and duties” and the “juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State.” *Nottebohm Case (Liech. v. Guat.)*, Judgment, 1955 I.C.J. 4, 23 (Apr. 6). *See also* AFR. COMM’N. H.P.R., *THE RIGHT TO NATIONALITY IN AFRICA* 13 (May 2014) (noting in particular that “where nationality is concerned, the relationship between the individual and the State must be effective: the individual must enjoy all the rights and be bound by the obligations which the State’s legislation grants to or imposes on its citizens.”).

²³ *See* HUNTER, *UNDOCUMENTED NATIONALS*, *supra* note 13, at 8 (2019) (defining and analyzing ‘undocumented nationality’ and ‘evidentiary statelessness’). As this Report illustrates, there are many persons who are eligible for Egyptian nationality, but “are nonetheless stateless because they are not considered as nationals by the competent authorities of the relevant state” though it may not be apparent to the affected individuals or to observers “that they are stateless.” ISI, *THE WORLD’S STATELESS*, *supra* note 20, at 40. *See also* Noora Lori, *Statelessness, ‘In-Between’ Statuses, and Precarious Citizenship*, in *THE OXFORD HANDBOOK OF CITIZENSHIP* 745, 746 (Ayelet Shachar et al., eds., 2017) (examining the concept of ‘precarious citizenship’ to refer to the structured uncertainty of being unable to secure permanent access to citizenship rights). There are multiple factors inhibiting access to citizenship for both migrant populations and state nationals including: (1) structural factors and global trends (such as identity management infrastructure, biometric identification mechanisms, climate change, and economic development/inequality), (2) institutional factors (including the role of the private sector, state security apparatus, representation (e.g., via census data), and type of government regime), and (3) individual factors (such as geography/place of birth, race and ethnicity, individual socioeconomic status, and relative social status). *Id.* at 747.

²⁴ HUNTER, *UNDOCUMENTED NATIONALS*, *supra* note 13, at 14 (2019).

²⁵ *See* Convention Relating to the Status of Stateless Persons, *supra* note 16; *see also* *Convention Relating to the Status of Stateless Persons*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en (last visited July 15, 2021). *See* Convention on the Reduction of Statelessness, 30 Aug., 1961, 989 U.N.T.S. 175; *see also* *1961 Convention on the Reduction of Statelessness*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5 (last visited July 15, 2021).

²⁶ *See* Int’l Law Comm’n, *Draft Articles on Diplomatic Protection with commentaries*, 48-49, U.N. Doc. A/61/10 (2006) (noting that the definition of Article 1(1) provided by the 1954 Statelessness Convention is considered to

basic rights and protections for stateless persons. However, Egypt is a party to the 1951 Convention Relating to the Status of Refugees²⁷ and the 1967 Protocol Relating to the Status of Refugees,²⁸ both of which provide protections for refugees that may face statelessness, in addition to international and regional human rights treaties that safeguard other critical aspects of the right to a nationality.²⁹

The key causes of statelessness are gaps and conflicts in nationality laws, legacies of colonization, consequences of state succession, intergenerational ‘inheritance’ of statelessness, arbitrary deprivation of nationality, and restrictive administrative practices (for example, in relation to issuance of documents necessary to prove nationality).³⁰ Given the range and complexity of causes, each presents differently depending on the context. The following sections provide a background to the context for this Report by examining the relevant history and demographics of Egypt.

B. History of the Egyptian State, Migration Flows, and Egypt’s Nationality Law

A review of the development of the modern Egyptian state, trends in migration, and more specifically, its nationality law, is necessary to contextualize the current issues relevant to statelessness and undocumented nationality in Egypt. The discussion below addresses how Egypt’s ‘original body of nationals’ came to be defined, as the consequences of its specific approach to nationality persists until today.³¹

Egypt’s modern legal regime derives from its complex history, including encounters with the Ottoman Empire, the French legal regime, British colonial rule, and legal reform movements; each of these legacies has affected the development of Egypt’s nationality law.³² Since the late 19th century, the concept of Egyptian nationality has undergone important transformations

have acquired a customary nature); *see generally* UNHCR, Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012).

²⁷ Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137; *see also* *Convention Relating to the Status of Refugees*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en (last visited July 15, 2021).

²⁸ Protocol Relating to the Status of Refugees, 28 Jan. 31, 1967, 606 U.N.T.S. 267; *see also* *Protocol relating to the Status of Refugees*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5 (last visited July 15, 2021).

²⁹ *See infra*, Part III.B.

³⁰ ISI, THE WORLD’S STATELESS, *supra* note 20, at 27-28.

³¹ *See* LEGAL AGENDA, NATIONALITY AND CASES OF STATELESSNESS, *supra* note 21, at 56.

³² *See* BRONWEN MANBY, CITIZENSHIP IN AFRICA: THE LAW OF BELONGING 90 (2018) (noting Egypt’s complex colonial heritage and its legacy on the development of Egyptian nationality) [hereinafter MANBY, THE LAW OF BELONGING]; *see also* GIANLUCA P. PAROLIN, CITIZENSHIP IN THE ARAB WORLD: KIN, RELIGION AND NATION-STATE 73-73, 79-82 [hereinafter PAROLIN, CITIZENSHIP IN THE ARAB WORLD]. *See generally* Nathan J. Brown, *Law and Imperialism: Egypt in Comparative Perspective*, 29 L. AND SOC’Y REV. 103 (1995) (discussing Egypt’s comprehensive legal reforms, including development of modern legal codes and court system).

shaped by Egypt's shifting position through the Ottoman Empire, British colonial rule, independence and nationalist movements, the establishment of the Israeli state and ensuing wars, trends in migration flows, and other prevailing political currents and ideologies (Ottomanism, pan-Arabism, secular nationalism, and Islamism).³³ The result is an Egyptian nationality law that became increasingly restrictive, arguably until the early years of the 21st century.³⁴

1. Nineteenth Century Egypt and the Emergence of Ottoman Nationality and Egyptian Nationality

Although Egypt was formally under Ottoman rule from 1517 until 1914, following the French occupation under Napoleon (1798-1801), 19th century Egypt became a semi-autonomous but important province of the Ottoman Empire.³⁵ This is in part due to the development of the modern Egyptian state, which emerged under Mehmet Ali Pasha, the Albanian-born founder of the dynasty that ruled Egypt from the 19th century to the middle of the 20th. Under Mehmet Ali and his successors, Egypt developed its own modern army based solely on Egyptian conscripts;³⁶ a burgeoning economy increasingly integrated into the global economy; major land reforms; the Suez Canal, a critical gateway to India and East Asia for the Great Powers; and a centralized modern administrative bureaucracy complete with a 'good census' by 1848 and 'secular' methods for identification, as well as education and health institutions.³⁷

³³ For discussions of the development of Egyptian nationality law, trends, and influences, as well as access to nationality of various groups, see DALIA MALEK, GLOB. CITIZEN OBSERVATORY, REPORT ON CITIZENSHIP LAW EGYPT 1 (2021) (noting "The concept of nationality in Egypt has undergone transformations throughout the history of the country, coinciding with colonial rule, independence, trends of emigration and migration, and the political climate.") [hereinafter MALEK, REPORT ON CITIZENSHIP LAW EGYPT]; WILL HANLEY, IDENTIFYING WITH NATIONALITY: EUROPEANS, OTTOMANS, AND EGYPTIANS IN ALEXANDRIA 1-21 (2017) [hereinafter HANLEY, IDENTIFYING WITH NATIONALITY]; NAJAT ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT: ENTREPRENEURSHIP AND BUSINESS BEFORE NASSER 147-157, 195-210 (2016) [hereinafter ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT].

³⁴ See also MANBY, THE LAW OF BELONGING, *supra* note 32, at 90 (noting the "steady progression" of Egypt's citizenship law towards "more restrictive access.").

³⁵ See Khaled Fahmy, *Birth of the 'Secular' Individual: Medical and Legal Methods of Identification in Nineteenth-Century Egypt*, in REGISTRATION AND RECOGNITION: DOCUMENTING THE PERSON IN WORLD HISTORY 335, 344-345 (2012).

³⁶ See KHALED FAHMY, ALL THE PASHA'S MEN: MEHMED ALI, HIS ARMY AND THE MAKING OF MODERN EGYPT 9-14 (2010). (Fahmy's transliteration uses 'Mehmed,' but the Pasha's name is most commonly transliterated as 'Mehmet'). Mehmet Ali's army at times went to war with the Ottoman Sultan and "even gained control over wide areas of the Middle East," including extending the boundaries of Egypt to parts of what is now known as Sudan. *Id.* at 11-12. Through these confrontations, Mehmet Ali was able to negotiate a special independent status within the Ottoman system, including the title 'governor of Egypt for life' and his male descendants, known as 'Khedives,' were granted hereditary rights to office. See ALI COŞKUN TUNÇER, SOVEREIGN DEBT AND INTERNATIONAL FINANCIAL CONTROL: THE MIDDLE EAST AND THE BALKANS, 1870-1914, 30-31 (2015).

³⁷ See Khaled Fahmy, *Birth of the 'Secular' Individual: Medical and Legal Methods of Identification in Nineteenth-Century Egypt*, in REGISTRATION AND RECOGNITION: DOCUMENTING THE PERSON IN WORLD HISTORY 335, 344-47, 352 (2012). Mehmet Ali is largely depicted as the founder of modern Egypt. See, e.g., Mohamed R. Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, in OXFORD CONSTITUTIONS OF THE WORLD (2019) [hereinafter Abdelsalam, *The Arab Republic of Egypt: Introductory Note*]. See also KHALED FAHMY, ALL THE PASHA'S MEN,

Additionally, Egypt's legal system underwent a transformation under Mehmet Ali's rule as he moved to centralize the state and undercut the authority of the *'ulama* and Qadi courts associated with the Taqlid legal system, the pre-modern Islamic legal system prevalent in the Muslim world.³⁸ Egyptian elites 'borrowed' European laws that 'displaced' the rules of the Taqlid legal system as well as its institutions—the exception to this transformation was in the area of family law.³⁹ However, following the opening of the Suez Canal in 1869, the high cost for this 'modern state' transformation took its toll not only in human terms, but also by way of large debts to Europeans.⁴⁰ By the 1870s, Egypt's loss of ownership interest in the Suez Canal gave the British the pretext for the occupation of Egypt (and Sudan) beginning in 1882.⁴¹ Although Egypt remained under the sovereignty of the Ottoman Empire until the latter's demise, from 1882 until 1922, Egypt was formally incorporated into the British Empire as a 'Veiled' Protectorate, which meant it was administered by the British Foreign Office yet formally retained Ottoman institutions, an expanding khedival authority, and particular Egyptian governing laws and court system.⁴² Meanwhile, throughout the period of occupation, the nationalist movement – with the 1881-82 'Urabi rebellion's slogan 'Egypt for Egyptians' – gained currency with the Egyptian populace.⁴³

Despite massive debts, by the 1880s and for the next seventy years, some regarded Egypt as the "most prosperous, modern, and promising country in the Middle East."⁴⁴ The population expanded significantly during the period, from 4.5 million in 1800 to 7.8 million in 1882, then

supra note 36, at 17 ("Rather than taking 'Egypt' as referring to a nation with an unadulterated identity inhabiting a territory with distinct borders that sharply distinguish it from other nations, ... 'Egypt' came to refer to a nation so defined only in the nineteenth century and mostly as a result of Mehmet Ali's policies.").

³⁸ See Lama Abu-Odeh, *Modernizing Muslim family law: the case of Egypt*, 37 VAND. J. TRANSNAT'L L., 1043, 1047 (2004).

³⁹ *Id.* (noting also that this division between family law and other areas of law persists until today).

⁴⁰ See KHALED FAHMY, *ALL THE PASHA'S MEN*, *supra* note 36, at 10-14, 73-76, 126, 260-61 (detailing the brutality and misery that attached to the formation of a modern army along with Egypt's industrialization and land reforms). See also LHAM KHURY-MAKDISI, *THE EASTERN MEDITERRANEAN AND THE MAKING OF GLOBAL RADICALISM, 1860-1914* 3, 137-138 (2013) (discussing the major economic and social disruptions at the end of the nineteenth century and beginning of the 20th and resulting labor strikes).

⁴¹ ALI COŞKUN TUNÇER, *SOVEREIGN DEBT AND INTERNATIONAL FINANCIAL CONTROL: THE MIDDLE EAST AND THE BALKANS, 1870-1914*, 100-122 (2015). Consequently, modern Egypt's first Constitution of 1882, creating parliamentary representation for the first time under an Ottoman mandate, was abrogated within months as the British assumed control. The 1882 Constitution was envisioned as a "wider reformation project to establish modern institutions" capable of addressing the economic and political crises at the time. Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

⁴² See Aimee M. Genell, *Empire by Law: Ottoman Sovereignty and the British Occupation of Egypt, 1882-1923*, 13-14, 84-89 (2013) (Ph.D. Dissertation, Columbia University) (discussing complex status of Egypt during occupation period when the khedive's powers were expanded yet "the British Consul-General's powers were paramount"). See also Will Hanley, *When Did Egyptians Stop Being Ottomans? An Imperial Citizenship Case Study*, in *MULTILEVEL CITIZENSHIP*, 89, 89-92 (2013) ("By the time Britain invaded and occupied Egypt in 1882, few remnants of [Ottoman] direct control remained. Historians agree that Egypt was, for all intents and purposes, independent of the Ottoman Empire by the last quarter of the century.").

⁴³ See KHALED FAHMY, *ALL THE PASHA'S MEN*, *supra* note 36, at 267. See also HANLEY, *IDENTIFYING WITH NATIONALITY*, *supra* note 33, at 16.

⁴⁴ AIMÉE ISRAEL-PELLETIER, *ON THE MEDITERRANEAN AND THE NILE: THE JEWS OF EGYPT* 6 (2018).

tripling to 24 million by 1954, with Cairo and Alexandria growing exponentially.⁴⁵ European workers from the Balkans, Italy, and Spain “flocked to Egypt,” with some settling permanently and others on a seasonal basis.⁴⁶ Artisans, craftsmen, and white-collared professionals from within and outside Ottoman provinces immigrated to Egypt as well. The number of Alexandrian and Cairene residents born outside Egypt multiplied.⁴⁷ By the turn of the century, Egypt was a critical center of intellectual thought, innovation and production, and a central site of the *Nahda* (or Arab Renaissance) movement. Cairo and Alexandria in particular served as hubs connected to various parts of the world by “webs of people, information, capital and commodities”; intellectual circulation was multidirectional and across social divisions.⁴⁸ Citizenship (or ‘a patriotic identity’)⁴⁹ and belonging were core ideas explored by the educated multicultural, multireligious elite in Egypt but increasingly more broadly,⁵⁰ especially as Egypt’s population experienced the dramatic structural upheavals that arose with its integration into a volatile globalized economy.⁵¹

Against this backdrop, “nationality” for the Egyptian population was conceived as a legal matter.⁵² Under the Ottoman Empire, in particular the *Tanzimat* reforms of the nineteenth century,⁵³ Egyptians were considered “Ottoman nationals” under the first Ottoman Nationality Law of 1869 and throughout the 1890s.⁵⁴ With the entry into force of this law, anyone residing in the territory of the Ottoman Empire was recognized as a national, regardless of their race or religious affiliation.⁵⁵ Prior to this period, the Ottoman system organized the population

⁴⁵ *Id.* 5-6.

⁴⁶ *Id.* at 5.

⁴⁷ *Id.* at 5-6, 19.

⁴⁸ See Khury-Makdisi, THE EASTERN MEDITERRANEAN AND THE MAKING OF GLOBAL RADICALISM, *supra* note 40, at 5-9.

⁴⁹ See Will Hanley, *What Ottoman Nationality Was and Was Not*, 3 J. OTTOMAN & TURKISH STUD. ASSOC. 277, 278 (2016). See also Fateh Azzam, *Palestinian (Non)Citizenship*, 73 MIDDLE EAST J. 573, 575 (2019) (noting “[s]cholars have debated the nature of Ottoman citizenship, whether it was a successful attempt to create a ‘patriotic identity’ that eroded civil and religious distinctions or if it maintained a subject status ... in the terminology of the law”).

⁵⁰ See HANLEY, IDENTIFYING WITH NATIONALITY, *supra* note 33, at 1-21. See also ISRAEL-PELLETIER, THE JEWS OF EGYPT, *supra* note 44, at 7, 12-20.

⁵¹ See Khury-Makdisi, THE EASTERN MEDITERRANEAN AND THE MAKING OF GLOBAL RADICALISM, *supra* note 40, at 3-5.

⁵² See HANLEY, IDENTIFYING WITH NATIONALITY, *supra* note 33, at 16.

⁵³ *Tanzimat* refers to the comprehensive Ottoman reforms in the Empire’s military and economic administration, as well as education and fiscal systems, that began in 1839 to address the decline of the central bureaucratic apparatus. The reforms are said to have oscillated between two models: “on the one side, traditional confessional communitarianism (i.e., the millet system), and on the other side, forced denationalisation and Ottomanisation.” PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 73.

⁵⁴ See PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 73. See also HANLEY, IDENTIFYING WITH NATIONALITY, *supra* note 33, at 256. “The Ottoman nationality law of 1869 met the needs of Egyptians and non-Egyptian Ottomans alike when they were outside of the empire, but it offered no means of distinguishing Egyptians for domestic purposes.” *Id.*

⁵⁵ LEGAL AGENDA, NATIONALITY AND CASES OF STATELESSNESS, *supra* note 21, at 45. Thereafter, Ottoman nationality was passed from parent to child or could be acquired by application by those who were born on Ottoman territory after reaching the age of majority, or by naturalization after five years’ residence. *Id.*

throughout the empire neither by territory nor language but along a confessional basis, allowing religious communities (‘millets’) to each have their “own internal organization and [to be] controlled by a religious hierarchy.”⁵⁶ The Sunni-Muslim was the dominant community and the protectors of the “People of the Book,” i.e., Jews, Christians, and Muslims.⁵⁷ Consequently, some have referred to the Ottoman system as the “Empire of Differences,” based on the “twin principles of religious pluralism and inequality.”⁵⁸ But as the Ottoman Empire was in decline, this system was steadily dismantled,⁵⁹ and “Ottoman nationality established a more direct relationship between the individual and the state.”⁶⁰ In terms of religious demographics, Egypt’s population was largely Sunni-Muslim, with Christians, predominantly Coptic Orthodox Christians, being the second largest religious group.⁶¹

In addition to Ottoman nationality, indigenous nationality emerged in certain autonomous provinces.⁶² Despite its special status within the Ottoman Empire, it was not until 1900 when a legal definition of “Egyptian” was first codified and enacted into an Egyptian Decree-Law, which did little besides distinguish between “Egyptians” and “Ottomans,” specifying that Egyptian nationality was for Ottoman subjects born or long resident in Egypt.⁶³ As late as 1905 the majority of Egyptians considered themselves to be Ottoman *subjects*.⁶⁴ Regardless, membership in Egyptian nationality for most was a matter of jurisdiction rather than rights or political participation.⁶⁵ Self-identification, however, changed significantly by 1914, as nationality became a principal marker of identity.⁶⁶

The legal definition of who was an “Egyptian” was made more specific after the First World War. The emergent definition largely depended on one’s period of residence in Egypt and

⁵⁶ This changed in the nineteenth century as the Ottoman “reformers recognized the need to establish the social and political life of the state on a new basis.” Butrus Abu-Manneh, *The Christians between Ottomanism and Syrian Nationalism: The Ideas of Butrus AlBustani*, 11 INT’L J. MIDDLE EAST STUD. 287 (1980). See also SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE: MINORITY REPORT 35-36, 38-39 (2016) [hereinafter SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE]. For an examination of the millet system in Egypt and how it differed from and was replaced by the later secular notion of ethnic and religious ‘minorities,’ see ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 53-60.

⁵⁷ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 38-39.

⁵⁸ *Id.*

⁵⁹ *Id.* at 39.

⁶⁰ Rachel Scott, *Citizenship, Public Order, and State Sovereignty: Article 3 of the Egyptian Constitution and the “Divinely Revealed Religions,”* in THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD 382 (2017) (“In 1869, the Ottoman government imposed upon Ottoman subjects an Ottoman citizenship that was modelled on Western conceptions of citizenship: every person born of an Ottoman father was an Ottoman subject and was equal regardless of faith or language.”).

⁶¹ See Mohamed Saleh, *A Pre-Colonial Population Brought to Light: Digitization of the Nineteenth Century Egyptian Censuses*, 46 HISTORICAL METHODS 5-6 (2013). See ISRAEL-PELLETIER, THE JEWS OF EGYPT, *supra* note 44, at 7 (noting the population of Jews in Egypt in 1800s and 1900s).

⁶² PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 74, 79.

⁶³ MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33 at 2 (citing Al Waqa’i al-Masriyyah (WM) 70, No. 74, July 4, 1900). See also HANLEY, IDENTIFYING WITH NATIONALITY, *supra* note 33, at 256-58, 261-62, 268-70.

⁶⁴ Will Hanley, *When Did Egyptians Stop Being Ottomans? An Imperial Citizenship Case Study*, in MULTILEVEL CITIZENSHIP 89, 93 (2013).

⁶⁵ *Id.* at 95; see also Hanley, *What Ottoman Nationality Was and Was Not*, *supra* note 49, at 278-81.

⁶⁶ HANLEY, IDENTIFYING WITH NATIONALITY, *supra* note 33, at 16.

the Ottoman Empire, as determined by the date of November 5, 1914, when Britain and France declared war on the Ottoman Empire.⁶⁷ Britain ended Ottoman rule in Egypt by the close of 1914, and the ‘Khedivate’ under the successors of Mehmet Ali became the ‘Sultanate’ of Egypt, a British protectorate.⁶⁸ Although Britain had wielded military and administrative power in Egypt since 1882, “the wartime termination of Ottoman sovereignty was largely of theoretical importance at the level of the state,” but it drastically changed the status of Ottoman nationals, as the population came under martial law.⁶⁹

After the end of the First World War and the collapse of the Ottoman Empire, the leader of Egypt’s nationalist Wafd Party, Sa‘d Zaghlūl, organized a delegation to present Egyptian claims for independence at the 1919 Versailles Conference. However, their demands were ignored and delegation members were arrested and sent into exile by the British.⁷⁰ By then Egyptian nationalism was widespread, moving well beyond the educated elite, and led to a popular revolution.⁷¹ In 1922, Britain unilaterally declared Egypt independent, but in practice the country remained a less than fully sovereign colonial territory within the British imperial system, with Britain reserving for itself “protection of foreign interests in Egypt and the protection of minorities,” military, security of communications, and the territory of the Sudan.⁷² Furthermore, Article 17 of the Treaty of Lausanne provided that Turkey would renounce all rights and titles over Egypt and Sudan, taking effect November 5, 1914.⁷³ Consequently, Ottoman nationality “ceased to exist, leaving the ground clear for the new, full-fledged nationalities drawn by the treaties.”⁷⁴

2. Formal Independence: Egyptian Nationality Law of 1926/1929

The Egyptian Constitution adopted in 1923 established a constitutional monarchy with a bicameral parliament over which the king had great power.⁷⁵ The 1923 Constitution became the

⁶⁷ PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 80. Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, AFRICA CITIZENSHIP AND DISCRIMINATION AUDIT THE CASE STUDY OF EGYPT 34, 38-39 (2005). November 14, 1914 remains important for purposes of defining who is eligible for Egyptian nationality. See MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33 at 1; see Law No. 26 of 1975 (Concerning Egyptian Nationality), 29 May, 1975 (Egypt).

⁶⁸ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

⁶⁹ See HANLEY, IDENTIFYING WITH NATIONALITY, *supra* note 33, at 16; see also Nathan J. Brown, *Law and Imperialism: Egypt in Comparative Perspective*, 29 LAW & SOC’Y REV. 103, 111 (1995).

⁷⁰ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

⁷¹ HANLEY, IDENTIFYING WITH NATIONALITY, *supra* note 33, at 16.

⁷² Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37. Nathan J. Brown, *Law and Imperialism: Egypt in Comparative Perspective*, 29 L. AND SOC’Y REV. 103, 107 (1995).

⁷³ Aimee M. Genell, *Empire by Law: Ottoman Sovereignty and the British Occupation of Egypt, 1882-1923*, 159-160, n.35 (2013) (Ph.D. Dissertation, Columbia University). PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 75.

⁷⁴ *Id.*

⁷⁵ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

model for each of Egypt's subsequent constitutions;⁷⁶ for some this marked the beginning of the Liberal Age, or "the age of aristocratic constitutional monarchy" (1923-52).⁷⁷ Soon thereafter the first nationality laws under 'independent' Egypt were promulgated in 1926, and to a limited extent, revised in 1929.⁷⁸

The Nationality Law of 1926 provided:

- i. Ottoman subjects residing in Egypt on or after November 5, 1914 until the coming into force of the law were to be considered Egyptian nationals as of right,⁷⁹
- ii. a right of option for other territories which required birth or birth of a parent of that territory and a residence transfer to the country of option within six months;
- iii. former Ottoman subjects if resident in Egypt on or after November 5, 1914, could acquire Egyptian nationality;
- iv. Ottoman subjects who had never taken residence in Egypt could transfer their residence to Egypt within a year and become a national after five years.⁸⁰
- v. an individual is Egyptian if born in the territory or outside Egypt to an Egyptian mother, as long as the father's status has not been proved.⁸¹

The 1929 Decree-Law revised certain aspects of the 1926 law, including a 'double *jus soli*' provision by which a child born in Egypt of a foreign father but ethnically belonging to the majority of the population of a country whose language was Arabic or religion was Islam could acquire citizenship (Art. 6(4)).⁸² Under Article 7 of the 1929 law, birth in Egypt also allowed a person to not only live permanently in the country but also to acquire Egyptian nationality at the age of majority.⁸³ A foreign woman marrying an Egyptian was automatically given Egyptian nationality, whereas an Egyptian woman marrying a foreign man would lose her Egyptian nationality, except in cases where she was not granted her husband's nationality.⁸⁴

⁷⁶ *ConstituteNet – Constitutional history of Egypt*, INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, <https://constitutionnet.org/country/egypt> (last visited July 24, 2021).

⁷⁷ See SELMA BOTMAN, *ENGENDERING CITIZENSHIP IN EGYPT XI* (1999) (referring to the period as 'liberal'); ABDULHAQ, *JEWISH AND GREEK COMMUNITIES IN EGYPT*, *supra* note 33, at 151.

⁷⁸ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 38. Article 10 of Law No. 26 of 1926 was promulgated without the Egyptian Parliament's participation, leading to the Executive freezing the law, "but the courts used it whenever cases presented to courts fell under its regulations." *Id.* This led to the promulgation of Law No. 19 of 1929, although it was "in essence the same as the law 26/1926." *Id.*

⁷⁹ See PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 32, at 80; see also ABDULHAQ, *JEWISH AND GREEK COMMUNITIES IN EGYPT*, *supra* note 33, at 148 (quoting the equivalent provision in Law No. 19 of 1929).

⁸⁰ PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 32, at 80-81 (quotations omitted).

⁸¹ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 34, 37-38 (citing Law No. 26 of 1926, article 10). See also Ottoman Nationality Law of 1909: Hanley, *What Ottoman Nationality Was and Was Not*, *supra* note 49, at 290-91.

⁸² PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 32, at 81.

⁸³ *Id.*

⁸⁴ *Id.* at 81. Other provisions in the nationality law included provisions related to naturalization, loss and deprivation of nationality. *Id.* See also Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 38.

The 1926 and 1929 nationality laws were initial steps towards a “secular entity.”⁸⁵ In keeping with the slogan of the 1919 revolution, ‘Religion for God and Homeland for Everyone,’ there was little distinction under the law for determining who was an Egyptian national in terms of religious affiliation, though the overwhelming majority of the population (of 5 million) during that time were Sunni Muslim.⁸⁶ Coptic Christians were estimated at 8%,⁸⁷ and Jews less than 1%, numbering nearly 60,000.⁸⁸ Religion was not a part of the nationality debate – instead, commentators note a “secular radicalism.”⁸⁹ It is noteworthy that the categorization of who was Egyptian or foreign was somewhat fluid, as indicated in the Egyptian censuses of prior decades.⁹⁰ Syrians, Armenians, Greeks, and Jews who arrived in Egypt from areas of the former Ottoman Empire before the First World War automatically became Egyptian unless they explicitly opted for other citizenships.⁹¹ Segments of Egypt’s diverse and largely assimilated population found new home countries following the Ottoman Empire’s collapse, primarily Syrians, Armenians, and Jews, yet in addition to other ethnic, religious, and national minorities (e.g., Armenian, Christian, French, Greek, Italian) many remained Egyptian nationals. Naturalization under the 1929 Nationality Law also included preferences for ethnic and religious background (i.e., for countries where the predominant language was Arabic or the majority religion was Islam).⁹²

⁸⁵ PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 79 (noting that other key steps included an end in 1937 to the Capitulations, a set of long-standing extraterritorial privileges and exemptions for foreigners, and the institution of general state courts by 1955); *see also* Hanley, *What Ottoman Nationality Was and Was Not*, *supra* note 49, at 284.

⁸⁶ ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 24.

⁸⁷ ANTHONY O'MAHONY, ED., EASTERN CHRISTIANITY IN THE MODERN MIDDLE EAST 61 (2009).

⁸⁸ *See* ISRAEL-PELLETIER, THE JEWS OF EGYPT, *supra* note 44, at 7. *See also* ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 64-65 (highlighting discrepancies with demographic statistics and shifting categories during the period).

⁸⁹ ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 152.

⁹⁰ *See* Roger Owen, *The Population Census of 1917 and its Relationship to Egypt's Three 19th Century Statistical Regimes*, 9 J. HISTORICAL SOCIOLOGY 457, 462-63 (1996) (noting the census indicated that there was no such nationality as ‘Coptic’ or ‘Jewish,’ such that Copts were to be considered as “Egyptian by nationality and race but Copt by religion,” and other persons could be “Egyptian by nationality but of some other race, possible categories being given as ‘Sudanese’, ‘Berber’, Bedouin’, Turk or ‘Armenian’”). *See also* ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 63-65 (noting shifting categories of identity during the period); *also* Mohamed Saleh, *A Pre-Colonial Population Brought to Light*, *supra* note 61.

⁹¹ ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 148.

⁹² *See* PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 80-81; ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 63-66. For a variety of reasons, many Armenians had difficulty accessing Egyptian nationality, and some did not have their legal status in Egypt clarified until 1961. *Id.* at 148-50. *See also* LAURA VAN WAAS, UNHCR, THE SITUATION OF STATELESS PERSONS IN THE MIDDLE EAST AND NORTH AFRICA 16 (2010).

3. Egyptian Nationality Laws of 1950, 1956, and 1958

The political shifts of the 1930s and 1940s led to significant changes in the nationality law in 1950.⁹³ The national liberation movement against British occupation grew significantly, especially following the Second World War, resulting in the 1949 revocation of the law on foreign privileges, which since 1875 had provided specific privileges to foreign nationals residing in Egypt, including being tried before special (mixed) courts.⁹⁴ In addition, the establishment of the state of Israel in 1948, resulting in the widespread displacement of over 700,000 Palestinians, had a particular impact on Egypt's Nationality Law of 1950.⁹⁵ Law No. 160/1950 recognized stateless persons for the first time; Article 2(3) allowed children born outside Egypt "to an Egyptian mother and a stateless father, or of unknown nationality to notify the Ministry of Interior with their choice to be [naturalized]."⁹⁶ This was claimed to be due to Egypt's adoption of the Universal Declaration on Human Rights (UDHR, 1948). Article 15(1) of the UDHR provides that "everyone has the right to a nationality" and Article 15(2) states "no one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality."⁹⁷ The 1950 Nationality Law eliminated the double *jus soli* provision included in the 1929 Decree-Law.⁹⁸

On July 23rd, 1952, a group of army officers, called the "Free Officers," led by General Mohammed Neguib and Colonel Gamal Abdel Nasser overthrew the Egyptian monarch King Farouk, establishing an "officer's republic."⁹⁹ The overthrow of the monarchy, known later as the Egyptian Revolution of 1952, led to the declaration of a Republic in 1953 and Nasser securing the Presidency (1954-70). The new Republic abolished Islamic *shari'a* and millet courts and gave jurisdiction over family law matters to Egypt's national courts (1955).¹⁰⁰ In early 1956 Egypt adopted a new Constitution, and by June 1956, Britain withdrew all its forces from Egypt's territory.¹⁰¹ A month later, in July 1956, President Nasser nationalized the Suez Canal to

⁹³ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 34, 38.

⁹⁴ *Id.*

⁹⁵ *Id.* at 34, 38-39. *See infra*, Part IV.E.7.

⁹⁶ *Id.* at 34, 39.

⁹⁷ *Id.*

⁹⁸ MANBY, *THE LAW OF BELONGING*, *supra* note 32, at 90.

⁹⁹ *See* Joel Benin, *Egypt's Gamal Abdel Nasser Was a Towering Figure Who Left an Ambiguous Legacy*, *THE JACOBIN* (June 2020); *see also* EL-ABED, *PALESTINIANS IN EGYPT SINCE 1948*, *supra* note 11, at 40.

¹⁰⁰ Rachel Scott, *Citizenship, Public Order, and State Sovereignty: Article 3 of the Egyptian Constitution and the "Divinely Revealed Religions,"* in *THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD* 392 (2017) (noting that in the first instance the personal status law of all Egyptians was to be governed by Islamic law, with exceptions carved out for non-Muslims to utilize their own personal status laws so long as any disputes that arose involved persons under the same sect, and under organized sectarian judicial institutions).

¹⁰¹ *See* Joel Benin, *Egypt's Gamal Abdel Nasser Was a Towering Figure Who Left an Ambiguous Legacy*, *THE JACOBIN* (June 2020). Additionally, in February 1953, Egypt and Britain agreed to allow the Sudanese to hold a referendum to choose between independence and union with Egypt. A majority of Sudanese voted for independence in a referendum held in 1953, and Sudan eventually gained independence in 1956. *See Sudan – History*, in *ENCYC. BRITANNICA* (2020). *See also* Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

fund the Aswan High Dam.¹⁰² By October of that same year, Britain, France, and Israel invaded Egypt over the nationalization of the Suez Canal in an attempt to topple the Nasser government, in what became known as the Suez Crisis (or the second Arab-Israeli war). This ultimately failed due to intervention by the U.S. and the Soviet Union, marking a turning point in Egypt's positioning vis-à-vis global powers – and Nasser's rise as a leader of the Arab nationalist movement in the MENA region and the eventual embrace of “Arab socialism.”¹⁰³

A growing sense of national identity, particularly defined by “anti-Royal, anti-Western and anti-Zionist” sentiments, that emerged out of the liberation movement, the independence of Sudan in 1956, and the second Arab-Israeli war of 1956, contributed to changes in the Nationality Law of 1956, which further defined attachment to Egypt.¹⁰⁴ Law No. 391 of 1956 provided that regardless of Ottoman nationality, Egyptian nationality required continued residence in Egypt from 1900 onwards.¹⁰⁵ The law included more onerous conditions for those born to an Egyptian mother and a stateless or unknown father outside of Egypt. Children born outside of Egypt to an Egyptian mother and a stateless father or one of unknown nationality, instead of automatically acquiring Egyptian nationality, were subject to discretionary decisions on their nationality by the Ministry of Interior.¹⁰⁶ The 1956 Nationality Law also provided that nationality could be withdrawn to protect the security and integrity of the state, including leaving the country for “six months or longer without the intention of returning to Egypt.”¹⁰⁷

For the first time, the 1956 Nationality Law mentioned the term ‘Zionism’ in connection with disloyalty to the state as a criterion for withdrawing Egyptian nationality, in addition to being a charge for treason.¹⁰⁸ Since ‘Zionism’ was not defined, critics observed the potential for it to be conflated with ‘Judaism,’¹⁰⁹ a religion the Egyptian state recognized, as its adherents were a historic religious community.¹¹⁰ Based on the political events in the region and within the country,¹¹¹ Jewish Egyptian nationals as well as Jewish non-nationals residing in Egypt had difficulties remaining in the country, and some were expelled in 1956.¹¹² For decades the

¹⁰² Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 34, 39 (2005).

¹⁰³ Joel Benin, *Egypt's Gamal Abdel Nasser Was a Towering Figure Who Left an Ambiguous Legacy*, THE JACOBIN (June 2020); *Egypt Profile – Timeline*, BBC (Jan. 7, 2019).

¹⁰⁴ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 34, 39. MANBY, THE LAW OF BELONGING, *supra* note 32, at 90.

¹⁰⁵ PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 81.

¹⁰⁶ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 34, 40.

¹⁰⁷ PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 81-82. Emigration was tightly controlled during this period. Gerasimos Tsourapas, *Egypt: Migration and Diaspora Politics in an Emerging Transit Country*, MIGRATION POL'Y INST. (Aug. 8, 2018).

¹⁰⁸ See MANBY, THE LAW OF BELONGING, *supra* note 32, at 90. PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 32, at 81.

¹⁰⁹ MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 21.

¹¹⁰ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37. ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 65.

¹¹¹ See David D. Kirkpatrick, *A Timeline of Jews in Egypt*, N.Y. TIMES (June 23, 2015).

¹¹² *Id.* (citing JOEL BEININ, THE DISPERSION OF EGYPTIAN JEWRY (1998)). See also ABDULHAQ, JEWISH AND GREEK COMMUNITIES IN EGYPT, *supra* note 33, at 209-210 (many Egyptian Greeks, Egyptian Jews and others were

population of Jews had increased in Egypt, but following the creation of the state of Israel in 1948, their numbers decreased significantly.¹¹³ Under government pressure, about 25,000 Jews left Egypt, reducing their population to about 15,000 by 1956 and 12,000 by 1967.¹¹⁴

In 1958, as part of the Pan-Arab unity for which Nasser's Egypt had become the champion, Egypt merged with Syria to create the United Arab Republic (UAR).¹¹⁵ In addition to a new constitution passed in 1958, Egypt needed a new law to define nationality status under this union.¹¹⁶ Law No. 82 of 1958 largely mirrored the previous law, No. 391 of 1956, with the exception of substituting 'United Arab Republic nationality' for the prior conception of an 'Egyptian nationality.'¹¹⁷ It also reinforced "ideas of membership in an Arab community"¹¹⁸ by providing that "an expatriate citizen, a member of the Arab community who was neither a resident nor a national of an Arab State, was assimilated as a national and could be naturalized under more lenient provisions."¹¹⁹ The UAR dissolved after Syria withdrew from the union in 1961, but the Nationality Law of 1958 remained in effect for Egyptians (not Syrians) until 1975.¹²⁰

In the 1960s, Egypt adopted a formally socialist economic orientation, nationalizing most non-agricultural enterprises, limiting agricultural land ownership, and expanding welfare programs dramatically. Concurrently, many liberal structures and institutions were undermined and leftists as well as the Muslim Brotherhood members were repressed.¹²¹ While pre-1952 Egypt attracted immigrants, the rise of nationalism associated with the Free Officers Revolution, along with the nationalization of businesses, contributed to the decline of so-called 'cosmopolitan' Egypt, and many successful entrepreneurs (including those with immigrant heritage) left Egypt.¹²² The exception to this decline in immigration was the arrival of displaced

compelled to leave Egypt both before and after the 1961 nationalizations of private companies due to changes in political status).

¹¹³ ISRAEL-PELLETIER, *THE JEWS OF EGYPT*, *supra* note 44, at 7.

¹¹⁴ David D. Kirkpatrick, *A Timeline of Jews in Egypt*, N.Y. TIMES (June 23, 2015) (noting also arrests of hundreds of Egyptian Jews on suspicion of spying for Israel); *see also* ISRAEL-PELLETIER, *THE JEWS OF EGYPT*, *supra* note 44, at 20-21 (detailing how increased restrictions on employment and confiscation of businesses lead to a decreased presence of Egyptian Jews *see also* ABDULHAQ, *JEWISH AND GREEK COMMUNITIES IN EGYPT*, *supra* note 33, at 24-25, 209-210 (2016) (discussing nationality law and shifts in Jewish identity as well as economic status in Egypt).

¹¹⁵ *See* Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 40.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 40; *see also* MANBY, *THE LAW OF BELONGING*, *supra* note 32, at 90.

¹¹⁹ PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 32, at 82.

¹²⁰ Thereafter, under Egypt's Law No. 26 of 1975, those with UAR nationality who did not meet the criteria of Law No. 26 were not considered Egyptian nationals. Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 40.

¹²¹ *See* Joel Benin, *Egypt's Gamal Abdel Nasser Was a Towering Figure Who Left an Ambiguous Legacy*, THE JACOBIN (June 2020); *see also* ISRAEL-PELLETIER, *THE JEWS OF EGYPT*, *supra* note 44, at 20.

¹²² Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107 (noting that Egypt's nationalization of enterprises and "import-substitution industrialization policies, within a broader anti-Western, postcolonial political climate," was also a factor in the decline in immigration into Egypt throughout the Nasser period.); *see also* ABDULHAQ, *JEWISH AND GREEK COMMUNITIES IN EGYPT*, *supra* note 33, at 207-210.

Palestinians fleeing war in 1948, 1956, and 1967.¹²³ Following the 1967 Arab-Israeli war, in particular Egypt's loss of the Sinai Peninsula to Israel and weakening economic conditions, Nasser's government was confronted with significant popular discontent, including among Islamists.¹²⁴ In the years that followed, the balance of power moved from Egypt to the Arab Gulf countries as Gulf states came to the aid of Egypt.¹²⁵

Egypt's transition to Anwar Sadat as President following Nasser's death in 1970 brought a shift away from Nasserism, which had been "constructed on concepts of nationalism, secularism, and state-dominated ideological control and a centrally planned economy," to a more socially conservative but economically liberal positioning of the Egyptian state in the 'open door' years of the 1970s through the 1990s.¹²⁶ The ensuing period also saw the rise of a particular 'Islamist' trend.¹²⁷ Sadat drafted a new constitution that would engage with "a wide variety of constituencies in Egypt, including Islamists."¹²⁸ As a result, Egypt's Constitution of 1971 for the first time included a so-called 'shari'a clause' recognizing that "the principles of the Islamic shari'a are a chief source of legislation," which nearly a decade later would be amended and arguably strengthened to respond to rising Islamist critique.¹²⁹ As part of its 'opening up,' Egypt recognized emigration as a citizen's right, including it as a constitutional right in the 1971 Constitution and lifting all restrictions on Egyptians' international migration.¹³⁰ Given the weak economic situation in Egypt, including lack of employment for a rapidly expanding population,

¹²³ Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107.

¹²⁴ See Clark B. Lombardi, *Constitutional Provisions Making Sharia "A" or "The" Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?* 28 AM. U. INT'L L. REV. 733, 755 (2013).

¹²⁵ See GERASIMOS TSOURAPAS, *THE POLITICS OF MIGRATION IN MODERN EGYPT: STRATEGIES FOR REGIME SURVIVAL IN AUTOCRACIES* 128, 130 (2018).

¹²⁶ SELMA BOTMAN, *ENGENDERING CITIZENSHIP IN EGYPT*, XI, *supra* note 77, at 1.

¹²⁷ *Id.* The term 'Islamist' is "used to describe an Islamic political or social activist. Coined in preference to the more common term 'Islamic fundamentalist.' Islamists (*al-Islamiyyun*) are committed to implementation of their ideological vision of Islam in the state and/or society. Their position is often seen as a critique of the establishment and status quo. Most belong to Islamic organizations or social movements (*al-harakat al-Islamiyyah*)." *Islamist*, in *THE OXFORD DICTIONARY OF ISLAM* (John L. Esposito ed., 2003), <https://www.oxfordreference.com/view/10.1093/acref/9780195125580.001.0001/acref-9780195125580-e-1128?rsk=9PLHO&result=1> (last visited June 21, 2021). It should be noted that in contemporary Egypt, there are multiple 'types' of Islamists with diverse and often conflicting agendas and ideologies. See generally Mohammed Fadel, *Constitutionalism, Democracy and Political Division: The Virtues of a Modus Vivendi*, in *SCHOOL OF ORIENTAL AND ASIAN STUDIES SYMPOSIUM, LAW, POLITICS AND CONSTITUTION-MAKING IN THE ARAB SPRING* (Mar. 2015).

¹²⁸ Clark B. Lombardi, *Constitutional Provisions Making Sharia "A" or "The" Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?* 28 AM. U. INT'L L. REV. 733, 755 (2013).

¹²⁹ *Id.*; see also Clark Lombardi and Nathan Brown, *Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law*, 21 AM. U. INT'L L. REV. 379 (2006).

¹³⁰ Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107; see also TSOURAPAS, *THE POLITICS OF MIGRATION IN MODERN EGYPT*, *supra* note 127, at 31. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, art. 52, 11 Sept. 1971.

the years that followed saw a major expansion of Egyptian emigration to economically flourishing Gulf countries in the post-1973 oil boom.¹³¹

4. Egyptian Nationality Law of 1975

Despite the dissolution of the UAR and transition to Sadat's rule, Egypt's 1958 Nationality Law was not replaced until the enactment of Law No. 26 of 1975 (1975 Nationality Law). The 1975 Nationality Law remains in effect today (with certain amendments) and thus is the main subject of this Report. The 1975 Nationality Law further limited access to nationality on the basis of *jus soli*, increased the residence requirements for naturalization,¹³² and represented a "codification of the circumstances surrounding acquisition and withdrawal of citizenship."¹³³ Pursuant to the incorporation of a right to emigration in the 1971 Constitution, the Nationality Law also removed the provision by which Egyptian nationality could be withdrawn based on emigration.¹³⁴ Nonetheless, the 1975 Nationality Law continued to include gender discriminatory provisions, despite the 1971 Constitution provisions relating to gender equality (Article 11), and non-discrimination before the law (Article 40).¹³⁵

The Camp David Accords of 1977, formally ending the war between Israel and Egypt, had profound impact consequences – including significant economic and military aid from the U.S. to Egypt, and Israel's withdrawal from the Sinai Peninsula.¹³⁶ The latter affected Bedouin populations among others, so that decades later some Bedouin in the Sinai remained without access to Egyptian nationality and/or became stateless.¹³⁷ Additionally, as Sadat moved towards rapprochement with the U.S. and Israel, Egypt's previous anti-Zionist position changed and, beginning in 1978, Palestinians in Egypt lost a number of rights including legal residency, employment, and property ownership.¹³⁸ In October 1981, President Anwar Sadat was assassinated, leaving his vice president and former Air Force Commander, Mohamed Hosni Mubarak, as his successor for nearly thirty years.¹³⁹ Under Mubarak, the Egyptian Government

¹³¹ See TSOURAPAS, THE POLITICS OF MIGRATION IN MODERN EGYPT, *supra* note 127, at 188; Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107. For an overview of rise in Egypt's population, see BASEERA, UNFPA, & NCP, POPULATION SITUATION ANALYSIS, EGYPT 2016 19 (Dec. 2016).

¹³² MANBY, THE LAW OF BELONGING, *supra* note 32, at 90.

¹³³ MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 1. See Law No. 26 of 1975, *supra* note 67.

¹³⁴ TSOURAPAS, THE POLITICS OF MIGRATION IN MODERN EGYPT, *supra* note 127, at 31.

¹³⁵ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 40.

¹³⁶ See Ayman Zohry, *The Place of Egypt in the regional migration system as a receiving country*, 3 REVUE EUROPÉENNE DES MIGRATIONS INTERNATIONALES 12 (2003).

¹³⁷ See Akbar Ahmed and Harrison Akins, *No Arab Spring for Egypt's Bedouin*, BROOKINGS INST. (Feb. 15, 2012) (noting al-Azama in Sinai had been denied Egyptian citizenship); see also ISI, STATELESSNESS IN NUMBERS: 2019, *supra* note 2, at 4-5. For discussion of status and access to nationality for Bedouin groups in Egypt, see *infra*, Part IV.B.3.

¹³⁸ Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107.

¹³⁹ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

became, as one commentator summarized, “a liberalised authoritarian regime that provide[d] limited . . . [yet] surprisingly substantial degrees of pluralism.”¹⁴⁰

Throughout the 1980s and 1990s, despite ongoing high unemployment within Egypt, many Egyptian migrants returned from Arab and Gulf countries due to shifts in Gulf Cooperation Council (GCC) labor policies and mass deportations from various upheavals (including the Iraq War of 1991).¹⁴¹ Additionally, although Egypt has historically hosted many refugee populations,¹⁴² starting in the 1980s, Egypt experienced a major increase in refugees and migrants from neighboring African countries due to conflict and political instability in the Sudan and, in the 1990s, in Ethiopia, Eritrea, and Somalia. This increase in refugees to Egypt has continued to the present day.¹⁴³

Mubarak’s regime instituted a number of notable reforms, partly reversing the trend of an increasingly restrictive nationality law. In 1983, Law No. 111 concerning the Emigration and Sponsorship of Egyptians Abroad reinstated Egyptian nationality of emigrants who previously had lost it for living abroad.¹⁴⁴ Law No. 154 of 2004 amended Article 2 of Law No. 26 of 1975, allowing for the acquisition of Egyptian nationality by maternal *jus sanguinis*.¹⁴⁵ This amendment in the Nationality Law was the result of years of advocacy and lobbying on the part of activists, NGOs, civil society institutions, human rights and women’s rights groups, arguing that the provision was unconstitutional and discriminated against women in violation of Article 11 of the 1971 Constitution which ensured equality among men and women.¹⁴⁶ The 2004 amendment led to important reforms in Egypt,¹⁴⁷ and there were further changes in the years that followed, including the Child Law of 2008, which gave both parents the right to register the birth

¹⁴⁰ See Hugh Roberts, *The Revolution that Wasn’t*, 35 LONDON REV. OF BOOKS 12 (Sept. 12, 2013) (citations and internal quotations omitted).

¹⁴¹ Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107.

¹⁴² Among the refugee communities Egypt has historically hosted are Armenians fleeing genocide in the early 1900s, Palestinians fleeing the establishment of the Israeli State in 1948, the 1967 conflict and Israeli occupation, and again after Black September in Jordan 1971, and Southern Sudanese fleeing after the outbreak of the first war in Sudan in 1955. Karen Jacobsen, Maysa Ayoub, and Alice Johnson, *Sudanese Refugees in Cairo*, 27 J. REFUGEE STUD. 145, 146 (2014).

¹⁴³ See Karen Jacobsen, Maysa Ayoub and Alice Johnson, *Sudanese Refugees in Cairo*, 27 J. REFUGEE STUD. 145, 146 (2014); Ayman Zohry, *The Place of Egypt in the regional migration system as a receiving country*, 3 REVUE EUROPÉENNE DES MIGRATIONS INTERNATIONALES 129 (2003); See also AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 1-6, 23-24; see also Ray Jureidini, *Regulation of Migration to Egypt*, MIDDLE EAST INST. (2010).

¹⁴⁴ Law No. 111 of 1983 (Concerning the Emigration and Sponsorship of Egyptians Abroad), Aug. 11, 1983, art. 20. (Egypt). Lea Müller-Funk, *Managing Distance: Examining Egyptian Emigration and Diaspora Policies*, 15 MIGRATIONS VUES D’ÉGYPTÉ - MOBILISATIONS ET POLITIQUES 47, 56 (2017).

¹⁴⁵ Law No. 154 of 2004 (Amending Some Provisions of Law No. 26 of 1975 Concerning Egyptian Nationality), July 14, 2004 (Egypt).

¹⁴⁶ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 41-49. Although Egypt had been the first country in the region granting women the right to vote in its 1956 Constitution and ratifying CEDAW in 1981, its nationality law had been gender discriminatory since its inception. *Id.*

¹⁴⁷ Reforms granting women equal rights to confer their nationality on their children were instituted in a number of MENA countries following Egypt’s 2004 reform, including: Algeria (2005), Morocco (2007), Tunisia (remaining gaps addressed in 2010), and Yemen (2010). See UNHCR, REMOVING GENDER DISCRIMINATION FROM NATIONALITY LAWS 2 n.3 (Mar. 2015).

of a child, and litigation that addressed access to citizenship and documentation issues for those belonging to an unrecognized religion, specifically the Baha'i.¹⁴⁸ The cases brought on behalf of Baha'i applicants resulted in a 2009 decree instructing the Civil Status Department to leave the line for religion blank in identity documents for adherents of religions other than the three religions recognized by the state (Islam, Christianity, and Judaism) – a significant step in reducing barriers to perfecting their citizenship status.¹⁴⁹

The deterioration of the national economy, social unrest, and dissatisfaction with the political system, including longstanding human rights abuses under President Mubarak, led to Egypt's 'Arab Spring' in January 2011.¹⁵⁰ Millions took to the street demanding 'bread, freedom, justice,' which led to President Mubarak's ouster in February 2011 after three decades of autocratic rule.¹⁵¹ Some observers noted that Egypt's Arab Spring sought to challenge "the exclusion and marginalization of the workers, youth, women, and the Islamists in the Middle East . . . paving the way to more inclusive definitions of citizenship."¹⁵² Among the many protestors were Egyptian mothers of non-citizen children born to Palestinian fathers calling for citizenship for their children, a category of persons previously denied citizenship despite the 2004 reform.¹⁵³ By May 2011, the Government issued a decree granting, albeit under different terms, nationality to children born to Egyptian mothers and Palestinian fathers.¹⁵⁴

In 2012, Mohammed Morsi from the Muslim Brotherhood was elected President in what Cherif Bassouni characterized as "Egypt's first free and fair elections since the 1950s" and a new Constitution was adopted soon thereafter.¹⁵⁵ Within a year, however, by July 2013, Morsi was removed from office by the military and the second transitional military regime. In May 2014 the

¹⁴⁸ See Law No. 12 of 1996 promulgating the Child Law, Amended by Law No. 126 of 2008, 28 Mar., 1996 (Egypt). U.N. Comm. on the Rts. of the Child, Consideration of reports by States Parties under Article 44 of the Convention, CRC Concluding observations: Egypt, U.N. Doc. CRC/C/EGY/CO/3-4, ¶ 42 (July 15, 2011).

¹⁴⁹ See MANBY, THE LAW OF BELONGING, *supra* note 32, at 123.

¹⁵⁰ See TSOURAPAS, THE POLITICS OF MIGRATION IN MODERN EGYPT, *supra* note 127, at 204. See also ROEL MEIJER AND NILS BUTENSCHØN, THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD 1-3 (2017).

¹⁵¹ See Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

¹⁵² See Mervat F. Hatem, *The Arab Spring Meets the Occupy Wall Street Movement: Examples of Changing Definitions of Citizenship in a Global World*, 8 J. CIV. SOC'Y. 401, 402 (2012); see also Khaled Fahmy, *The long revolution*, AEON (Nov. 3, 2015). Commentators have noted that concepts such as dignity (*karama*), liberty (*hurriyya*), equality (*masawa'*), rights (*huquq*), and social justice (*al-adala al-ijtima'iyya*) were central in the uprising, and terms such as the 'people' (*al-sha'b*) and 'civility' (*madaniyya*) were also central expressions of the mass demonstrations. ROEL MEIJER AND NILS BUTENSCHØN, THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD 6-7 (2017).

¹⁵³ Gianluca Parolin, *New policy on Egyptian citizenship for children of Palestinian fathers*, GLOB. CITIZENSHIP OBSERVATORY (Nov. 2011).

¹⁵⁴ See Kelly McBride and Lindsey Kingston, *Legal Invisibility and the Revolution*, 15 HUM. RTS. REV., 159, 162 n.4 (2014); see also CRC, Consideration of reports by States Parties under Article 44 of the Convention, Concluding observations: Egypt, *supra* note 148, at ¶ 44. Sources report that some individuals born to Egyptian mothers and Palestinian fathers who were naturalized in 2011 and 2012 were later stripped of their Egyptian nationality following the 2013 military coup. See, e.g., *Egyptian nationality stripped from 800, including Palestinians*, EGYPT INDEP. (Oct. 29, 2014).

¹⁵⁵ See Cherif Bassouni, *Egypt in Transition*, PRISM 4, No. 4 (2013) ("In June of 2012, in Egypt's first free and fair election, Muslim Brotherhood candidate Mohammed Morsi was elected President. Slightly more than 50% of registered voters actually voted, and those voters gave Morsi a majority of just less than 52%.")

chairman of the Supreme Council of the Armed Forces (SCAF), Field Marshal Abdel Fattah el-Sisi, was elected as president.¹⁵⁶ The new Constitution, drafted in 2013 and adopted in early 2014, included the 2004 reform to make Egyptian nationality a constitutional right of “anyone born of an Egyptian father or an Egyptian mother.”¹⁵⁷ Additionally, the 2014 Constitution provided that “[e]very child shall have the right to a name and identity card.”¹⁵⁸

While some of the protest movements’ demands and earlier legal reforms were achieved and made their way into Egypt’s subsequent adoption of new Constitutions in 2012 and 2014, the aspirations of many have yet to be realized.¹⁵⁹ Activism led to an expansion of particular rights under the Nationality Law that included extending voting rights to Egyptians abroad and allowing those with dual citizenship to run for Parliament.¹⁶⁰ However, efforts to eliminate political opposition under the current government have also left a mark on the Nationality Law, illustrated by the proposed amendment to extensively broaden the state’s power to withdraw nationality of Egyptian citizens.¹⁶¹ Each of the specific aspects of the Nationality Law as it stands today, along with its amendments and other relevant laws, are discussed in further detail in Parts III-V of this Report.

C. Current Demographics

Given the complex makeup of Egypt’s population, the following sections first examine Egypt’s demographics including relevant information on various ethnic and religious communities, before separately considering refugee and migrant populations.

1. Egyptian Population

Despite Egypt being the most populous country in the MENA region and third most populous in Africa, the Egyptian population of 104 million today¹⁶² is often framed as ethnically

¹⁵⁶ CHERIF BASSOUNI, CHRONICLES OF THE EGYPTIAN REVOLUTION AND ITS AFTERMATH: 2011-2016 1 (2017).

¹⁵⁷ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37. CONSTITUTION OF EGYPT, *supra* note 4, at art. 6.

¹⁵⁸ CONSTITUTION OF EGYPT, *supra* note 4, at art. 80.

¹⁵⁹ *Id.* at arts. 6, 32. For an analysis of the impact of the Egyptian Constitution of 2012 and 2014 on the status of religion and religious groups, see Rachel Scott, *Citizenship, Public Order, and State Sovereignty: Article 3 of the Egyptian Constitution and the “Divinely Revealed Religions,”* in THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD (2017).

¹⁶⁰ See MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 1.

¹⁶¹ See Walaa Ali, *All you need to know about Egyptian nationality law amendments*, EGYPT TODAY (Oct. 17, 2018); see also MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 17. For a review of the human rights situation in the country, see HUM. RTS. WATCH [HRW], WORLD REPORT 2021: EGYPT EVENTS OF 2020 (2021).

¹⁶² ADEL ABDAL GHAFAR, THE EUROPEAN UNION AND NORTH AFRICA: PROSPECTS AND CHALLENGES 151 (2019) (noting that the UN projects that by 2050 Egypt’s population will reach 150 million, and 200 million persons by 2100). See also BASEERA, UNFPA, & NCP, POPULATION SITUATION ANALYSIS, EGYPT 2016 19 (Dec. 2016).

“fairly homogenous,”¹⁶³ with some estimates of 99.7% being ‘Egyptian’ and 0.3% termed ‘other’;¹⁶⁴ or sometimes 99% ‘Arab’ and 1% ‘Nubian.’¹⁶⁵ More particularized estimates reflect a 3-4% ‘Nubian’ population;¹⁶⁶ a less than 1% ‘Bedouin’ population;¹⁶⁷ an estimated 26,000 ‘Amazigh’ (or Berbers);¹⁶⁸ and an unknown number of ‘Dom’ or ‘Domari’ (estimated between 270,000 to almost 1,745,000) in Egypt.¹⁶⁹

Yet definitions of particular ‘ethnic’ or ‘cultural’ categories are dynamic and often fraught in political implications; each category is not necessarily representative of a mutually exclusive identity.¹⁷⁰ Some sources note the “Egyptian people” are “many races and ethnic

¹⁶³ See, e.g., *People of Egypt*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Egypt/People> (last visited Nov. 1, 2021); HELEN CHAPIN METZ, LIBRARY OF CONGRESS, EGYPT: A COUNTRY STUDY (1991). When compared to the two most populous countries of Africa, Nigeria and Ethiopia, it becomes clearer why Egypt might be considered less diverse. See, e.g., Yonatan Fessha, *Empowerment and exclusion: The story of two African federations*, in REVISITING UNITY AND DIVERSITY IN FEDERAL COUNTRIES: CHANGING CONCEPTS, REFORM PROPOSALS AND NEW INSTITUTIONAL REALITIES 57, 57-58 (Alain-G Gagnon and Michael Burgess, eds., 2018) (detailing the complex ethnographic composition of Ethiopia and Nigeria).

¹⁶⁴ See, e.g., *World Factbook, Egypt*, US CENTRAL INTELLIGENCE AGENCY (2021), <https://www.cia.gov/the-world-factbook/countries/egypt/#people-and-society> (last visited Sept. 31, 2021); *Constitutional history of Egypt*, CONSTITUTIONNET, <https://constitutionnet.org/country/egypt> (last visited Nov. 6, 2021) (noting “[a]pproximately 90% of the populace is Muslim and 99.6% are ethnic Egyptian.”).

¹⁶⁵ See RAFIC BOUSTANI AND PHILIPPE FARGUES, ATLAS DU MONDE ARABE 126 (1990) (noting 160,000 Nubians out of Egypt’s then 53 million population). See also Hala Nouhad Nasreddine, *Ethnic/Religious Communities in Egypt: Grievances and Inclusive Prospects*, BAKER INST. FOR PUB. POL’Y. (Oct. 5, 2018) (noting that as of 2014 Nubians are estimated to be around 300,000 in Egypt).

¹⁶⁶ See *Egypt: Nubians*, MINORITY RTS. GRP. INT’L: WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES, <https://minorityrights.org/minorities/nubians/> (last visited Jan. 24, 2022) (“though estimates vary, it is thought that there may be as many as 3 or 4 million Nubians in Egypt.”); see also Mahmood Mourad, *For Egypt’s Nubians, years of patience wear thin and anger rises*, REUTERS (Nov. 17, 2015) (“The Nubians were counted in an Egyptian census only once, shortly before they were uprooted. Back then there were 100,000; today, though estimates vary, advocacy groups say they may number as many as 3 million of Egypt’s 90 million population.”).

¹⁶⁷ See Ruth Kark and Seth Frantzman, *Empire, State and the Bedouin of the Middle East, Past and Present: A Comparative Study of Land and Settlement Policies*, 48 MIDDLE EASTERN STUD. 503 (2012) [hereinafter Kark and Frantzman, *Empire, State and the Bedouin of the Middle East*].

¹⁶⁸ See Fady Saleh, *The Forgotten Minorities: Egypt’s Nubians and Amazigh in the Amended Constitution*, ATLANTIC COUNCIL BLOG (2013); See also Omar al-Naghy, *Who are Egypt’s Amazighs?*, AL-MONITOR (Sept. 29, 2015).

¹⁶⁹ ALEXANDRA PARRS, GYPSIES IN CONTEMPORARY EGYPT: ON THE PERIPHERIES OF SOCIETY 18 2017 (noting a range of estimates of Dom populations, such as “1,745,000, with most of them ‘Sunni Muslim’ . . . [while] [a]ccording to Idlewild, there are 270,000 Dom in Egypt and 99% of them are Muslim, but with a growing Christian population . . . [and] [a]ccording to the website Ethnologue, there are 1,080,000 Muslim “Gypsies” in Egypt, or 2% of the population, including 864,000 Halebi and 216,000 Ghagar.”). See also Alexandra Parrs, *Egypt’s Invisible Gypsies*, GLOB. DIALOGUE, <https://globaldialogue.isa-sociology.org/egypts-invisible-gypsies/> (last visited May 20, 2021); see also E-mail from Arpan Roy, Program Coordinator, Johns Hopkins Univ., to Christopher Creech, Susan Akram, and Christine Bustany, IHRC (Aug. 22, 2021) (on file with the author) (noting it would seem likely that Doms in Egypt generally possess citizenship but given the geographic and political complexity of Egypt this would require further research to confirm).

¹⁷⁰ See, e.g., Maja Janmyr, *Indigeneity vs. development: Nubian rights mobilisation in Egypt*, in CRITICAL INDIGENOUS RTS. STUD. 27, 28-29 (2017) (noting Nubians “comprise three culturally ethnic and linguistically distinct groups: the Kenuz, Fadicha, and Arabs”; and previously regarded themselves as regional sub-groups but became collectively known as “Nubian” only following displacement). See also ISRAEL-PELLETIER, THE JEWS OF EGYPT, *supra* note 44, at 7, 16-17 (describing shifts in notions of Egyptian ‘Arab’ heritage).

groups,” including “Africans, Arabs, Berbers, Greeks, Persians, Romans, and Turks.”¹⁷¹ The population is considered to be (relatively) linguistically homogenous, with Egyptian Arabic (albeit characterized by distinct regional dialects within Egypt) as the predominant language.¹⁷²

Egypt’s current religious makeup comprises a Sunni Muslim majority, estimated to be 90%;¹⁷³ Coptic Orthodox Christians, estimated between 4-20%,¹⁷⁴ (some indicate they are more likely to be 10%);¹⁷⁵ Shi’a Muslims, estimated to be 1-2%;¹⁷⁶ 1,500 – 7,000 (or more) Baha’is;¹⁷⁷ and less than 30 Jews.¹⁷⁸ In addition to Coptic Christians, other Christian communities are estimated to constitute less than 2% of the population, including Anglican/Episcopalian, Armenian Apostolic, Catholic (Armenian, Chaldean, Melkite, Maronite, Latin, and Syrian), and Orthodox (Greek and Syrian) Churches.¹⁷⁹ There are very small numbers of Dawoodi Bohra Muslims, Ahmadi Muslims, and “expatriate members of various religious groups.”¹⁸⁰

¹⁷¹ Ayman Zohry, *The Place of Egypt in the regional migration system as a receiving country*, 3 REVUE EUROPÉENNE DES MIGRATIONS INTERNATIONALES 129 (2003); see also CHERIF BASSOUNI, CHRONICLES OF THE EGYPTIAN REVOLUTION AND ITS AFTERMATH: 2011-2016 2 (2017) (“Egyptianhood and other national characteristics have been conditioned by the peculiar geography of a country that is almost square in shape and divided lengthwise by the Nile, the longest river in the world that runs south to north.”).

¹⁷² See *Languages of Egypt* ENCYC. BRITANNICA, <https://www.britannica.com/place/Egypt/Languages> (last visited Nov. 6, 2021).

¹⁷³ See U.S. DEP’T OF STATE, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: EGYPT (May 21, 2021) (noting most experts believe that 90 % of population is Sunni Muslim); see also *Egypt*, MINORITY RTS. GRP. INT’L: WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES, <https://minorityrights.org/country/egypt/> (last visited Jan. 24, 2022) (reflecting non-Sunni Muslim religious groups comprise as much as 15% of the population).

¹⁷⁴ See Sebastian Elsässer, *The Coptic divorce struggle in contemporary Egypt*, 66 SOC. COMPASS 333, 335 (2019) (noting official statistics indicate Copts comprise over 6% of the population); see also *Egypt: Copts of Egypt*, MINORITY RTS. GRP. INT’L: WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES, <https://minorityrights.org/minorities/copts/#:~:text=Historical%20context,the%20Christian%20community%20in%200451> (last visited Jan. 24, 2022) (“Copts are the largest minority in Egypt, though their exact numbers remain uncertain. Figures range between 4.7 and 7.1 million, comprising between six and nine per cent of the population, though some estimates put the proportion at as much as 10 to 20 per cent.”); U.S. DEP’T OF STATE, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: EGYPT, *supra* note 173 (noting 10% of population is Christian, 90% of whom are Copt); see also Conrad Hackett, *How many Christians are there in Egypt?* PEW RSCH. CTR. (2011).

¹⁷⁵ Remote Interview with Confidential Informant, Academic Institution (Feb. 10, 2021) (noting estimates of the Coptic population are difficult to assess and politically sensitive; while some Copts believe that they represent between 15-20% of Egypt’s population, he would ‘guess’ Copts comprise 10% of the population).

¹⁷⁶ See, e.g., *Egypt: Shi’a*, MINORITY RTS. GRP. INT’L: WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES, <https://minorityrights.org/minorities/shia-3/> (last visited Jan. 24, 2022) (noting size of Shi’a population is unclear and “[e]stimates tend to range from 800,000 to two million out of Egypt’s total population of about 90 million.”).

¹⁷⁷ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 149-151; see also *Egypt: Bahai*, MINORITY RTS. GRP. INT’L: WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES, at <https://minorityrights.org/minorities/bahai-6/> (last visited Jan. 24, 2022) (“the exact number of Baha’i in Egypt today [is uncertain], though estimates range from 1,500-2,000 to over 7,000.”).

¹⁷⁸ *Egypt*, MINORITY RTS. GRP. INT’L: WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES, at <https://minorityrights.org/country/egypt/> (noting there are “fewer than 30” Jews); Declan Walsh and Ronen Bergman, *A Bittersweet Homecoming for Egypt’s Jews*, N.Y. TIMES (Feb. 23, 2020).

¹⁷⁹ U.S. DEP’T OF STATE, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: EGYPT, *supra* note 173.

¹⁸⁰ *Id.*

IHRC research has found that certain ethnic and religious groups are vulnerable to statelessness based on a given identity, for example, for certain Bedouin populations and the Baha'i. An individual's likelihood of being an undocumented national or stateless as part of an ethnic or religious minority in Egypt is largely dependent on additional vulnerabilities. These include poverty and geographic location within the country, each of which creates difficulties, such as limited ability to travel or access to education or registration services.¹⁸¹ Access to state services, for example, is especially difficult in peripheral zones, or non-urban areas, especially for persons living farther from the Nile Valley and Delta.¹⁸² There is a globally documented disparity between access to civil registration (e.g., birth certificates) for those in rural areas as opposed to urban centers, as well as disparities based on poverty levels, all of which apply to Egypt.¹⁸³ As of 2015, the poverty rate in Egypt is 28%, and has grown in the past decade.¹⁸⁴ Today 57% of the population is rural,¹⁸⁵ poverty is higher, and the consequences of extreme poverty more severe, particularly in Upper Egypt.¹⁸⁶ Poverty level and place of residence (i.e., rural vs. urban and Upper Egypt vs. Lower Egypt)¹⁸⁷ can lead to an increased risk of being undocumented.¹⁸⁸ Indeed, the Committee on the Rights of the Child noted in 2011 a deep concern that birth registration rates were not yet uniform throughout the country, with persistent

¹⁸¹ Remote Interview with Confidential Informant, *supra* note 175; Remote Interview with Mona Oraby, Assistant Professor of Law, Jurisprudence, and Social Thought, Amherst College (Mar. 4, 2021); *see also* E-mail from Tessa Rose Farmer, Assistant Professor, Univ. of Virginia, to Christopher Creech, Susan Akram, and Christine Bustany, IHRC (Mar. 11, 2021) (on file with the author) (noting that generally Imazigh/Siwi in Siwa are Egyptian citizens; they vote, have ID cards, passports, participate in compulsory military service, etc.); E-mail from Confidential Informant, Acad. Inst., to Christopher Creech, IHRC (July 11, 2021) (on file with author). Consequently, the IHRC found that while a particular group, like Coptic Christians, may face religious discrimination, their religious identity alone was not a deciding factor or obstacle to accessing citizenship. Yet coming from a poor family in Upper Egypt, in addition to being from a disfavored minority, disadvantages a child in accessing documentation. *See* Jennifer Brinkerhoff, *Diaspora Philanthropy in an At-Risk Society*, 37 *NONPROFIT & VOLUNTARY SECTOR Q.* 411, 419 (2009) (noting that the majority of Copts reside in Upper Egypt where there are the highest rates of poverty).

¹⁸² E-mail from Confidential Informant, *supra* note 181.

¹⁸³ HUNTER, *UNDOCUMENTED NATIONALS*, *supra* note 13, at 9-12. *See also* UNICEF, *EVERY CHILD'S BIRTH RIGHT: INEQUITIES AND TRENDS IN BIRTH REGISTRATION* 23 (Dec. 2013).

¹⁸⁴ CAPMAS AND UNICEF, *CHILDREN IN EGYPT 2016, A STATISTICAL DIGEST* 9 (2017).

¹⁸⁵ *Rural population (% of total population) – Egypt, Arab Rep., (2020)*, WORLD BANK, <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=EG> (last visited Dec. 12, 2021).

¹⁸⁶ Christian Gericke, Kaylee Britain, Mahmoud Elmahdawy, and Gihan Elsisy, *Health System in Egypt*, in *HEALTH CARE SYSTEMS AND POLICIES* 1, 3 (Ewout Van Ginneken and Reinhard Busse eds., 2018).

¹⁸⁷ Poverty is significant in Egypt and there is deep inequality within the country, as well as fragmentation between urban and rural areas. Nistha Sinha, *Poverty & Equity Brief Middle East & North Africa Arab Republic of Egypt*, WORLD BANK GROUP (Apr. 2020). Urban areas have a per capita income 67% higher than rural income. *INSIDE INEQUALITY IN THE ARAB REPUBLIC OF EGYPT: FACTS AND PERCEPTIONS ACROSS PEOPLE, TIME, AND SPACE*, THE WORLD BANK 41 (2017). However, the divide is not merely urban versus rural but geographic, as there exists a major gap between the four main cities and the rest of the country. *Id.* at 53. The poorest villages have an estimated poverty rate of 82% versus 22% for urban Egypt and 28% for rural Egypt. *Id.* at 13. Current and projected poverty levels are also deeply tied to protracted inequality linked to the shifting of financial burdens from the rich to the poor. *See* Maged Mandour, *Sisi's War on the Poor*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Sept. 23, 2020).

¹⁸⁸ *See, e.g.*, UNICEF, *EVERY CHILD'S BIRTH RIGHT: INEQUITIES AND TRENDS IN BIRTH REGISTRATION* 24 (Dec. 2013) (noting low birth registration rates in rural areas and for low-income individuals).

gaps in Upper Egypt, among other groups.¹⁸⁹ Vulnerability within Egypt’s large urban populations (e.g., Cairo, a city of approximately 20 million) and urban slums is also an issue, for example, with street children.¹⁹⁰

Another important demographic feature of Egypt is that nearly a tenth of its population lives abroad, having migrated and/or emigrated.¹⁹¹ As of 2016, more than 6 million Egyptian emigrants lived in the MENA region, primarily in Saudi Arabia, Jordan, and the United Arab Emirates. Another 3 million Egyptian citizens and their descendants reside in Europe, North America, and Australia.¹⁹² Although the status of Egyptians who have emigrated or work abroad are largely beyond the scope of this Report, given their significant numbers and the often precarious status they hold in host countries (including at various points being expelled *en masse*, or at the behest of the Egyptian Government),¹⁹³ access to documentation for purposes of claiming Egyptian nationality merits further research and attention to assess potential vulnerabilities to statelessness.¹⁹⁴

2. Refugee Populations

Today, Egypt hosts many refugee populations, and has historically hosted a large number of Palestinians; a majority of the latter may fit the definition of refugee as well as stateless persons even though very few Palestinians in Egypt are registered with UNHCR.¹⁹⁵ While the estimated number of Palestinians has shifted over the decades due to various conflicts and migration flows, it is estimated that between 50,000-300,000 Palestinians continue to reside in Egypt.¹⁹⁶

¹⁸⁹ CRC, Consideration of reports by States Parties under Article 44 of the Convention, Concluding observations: Egypt, *supra* note 148, at ¶ 44.

¹⁹⁰ *Id.* at ¶ 44. *See also* Magda A. Mohamed et al, *Causes and Consequences of Street Life on Homeless Children: Choice or Compulsion?*, 86 MED. J. CAIRO UNIV., 1345, 1346 (2018). A 2012 study in Egypt noted that rates of poverty and deprivation among some children in urban slums reached or exceeded those in the country’s most deprived areas. UNICEF, EGYPT AND INFORMAL SETTLEMENTS DEVELOPMENT FACILITY, MULTIDIMENSIONAL CHILD POVERTY IN SLUMS AND UNPLANNED AREAS IN EGYPT 1 (2013).

¹⁹¹ Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107.

¹⁹² *Id.*

¹⁹³ *Id.*; *see also* Gerasimos Tsourapas, *The Politics of Egyptian Migration to Libya*, MIDDLE EAST RSCH. AND INFO. PROJECT (Mar. 7, 2015).

¹⁹⁴ *Egypt: Activist Stripped of Citizenship*, HRW (Feb. 11, 2021); *see generally* PROJECT ON MIDDLE EAST DEMOCRACY, STRIPPING AWAY IDENTITY: THE DANGERS OF A REPRESSIVE NEW NATIONALITY LAW IN EGYPT (Dec. 5, 2017).

¹⁹⁵ McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.3.

¹⁹⁶ *See* ASEM KHALIL, SOCIOECONOMIC RIGHTS OF REFUGEES, THE CASE OF PALESTINIAN REFUGEES IN EGYPT, JORDAN, LEBANON, AND SYRIA 1 n.1 (2010) (noting that in Egypt “the number of Palestinian refugees is estimated to be between 50,000 and 70,000”) [hereinafter ASEM KHALIL, SOCIOECONOMIC RIGHTS OF REFUGEES]; *see also* Oroub El-Abed, *The Invisible Community: Egypt’s Palestinians*, SHABAKA NETWORK (June 8, 2011) (noting that numbers of Palestinians in Egypt are unknown but could be as high as 80,000); Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107.

UNHCR notes that Egypt currently hosts over 266,726 registered asylum seekers and refugees from 63 countries,¹⁹⁷ but these figures likely significantly underestimate the total number of refugees in the country, many of whom do not register with UNHCR (very few Palestinians in Egypt are registered with UNHCR).¹⁹⁸ Between 2011 and 2014 alone, the Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS) estimated that “more than 2.3 million Syrians and Libyans [had] come to Egypt . . . [and that] most of those migrants [did not] register themselves as refugees, especially those who could live without formal financial aid, to avoid being refused” if they attempted to reach European countries at a later date.¹⁹⁹ Nearly half of the refugee population are refugees from Syria.²⁰⁰ Refugees from Sudan, South Sudan, Eritrea, Ethiopia, Yemen, Iraq, and Somalia also make up a sizable portion of the refugee population.²⁰¹ Most refugees and asylum seekers in Egypt reside in urban communities in Greater Cairo, Alexandria, Damietta, and towns in the North Coast.²⁰²

The population of refugees and asylum seekers has shown no signs of shrinking, or even plateauing. UNHCR has reported a consistent increase in “People of Concern” in Egypt.²⁰³ The number rose from 289,231 to 314,937 in 2018, and then to 324,740 in 2019.²⁰⁴ Many asylum seekers view Egypt as a transit country, arriving without intending to stay, but as a transition point for reaching Europe.²⁰⁵ However, the reality is that many stay in Egypt for years, even decades, before being able to cross to Europe, if they ever do so.²⁰⁶

3. Migrant Populations

Egypt hosts a smaller number of migrant populations, although there are no official statistics to reflect the exact number. Some of these are in the country regularly, and others irregularly. Migrants in Egypt mainly come from East Africa both in search of economic and

¹⁹⁷ UNHCR, EGYPT OPERATIONAL UPDATE JULY-SEPTEMBER 2021, <https://www.unhcr.org/eg/unhcr-egypt-documents> (last visited Feb. 5, 2021).

¹⁹⁸ See, e.g., Omer Karasapan, *Who are the 5 Million Refugees in Egypt?*, BROOKINGS INST. (Oct. 4, 2016); McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.3.

¹⁹⁹ BASEERA, UNFPA, & NCP, POPULATION SITUATION ANALYSIS EGYPT 2016 34 (Dec. 2016).

²⁰⁰ UNHCR, EGYPT OPERATIONAL UPDATE JULY-SEPTEMBER 2021, *supra* note 197.

²⁰¹ *Id.*

²⁰² *Refugee Context in Egypt*, UNHCR, <https://www.unhcr.org/eg/about-us/refugee-context-in-egypt> (last visited Apr. 22, 2021).

²⁰³ *Glossary*, UNHCR, <https://reporting.unhcr.org/glossary/p> (last visited May 1, 2021) (defining a person of concern as “a person whose protection and assistance needs are of interest to UNHCR. This includes refugees, asylum seekers, stateless people, internally displaced people and returnees.”).

²⁰⁴ *Refugee Context in Egypt*, UNHCR, *supra* note 202.

²⁰⁵ Nourhan Abdel Aziz, *Out of Sight Out of Rights: Rejected Asylum Seekers and Closed-Files Individuals in Egypt* 31 (Feb. 2018) (L.L.M. dissertation, the American University in Cairo).

²⁰⁶ *Id.* Though the number of people who make the dangerous journey to cross the Central Mediterranean is unknown, UNHCR reports over 1,400 people died or went missing in 2020 while making the journey. See *Operational Data Portal Mediterranean Situation*, UNHCR, <https://data2.unhcr.org/en/situations/mediterranean> (last visited Nov. 2, 2021) (also providing data for past years); Don Murray, *Refugees in Egypt Risk All on Deadly Sea Crossing to Europe*, UNHCR (Oct. 21, 2016).

financial opportunities – as a country of destination – but primarily, like asylum seekers and refugees, view Egypt as a transit country, wanting to cross through Egypt to Europe.²⁰⁷ However, like refugees, many (if not most) migrants stay in Egypt for years, even decades, before crossing to Europe or returning home. Many who initially settle in Egypt, particularly from the Horn of Africa, who wanted to migrate to other countries, end up permanently settling in Egypt with their families.²⁰⁸

III. Legal Framework on Statelessness

There are three areas of law relevant to Egypt’s obligations concerning stateless populations and those at risk of statelessness within its jurisdiction, Egypt’s existing domestic law, international law and the regional law of the LAS, AU, and OIC regimes. International treaties and conventions, including the regional conventions “acquire the force of law upon promulgation in accordance with the provisions of the Constitution”²⁰⁹; and by “virtue of their publication they become ‘ordinary laws.’”²¹⁰

A. Domestic Law

There are several sources of Egypt’s domestic law relevant to the determination of nationality. Part III.A examines the primary sources of law before addressing how the Egyptian nationality law regulates the acquisition and transmission of nationality, naturalization, civil registration, and other aspects related to dual nationality, denationalization, and the legal framework for stateless refugees.

1. Sources of Law

There are a variety of legal sources in Egypt that regulate the acquisition of citizenship. Article 6 of the Egyptian Constitution of 2014 – the current Constitution – guarantees the right of citizenship to all children born to Egyptian parents. It states: “Nationality is a right to anyone born to an Egyptian father or an Egyptian mother, and legal recognition through official papers proving his/her personal data, is a right guaranteed and regulated by Law. Requirements for acquiring nationality shall be specified by law.”²¹¹ The Constitution supersedes all other laws in the country, but these requirements are also incorporated in the current Egyptian nationality law. This is primarily Law No. 26 of 1975 Concerning Egyptian Nationality and in a number of other

²⁰⁷ Nourhan Abdel Aziz, *Out of Sight Out of Rights: Rejected Asylum Seekers and Closed-Files*, *supra* note 205, at 31.

²⁰⁸ *See, e.g., Egypt Country Brief*, MIXED MIGRATION HUB (Mar. 2018).

²⁰⁹ CONSTITUTION OF EGYPT, *supra* note 4, at art. 15.

²¹⁰ Tarek Badawy and Abdallah Khalil, *Rights of Foreigners and Access to Citizenship*, in AFRICA CITIZENSHIP AND DISCRIMINATION AUDIT THE CASE STUDY OF EGYPT 4, 6 (2005).

²¹¹ CONSTITUTION OF EGYPT, *supra* note 4, at art. 6.

amendments to the law since it came into force. Article 29 of the 1975 Nationality Law, in particular, states that the Ministry of Interior is responsible for making decisions with regard to citizenship and has the discretion to withdraw nationality and decide on naturalisation applications.²¹²

2. Acquisition and Transmission of Egyptian Nationality

Acquisition of nationality is regulated by the 1975 Egyptian Nationality Law through both *jus sanguinis* and *jus soli* mechanisms. Article 1 of the 1975 Nationality Law defines those considered Egyptian at the time of the promulgation of the law, including persons: (1) who settled in Egypt before November 5, 1914; (2) who were considered Egyptian nationals under Egyptian Nationality Law No. 391 of 1956; and (3) who acquired UAR nationality under Law No. 82 of 1958.²¹³

Subsequent articles of the 1975 Nationality Law stipulate who is considered Egyptian, and are the most relevant to current acquisition of citizenship. Article 2 of the 1975 Law stipulates a combination of parentage and birth criteria:

those who were born of Egyptian fathers, (2) those who were born in Egypt of an Egyptian mother, and a father whose nationality is unknown or who is stateless, (3) those who were born in Egypt, of an Egyptian mother but kinship to the father has not been legally proved, (4) those who were born in Egypt of unknown parents, and a foundling in Egypt shall be considered born in it, unless otherwise proved.²¹⁴

This Article was amended in 2004, to read: “The following shall be Egyptian: (1) Anyone who is born of an Egyptian father, or an Egyptian mother [, and] (2) Anyone who is born in Egypt from unknown parents. A foundling in Egypt shall be considered born in it unless otherwise established.”²¹⁵ Law No. 154 of 2004 also established a retroactive nationality provision:

A person born to an Egyptian mother and non-Egyptian father before the effective date of the present law may announce to the Minister of Interior his wish to enjoy the Egyptian nationality. Such person shall be considered Egyptian by virtue of a decree to be issued by the minister, or with the lapse of one year from the date of

²¹² Law No. 26 of 1975, *supra* note 67, at art. 29.

²¹³ *Id.* at art. 1; Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 40.

²¹⁴ Law No. 26 of 1975, *supra* note 67, at art. 2.

²¹⁵ *See* Law No. 154 of 2004, *supra* note 145, at art. 1. The 2004 Amendment also cancelled Article 3 of the 1975 Nationality Law which provided that persons born abroad of an Egyptian mother and unknown or stateless father could choose Egyptian nationality within one year of coming of age. *Id.* at art. 2.

such announcement without the issue of a substantiated refusal decree from the minister.²¹⁶

Furthermore, the same article has an even wider retroactive provision: if a person “born to an Egyptian mother and non-Egyptian father dies before the effective date of the present law, his children must have the right to enjoy the Egyptian nationality.”²¹⁷

Egyptian nationality may also be acquired through marriage. The wife of an Egyptian male national can acquire citizenship through her husband if she notifies the Minister of Interior after two years of marriage, and it can be given at the Minister of Interior’s discretion.²¹⁸ If she obtains Egyptian nationality through her husband and the marriage ends after the acquisition of nationality, she will retain her Egyptian nationality unless she re-acquires her previous nationality or marries a non-Egyptian and naturalizes to his citizenship. Thus, a female may obtain Egyptian nationality through marriage to an Egyptian citizen, but this requires discretionary permission from the Minister of Interior.²¹⁹ It is important to note that the same possibility to acquire nationality is not available to a man married to an Egyptian woman, a discrimination against Egyptian female citizens entrenched in the law.

Article 12 of Law No. 154 provides for retention of nationality upon marriage:

An Egyptian who gets married to a foreigner shall continue to retain her Egyptian nationality unless she wishes to acquire the nationality of her husband and has recorded that at marriage, or during the existence of her marriage in case she is entered in her husband's nationality by force of the law governing it.²²⁰

Aside from birth, parentage or naturalization, there are other exceptional criteria through which someone may acquire Egyptian nationality. Law No. 173 of 2018 stipulates the possibility for foreigners – following a five-year residency period and a 7 million EGP (US \$391,000) investment – to obtain citizenship with the permission of the Minister of Interior.²²¹ In addition, under Article 5 of the 1975 law, Egyptian nationality may be granted by presidential decree to any foreigner deemed to have rendered honorable services to the country, as well as to heads of religious sects in Egypt.²²²

²¹⁶ *Id.* at art. 3.

²¹⁷ *Id.*

²¹⁸ Law No. 26 of 1975, *supra* note 67, at art. 7.

²¹⁹ *Id.* at art. 8.

²²⁰ Law No. 154 of 2004, *supra* note 145, at art. 12.

²²¹ *See* Law No. 173 of 2018 (Amending Certain Provisions of Law No. 89 of 1960 Concerning the Entry, Residence, and Exit of Foreigners in the Territories of the Arab Republic of Egypt and Law No. 26 of 1975 regarding Egyptian Nationality), art. 1, Aug. 2018 (Egypt).

²²² Law No. 26 of 1975, *supra* note 67, at art. 5.

3. Naturalization

Egypt also has naturalization procedures in the 1975 Nationality Law. Article 4 of the Law states that Egyptian nationality may be granted by the Minister of Interior when certain criteria are met:

1. That the person is “born in Egypt of a father of Egyptian origin, if he applies for the Egyptian nationality after having made his ordinary residence in Egypt, and is of full age at the time he applies for Egyptian nationality”;²²³
2. That the person “belongs to an Egyptian origin whenever he applies for Egyptian nationality after five years of ordinary residence in Egypt, provided he has already attained full age” at the time of applying;²²⁴
3. That any foreigner “born in Egypt of a foreign father who was also born in it, if such a foreigner belongs to the majority of inhabitants in a country whose language is Arabic, or religion is Islam, if he applies for the Egyptian nationality within one year from the date that he attains full age;”²²⁵
4. “To each foreigner born in Egypt and his ordinary residence has been in it [Egypt] on attaining full age, if he applies within one year from attaining full age” (this particular category is subject to specific restrictions);²²⁶ and
5. To each foreigner “who has made his normal residence in Egypt for ten consecutive years at least before he submits an application for the Egyptian nationality” and if said person fulfills the same restrictions set out under the fourth category above.²²⁷

Clearly the prohibition of individuals suffering from mental or physical disabilities from naturalizing is a point of concern. There are no official figures publicly available as to how many individuals are naturalized annually in Egypt, or any information on how the discretionary nature of this process is exercised.

4. Civil Registration for Egyptian Nationals and Non-Nationals

²²³ *Id.* at art. 4(1).

²²⁴ *Id.* at art. 4(2).

²²⁵ *Id.* at art. 4(3).

²²⁶ These restrictions are as follows: (1) The person “should be mentally sane and suffering from no disability rendering him a burden on society”; (2) the person “should be of a good conduct and reputation, and that no criminal penalty or penalty restricting his freedom should have been passed against him in a crime against honor, unless he has been rehabilitated”; (3) the person “should be acquainted with the Arabic language”; and (4) the person “should have a legal means of earning his living.” *Id.* at art. 4(4).

²²⁷ *Id.*

Civil registration was first established by Decree No. 23 of 1912, making notification of births and deaths compulsory.²²⁸ The civil registration process underwent numerous changes; the system continues to function under Decree No. 11 of 1965 (modifying Decree No. 260 of 1969), which specified that “notifications of births and deaths were to be given to the health office (either health bureau, center or unit) or to the chief of the village in areas without any of these offices.”²²⁹ Notwithstanding the lack of precise figures for segments of both Egyptian and non-national populations, Egypt’s system for demographic tracking,²³⁰ and civil registration,²³¹ is a long-established state program, and birth registration is reported as nearly universal, with the 2014 Demographic and Health Survey (DHS) recording that 99% of all births were registered.²³² This is addressed further in Part IV.A-B.

In addition to the process for registering a birth, Law No. 143 of 1994 on Civil Status states that an Egyptian citizen must apply for an identity card within six months of turning sixteen years old.²³³ These national ID cards are essential to daily life in Egypt (as detailed throughout this Report). In order to acquire a national ID, a birth certificate must be provided, as well as a marriage contract (if applicable), and certain other documents such as proof of ownership of property or lease agreement (if registrant is not living with parents), or an old ID card (if applicable).²³⁴

a. Birth Registration Requirements

²²⁸ *The Development of the Vital Statistics System in Egypt*, 13 INT’L INST. FOR VITAL REGISTRATION AND STAT. 1 (Jan. 1981).

²²⁹ *Id.*

²³⁰ WARREN ROBINSON & FATMA EL-ZANATY, *THE DEMOGRAPHIC REVOLUTION OF EGYPT*, 38 (2006). Khaled Fahmy, *Birth of the ‘Secular’ Individual: Medical and Legal Methods of Identification in Nineteenth-Century Egypt*, in *REGISTRATION AND RECOGNITION: DOCUMENTING THE PERSON IN WORLD HISTORY* 335, 344-345 (2012). Early in the 19th century, authorities in Egypt recognized the importance of genuine census-taking as opposed to population estimates – with Mehmet Ali noting as early as 1827 that “the welfare of a people depends on a good census.” The 1848 census marked the turning point in producing a ‘good census.’ *Id.* Mohamed Saleh, *A Pre-Colonial Population Brought to Light*, *supra* note 61, at 6 (“The Egyptian censuses are perhaps the oldest modern censuses in the Middle East and among the earliest from any non-Western country.”).

²³¹ *The Development of the Vital Statistics System in Egypt*, 13 INT’L INST. FOR VITAL REGISTRATION AND STAT. 1 (Jan. 1981). These vital statistics are compiled by CAPMAS, which is also responsible for administering the national census. U.N. Dep. Of Econ. and Soc. Affairs Stat. Division, Demographic and Soc. Stat. Branch, Technical Report on the Status of Civil Registration and Vital Statistics in ESCWA Region, ¶ 92 U.N. Doc. ESA/STAT/2009/9 (Mar. 30, 2009). This system is centralized. While births and deaths “are registered at the local level by the health offices and units (under the Ministry of Health),” the registration forms are sent to the Civil Registration Office under the Ministry of Interior for review, and then CAPMAS receives the “information on the registered vital events from the Civil Registration Office . . . [and] compiles and disseminates the statistics.” *Id.* at ¶ 90.

²³² MINISTRY OF HEALTH AND POPULATION, *EGYPT DEMOGRAPHIC AND HEALTH SURVEY 2014*, *supra* note 6, at 197.

²³³ *Egypt: Information on national identity cards including appearance; requirements and procedures to obtain the card, and whether documents required to apply for a card can be obtained by a proxy (2010 – June 2016)*, IMMIGR. & REFUGEE BD. OF CANADA (May 26, 2016).

²³⁴ *Id.*

Birth registration is critical to establishing legal identity and preventing statelessness. A birth certificate is essential evidence of a child's family ties and helps to establish their nationality. Children without confirmation of their identities, place of birth, or descent become vulnerable to statelessness. Birth registration is governed by Law No. 12 of 1996 – Promulgating the Child Law, as amended by Law No. 126 of 2008, specifically Chapter 2. It states: “Reporting the birth of a child must take place within fifteen days from the date of birth, on the form provided for such purpose, to the health office located in the area where the birth has taken place or to the health department in the districts with no health offices, or to the *Umda* (chief magistrate or the mayor of the village) in other sectors.”²³⁵

Article 15 permits four persons to report the birth of a child: the father (if present); the mother (provided the marital relationship is confirmed as required); the directors of hospitals and corrective facilities (or health quarantine houses and other places where births occur); and the *Umda* or the sheikh.²³⁶ Adult relatives and in-laws up to the second-degree may also report a birth.²³⁷ Additionally, those responsible for reporting a birth will be punished if they fail to do so. This Article does not specify the punishment, but Article 23 provides that a violation of the provision of Article 15 will incur a fine between 10-100 EGP; however, this has apparently not been implemented.²³⁸

The 2008 Amendment to the 1996 Child Law specifically provides that “the mother shall have the right to report the birth of her newborn, register him at the birth registry, and apply for a birth certificate in which her name as mother is recorded. This birth certificate is to be used only as a proof of the birth and for no other purposes.”²³⁹

Article 16 details what information is needed to register a birth and which parents' names will be listed. The following information is required when reporting a birth: (1) date of birth, (2) gender (either male or female), (3) name and surname of the child, (4) name, surname, nationality, religion, home address, and profession of each parent, (5) civil registry location of the parents, if known to person reporting birth, and (6) any other additional information required by decree of the Minister of Interior, in agreement with the Minister of Health.²⁴⁰

For refugee children, the following documents are required when reporting a birth in Egypt at the Registrar of the Civil Registry: (1) valid and legally certified marriage or divorce documents, (2) birth notification from hospital or medical facility, (3) report to health office if

²³⁵ Law No. 12 of 1996 promulgating the Child Law, as amended by Law No. 126 of 2008, *supra* note 148, at art. 14.

²³⁶ *Id.* at art. 15.

²³⁷ *Id.* at art. 15.

²³⁸ *Id.* at art. 23.

²³⁹ *Id.* at art. 15. The restriction on the use of birth certificates obtained in this way may undermine their confirmation of citizenship status compared to birth certificates issued under other provisions of Article 15, thus discriminating between the value of birth certificates with solely the mother's registration and those with the father's registration. However, how this distinction is being implemented requires additional research.

²⁴⁰ *Id.* at art. 16.

delivery occurred at home, (4) UNHCR registration card or valid passports of both the mother and the father, and (5) death certificate if the father is deceased.²⁴¹

Pursuant to Article 17, the Civil Registry is responsible for issuing birth certificates including the data set out in Article 16.²⁴² However, Article 22 specifies that the name of the father, mother, or both parents will not be recorded in certain cases, i.e.: (1) if the parents are forbidden to marry under Islamic law, then neither name will be recorded; (2) if the mother is married and the child is born to a father other than her husband then the mother's name will not be recorded; or (3) if the parents are not Muslim, and the father is married but the child is born to a mother other than his legitimate wife, his name will not be recorded (unless the child was born before the marriage or after annulling the marriage).²⁴³

b. Marriage Certificate

A valid and legally certified marriage or divorce document is required to report a birth in Egypt.²⁴⁴ Since there is no civil marriage in Egypt, religion-based personal status laws regulate these procedures.²⁴⁵ The minimum age of marriage across all religions is eighteen,²⁴⁶ and Egypt only recognizes heterosexual marriage.²⁴⁷ If the child's parents are married in a religion not recognized by the Egyptian Government, the marriage certificate is considered invalid and the marriage void.²⁴⁸

c. Personal Status Framework

To be considered a valid marriage under Egyptian law, specifically to register a child within the Civil Registry, the marriage contract must be made under a religion recognized by the Egyptian state. Egypt only recognizes the Abrahamic religions – Islam, Judaism, and Christianity

²⁴¹ *Help – Egypt Birth Certificates for Newborns*, UNHCR <https://help.unhcr.org/egypt/en/> (choose 'birth certificate for newborns' in the menu) (last visited Aug. 17, 2021).

²⁴² Law No. 12 of 1996 promulgating the Child Law, as amended by Law No. 126 of 2008, *supra* note 148, at art. 17.

²⁴³ *Id.* at art. 22.

²⁴⁴ *Id.* *Help – Egypt Birth Certificates for Newborns*, UNHCR, *supra* note 241.

²⁴⁵ Remote Interview with Mohamed Farahat, Lawyer (Mar. 23, 2021); Remote Interview with Confidential Informant, *supra* note 175. SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 115 n.15.

²⁴⁶ NAT'L COUNCIL FOR CHILDHOOD AND MOTHERHOOD CHILD RIGHTS OBSERVATORY, POLICY FOR ACTION: ENDING CHILD MARRIAGE 1-2 (June 2018).

²⁴⁷ *LGBT Rights in Egypt*, EQUALDEX, <https://www.equaldex.com/region/egypt> (last visited Jan. 28, 2022).

²⁴⁸ Remote Interview with Mona Oraby, *supra* note 181. Remote Interview with Confidential Informant, *supra* note 175. See generally Mona Oraby, *Authorizing Religious Conversion in Administrative Courts: Law, Rights, and Secular Indeterminacy*, 17 NEW DIVERSITIES 64 (2015) (examining personal status laws, marriage contracts and other legalized relationships between individual and state, particularly regarding the Baha'i).

– and requires a religion to be listed on national ID cards.²⁴⁹ This creates problems for individuals in Egypt who do not identify with the three recognized religions.²⁵⁰

Under Egyptian law – for the majority-Muslim population – the personal status laws regulate marriage according to principles of *shari'a*.²⁵¹ This involves a marriage contract that is processed by an Islamic judge or religious figure. The marriage registration requires ID cards for both parties, witness(es), and payment of fees.²⁵²

Under the personal status laws, a non-Muslim man must convert to Islam in order to marry a Muslim woman. In theory, a Christian or Jewish woman can marry a Muslim man without having to convert, and the marriage will then be performed under *shari'a*, but in practice this may be more complicated.²⁵³ For instance, a Christian woman must get a letter of approval from the church to marry outside her faith, and the Coptic Church is known to often refuse to approve interfaith marriages.²⁵⁴ For a Christian marriage, the relevant denomination of Christian church will carry out the marriage and process the marriage documentation. The church's marriage certificates thus serve as proof of marriage, for birth certificates, and to register children in the Civil Registry.²⁵⁵

The personal status code in Egypt is governed by religious law that does not recognize sexual relations outside of wedlock. To pursue paternity proceedings – in order for the child to be legally registered – the mother has the right to register the child under a temporary name, chosen by the official in charge of issuing birth certificates. To pursue paternity confirmation, the mother must file a court case and provide evidence of a sexual relationship with the man she claims is the child's father (such as a document written by the couple, correspondence between them, etc.), and the testimonies of witnesses corroborating the existence of the relationship in question. If the mother loses the case, the child will remain undocumented.²⁵⁶ There are other procedures through which a mother can attempt to register her child, but they are drawn out and

²⁴⁹ CONSTITUTION OF EGYPT, *supra* note 4, at Preamble. See Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

²⁵⁰ This is analyzed in Part IV.B.2 with regard to the Baha'i. In 2021, a draft law included provisions that threatened to further undermine personal status laws applicable to women in Egypt and would have made it more difficult for women to register the birth of their children. It was subsequently withdrawn following protests. See *New Draft Personal Status Law Sparks Outrage in Egypt*, EGYPTIAN STREETS (Feb. 27, 2021); Nouran Ahmed, *The Regime Between Stability and Stumbling: Family Law in Egypt*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Aug. 3, 2021).

²⁵¹ See *Gender and Land Rights Databased*, FOOD AND AGRICULTURE ORG. OF THE U.N., http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/womens-property-and-use-rights-in-personal-laws/en/?country_iso3=EGY (last visited Nov. 6, 2021) [noting that Personal Status Laws 25/1920, 25/1929, 77/1943, 260/1960, 100/1985 (amended on 27 January 2000) provide the relevant legal framework for the personal status of women in Egypt; this framework is derived from Islamic law].

²⁵² *Id.*

²⁵³ NATHALIE BERNARD-MAUGIRON, PROMOTION OF WOMEN'S RIGHTS (EGYPT), PERSONAL STATUS LAWS IN EGYPT FAQ 28 (2010)

²⁵⁴ Ali Gamal, *Egypt: The forbidden love of interfaith romances*, BBC (Nov. 24, 2014).

²⁵⁵ Remote Interview with Confidential Informant, *supra* note 175.

²⁵⁶ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 25-26.

costly.²⁵⁷ A report published in 2016 by CAPMAS set the number of paternal filiation cases at 75,000, and indicated the number of secret marriages had reached 9% of all unions in Egypt.²⁵⁸ This suggests that the number of families affected by the restrictive registration process in out-of-wedlock cases may be much larger than recorded.

5. Dual Nationality

There is no law that prohibits dual or multiple nationality in Egypt. However, those who apply for another nationality are required to inform the Egyptian government of their intent to take on another nationality.²⁵⁹ The applicant will have to declare her wish to retain Egyptian citizenship within a period not exceeding one year from the date of acquiring the foreign nationality. In general, individuals with dual nationality can be exempted from military service and are prohibited from being elected to parliament.²⁶⁰ There are other particularly specific regulations tailored to dual nationals.²⁶¹ The Egyptian Civil Code notes that in cases of a “person of unknown nationality or of a person of plural nationality” the judiciary must determine the applicable law. However, Egyptian law applies if the person is an Egyptian national even if the individual “is at the same time deemed by one or more foreign states to be a national” of such foreign state.²⁶²

6. Loss and Withdrawal of Egyptian Nationality

The 1975 Nationality Law envisions the loss or withdrawal of citizenship through a decree by the Council of Ministers under individual criteria; any decree withdrawing citizenship takes effect immediately from the date of issuance.²⁶³ An Egyptian national may voluntarily renounce their citizenship after acquiring a foreign nationality, which is regulated by a decree from the Minister of Interior.²⁶⁴

Article 15 permits the withdrawal of nationality from persons who have acquired it by “forged means or false statements,”²⁶⁵ but also permits revocation for nationals who obtained nationality “by naturalization or through marriage, within five years [following the date

²⁵⁷ Remote Interview with Mohamed Farahat, *supra* note 245.

²⁵⁸ Hossam Rabie, *The Egyptian mothers battling to establish paternity – and rights – for their children*, EQUAL TIMES (Sept. 21, 2018).

²⁵⁹ Law No. 26 of 1975, *supra* note 67, at art. 10.

²⁶⁰ Walaa Ali, *All you need to know about Egyptian nationality law amendments*, EGYPT TODAY (Oct. 17, 2018).

²⁶¹ Andrew Tobin, *Update: Egypt – new law threatens hotels and other international investment in Sinai*, Clyde & Co LLP (2013) (noting that Decree Law No. 14 of 2012 Concerning the Integrating Development of the Sinai Peninsula requires that naturalized citizens, dual nationals, and Egyptians with a foreign parent are prohibited from ownership of land and property in the Sinai Peninsula). *See infra*, Part V.A.4.

²⁶² The Civil Code, Arab Republic of Egypt, art. 25.

²⁶³ Law No. 26 of 1975, *supra* note 67, at art. 22.

²⁶⁴ *Id.* at art. 10.

²⁶⁵ *Id.* at art. 15.

obtained]” under specific circumstances.²⁶⁶ The 1975 Nationality Law also provides for citizenship revocation of Egyptians who have citizenship as a right of birth under a broad set of circumstances.²⁶⁷ These circumstances are: (1) if a person accepts a foreign nationality; (2) if a person joins the military service of a foreign country; (3) if a person’s normal residence is abroad and a court ruling condemns the person of a crime harmful to state security; (4) if a person accepts a post abroad with a foreign government or international body and remains in said post more than six months after ordered to quit on a determination by the Ministers Council that the person’s continuance poses a threat to Egyptian state interests; (5) if a person’s normal stay is abroad and the person joins any foreign body whose purpose includes undermining the social or economic order of Egypt; (6) if a person works for a foreign state at war, or that does not have diplomatic relations, with Egypt, and the person’s continued work would harm Egyptian national interests; and (7) if at any time a person is determined to be a Zionist.²⁶⁸ Article 17 further provides for the withdrawal of Egyptian nationality “from all of those having acquired it by dependence.”²⁶⁹

There is a low standard for citizenship revocation: “[i]t suffices for the Cabinet to doubt a person’s loyalty to Egypt to strip such a person of Egyptian citizenship or deny him or her a naturalization request, even if such a person was born and/or raised in Egypt, or married to an Egyptian citizen.”²⁷⁰ There are no publicly available figures on how many – or even if any – nationalities are withdrawn annually.²⁷¹

7. Domestic Refugee Law

Article 91 of the 2014 Constitution guarantees the right to political asylum, stating that: “The State shall grant political asylum to any foreigner who has been persecuted for defending the interests of peoples, human rights, peace or justice. Extradition of political refugees is forbidden.”²⁷² Despite this policy, Egypt does not yet have domestic refugee or asylum legislation.²⁷³

²⁶⁶ *Id.* (These circumstances include: (1) if a sentence was passed against the person in a criminal offense or as a penalty in a crime against honor; (2) if a court ruling determines a person committed a crime against the safety of the state, either within or outside of Egypt; or (3) if the person has failed to reside in Egypt for two consecutive years without a reason determined acceptable by the Minister of Interior).

²⁶⁷ *Id.* at art. 16.

²⁶⁸ *Id.*

²⁶⁹ *Id.* at art. 17 (dependence, in this context, refers to those who have derived Egyptian nationality through their relationship to an Egyptian national).

²⁷⁰ Tarek Badawy, *Egyptian citizenship legislation, private international law, and their impact on individual rights*, 6(3) MIDDLE E. L. & GOVERNANCE 272, 279 (2014) [hereinafter Badawy, *Egyptian citizenship legislation*].

²⁷¹ See *infra*, Part IV.C.

²⁷² CONSTITUTION OF EGYPT, *supra* note 4, at art. 91.

²⁷³ For purposes of residency, Egyptian law divides foreigners into four categories: (1) foreigners with special residence status; (2) foreigners with normal residence status; (3) foreigners with temporary residence status; and (4) foreigners who have acquired residency due to substantial financial investment. See Law No. 173 of 2018, *supra* note 221, at art. 1. Egypt is in the process of drafting asylum legislation, though that has not yet been finalized or made public. See Neemat Sharafeldin, *Refugees in Egypt: Practices and Prospective Law* 60 (Sept. 13, 2020) (M.A.

Instead, the 1954 Memorandum of Understanding (MOU) between the Egyptian government and UNHCR has given responsibility for determining refugee status to UNHCR, and defines the scope of UNHCR's operations, as well as the Egyptian government's obligations to cooperate with refugee issues.²⁷⁴ The MOU does not include stateless populations under UNHCR's mandate, only "bona fide" refugees.²⁷⁵ Under the MOU, UNHCR is required to: (1) cooperate with governmental authorities, undertake the census of, and identify the refugees eligible under the mandate of the High Commissioner; (2) facilitate the voluntary repatriation of refugees; (3) encourage, in cooperation with the Egyptian Government and competent international organizations, initiatives leading to resettlement of refugees residing in Egypt in countries of immigration; (4) help, within the limits of available funds, the most destitute refugees within the mandate residing in Egypt; and (5) ensure coordination of activities in Egypt in favor of refugees under the mandate by welfare societies duly authorized by the Government.²⁷⁶ Thus, all processes in Egypt regarding refugee registration, documentation, and refugee status determination are conducted by UNHCR.

B. International and Regional Law

Egypt has extensive legal obligations under international and regional law to respect the right to nationality and protect stateless persons and persons at risk of statelessness.²⁷⁷ Egypt is a

dissertation, American University in Cairo) (on file with the American University in Cairo, AUC Knowledge Fountain).

²⁷⁴ The Egypt-UNHCR MOU is the first agreement with UNHCR, establishing the first UNHCR office in the MENA region; the office processes roughly two-thirds of UNHCR's global refugee status determination ("RSD") caseload. Nourhan Abdel Aziz, *Out of Sight Out of Rights: Rejected Asylum Seekers and Closed-Files*, *supra* note 205, at 18.

²⁷⁴ *Refugee Context in Egypt*, UNHCR, *supra* note 202.

²⁷⁵ Memorandum of Understanding Between the Government of Egypt and UNHCR, art. 6 (Feb. 10, 1954).

²⁷⁶ *Id.*, at art. 2. See TAREK BADAWY, EURO-MEDITERRANEAN CONSORTIUM FOR APPLIED RSCH. ON INT'L MIGRATION, THE MEMORANDUM OF UNDERSTANDING BETWEEN EGYPT AND THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: PROBLEMS AND RECOMMENDATIONS 7 (2010) (stating that several conclusions emerge from the MOU: "(1) that UNHCR is to conduct RSD on behalf of the government in exchange for the government's issuance of residence permits to recognized refugees; (ii) that, unlike what the UNHCR Statute stipulates, local integration is not a recognized durable solution for refugees in Egypt; and (iii) that the Egyptian government is not to be financially responsible for mandate refugees. Rather, the Egyptian government is restricted to granting mandate refugees temporary residence permits and authorizing welfare societies to provide assistance to refugees.").

²⁷⁷ *Human Rights Bodies – Complaint Procedures*, U.N. OFFICE OF THE HIGH COMM'R FOR HUM. RTS. [OHCHR], <https://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrtbpetitions.aspx> (last visited Mar. 5, 2021) In total, eight of the human rights treaty bodies (CCPR, CERD, CAT, CEDAW, CRPD, CED, CESC, and CRD) may, under certain circumstances, receive and consider individual complaints or communications from individuals. The UN Human Rights Council (HRC) may also decide that a State has violated its obligations under a treaty and provide recommendations and follow-up procedures. *Id.*

founding member of the LAS,²⁷⁸ as well as the Organization of Islamic Cooperation (OIC),²⁷⁹ and the African Union (AU),²⁸⁰ and each regime protects the right to a nationality and places obligations on states to ensure the right through national law. Egypt is bound, both as a signatory to the Vienna Convention on the Law of Treaties (VCLT) and by CIL, to not defeat the object and purpose of a treaty it has signed but not ratified – until it announces it does not intend to become a party to the treaty.²⁸¹

To date, Egypt has not ratified the 1954 Convention Relating to the Status of Stateless Persons²⁸² or the 1961 Convention on the Reduction of Statelessness.²⁸³ In addition to providing a definition of statelessness,²⁸⁴ these Conventions recognize that protection as a stateless person is not a substitute for possession of a nationality, and it is the responsibility of states to facilitate the naturalization process of stateless persons.²⁸⁵ The next section addresses Egypt’s current legal obligations that provide for the right to nationality, analyzing Egypt’s obligations with regard to (1) the right to a nationality for all persons, (2) the child’s right to a nationality, (3) the right to access, and the obligation to confer nationality without discrimination based on gender, and (4) the rights and protections for refugee populations.

1. The Right to a Nationality for All Persons

The Universal Declaration of Human Rights (UDHR) is a non-binding instrument, yet many of its provisions have achieved recognition as part of CIL.²⁸⁶ Article 15 of the UDHR

²⁷⁸ The LAS established the Arab Permanent Committee on Human Rights in 1968, comprising a single political representative from each member state. The Human Rights Department of the LAS also provides technical support to the Permanent Committee. Despite several attempts, thus far the proposals to form an Arab Court of Human Rights and an Arab Court of Justice have not come to fruition. MERVAT RISHMAWI, *THE LEAGUE OF ARAB STATES HUMAN RIGHTS STANDARDS AND MECHANISMS* 27, 29, 53 (2015). The lack of an independent human rights or juridical body remains a gap in addressing concerns regarding the right to nationality within the LAS framework, and have led to a dearth of jurisprudence on the topic.

²⁷⁹ All twenty-two members of the LAS are also OIC members. The 2008 revision of the OIC Charter also initiated the OIC’s Independent Permanent Human Rights Commission (OIC IPHRC) as a body designed to strike a balance between Islam and the international human rights regime. *See* Ioana Cismas, *Introductory Note to the Statute of the OIC Independent Permanent Human Rights Commission*, 50 I.L.M. 1148, 1148 (2011).

²⁸⁰ *See Member States*, AFRICAN UNION, https://au.int/en/member_states/countryprofiles2 (last visited Jan. 25, 2022).

²⁸¹ *See* Vienna Convention on the Law of Treaties, art. 18(a), Jan. 27, 1980, 1155 U.N.T.S. 331 [hereinafter VCLT]. When a treaty has not entered into force, Egypt remains bound by the treaty provisions provided that the entry into force is not unduly delayed. *Id.* at art. 18(b). *See also* Vienna Convention on the Law of Treaties, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en (last visited May 15, 2021).

²⁸² *Convention Relating to the Status of Stateless Persons*, U.N. TREATY COLLECTION, *supra* note 25. Egypt did not sign the 1954 Statelessness Convention (although at least one source notes that Egypt has acceded to it). The authoritative UN Treaty Series indicates that Egypt is not a party to either convention on statelessness.

²⁸³ *Convention on the Reduction of Statelessness*, U.N. TREATY COLLECTION, *supra* note 25.

²⁸⁴ *See supra*, Part II.A.

²⁸⁵ UNHCR, *TEXT OF THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS, WITH AN INTRODUCTORY NOTE BY THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES* 3 (May 2014).

²⁸⁶ Int’l Law Comm’n, *Draft Articles on Diplomatic Protection with Commentaries*, *supra* note 26.

states that “[e]veryone has the right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”²⁸⁷ Thus, “access to a nationality, the ability of an individual to become a citizen of a particular state . . . is mandated by the positive right [Article 15(1)],” while the negative prohibition of Article 15(2) also “constrains state action in the nationality sphere.”²⁸⁸ Based on the UDHR, international and regional instruments have elaborated on the right to acquire and maintain a nationality. While there remains an “absence of universally accepted standards on attribution of nationality,”²⁸⁹ the broad notion that every person is entitled to a nationality as a human right appears to have become CIL.²⁹⁰ Nevertheless, the extent of the *duty-holder’s* obligation to grant a nationality under CIL remains difficult to determine.²⁹¹

The right to nationality is supported by other critical human rights provisions. The principle of non-discrimination is a universal component of the instruments examined in this section, though the scope of non-discrimination is not uniform.²⁹² The ICERD, ratified by Egypt in 1967, requires that nationality be guaranteed “without distinction as to race, colour, or national or ethnic origin”²⁹³ (gender discrimination is considered in a later section). While ICERD is often read to exclude the rights of non-citizens pursuant to Article 1(2) and Article 1(3),²⁹⁴ the ICERD Committee has recommended that States parties ensure that “particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization,” including barriers “to naturalization that may exist for long-term or permanent residents.”²⁹⁵ The ICERD Committee also recognized that deprivation of citizenship on a discriminatory basis is a breach of the Convention; that denial of citizenship for long-term or permanent residents could breach the Convention; and that States parties are obliged to reduce statelessness.²⁹⁶ In addition, the Convention on the Rights of Persons with Disabilities (ICRPD), ratified by Egypt in 2008,

²⁸⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948).

²⁸⁸ Jonathan Bialosky, *Regional Protection of the Right to a Nationality*, 24 *CARDOZO INT’L COMP. POL’Y & ETHICS L.* 153, 157 (2015).

²⁸⁹ Serena Forlati, *Nationality as a Human Right*, in *THE CHANGING ROLE OF NATIONALITY IN INTERNATIONAL LAW* 18, 19 (Serena Forlati & Alessandra Annoni eds., 2013).

²⁹⁰ See Robert John Penness v. Tanzania, Afr. Court H.P.R., Judgement Nov. 28, 2019, App. No. 013/2015, ¶ 87 (stating “the right to nationality is a fundamental aspect of the dignity of the human person.”); see also Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica, Inter-Am. Comm’n H.R., Advisory Opinion OC-4/84 (Jan. 19, 1984) Series A No. 4, paragraphs 32-33 (nationality is an “inherent right of all human beings”).

²⁹¹ Serena Forlati, *Nationality as a Human Right*, *supra* note 289, at 20.

²⁹² See, e.g., Arab Charter on Human Rights art. 3(1), May 22, 2004, League of Arab States [hereinafter Arab Charter]; African Charter on Human and Peoples’ Rights, art. 2, 21 I.L.M. 58 (1982), Org. of Afr. Unity [hereinafter African Charter]; Convention on the Rights of the Child art. 2(1), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

²⁹³ International Convention on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195.

²⁹⁴ *Id.* at art. 1(2) and art. 1(3).

²⁹⁵ Comm. on the Elimination of Racial Discrimination, CERD General Recommendation XXX on Discrimination Against Non-Citizens, ¶ 13, (Oct. 1, 2002) [GR XXX].

²⁹⁶ *Id.* at ¶ 14-16. See generally PATRICK THORNBERRY, *THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY* (2016).

provides that persons with a disability shall have an “on an equal basis with others . . . the right to acquire and change a nationality” including the right to access relevant documentation.²⁹⁷ The non-discrimination obligations under the ICERD and ICRPD demonstrate the interconnections of nationality with other rights and obligations, along with wider conceptions of the right to nationality in international law that Egypt has assumed through treaties or CIL.

Egypt has also ratified regional instruments that recognize the right to a nationality as a fundamental right due to all persons. The LAS, in particular, has played a central role in holding Arab states to obligations on the right to a nationality. The 2004 Arab Charter formally entered into force in March 2008,²⁹⁸ with Egypt ratifying the Charter in June 2019.²⁹⁹ The Arab Charter provides that “everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.”³⁰⁰ The provision related to deprivation of nationality affords broader state discretion than the UDHR, as it specifically allows a state to deny nationality for “a legally valid reason in accordance with [the state’s] legislation” as opposed to the UDHR’s broader protection against “arbitrary deprivation.”³⁰¹

In addition, the LAS promulgated the Convention on Citizenship for Residents of Arab States Other than their Native Countries (also known as the Arab Nationality Convention), which was ratified by Egypt and entered into force in 1956.³⁰² The LAS has recently suggested

²⁹⁷ Convention on the Rights of Persons with Disabilities art. 18(1), May 3, 2008, 2515 U.N.T.S. 3; *see also* *Convention on the Rights of Persons with Disabilities*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en (last visited July 15, 2021).

²⁹⁸ *See* Mohammed Amin Al-Midani, Mathilde Cabanettes, and Susan Akram, *Arab Charter on Human Rights* 24 BOSTON U. INT’L L.J., 147, 147-149 (2004) (providing an English translation of the Arab Charter, and briefly reviewing the drafting history of the 2004 Arab Charter). *See also* Mervat Rishmawi, *The Revised Arab Charter on Human Rights: A Step Forward?*, 5 HUM. RTS. L. REV. 361, 361-362 (2005) (noting that the original Arab Charter on Human Rights was adopted by the LAS in 1994, but was “widely criticized at the time by many human rights organizations both within the [MENA] region and beyond as failing to meet international human rights standards, [and] not one Arab League State was prepared to ratify it.”); *see also* Mervat Rishmawi, *The Arab Charter on Human Rights and the League of Arab States: An Update*, 10 HUM. RTS. L. REV. 169, 169 (2010) (noting the first ratifying states of the Arab Charter were Algeria, Bahrain, Jordan, Palestine, Syria, Libya, and the United Arab Emirates, thus providing the seven ratifications necessary for it to enter into force pursuant to Article 49(2)).

²⁹⁹ *Egypt joins Arab Charter of Human Rights per Presidential Decree*, EGYPT TODAY (Jun. 14, 2019).

³⁰⁰ Arab Charter, *supra* note 292, at art. 29(1).

³⁰¹ Universal Declaration of Human Rights, *supra* note 287, at art. 15.

³⁰² *See* Convention on Citizenship for Arab Residents of Arab States Other than their Native Countries, League of Arab States (1954). *See also* MERVAT RISHMAWI, THE LEAGUE OF ARAB STATES HUMAN RIGHTS STANDARDS AND MECHANISMS 96 (2015) (also noting that the Citizenship Convention (1994) did not enter into force, but that Egypt ratified or is in the process of ratifying this convention). *See also* Maja Janmyr and Dallal Stevens, *Regional Refugee Regimes: Middle East*, in OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW 334, 342 (Cathryn Costello, Jane McAdam, & Michelle Foster eds., 2021) (noting also that this convention would likely by its terms be restricted to persons considered to be Arab). Notably, at least one source indicates the Arab Nationality Convention has been repealed by the Arab League Ministers of Foreign Affairs Council. *Arab Nationality Convention*, CITIZENSHIP RIGHTS IN AFRICA INITIATIVE, <https://citizenshiprightsafrika.org/arab-nationality-convention/> (last visited Feb. 2, 2022).

revisiting this convention to revise it in line with international standards.³⁰³ The LAS's early attention to the right to nationality contrasts with the OIC, which did not include the right to nationality in the Cairo Declaration of Human Rights in Islam in 1990 (although it appears that a right to nationality may be included in the OIC Declaration on Human Rights (ODHR)).³⁰⁴

The 1986 African Charter of the AU does not explicitly recognize the right to a nationality.³⁰⁵ However, it provided for the creation of the African Commission on Human and Peoples' Rights (ACHPR), charged with overseeing the implementation of the African Charter,³⁰⁶ which has determined that the right to nationality is implied in the Charter.³⁰⁷ The ACHPR has interpreted several provisions of the treaty as guaranteeing the right to nationality.³⁰⁸ For example, Article 2 includes a prohibition against discrimination, including on the basis of "national or social origin."³⁰⁹ This imposes obligations to secure each of the rights provided by the African Charter "to all persons within their jurisdiction, nationals or non-nationals," and implies nationality rights;³¹⁰ other provisions have been interpreted to protect the right to nationality.³¹¹ These interpretations of the African Charter are not formally binding on

³⁰³ The First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women's Nationality Rights League of Arab States Secretariat General, Final Declaration (Oct. 1-2, 2017); Remote Interview with UNHCR, *supra* note 5.

³⁰⁴ See Turan Kayaoglu, *The Organization of Islamic Cooperation's Declaration on Human Rights: Promises and Pitfalls* Table 1, BROOKINGS INST. (Sept. 28, 2020). The OIC has attempted to provide a new human rights framework through the Organization of Islamic Cooperation Declaration of Human Rights (ODHR). However, adoption of the text, intended for approval by the Council of Foreign Ministers in April 2020, has been delayed due to the COVID-19 pandemic.

³⁰⁵ African Charter, *supra* note 292; see also *The African Union Approach to the Right to Nationality in Africa: Statelessness Impact on Africa's Development and the Need for its Eradication*, AFR. COMM'N H.P.R., DEPT. OF POL. AFFAIRS, https://www.achpr.org/public/Document/file/Any/presentation_approach_on_statelessness_in_africa_dpa_auc.pdf (last visited July 15, 2021).

³⁰⁶ Sara Palacios-Arapiles, *Unfolding Africa's Impact on the Development of International Refugee Law*, 65 J. OF AFR. L., SUPPL. 1 9, 28 (May 1, 2021) (citing the African Charter at art. 2).

³⁰⁷ See AFR. COMM'N. H.P.R., THE RIGHT TO NATIONALITY IN AFRICA, *supra* note 22, at 5 n.31 (noting that "Article XXVIII of the Draft African Charter on Human and Peoples' Rights (CAB/LEG/67/1), prepared by Judge Kéba Mbaye, originally provided that 'Every person has the right to a nationality', that 'Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality' and that 'No one shall be arbitrarily deprived of his nationality or of the right to change it'" but these provisions did not become part of the final text of the African Charter).

³⁰⁸ AFR. COMM'N. H.P.R., THE RIGHT TO NATIONALITY IN AFRICA, *supra* note 22, at 6.

³⁰⁹ African Charter, *supra* note 292, at art. 2.

³¹⁰ See *Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) v. Zambia*, Communication 71/92, Afr. Comm'n H.P.R., ¶ 22 (Oct. 1996).

³¹¹ Article 3's requirement of equal protection before the law is another such example. AFR. COMM'N. H.P.R., THE RIGHT TO NATIONALITY IN AFRICA, *supra* note 22, at 6 (citing *John K. Modise v. Botswana*, Communication 97/93, Afr. Comm'n H.P.R., ¶ 89 (Nov. 6, 2000)). Article 5's provision establishing the dignity inherent to all human beings has also been read to implicitly encompass nationality rights. See Sara Palacios-Arapiles, *Unfolding Africa's Impact on the Development of International Refugee Law*, 65 J. OF AFR. L., SUPPL. 1 9, 29 (May 1, 2021) (citing *Nubian Community in Kenya v. Kenya*, Communication 317/06, Afr. Comm'n H.P.R. ¶ 136-151 (May 30, 2006)). See 234: Resolution on the Right to Nationality, Afr. Comm'n H.P.R. (Apr. 23, 2013). The ACHPR noted in its decision that "denial of access to identity documents which entitles an individual to enjoy rights associated with citizenship violates an individual's right to the recognition of his juridical personality . . . a claim to citizenship or nationality

Egypt, but do strengthen the right to nationality as a component of CIL. In addition, the Optional Protocol to the African Charter established the African Court of Human Rights and Peoples' Rights (African Court), which has in turn recognized this right.³¹² In at least two cases, the African Court has acknowledged that the right to a nationality is part of CIL.³¹³ While the African Court has yet to decide a case with regard to Egypt, the jurisprudence of the ACHPR and the African Court indicate that Egypt would be obliged to provide the right to a nationality under the African Charter.

2. The Child's Right to Nationality

Egypt is party to multiple international agreements that guarantee the right to a nationality for children. Article 24(3) of the ICCPR, which Egypt ratified in 1982, provides that every child has the right to acquire a nationality.³¹⁴ Similarly, in the CRC, which Egypt ratified in 1990, Article 7 provides that every child has the right to acquire a nationality, and Article 8 obliges States Parties to "undertake to respect the right of the child to preserve his or her identity,

as a legal status is protected under Article 5.") Nubian Community in Kenya, Afr. Comm'n H.P.R. at ¶ 140. Other examples include the right to a fair trial (Article 7), the prohibition against mass expulsion (Article 12), and the protection of the family unit (Article 18). See *Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) v. Zambia*, Communication 71/92, Afr. Comm'n H.P.R., ¶ 30 (Oct. 1996); *Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea*, Communication 249/02, Afr. Comm'n H.P.R. ¶ 44, 72 (Dec. 2004); *Amnesty International v. Zambia*, Communication 212/98, Afr. Comm'n H.P.R., ¶ 59 (May 1999).

³¹² Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Org. of Afr. Unity (June 10, 1998). In July 2008, the AU promulgated a Protocol on the Statute of the African Court of Justice and Human Rights, intended to merge the African Court on Human and Peoples' Rights with the African Court of Justice; this merger has not yet taken place since the Protocol has not reached the required number of ratifications to enter into force. See *Protocol on the Statutes of the African Court of Justice and Human Rights*, African Union (July 1, 2008); see also *OAU/AU Treaties, Conventions, Protocols & Charters*, AFRICAN UNION, <https://au.int/en/treaties> (last visited July 15, 2021) (noting Egypt signed the Optional Protocol on February 17, 1999, but did not ratify it).

³¹³ In *Anudo v. Tanzania*, the African Court stated that while the "granting of nationality falls within the ambit of the sovereignty of States . . . the power to deprive a person of his or her nationality has to be exercised in accordance with international standards, to avoid the risk of statelessness." *Anudo v. Tanzania*, No. 012/2015, Judgment, Afr. Ct. H.P.R. ¶ 77-78 (Mar. 22, 2018). The African Court later strengthened this holding, interpreting the *Anudo v. Tanzania* case as holding that "the right to nationality as provided under the UDHR can apply as a binding norm to the extent to which the instrument has acquired the status of a rule of [CIL]," and then holding "*the right to nationality is a fundamental aspect of the dignity of the human person . . . [t]he protection of human dignity is therefore considered as a fundamental human right.*" *Penessis v. Tanzania*, No. 013/2015, Judgement, Afr. Ct. H.P.R. ¶ 85-87 (Nov. 28, 2019) (emphasis added). See also Bronwen Manby and Clement Bernardo Mubanga, *Case note: Robert John Penessis v. United Republic of Tanzania*, 2 STATELESSNESS AND CITIZENSHIP REVIEW, 172-178 (Jun. 29, 2020) (stating "The judgement cements the holding that where a person has been issued documents recognizing nationality, the burden of proof is incumbent upon the State to prove that he was not a national. Finally, adding to the findings in *Anudo*, the African Court drew on African Commission jurisprudence to confirm that the protection of 'legal status' in art. 5 of the African Charter includes the right to a nationality.").

³¹⁴ International Covenant on Civil and Political Rights art. 24(3), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

including nationality . . . without unlawful interference.”³¹⁵ The CRC specifically requires that states must implement the right of the child to a nationality “in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”³¹⁶ The CRC also requires Egypt to “provide appropriate assistance and protection” where a child is deprived of an element of his identity, including his nationality.³¹⁷ Under both the ICCPR and the CRC, Egypt has additional obligations to protect a child’s right to nationality and legal status. Both conventions require that a child must be registered immediately after the child’s birth.³¹⁸ In the case of the children of migrants, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), which Egypt acceded to in 1993, specifically provides that “each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.”³¹⁹

With regard to the LAS, States Parties to the Arab Charter are obliged to undertake “in accordance with their domestic laws on nationality, to allow a child to acquire the mother’s nationality, having due regard, in all cases, to the best interests of the child.”³²⁰ In addition, the Arab Charter on the Rights of the Child (ACRC), adopted in 1983, though given less focus by Arab states than the CRC,³²¹ provides for the child’s right to a nationality. The ACRC also leaves “the ambiguous socio-ethnic term ‘Arab’ undefined”³²² and also does not specify whether its entitlements are “owed to all Arab children, or only to citizens of member states of the [LAS].”³²³ However, AUC reports that “Egypt subsequently participated in non-binding declarations committing to guarantee children’s rights without reference to ethnicity” indicating that Egypt’s interpretation of these rights may be more in conformance with human rights

³¹⁵ CRC, *supra* note 292, at arts. 7(1), 8(1).

³¹⁶ *Id.* at art. 7(2).

³¹⁷ *Id.* at art. 8(2).

³¹⁸ ICCPR, *supra* note 314, at art. 24(2); CRC, *supra* note 292, at art. 7(1). The Human Rights Committee has especially “stressed the importance of non-discrimination: ‘[N]o discrimination with regards to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.’” Peggy Brett, *Discrimination and Childhood Statelessness in the Work of the UN Human Rights Treaty Bodies*, in *THE WORLD’S STATELESS CHILDREN* 169, 171 (Jan. 2017).

³¹⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 29, Dec. 18, 1990, 2220 U.N.T.S. 2.; *see also International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=_en (last visited July 15, 2021).

³²⁰ Arab Charter, *supra* note 292, at art. 29(2).

³²¹ MERVAT RISHMAWI, *THE LEAGUE OF ARAB STATES HUMAN RIGHTS STANDARDS AND MECHANISMS* 83 (2015).

³²² AUC, *REFUGEE ENTITLEMENTS IN EGYPT*, *supra* note 1, at 83.

³²³ *Id.*

norms.³²⁴ In 2009 the LAS recommended that states “should strengthen their reports to the UN CRC Committee” and did not advise independently working to revise the ACRC.³²⁵

The LAS has continued to reinforce the child’s right to a nationality. In 2001, LAS Resolution 216 acknowledged “children’s individual rights and the associated right to a name, an identity, a lineage and a nationality.”³²⁶ The LAS declared its determination to “register every child at birth to preserve his right to an identity, a name, a nationality and to enforce laws and regulations to this effect” in the 2010 Marrakech Declaration.³²⁷ Finally, in 2018 and in coordination with UNHCR, the LAS issued a declaration to, amongst other things, call upon the LAS Secretariat to enact an Arab Model Law reflecting best practices to grant nationality at birth (including to refugee children). It also called upon Member States to ensure all children are able to acquire a nationality, and urged Member States to make every effort to reduce statelessness. The Declaration also reiterated the LAS’s focus on women’s rights and nationality, discussed in further detail below.³²⁸

By way of comparison, the Covenant on the Rights of the Child in Islam (CRCI) of the OIC has thus far not entered into force, since it has not garnered the twenty signatures required (and it could not be confirmed for this Report whether Egypt is indeed one of its signatories),³²⁹ but remains an important part of the OIC regime.³³⁰ It requires states to “safeguard the elements of the child’s identity, including his/her name, nationality, and family relations . . . and [to] make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.”³³¹ If the child is of unknown descent, then the child

³²⁴ *Id.* at 139 (citing the Cairo Declaration on Development Challenges and Population Dynamics, Regional Conference on Population and Development in the Arab States (ICPD Beyond 2014) and the Rabat Declaration on Children in the Islamic World, Organization of Islamic Cooperation (2003)).

³²⁵ MERVAT RISHMAWI, THE LEAGUE OF ARAB STATES HUMAN RIGHTS STANDARDS AND MECHANISMS 84 (2015).

³²⁶ Permanent Rep. of Jordan to the U.N., Letter dated May 14, 2001 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary General, U.N. Doc. A/55942-S/2001/485, annex I (May 15, 2001).

³²⁷ Fourth Arab High-Level Conference on the Rights of the Child, Marrakech Declaration, League of Arab States (Dec. 2010).

³²⁸ Arab Declaration on “Belonging and Legal Identity”, League of Arab States (Feb. 28, 2018); Remote Interview with UNHCR, *supra* note 5.

³²⁹ *See* Outcome Document of the Thematic Debate on Revisiting the OIC Covenant on the Rights of the Child in Islam to Reinforce the Rights of Children in Member States, OIC Independent Permanent Human Rights Commission (Apr. 2017) (noting that “only 8 Member States have so far signed the Covenant, out of which only two have ratified it. On the other hand, all the OIC Member States have signed and ratified the UN CRC, which substantiates the claim to review the OIC Covenant to bring it in conformity with the international human rights instruments and make it more representative, broad based and implementable”); *see also* Covenant on the Rights of the Child in Islam at art. 23, 2005, Organization of Islamic Cooperation (stating the requirement for twenty states to ratify to enter into force); *see also* Mahmood Monshipouri and Turan Kayaoglu, *The OIC and Children’s Rights, in THE ORGANIZATION OF ISLAMIC COOPERATION AND HUMAN RIGHTS* 198 (Marie Juul Petersen and Turan Kayaoglu eds., 2019).

³³⁰ *See* Resolution No. 1/47 on Matters Pertaining to the Work of the OIC IPHRC adopted by the 47th Session of the Council of Foreign Ministers, Organization of Islamic Cooperation 4 (Nov. 2020) (at the session the OIC Council of Foreign Ministers also requested the OIC Secretary-General to convene an intergovernmental working group to discuss a finalized revision of the CRCI).

³³¹ Covenant on the Rights of the Child in Islam art. 7, 2005, Organization of Islamic Cooperation.

“shall have a right to a name, title and nationality.”³³² The CRCI obliges states to “take the necessary steps to enforce [the CRCI] in accordance with their domestic regulations” and when needed “end action based on customs, traditions, or practices that are in conflict with the rights stipulated.”³³³

The African Charter on the Rights and Welfare of the Child (ACRWC) of 1990 provides important and explicit protections for the right to nationality for children, and obliges States Parties to take the necessary steps to ensure they adopt legislative measures to give effect to its protections.³³⁴ Article 6 of the ACRWC “recognises three interlinked rights”³³⁵ by providing for the right to a name at birth,³³⁶ the right to be immediately registered after birth,³³⁷ and finally the “right to acquire a nationality.”³³⁸ Article 6 also imposes the obligation to ensure a state’s legislation recognizes the principle that a child “shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth he is not granted nationality by any other State in accordance with its laws.”³³⁹ Thus, the ACRWC’s provision harmonizes “the principle established both by the [1961 Convention] prescribing that a child who would otherwise be stateless shall have the nationality of the state in which he or she is born, and the [CRC] which obliges State Parties to realise every child’s right to acquire a nationality.”³⁴⁰ The adoption of the ACRWC also created the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), a body charged with implementing the ACRWC with authority to engage in a periodic review process, receive communications from any persons or organizations relating to the protections enshrined in the ACRWC, and investigate any matter within the ambit of the ACRWC.³⁴¹ The ACERWC has repeatedly emphasized that States Parties

³³² *Id.*

³³³ *Id.* at art. 4

³³⁴ African Charter on the Rights and Welfare of the Child [henceforth ACRWC] art. 1(1), 1991, African Union. Egypt also ratified the African Youth Charter (AYC) in 2015. African Youth Charter (AYC), 2006, African Union (“Youth” in this context refers to ages 15-35). The AYC also does not expressly provide for the right to nationality, but does protect against discrimination. African Youth Charter at art. 2(2). The AYC also establishes the right to freedom of movement (Art. 3), the “right to social, economic, political and cultural development,” (Art. 10) and the right to “participate in all spheres of society” (Art. 11).

³³⁵ Ayalew Getachew Assefa, *Safeguards against childhood statelessness under the African human rights system*, in THE WORLD’S STATELESS CHILDREN 359, 360 (Jan. 2017).

³³⁶ ACRWC, *supra* note 334, at art. 6(1).

³³⁷ *Id.* at art. 6(2).

³³⁸ *Id.* at art. 6(3).

³³⁹ *Id.* at art. 6(4). *See also* General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, Afr. Comm. of Experts on the Rights and Welfare of the Child, ¶ 11 ACERWC/GC/02 (2014) (“The Committee specifically expects States parties . . . whose laws are deficient or outdated to align them to the required standards through law reform, drawing inspiration from the present General Comment and best practices from other States parties.”).

³⁴⁰ Ayalew Getachew Assefa, *Safeguards against childhood statelessness under the African human rights system*, in THE WORLD’S STATELESS CHILDREN 359, 360 (Jan. 2017).

³⁴¹ ACRWC, *supra* note 334, at arts. 42-45.

must commit to reducing statelessness, and that the right to a nationality is a fundamental human right – although it has yet to specifically address nationality concerns related to Egypt.³⁴²

3. Gender Equality in Nationality Law

Until recent decades, it was common for men and women to be treated differently with regard to citizenship and nationality rights. In part due to the discriminatory nature of British and French nationality laws introduced in their colonial territories, and persistent patriarchal structures, ensuring gender equality in nationality has been a long-standing challenge.³⁴³ Discriminatory nationality laws continue to affect the rights of women to confer nationality to their children in the MENA region, although Egypt has been a leader in reforming its nationality laws to conform to international standards.³⁴⁴ The human right of a woman to “independently acquire, retain, confer, and change her nationality” was recognized by the 1963 Declaration on the Elimination of Discrimination Against Women (adopted by the General Assembly in 1967).³⁴⁵ The Declaration generated momentum to address gender discrimination, leading to the preparation of CEDAW.³⁴⁶ Egypt ratified CEDAW in 1981.³⁴⁷ While Article 1 of CEDAW provides for a broad definition of discrimination against women,³⁴⁸ Article 9 specifically provides that:

³⁴² Jonathan Bialosky, *Regional Protection of the Right to a Nationality*, 24 CARDOZO INT’L COMP. POL’Y & ETHICS L. 153, 187 (2015) (citing Institute for Human Rights and Development in African and The Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v. The Republic of Kenya, Decision No. 002, Afr. Comm. Of Experts on the Rights and Welfare of the Child, ¶ 48, 68 (Mar. 22, 2011) (stating that “[t]he implications of the multi-generational impact of the denial of right of nationality are manifest and of far wider effect than may at first blush appear.”)).

³⁴³ Laura van Waas, Zahra Al-Barazi, and Deirdre Brennan, *Gender Discrimination in Nationality Laws: Human Rights Pathways to Gender Neutrality*, in INTERNATIONAL HUMAN RIGHTS OF WOMEN 194, 196 (N. Reilly ed. 2019). See also Malak Benslama-Dabdoub, *Colonial Legacies in Syrian Nationality and the Risk of Statelessness*, 3 STATELESSNESS AND CITIZENSHIP REVIEW 6, 10 (2021) (explaining the legacies of colonial laws of France and Britain in forming gender-discriminatory nationality law provisions in Syria).

³⁴⁴ Remote Interview with UNHCR, *supra* note 5.

³⁴⁵ See Laura van Waas et al., *Gender Discrimination in Nationality Law: Human Rights Pathways to Gender Neutrality*, *supra* note 343 at 197-198. See Res. 2265 (XXII), Declaration on the Elimination of Discrimination against Women, art. 5 (Nov. 7, 1967) (stating that “Women shall have the same rights as men to acquire, change, or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of her husband.”); *Id.* at art. 6 (“Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.”).

³⁴⁶ Laura van Waas et al., *Gender Discrimination in Nationality Law: Human Rights Pathways to Gender Neutrality*, *supra* note 343, at 198.

³⁴⁷ Convention on the Elimination of All Forms of Discrimination Against Women, art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. See also *Convention on the Elimination of All Forms of Discrimination against Women*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4 (last visited July 15, 2021).

³⁴⁸ CEDAW, *supra* note 347, at art. 1 (defining discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”).

[s]tates Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband States Parties shall grant women equal rights with men with respect to the nationality of their children.³⁴⁹

Further, under Article 15(4), “States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”³⁵⁰ Though Egypt does have reservations to other articles of the Convention, Egypt does not have reservations to these articles pertaining to nationality.³⁵¹

Within the regional framework, the 2004 Arab Charter acknowledges that men and women “are equal in human dignity, in rights and in duties, within the positive discrimination established in favor of women by Islamic *shari’a* and other divine laws, legislation and international instruments” requiring states to “undertake all necessary measures to guarantee the effective equality between men and women.”³⁵² This includes equality in the conferral of nationality to children pursuant to Article 29(2),³⁵³ although the language of Article 29(2) (“State Parties shall undertake, in accordance with this legislation, all appropriate measures to allow a child to acquire the nationality of his mother with regard to the interest of the child”)³⁵⁴ may be construed to provide states with broad latitude to regulate conferral of nationality.³⁵⁵ Article 43 notes that the Arab Charter does not impair the rights guaranteed by other international or regional instruments.³⁵⁶ This requires states to fulfill the highest standards of their legal obligations under international law.³⁵⁷ In the case of domestic legislation failing to meet the standards of the Arab Charter, it is incumbent on Egypt to bring its law into conformity with the Charter. Moreover, Egypt’s obligations under CEDAW supersede its interpretation of Article

³⁴⁹ *Id.* at art. 19.

³⁵⁰ *Id.* at art. 15(4).

³⁵¹ See, e.g., CEDAW, *supra* note 347, at arts. 2, 16. Egypt reserved to the former article that it will only comply to the extent that such compliance “does not run counter to the Islamic *Sharia*” and to the latter that compliance must be “without prejudice to the Islamic *Sharia*’s provisions whereby women are accorded rights equivalent to those of their spouses [t]he *Sharia* therefore restricts the wife’s rights to divorce by making it contingent on a judge’s ruling, whereas no such restriction is laid down in the case of the husband.” See *Convention on the Elimination of All Forms of Discrimination against Women*, U.N. TREATY COLLECTION, *supra* note 347. See also Comm. on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Egypt, ¶ 14, U.N. Doc. CEDAW/C/EGY/CO/7 (Feb. 2010).

³⁵² Arab Charter, *supra* note 292, at art. 3(3).

³⁵³ *Id.* at art. 29(2).

³⁵⁴ *Id.*

³⁵⁵ Jonathan Bialosky, *Regional Protection of the Right to a Nationality*, 24 CARDOZO INT’L COMP. POL’Y & ETHICS L. 153, 165 (2015).

³⁵⁶ Arab Charter, *supra* note 292, at art. 43.

³⁵⁷ See Mohamed Mattar, *Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards* 26 Harv. HUM. RTS J., 91, 108 (2013); see also VCLT, *supra* note 281, at art. 30.

29(2) of the Arab Charter.³⁵⁸ The LAS has also advocated for Member States to implement legislation related to nationality in conformity with international standards, requested all LAS Member States to end all forms of discrimination in their nationality laws, and encouraged the effective implementation of such laws.³⁵⁹

The AU has also promulgated specific instruments related to gender equality, but to date Egypt has neither signed nor ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).³⁶⁰ The Maputo Protocol provides for nationality protections on the basis of gender equality, namely that women “shall have the right to retain her nationality or to acquire the nationality of her husband” and that “a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests.”³⁶¹ Although Egypt has not ratified the Maputo Protocol, it is not relieved of its obligation to adhere to the right to nationality under the African Charter and the ACRWC's protections against discrimination, including on the basis of gender.³⁶²

4. Rights and Protections of Refugees

Egypt has ratified the 1951 Refugee Convention and the 1967 Refugee Protocol,³⁶³ together, these texts provide the customary definition of refugees in international law.³⁶⁴ The 1951 Convention also provides that its protections “shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the [UNHCR] protection or assistance,”³⁶⁵ a provision that has commonly (but incorrectly) been read to exclude Palestinian refugees from legal protection.³⁶⁶

³⁵⁸ Arab Charter, *supra* note 292, at art. 44.

³⁵⁹ See The First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women's Nationality Rights, League of Arab States Secretariat General, Final Declaration (Oct. 1-2, 2017).

³⁶⁰ *OAU/AU Treaties, Conventions, Protocols & Charters*, AFRICAN UNION, <https://au.int/en/treaties> (last visited July 15, 2021).

³⁶¹ African Charter on Human and Peoples' Rights on the Rights of Women in Africa [Maputo Protocol], arts. 6(g), 6(h) (1995), Org. of Afr. Unity.

³⁶² See African Charter, *supra* note 292, at art. 2; ACRWC, *supra* note 334, at art. 3.

³⁶³ See Convention Relating to the Status of Refugees, *supra* note 27; Protocol Relating to the Status of Refugees, *supra* note 28.

³⁶⁴ A refugee is defined by these instruments as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” See Convention Relating to the Status of Refugees, *supra* note 27, at art. 1(A); Protocol Relating to the Status of Refugees, *supra* note 28, at art. 1. To meet this definition of a refugee would entail a stateless person showing “their inability or unwillingness to return to their country of former habitual residence.” Hélène Lambert, *Stateless Refugees*, in *THE OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW* 797, 805 (Cathryn Costello, Michelle Foster, and Jane McAdam eds., 2021).

³⁶⁵ Convention Relating to the Status of Refugees, *supra* note 27, at art. 1(D).

³⁶⁶ See *infra*, Part IV.E.7.

Article 25 of the 1951 Convention requires States to arrange assistance for the delivery of documents normally issued by national authorities.³⁶⁷ Article 27 also requires states to “issue identity papers to any refugee in their territory who does not possess a valid travel document.”³⁶⁸ Article 28 requires states to issue documents to refugees “for the purpose of travel outside their territory.”³⁶⁹ Finally, Article 34 requires that states “as far as possible facilitate the assimilation and naturalization of refugees . . . [and] make every effort to expedite naturalization proceedings.”³⁷⁰ These provisions place a number of obligations upon States Parties to the 1951 Convention and 1967 Protocol to protect the identity and documented status of refugees. The Refugee Convention also ensures non-discriminatory access to a number of social entitlements, including courts, education, housing, employment, and documentation for refugees, including stateless refugees.³⁷¹

In 2018 the U.N. General Assembly, following consultations with Member States, international organizations, experts, civil society, and affected populations, adopted the Global Compact on Refugees (GCR) as a framework for heightened responsibility-sharing. The GCR recognized the importance of civil and birth registration in establishing legal identity and preventing the risk of statelessness for refugee populations, as well as recognizing that statelessness may be “both a cause and consequence of refugee movements.”³⁷² The GCR, along with the Global Compact on Safe, Orderly and Regular Migration have “generated a much-needed renewed focus on the protracted and interconnected nature of refugee, statelessness, and other displacement concerns across [the MENA] region.”³⁷³ While it is too early to determine the role of the Global Compacts in addressing statelessness in Egypt, further research could monitor these developments.

³⁶⁷ Convention Relating to the Status of Refugees, *supra* note 27, at art. 25.

³⁶⁸ *Id.* at art. 27.

³⁶⁹ *Id.* at art. 28.

³⁷⁰ *Id.* at art. 34.

³⁷¹ *Protocol Relating to the Status of Refugees*, U.N. TREATY COLLECTION, *supra* note 28. Egypt has placed reservations on five articles of the Refugee Convention related to personal status, rationing, access to primary education, and access to public relief and assistance, labor legislation, and social security. Specifically, Egypt issued a reservation to article 12(1) as it “contradicts article 25 of the Egyptian Civil Code, which reads as follows: ‘The judge declares the applicable law in the case of persons without nationality or with more than one nationality at the same time. In the case of persons where there is proof, in accordance with Egypt, of Egyptian nationality, and at the same time in accordance with one or more foreign countries, of nationality of that country, the Egyptian law must be applied.’”

³⁷² Rep. of the U.N. High Comm’r for Refugees, Global Compact on Refugees ¶ 82, U.N. Doc. A/73/12 (Part II) (2018).

³⁷³ Susan Akram, *Assessing the Impact of the Global Compacts on Refugees and Migration in the Middle East*, 30 INT’L J. OF REFUGEE LAW 691, 693 (2018). See Global Compact for Safe, Orderly and Regular Migration ¶ 20(e), U.N. Doc. A/RES/73/195 (2018) (recognizing the objective of strengthening measures “to reduce statelessness, including by registering migrants’ births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State’s territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation.”).

The 1969 OAU Refugee Convention is also a strong source of refugee rights and expands the definition of ‘refugee’ provided under the 1951 Refugee Convention.³⁷⁴ UNHCR and state parties frequently recognize refugees solely on the basis of Article 1(2), regardless of the potential application of the 1951 Refugee Convention definition.³⁷⁵ The 1969 OAU Refugee Convention prohibits discrimination against refugees by host states on the same grounds as the 1951 Convention,³⁷⁶ and also prohibits discrimination on the basis of nationality, particular social group, or political opinion.³⁷⁷ However, the 1969 OAU Refugee Convention is (arguably) limited to refugees who originate from African states, thus likely excluding the majority of Palestinian refugees in Egypt.³⁷⁸

The ACRWC also provides specific protections for refugee children. Article 23 requires State Parties to provide appropriate protection and assistance to refugee children including obtaining the information necessary for family reunification. In cases where no family or guardians are found, the refugee child must be provided with protection equal to any other child deprived of a family environment.³⁷⁹ The ACERWC has emphasized the importance of universal birth registration programs, noting that “Children born to foreigners, asylum seekers, refugees and undocumented immigrants qualify equally for birth registration in the same way as those

³⁷⁴ The 1969 OAU Refugee Convention’s definition of a refugee encompasses “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa art. 1(2), Sept. 10, 1969, 1001 U.N.T.S. 45, Organization of African Unity [hereinafter 1969 OAU Refugee Convention]. This definition does not require the elements of “deliberateness or discrimination inherent in the 1951 Convention,” solely requiring objective criteria based on the conditions in the country of origin. See Marina Sharpe, *The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions* 58:1 MCGILL L.J. 95, 103 (2012). See also Sara Palacios-Arapiles, *Unfolding Africa’s Impact on the Development of International Refugee Law*, 65 J. OF AFR. L., SUPPL. 1 9, 17 (May 1, 2021) (noting “the subject of refugee protection had been on the agenda of the [Asian-African Legal Consultative Committee] since its sixth session, held in Cairo in 1964 following a reference made by the only African member of the AALCC at that time: the Government of Egypt.” These discussions led to the formulation of the Status and Treatment of Refugees (1966 Bangkok Principles), which recognized the applicability of the *non-refoulement* principle in its widest sense. *Id.* The 1969 OAU Refugee Convention’s definition has been highly influential in other regional refugee-protection instruments. See, e.g., 2001 Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles) art. 1, Asian-African Legal Consultative Organization (2001).

³⁷⁵ See Marina Sharpe, *The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions* 58:1 MCGILL L.J. 95, 102-103 (2012); see also Sara Palacios-Arapiles, *Unfolding Africa’s Impact on the Development of International Refugee Law*, 65 J. OF AFR. L., SUPPL. 1 9, 22 (May 1, 2021) (noting the 1969 OAU Refugee Convention has expanded the scope of UNHCR’s concept of persons in need of international protection).

³⁷⁶ Convention Relating to the Status of Refugees, *supra* note 27, at art. 3.

³⁷⁷ 1969 OAU Refugee Convention, *supra* note 374, at art. 4. See also Marina Sharpe, *Organization of African Unity and African Union Engagement with Refugee Protection: 1963-2011*, 21.1 AFR. J. OF INT’L AND COMPAR. L. 50, 57 (2013).

³⁷⁸ ASEM KHALIL, *PALESTINIAN REFUGEES IN ARAB STATES: A RIGHTS-BASED APPROACH* 17 (2009).

³⁷⁹ ACRWC, *supra* note 334, at art. 23. The ACRWC also provides for the right for family reunification, including obliging the state to reunite families separated by “internal or external displacement arising from armed conflict or natural disaster.” *Id.* at art. 25(2). See also AUC, *REFUGEE ENTITLEMENTS IN EGYPT*, *supra* note 1, at 85.

born to citizens.”³⁸⁰ This is also linked closely to the African Child Rights’ Committee’s view that “denying the right to birth registration . . . is an act of discrimination” in violation of Article 3 of the African Charter.³⁸¹

Article 28 of the Arab Charter provides that all persons shall have the right to seek political asylum, but it does not provide for more expansive refugee rights or protections for persons at risk of statelessness.³⁸² The LAS has continued to recognize the importance of a refugee child’s right to nationality, for example in the Arab Declaration on “Belonging and Legal Identity” in which the LAS called upon Member States to enact a model law to ensure the granting of nationality at birth, “including to displaced and refugee children.”³⁸³

a. Palestinian Rights and the Casablanca Protocol

The LAS has promulgated specific protections for Palestinians in the MENA region, with the Protocol for the Treatment of Palestinians in Arab States of 1965 (Casablanca Protocol) a significant source of legal rights of Palestinians.³⁸⁴ While the Casablanca Protocol does not provide for nationality rights to Palestinians in States Parties, it does provide Palestinians with equal rights to the nationals of host states with regard to several social entitlements. These include the right to enter/exit signatory states, the right to enter/exit other Arab states, the right to valid travel documents (and renewal thereof), and the right to equal treatment with all other citizens of LAS States.³⁸⁵

Subsequent resolutions built on the Casablanca Protocol framework. LAS Resolution 2600 of 1970 authorized granting dual citizenship to Palestinians, thus recognizing the compatibility between Palestinian citizenship and Palestinian rights across the diaspora.³⁸⁶ LAS Resolution 8 of 1982 sought to clarify and confirm the Casablanca Protocol’s provisions due to the noted failures of host states to fulfil the Casablanca Protocol’s provisions.³⁸⁷ However, Resolution 5093 of 1991 authorized states to “treat Palestinian refugees in accordance with

³⁸⁰ General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, Afr. Comm. of Experts on the Rights and Welfare of the Child, ¶ 50 ACERWC/GC/02 (2014).

³⁸¹ *Id.* at ¶ 57.

³⁸² Arab Charter, *supra* note 292, at art. 28. The LAS Council of Ministers of Foreign Affairs did approve the Arab Convention on the Regulation of the Status of Refugees in Arab States in 1994, but this did not enter into force. MERVAT RISHMAWI, THE LEAGUE OF ARAB STATES HUMAN RIGHTS STANDARDS AND MECHANISMS 99 (2015); *see* Arab Convention Regulating Status of Refugees in the Arab Countries, League of Arab States (1994).

³⁸³ Arab Declaration on “Belonging and Legal Identity”, League of Arab States (Feb. 28, 2018).

³⁸⁴ Protocol for the Treatment of Palestinians in Arab States, League of Arab States (Sept. 11, 1965), REFWORLD, <https://www.refworld.org/docid/460a2b252.html> (last visited Feb. 15, 2021) [hereinafter Casablanca Protocol] (Egypt has made no reservations to the Casablanca Protocol).

³⁸⁵ Casablanca Protocol, arts. 1-5, League of Arab States (1965). The Casablanca Protocol provides a more robust rights framework than prior non-binding resolutions approved by the LAS during mass displacement of Palestinians from their homeland. *See, e.g.*, ASEM KHALIL, PALESTINIAN REFUGEES IN ARAB STATES, *supra* note 378, at 16 (noting that LAS Resolution 424 of 1952 provided for the right to family reunification, and LAS Resolution 714 of 1952 provided for the issuance of a standardized travel document to Palestinians).

³⁸⁶ *Id.*

³⁸⁷ *Id.*

domestic law” rather than adhering to the Casablanca Protocol.³⁸⁸ Resolution 5093 has been observed as weakening any remaining respect for the Protocol’s provisions, and since then protections for such rights have been “curtailed, if not disposed of outright.”³⁸⁹ As acknowledged in prior reports by the IHRC,³⁹⁰ under normative treaty rules including the VCLT and CIL a declarative resolution does not have the effect of revoking a treaty, and thus Egypt remains bound by the Casablanca Protocol. Nonetheless, the failure of states parties to meet the requirements of the Casablanca Protocol, coupled with the inability of the LAS to hold states accountable for their failures to protect Palestinians, demonstrates the practical complications of sustained regional engagement in protecting the rights of Palestinians.

IV. Gaps in Egypt’s Legal Framework and Implementation

Despite its Nationality Law reforms, gaps and inconsistencies remain in Egypt’s domestic law, policy, and administrative practices that perpetuate the problems and risks of statelessness. Part IV analyzes these gaps and inconsistencies. First, it examines Egypt’s obligation to protect the right to a nationality of all persons, in particular with regard to the Nationality Law and barriers to civil registration, birth registration, and marriage registration. Second, it addresses gaps in civil registration for particular populations of Egyptian nationals and examines withdrawal of nationality. The section concludes by examining gaps in protections for adult refugees, displaced persons, and migrants, in particular Palestinians, in Egypt.

A. Gaps in Protecting All Persons’ Right to a Nationality—Acquiring a Nationality

At the outset, there are gaps in Egypt’s nationality laws and in their implementation with regard to the ability for Egyptian nationals to *acquire a nationality*. These relate to the nationality law provisions themselves, as well as barriers in the civil registration and related documentation processes.

It is important to note again that Egypt is considered to have one of the strongest civil-registration country programs in Africa.³⁹¹ The country has nearly universal birth registration, with estimates in 2014 that approximately 99% of all births were being registered.³⁹² However, the reporting acknowledged that birth registrations in the Sinai were not counted, and it is

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ See, e.g., BU IHRC, CAMPAIGN TO END STATELESSNESS IN JORDAN, *supra* note 10, at 86.

³⁹¹ See U.N. ECON. COMM. FOR AFR., REPORT ON THE STATUS OF CIVIL REGISTRATION AND VITAL STATISTICS IN AFRICA 3 (Nov. 2017) (explaining that “[o]nly four countries (Egypt, Mauritius, Seychelles and South Africa) have managed to maintain a compulsory and universal registration system that meets international standards, including a satisfactory level of registration coverage and completeness of recording vital events and information on cause of death”).

³⁹² MINISTRY OF HEALTH AND POPULATION, EGYPT DEMOGRAPHIC AND HEALTH SURVEY 2014, *supra* note 6, at 197.

unclear whether the data included refugee, displaced, and migrant populations.³⁹³ At the time of the study, the figures also did not address lack of birth registration for persons above the age of five.³⁹⁴ Subsequent sections of this Report address some of these gaps with regard to Egyptian nationals as well as refugee/migrant populations.

1. The Nationality Law Provisions

Egypt amended its gender-discriminatory Nationality Law with Law No. 154 of 2004. This enabled non-gender-discriminatory conveyance of Egyptian nationality to children with retroactive effect; this amendment was a major advancement in mitigating statelessness, affecting thousands and possibly hundreds of thousands of individuals.³⁹⁵ The law initially did not apply to children born to a Palestinian father and an Egyptian mother. Following significant protest and pressure from civil society, the government issued Decree No. 1231 of 2011 which extended the nationality provision to children of Egyptian women married to Palestinian men.³⁹⁶ In 2008, Egypt also withdrew its reservation to Article 9(2) of CEDAW.³⁹⁷

While the 2004 and 2011 reforms were a critical step towards compliance with the guarantees of a child's right to nationality under ICCPR Article 24(2), CRC Article 7(1), CRCI Article 7, and ACRWC Article 6, important gaps remain. These include the law's application to individuals born before 2004; the implementation of the law in terms of gender-based legal and administrative differences in accessing documentation; and systemic barriers to civil registration. These deficiencies are also contrary to the 2014 Egyptian Constitution's provision guaranteeing the right to a nationality for children born to Egyptian mothers and fathers.³⁹⁸

While Law No. 154 is to have retroactive effect, children born to Egyptian mothers and foreign fathers before the entry into force of the law were not automatically granted Egyptian

³⁹³ *Id.* at 198.

³⁹⁴ *Id.* at 197-198.

³⁹⁵ It is unknown how many among these had been stateless. See LAURA VAN WAAS, THE SITUATION OF STATELESS PERSONS IN THE MIDDLE EAST AND NORTH AFRICA, *supra* note 92, at 13 (while one source "reported the number of stateless children with Egyptian mothers to be around 250,000, another explained that the legislative amendment would benefit one million individuals from 468,000 families, an unknown number of which were initially stateless."). See also OUR MOTHERLAND, OUR COUNTRY, WOMEN'S REFUGEE INTERNATIONAL n.18 (2013) ("NGOs fighting for the [2004] amendment say that a quarter of a million households, encompassing an approximate one million children, were of Egyptian mothers."). The number of stateless among the estimated 400,000 to 1 million children born to Egyptian mothers and foreign fathers is not disaggregated. However, some sources note that an estimated one-third of all Egyptian women who are married to non-nationals are married to Palestinians, thereby indicating that the number of stateless children potentially affected is significant. See, e.g., Oroub El-Abed, *The Palestinians in Egypt: Identity, Basic Rights and Host State Policies*, 28 REFUGEE SURV. Q. 531, 543 (2009).

³⁹⁶ Bronwen Manby, *Citizenship and Statelessness in Africa: The Law and Politics of Belonging* 384 (2015) (dissertation, Maastricht University) [hereinafter Manby, *Citizenship and Statelessness in Africa*]; McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.3.

³⁹⁷ CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Egypt, *supra* note 351, at ¶ 5.

³⁹⁸ CONSTITUTION OF EGYPT, *supra* note 4, at art. 6. See also Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 276 (2014) (noting that following the constitutional provision, "[i]t follows that any restrictions on women's right to pass on their citizenship to their children that may have existed prior to January 2014 are no longer valid").

nationality but were required to apply for it from the Minister of the Interior, and the Minister had one year from the [application] date to refuse.³⁹⁹ The Minister of Interior appears to no longer have discretion to decide the naturalization of those born prior to 2004 since the 2014 Constitution guarantees this right to equally to anyone born to an Egyptian father or Egyptian mother.⁴⁰⁰

Other concerns have been raised that the Government did not adequately disseminate information about the amendment to Law No. 154, such that affected individuals, especially in rural areas, have not become aware of it.⁴⁰¹ It has also been reported that the procedures themselves are highly burdensome and difficult for many to meet.⁴⁰² For example, the required documents for obtaining nationality include providing the father's and grandfather's birth certificates, and the process of applying can only be done in Cairo at the *Mugamma* government building.⁴⁰³

For children who are born to non-Egyptian parents and are legally stateless (including for example, children born to stateless Palestinians), the law fails to honor its obligation to guarantee a child's right to a nationality and birth registration. While states may claim the obligation to confer nationality to a particular child belongs to another state, under CRC Article 7 and ACRWC Article 6, the obligation falls on the state of the child's residence "in particular where the child would otherwise be stateless" – that is almost always the country in which the child lives.⁴⁰⁴ The ACERWC has emphasized that based on the best interest of the child, Article 6(3) requires that children should acquire a nationality from birth as opposed to waiting until they are 18.⁴⁰⁵

Acquiring Egyptian nationality through *naturalization* under the Nationality Law is a discretionary process, which is apparently applied on an extremely limited basis.⁴⁰⁶ While the Nationality Law grants citizenship to foreign women who marry Egyptian men after a period of two years, it does not grant citizenship to foreign men married to Egyptian women.⁴⁰⁷ This is

³⁹⁹ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

⁴⁰⁰ See also Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 276.

⁴⁰¹ WOMEN'S REFUGEE INTERNATIONAL, *OUR MOTHERLAND, OUR COUNTRY*, *supra* note 3, at 9.

⁴⁰² See Law No. 154 of 2004, *supra* note 145, at art. 3. See also MANBY, *BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO*, *supra* note 11; LAURA VAN WAAS, *THE SITUATION OF STATELESS PERSONS IN THE MIDDLE EAST AND NORTH AFRICA*, *supra* note 92, at 13.

⁴⁰³ WOMEN'S REFUGEE INT'L, *OUR MOTHERLAND, OUR COUNTRY*, *supra* note 3, at 9.

⁴⁰⁴ CRC, *supra* note 292, art. 7; ACRWC, *supra* note 334, at arts. 6(3) and 6(4).

⁴⁰⁵ See Institute for Human Rights and Development in African and The Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v. The Republic of Kenya, Decision No. 002, Afr. Comm. Of Experts on the Rights and Welfare of the Child (Mar. 22, 2011); Ayalew Getachew Assefa, *Safeguards against childhood statelessness under the African human rights system*, in *THE WORLD'S STATELESS CHILDREN* 359, 360-363 (Jan. 2017).

⁴⁰⁶ AUC, *PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT*, *supra* note 11, at 23. Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 272-273, 276.

⁴⁰⁷ Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 277 n.11. "Unlike foreign wives, foreign husbands are not eligible for the two-year naturalization scheme, although they may qualify for one of the other expedited naturalization schemes discussed above, based on their national or ethnic origin and/or place of birth." *Id.* at 272.

contrary to obligations under CEDAW not to discriminate on the basis of sex in terms of women’s ability to confer nationality on non-national spouses.⁴⁰⁸

The Nationality Law also includes preferential terms for naturalization for persons of Egyptian or Arab origin and Muslims. Requirements that vary based on protected grounds that are discriminatory in application are contrary to Egypt’s obligations under ICERD Article 1(3).⁴⁰⁹ The Committee on the Elimination of Racial Discrimination has noted that States should not discriminate in access to citizenship or naturalization and that denial of citizenship could, in the long-term, be harmful to residents and lead to violations under ICERD.⁴¹⁰ This includes any differences in lengths of residency requirements for certain groups which may be overly burdensome.⁴¹¹ In addition, the non-disability requirements can be interpreted as being in conflict with Egypt’s obligations under Article 18 of ICRPD,⁴¹² as well as potentially Article 53 of Egypt’s Constitution.⁴¹³

Notwithstanding these gaps and inconsistencies in the law, Egyptian lawyers report that even for applicants who have met the requirements, naturalization does not present a viable pathway to citizenship since it is rarely, if ever, implemented.⁴¹⁴ While there are no official statistics on naturalizations,⁴¹⁵ sources indicate that “naturalization is almost never granted, except to those born in Egypt, with a father of Egyptian origin or from an Arab or Muslim country.”⁴¹⁶ Egypt’s 2019 amendment of its Nationality Law to provide citizenship to investors may impact the number of successful naturalizations for those with high income and/or net worth, including potentially stateless persons from Gulf Arab countries.⁴¹⁷ It will, however, do

⁴⁰⁸ Comm. on the Elimination of Discrimination against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality, and statelessness of women, ¶ 52, U.N. Doc. CEDAW/C/GC/32 (Nov. 14, 2014) (clarifying that Article 9 extends an obligation to ensure equality between men and women in the ability to confer their nationality to spouses).

⁴⁰⁹ ICERD, *supra* note 293, at art. 1(3) (“legal provisions of States Parties concerning nationality, citizenship or naturalization” fall within the reserved domain of sovereign States, “provided that such provisions do not discriminate against any particular nationality”). See PATRICK THORNBERRY, *THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY* 144, 158 (2016) (“With regard to [CERD’s Article] 1(3) and the repeated use of ‘nationality’, the *travaux* and subsequent practice support the view that ‘nationality’ in the second sense of a forbidden ground of discrimination means ‘national origin’ on a par with ‘ethnic origin’”).

⁴¹⁰ Comm. on the Elimination of Racial Discrimination, General Recommendation No. 34 on Racial Discrimination against People of African Descent, CERD/C/GC/34, ¶ 13, 15 (2011).

⁴¹¹ Those who are not eligible for the expedited naturalization pathways must meet the strict requirements of Section 4(5), which requires a ten consecutive year residency in Egypt in addition to other requirements. Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 278.

⁴¹² ICRPD, *supra* note 297, at art. 18.

⁴¹³ CONSTITUTION OF EGYPT, *supra* note 4, at art. 53.

⁴¹⁴ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 23.

⁴¹⁵ MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 13-14.

⁴¹⁶ See, e.g., BRONWEN MANBY, STRUGGLES FOR CITIZENSHIP IN AFRICA 142 (2009).

⁴¹⁷ See Mohammed Shamaa, *For \$250,000 you, too, can be an Egyptian*, ARAB NEWS (Dec. 2019).

little to mitigate statelessness among the overwhelming majority of vulnerable populations in Egypt who lack the financial resources required for the investor program.⁴¹⁸

2. Barriers to Civil Registration

Because acquisition of nationality relies on being ‘documented’ through, for example, a birth certificate to a child, civil registration is a core element in preventing statelessness.⁴¹⁹ International and regional law link the right to birth registration and the right to a name with the right to a nationality,⁴²⁰ and Article 18 of the Egyptian Constitution provides that “every child shall have the right to a name and identity card.”⁴²¹

The Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have noted that significant gaps in registering births remain in Egypt, with disparities in registration rates particularly among certain populations.⁴²² It should be underscored that further statistical research is needed to verify the birth registration numbers of at-risk groups.⁴²³ Researchers have pointed out that there are also methodological challenges in Egypt that complicate an accurate assessment of the scope of statelessness and vulnerabilities based on weaknesses in the civil registration process.⁴²⁴

3. Birth Registration

Stakeholders note major barriers to the registration and certification of births in Egypt, leaving many individuals at risk of lack of status, perpetuating problems in accessing other documentation. Egypt’s fifteen-day deadline following the birth of a newborn to notify the local health office of the birth, and the extensive documentation requirements that include a marriage

⁴¹⁸ See also Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 278 (noting in 2014 that the *proposed* citizenship investment scheme is “believed to primarily target stateless Arabs from the Gulf.”).

⁴¹⁹ HUNTER, UNDOCUMENTED NATIONALS, *supra* note 13, at 1-2, 17. Having one’s birth entered into the civil registry is a crucial step towards full citizenship, as it produces a legal record of where the child is born, and the identity of her parents, both of which are critical in proving entitlement to nationality. *Id.* at 1.

⁴²⁰ General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, Afr. Comm. of Experts on the Rights and Welfare of the Child, ¶ 9 ACERWC/GC/02 (2014).

⁴²¹ CONSTITUTION OF EGYPT, *supra* note 4, at art. 80.

⁴²² CRC, Consideration of reports by States Parties under Article 44 of the Convention, Concluding observations: Egypt, *supra* note 148, at ¶ 44. See also *Egypt, Formal requirements for the issuance of birth and marriage certificates*, EUROPEAN ASYLUM SUPPORT OFFICE, COI QUERY (May 2, 2018) (“According to information collected by the European Union Election Observation Mission in 2014, there is still a segment of the population which does not have birth certificates.”).

⁴²³ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 29.

⁴²⁴ HUNTER, UNDOCUMENTED NATIONALS, *supra* note 13, at 9 (noting that there is a low standard for a birth being counted as registered, including, e.g., a caretaker reporting that they have registered the birth, even if there is no accompanying birth certificate).

certificate and valid identification documents for each parent, create significant problems.⁴²⁵ Advocates note that the fifteen-day deadline alone results in formidable challenges.⁴²⁶ Many people in Egypt are unable to fulfill the requirements in that time period, forcing them to pursue the longer, more laborious and extensive process that includes reporting to the police and obtaining a police report. The process also leaves too much discretion in the authorities.⁴²⁷ Though many advocates note the importance of encouraging the issuance of a birth certificate, including for preventing trafficking in children,⁴²⁸ the fifteen-day deadline for birth registration is onerous.⁴²⁹ The Committee on the Rights of the Child in its General Comment No. 7 recommended that Governments “take all necessary measures to ensure that all children are registered at birth, through a universal, well-managed registration system that is accessible to all and free of charge” and that an “effective system” needs to be “flexible and responsive to the circumstances of families.”⁴³⁰ While the CRC has noted that birth registration should be free, Egypt requires obtaining a stamped certificate for which there is a charge,⁴³¹ and the costs and time involved for late registration can be prohibitive for many Egyptians.⁴³²

In addition, although the Nationality Law provides for non-gender-discriminatory conveyance of Egyptian nationality to children, significant gender-based legal and regulatory barriers for women in birth registration and certification persist. For example, women are not permitted to register the birth of a child or obtain their child’s birth certificate on an equal basis to a man.⁴³³ While under Article 15 of Law No. 12 of 1996 (as amended by Law No. 126 of 2008), mothers are entitled to register the birth of a child, the implementing regulations to Article 23 of the Egyptian Ministerial Decree No. 2075 require a mother to provide documentation that is unavailable for thousands of Egyptian mothers – particularly proof of marriage with the child’s father.⁴³⁴ While the father can register the birth of a child (and is to be the primary informant,

⁴²⁵ Law No. 12 of 1996 promulgating the Child Law, as amended by Law No. 126 of 2008, *supra* note 148, at art. 14.

⁴²⁶ See, e.g., Remote Interview with Mohamed Farahat, *supra* note 245; Remote Interview with UNHCR (Feb. 10, 2021).

⁴²⁷ MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 14.

⁴²⁸ Remote Interview with Ashraf Ruxi, Asylum Lawyer (June 28, 2021).

⁴²⁹ MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 6 (noting the fifteen-day deadline as an obstacle to successful birth registration); see also UNHCR interview, *supra* note 426 (noting the complications in birth registration involving cases of non-marital children and survivors of gender-based violence, among others, and suggesting steps UNHCR can undertake to assist in such cases).

⁴³⁰ Rep. of the Office of the U.N. High Comm’r for Hum. Rts., Birth registration and the right of everyone to recognition everywhere as a person before the law, U.N. Doc. A/HRC/27/22, ¶ 13 (June 17, 2014).

⁴³¹ CRC, Consideration of reports by States Parties under Article 44 of the Convention, Concluding Observations: Egypt, *supra* note 148, at ¶ 44. See also *Undocumented Citizens*, EGYPT TODAY (Sept. 13, 2013) (“Cost is another barrier to obtaining registration papers not only the price of the document itself (a birth certificate is around LE 15) but the fact that in many villages, people have to travel far distances to reach their nearest civil status registries.”).

⁴³² AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 30-34 (outlining the extensive procedures associated with late registration).

⁴³³ Lucia Hanmer and Marina Elefante, *The Role of Identification in Ending Child Marriage, Identification for Development*, WORLD BANK GROUP 19 (July 2016).

⁴³⁴ *Id.* AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 26-27. Sources indicate that prior to the 2008 amendment, even married women

which is itself gender-discriminatory), the mother may do so only if she provides proof of marriage as well as a signed attestation that the child is of the marriage. If she cannot prove her marital relationship, she can register the birth of her child if she provides the testimony of a person who witnessed the birth.⁴³⁵ If the father is deceased or missing, the mother has to provide additional evidence in order to register her child, including providing the father's death certificate and the marriage certificate.⁴³⁶ Preventing women from being able to register their children is incompatible with Egypt's obligations under Article 9(2) of CEDAW.⁴³⁷

While Egyptian law allows for single mothers to register a non-marital child, there are a number of important obstacles both in terms of the regulatory requirements and deficiencies in implementation.⁴³⁸ According to experts, in practice, mothers in these situations must have legal counsel in order to obtain birth certificates for their children.⁴³⁹ There is a widespread lack of knowledge among government officials that registration by single mothers is even permitted, indicating a critical gap in the training of civil registrars.⁴⁴⁰ Moreover, lawyers indicate that social stigma commonly prevents women from attempting to register a child born outside of marriage. One lawyer indicated that registration of a non-marital birth is extremely difficult in Egypt, while in rape cases if there is a police report confirming the rape, registration may sometimes be easier.⁴⁴¹ A single mother is more likely to have a male family member intervene

could not register their children. *See* Hossam Rabie, *Egyptian mothers battling to establish paternity – and rights – for their children*, EQUAL TIMES (Sept. 21, 2018).

⁴³⁵ Lucia Hanmer and Marina Elefante, *The Role of Identification in Ending Child Marriage, Identification for Development*, WORLD BANK GROUP 19 (July 2016) (citing Civil Status Code, Law No. 143 of 1994, Art. 20; Law No. 12 of 1996 promulgating the Child Law, as amended by Law No. 126 of 2008, *supra* note 148, at art. 145). AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 26-27.

⁴³⁶ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 27 (citing brochures developed by the Egyptian Foundation for Refugee Rights, an NGO that provides legal assistance for obtaining birth certificates for refugees in Egypt).

⁴³⁷ *See* CEDAW, *supra* note 347, at art. 9(2) (“States Parties shall grant women equal rights with men with respect to the nationality of their children.”); *see also* ICCPR, *supra* note 314, at art. 3 (requiring States to “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”).

⁴³⁸ Remote Interview with Ashraf Ruxi, Asylum Lawyer (Nov. 17, 2020). *But see* Amira Abdel-Aziz, *Assessment of the Alternative Families System in Egypt*, 18 SCOT. J. RESIDENTIAL CHILD CARE 50, 58 (2018) (noting that according to government regulations “mothers can register their children with a marriage certificate and without a marriage certificate [, and if] a marriage certificate does not exist, the mother can sign a formal written approval that this child is hers and accordingly only her name will appear in the child's birth certificate.”). Despite such regulations, Amira Abdel-Aziz elaborated on various barriers to registration. *Id.* at 55-56.

⁴³⁹ Remote Interview with Ashraf Ruxi, *supra* note 438; Remote Interview with Mohamed Farahat, *supra* note 245.

⁴⁴⁰ Amira Abdel-Aziz, *Assessment of the Alternative Families System in Egypt*, *supra* note 438, at 55-56. Amira Abdel-Aziz also noted that although the right to registration “is mentioned clearly in the law, only one of the study's respondents was aware of this article, and on the contrary most of the study's respondents showed astonishment of the existence of this article. The only informant who was aware of the article was the representative of one of the national NGOs working in the field. He affirmed the practical challenge they face every time they try to support mothers with no marriage certificates to exercise this right, especially in the civil register where such procedure is normally carried out. They usually had to seek legal support in order to finalize the birth certificate of their child in such cases.” *Id.* at 55.

⁴⁴¹ Remote Interview with Ashraf Ruxi, *supra* note 428.

on her behalf or accompany her to register the birth of the child in the male family member's name.⁴⁴² Lawyers note that women sometimes must resort to bribes in cases where documentation is lacking.⁴⁴³ Some note that despite the child's entitlement to a birth certificate, "in practice, the focus turns to the nature of the relationship that produced the child rather than the child's rights."⁴⁴⁴

Another gap in Egypt's civil registration law is that in certain instances, the law does not allow the name of the father, mother, or both parents, to be recorded on the birth certificate.⁴⁴⁵ The law provides that in the case of a single mother registering her child, it is the health officer in charge who selects the name of the father of the child.⁴⁴⁶ The United Nations Children's Fund (UNICEF) and UNHCR note that this means that a non-marital child is "to be registered using false names for the parents and/ or child, or by omitting their names from the certificate altogether."⁴⁴⁷ The ACERWC has noted that discrimination on the "basis of marital status of the child's parents should not prevent the child from carrying the name of either or both his/her mother and father."⁴⁴⁸ The failure to accurately record each of a child's parents on the birth certificate can compromise the child's ability to acquire nationality through each parent separately, which can present a risk of statelessness in situations where only one parent is able to confer nationality.⁴⁴⁹

In cases of children born to mothers who have been victims/survivors of gender-based violence, as with cases of non-marital children, lawyers contend there is a critical gap in birth registration due to lack of knowledge and awareness among officials with regard to the process. Registration will depend on whether (1) the father is unknown, (2) the father has denied paternity

⁴⁴² MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 19.

⁴⁴³ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁴⁴⁴ Mohamed Farahat, *Children of rape of refugee women, and statelessness, in Egypt*, 55 FORCED MIGRATION REV. 79, 79 (June 2017).

⁴⁴⁵ In Egypt, there are several instances where the law does not permit one of the parents or both of the parents to be named on the birth certificate. If the parents are prohibited to marry under Islamic *shari'a*, the parents' names are not recorded on the birth certificate. If the mother is married and the newborn child is born to a father other than her husband, her name is not recorded on the birth certificate. If a non-Muslim father is married, and the child is born to a mother other than his legitimate wife, his name is not recorded on the birth certificate, unless the child was born either before marriage or after annulling the marriage, except for those persons whose religion permits polygamy. Law No. 12 of 1996 promulgating the Child Law, as amended by Law No. 126 of 2008, *supra* note 148, at art. 22.

⁴⁴⁶ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 26. *See also* Hossam Rabie, *Egyptian mothers battling to establish paternity – and rights – for their children*, EQUAL TIMES (Sept. 21, 2018).

⁴⁴⁷ UNHCR AND UNICEF, BACKGROUND NOTE ON SEX DISCRIMINATION IN BIRTH REGISTRATION 12 (May 2021) (Law No. 12 of 1996 promulgating the Child Law, as amended by Law No. 126 of 2008, *supra* note 148, at art. 22).

⁴⁴⁸ General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, Afr. Comm. of Experts on the Rights and Welfare of the Child, ¶ 16 ACERWC/GC/02 (2014).

⁴⁴⁹ UNHCR AND UNICEF, BACKGROUND NOTE ON SEX DISCRIMINATION IN BIRTH REGISTRATION 12 (May 2021). The practice of registering children under "false names" has also been noted as being detrimental for purposes of allowing "biological connections from being known and have an impact on the ability of children to establish his/her identity, know their origins and acquire nationality by descent." *Id.* at 15.

or disappeared, or (3) the rape occurred in Egypt.⁴⁵⁰ Another barrier is lack of required documentation, including evidence of rape, such as a police record.⁴⁵¹ If registered, the name adopted in rape cases will likely be the mother's father.⁴⁵² Advocates note the need for procedures to facilitate birth registration for children in such circumstances, including registering children even if the alleged father denies paternity, and allowing only the mother to be the identifying parent of the child.⁴⁵³

Although the law gives women the right to pursue paternity proceedings, it does not require that men take a DNA test, which experts highlight is a major impediment to a child's right to legal identity.⁴⁵⁴ A judge in paternity cases must deliver a verdict based on documentary evidence and the testimonies of witnesses corroborating the existence of the relationship. Due in part to the backlog of cases, paternity litigation often takes several years, and it has been reported that the majority of paternity suits do not succeed.⁴⁵⁵ In 2015, President al-Sisi issued a decree that expanded the term 'orphan' to include children with unproven paternity, granting them greater access to services, and allowing the mother to issue a temporary birth certificate using the name of the father she identifies.⁴⁵⁶ However, the fact that it can take years to settle paternity disputes conflicts with Egypt's legal obligations to provide a child the right to his or her personal identity without unnecessary delay.⁴⁵⁷

4. Marriage Registration

The requirement of a valid marriage certificate for purposes of birth registration acts as a major barrier to achieving civil registration for many in Egypt, and is the beginning point of various forms of discrimination. While the law allows other forms of proof of the relationship, in practice, a marriage certificate is required.⁴⁵⁸ If a woman does not have a marriage certificate,

⁴⁵⁰ Mohamed Farahat, *Children of rape of refugee women, and statelessness, in Egypt*, 55 FORCED MIGRATION REV. 79, 79 (June 2017).

⁴⁵¹ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 32-33 (outlining the procedure for birth registration in cases where the pregnancy was the result of sexual assault).

⁴⁵² Remote Interview with Ashraf Ruxi, *supra* note 428.

⁴⁵³ Mohamed Farahat, *Children of rape of refugee women, and statelessness, in Egypt*, 55 FORCED MIGRATION REV. 79, 79 (June 2017).

⁴⁵⁴ Hossam Rabie, *Egyptian mothers battling to establish paternity – and rights – for their children*, EQUAL TIMES (Sept. 21, 2018). See CRC, *supra* note 292, at arts.7 and 8. Ayman Shabana, *Islamic Law of Paternity Between Classical Legal Texts and Modern Contexts: From Physiognomy to DNA Analysis*, J. ISLAMIC STUD., 1 (2014) (outlining and analyzing different positions of Muslim jurists on the use of DNA testing for paternity verification).

⁴⁵⁵ Hossam Rabie, *Egyptian mothers battling to establish paternity – and rights – for their children*, EQUAL TIMES (Sept. 21, 2018); see also '20 Years to Prove He Was My Child's Father': *Paternity Disputes in Egypt Destroy Lives*, EGYPTIAN STREETS (Dec. 3, 2015).

⁴⁵⁶ *Court ruling obliges authorities to register children from customary marriages*, MADA MASR (Apr. 24, 2017).

⁴⁵⁷ See CRC, *supra* note 292, at arts.7 and 8.

⁴⁵⁸ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 36-37; see also MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 19;

she must seek legal assistance.⁴⁵⁹ Children who are born to parents in unrecognized marriages will be considered non-marital children. Fathers in such cases cannot establish the relationship to their children for purposes of conveying nationality, and the parents cannot register their children's births. Discrimination on the basis of birth status conflicts with Egypt's obligations under Article 7 of the CRC. When a child born outside marriage is registered to a single parent, he faces other issues, for example, with regard to inheritance.⁴⁶⁰

Even if the marriage is considered valid by the state, access to marriage-related documentation can itself be a barrier, especially for refugees and migrants.⁴⁶¹ The process to obtain a marriage certificate can be onerous for marginalized groups who lack valid identification documents and, in the case of refugees and migrants, valid residency permits, both of which are key requirements. Refugees and migrants must also obtain a statement from their respective embassies and submit it to one of the Egyptian Ministry of Foreign Affairs' authentication offices; for many, this is an insurmountable obstacle.⁴⁶²

In the case of informal '*urfi* marriages, the registrant would need the father's presence, or a copy of the father's ID and the relevant certifications.⁴⁶³ If the father contests, then it becomes a paternity case.⁴⁶⁴ A recent 2015 Cairo Court of Administrative Justice case held that the Civil Status Bureau could not refuse to register a child resulting from a customary '*urfi* marriage between an Egyptian woman and Palestinian man.⁴⁶⁵ The Court ruled that for purposes of safeguarding the rights of children, formal documentation is not a necessary element for the legality of marriage, and that a marriage has religious legitimacy if it is declared voluntarily and publicly.⁴⁶⁶ Whereas "formal documentation is a prerequisite for marital lawsuits . . . its effects do not extend to a child's right to register his or her nationality."⁴⁶⁷ One source suggests that had the right to nationality been based on a law, as opposed to a constitutional right, the court may have ruled in favor of the Government.⁴⁶⁸ In 2017, an Administrative Court ruling compelled the Civil Status Bureau to register children who are not born of official-recognized marriages, although whether this ruling is being uniformly implemented is unknown.⁴⁶⁹

⁴⁵⁹ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 36-37.

⁴⁶⁰ Remote Interview with Mona Oraby, *supra* note 181.

⁴⁶¹ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 29-30.

⁴⁶² *Id.* at 35.

⁴⁶³ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁴⁶⁴ *Id.*

⁴⁶⁵ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37. In cases where the '*urfi* marriage is contested, mothers would have to pursue a paternity claim as outlined above. Some note that the majority of paternity claims are based on '*urfi* marriages. Omnia Talal, *Living without a name: Paternity disputes in Egypt ruin thousands of lives*, NESKHAT EL-ARABIYET (Jan. 12, 2015).

⁴⁶⁶ *Id.*

⁴⁶⁷ Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

⁴⁶⁸ *Id.*

⁴⁶⁹ *Court ruling obliges authorities to register children from customary marriages*, MADA MASR (Apr. 24, 2017).

B. Gaps in Protections for Particular Egyptian National Populations

Among populations at risk of statelessness are Egyptian nationals, considered ‘undocumented nationals’ or ‘evidentiary stateless,’ that is to say, persons who are effectively denied the ability to fully document their legal claim to nationality due to administrative gaps and practices of the Egyptian Government.⁴⁷⁰ Some may be in this position because of “documentary challenges that arise from state neglect,” while others may be unable to substantiate a claim to citizenship due to “active discrimination against given individuals and groups.”⁴⁷¹

1. Vulnerable Children at Risk of Statelessness

The following groups of children are vulnerable to being undocumented nationals in Egypt.⁴⁷² While migrants and refugees also fall into these categories, this discussion focuses on children of Egyptian nationals. Estimates on the numbers of children for each category are unreliable, and the methods of obtaining the estimates that are available are difficult to verify.

- ***Non-marital children*** (sometimes termed ‘children out of wedlock’) in Egypt often face social stigma, given the perceived negative implication of ‘illegitimacy,’ which affects the ability of mothers to register their children.⁴⁷³ Although the law allows for single mothers to register their children,⁴⁷⁴ one lawyer noted that in practice a single mother in Egypt would likely not register her child due to social stigma.⁴⁷⁵
- ***Children born to parents with ‘urfi’ (informal customary Muslim) marriages*** face obstacles to birth registration.⁴⁷⁶ ‘Urfi marriages became more widespread in recent

⁴⁷⁰ See HUNTER, UNDOCUMENTED NATIONALS, *supra* note 13, at 5.

⁴⁷¹ *Id.* at 8-9.

⁴⁷² Each category is not necessarily mutually exclusive, and there can be significant overlap in categories (especially depending on how ‘street children’ or ‘abandoned children’ are defined). For example, some sources indicate that large segments of ‘abandoned children/foundlings’ are children born out of wedlock. See, e.g., FACE FOR CHILDREN IN NEED, ADOPTION (KAFALA) IN EGYPT HANDBOOK 3 (2020); Jacqueline Gibbons, *Orphanages in Egypt*, J. OF ASIAN AND AFR. STUD. 40 (2005).

⁴⁷³ Remote Interview with Ashraf Ruxi, *supra* note 428. See also *Egypt – Legal Identity*, CONSORTIUM FOR STREET CHILDREN, <https://www.streetchildren.org/legal-atlas/map/egypt/legal-identity/can-a-child-obtain-retroactive-or-replacement-birth-registration-documents/> (last visited Nov. 3, 2021).

⁴⁷⁴ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 25-26

⁴⁷⁵ See Remote Interview with Ashraf Ruxi, *supra* note 428.

⁴⁷⁶ See AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 303, n.213. An “‘Urfi’ marriage refers to an “informal [Muslim] marriage contract between a man and a woman, signed in the presence of two witnesses, but not further publicized nor officially registered with the authorities.” *Id.* Egyptian law does not prohibit unregistered or customary marriages (‘urfi) but grants them a status that is inferior to that of officially registered marriages.” Among other things, ‘urfi marriages “deprive children born in such marriages from accessing certain rights due to lack of official documentation such as birth certificates.” *Egypt – Overview Table*, MUSAWAH (May 31, 2017).

decades due in part to the high costs of marriage.⁴⁷⁷ In 2007, it was reported that there were three million *'urfi* marriages registered with the notary public, yet an official indicated that there could be three times that number.⁴⁷⁸ In 2018, CAPMAS indicated that the number of legally ratified *'urfi* marriage contracts increased to 88,000 during 2014, approximately 9% of unions, but that the total number of other *'urfi* marriage contracts is unknown.⁴⁷⁹ In cases where the father does not recognize the child or the *'urfi* marriage, the obstacles to becoming documented are especially burdensome.⁴⁸⁰ While there are no official statistics regarding how many paternity lawsuits are filed, one source estimated there to be about 14,000 cases,⁴⁸¹ a majority of which are reported to involve customary marriages.⁴⁸² A 2006 news report notes that activists assert that the number is closer to one million.⁴⁸³

- ***Children born to parents who are married before the legal age of 18*** are also at risk of not being registered. The Egyptian Child Law of 2008 provides for a minimum age of 18 for both males and females to marry, but child marriage practices have persisted. In 2017 it was noted that “nearly 1 in every 20 girls (4%) between age 15 to 17 and 1 in every 10 (11%) adolescent girls 15-19 years are either currently married or were married before, with large differentials between the rural and urban residence.”⁴⁸⁴ Many girls are married “without registering or reporting their marriages, or registering their children born out of these marriages.”⁴⁸⁵ Instead, couples might resort to an *'urfi* marriage and the children

⁴⁷⁷ *Egypt court rules children from customary marriages to foreigners be granted Egyptian citizenship*, AHRAM ONLINE (Sept. 11, 2017); *see also* Jill Carroll & Ahmed Maher, *Young Egyptian couples in a hurry tie temporary knot*, CHRISTIAN SCIENCE MONITOR (Sept. 20, 2007).

⁴⁷⁸ Jill Carroll & Ahmed Maher, *Young Egyptian couples in a hurry tie temporary knot*, CHRISTIAN SCIENCE MONITOR (Sept. 20, 2007). Mona Abaza, *Perceptions of 'urfi Marriage in the Egyptian Press*, ISIM NEWSLETTER (July 2001) (noting statistics on *'urfi* marriages among university students are unreliable—while the Minister of Social Affairs stated that *'urfi* marriage concerns 17% of Egyptian university students, al-Wafd newspaper estimates 70%). One attorney noted that any marriage contract, since it includes particular phrases detailing the acceptance of a marriage, can be official if notarized by a court. In addition, if the wife in an *'urfi* marriage sues the husband, it is also possible to request the authenticity of the husband’s signature on the *'urfi* contract; once it is determined the husband did in fact sign the contract then the court is able to provide an official court stamp on the contract, thus formalizing and legalizing the marriage. E-mail from Ashraf Ruxi, Asylum Lawyer, to Christopher Creech and Susan Akram, IHRC (Jan. 28, 2022) (on file with author).

⁴⁷⁹ *See Controversy over new proposed law to criminalize 'urfi marriage*, EGYPT TODAY (Aug. 21, 2018); *see also* Hossam Rabie, *Egyptian mothers battling to establish paternity – and rights – for their children*, EQUAL TIMES (Sept. 21, 2018).

⁴⁸⁰ Mai Shams El-Din, *Proving paternity: A prolonged struggle for thousands of Egyptian mothers*, MADA MASR (Mar. 15, 2017).

⁴⁸¹ *Id.*; *see also* Yolande Knell, *The perils of young Egyptians' secret marriages*, BBC NEWS (Jan. 19, 2010).

⁴⁸² *Id.*

⁴⁸³ *Landmark paternity case highlights dangers of 'urfi marriage*, THE NEW HUMANITARIAN (June 2006).

⁴⁸⁴ NAT’L COUNCIL FOR CHILDHOOD AND MOTHERHOOD CHILD RIGHTS OBSERVATORY, POLICY FOR ACTION: ENDING CHILD MARRIAGE 1 (June 2018).

⁴⁸⁵ *Id.* *See also* REEM BASSEM, ET AL., THE AMER. UNIV. IN CAIRO, CURBING CHILD MARRIAGE IN EGYPT 2 (2018). In 2008, Egypt raised the legal age of marriage for females to 18. Comm. on the Elimination of Discrimination against Women, Combined eighth to tenth periodic reports submitted by Egypt under article 18 of the Convention, due in 2014, ¶ 18 CEDAW/C/EGY/8-10 (Apr. 22, 2020).

born during that time will not be issued birth certificates until the marriage is legalized.⁴⁸⁶ While the number of child marriages has been declining, child marriages are still prevalent in Egypt, especially in rural areas.⁴⁸⁷ The Egyptian Ministry of Health and Population states that 500,000 children are born annually to adolescent mothers, while the National Council for Childhood and Motherhood (NCCM) estimates that 250,000 children annually are born as a result of child marriages.⁴⁸⁸

- **Children born of rape** are also vulnerable to being undocumented.⁴⁸⁹ Although specifically referring to refugees, one Egyptian lawyer noted that registration of children born from rape is one of the hardest matters facing victims regardless of whether the assault was committed inside or outside of Egypt.⁴⁹⁰ Statistics on sexual assault in Egypt are highly unreliable for multiple reasons, including significant social stigma inhibiting reporting.⁴⁹¹ In 2006, the Egyptian Ministry of Interior noted that 20,000 women and girls were raped each year, but the Egyptian Center for Women’s Rights indicated at the time that this figure should likely be multiplied by ten since victims/survivors are reluctant to report cases due to social stigma.⁴⁹² While in 2020 the Egyptian Parliament approved government-sponsored amendments to ensure anonymity and protect identities of victims in sexual assault cases,⁴⁹³ the authorities’ potentially hostile and abusive treatment of victims/survivors, including possible virginity testing, hinders victims’ reporting of sexual assault.⁴⁹⁴

⁴⁸⁶ Tarek Abd El-Galil, *Economic Hardship Drives Child Marriage*, AL-FANAR MEDIA (May 18, 2015) (‘sunnah marriage’ is the same as a marriage by ‘urfi marriage’).

⁴⁸⁷ Chata Malé and Quentin Wodon, *Basic Profile of Child Marriage in Egypt*, WORLD BANK GROUP 1-3 (Mar. 2016).

⁴⁸⁸ Lolwa Reda, *11% of girls aged 15-19 are married: Health Min.*, EGYPT TODAY (July 5, 2018). The Egyptian Ministry of Health and Population states that 500,000 children are born every year to underage mothers. Marwan Menaway, *Despite child marriage being illegal in Egypt, it is still all too common*, ARAB NEWS (Feb. 23, 2018) (the 2017 census indicates that one in 20 girls ages 15 to 17 years are currently married or were married, amounting to 118,904 girls under 18 when they wed).

⁴⁸⁹ Remote Interview with Ashraf Ruxi, *supra* note 428. Mohamed Farahat, *Children of rape of refugee women, and statelessness, in Egypt*, 55 FORCED MIGRATION REV. 79, 79 (June 2017).

⁴⁹⁰ Mohamed Farahat, *Children of rape of refugee women, and statelessness, in Egypt*, 55 FORCED MIGRATION REV. 79, 79 (June 2017).

⁴⁹¹ Azza El-Ellemi, Sahar Moustafa, and Abeer Hagra, *Reported cases of female sexual assault over 5 years period in Suez Canal area, Egypt: Demographic study*, EGYPTIAN J. OF FORENSIC SCIENCES 118, 118-23 (2011) (detailing lack of reliable statistical data as well as lack of reporting by victims).

⁴⁹² *Egypt: Are attitudes towards rape beginning to change?*, IRIN (Feb. 18, 2006).

⁴⁹³ Menna Farouk, *Egypt approves law to protect identities of women reporting sex abuse*, REUTERS (Aug. 16, 2020).

⁴⁹⁴ See HRW, Submission to the Committee on the Elimination of Discrimination against Women, Review of the Arab Republic of Egypt’s periodic report for the 79th Pre-Session, (Oct. 13, 2020); see also Mona El-Naggar, Yousu Al-Hlou, and Aliza Aufrichtig, *When a Search Crosses a Line*, NY TIMES (July 5, 2021) (detailing cases of sexual abuse by Egyptian authorities when individuals report a crime to the police).

- **Street Children** are also at risk of not being registered based on fear of social stigma, as well as the increased difficulties in delayed birth registration.⁴⁹⁵ While definitions vary, researchers and NGOs consider “street children” to be “minors who spend most of their time on the street without protection or guidance,” and “with generally little or no contact with their families.”⁴⁹⁶ There are no official statistics or reliable data on the number of street children in Egypt. Differing definitions, as well as challenges in conducting surveys, affect the estimated numbers of such children. The Government estimates there are 16,000 “street children,” while other sources’ estimates are significantly higher, from 200,000 to the millions.⁴⁹⁷ Street children tend to live in the large urban areas of Port Said, Cairo City, Suez, and Alexandria.⁴⁹⁸
- **Abandoned children/foundlings** are also vulnerable to being unregistered.⁴⁹⁹ Birth registration often depends on the type of care or institution the children are in—with one lawyer noting it is likely that a majority of abandoned/foundling children are not registered.⁵⁰⁰ A recent report notes that while in some cases the child will have been abandoned by parents, in other cases, one parent will have abandoned the family and the other will have died before applying for the child’s birth certificate.⁵⁰¹ Some sources indicate that most “orphaned” children in Egypt are believed to be children born out of

⁴⁹⁵ See AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 40. See also *Egypt – Legal Identity*, CONSORTIUM FOR STREET CHILDREN, *supra* note 473 (“children in street situations that are estranged from their parents and lacking identification documentation will be unable to obtain any retroactive or replacement birth certificate”). Reem ElMenshawey, The role of non-governmental organizations in addressing street children in Egypt 61 (2015) (M.A. thesis, American University in Cairo); HUNTER, UNDOCUMENTED NATIONALS, *supra* note 13, at 13.

⁴⁹⁶ See Faisal Hegazy et al., *Egypt: Street children and substance abuse*, UNODC, <https://www.unodc.org/newsletter/en/perspectives/0601/page006.html> (last visited July 7, 2021). See also LORENZO GUARCELLO AND NIHAN KOSELECI, A PROFILE OF CAIRO STREET CHILDREN 8 (Nov. 2009) (“In this report, ‘street children’ is a term used to describe both children who work in the streets and markets of cities, selling or begging, and live with their families and homeless street children who work, live and sleep in the streets, often lacking any contact with their families. At highest risk is the latter group.”).

⁴⁹⁷ See Mahmoud Mostafa, *Ministry estimate of 20,000 street children in Egypt ‘far from reality’: NGO*, DAILY NEWS EGYPT (Jan. 20, 2015) (“UNICEF estimated in 2005 that there are around one million children who spend most of their lives on the streets” whereas government found there to be 20,000); Amro Hassan, *EGYPT: 3 million children live on the streets, study says*, LA TIMES BLOG (Aug. 11, 2011) (2011 survey estimated there to be 3 million children living on the streets of Egypt). *But see* Reem ElMenshawey, The role of non-governmental organizations in addressing street children in Egypt 41, 61 (2015) (M.A. thesis, American University in Cairo) (critiquing the high estimates provided by some NGOs as inaccurate, and noting the lack of clear government statistics to correct this).

⁴⁹⁸ Magda A. Mohamed et al, *Causes and Consequences of Street Life on Homeless Children: Choice or Compulsion?*, 86 MED. J. CAIRO UNIV., 1345, 1345-46 (2018).

⁴⁹⁹ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁵⁰⁰ *Id.* See generally Jacqueline Gibbons, *Orphanages in Egypt*, J. ASIAN & AFR. STUD. 40 (2005).

⁵⁰¹ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 40-41.

wedlock.⁵⁰² SOS Children’s Villages International estimates there to be 1.7 million “orphaned” children in Egypt, with one orphanage representative asserting the number to be 3 to 5 million.⁵⁰³ A recent official number of children registered inside orphanages is 12,500,⁵⁰⁴ with 10,000 children in alternative care families.⁵⁰⁵ Egypt has more than 500 institutional care homes,⁵⁰⁶ most of which are private NGOs registered under the supervision of the Ministry of Social Solidarity.⁵⁰⁷ In addition, while adoption is largely not recognized or limited, there is a *kafala* system by which children are placed in a form of foster-care.⁵⁰⁸ This “Alternative Family” program under the Ministry of Social Solidarity recognizes permanent legal guardianship if certain requirements are met.⁵⁰⁹

In 2012 it was noted that “around 20 per cent of births [in slums or unplanned areas] . . . occur at home and only a small minority . . . is attended by skilled health personnel.”⁵¹⁰ At-home births among low-income populations can make it significantly more difficult to secure a birth certificate within the fifteen-day period.

With respect to children in street situations, the Child Law is silent on whether a child can independently obtain a retroactive or replacement birth certificate, with only the child’s father or mother, directors of hospital/house where the birth occurred, or the *Umda/sheikh* being permitted to register the birth of a child.⁵¹¹ Street children who are estranged from their parents and/or lack identification documentation will likely be unable to obtain any retroactive or replacement birth certificate.⁵¹² For some, access to registration is onerous despite the best efforts on the part of NGOs to register a child.⁵¹³ Similarly, representatives from the Ministry of

⁵⁰² See, e.g., FACE FOR CHILDREN IN NEED, ADOPTION (KAFALA) IN EGYPT HANDBOOK 3 (2020) (noting also there are 12,500 registered orphanages in Egypt); Amira Abdel-Aziz, *Assessment of the Alternative Families System in Egypt*, *supra* note 438, at 50-63.

⁵⁰³ *General Information on Egypt*, SOS CHILDREN’S VILLAGES, <https://www.sos-childrensvillages.org/where-we-help/africa/egypt> (last visited Nov. 14, 2021). See also Sarah El-Rashihi, *Egyptian orphans still suffering on their National Day*, AHARAM ONLINE (Apr. 5, 2013) (noting UNICEF and SOS estimated there to be 1.7 million orphans in Egypt in 2009).

⁵⁰⁴ FACE FOR CHILDREN IN NEED, ADOPTION (KAFALA) IN EGYPT HANDBOOK 3 (2020). For statistics on orphans provided by Egyptian Government, see CAPMAS AND UNICEF, CHILDREN IN EGYPT 2016, A STATISTICAL DIGEST 206-208 (2017).

⁵⁰⁵ Amira Abdel-Aziz, *Assessment of the Alternative Families System in Egypt*, *supra* note 438, at 52.

⁵⁰⁶ *Id.* See also Ashraf Khalil, *Egypt’s Orphans Struggle Long After Childhood Ends*, TIME (Aug. 26, 2014) (noting there are around 450 orphanages).

⁵⁰⁷ *Id.*

⁵⁰⁸ Hamido A Megahead, *Non-kinship family foster care in Egypt*, 4 ADOPTION & FOSTERING 391 (2017); Ashraf Khalil, *Egypt’s Orphans Struggle Long After Childhood Ends*, TIME (Aug. 26, 2014). See generally Usang Assim and Julia Sloth-Nielsen, *Islamic kafalah as an alternative care option for children deprived of a family environment*, 14 AFR. HUM. RTS. L. J. 322 (2014).

⁵⁰⁹ U.S. DEP’T OF STATE, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: EGYPT, *supra* note 173.

⁵¹⁰ MULTIDIMENSIONAL CHILD POVERTY IN SLUMS AND UNPLANNED AREAS IN EGYPT, UNICEF EGYPT & INFORMAL SETTLEMENTS DEVELOPMENT FACILITY 40 (Oct. 2013)

⁵¹¹ *Egypt – Legal Identity*, CONSORTIUM FOR STREET CHILDREN, *supra* note 473.

⁵¹² *Id.*

⁵¹³ *Undocumented Citizens*, EGYPT TODAY (Sept. 13, 2013).

Social Solidarity report challenges in their attempts to collect official documents such as birth certificates without which the children are unable to seek refuge in shelters.⁵¹⁴ It has also been noted that many if not most street children are undocumented as they come from second- or third-generation homeless families.⁵¹⁵ Without documentation, in addition to shelter, they are not able to access government services such as education, vocational training, or medical care.⁵¹⁶

Abandoned children/foundlings are also particularly at risk of not being registered.⁵¹⁷ While those administering alternative care options for children deprived of a family – including *kafalah* and institutional options – have a responsibility to facilitate registration for children in their care, sources note problems in this system.⁵¹⁸ Many care homes, especially those organizations which are smaller or less well known, are not aware of the requirements for registration and/or lack capacity to handle the process. One lawyer noted that while statistics are not available, he estimated that less than half of all children in alternative care are registered.⁵¹⁹ In contrast, a recent study indicated a correlation between single mothers not being able to register their children and children being abandoned. The study asserts that inability of unmarried mothers to “officially register and thus provide care for their child, despite the legislative framework that enables them to do so” was a root cause of abandonment.⁵²⁰ The study noted that the legal entitlement of single mothers to register their children is “neither widespread nor accepted by the relevant governmental officials, such as civil register employees,” suggesting “the need to communicate this article across related governmental entities and NGOs that work in the field of child care and women’s rights.”⁵²¹

In the past, official documentation apparently included the designation ‘orphan’ on the birth registration for orphan children, which news sources claimed exposed them to marginalization and lifelong discrimination. In 2012, however, the law changed, and children are no longer identified as orphans on national IDs.⁵²² Due to the significant stigma attached to the status of orphans, this was a much-needed reform.⁵²³

⁵¹⁴ *Lawmaker's proposal to place street children in camps stirs controversy*, AL-MONITOR (Feb. 2021); see also Magda A. Mohamed et al., *Causes and Consequences of Street Life on Homeless Children: Choice or Compulsion?* 86 MED. J. CAIRO UNIV. 1345-1355 (June 2018).

⁵¹⁵ *Lawmaker's proposal to place street children in camps stirs controversy*, AL-MONITOR (Feb. 2021); Jeffrey Fleishman, *A child of Cairo's streets, with a child of her own*, LA TIMES (Feb. 17, 2009).

⁵¹⁶ Magda A. Mohamed et al., *Causes and Consequences of Street Life on Homeless Children: Choice or Compulsion?* 86 MED. J. CAIRO UNIV. 1345-1346 (June 2018).

⁵¹⁷ *Lawmaker's proposal to place street children in camps stirs controversy*, AL-MONITOR (Feb. 2021).

⁵¹⁸ See, e.g., Remote Interview with Ashraf Ruxi, *supra* note 428. Amira Abdel-Aziz, *Assessment of the Alternative Families System in Egypt*, *supra* note 438, at 50-56 (providing an overview of the different types of care offered to abandoned children/foundlings in Egypt).

⁵¹⁹ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁵²⁰ Amira Abdel-Aziz, *Assessment of the Alternative Families System in Egypt*, *supra* note 438, at 62.

⁵²¹ *Id.*

⁵²² Ashraf Khalil, *Egypt's Orphans Struggle Long After Childhood Ends*, TIME (Aug. 26, 2014).

⁵²³ *Id.*

2. Unrecognized Religious Groups in Egypt—the Baha’i

As previously stated, the Egyptian Constitution and Government recognize three Abrahamic religions – Islam, Judaism, and Christianity.⁵²⁴ While Article 2 of the Egyptian Constitution declares Islam the religion of the state, with a provision declaring that Islamic *shari’a* principles are the chief source of all state legislation applicable to citizens, Article 3 specifies which issues are to be governed by the principles of Christianity and Judaism.⁵²⁵ It states that the principles of confessional laws for Christians and Jews are the chief source of legislation regulating their personal status, religious affairs, and their choice of religious authorities.⁵²⁶ Whereas prior Constitutions had declared Islam as the state religion (with the exception of the Constitution of 1958), the constitutional commitment to Judaism and Christianity and to the concept of “divinely revealed religions” first appeared in the Constitutions of 2012 and 2014, but had long been established in Egyptian law and practice.⁵²⁷

Recognition of religion by the state is important under Egyptian law for purposes of obtaining a national ID card, a marriage certificate (a requirement for a birth certificate), as well as the right to litigate in personal status matters.⁵²⁸ Since 1955, each confession determines its own family laws under the jurisdiction of the Egyptian National Courts.⁵²⁹ In practice, three Christian communities (Orthodox, Catholic, and Protestant) and two Jewish communities (the Karaites and Rabbanites) command their own family law in Egypt.⁵³⁰ In assigning or recording religious identity for identification documents, the Government only recognizes the Abrahamic

⁵²⁴ CONSTITUTION OF EGYPT, *supra* note 4, preamble. See Abdelsalam, *The Arab Republic of Egypt: Introductory Note*, *supra* note 37.

⁵²⁵ See Clark B. Lombardi, *Constitutional Provisions Making Sharia “A” or “The” Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?*, 28 AM. U. INT’L L. REV. 733, 755 (2013). Clark Lombardi and Nathan Brown, *Do Constitutions Requiring Adherence to Shari’a Threaten Human Rights? How Egypt’s Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law*, 21 AM. U. INT’L L. REV. 379 (2006).

⁵²⁶ CONSTITUTION OF EGYPT, *supra* note 4, at arts. 2-3. In addition, the Egyptian Constitution provides that “freedom of belief is absolute” and “the freedom of practicing religious rituals and establishing worship places for the followers of Abrahamic religions is a right regulated by law.” The Constitution prohibits discrimination on the basis of religion, makes “incitement to hate” a crime, and prohibits political activity or the formation of political parties on the basis of religion. CONSTITUTION OF EGYPT, *supra* note 4, at art. 53.

⁵²⁷ Rachel Scott, *Citizenship, Public Order, and State Sovereignty: Article 3 of the Egyptian Constitution and the “Divinely Revealed Religions,”* in THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD 375, 388 (2017).

⁵²⁸ Remote Interview with Mona Oraby, *supra* note 181; see also EGYPTIAN INITIATIVE FOR PERSONAL RTS., IDENTITY PAPERS, MARRIAGES, AND BURIALS: THE FUNDAMENTAL RIGHTS ABSENT FOR THOSE OF UNRECOGNIZED RELIGIONS IN EGYPT (2018) [hereinafter EIPR, IDENTITY PAPERS, MARRIAGES, AND BURIALS].

⁵²⁹ See Sebastian Elsässer, *The Coptic divorce struggle in contemporary Egypt*, 66 SOC. COMPASS 333, 335-36 (2019) (“Law 462/1955 was the culmination of a process of ‘nationalisation’ that started in the 1920s, and by which the Personal Status issues of non-Muslims, such as divorce, maintenance, and inheritance were gradually removed from the jurisdiction of clerical and communal courts and transferred to state courts. However, one major prerogative remained in the hands of the clergy: the right to conclude and register marriage contracts.”).

⁵³⁰ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 115 n.15. The Christian sects comprise multiple denominations, each with its own family law. Because personal status issues are informed by religious rather than civil law, the lack of recognition also impacts the laws which govern family law related issues, including marriage, divorce practices, and family relationships. There is no civil marriage in Egypt. *Id.*

traditions as religions. While Egypt's minority Muslims (e.g., Shi'a), and minority Christians (e.g., Protestant) have no issue listing themselves as Muslim or Christian, adherents outside Islam, Christianity, and Judaism, do, in particular the Baha'i.⁵³¹

One expert noted that while Baha'i are small in number, because they do not affiliate as Muslim, Christian, or Jewish, their status is "crucial for thinking about [the problem of] religious discrimination in Egypt . . . [that goes beyond] religious arguments to the issue of citizenship equality."⁵³² The legal status of Baha'i in Egypt is "extremely complex."⁵³³ Some Baha'i in Egypt suffer from undocumented nationality since their religion is not recognized. Because religion is a required designation on Egyptian identification documents, they face discrimination in obtaining IDs and vital documents such as marriage and death certificates.⁵³⁴

The Baha'i have resided in Egypt since the 1860s when a small number arrived from Persia due in part to religious persecution there.⁵³⁵ The Baha'i religion originated in Iran as a messianic movement within Shi'a Islam in the late nineteenth century before eventually becoming a separate religion. The founder, Bahá'u'lláh, declared himself to be a prophet and laid out the religion's core principles in the Baha'i Holy Book (Kitáb-i-Aqdas).⁵³⁶ The Holy Book, composed in Arabic, was influenced by a variety of faiths (including Islam, Judaism, Christianity, Zoroastrianism, and Buddhism) and contains laws of worship and social relations, family law, and an administrative structure for adherents to the faith.⁵³⁷ The center of the Baha'i faith is in Haifa, Israel, in part because the Baha'i prophet-founder had been banished and later

⁵³¹ EIPR AND HRW, PROHIBITED IDENTITIES STATE INTERFERENCE WITH RELIGIOUS FREEDOM 1-2 (2007) [hereinafter EIPR AND HRW, STATE INTERFERENCE WITH RELIGIOUS FREEDOM]. Despite lack of legal recognition (and discrimination against) other religious groups in Egypt, for example, Shi'a and Jehovah's Witnesses, do not face the same documentation issues as Baha'i because they identify themselves as Muslim and Christian, respectively; *Id.* at 18 n.17; see also Remote Interview with Ashraf Ruxi, *supra* note 428 (noting Shi'a have access to documentation).

⁵³² SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 149-50 ("Baha'is constitute less than 1% of the population, but their conflicted civil and political status is exemplary of the difficulties involved in negotiating between the secular civil-law tradition that informs most of Egyptian law and the Islamic concepts and practices that permeate the state's various legal and administrative bodies."). Sources suggest that no other religious group in Egypt face the same legal conundrums due to unrecognized status. See Sabah Mahmood and Peter Danchin, *Immunity or Regulation?: Antinomies of Religious Freedom*, 113 S. ATLANTIC Q. 129, 142 (2014) [hereinafter Mahmood and Danchin, *Antinomies of Religious Freedom*].

⁵³³ Rachel Scott, *Citizenship, Public Order, and State Sovereignty: Article 3 of the Egyptian Constitution and the "Divinely Revealed Religions,"* in THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD 382 (2017).

⁵³⁴ EIPR, IDENTITY PAPERS, MARRIAGES, AND BURIALS, *supra* note 528. Remote Interview with Mona Oraby, *supra* note 181.

⁵³⁵ Mahmood and Danchin, *Antinomies of Religious Freedom*, *supra* note 532, at 131-132.

⁵³⁶ See generally OLIVER SCHARBRODT, ISLAM AND THE BAHÁ'Í FAITH (2011).

⁵³⁷ See SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 151-52 ("[T]he Bahai faith is of relatively recent origin. It drew its inspiration from the nineteenth-century millenarian Babi movement that expanded its scope under the leadership of Mirza Husayn Ali Nuri (1817-92), known as Baha'ullah, to incorporate teachings from a variety of faiths, including Islam, Judaism, Christianity, Zoroastrianism, and Buddhism."); Mahmood and Danchin, *Antinomies of Religious Freedom*, *supra* note 532, at 131-132.

lived in Acre, Palestine during Ottoman rule.⁵³⁸ Current estimates range from 2,000 to over 7,000 Baha'is in Egypt, and six to seven million adherents worldwide.⁵³⁹

While earlier in the 20th century, Baha'i of Egypt had greater freedom to associate and practice their religion publicly, by the 1950s, the Egyptian Government moved to increase its power over "religious and other forms of identity."⁵⁴⁰ In the early 1900s, Baha'is were able to establish a Local Spiritual Assembly and a National Assembly, and a publishing house. Egyptian Baha'i even petitioned the Government in the 1920s to be recognized as an official religion with its own family law.⁵⁴¹ In the 1930s, it was common for Baha'i to register themselves as Baha'i in government documents, and in 1952 the State Council held that it was the right of every Egyptian citizen "to adhere to the Baha'i faith or even to be an apostate," and the registration offices were required to examine all marriage contracts submitted to them, even if they were between Baha'i.⁵⁴² But by 1960, President Nasser had nationalized the religious courts and annulled the Baha'i legal privileges and, under Law No. 263 of 1960, criminalized their activities, resulting in the confiscation of Baha'i properties and closing of their temples.⁵⁴³ It has been noted that the 1960 law was largely due to Nasser's national security policy and increasing hostility towards Israel.⁵⁴⁴

Many court cases have been brought through the decades challenging Baha'is' legal status, including a 1975 Supreme Court case which upheld protections only for the "People of the Book." In 1977 the State Council ruled that the Baha'i faith was not recognized by Islamic *shari'a*, contradicts public order, and consequently "every Baha'i marriage is invalid, even if it involves two persons of non-Muslim descent."⁵⁴⁵ In 1983, however, the Supreme Administrative Court (SAC) ruled in favor of a Baha'i petitioner "who sued the Ministry of Interior for refusing to issue him a national identity card that listed his correct religion," in violation of Article 46 of

⁵³⁸ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 152. *Baha-Allah*, ENCYC. IRANICA (2011).

⁵³⁹ *See Egypt: Baha'i*, MINORITY RTS. GRP. INT'L, *supra* note 177 (estimating Baha'i in Egypt); *see also* Mahmood and Danchin, *Antinomies of Religious Freedom*, *supra* note 532, at 131-132 (estimating global population of Baha'i).

⁵⁴⁰ Rachel Scott, *Citizenship, Public Order, and State Sovereignty: Article 3 of the Egyptian Constitution and the "Divinely Revealed Religions,"* in THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD 375, 392 (2017).

⁵⁴¹ *Id.*

⁵⁴² *Id.* at 392 (citing Johanna Pink, *A Post-Qur'anic Religion between Apostasy and Public Order: Egyptian Muftis and Courts on the Legal Status of the Baha'i Faith*, 10 ISLAMIC L. AND SOC'Y 409, 422-423 (2003)).

⁵⁴³ *Id.* at 393.

⁵⁴⁴ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 152. Mahmood and Danchin, *Antinomies of Religious Freedom*, *supra* note 532, at 132 ("Given modern geopolitical tensions between Israel and most Middle Eastern states, the location of their headquarters in Haifa has often made Bahai's a national security threat in the eyes of these governments.").

⁵⁴⁵ Rachel Scott, *Citizenship, Public Order, and State Sovereignty: Article 3 of the Egyptian Constitution and the "Divinely Revealed Religions,"* in THE CRISIS OF CITIZENSHIP IN THE ARAB WORLD 375, 393 (2017). The Egyptian Government applies Islamic *shari'a* in matters relating to identification documents in various ways, and its application is often contested. For an analysis of varying Islamist discourse regarding the status of Baha'i and other non-Muslims in Islamic history and jurisprudence. *Id.* at 393-397; *see also* SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 149-167.

Egypt's 1971 Constitution, yet the SAC refused to recognize the public practice of "anything but recognized religions."⁵⁴⁶

By the mid-1990s, the issue concerning identification documents became more acute for the Baha'i when the Egyptian Civil Registry began to digitize the registration process, thus formalizing the requirement of Baha'i to affiliate themselves and their children with the recognized Abrahamic religions.⁵⁴⁷ Prior to computerization, local officials often would note 'Baha'i' on state documents, leave the religion field blank, or leave a dash instead. By 2004, this was no longer possible.⁵⁴⁸ Baha'is also previously had some flexibility in making arrangements or negotiating with local officials, but these channels were significantly limited with the turn to computerized registration.⁵⁴⁹ Many Baha'i who did not want to identify with another faith were unable to secure documentation, with some having their documentation confiscated.⁵⁵⁰ From 2003 through 2009, several administrative cases were brought that challenged discrimination faced by Egyptians who did not conform to the state's definition of religion.⁵⁵¹ Among these were cases brought by Baha'i community members seeking a resolution to the lack of administrative recognition, to be able to receive documentation of their citizenship.⁵⁵² Litigation challenging the Ministry of Interior and Civil Status Department claiming violation of Baha'i rights to religious liberty was met with partial success. In 2006, an administrative court ruled in favor of a Baha'i family concluding, among other things, that the fact that a religion is banned does not eliminate the adherents' political and civil status. The Court ordered the Ministry of Interior to issue family identity cards that state the family's religious affiliation as Baha'i.⁵⁵³ While this decision was overturned by the SAC, a subsequent 2008 decision by a lower Administrative Court of Justice decision permitted Baha'is to leave the religion space blank so as

⁵⁴⁶ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 156-57 (quoting the SAC decision "[t]he request to issue an identity card is not a prohibited activity; on the contrary, obtaining one is a duty under the law. The [appellant] cannot change what was written on his birth certificate about his parents' religion, lest it be considered forgery, which is a crime."). These cases were decided in the context of a significant wave of arrests and detainment of Baha'is in Egypt throughout the 1970s and 1980s. Remote Interview with Mona Oraby, *supra* note 181. Subsequent cases have demonstrated other areas where Egyptian authorities have been permitted by the court system to restrict Baha'i civil liberties. *See, e.g.*, EIPR, IGNORING THE DEAD – WHERE HAVE THE GRAVES OF 'THE FREE THINKERS' AND BELIEVERS OF UNRECOGNIZED RELIGIONS GONE? (Dec. 2021); *Court ruling says local authorities need not provide cemeteries for those not of 'the 3 faiths'*, MADA MASR (Dec. 30, 2021).

⁵⁴⁷ EIPR AND HRW, STATE INTERFERENCE WITH RELIGIOUS FREEDOM, *supra* note 531, at 1-2. It was noted that prior to the digitization of identification documents, when national identity documents were filled out by hand, Baha'i, for example, were sometimes able to get a local civil registry office to leave the religion line blank, or enter 'other.'" *Id.* at 3.

⁵⁴⁸ Mahmood and Danchin, *Antinomies of Religious Freedom*, *supra* note 532, at 134; *see also* Ministry of Interior Circular No. 49, 2004; Interview with Mona Oraby, *supra* note 181.

⁵⁴⁹ Remote Interview with Mona Oraby, *supra* note 181.

⁵⁵⁰ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 157-158.

⁵⁵¹ Remote Interview with Mona Oraby, *supra* note 181; *see also* Mona Oraby, *Authorizing Religious Conversion in Administrative Courts*, *supra* note 248, at 69-72 (2015).

⁵⁵² Mona Oraby, *Authorizing Religious Conversion in Administrative Courts*, *supra* note 248, at 69-72 (2015).

⁵⁵³ SABA MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *supra* note 56, at 157-158.

not to have to identify themselves *incorrectly* as Muslim or Christian.⁵⁵⁴ Thereafter, Egypt's Interior Ministry recognized the right of adherents of "non-recognized" religions to obtain necessary identification documents and to access basic services.⁵⁵⁵ As a consequence, Baha'is secured the right to an identification card, yet Baha'i personal status law and marriage continue to be unrecognized by the state.⁵⁵⁶

As an unrecognized religious group, the Baha'i population of Egypt has faced ongoing discrimination in documenting their status as Egyptian nationals, illustrating some of the barriers associated with Egypt's administrative regulations, and the implementation gaps that exacerbate statelessness. Despite clear and generally uncontested claims to Egyptian nationality under the Nationality Law, for decades Baha'is have encountered significant administrative hurdles or have been prohibited from securing nationality documentation, including Egyptian identification cards.⁵⁵⁷ For example, in 2006, HRW and EIPR noted that they were aware of three children born to Baha'i parents who lacked any birth records.⁵⁵⁸ Since the 2009 court decision that recognized the Baha'is' right to access Egyptian identification documents without affiliating with one of the three state-recognized religions (i.e., allowing them to mark a dash under the religion category for purposes of securing Egyptian ID cards), procedures have been established to allow them access to documentation.⁵⁵⁹ However, due to administrative laws, regulations, and a legacy of state practices, documentation of Baha'i citizenship is conferred on a case-by-case basis rather than in a uniform manner. In practice, Baha'is can fall between being *partially* documented to *completely* undocumented.⁵⁶⁰

Baha'i who are documented still face issues concerning the veracity of the information in their identification documents and the extent to which parentage limits possibilities for amending that information.⁵⁶¹ It is important to note the 2009 court decision benefits those Baha'is who had their previous IDs registered as 'Baha'i' or designated as 'other,' but does not address those who may have been previously documented as Christian or Muslim.⁵⁶² Accordingly, information reflected in civil registration documents in which Baha'is have been documented as Christian or Muslim based on documentation of relatives, can affect Baha'is' eligibility for marriage and who

⁵⁵⁴ *Id.* at 152-163 (discussing Supreme Administrative Court decision on case nos. 16834 and 18971 of the fifty-second judicial year, issued on December 16, 2006 and Administrative Court of Justice decision on case no. 18354 of the fifty-eighth judicial year, issued on January 29, 2008).

⁵⁵⁵ Ministry of the Interior, Ministerial Decree No. 520 of 2009 (Egypt); *Egypt: Decree Ends ID Bias Against Baha'is Halts Official Discrimination Against 'Non-Recognized' Religion*, HRW (Apr. 15, 2009).

⁵⁵⁶ Remote Interview with Mona Oraby, *supra* note 181.

⁵⁵⁷ *Egypt: Baha'i*, MINORITY RTS. GRP. INT'L, *supra* note 177. Remote Interview with Mona Oraby, *supra* note 181. Mona Oraby, *Authorizing Religious Conversion in Administrative Courts*, *supra* note 248, at 72 n.21.

⁵⁵⁸ EIPR AND HRW, STATE INTERFERENCE WITH RELIGIOUS FREEDOM, *supra* note 531, at 41.

⁵⁵⁹ Ministerial Decree No. 520 of 2009, *supra* note 555.

⁵⁶⁰ Remote Interview with Mona Oraby, *supra* note 181.

⁵⁶¹ *Id.*

⁵⁶² MINORITY RTS. GROUP INT'L, JUSTICE DENIED, PROMISES BROKEN: THE SITUATION OF EGYPT'S MINORITIES SINCE 2014 18 (2019) [hereinafter MRGI, THE SITUATION OF EGYPT'S MINORITIES SINCE 2014]; Remote Interview with Mona Oraby, *supra* note 181.

they may marry (since there are legal as well as social barriers to certain mixed marriages).⁵⁶³ In addition, only Baha'is who possess documented evidence that their relatives were previously identified by the state as Baha'i are most likely to have their contemporary ID cards marked with the dash (-) used as a proxy for Baha'i affiliation after 2009. This affects a small subset of the Baha'i today – primarily second or third generation individuals whose family had documents identifying them as 'Baha'i' or 'Other' and not identified as Muslim, Christian, or Jewish prior to the digitization process of the 1990s.⁵⁶⁴ Not having a legally valid marriage can deprive women of access to courts to resolve disputes involving divorce, maintenance and child custody, as well as denying them other rights of married couples such as inheritance and sponsorship of a foreign spouse.⁵⁶⁵

As discussed earlier, lack of a marriage certificate can lead to significant problems in accessing birth registration documents.⁵⁶⁶ Since the Baha'i faith is not recognized by the Egyptian Government, a Baha'i marriage certificate is not considered valid.⁵⁶⁷ Since a valid marriage certificate and declaration of the parents' religion is a prerequisite, it may be difficult or impossible to register the birth of a child.⁵⁶⁸ Because of this, some Baha'i parents are listed as single on a birth registration, as well as on their own ID cards, which causes problems in inheritance, among other things (a child cannot inherit from the father if the parents are not recognized as legally married).⁵⁶⁹ Registering a child born of two parents with documentation that has a blank or a dash in place of identifying their religion is generally not an issue. However, if one of the parents is not similarly identified, what religion the child will have on his or her documents becomes problematic.⁵⁷⁰ Lack of access to birth certificates has caused some Baha'i families to pursue their claims in court.⁵⁷¹ Those with resources are “able to file individual petitions for recognition of their marriages in civil court.”⁵⁷²

⁵⁶³ See U.S. DEP'T OF STATE, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: EGYPT, *supra* note 173 (noting legal barriers to certain mixed religion marriages). The family lineage of a Baha'i individual, and the records that individual holds which accurately describe their parents' civil status (including their religious affiliation) affects the individual's freedom to form relationships with others. E-mail from Mona Oraby, Remote Interview with Mona Oraby, Assistant Professor of Law, Jurisprudence, and Social Thought, Amherst College, to Christopher Creech, Susan Akram, and Yoana Kuzmova, IHRC (Oct. 26, 2021) (acknowledging that each of these nuances highlight the rarity of mixed marriages in contemporary Egypt).

⁵⁶⁴ E-mail from Mona Oraby, *supra* note 563.

⁵⁶⁵ U.S. DEP'T OF STATE, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: EGYPT, *supra* note 173.

⁵⁶⁶ Mona Oraby, *Authorizing Religious Conversion in Administrative Courts: Law, Rights, and Secular Indeterminacy*, 17 NEW DIVERSITIES 64, 67 (2015); see also *Egypt: Baha'i*, MINORITY RTS. GRP. INT'L, *supra* note 177.

⁵⁶⁷ *Egypt: Baha'i*, MINORITY RTS. GRP. INT'L, *supra* note 177.

⁵⁶⁸ Law No. 12 of 1996 promulgating the Child Law, as amended by Law No. 126 of 2008, *supra* note 148, at Chapter 2.

⁵⁶⁹ Remote Interview with Mona Oraby, *supra* note 181. MRGI, THE SITUATION OF EGYPT'S MINORITIES SINCE 2014, *supra* note 562, at 18.

⁵⁷⁰ MRGI, THE SITUATION OF EGYPT'S MINORITIES SINCE 2014, *supra* note 562, at 18.

⁵⁷¹ *Id.* at 18 (citing *Unmarried and with ten grandchildren: The official paper crisis of Egyptian Baha'is*, EIPR, (Nov. 5, 2018)).

⁵⁷² U.S. DEP'T OF STATE, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: EGYPT, *supra* note 173.

Baha'is' ability to obtain ID cards and other necessary documents can also depend on other factors, including: (1) where a Baha'i individual lives within the country (urban vs. rural), (2) his or her social standing, (3) social network, and (4) relationships with local authorities.⁵⁷³ In addition, whether an individual Baha'i can obtain specific documents often depends on the whim of the official who happens to be working in the office the day he or she seeks to register a child or apply for an identification card.⁵⁷⁴

Since documentation status has a direct impact on access to social entitlements like education, health insurance and employment, Baha'i with even limited documentation tend to fare much better than those without any documentation.⁵⁷⁵ Baha'is report that having documentation bearing the dash for religion – depending on local relations, geography, and general biases – has been both positive as a form of recognition for the Baha'i community, yet problematic as another way of formalizing their 'otherness' in Egyptian society.⁵⁷⁶ More concretely, some report that the dash on identity documents permits too much discretion by the person reviewing such documentation, whether it be for the purpose of seeking employment, buying real estate, or for receiving further government documentation.⁵⁷⁷

3. Bedouin Populations and Egyptians in Border Regions

The Bedouin population of the MENA region comprises many distinct populations and communities. The term 'Bedouin' is a broad label, but this Report will refer to the 'Bedouin' in Egypt as those individuals or communities that self-identify as Bedouin or are affiliated with communities that are recognized as Bedouin within Egypt.⁵⁷⁸ This definition acknowledges that

⁵⁷³ Remote Interview with Mona Oraby, *supra* note 181.

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ See generally Mona Oraby, *Authorizing Religious Conversion in Administrative Courts: Law, Rights, and Secular Indeterminacy*, 17 NEW DIVERSITIES 64 (2015). How employers, school administrators, or those selling property to a Baha'i react to the dash for religion on the ID card depends on the area in which a Baha'i person lives and their social class, and varies case-by-case. Remote Interview with Mona Oraby, *supra* note 181.

⁵⁷⁸ See, e.g., William Young, *'The Bedouin' Discursive Identity or Sociological Category? A Case Study from Jordan*, 9 J. OF MEDITERRANEAN STUD., 277, 278-279 (1999) ("in the Arabic lexicon, a 'Bedouin' is 'an Arab' who lives apart from permanently settled areas, in either (1) a seasonal pastureland called a *badiya*; (2) a wasteland (*khala*); or (3) a seasonally desiccated area (*sahra*) where plants and other people are found only occasionally. Note that none of these terms necessarily implies that the Bedouin are nomadic pastoralists. In fact, this connotation is only secondary."); see also Donald Cole, *Where have the Bedouin Gone?*, 76 ANTHROPOLOGICAL Q. 235, 237 (2003) (noting that "Today, 'Bedouin' refers less to a 'way of life' than to an 'identity.' The way of life was grounded in ecology and economy, the identity in heritage and culture."); Remote Interview with Dawn Chatty, Emerita Professor of Anthropology and Forced Migration, Univ. of Oxford (Feb. 5, 2021) (noting the colonial legacy of Orientalized notions about the Bedouin, and the associated typologies with which colonial powers categorized Bedouin populations in the MENA region). See also INT'L CRISIS GROUP, EGYPT'S SINAI QUESTION 22 (Jan. 30, 2007) (quoting one resident of Shaykh Zwayd district, who indicated the Bedouin of Sinai "have known four periods of occupation [*ihitalal*]: British, Egyptian, Israeli, and for the last 30 years, Egyptian again."). See also BU IHRC, CAMPAIGN TO END STATELESSNESS IN JORDAN, *supra* note 10, at 24 ("the Bedouin-related 'bidoon'" in

many individuals and communities who either self-identify or are identified as “Bedouin” may be considered nomadic, semi-nomadic, or pastoralist, while others may not, and that additional research is needed to determine precise vulnerabilities for specific Bedouin populations. While some “settled populations resist assimilating Bedu into the national identity,” other Bedouin individuals or communities have varying relationships with Egyptian national identity.⁵⁷⁹

The Bedouin are estimated to account for “less than 1 per cent”⁵⁸⁰ of Egypt’s total population, i.e., approximately 1,000,000 people, though there are no verified statistics. Past estimates suggested that “as few as one-third of adult Bedu outside urban centres have identity documents,” in particular those residing in South Sinai.⁵⁸¹ Although these estimates cannot be verified due to lack of quantitative data, a number of factors lead to some Bedouin lacking identity documents and living as unregistered citizens within Egypt.⁵⁸² Since national surveys, including the national census (most recently conducted in 2017), assimilate the Bedouin into the general population, official government data is not reflective of Bedouin experiences or status preferences.⁵⁸³

Historically, many states in the MENA region have “subjected [the] Bedouin to settlement, land appropriation, detribalization, and neglect.”⁵⁸⁴ In Egypt, the Bedouin have also been frequently viewed as “somewhat primitive, [or] requiring civilization.”⁵⁸⁵ The end of the Ottoman Empire’s control of Egypt did not end Ottoman policies intended to ‘sedentarize’ the Bedouins (for example, in the 1850s, much of Egypt’s desert land was nationalized “on the basis of its definition as *mawat* or ‘dead’ (uncultivated)”land).⁵⁸⁶ British land policies with regard to

Jordan will refer to those individuals who are stateless, have nomadic or seminomadic Arab origins, and (i) self-identify as Bedouin, (ii) live nomadically or semi nomadically, and/or (iii) are affiliated with certain recognized Jordanian Bedouin tribes and groups.”).

⁵⁷⁹ Hilary Gilbert, *Nature = Life: Environmental Identity as Resistance in South Sinai*, 17 *NOMADIC PEOPLES* 40, 46 (2013) (citing Soraya Altorki and Donald Cole, *Land and Identity among Awlad ‘Ali Bedouin: Egypt’s Northwest Coast*, in *NOMADIC SOCIETIES IN THE MIDDLE EAST AND NORTH AFRICA* 634, 634 (Dawn Chatty ed., 2006)).

⁵⁸⁰ Kark and Frantzman, *Empire, State and the Bedouin of the Middle East*, *supra* note 167, at 503.

⁵⁸¹ Hilary Gilbert, ‘Everything has its Price.’ Conservation, development and Bedu in St. Katherine Protectorate, South Sinai, 179-180 (2010) (Ph.D. dissertation, Univ. of Manchester) (citing the Author’s interview with a USAID officer).

⁵⁸² See, e.g., Hilary Gilbert, ‘*This is Not Our Life, It’s Just a Copy of Other People’s’: Bedu and the Price of Development in South Sinai*, 15 *NOMADIC PEOPLES* 7, 26 (2011) (noting there is “no formal record of their population, which is in any case under-registered”).

⁵⁸³ Hilary Gilbert and Mohammed Khedr al Jebaali, *Not Philanthropists but Revolutionaries: Promoting Bedouin Participation in the New Egypt*, 9 (Am. Univ. in Cairo, Working Paper, 2012) (“for example, the Human Development Indicators for South Sinai are based on a sample derived from the voter registration index, a high proportion of which . . . has been comprised of Egyptian settlers or migrant workers.”) [hereinafter Gilbert and al Jebaali, *Bedouin Participation in the New Egypt*].

⁵⁸⁴ Hilary Gilbert, *An Excluded Population, A Nuanced Approach to Sinai’s Bedouin is Necessary to Secure the Region*, PROJECT ON MIDDLE EAST DEMOCRACY 2 (2014). See also Kark and Frantzman, *Empire, State and the Bedouin of the Middle East*, *supra* note 167, at 501-404.

⁵⁸⁵ Gilbert and al Jebaali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 2.

⁵⁸⁶ Bedouin populations held a great deal of land across Sinai, the Western Desert, and the Eastern Desert, but were numerically a small minority. See Kark and Frantzman, *Empire, State and the Bedouin of the Middle East*, *supra* note 167, at 489.

the Bedouin hardly altered Ottoman policies.⁵⁸⁷ Following independence, in 1958, Nasser “repealed the Law of the Tribes of 1956 and proclaimed that thenceforth all Bedouin tribes would cease to possess any separate legal identity,”⁵⁸⁸ Nasser’s Law 143 also “defined all desert land outside of towns (*zimam*) as government owned.”⁵⁸⁹ These policies have resulted in Bedouin communities that were often historically pastoralist or nomadic becoming dependent on informal work sectors, particularly tourism.⁵⁹⁰

Due to “official government, and . . . international blindness or disinterest” in identifying Bedouin communities, many Bedouin lack channels to express practical or political concerns,⁵⁹¹ leaving many believing that “the state-citizen contract is inadequately fulfilled.”⁵⁹² This has led to protests by some Bedouin communities, such as the Azazma and Gararsha in the Sinai, against their treatment by the Egyptian government, including difficulties with civil registration and accessing identification documents.⁵⁹³ These difficulties have translated into a situation of statelessness or lack of documentation for many Bedouins in the Sinai.⁵⁹⁴

Because there are common barriers to accessing civil registration across multiple Bedouin populations, Bedouins face a range of difficulties characterized by a deep urban-rural divide.⁵⁹⁵ Bedouin populations more closely settled or integrated in or around urban areas seem to face fewer barriers to accessing full citizenship status, while those in rural areas of Egypt face more difficulties in documenting their status. The greatest barriers are faced by people living in border regions. These conditions are shared by a number of rural Bedouin communities, particularly in central and upper Egypt. However, this Report does not cover the specifics of most of the Bedouin communities, whose situations remain for future research to examine.

Specific challenges (e.g., active conflict in North Sinai or territorial disputes in the Hala’ib region) as well as issues common to Bedouin populations and some rural poor communities across Egypt (e.g., practical difficulties accessing civil registration in South Sinai and barriers on the Egypt-Libyan border) affect many individuals and communities’ ability to

⁵⁸⁷ *Id.*

⁵⁸⁸ Dawn Chatty, *The Bedouin in Contemporary Syria: The Persistence of Tribal Authority and Control*, 64 MIDDLE EAST J. 29, 37 (2010).

⁵⁸⁹ Kark and Frantzman, *Empire, State and the Bedouin of the Middle East*, *supra* note 167, at 495.

⁵⁹⁰ *See generally* Joseph Hobbs and Jujiyo Tsunemi, *Soft Sedentarization: Bedouin Tourist Stations as a Response to Drought in Egypt’s Eastern Desert*, 35 HUM. ECOLOGY 209 (2007).

⁵⁹¹ Hilary Gilbert, *Bedu and the Price of ‘Development in South Sinai*, *supra* note 582, at 7.

⁵⁹² *Id.*

⁵⁹³ E-mail from Confidential Informant, NGO, to Christopher Creech, IHRC (July 7, 2021) (on file with author); *see also* Hilary Gilbert, *Environmental Identity as Resistance in South Sinai*, *supra* note 579, at 51.

⁵⁹⁴ *See, e.g., North Sinai voters wary of Islamist dominance*, DAILY NEWS EGYPT (Jan. 4, 2012) (estimating there to be approximately 70,000 Bedouins in the Sinai without identification documents); *see also* Dan Swale, *Discord in the Desert: Egypt’s Sinai Peninsula in the aftermath of the Arab Spring* 29 (2015) (M.A. thesis, Massey University); *see also Egypt’s stateless keep receiving empty promises of citizenship*, AL-MONITOR (Feb. 18, 2021) (noting the problem of statelessness for Bedouin populations in border regions and conflict zones).

⁵⁹⁵ For example, one source noted that many of the individual Bedouins lacking an official form of identification “are those deep in the desert who have nothing, no ID card or driver’s license, who don’t go into town and avoid the roads.” E-mail from Confidential Informant, NGO, to Christopher Creech, IHRC (June 1, 2021) (on file with author).

secure status documentation. It is also important to note that gaps in civil registration in these regions, including for Bedouin populations, are primarily a result of the administrative process and practical realities of administering Egypt's nationality laws; these are examined further below. This Report examines Bedouin populations in the periphery of Egypt: (1) the Sinai Peninsula (examined separately here as North Sinai and South Sinai), (2) the Egypt-Libya border region, and (3) the Hala'ib Triangle.

a. The Sinai Peninsula

The Sinai Peninsula's total population is estimated at around 450,000 by CAPMAS,⁵⁹⁶ the majority of which is composed of Bedouin populations (estimated at between 300,000-400,000 persons across approximately twenty Bedouin clans or confederacies), most of whom are concentrated in North Sinai.⁵⁹⁷ The Bedouin make up approximately 70% of the total population of the Sinai Peninsula.⁵⁹⁸ There are also a significant number of Palestinians in Sinai, but due to their unique circumstances regarding citizenship they are not addressed specifically in this section.⁵⁹⁹ It is difficult to quantify the number Bedouin who are unable to access civil registration, although one source in 2012 indicated that approximately 70,000 Bedouins were unregistered.⁶⁰⁰ The lack of reliable data makes it impossible to determine exactly how many Bedouins continue to live unregistered across the peninsula, but based on reporting by experts working with the communities, the percentage is likely very high.⁶⁰¹

i. North Sinai

⁵⁹⁶ *Egypt Statistics*, CAPMAS, <https://www.capmas.gov.eg/> (last visited Aug. 24, 2021).

⁵⁹⁷ Hilary Gilbert, *An Excluded Population, A Nuanced Approach to Sinai's Bedouin is Necessary to Secure the Region*, PROJECT ON MIDDLE EAST DEMOCRACY 1 (2014); *see also* Nicolas Pelham, *Sinai: The Buffer Erodes*, CHATHAM HOUSE 1 (Sept. 2012). By comparison, about 40,000 Bedouin reside in South Sinai. Gilbert and al Jebaali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 7.

⁵⁹⁸ MRGI, *THE SITUATION OF EGYPT'S MINORITIES SINCE 2014*, *supra* note 562, at 22.

⁵⁹⁹ Alyaa Anter, *TV Exposure and North Sinai Youth's Tribal Identity, National Identity, and Risk Perception*, 12 CONTEMP. ARAB AFFAIRS 37, 39 (2019) (noting that the "identity of the indigenous inhabitants of North Sinai consists of a Palestinian element, which is very conscious of its identity and its relations with the inhabitants of Gaza and the West Bank, and a Bedouin element, which is aware of its historical heritage in the Arabian Peninsula and belonging to tribes with branches in Palestine and Jordan."). *See also* INT'L CRISIS GROUP, *EGYPT'S SINAI QUESTION* 10 (Jan. 30, 2007) (estimating that a third of the population of Al-Arish alone is estimated to be composed of Palestinians (i.e., approximately 33,000 of the roughly 100,000 people residing in Al-Arish in 2012, a number that has likely grown as the general population of Al-Arish has grown over subsequent years)). Palestinians face a specific set of barriers to accessing citizenship, in ways both distinct and similar to the Bedouin who reside in North Sinai.

⁶⁰⁰ *See* CAPMAS AND UNICEF, *CHILDREN IN EGYPT 2016, A STATISTICAL DIGEST* 205 (2017) (noting that in 2014, no data on birth registration was available in the Sinai).

⁶⁰¹ *No ID, no government services*, IRIN (July 18, 2012) (citing Bakr Sweilam, head of the Al Gora Community Development Association in Sinai).

North Sinai's Bedouin population is estimated to be over 300,000.⁶⁰² The lack of quantitative data regarding citizenship registration or availability of birth certificates is due in large part to ongoing conflict in the region, which has resulted in Egyptian authorities establishing a "police state [and] mass settlement and manpower-intensive economic projects."⁶⁰³ Reports indicate that "Egypt's military has forcibly evicted roughly 100,000 North Sinai residents" and "destroyed thousands of homes" in a campaign that has continued unabated since 2014.⁶⁰⁴ This has been accompanied by restrictions on movement, food shortages, and thousands of arrests.⁶⁰⁵ Many local Bedouin communities suffer severe human rights violations.⁶⁰⁶ The intersection of social exclusion, punitive security measures, and economic disparity have caused the radicalization of some Bedouin, "with reportedly up to 15 groups regularly claiming responsibility for acts of terrorism and sabotage."⁶⁰⁷

These conditions exacerbate existing vulnerabilities to accessing citizenship. In a study of Bedouin youth in the North Sinai Governorate, Alyaa Anter noted that "[s]ome Bedouin never hold an Egyptian citizenship card, and others have difficulties obtaining one."⁶⁰⁸ The Azazma Bedouins, located primarily in an area straddling the Egyptian-Israeli border,⁶⁰⁹ have faced particular challenges of statelessness.⁶¹⁰ The Azazma population is estimated to be around 12,000 total,⁶¹¹ with approximately 2,000 persons on the Egyptian side of the border.⁶¹² The Azazma have not been able to register for Egyptian citizenship. In the early 2000s, the Egyptian government produced a unique form of documentation that acknowledged them as members of the al-Azazma tribe, but excluded them from the basic services that flow from citizenship rights, confirming their status as second-class Egyptian citizens.⁶¹³ There is a lack of information about

⁶⁰² IFFAT IDRIS, K4D HELPDESK REPORT, SINAI CONFLICT ANALYSIS 4 (Mar. 2, 2017).

⁶⁰³ Nicolas Pelham, *Sinai: The Buffer Erodes*, CHATHAM HOUSE 17 (Sept. 2012).

⁶⁰⁴ HRW, WORLD REPORT 2020: EGYPT EVENTS OF 2019 3 (2020).

⁶⁰⁵ *Id.*

⁶⁰⁶ MRGI, THE SITUATION OF EGYPT'S MINORITIES SINCE 2014, *supra* note 562, at 24 (noting that "Ongoing human rights abuses, while caused in part by the current conflict, cannot be separated from the Bedouin's situation as an excluded minority regarded with suspicion and mistrust by the central government for decades.").

⁶⁰⁷ Hilary Gilbert, *An Excluded Population, A Nuanced Approach to Sinai's Bedouin is Necessary to Secure the Region*, PROJECT ON MIDDLE EAST DEMOCRACY 2 (2014). *See also* Remote Interview with Dawn Chatty, *supra* note 578 (noting that poverty has driven some Bedouin individuals to join non-state armed groups in conflict with the governments in the MENA region generally, not infrequently for the sake of payment rather than ideology).

⁶⁰⁸ Alyaa Anter, *TV Exposure and North Sinai Youth's Tribal Identity, National Identity, and Risk Perception*, 12 CONTEMP. ARAB AFFAIRS 37, 39 (2019).

⁶⁰⁹ E-mail from Confidential Informant, *supra* note 593.

⁶¹⁰ A Past Still Present: Addressing Discrimination and Inequality in Egypt, Equal Rights Trust 236 (Dec. 2018); *see also* ISI, STATELESSNESS IN NUMBERS: 2019, *supra* note 2, at 5; IFFAT IDRIS, K4D HELPDESK REPORT, SINAI CONFLICT ANALYSIS (Mar. 2, 2017); Akbar Ahmed & Harrison Akins, *No Arab Spring for Egypt's Bedouin*, BROOKINGS (Feb. 15, 2012).

⁶¹¹ EQUAL RIGHTS TRUST, PAST STILL PRESENT: ADDRESSING DISCRIMINATION AND INEQUALITY IN EGYPT 236 (Dec. 2018).

⁶¹² *North Sinai voters wary of Islamist dominance*, DAILY NEWS EGYPT (Jan. 4, 2012).

⁶¹³ *Id.* *See also* Dan Swale, *Discord in the Desert: Egypt's Sinai Peninsula in the aftermath of the Arab Spring* 29 (2015) (M.A. thesis, Massey University).

whether and how many members of the Azazma have been able to fully regularize their citizenship status; more detailed information on their situation requires further investigation.

ii. *South Sinai*

The situation of the Bedouin of South Sinai – a predominantly rural region with less extensive armed conflict than in much of North Sinai – is similar in some ways to that of the Bedouin populations in less geographically peripheral but equally rural areas of Egypt.⁶¹⁴ South Sinai’s Bedouin population numbers approximately 40,000,⁶¹⁵ and consists of “Bedu from eight tribes or tribal confederations.”⁶¹⁶ Some individuals pursue mobile agro-pastoral livelihoods, but the majority are sedentarized to varying degrees.⁶¹⁷ Egyptian development projects conflict with historical claims to territory by several Bedouin populations in South Sinai, creating additional barriers to documented status for rural poor communities.⁶¹⁸

In an important recent development, trends in health care in South Sinai have resulted in the majority of births (approximately three quarters) taking place in hospitals. As a consequence, it appears that most if not all Bedouin children born now in South Sinai possess birth certificates⁶¹⁹ One attorney also noted that midwives are also now authorized to complete civil registration processes.⁶²⁰ This is a significant step in confirming citizenship status for Bedouins who are Egyptian nationals. Increased registration rates also indicate a trend toward regularized registration status, and reports also show that individual Bedouin in South Sinai are being granted citizenship in specific cases.⁶²¹ Still, there are other risk factors beyond acquiring birth certificates that relate to the lack of other forms of civil registration. In a 2012 study by Hilary Gilbert and Mohammed Khedr al Jebraali, the authors estimated that “30-50 per cent of Bedu [in

⁶¹⁴ Despite the distinctions between North and South Sinai in terms of the level of conflict, many Bedouin still “live with a constant, intrusive security presence,” and many lack access to “education, healthcare, sanitation, electricity, water and work.” Hilary Gilbert, *‘Bedouin overgrazing’ and conservation politics: Challenging ideas of pastoral destruction in South Sinai*, 160 *BIOLOGICAL CONSERVATION* 59, 61 (2013).

⁶¹⁵ Gilbert and al Jebraali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 7.

⁶¹⁶ Hilary Gilbert, *Conservation, Development and Bedu in St. Katherine Protectorate, South Sinai*, *supra* note 581, at 6.

⁶¹⁷ Gilbert and al Jebraali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 7.

⁶¹⁸ Hilary Gilbert, *Conservation, Development and Bedu in St. Katherine Protectorate, South Sinai*, *supra* note 581, at 13-14 (explaining that “Since well before the Islamic era, Sinai’s indigenous population has consisted of mobile Bedu. In 1967 Israel captured Sinai from Egypt. In the ensuing fifteen-year occupation, settlement and rapid economic change produced wholesale shifts away from pre-development Bedouin livelihoods of semi-nomadic pastoralism, horticulture, hunting and fishing. Since 1982, when full Egyptian Government resumed, South Sinai has experienced rapid commercial development through tourism and substantial donor investment.”).

⁶¹⁹ E-mail from Confidential Informant, NGO, *supra* note 595 (notably, the same informant noted that “[t]here is a high incidence of last-minute advice to have expensive C-sections, with correspondingly high rates, and distressing cases of women with complications being turned away until money for surgery is produced upfront – a massive challenge for many Bedouin.”)

⁶²⁰ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁶²¹ *Egypt’s stateless keep receiving empty promises of citizenship*, AL-MONITOR (Feb. 18, 2021).

South Sinai] have no ID card,”⁶²² and it is estimated that approximately fifteen per cent of the Bedouin in South Sinai continue to be unregistered with the Egyptian government.⁶²³ The study states that, many Bedouin “born before the onset of development had no means of registering their children’s births, and many interviewed in 2007-2008 did not know their own age or birthday.”⁶²⁴

In addition, the process of registering for identification documents involves traveling large distances and facing many security checkpoints.⁶²⁵ Travel restrictions make it more difficult to acquire identification documents. Some Bedouin face a Catch-22, as “they cannot travel without ID, but cannot get ID without travelling.”⁶²⁶ With a significant number of security checkpoints and heavy surveillance in Sinai, the challenge of accessing civil registration centers many kilometers away can be an insurmountable barrier (or at least a significant deterrent) to registering as a citizen.⁶²⁷ This barrier is likely faced by many communities, both Bedouin and otherwise, that are in remote regions of Egypt and unable to readily access administrative offices.

Individuals able to overcome this barrier are also asked to retrieve identification documents, birth certificates, marriage certificates, and other documentation that may be decades old, not computerized, and completely unavailable.⁶²⁸ In addition, two Sheikhs must sign this documentation to verify its authenticity, requiring further travel.⁶²⁹ To access citizenship registration, some adult Bedouin are expected to bring all documentation they have (often little, if any), to the government registration office where their father or grandfather was registered at the time of the handover of Sinai from Israel’s control, a process that can make acquiring identification documents nearly impossible.⁶³⁰

Finally, it is important to note that Bedouin in South Sinai face barriers to registration due to lack of resources. Gaps in education have resulted in high illiteracy rates.⁶³¹ “[P]oor quality teaching and patchy or non-existent provision of schools mean that virtually no one goes to

⁶²² Hilary Gilbert, *Environmental Identity as Resistance in South Sinai*, *supra* note 579, at 50 (citing Gilbert and al Jebaali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 7)).

⁶²³ E-mail from Confidential Informant, NGO, to Christopher Creech, IHRC (Mar. 25, 2021) (on file with the author); E-mail from Confidential Informant, NGO, to Christopher Creech, IHRC, *supra* note 595.

⁶²⁴ Gilbert and al Jebaali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 18.

⁶²⁵ E-mail from Confidential Informant, NGO, *supra* note 619.

⁶²⁶ Gilbert and al Jebaali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 18.

⁶²⁷ *Id.*

⁶²⁸ E-mail from Confidential Informant, NGO, *supra* note 619. While a marriage certificate is required to obtain a birth certificate, if there is any reason why a marriage certificate cannot be procured, the baby will likely be registered as belonging to the father’s brother in order to retain the family name. E-mail from Confidential Informant, NGO, to Christopher Creech, IHRC, *supra* note 595.

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ See Hilary Gilbert, Conservation, Development and Bedu in St. Katherine Protectorate, South Sinai, *supra* note 581, at 179 (mobility, illiteracy and suspicion of authority combine to ensure fewer adult Bedu are registered citizens than in the population at large); see also Joseph Hobbs, *Speaking with People in Egypt’s St. Katherine National Park*, 86 GEOGRAPHICAL REVIEW 1, 15 (1996) (noting that “illiterate, Bedouin women of all the tribes asked whether the park would assist them with adult-literacy education.”).

university, and professional South Sinai Bedu are almost unheard of.”⁶³² Lack of education and high illiteracy make the registration process more difficult. Bedouin in South Sinai face high unemployment, and approximately 50% of those who work live on “around US \$1 per day; while almost twice as many Bedu as Egyptians (81% vs. 44%) experience food poverty.”⁶³³ Lack of access to employment,⁶³⁴ both in formal and informal sectors, creates a severe barrier to paying administrative fees and travel costs.⁶³⁵ In addition, some Bedouin populations may be wary of attempting to access citizenship status from the Egyptian Government. Gararsha tribesmen handing in their identification cards as a rejection of state authority demonstrates the failure of the state to engage with some marginalized Bedouin communities.⁶³⁶ These factors combine to make accessing civil registration very difficult for this population.⁶³⁷

b. Egypt-Libya Border and the Western Desert

The Awlad ‘Ali Bedouin are a “trans-national tribal confederation” in Egypt’s Western Desert.⁶³⁸ They straddle the Egypt-Libya border, with an estimated population of 750,000 in Egypt.⁶³⁹ Generally, it has been noted that the Awlad ‘Ali “have national identity cards . . . and participate in national elections . . . [t]hey are citizens – in deed, in spirit, and in identity.”⁶⁴⁰ While the social practices of the Awlad ‘Ali “are shaped by connectivity and transgression across state territory and state sovereignty” they are also “Egyptian [or Libyan] citizens who have been

⁶³² Hilary Gilbert, *Bedu and the Price of ‘Development in South Sinai*, *supra* note 582, at 18 (noting also that children on average attend formal education for approximately seven years).

⁶³³ Hilary Gilbert, ‘*Bedouin overgrazing’ and conservation politics: Challenging ideas of pastoral destruction in South Sinai*, 160 *BIOLOGICAL CONSERVATION* 59, 61 (2013); *see also* Remote Interview with Dawn Chatty, *supra* note 578 (noting there are similarities between rural poor populations’ ability to access citizenship and identification documents and that of Egyptian Bedouin populations.).

⁶³⁴ Hilary Gilbert, *Bedu and the Price of ‘Development in South Sinai*, *supra* note 582, at 7 (citing Heba Aziz, *Employment in a Bedouin Community: The Case of the Town of Dahab in South Sinai*, 4 *NOMADIC PEOPLES* 28, 28 (2000) (“State officials . . . would argue that Bedouin are incapable of working – an excuse for the alienation of Bedouin from the path of economic and social development in their own communities . . . In 2002, the 110 hotels in Sharm El Sheikh created ten thousand to thirty thousand direct jobs, yet almost none were offered to Bedu.”).

⁶³⁵ E-mail from Confidential Informant, NGO, to Christopher Creech, IHRC, *supra* note 595 (noting that while there are no formal fees, people still have to pay for the proper forms and stamps in addition to travel expenses).

⁶³⁶ Hilary Gilbert, *Environmental Identity as Resistance in South Sinai*, *supra* note 579, at 51.

⁶³⁷ While this analysis centers on South Sinai, further inquiry is needed to determine the extent to which similar problems exist for other marginalized populations in Egypt, particularly Bedouins and communities in rural areas.

⁶³⁸ THOMAS HÜSKEN, *TRIBAL POLITICS IN THE BORDERLAND OF EGYPT AND LIBYA* 32 (2019) (stating that “The Confederation consists of five subtribes and 64 clans. The subtribes are the Abyad (subdivided in Kharuf and Sanaqra), the Ahmar, the Sinina, the Qutu’an and the Jimi’at.”). The territory of the Awlad ‘Ali “stretches along the Mediterranean coast for around 500 km from al-Hamam to Salloum . . . [and] extends as far as the Siwa Oasis in the Qatarra Depression.” *Id.*

⁶³⁹ Frederic Wehrey, David Bishop, Ala’ Alrababa’h, *Backdrop to an Intervention: Sources of Egyptian-Libyan Border Tension*, *CARNEGIE ENDOWMENT FOR INT’L PEACE* (Aug. 27, 2014).

⁶⁴⁰ Soraya Altorki and Donald Cole, *Land and Identity among Awlad ‘Ali Bedouin: Egypt’s Northwest Coast, in NOMADIC SOCIETIES IN THE MIDDLE EAST AND NORTH AFRICA* 634, 645-646 (Dawn Chatty ed., 2006).

deeply involved in the colonial and postcolonial history of these nations.”⁶⁴¹ However, barriers continue to exist for some individual Bedouins in the region due to intergenerational factors, difficulties in travelling to civil registration offices, and difficulties in registering ‘*urfi* marriages.

One barrier to status has to do with inter-generational documentation gaps. In 1986, Lila Abu-Lughod noted that “wittingly or unwittingly, most people [of the Awlad ‘Ali] live outside the law, smuggling, crossing closed borders, carrying unlicensed firearms, avoiding conscription, not registering births, not having identity papers, evading taxes, and taking justice into their own hands.”⁶⁴² She suggests many Awlad ‘Ali were not formally registered with the Egyptian government at the time. While the Egyptian civil registration process has changed dramatically since, certain individuals, particularly adult Bedouin, still lack identity papers. This leaves younger Bedouins at risk of intergenerational statelessness if either their birth or their parents’ marriage were not registered with the Egyptian government.⁶⁴³

The problems of needing to travel to fulfill civil registration requirements has already been noted in the context of South Sinai, but less information is available regarding the Bedouin of the Western Desert. Many of the Awlad ‘Ali Bedouin are viewed with suspicion, manifested by “surveillance by security forces that have set up checkpoints across their region . . . [and] they are subject to harassment by police and security under the new regime.”⁶⁴⁴ Checkpoints and the cost of travel create barriers to civil registration, as has been reported in South Sinai.⁶⁴⁵ Finally, ‘*urfi* marriages, particularly in the case of cross-border marriages, create problems for individuals in obtaining marriage certifications.⁶⁴⁶ It is unclear what the extent is to which these are problems for ensuring citizenship to communities in the Western Desert.

⁶⁴¹ HÜSKEN, TRIBAL POLITICS IN THE BORDERLAND OF EGYPT, *supra* note 638, at 31. There is also a degree of arbitrariness in documentation required to cross the Egypt-Libya border, as “[d]epending on the situation, the Awlad ‘Ali could cross the border without a visa on a daily or weekly basis, needed visas when under 60 years of age, could transport goods across the border or not, and were allowed to work in Libya or not.” *Id.* at 182.

⁶⁴² LILA ABU-LUGHOD, VEILED SENTIMENTS HONOR AND POETRY IN A BEDOUIN SOCIETY 72 (2d ed., 2016).

⁶⁴³ *See, e.g.*, LILA ABU LUGHOD, VEILED SENTIMENTS HONOR AND POETRY IN A BEDOUIN SOCIETY 297 (2d ed., 2016) (noting the changes that had occurred in Awlad ‘Ali society, as some members of the younger generations “lived in apartments or villas with washing machines, televisions, and carpeting, and who are literate and working as teachers, engineers, and pharmacists.”).

⁶⁴⁴ *Id.* at 295. *See also* HÜSKEN, TRIBAL POLITICS IN THE BORDERLAND OF EGYPT, *supra* note 638, at 179 (noting that the Awlad ‘Ali have “not been the object of severe military action or harsh security and secret service measures within the context of the so-called war against terror.”).

⁶⁴⁵ Gilbert and al Jebaali, *Bedouin Participation in the New Egypt*, *supra* note 583, at 18. As in South Sinai, the structure of the economy disadvantages Bedouin communities: “a weak labor market with a high rate of unemployment among the youth; the limited potential of desert agriculture; tourism that is predominantly in the hands of Egyptian investors from the Nile Valley . . . and often operates with non-Bedouin employees . . . and a construction sector that basically employs cheap seasonal workers from Upper Egypt.” HÜSKEN, TRIBAL POLITICS IN THE BORDERLAND OF EGYPT, *supra* note 638, at 179.

⁶⁴⁶ *See* HÜSKEN, TRIBAL POLITICS IN THE BORDERLAND OF EGYPT, *supra* note 638, at 113 (stating that “‘*Urfi* is a non-state law that establishes a legal framework for conflict resolution and the production of order for a population living on the territories of two states and carrying two different citizenships. It also contributes to ‘law and order’ in relations between the two states. This international dimension is exemplified by the regulation of Bedouin and non-Bedouin labor migration between Egypt and Libya, trade and commerce, criminal acts and also marriages between Libyan and Egyptian members of the Awlad ‘Ali.”).

c. Hala'ib Triangle

Several populations, including but not limited to Bedouin communities in the Hala'ib region, face issues in accessing citizenship status for complex historical reasons. Egypt and Sudan have been engaged in a territorial dispute over the border region of the Hala'ib Triangle since the turn of the 20th century.⁶⁴⁷ The Condominium Agreement of 1899 between Britain and Egypt nominally provided for joint administration of the Sudan by both governments, yet Egypt's "share of the Sudan administration was in reality carried out by the British consul-general and the British advisors."⁶⁴⁸ The Condominium Agreement delineated the Sudan's territorial boundary as areas "south of the 22nd parallel of latitude."⁶⁴⁹ This is the boundary that Egypt still recognizes.⁶⁵⁰ However, since the boundary "separated the Ababda and Basharva tribes," the Egyptian Interior Minister, Mustapha Fahmy, issued a series of decrees between 1899 and 1907 to accommodate the Bedouins.⁶⁵¹ These decrees amended the boundary to permit the Sudanese administration to manage the tribal areas north of the 22nd parallel, and this is the boundary that Sudan recognizes.⁶⁵² Sudan gained independence from the Anglo-Egyptian administration in 1956, and while the Hala'ib area remained under primarily Sudanese control at the time, in the early 1990s Egyptian forces under then-President Mubarak seized the land and expelled any remaining Sudanese forces.⁶⁵³

The disputed Hala'ib Triangle has a total population of approximately 20,000-27,000 persons within an area of approximately 20,000 square kilometers, though only a small subset of

⁶⁴⁷ Also referred to as "Halayeb," while the largest city of Shalatin is frequently referred to as "Shalateen." This report adopts the spelling of "Hala'ib" and "Shalatin" but does not modify the quoted language from sources that use alternative spellings.

⁶⁴⁸ Gabriel Warburg, *The Sudan, Egypt and Britain, 1899-1916*, 6 MIDDLE EASTERN STUD. 163, 163 (May 1970). Egypt came under Ottoman rule in 1517 and its borders were enlarged in the nineteenth century by Mohamed 'Ali Pasha following the conquest of some parts of what is now Sudan. Sudan was linked with Egypt and governed through Turco-Egyptian administration. Following British occupation of Egypt in 1882, Britain and Egypt signed the Condominium Agreement which declared joint sovereignty over the Sudan on 19 January 1899. When Egypt gained formal independence from Britain, Britain reserved for itself control of Sudan. The legal relationship between Egypt and Sudan was brought to an end by the cessation of the Condominium Agreement on 1 January 1956. See KHALED FAHMY, *ALL THE PASHA'S MEN*, *supra* note 36, at 9-14; ALI COŞKUN TUNÇER, *SOVEREIGN DEBT AND INTERNATIONAL FINANCIAL CONTROL: THE MIDDLE EAST AND THE BALKANS 1870-1914*, 30-31 (2015).

⁶⁴⁹ See HELEN MILLER DAVIS, *CONSTITUTIONS, ELECTORAL LAWS, TREATIES OF STATES IN THE NEAR AND MIDDLE EAST* 62-65 (1953) (reproducing the 1899 Condominium Agreement in full).

⁶⁵⁰ Sherif Mohyeldeen, *The Egypt-Sudan Border: A Story of Unfulfilled Promise*, CARNEGIE MIDDLE EAST CTR. (June 11, 2020).

⁶⁵¹ *Id.*

⁶⁵² *Id.* Due to both nations recognizing the Hala'ib region as their own, the neighboring region of Bir al-Tawil is an unrecognized territory for both, and remains possibly the only habitable area on the planet where no state has asserted sovereignty. See also GBENGA ODUNTAN, *INTERNATIONAL LAW AND BOUNDARY DISPUTES IN AFRICA* 171 (2015).

⁶⁵³ Sherif Mohyeldeen, *The Egypt-Sudan Border: A Story of Unfulfilled Promise*, *supra* note 650.

this population face challenges related to citizenship status.⁶⁵⁴ Several Bedouin populations live in the region, including the Ababda, al-Atman, Basharia, and Rashāyidah.⁶⁵⁵ Some are considered to be Sudanese by Egyptian authorities.⁶⁵⁶ Since this area is a frequent migration route for Ethiopian, Eritrean, Sudanese, and other refugees and migrants *en route* to Cairo, there is also a high military presence in parts of the region that makes movement without identification more difficult.⁶⁵⁷

Much of the population within the Hala'ib region are nomadic or descended from nomadic populations, and there is “a tangible cross-border social relationship” that runs contrary to nationalist conceptions of state citizenship.⁶⁵⁸ It is partly this relationship that leads to difficulties in citizenship registration, as if Egyptian authorities believe a person is or should be registered in Sudan, they will not issue them Egyptian status documents, or recognize ones they may have.⁶⁵⁹ It has been noted that while many individuals primarily “identify with their tribe, they have an Egyptian identity card, an Egyptian birth certificate and an Egyptian marriage certificate.”⁶⁶⁰ Some individuals lack these Egyptian identification documents, partly due to their rural location and the strong security presence of the Egyptian armed forces, and partly due to allegations by the Egyptian authorities that some populations or individuals are Sudanese and should not be registered.⁶⁶¹

Notably, the Permanent Representative of the Sudan also claimed that a recent Egyptian presidential decree directed further ‘Egyptianization’ of the region.⁶⁶² One element of this has been the opening of an “Egyptian Civil Register office in Shalatin in order to issue Egyptian personal documents, including birth certificates and national identification cards.”⁶⁶³ However, many people “have yet to receive Egyptian citizenship, mainly from the Atman and Rashaida [Rashāyidah] . . . [t]he Egyptian authorities have refused to grant them any official papers

⁶⁵⁴ *Id.* See also YEHYA SERAG, FUTURE UNIV. IN EGYPT, TOWARDS AN APPROPRIATE REGIONAL DEVELOPMENT APPROACH FOR DEVELOPING THE HALAYB-SHALATEEN BORDER REGION IN THE SOUTH EAST OF EGYPT 5 (Sept. 2018).

⁶⁵⁵ Sherif Mohyeldeen, *The Egypt-Sudan Border: A Story of Unfulfilled Promise*, *supra* note 650; *Egypt's stateless keep receiving empty promises of citizenship*, AL-MONITOR (Feb. 18, 2021). See also Malak Guirguis, *El-Bega Tribes: A Little Known People of Egypt and Sudan*, 6 CIVILISATIONS 237, 238 (1956).

⁶⁵⁶ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁶⁵⁷ MICHAEL COLLYER, NORTH AFRICA MIXED MIGRATION TASK FORCE, CONDITIONS AND RISKS OF MIXED MIGRATION IN NORTH EAST AFRICA 29, 31 (Nov. 2015).

⁶⁵⁸ YEHYA SERAG, TOWARDS AN APPROPRIATE REGIONAL DEVELOPMENT APPROACH FOR DEVELOPING THE HALAYB-SHALATEEN BORDER REGION, *supra* note 654, at 5.

⁶⁵⁹ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁶⁶⁰ Anthony Shadid, *Long Forgotten, Tribes Become Locked in Battle Over Borders*, ASSOCIATED PRESS (Aug. 11, 1995).

⁶⁶¹ COLLYER, CONDITIONS AND RISKS OF MIXED MIGRATION IN NORTH EAST AFRICA *supra* note 657, at 29, 31.

⁶⁶² Permanent Rep. of the Sudan to the U.N., Letter dated 17 July 2017 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2017/616 (July 20, 2017). Research for this Report could not verify the precise decree referenced by the Permanent Representative of the Sudan.

⁶⁶³ *Id.* (noting also that passports are not issued in this location, as they are issued in the Egyptian city of Ghardaqah).

proving their right to Egyptian citizenship.”⁶⁶⁴ It is also important to note that although some have been unable to register for Egyptian citizenship, an undetermined number may be able to access Sudanese citizenship.⁶⁶⁵ How many people are unable to register for either Egyptian or Sudanese citizenship remains to be documented.

C. Withdrawal of Nationality

Revocation of citizenship is “widely – and increasingly – reported” in Egypt,⁶⁶⁶ but it is not a new invention of Egyptian law.⁶⁶⁷ With regard to withdrawal of nationality, Egypt’s Nationality Law continues to discriminate on the basis of gender.⁶⁶⁸ The law provides that where the father’s nationality changes, his children may lose their Egyptian citizenship without consideration of the mother’s nationality.⁶⁶⁹ This provision is contrary to Egypt’s obligations under CEDAW’s Article 9, though information could not be obtained on the extent to which these provisions are applied in practice.⁶⁷⁰

Moreover, national security measures have given the state “greater powers to unilaterally sever the legal bond with its own citizens on grounds that relate to national security or terrorism.”⁶⁷¹ Egypt has proposed amendments that could make citizenship revocation easier and more prevalent. One proposed amendment “would require natural born Egyptian nationals working abroad for a foreign Government or a foreign or international body to leave their posts immediately” if so ordered by Egypt (removing the former six-month grace period).⁶⁷² Another

⁶⁶⁴ *Egypt’s stateless keep receiving empty promises of citizenship*, AL-MONITOR (Feb. 18, 2021); see also Mohamed Abu Deef, *The members of the “Atman” tribe: We go to obtain official papers and they say: “You are Sudanese.”*, EL WATAN NEWS (Nov. 27, 2015).

⁶⁶⁵ Remote Interview with Ashraf Ruxi, *supra* note 428.

⁶⁶⁶ MANBY, *THE LAW OF BELONGING*, *supra* note 32, at 117.

⁶⁶⁷ See PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 32, at 81-82; MALEK, *REPORT ON CITIZENSHIP LAW EGYPT*, *supra* note 33, at 2. Cf. Malak Benslama-Dabdoub, *Colonial Legacies in Syrian Nationality and the Risk of Statelessness*, 3 *STATELESSNESS AND CITIZENSHIP REVIEW* 6, 29 (2021) (examining the legacies of colonial laws of France and Britain in exporting procedures of denationalization, specifically in the case of Syria); see also Matthew Gibney, *Banishment and the pre-history of legitimate expulsion power*, 24 *CITIZENSHIP STUD.* 177 (2019).

⁶⁶⁸ See Equality Now, Ctr. for Egyptian Women’s Legal Assistance, and Global Campaign for Equal Nationality Rights, *Egypt Submission to the UN Universal Periodic Review, 34th Session of the UPR working Group of the Human Rights Council, Oct.-Nov. 2019*, https://www.equalitynow.org/egypt_upr_submission_2019 (last visited Feb. 7, 2022).

⁶⁶⁹ Law No. 26 of 1975, *supra* note 67, at art. 11.

⁶⁷⁰ Such provisions are discriminatory under Article 9 since women are to have “equal rights with men to acquire, change or retain their nationality,” and “with respect to the nationality of their children.” The CEDAW Committee confirmed that Article 9 creates an obligation to ensure equality between men and women in conferring nationality to their spouse. CEDAW, General recommendation No. 32, *supra* note 408, at ¶ 52.

⁶⁷¹ See Laura van Waas and Sangita Jaghai, *All Citizens are Created Equal, but Some are More Equal than Others*, 65 *NETHERLANDS. L. REV.* 414, 419 (2018) (noting Egypt among a dozen other states that have used such measures). See also *Egypt court rejects case to revoke citizenship of opponents convicted of terrorism*, MIDDLE EAST MONITOR (Feb. 15, 2021).

⁶⁷² NAEL SHAMA, *PROJECT ON MIDDLE EAST AND DEMOCRACY, STRIPPING AWAY IDENTITY: THE DANGERS OF A REPRESSIVE NEW NATIONALITY LAW IN EGYPT* 3 (2017); see also Muhammed Magdy, *Egypt aims to amend rules*

proposal would permit the state to “revoke citizenship from Egyptians living abroad convicted of harming Egypt’s external or domestic security.”⁶⁷³ A third proposed amendment would allow the state “to revoke the citizenship of Egyptians convicted of ‘belonging to a group, association, front, organization, gang, or entity of any kind, inside or outside the country, that aims to harm the public order of the state or undermine its social, economic or political order.’”⁶⁷⁴ This amendment would give enormous discretion to the Egyptian Government to revoke the citizenship of any person deemed a threat to the regime’s stability regardless of their status as naturalized or natural-born citizens.⁶⁷⁵ It is expected that “Parliament will approve the amendment to the citizenship law because it is overwhelmingly comprised of pro-government members” and administrative courts have approved the amendments. However, at the time of writing these amendments have not yet become law.⁶⁷⁶ The arbitrary application of these amendments or the 1975 Nationality Law risk violating international law that prohibits the arbitrary deprivation of nationality.⁶⁷⁷

1. Political Dissidents and Individuals Deemed a National Security Threat

There are an estimated 70,000-100,000 political prisoners currently detained by the Egyptian Government, but it is unclear how many persons have been detained on political or national security grounds and stripped of their citizenship (or have undergone proceedings related to revoking their citizenship).⁶⁷⁸ In 2014, it was reported that Egyptian citizenship was revoked from approximately 800 naturalized persons (including Palestinians), for allegedly having naturalized illegally, and President al-Sisi reportedly demanded the details of the cases of up to 13,000 Palestinians awarded citizenship since 2011.⁶⁷⁹ These actions indicate that Egypt’s

for revoking citizenship, AL-MONITOR (Oct. 2, 2017); Walaa Ali, *Egyptian nationality: Revoked, regained and relinquished*, EGYPT TODAY (Apr. 22, 2018).

⁶⁷³ NAEL SHAMA, THE DANGERS OF A REPRESSIVE NEW NATIONALITY LAW IN EGYPT, *supra* note 672, at 3 (explaining that under Law No. 26 of 1975 “natural-born citizens could only have their citizenship stripped for harming Egypt’s external security interests (such as through espionage). The proposed change would also make their citizenship vulnerable if they are convicted of actions that harm the country domestically”).

⁶⁷⁴ *Id.*; see also MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 17; George Sadek, *Egypt: Draft Amendment to Citizenship Law*, LIB. OF CONG. (Oct. 4, 2017) (citing Ahmed Imam, *Undersecretary of Legal Affairs at the Ministry of Interior*, ‘The New Amendment to the Law of Citizenship is a Challenge to the Muslim Brotherhood Organisation’, AL-AHRAM NEWSPAPER (Sept. 24, 2017) (Arabic)).

⁶⁷⁵ NAEL SHAMA, THE DANGERS OF A REPRESSIVE NEW NATIONALITY LAW IN EGYPT, *supra* note 672, at 4.

⁶⁷⁶ MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 17.

⁶⁷⁷ See *supra*, Part B.1.

⁶⁷⁸ See Dale Sprusansky, *Egypt’s Political Prisoners and U.S. Aid*, WASH. REP. ON MIDDLE EAST AFFAIRS (Mar. 17, 2021); see also AMNESTY INT’L, “WHAT DO I CARE IF YOU DIE?” NEGLIGENCE AND DENIAL OF HEALTH CARE IN EGYPTIAN PRISONS, AI Index MDE 12/3538/2021, 13 (2021) (noting the OHCHR has estimated there to be at least 114,000 inmates in Egypt in total).

⁶⁷⁹ *Egyptian nationality stripped from 800, including Palestinians*, EGYPT INDEP. (Oct. 29, 2014); See also NAEL SHAMA, THE DANGERS OF A REPRESSIVE NEW NATIONALITY LAW IN EGYPT, *supra* note 672, at 5 (noting that potential revisions to the nationality law could be used to “revoke citizenship from thousands of Palestinians granted Egyptian citizenship during Morsi’s presidency,” particularly as a means to target persons allegedly affiliated with non-state armed groups in the Sinai Peninsula or with Hamas).

broad provisions permitting citizenship revocation are and can be used to strip political dissidents and otherwise vulnerable populations of Egyptian nationality status on a broad basis, in addition to detention or expulsion.⁶⁸⁰

The use of Zionism as a basis for citizenship revocation is also closely tied to the rhetoric of national security.⁶⁸¹ However, it is unclear the extent to which Zionism is employed as a means of justifying citizenship revocation. Tarek Badawy noted in 2014 that the provision mandating citizenship revocation of Zionists “is likely dead letter law,” and there have been few indications that the Egyptian government has been interested in utilizing this provision.⁶⁸²

Individual instances of citizenship revocation have been reported in cases against persons outside of Egypt. There are no estimates of how many persons remain in exile due to fears of being targeted by the Egyptian Government, and how many have actually faced citizenship revocation. Nonetheless, in an effort to target those who have fled, Egypt has stripped political dissidents, and those perceived as dissidents, of their citizenship (for example, in one well-publicized case, Egypt revoked the citizenship of political activist Ghada Naguib in December 2020).⁶⁸³ Reports emerged in 2017 of Egyptian embassies delaying renewal of passports for activists and dissidents living abroad, requiring them to return to Egypt to renew their documents.⁶⁸⁴ Such actions risk subjecting persons to citizenship revocation while abroad if they do not return to Egypt, and arbitrary detention if they do return.

However, it is important to note in any case that citizenship “may always be reinstated by an order of the Minister of Interior after five years of revocation” and the President of Egypt “may, at any time, order the reinstatement of citizenship for those who have had it revoked.”⁶⁸⁵

D. Gaps in Legal Framework and Egypt’s Implementation for Adult Refugees, Displaced, and Migrant Populations

⁶⁸⁰ *Egypt: Activist Stripped of Citizenship*, HRW (Feb. 11, 2021) (noting that Law No. 26 of 1975 is subject to such governmental abuses, as “it gives authorities great discretion, without legal oversight or court review, in stripping Egyptians of their nationality.”).

⁶⁸¹ See, e.g., MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 20-21; *Egyptian court rules Egyptians married to Israelis must be stripped of citizenship*, AHRAM ONLINE (Sept. 8, 2016) (noting that an Egyptian administrative court ruled “the interior ministry must strip Egyptian citizenship from Egyptians who have married Israelis, in order to protect the country’s national security.”).

⁶⁸² Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 281 (acknowledging the provision was first “introduced in Law 391/1956 on Egyptian Citizenship at the height of the Arab-Israeli conflict, and was transplanted into the Citizenship Act of the [UAR] in 1958 While the Egyptian executive may have resorted to the provision on several occasions, the author is aware of one reported case only, where a citizen who was stripped of her citizenship for adopting Zionist sympathies challenged the executive’s decision to revoke her citizenship.”).

⁶⁸³ *Egyptians in exile fear losing citizenship*, AL-MONITOR (Jan. 4, 2021); AMNESTY INT’L, EGYPT: ACTIVIST ARBITRARILY DEPRIVED OF NATIONALITY, MADE STATELESS, AI Index: MDE 12/3770/2021 (Mar. 5, 2021); see also *Court revokes Egyptian nationality of Copt living in the US*, AHRAM ONLINE (May 22, 2011).

⁶⁸⁴ NAEL SHAMA, THE DANGERS OF A REPRESSIVE NEW NATIONALITY LAW IN EGYPT, *supra* note 672, at 7.

⁶⁸⁵ Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 283. See Law No. 26 of 1975, *supra* note 67, at art. 18.

Previous sections have addressed issues pertaining to nationality particularly with regard to Egyptian nationals. While the gaps described in Part IV.A do apply to refugee populations, there are also specific gaps in legal protections pertaining specifically to refugees in Egypt that are addressed in section IV.D below. Egypt has no asylum legislation and has delegated the registration and assessment of asylum applications to UNHCR. This section discusses the practice and situation of UNHCR. Part IV.E then addresses specific refugee populations of concern, briefly touching on migrant populations that face many of the same challenges without the additional protections of UNHCR. Part IV.E.7 concludes by addressing the unique status of Palestinians in Egypt.

1. MOU between UNHCR and the Egyptian Government

The Egypt-UNHCR MOU states that voluntary repatriation and resettlement are durable solutions for refugees, but it does not include local integration as a solution.⁶⁸⁶ Refugees who are recognized as such by UNHCR are issued an identity card and given a legal residency permit.⁶⁸⁷ The Egyptian government views the residency of refugees as temporary, and residency permits have limited time periods that require regular renewal.⁶⁸⁸ Refugees have no tailored or facilitated path to acquire Egyptian citizenship, even when they acquire residence and qualify for regular naturalization criteria through residence, or through other avenues under Egypt's citizenship laws, such as through marriage to an Egyptian citizen or investment in the country.

2. UNHCR Registration Documents

Another concern regarding recognition and protection of refugees and asylum seekers is the complicated system of UNHCR registration. The system is very difficult to navigate for refugees and asylum seekers, and government officials' recognition of the various documents UNHCR issues is inconsistent, occasionally resulting in apprehension of refugees and failure to grant them the protections to which they are entitled by UNHCR registration. Many refugees never approach UNHCR for assistance for a range of reasons. Refugees must present themselves to the UNHCR office in person, and given the size of Cairo this is complicated for many. It can take some individuals or families a full day, and require them to take time off from work, which they may be unable to afford. Many refugees do know what UNHCR is or does, and many fear that registering as a 'refugee' can negatively affect their ability to remain in Egypt, or travel from Egypt to another country.

There are three primary documents issued by UNHCR: a white paper, a yellow card, and a blue card.

⁶⁸⁶ Memorandum of Understanding Between the Government of Egypt and UNHCR (Feb. 10, 1954).

⁶⁸⁷ Remote Interview with Mohamed Farahat, Lawyer (Oct. 19, 2020).

⁶⁸⁸ *Egypt: Baha'i*, MINORITY RTS. GRP. INT'L, *supra* note 170.

- *The white paper* – an asylum seeker certificate – is the certificate issued to those registered with UNHCR who have officially applied for refugee status *without* presenting valid identification documents.⁶⁸⁹ Unlike the other two registration documents, the white paper does not enable its holder to obtain a residency permit in Egypt.⁶⁹⁰ The white paper is only valid for six months, can be renewed, and is frequently issued to individuals who carry no identification documents recognized by the Ministry of Foreign Affairs.⁶⁹¹ Asylum seekers keep this white paper until they undergo a refugee status determination (RSD) interview. It acknowledges that the asylum seeker has registered his or her presence with UNHCR, but until the RSD interview is conducted confirming eligibility for international protection, it does not entitle the holder to a residency permit.⁶⁹² Since many stateless asylum seekers who attempt to register with UNHCR are undocumented, this is the most likely document they will receive.
- *The yellow card*, an asylum seeker registration card, is issued to those persons registered with UNHCR who have officially applied for refugee status and have presented valid identification documents.⁶⁹³ This card enables holders to obtain residency permits to legalize their stay in Egypt, and protects them from detention and deportation.⁶⁹⁴ The yellow card is valid for eighteen months.⁶⁹⁵ In the past, individuals claiming asylum at the UNHCR office were given a yellow card.⁶⁹⁶ For persons with identification documents, but who entered Egypt in an irregular manner, a yellow card would likely (but not automatically) be issued.⁶⁹⁷ As noted regarding the white paper, the yellow card is more frequently issued to those who provide recognized identification documents from their country of origin. While white paper holders are unable to get residency permits, yellow card holders are able to do so.⁶⁹⁸

⁶⁸⁹ UNHCR, SERVICES FOR REFUGEES AND ASYLUM SEEKERS REGISTERED WITH UNHCR IN GREATER CAIRO 2 (Aug. 2019) [hereinafter UNHCR, SERVICES FOR REFUGEES AND ASYLUM SEEKERS].

⁶⁹⁰ *Id.*

⁶⁹¹ Remote Interview with Mohamed Farahat, *supra* note 687. AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 26-27.

⁶⁹² See *UNHCR Help Egypt Refugee Status Determination (RSD)*, UNHCR, <https://help.unhcr.org/egypt/en/refugee-status-determination-rsd/> (last visited Jan. 30, 2022) (explaining the RSD process in Egypt). AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 26-27.

⁶⁹³ *Id.*

⁶⁹⁴ *Id.*

⁶⁹⁵ *Id.*

⁶⁹⁶ Remote Interview with Mohamed Farahat, *supra* note 687.

⁶⁹⁷ *Id.*

⁶⁹⁸ *Id.* AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 26-27.

- *The blue card*, the refugee registration card, is issued to persons who are formally recognized as refugees by UNHCR.⁶⁹⁹ The card allows its holder to obtain a legal residence permit (sticker) to legalize his stay in Egypt and is valid for three years.⁷⁰⁰

This registration card system is not only confusing, but the cards are not always properly recognized by government officials. For example, though the Ministry of Interior recognizes the blue card and the residency permit it authorizes, officials in the Ministry of Manpower and Migration, the ministry that issues work permits, do not always recognize or accept the card.⁷⁰¹ Blue card holders are supposed to be able to use them as a valid substitute for passports in order to obtain work permits. However, when their card is not accepted by the Ministry, recognized refugees are unable to obtain work permits and support themselves. The registration system seriously disadvantages stateless persons, who usually do not have required documentation that would entitle them to yellow and then blue cards, as the white papers they usually receive do not entitle them to international protection.

3. Accelerated RSD Processes

Other concerns include that asylum seekers with legitimate claims are not afforded that status because of accelerated or merged RSD processes. Refugees and asylum seekers who do not benefit from *prima facie* refugee status (as many Syrians and Yemenis have) must undergo RSD procedures to ensure they qualify for international protection. However, in part due to the high number of refugees and asylum seekers in Egypt, UNHCR has made efforts to accelerate its RSD procedures, a process that results in the rejection of some asylum seekers with legitimate refugee claims, and in turn leads to a loss of protection from UNHCR for stateless refugees.⁷⁰²

4. Closed-File Refugees

Closed-file refugees, or rejected asylum seekers, are at risk of statelessness, even more so than registered asylum seekers, because of the lack of legal status and protection provided by UNHCR once their case is closed. Although asylum seekers rejected at the first instance stage are eligible to appeal the determination and have their claims re-examined, once their files are closed following a rejected appeal, UNHCR is no longer responsible for providing them further

⁶⁹⁹ UNHCR, SERVICES FOR REFUGEES AND ASYLUM SEEKERS, *supra* note 689, at 2-3.

⁷⁰⁰ *Id.*

⁷⁰¹ Remote Interview with Mohamed Farahat, *supra* note 687.

⁷⁰² Nourhan Abdel Aziz, *Surviving in Cairo as a Closed-File Refugee: Socio-economic and Protection Challenges* 6 (Int'l Inst. Env't. Dev., Working Paper, Aug. 2017).

legal or protection-oriented services (nor are they eligible for resettlement).⁷⁰³ This vulnerability is perpetuated by the Egyptian government's view that closed-file refugees are irregular migrants, so they are ineligible for any legal status, and are not included in the network of organizations that provide protection or basic services for refugees.⁷⁰⁴ Remaining in limbo without legal status in Egypt when they cannot return to their country of origin creates a heightened risk that their children will be born undocumented and unable to establish their legal link to any country.

Closed-filed asylum seekers without identification cannot legally marry, divorce, or obtain a birth certificate for their child. Many closed-file refugees are unable or unwilling to go to their embassies and consulates for assistance in obtaining birth certificates for their children.⁷⁰⁵ Even if they do decide to approach their embassies and consulates, their requests for assistance and documents are often rejected.⁷⁰⁶ Providing such individuals with even a short-term, renewable legal status would give them time and a path to obtain valid documentation and would decrease their risk of statelessness.

E. Gaps in Protection for Specific Refugee and Migrant Populations

The gaps in the legal framework relevant to refugees, including stateless refugees, have a range of implications for refugee populations in Egypt. This Report addresses some consequences for certain populations, particularly those most at risk of statelessness.

1. Syrians

There are over 130,000 registered Syrian refugees and asylum seekers in Egypt. The real figure is likely much higher, as many Syrians have not registered with UNHCR or Egyptian authorities. As Syria descended into civil war in 2011, and Syrians began fleeing to other countries in the MENA, the number of Syrian refugees in Egypt rose from 12,800 at the end of 2012 to the current estimated population of 130,000 people.⁷⁰⁷ As a result of this significant increase in refugees and asylum seekers, at the end of 2013, UNHCR set up a field office in Alexandria, where many Syrian refugees reside.⁷⁰⁸ UNHCR provides Syrian refugees with *prima*

⁷⁰³ *Id.*

⁷⁰⁴ *Id.*

⁷⁰⁵ *Id.*

⁷⁰⁶ Nourhan Abdel Aziz, Out of Sight Out of Rights: Rejected Asylum Seekers and Closed-Files, *supra* note 205, at 30.

⁷⁰⁷ *Refugee Context in Egypt*, UNHCR, *supra* note 202.

⁷⁰⁸ UNHCR, EGYPT OPERATIONAL UPDATE JANUARY – FEBRUARY 2018 2 (2018), 3RP, REGIONAL REFUGEE & RESILIENCE PLAN IN RESPONSE TO THE SYRIA CRISIS 2020/2021 EGYPT (2021).

facie RSD that enables them to obtain certain relief and services in Egypt.⁷⁰⁹ Syrians, like other refugee populations, are at risk of statelessness because of barriers to obtaining documentation from consulates and embassies and maintaining necessary documentation when these expire. For example, because of the widespread use of local sheikhs to perform marriages who do not issue formal marriage certificates in Syria that are recognized in Egypt, many Syrians have difficulty establishing that their marriages are legal.⁷¹⁰

In addition, due to Syria's nationality law which does not allow children to acquire nationality from their Syrian mothers, if a Syrian woman gives birth in Egypt and the child does not acquire a nationality from the father – or has no legal ink to the father – the child may be left undocumented.⁷¹¹ Egypt's nationality law has no safeguard against such children becoming stateless.

2. Yemenis

The conflict in Yemen has displaced millions of Yemenis since 2015. The majority of displaced Yemenis are internally-displaced and remain in Yemen, while others have fled to other countries in the MENA region, including Egypt. According to the Yemeni Embassy in Cairo, between 500,000 and 700,000 Yemeni live in Egypt, a dramatic increase from the 70,000 prior to 2015.⁷¹² Like Syrians, because of the conflict in Yemen, UNHCR generally provides Yemeni refugees and asylum seekers with *prima facie* refugee status determination procedures.⁷¹³ However, many Yemenis who do reside in Egypt are not registered with UNHCR as refugees or asylum seekers because this gives them the flexibility to return to Yemen at their own convenience, leaving many Yemenis who could be registered as refugees and asylum seekers without protection.⁷¹⁴ If Yemenis in the latter category are unable to fulfill the registration procedures for their children born in Egypt, and are unable to access consular assistance for security or practical reasons, their children risk lacking documentation and potential statelessness.

⁷⁰⁹ Maja Janmyr, *Negotiating Protection in the Syrian Refugee Response*, MIDDLE EAST INST. (Feb. 13, 2018); *see also* Remote Interview with Confidential Informant, NGO (Dec. 8, 2020) (stating that Syrians have frequently faced problems accessing the Syrian embassy and renewing their passport, but the situation has much improved).

⁷¹⁰ Remote Interview with Mohamed Farahat, *supra* note 687.

⁷¹¹ *Toolkit: Understanding statelessness in the Syria refugee context*, INST. ON STATELESSNESS AND INCLUSION AND NORWEGIAN REFUGEE COUNCIL, <http://www.syrianationality.org/index.php?id=1> (last visited Jan. 29, 2022).

⁷¹² Qabool Al-Absi, *The Struggle Far from Home: Yemeni Refugees in Cairo*, SANA'A CTR. FOR STRATEGIC STUD. (Dec. 18, 2020) (citing Author interview with Baleegh Al-Mekhlafi, spokesperson for the Embassy of the Republic of Yemen in Egypt, Cairo, Oct. 6, 2020).

⁷¹³ UNHCR, EGYPT RESPONSE PLAN FOR REFUGEES, AND ASYLUM-SEEKERS FROM SUB-SAHARAN AFRICA, IRAQ, AND YEMEN (2020) [hereinafter EGYPT RESPONSE PLAN]. Not all Yemenis are eligible for *prima facie* refugee status, and Yemenis for the most part must still undergo RSD if they are under consideration for resettlement.

⁷¹⁴ Qabool Al-Absi, *The Struggle Far from Home: Yemeni Refugees in Cairo*, SANA'A CTR. FOR STRATEGIC STUD. (Dec. 18, 2020) (citing Author interview with Baleegh Al-Mekhlafi, spokesperson for the Embassy of the Republic of Yemen in Egypt, Cairo, Oct. 6, 2020).

3. Iraqis

Though the population of Iraqi refugees of over 6,800 is smaller than other refugee populations from countries in the MENA, most Iraqis are protracted refugees.⁷¹⁵ A systemic problem for Iraqi refugees is access to documentation to regularize their stay in Egypt and gain access to services.⁷¹⁶ This is particularly an issue for those Iraqis who arrived in Egypt on a tourist visa and then claimed asylum once in Egypt. Iraqis are at risk of deportation because obtaining and renewing residency permits has been restricted.⁷¹⁷ Because of this, Iraqis have problems finding adequate housing, as landlords aware of their precarious situation hesitate to rent to them. Most Iraqi refugees end up living in substandard housing and pay high rents for the privilege.⁷¹⁸

Iraq's gender discriminatory nationality law does not allow children to acquire nationality automatically from their Iraqi mothers if they were born outside the country. As with Syrians, if an Iraqi woman gives birth in Egypt and the child does not acquire a nationality from the father – or has no legal link to their father – the child is left stateless.⁷¹⁹ Egypt's nationality law does not protect such children against statelessness.

4. Sudanese and South Sudanese

Egypt also hosts a sizable number of refugees and asylum seekers from North and Sub-Saharan Africa. The second largest population of registered refugees and asylum seekers in Egypt are Sudanese, with UNHCR reporting the population at almost 51,000, over 20,000 of whom are from South Sudan.⁷²⁰ Though the Arabic Sudanese population may face fewer cultural problems adjusting, and using local services, than the mostly non-Arabic speaking Southern Sudanese population, both experience discriminatory and xenophobic treatment in Egypt.⁷²¹ The stabbing of a twelve-year-old Sudanese boy, Mohamed Hassan, sparked demonstrations in Cairo

⁷¹⁵ “Protracted refugee situations are those in which at least 25,000 refugees from the same country have been living in exile for more than five consecutive years. Refugees in these situations often find themselves trapped in a state of limbo: while it is not safe for them to return home, they also have not been granted permanent residence to stay in another country either.” *Protracted Refugee Situations Explained*, UNHCR, <https://www.unrefugees.org/news/protracted-refugee-situations-explained/> (last visited 9 July, 2021).

⁷¹⁶ UNHCR, EGYPT RESPONSE PLAN, *supra* note 724, at 12.

⁷¹⁷ *Id.*

⁷¹⁸ *Id.*

⁷¹⁹ ABDULLAH OMAR YASSEN, GLOB. CITIZEN OBSERVATORY, REPORT ON CITIZENSHIP LAW IRAQ 7 (2021).

⁷²⁰ UNHCR, EGYPT OPERATIONAL UPDATE JULY-SEPTEMBER 2021, *supra* note 197.

⁷²¹ Samy Magdy, *Fleeing War, Poverty, African Migrants Face Racism in Egypt*, ASSOCIATED PRESS, (Jan. 2, 2020); “*They Call Us Black and Filthy*”: *Sudanese Refugees in Egypt, Trapped Between Racism and Violence*, SCENE ARABIA (Mar. 20, 2018).

in October/November of 2020.⁷²² These protests resulted in dozens of refugees and migrants being arrested and detained.⁷²³

In 2004 Egypt and Sudan signed the Four Freedoms Agreement, which guaranteed freedom of movement, residency, work, and property ownership for citizens of both countries.⁷²⁴ However, although Sudan appears to have implemented the Agreement, Egypt has reportedly not fully implemented it.⁷²⁵

In Egypt, it is common for migrant and refugee families from Sudan and South Sudan to lack identification documents of any kind. Many Sudanese cannot register the births of their children born in Egypt for a host of reasons, including: they have no asylum or refugee document issued by UNHCR (either because they never registered or their asylum claim was rejected); they cannot obtain consular assistance from their home countries due to security issues; or they are refused documents by their consulates because they are not considered nationals.⁷²⁶ Any of these barriers puts their children at risk of statelessness. In addition, Sudanese nationality law discriminates against mothers in transmission of nationality, as the child of a Sudanese father automatically obtains nationality at birth, while the child of a Sudanese mother must make an application to obtain her nationality.⁷²⁷

5. Eritreans, Ethiopians, and Somalis

There are almost 36,000 registered Eritrean and Ethiopian refugees and asylum seekers in Egypt.⁷²⁸ However, this number could be increasing due to the ongoing conflict and instability in the Tigray region of Ethiopia. Refugee communities living in Tigray, including the approximately 100,000 Eritrean refugees living across four refugee camps in the region, are also entering Egypt.⁷²⁹ Since the outbreak of the Somali Civil War and the collapse of Siad Barre's regime in the early 1990s, refugees and asylum seekers from Somalia have increasingly been fleeing to Egypt, with over 6,700 refugees and asylum seekers registered with UNCHR.⁷³⁰ However, estimates of unregistered Somalis living in Egypt is much higher because refugees

⁷²² Zeinab Mohammed Salih, *Dozens of Sudanese migrants held in Cairo After Protests*, THE GUARDIAN (Nov. 12, 2020).

⁷²³ *Id.*

⁷²⁴ Agreement on the Freedom of Movement, Residence, Work, and Property Ownership Between Egypt and Sudan, Egyptian Presidential Decree No. 144, 2004, <https://manshurat.org/node/38306> (last visited Jan. 30, 2022).

⁷²⁵ Sherif Mohyelddeen, *The Egypt-Sudan Border: A Story of Unfulfilled Promise*, *supra* note 650.

⁷²⁶ MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 27.

⁷²⁷ The Sudanese Nationality Act 1994 and Sudanese Nationality Act (Amendment) 2011 and 2018, Section 4 (Dec. 30, 2018).

⁷²⁸ UNHCR, EGYPT OPERATIONAL UPDATE JULY-SEPTEMBER 2021, *supra* note 197.

⁷²⁹ Xinhua, *Eritrean Refugees' Situation in Ethiopia's Tigray Remains Precarious: UN*, DAILY NEWS EGYPT (Feb. 25, 2021).

⁷³⁰ UNHCR, EGYPT OPERATIONAL UPDATE JULY-SEPTEMBER 2021, *supra* note 197.

who have not been in contact with UNHCR for several years are “deregistered” by UNHCR, and UNHCR has been closing Somali refugee files for various reasons.⁷³¹

In addition to challenges similar to those faced by Sudanese and South Sudanese who arrive in Egypt without documents, individuals from all these countries face specific obstacles to obtaining or preserving their country-of-origin nationality status. Eritrea, for instance, places burdensome documentation requirements on its nationals living abroad (for example they need to pay taxes to the country before they can obtain consular assistance), which prevents some nationals from accessing this assistance.⁷³² Due to onerous requirements of both countries and suspicion of the other state’s nationals, persons of mixed Ethiopian and Eritrean parentage often find themselves unable to obtain documentation verifying their nationality from either Eritrea or Ethiopia.⁷³³

6. Non-Refugee Migrant Populations

As Egypt has historically been a transit and destination country for economic migrants in addition to refugees, it is host to migrants from an estimated fifty-eight different countries, including Iraq, Syria, Yemen, Libya, Ethiopia, Eritrea, Somalia, Sudan, South Sudan, and other sub-Saharan African countries.⁷³⁴ The precise number of migrants in Egypt, as noted earlier, is unknown. In addition to being a host for migrants, Egypt is also one of the largest providers of migrant labor; more than six million Egyptian emigrants live and work in the MENA, primarily in Saudi Arabia, Jordan, and the United Arab Emirates.⁷³⁵

While little data is available, it is likely that some migrant workers are at risk of statelessness in Egypt. Reports indicate that irregular migrant workers, in particular from nearby countries such as Eritrea, Ethiopia, the Democratic Republic of Congo, and Sudan, often lack documented status in their home country, and face statelessness or the risk of statelessness (especially when coupled with the denial of diplomatic or consular protection and assistance).⁷³⁶ An additional challenge is the requirement to produce a residence permit showing legal presence in Egypt. For regular migrants, renewing permits that expire every six months and take around two months to renew is not an easy task. Although Egypt has not deported those without papers, the lack of a valid residence permit limits freedom of movement, which may affect ability to travel, and to access documents from their respective consulates.⁷³⁷

⁷³¹ U.S. Committee for Refugees World Refugee Survey 2002 – Egypt, U.S. COMM. FOR REFUGEES & IMMIGRANTS (June 10, 2002). See also Remote Interview with Confidential Informant, NGO, *supra* note 709 (noting that many Eritrean refugees are unable to renew their residency in Egypt).

⁷³² MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 27.

⁷³³ LOUISE THOMAS, THE AMER. UNIV. IN CAIRO, CTR. FOR FORCED MIGRATION AND REFUGEE STUD., ‘REFUGEES AND ASYLUM SEEKERS FROM MIXED ERITREAN-ETHIOPIAN FAMILIES IN CAIRO’ (2006).

⁷³⁴ IOM, IOM STRATEGY FOR EGYPT (2021-2025) 3 (2021).

⁷³⁵ Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107.

⁷³⁶ EIRWEN-JANE PIERROT, UNHCR, A RESPONSIBILITY TO PROTECT: UNHCR AND STATELESSNESS IN EGYPT 7-9 (June 2013).

⁷³⁷ MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 27.

7. Palestinians

Palestinians have been subject to one of the most lengthy and inter-generational problems of statelessness in the world, and their status in Egypt is the result of mass displacement from Palestine, the Western colonial movement, and the complex relationship between Egypt and other actors in the MENA region.⁷³⁸ Palestinian statelessness is a consequence of the ongoing occupation of the Palestinian state and denial of Palestinian self-determination.⁷³⁹ Palestinians are considered separately from other stateless refugee populations for the purposes of this Report to acknowledge both the unique socio-historical context of Palestine,⁷⁴⁰ and the correspondingly unique status of Palestinians in international law.⁷⁴¹ The IHRC’s research indicates that Palestinians in Egypt continue to face systemic barriers to citizenship status and equal protection, despite important measures taken by the Egyptian government.

Palestinian statelessness as a matter of law is a “direct result of the misinterpretation of the Covenant of the League of Nations, the misadministration of the British mandate, and the UN’s partitioning of the Palestinian homeland.”⁷⁴² Following World War I, the allied powers carved up the former Ottoman territories among themselves and administered them through a series of treaties with Turkey.⁷⁴³ Pursuant to the Treaty of Lausanne of 1924,⁷⁴⁴ the Palestine Citizenship Order of 1925 conferred citizenship status to Palestinian nationals (i.e., those persons considered to be Turkish subjects “habitually resident in the territory of Palestine.”).⁷⁴⁵ The creation of Israel through the wars of 1948-1967 led to the mass displacement of Palestinians through systematic expulsions from their homeland.⁷⁴⁶ UN Resolution 181 of 1947 proposed the partition of a Palestinian state and a Jewish state.⁷⁴⁷ A year later in 1948, UN Resolution 194

⁷³⁸ ISI, *THE WORLD’S STATELESS*, *supra* note 20, at 127.

⁷³⁹ *Id.*

⁷⁴⁰ *See, e.g.*, DAWN CHATTY, *DISPLACEMENT AND DISPOSSESSION IN THE MODERN MIDDLE EAST* 183 (2010) (noting that with the exception of the European Crusaders in the 11th and 12th centuries, “the Arabs in Palestine have maintained an uninterrupted presence as the majority population” until their mass displacement beginning in the 1940s). *See* JOHN QUIGLEY, *THE CASE FOR PALESTINE: AN INTERNATIONAL LAW PERSPECTIVE* 3-13 (2005) (examining the establishment of Israel as a state as a component of colonial expansion in the early 20th century).

⁷⁴¹ AUC, *REFUGEE ENTITLEMENTS IN EGYPT*, *supra* note 1, at 27 (acknowledging that “Palestinian refugees have a special status in international law.”); *see generally* LEX TAKKENBERG, *THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW* (2d. ed., 2020).

⁷⁴² DAWN CHATTY, *DISPLACEMENT AND DISPOSSESSION IN THE MODERN MIDDLE EAST* 208 (2010).

⁷⁴³ *See* Susan Akram, *UNRWA and Palestine Refugees*, in *THE OXFORD HANDBOOK OF INT’L REFUGEE LAW* 643, 643 (Cathryn Costello, Michelle Foster, and Jane McAdam eds., 2021). *See, e.g.*, *Minorities Treaty Between the Principal Allied and Associated Powers and Poland*, June 28, 1919, 225 Consol. T.S. 412); *see also* Covenant of the League of Nations, art. 22, ¶ 1-4, Apr. 28, 1919, League of Nations.

⁷⁴⁴ Treaty of Lausanne art. 30, 28 L.N.T.S. 12 (1924).

⁷⁴⁵ Palestinian Citizenship Order, (1925) pt. I(1)(I), I LEGISLATION OF PALESTINE 1918-1925 37 (Mandate Palestine).

⁷⁴⁶ *See, e.g.*, Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107.

⁷⁴⁷ *See* G.A. Res. 181 (II) (Nov. 9, 1947). *But see* Susan Akram, *Palestinian Nationality and “Jewish” Nationality From the Lausanne Treaty to Today*, in *RETHINKING STATEHOOD IN PALESTINE* 192, 198 (Leila Farsakh ed., 2021) (noting that Resolution 181 lacked any obligatory character, and served only as a recommendation, itself inconsistent with the prior mandate that Palestinians were to be granted independence).

established the United Nations Conciliation Commission for Palestine (UNCCP), and resolved that Palestinian refugees who wished to return to Palestine “should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property.”⁷⁴⁸ Israel has refused to implement the terms of Resolution 194, and Israel’s Nationality Law of 1952 retroactively repealed Palestinian nationality, leaving Palestinians lacking citizenship in another state stateless under the international legal definition. Palestinians, however, consider Israeli denationalization as illegal, and that the law has not affected their status as Palestinian nationals.⁷⁴⁹ The recognition of Palestinian statehood by the majority of states in the UN General Assembly in November 2012 gave legal recognition to Palestine, but has not changed the practical reality of occupation or the inability to grant Palestinians a nationality through domestic legislation.⁷⁵⁰

There are approximately five million Palestinians who are either stateless or who have an ambiguous nationality status worldwide,⁷⁵¹ and over half of Palestinians are considered *de jure* stateless.⁷⁵² The nationality rights of Palestinians in Egypt discussed in this Report are distinguished from the right to return,⁷⁵³ as all Palestinians in Arab and non-Arab countries continue to hold the right to return to Palestine under international law (and UN resolutions).⁷⁵⁴

In 2008-2009, Oroub El-Abed’s research on Palestinians estimated there were at least 50,000-100,000 Palestinians in Egypt,⁷⁵⁵ with some reports at the time ranging as high as

⁷⁴⁸ DAWN CHATTY, *DISPLACEMENT AND DISPOSSESSION IN THE MODERN MIDDLE EAST* 208 (2010).

⁷⁴⁹ *Id.*

⁷⁵⁰ See G.A. Res. 67/19, at 3-4 (Dec. 4, 2012) (urging all States of the United Nations to support and assist the people of Palestine in realizing the right to self-determination, independence, and freedom, and noting the 132 UN Member States that have recognized the State of Palestine). Today, 139 of the UN Member States recognize the State of Palestine. Diplomatic Relations, Permanent Observer Mission of The State of Palestine to the United Nations New York, <http://palestineun.org/about-palestine/diplomatic-relations/> (last visited Feb. 2, 2022). See also Nada Ghandour-Demiri, *The (in)significance of the UN Palestine vote*, 3 BRIEFING NOTES, HELLENIC FOUND. FOR EUROPEAN AND FOREIGN POL’Y (2013).

⁷⁵¹ ISI, *THE WORLD’S STATELESS*, *supra* note 20, at 132.

⁷⁵² ASEM KHALIL, *PALESTINIAN NATIONALITY AND CITIZENSHIP CURRENT CHALLENGES AND FUTURE PERSPECTIVES* 28 (2007) (explaining that “Today, more than half the Palestinians are considered to be *de jure* stateless. They fall into three categories: holders of the ‘Refugee Travel Document’ issued by Syria, Lebanon, Egypt, Iraq and some other Arab countries; holders of nationalities of convenience—mainly temporary Jordanian passports; and holders of the Palestinian passport issued by the Palestinian Authority (PA) which is considered as a travel document pending the creation of a fully-fledged Palestinian state.”).

⁷⁵³ *Id.*

⁷⁵⁴ *Id.* at 5. See also Susan Akram, *Palestinian Nationality and “Jewish” Nationality*, *supra* note 747, at 209 (noting that the status of Palestinians may be best considered that of “stateless *nationals*,” and the right of return is thus based on “their rights as nationals of Palestine, not only as refugees.”). However, the goal of “fashioning a nationality law for Palestinians remains a complicated proposition . . . [t]he PLO and PA have recognized, in the citizenship laws they have drafted and considered, that in the absence of independence accompanying statehood recognition, a Palestinian citizenship law remains aspirational.” *Id.* at 210.

⁷⁵⁵ See Oroub El-Abed, *The forgotten Palestinians: how Palestinian refugees survive in Egypt*, 20 FORCED MIGRATION REV. 29, 29 (2004) (noting that in Egypt “the number of Palestinian refugees is estimated to be between 50,000 and 70,000.”); see also Interview with Oroub El-Abed, Principal Research and Co-Investigator, Centre for Lebanese Studies, Lebanese American University-Beirut (Dec. 11, 2020) (indicating that in the period researched from approximately 2007-2009 it was likely that the number of Palestinians in Egypt was over 100,000, but official

160,000.⁷⁵⁶ Sources have estimated the current number of Palestinians in Egypt may be as high as 300,000.⁷⁵⁷ The first wave of displaced Palestinians were the approximately “11,600 Palestinians who fled to Egypt during the Nakba and its immediate aftermath.”⁷⁵⁸ Many of these refugees were expelled to Gaza or Israel by Egyptian authorities after the closure of temporary refugee camps located in Cairo and the Sinai.⁷⁵⁹ The second wave came during the 1967 Arab-Israeli War and its aftermath, including mass expulsions from Gaza by Israel; by 1969 an estimated 33,000 Palestinians resided in Egypt.⁷⁶⁰

After Israel’s invasion of Lebanon in 1982, many fighters of the Palestinian Liberation Organization (PLO) who had previously been stationed in Egypt returned from Lebanon under a withdrawal deal brokered by the United States.⁷⁶¹ By 1985, it was estimated that over 100,000 Palestinians lived in Egypt.⁷⁶² It is also estimated that tens of thousands of Palestinians in Kuwait held Egyptian travel documents, even if they lacked residency status.⁷⁶³ Following the Gulf War of 1991 an estimated 70-80% of the 450,000-strong Palestinian population who fled or were expelled from Kuwait entered Egypt.⁷⁶⁴ In addition, an estimated 45,000 Palestinians left Egypt as a consequence of the 1993 Oslo Accords.⁷⁶⁵ Many Palestinians have been displaced and arrived in Egypt due to subsequent conflicts; as of 2018 there were approximately 5,000-6,000 Palestinian refugees from Syria residing in Egypt.⁷⁶⁶

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)⁷⁶⁷ has been prohibited from providing aid to Palestinians in Egypt, which has limited

figures were consistently lower). *See also* ASEM KHALIL, SOCIOECONOMIC RIGHTS OF REFUGEES, *supra* note 196, at 1 n.1 (2010)

⁷⁵⁶ BADIL RESOURCE CTR., SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS 2016-2018: VOLUME IX 73 (2019) [hereinafter BADIL, SURVEY OF PALESTINIAN REFUGEES 2016-2018].

⁷⁵⁷ *See, e.g.*, Tsourapas, *Egypt: Migration and Diaspora Politics*, *supra* note 107; *see also* Interview with Oroub El-Abed, *supra* note 755 (estimating generally that there could be approximately 400,000 Palestinians residing in Egypt today).

⁷⁵⁸ BADIL, SURVEY OF PALESTINIAN REFUGEES 2016-2018, *supra* note 756, at 73.

⁷⁵⁹ *Id.* at 73 (citing LAURIE BRAND, PALESTINIANS IN THE ARAB WORLD, INSTITUTION BUILDING AND THE SEARCH FOR STATE 43 (1991)).

⁷⁶⁰ *Id.*

⁷⁶¹ EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 28.

⁷⁶² *Id.*

⁷⁶³ *Id.* at 29.

⁷⁶⁴ *Id.*

⁷⁶⁵ *Id.* at 28, 143 (noting that while 1948 Palestine refugees were largely excluded from the call to return by the newly-established Palestinian Authority, Palestinians who had come to Egypt during or after 1967 were invited to return and offered employment).

⁷⁶⁶ BADIL, SURVEY OF PALESTINIAN REFUGEES 2016-2018, *supra* note 756, at 73. *See also* BOSTON UNIV. SCH. OF L. INT’L HUM. RTS. CLINIC, PROTECTING SYRIAN REFUGEES: LAWS, POLICIES, AND GLOBAL RESPONSIBILITY SHARING 77 (2015) [hereinafter BU IHRC, PROTECTING SYRIAN REFUGEES]. Further research is needed to update and clarify the quantitative data on Palestinians in Egypt today.

⁷⁶⁷ McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.3 (explaining that “UNRWA was established by United Nations General Assembly resolution 302 (IV) of December 8, 1949, to carry out direct relief and works programs for Palestinian refugees. It has aided four generations of Palestine refugees, defined as ‘persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.’”).

the availability of public data.⁷⁶⁸ UNRWA maintains a liaison office in Cairo but is unable to register Palestinian refugees due to the lack of a formal mandate in Egypt.⁷⁶⁹

Similarly, many Palestinians are unable to access protections that could be offered by UNHCR.⁷⁷⁰ Under the international legal framework, the exclusion of Palestinian refugees from UNRWA protection in Egypt should entitle them to protection from UNHCR under the 1951 Refugee Convention.⁷⁷¹ Palestinians in Egypt are not able to avail themselves of the protection of UNRWA, and the UNCCP was no longer able to provide Palestinians effective international protection since the early 1960's. Because no other international agency was able to offer them international protection, under its terms, Article 1(D) of the 1951 Refugee Convention should not be considered to bar Palestinians from international protection through UNHCR (i.e., Palestinians in Egypt do not receive "protection or assistance" from other organs or agencies of the United Nations).⁷⁷² While Egypt permits UNHCR to conduct RSD on its territory, this does not apply in the same manner for Palestinians.⁷⁷³ UNHCR considers protection of Palestinians to fall into two categories: "Firstly, those who do not fall under UNRWA's definition of 'Palestine refugees' or 'displaced persons' but fulfil the requirements of the Refugee Convention . . . [and] Secondly, those who are 'Palestine refugees' or 'displaced persons' according to UNRWA's definition but are outside of UNRWA's territorial scope of operation."⁷⁷⁴ In 2012, of the total population of Palestine refugees in Egypt, many were "currently detained and/or not registered with the UNHCR,"⁷⁷⁵ and only thirty Palestinians actually received UNHCR assistance.⁷⁷⁶

These issues highlight the importance of Egypt adhering to its obligations under international law. In particular, Egypt is obliged to guarantee the right of a child born to a Palestinian parent a nationality under ICCPR Article 24(2), CRC Article 7(1), CRCI Article 7,

⁷⁶⁸ Oroub El-Abed, *Palestinian Refugees of Egypt: What Exit Options are Left for Them?*, 22 REFUGEE, 2-3 (2005) (UNRWA's five areas of operation are Jordan, Syria, Lebanon, the West Bank, and Gaza, the latter two of which are collectively referred to as the Occupied Palestinian Territories).

⁷⁶⁹ BU IHRC, PROTECTING SYRIAN REFUGEES, *supra* note 766, at 77. The UNRWA Representative Office in Cairo does engage with Palestine refugees on matters related to their registration with UNRWA. E-mail from Confidential Informant, INGO, to Christopher Creech and Susan Akram, IHRC (Oct. 11, 2021).

⁷⁷⁰ McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.3.

⁷⁷¹ See ASEM KHALIL, SOCIOECONOMIC RIGHTS OF REFUGEES, *supra* note 196, at 10. See generally, BADIL RESOURCE CTR., CLOSING PROTECTION GAPS: HANDBOOK ON PROTECTION OF PALESTINIAN REFUGEES IN STATES SIGNATORY TO THE 1951 REFUGEE CONVENTION (Feb. 2015).

⁷⁷² Convention Relating to the Status of Refugees, *supra* note 27, at art. 1(D).

⁷⁷³ Janmyr and Stevens, *Regional Refugee Regimes: Middle East*, *supra* note 302, at 343; see also Mulki Al-Sharmani, *Refugee Migration to Egypt: Settlement or Transit?*, in TRANSIT MIGRATION IN EUROPE 55, 59 (Franck Duvell, Irinia Molodikova and Michael Collyer eds., 2014) (noting that "Unlike other refugee groups, the status and affairs of Palestinian refugees are directly administered by the Egyptian Government instead of UNHCR. The national policies regulating the status and affairs of the Palestinian refugees have changed over the past decades.").

⁷⁷⁴ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 28 (explaining that in the latter category, other conditions will apply, namely "[1] Termination of the mandate of UNRWA; [2] Inability of UNRWA to fulfill its protection or assistance mandate; [3] Threat to the applicant's life, physical integrity, security, or liberty or other serious protection-related reasons; or [4] Practical, legal, and/or safety barriers preventing an applicant from (re)availing him/herself of the protection or assistance of UNRWA.").

⁷⁷⁵ McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.3.

⁷⁷⁶ *Id.*

and ACRWC Article 6.⁷⁷⁷ The Casablanca Protocol, an instrument that binds Egypt, also provides a specific source of protection for Palestinians.⁷⁷⁸ Under President Nasser, Egypt largely upheld its obligations under the Casablanca Protocol, and Palestinians generally enjoyed “almost equal rights” as Egyptian citizens.⁷⁷⁹ However, the situation changed in 1978 with a dramatic shift in Egyptian policies towards Palestinians. The death of President Nasser and political tensions between Egypt and the PLO left many Palestinians vulnerable, and they “were slowly stripped of their rights, unless they [already] held citizenship.”⁷⁸⁰ In particular, the assassination of the Egyptian Minister of Culture (Yusuf al-Sibai) in 1978 by the Abu Nidal PLO faction brought the relationship between the PLO and the Egyptian Government to a standstill.⁷⁸¹ Relations between Egypt and the PLO remained fraught in the aftermath of the peace treaty between Egypt and Israel in March 1979,⁷⁸² and Egypt has never restored the rights and privileges it stripped from Palestinians, nor changed the state-imposed classification of Palestinians as “foreigners.”⁷⁸³ In essence, the Casablanca Protocol has not been implemented by Egypt since the Nasser era, and Egypt has remained out of compliance with its obligations to provide fundamental rights to Palestinians, including access to citizenship.⁷⁸⁴

The process of acquiring nationality for Palestinians in Egypt, including those born in Egypt, remains complex. One of the most significant developments has been the revised 2004 Nationality Law, which provides a means for children born after 2004 to parents when the mother is Egyptian to acquire Egyptian nationality.⁷⁸⁵ Thus, for many young Palestinians, marriage to an Egyptian may serve as “a means of legalizing their stay in Egypt.”⁷⁸⁶ As noted elsewhere in this Report, the implementation of the 2004 Nationality Law continues to constrain access, as applicants for citizenship “have to provide, among other documents, the birth

⁷⁷⁷ See *supra*, Part III.B.2-4.

⁷⁷⁸ The OIC instruments provide no specific legal protections for Palestinians similar to the Casablanca Protocol, and the African Union (pursuant to the 1969 OAU Convention) focuses on refugee populations that originate in Africa, generally appearing to exclude Palestinians other than those displaced Palestinians coming from African states (e.g., from Libya). See ASEM KHALIL, PALESTINIAN REFUGEES IN ARAB STATES, *supra* note 378, at 17.

⁷⁷⁹ BADIL, SURVEY OF PALESTINIAN REFUGEES 2016-2018, *supra* note 756, at 73.

⁷⁸⁰ *Id.* at 74.

⁷⁸¹ Oroub El-Abed, *The Palestinians in Egypt: Identity, Basic Rights and Host State Policies*, 28 REFUGEE SURV. Q. 531, 540 (2009).

⁷⁸² *Id.*

⁷⁸³ *Id.* at 541.

⁷⁸⁴ See, e.g., EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 70.

⁷⁸⁵ *Id.* at 84 (2009) (explaining that “the significance of the law with regard to Palestinian-Egyptian intermarriage in the future cannot be overstated. The fact that the law is automatically applied to children born after 2004 to mixed couples where the mother is Egyptian removes an important barrier to such marriages”); See also Manby, Citizenship and Statelessness in Africa, *supra* note 396, at 383 (explaining that “In 2004, an amendment to the 1975 nationality law for the first time allowed the children of Egyptian women and foreign men to obtain nationality, and those born before the changes to the law came into effect (in November 2005) were given the right to apply for their citizenship to be recognised.”).

⁷⁸⁶ EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 84.

certificates of both parents, the mother's identity card and her father's birth certificate, and the marriage contract.”⁷⁸⁷

Still, the 2004 Nationality Law's retroactive implementation “with regard to Palestinians born of Egyptian mothers prior to 2004” has been criticized.⁷⁸⁸ Even after issuance of Law No. 154, the “authorities continued to refuse nationality to children born to a Palestinian father and Egyptian mother,” estimated to constitute a third of the population of non-citizen children born to Egyptian mothers.⁷⁸⁹ Article 2 of the Egyptian Nationality Law provided for nationality acquisition by a combination of *jus soli* and maternal *jus sanguinis* if the father is stateless or unknown. However, children born in Egypt of Egyptian mothers and stateless or unknown fathers have been deprived of their right to be Egyptian citizens if their fathers were assumed to be Palestinian. A key justification for this longstanding exception was the concern that granting Egyptian nationality might threaten Palestinians' right of return.⁷⁹⁰

In May 2011, in response to NGOs and protests by affected families, the Government issued a decree explicitly granting nationality to children of Egyptian women married to Palestinian men.⁷⁹¹ Reports indicate that following changes to the law by this decree (i.e., Decree No. 1231 of 2011),⁷⁹² a significant number of people had been granted Egyptian citizenship; these reports range from 17,000,⁷⁹³ 24,000⁷⁹⁴ to approximately 40,000 individuals.⁷⁹⁵ The 2011 Decree seemingly has been implemented retroactively, although not in all cases, which has resulted in some court challenges.⁷⁹⁶ Additionally, applicants for citizenship “have to provide, among other documents, the birth certificates of both parents, the mother's identity card and her father's birth certificate, and the marriage contract,” a high burden for many to meet.⁷⁹⁷

⁷⁸⁷ Manby, *Citizenship and Statelessness in Africa*, *supra* note 396, at 383.

⁷⁸⁸ EL-ABED, *PALESTINIANS IN EGYPT SINCE 1948*, *supra* note 11, at 84.

⁷⁸⁹ Manby, *Citizenship and Statelessness in Africa*, *supra* note 396, at 384.

⁷⁹⁰ See McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.4.

⁷⁹¹ Manby, *Citizenship and Statelessness in Africa*, *supra* note 396, at 384. McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.4.

⁷⁹² The IHRC was unable to obtain a physical copy of Decree No. 1231 of 2011. See, e.g., MALEK, *REPORT ON CITIZENSHIP LAW EGYPT*, *supra* note 33, at 12.

⁷⁹³ Mohamed Mostafa Shaaban, *Passports: Citizenship was granted to 40,000 foreigners, including 15,0000 Palestinians, after 2011*, SADA EL-BALAD (2017).

⁷⁹⁴ Mohamed Shoman and Fatima El-Desouky, *Director of Passports department: 8000 Palestinians obtained Egyptian citizenship during Morsi's era*, AL-AHRAM ONLINE (May 2014).

⁷⁹⁵ BADIL, *SURVEY OF PALESTINIAN REFUGEES 2016-2018*, *supra* note 756, at 73 n.396.

⁷⁹⁶ Ahmed Abdel Hadi, *The Supreme Administration confirms the equality between the father and the mother because of the proof of Egyptian nationality*, YOUM7 (Apr. 22, 2017); Mahmoud El-Shorbagy, *Higher Administration: A Palestinian born to an Egyptian mother has the right to obtain her nationality*, MASRAWY (July 9, 2017). However, other sources have claimed the 2011 decree has not been implemented adequately to permit the acquisition of nationality retroactively for non-citizen children born to Egyptian mothers and Palestinian fathers. See McBride and Kingston, *Legal Invisibility and the Revolution*, *supra* note 154, at 162 n.3 (noting that “the 2011 decree was not retroactive and children born before 2011 have not benefitted from this change.”). In addition, an “inability to secure identity documents to prove maternal nationality, ineffective bureaucratic mechanisms within the Egyptian Government, and lack of information dissemination in rural areas create vulnerabilities to statelessness.” *Id.* at 162 n.4.

⁷⁹⁷ Manby, *Citizenship and Statelessness in Africa*, *supra* note 396, at 383.

Palestinians who are unable to become Egyptian citizens or access protections through UNHCR, must try to qualify under the Egyptian Residency Permit (ERP) regime. There are several types of ERPs for which Palestinians may be eligible; these are: (1) special residency permits issued for a period of ten years,⁷⁹⁸ (2) ordinary residency permits issued for a period of five years,⁷⁹⁹ (3) temporary residency permits typically issued for a period of one to three years,⁸⁰⁰ and (4) residency permits provided by UNHCR, which are issued for a period of six months and are renewable.⁸⁰¹ It is unclear how many Palestinians hold each type of residency permit, but reports generally give descriptions of how they are distributed to Palestinians based on the conditions of their arrival in Egypt.

Palestinians in Egypt fall into a number of different categories in terms of eligibility for residency status.⁸⁰² Depending on when they arrived in Egypt and the conditions of their arrival, they may hold significantly different residency permits as demonstrated in the table below. “[M]ost 1948 refugees hold temporary residency status, which must be renewed every one to three years, and entitles them to a five-year travel document.”⁸⁰³ Refugees displaced from the 1967 conflict “also hold temporary residency that must be renewed, and are entitled to three-year travel documents.”⁸⁰⁴ Palestinians from Syria, as noted below, have generally been unable to access any of these forms of documentation, but have instead been provided with short term permits by the Egyptian Government.⁸⁰⁵ These complex categorizations are illustrated in the following table.

First are Palestinians who arrived before 1948 for various reasons. Many of these Palestinians hold residency permits that are “renewable every five years, or ten years if proof of ten-year continuous residency can be provided.”⁸⁰⁶

⁷⁹⁸ ASEM KHALIL, PALESTINIAN REFUGEES IN ARAB STATES, *supra* note 378, at 35.

⁷⁹⁹ *Id.*

⁸⁰⁰ *Id.*

⁸⁰¹ *Id.* at 16.

⁸⁰² See also UNHCR, UNHCR REVISED STATEMENT ON ARTICLE 1D OF THE 1951 CONVENTION 6-7 (Oct. 2009) (considering first “Palestinians who are ‘Palestine refugees’ within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions, and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there [and their descendants]” and second “Palestinians not falling within [the preceding category who are displaced persons under UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent General Assembly resolutions], and who, as a result of the 1967 Arab-Israeli conflict, have been displaced from the Palestinian territory occupied by Israel since 1967 and have been unable to return there [and their descendants]” to fall within the scope of Article 1(D) of the 1951 Refugee Convention); see also ASEM KHALIL, SOCIOECONOMIC RIGHTS OF REFUGEES, *supra* note 196, at 1 n.1.

⁸⁰³ BADIL, SURVEY OF PALESTINIAN REFUGEES 2016-2018, *supra* note 756, at 73.

⁸⁰⁴ *Id.*

⁸⁰⁵ See BU IHRC, PROTECTING SYRIAN REFUGEES, *supra* note 766, at 77, 84; see also BADIL, SURVEY OF PALESTINIAN REFUGEES 2016-2018, *supra* note 756, at 73.

⁸⁰⁶ EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 80.

Second are Palestinian refugees who were displaced between 1948-1956 during the <i>nakba</i> . Many of these individuals likely hold residency permits that are renewable every five years. ⁸⁰⁷
Third are students in Egyptian university programs and workers in the public sector between 1954-1962. It is likely that many of these Palestinians hold permits renewable every three years. ⁸⁰⁸
Fourth are Palestinians who were displaced from Gaza for the first time in 1967. Depending on the conditions of entry into Egypt, many of these individuals hold residency permits that are renewable every three years. ⁸⁰⁹
Fifth are military officers from organizations such as Mustafa Hafez, the PLA, or others, such as Palestinian border guards. As military affiliates to the Egyptian army, residency permissions were given on a three-year renewable basis. ⁸¹⁰
Sixth are Palestinian employees who work for the Egyptian Government administration. As public sector employees, this group was given a special renewable residency every three years. ⁸¹¹
Seventh are PLO returnees from Lebanon in 1982. For some with expressed affiliation to the Egyptian Government (e.g., heads of Palestinian charitable associations, diplomatic officers, etc.), special privileges including residency permits were allowed as their actions served prevailing governmental interests. ⁸¹²
Eighth are Palestinians who were expelled or had to flee from Kuwait during the 1991 Gulf War. ⁸¹³ While these Palestinians included refugees displaced from Palestine between 1948-1967, there is no indication that they were treated in the same manner as displaced Palestinians who entered Egypt originally; there is also a notable gap in quantitative data on this category. ⁸¹⁴
Ninth are Palestinians displaced from more recent conflicts in the MENA region, in particular from Iraq and Syria. As demonstrated in the case of Palestinians displaced from Syria, these individuals are largely barred from holding residency permits. ⁸¹⁵
Tenth are Palestinian investors who are able to prove their company has a market capitalization worth \$50,000 (USD) or greater, and an Egyptian partner of the company holds more than 51% of the shares; such investors are able to receive a residency permit of five years. ⁸¹⁶

⁸⁰⁷ *Id.*

⁸⁰⁸ *Id.*

⁸⁰⁹ *Id.*

⁸¹⁰ Interview with Oroub El-Abed, *supra* note 755; E-mail from Oroub El Abed, Principal Research and Co-Investigator, Centre for Lebanese Studies, Lebanese American University-Beirut, to Christopher Creech and Susan Akram, IHRC (Jan. 28, 2022).

⁸¹¹ Interview with Oroub El-Abed, *supra* note 755; E-mail from Oroub El-Abed, *supra* note 810.

⁸¹² Interview with Oroub El-Abed, *supra* note 755; E-mail from Oroub El-Abed, *supra* note 810.

⁸¹³ Interview with Oroub El-Abed, *supra* note 755; E-mail from Oroub El-Abed, *supra* note 810.

⁸¹⁴ E-mail from Oroub El-Abed, *supra* note 810.

⁸¹⁵ *See, e.g.*, BU IHRC, PROTECTING SYRIAN REFUGEES, *supra* note 766, at 77.

⁸¹⁶ Besan Adwan, *Egypt – the portal for Palestinian refugees*, PALESTINIAN REFUGEE PORTAL (Aug. 7, 2017) (citing Resolution No. 344 of 2017).

Aside from the complexities of the ERPs, the Egyptian Government issues “Egyptian Travel Document for Palestinian Refugees,” referred to generally as Refugee Travel Documents (“RTDs”).⁸¹⁷ These come in two distinct types.⁸¹⁸ The first type is intended for Palestinians that already hold a valid ERP, distinguishing Palestinians with residency from those without.⁸¹⁹ Regulations for issuing and recognizing travel documents are strict; in order to re-enter Egypt, RTD holders with a valid ERP who are traveling abroad “must either return to Egypt every six months or provide the Egyptian authorities in advance with proof of employment or of current enrollment in an educational institution abroad.”⁸²⁰ Furthermore, extensions or renewals cannot “be granted through Egyptian embassies abroad,”⁸²¹ and any delay “can result in denial or deportation.”⁸²² Thus, all Palestinians who travel outside of Egypt risk losing their residency privileges if they fail to return in time to renew their permits. Palestinians who hold Egyptian travel documents “have no automatic rights to leave or re-enter the country, but must renew their visas regularly.”⁸²³ If a Palestinian remains outside of Egypt for over six months, or loses authorization to remain outside of Egypt (e.g., authorization to attend a foreign university), he will very likely lose residency rights and be refused re-entry into Egypt.⁸²⁴ In some cases “even when papers are in order, the uncertainty about whether or not re-entry will be permitted is enough to make an individual discontinue work abroad.”⁸²⁵ This uncertainty, coupled with reports of revoked nationality of Palestinians, traps many Palestinians from attempting to leave temporarily, even for confirmed employment, lest they be refused re-entry into Egypt.⁸²⁶

The second type of RTD is for Palestinians who lack a valid residency permit in Egypt, and is solely intended for travel purposes.⁸²⁷ These RTDs are held by thousands of Palestinians in Gaza and their descendants.⁸²⁸ These RTD’s were implemented as a consequence of the complex relationship between Egypt and Gaza before 1967.⁸²⁹ Egypt administered Gaza between 1948-1967 prior to Israel’s occupation, and Palestinians from Gaza were not given Egyptian

⁸¹⁷ ASEM KHALIL, PALESTINIAN NATIONALITY AND CITIZENSHIP CURRENT CHALLENGES AND FUTURE PERSPECTIVES 33 (2007).

⁸¹⁸ EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 84.

⁸¹⁹ *Id.*

⁸²⁰ *Id.* at 85.

⁸²¹ *Id.*

⁸²² *Id.*

⁸²³ ASEM KHALIL, PALESTINIAN REFUGEES IN ARAB STATES, *supra* note 378, at 84.

⁸²⁴ *Id.* at 41-42.

⁸²⁵ EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 87.

⁸²⁶ Manby, Citizenship and Statelessness in Africa, *supra* note 396, at 384 (“Following el-Sisi’s confirmation as president by election, a cabinet committee revoked nationality from 800 people, including Palestinians, apparently on national security grounds.”).

⁸²⁷ EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 84-85.

⁸²⁸ *Id.* at 85.

⁸²⁹ See ASEM KHALIL, PALESTINIAN NATIONALITY AND CITIZENSHIP CURRENT CHALLENGES AND FUTURE PERSPECTIVES 25 (2007) (“Egypt never annexed, or attempted to annex, the Gaza Strip. There was no attempt to assimilate Gaza Palestinians. For this reason there was a systematic reference to Palestinian citizenship in various Egyptian legislative texts, . . . and Egypt had always refused to grant Egyptian citizenship for Gazans, providing them simply with travel documents”).

citizenship at the time.⁸³⁰ The citizenship restrictions were “intended to ‘protect’ local identity (Gaza Palestinians) from assimilation” with Egyptian identity.⁸³¹ Thus, in Gaza “Palestinians became *de facto* stateless people holding Egyptian travel documents[;] Palestinian refugees in Lebanon, Syria, Egypt, and North African simply became stateless.”⁸³² This second type of RTD was “issued upon request to any Gaza resident.”⁸³³ It is difficult to ascertain how many such documents exist, but one estimate gives the number of Palestinians with RTD’s who arrived after the 1967 war as 236,307.⁸³⁴ Many of these RTD holders are not in Egypt but remain in Gaza or are spread across the MENA region.⁸³⁵

The vast majority of Palestinians who have been displaced from their former country of residence due to conflict in the MENA region, particularly in Kuwait, Iraq, and Syria, are also in protracted stateless situations because none of these countries’ laws provide Palestinians the right to obtain citizenship or to naturalize. The situation of Palestinian Refugees from Syria (PRS) in Egypt has been quite well-documented. As with other Palestinian refugees, Egypt has not permitted Palestinians fleeing from Syria to register with UNHCR.⁸³⁶ As of 2014, the Palestinian Embassy in Cairo registered 5,000-6,000 Palestinians from Syria, but it has been largely unable to provide significant assistance or aid.⁸³⁷ Another source noted there are an estimated 2,954 PRS in Egypt, located primarily in urban areas.⁸³⁸ This source also noted that a significant proportion of PRS lack valid residency documents, and it has become increasingly difficult for PRS to obtain or renew residency permits due to the costs involved.⁸³⁹ Egypt initially provided PRS with three-month tourist visas, with a single sixty-day renewal period.⁸⁴⁰ It is unclear whether Palestinians displaced from other conflicts, such as Kuwait or Iraq, have faced similar problems in Egypt.

⁸³⁰ DAWN CHATTY, *DISPLACEMENT AND DISPOSSESSION IN THE MODERN MIDDLE EAST* 218 (2010).

⁸³¹ ASEM KHALIL, *PALESTINIAN NATIONALITY AND CITIZENSHIP CURRENT CHALLENGES AND FUTURE PERSPECTIVES* 4 (2007) (“Thus, Egypt did not grant Egyptian citizenship for Gaza Palestinians. This was also the attitude of most Arab states to Palestinians and Palestinian refugees within their borders: a refusal to naturalize often justified by their resolve to protect Palestinians’ right to return and to preserve their national identity.”).

⁸³² *Id.* at 24.

⁸³³ EL-ABED, *PALESTINIANS IN EGYPT SINCE 1948*, *supra* note 11, at 85.

⁸³⁴ *Id.* at 85.

⁸³⁵ Interview with Oroub El-Abed, *supra* note 755 (estimating there are over one million Palestinians internationally who hold some form of Egyptian Travel Document).

⁸³⁶ BU IHRC, *PROTECTING SYRIAN REFUGEES*, *supra* note 766, at 84.

⁸³⁷ *Id.* (explaining that “the head of each Palestinian family receives 500 Egyptian pounds.”).

⁸³⁸ E-mail from Confidential Informant, INGO, to Christopher Creech and Susan Akram, IHRC (Oct. 24, 2021) (on file with author).

⁸³⁹ *Id.* (noting that the cost for issuance and renewal of a residency permit, in particular due to recent automation of residency cards, has resulted in higher fees for PRS (i.e., 600 EGP every six months), and failure to pay these fees in full can result in fines. The fees to register newborns also carry a significant cost – another barrier to status for PRS children).

⁸⁴⁰ BU IHRC, *PROTECTING SYRIAN REFUGEES*, *supra* note 766, at 85 (also noting that from July 2013-November 2013 the Egyptian Government ceased to hand out such visas, without providing any explanation).

V. Major Consequences and Stakeholders Efforts

The ramifications of statelessness and lack of full citizenship status have a direct impact on access to social entitlements provided by the Egyptian state. Egyptian nationals and foreign nationals have varied levels of access to benefits “depending on the rights they wish to exercise and their legal status in the country.”⁸⁴¹ Recent research has thoroughly examined refugees’ access to such entitlements.⁸⁴² Although a comprehensive evaluation of the links between citizenship and social entitlements is beyond the scope of this Report, the first part of this section illustrates some of the implications for persons who are stateless or unable to prove their nationality status. The second part briefly summarizes some of the progress made by the Egyptian government, international and regional organizations, and civil society in Egypt.

A. Entitlements Affected

As this research has shown, the gaps in Egypt’s nationality law and its implementation can prevent individuals from obtaining or rectifying their nationality status, and lack of sufficient safeguards to prevent childhood statelessness results in generations of families lacking nationality status. Stateless persons living in Egypt lack the key to accessing most rights, freedoms, and services offered by the state. In Egypt, identification documents are mandatory, and are essential to obtain access to social entitlements that are guaranteed by citizenship.⁸⁴³ This section takes a closer look at the documentation required to register in the Civil Registry and receive identification and legal status, and how lack of documentation results in an inability to access basic services essential for daily life. Stateless persons in Egypt cannot access rights reserved to citizens, such as pension or voting rights, but neither can they obtain many rights afforded to non-citizens with some form of legal status.

Although access to any given entitlement depends on individual circumstances, this Report provides a brief review of the related laws that determine the following entitlements: (1) employment, (2) education, (3) healthcare, (4) land and property rights, and (5) protection against unlawful detention and expulsion. This section also addresses the intersection between the citizenship/nationality status of the previously discussed populations and specific social entitlements. The is not a comprehensive list of benefits, nor does it address the psychological stress that stateless persons and their families have when they remain without basic services, security of residence, or status for generations. As many stateless persons are from minority

⁸⁴¹ Badawy, *Egyptian citizenship legislation*, *supra* note 270, at 293.

⁸⁴² See generally AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1.

⁸⁴³ MANBY, *THE LAW OF BELONGING*, *supra* note 32, at 87 (2d. ed. Oct. 2010) (stating that “Identification documents are mandatory for all Egyptians and necessary to obtain access to employment, education, registration of births and deaths, recognition of marriage, and other state services, as well as most commercial transactions. A person who cannot produce a national ID upon request by a law enforcement official commits an offence punishable by a fine of LE100–200 [at the time of writing this Report, approximately US \$6.35–12.71].”).

backgrounds, it is sometimes unclear whether the inability to access a right is due to lack of nationality or other discrimination the individual or group may also face.

1. Employment

Article 12 of the 2014 Egyptian Constitution guarantees the right to work.⁸⁴⁴ Article 13 also provides for workers' rights and the right to a safe work environment.⁸⁴⁵ Employment in Egypt is regulated by Labor Law No. 12 of 2003 (as amended).⁸⁴⁶ Although Egypt guarantees the right to work, accessing employment is difficult for many. The overall unemployment rate in Egypt was estimated between 7-10.45% in 2020.⁸⁴⁷ It is estimated that around 68% of new jobs for Egypt's labor force are in informal employment sectors.⁸⁴⁸ Identification documents, while mandatory for all Egyptians, are also necessary to access employment.⁸⁴⁹ The key distinction for eligibility to work under Egyptian labor laws, as in many countries, is between Egyptian nationals and foreign nationals. In 1978, Egypt adopted Labor Law No. 48 of 1978, which provided that the "employment of Arab country nationals should be conducted on a reciprocal basis" in the public sector.⁸⁵⁰ The law further provided that special concessions were to be made "available to foreign nationals married to Egyptians [and that] anyone of an undetermined nationality who has been continuously and permanently residing in Egypt for not less than fifteen years should be given priority, as should political refugees."⁸⁵¹ Labor Law No. 25 of 1982 stipulates that foreign nationals may not exceed 10% of the total number of employees of a given business, which protects Egyptian nationals from labor competition while also excluding many refugees from potential employment.⁸⁵² Labor Law No. 43 of 1988 also sets out conditions to receive a work permit: (1) the foreign employee cannot compete with the Egyptian labor force, (2) the foreign employee must have specific qualifications needed by the employer, and (3) the

⁸⁴⁴ CONSTITUTION OF EGYPT, *supra* note 4, at art. 12 (also eliminating forced labor, except when providing a public service for a set period of time and a fair wage).

⁸⁴⁵ *Id.* at art. 13 (including prohibiting arbitrary dismissal).

⁸⁴⁶ See Labor Law No. 12 of 2003 (Promulgating Labor Law) (Egypt). Egypt has also ratified a number of international agreements, such as the Convention on the Protection of the Rights of Migrant Workers and their Families; Article 7 of this Convention confers all rights in the Egyptian Constitution to those considered migrant workers and their families.

⁸⁴⁷ *Egypt's unemployment rate records 7.9% in 2020*, EGYPT TODAY (June 23, 2021); *Unemployment, total (% of total labor force (modeled ILO estimate) – Egypt, Arab Rep.*, THE WORLD BANK, <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=EG> (last visited Jan. 30, 2021).

⁸⁴⁸ Mohammed Soliman, *Egypt's Informal Economy: An Ongoing Cause of Unrest*, COLUMBIA J. OF INT'L AFFAIRS (Oct. 29, 2020).

⁸⁴⁹ MANBY, *THE LAW OF BELONGING*, *supra* note 32, at 87 (2d. ed. Oct. 2010).

⁸⁵⁰ ASEM KHALIL, *PALESTINIAN REFUGEES IN ARAB STATES*, *supra* note 378, at 47. This was subsequently mirrored by a reciprocity requirement in the private sector by Labor Law No. 137 of 1981 (later repealed). See *Egypt (483)*, ILO, http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=64693&p_country=EGY&p_count=483 (last visited Jan. 30, 2022) (providing a tabulation of Egyptian labor codes currently in force).

⁸⁵¹ ASEM KHALIL, *PALESTINIAN REFUGEES IN ARAB STATES*, *supra* note 378, at 46.

⁸⁵² EL-ABED, *PALESTINIANS IN EGYPT SINCE 1948*, *supra* note 11, at 92.

expertise of the foreign employee must match the job for which the permit is requested.⁸⁵³ Persons who cannot prove their nationality status with the requisite documentation are, in effect, commonly treated as foreign nationals and thus are restricted in access to employment.

The inter-related problems of statelessness, documentation requirements, and employment entitlements are demonstrated particularly well in the case of Palestinians. Many Palestinians are treated as foreign nationals even though they have resided in Egypt for years.⁸⁵⁴ Although they have formally been “exempted from the principle of non-competition with the Egyptian labor market,”⁸⁵⁵ many Palestinians are forced to work in the informal sector due to the Egyptian bureaucracy.⁸⁵⁶ For Palestinians who are able to access sufficient identification documents, this is a particularly acute problem.⁸⁵⁷ The Egyptian legal framework places the burden on employers to demonstrate that employing a Palestinian who may be considered a foreign employee fulfills the other requirements set out by the labor law. Most recently, although past Ministerial Decisions “exempted Palestinians, refugees and stateless individuals from such things as the work permit requirement and the work permit cost the most recent Ministerial Decision No. 160/2019 makes no mention as to whether such exemptions still apply [indicating that] only nationals of countries with which Egypt has a reciprocity agreement are exempt from the permit requirement and the work permit cost.”⁸⁵⁸ This change makes the ability of Palestinians to access work permits more uncertain, though its effect has yet to be documented. In practice, many Palestinians have been unable to acquire work permits, which means they cannot obtain or renew Egyptian residency permits, creating a cycle of vulnerability. AUC has noted in particular the vulnerabilities for Palestinian individuals recently displaced from Syria.⁸⁵⁹ These illustrate the barriers Palestinians face in Egypt in accessing social entitlements, particularly without a pathway to citizenship, the impact of which may be much greater for stateless persons in Egypt.

2. Education

Public education is guaranteed by both Egyptian domestic law and Egypt’s obligations under international law. Under Article 19 of the 2014 Egyptian Constitution, every citizen has

⁸⁵³ *Id.* (citing Law No. 43 of 1988).

⁸⁵⁴ *Egypt: Information on national identity cards including appearance; requirements and procedures to obtain the card, and whether documents required to apply for a card can be obtained by a proxy (2010 – June 2016)*, IMMIGR. & REFUGEE BD. OF CANADA (May 26, 2016).

⁸⁵⁵ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 109 (noting, however, that the degree of implementation of such exemptions is unclear).

⁸⁵⁶ *Id.* at 117; *see also* EL-ABED, PALESTINIANS IN EGYPT SINCE 1948, *supra* note 11, at 93.

⁸⁵⁷ MANBY, THE LAW OF BELONGING, *supra* note 32, at 87.

⁸⁵⁸ MARINA ANDRADE ET AL., INT’L POL’Y CTR. FOR INCLUSIVE GROWTH AND UNICEF, IMPROVING SOCIAL PROTECTION FOR MIGRANTS, REFUGEES AND ASYLUM SEEKERS IN EGYPT: AN OVERVIEW OF INTERNATIONAL PRACTICES 54 (2021).

⁸⁵⁹ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 117.

the right to education.⁸⁶⁰ Compulsory education through secondary school is also free to Egyptian citizens.⁸⁶¹ Egypt is also a signatory to the CRC, Article 28 of which provides for the right to education, and equal opportunity in accessing this right.⁸⁶² Admission into primary school (i.e., from age six to age twelve), is regulated under Decision No. 154 of 1989 of the Minister of Education, which provides that enrollment must “be accompanied by the child’s original birth certificate or an official copy [of the birth certificate] . . . in accordance with Article 29 of the amended Child Law.”⁸⁶³ Admission into schools for the following three years of education (preparatory education) until the age of fifteen is “conditional upon passing” primary education; likewise, “admission into the first grade of secondary education is conditional upon possession of a certificate of completion of preparatory education.”⁸⁶⁴ The initial period of primary education is essential for the enrollment in and completion of subsequent periods of education. The Egyptian education system also distinguishes between foreign nationals and Egyptian nationals, and as noted, public primary education cannot be accessed without a valid birth certificate.

While Ministerial Decree 24 of 1992 does permit certain groups of refugees to access public education, refugees have particular problems in accessing education. For example, Syrian refugees have encountered difficulties in registering children in school, “in part because of their lack of required documentation.”⁸⁶⁵ This is despite the fact that a bilateral agreement exists between Syria and Egypt to permit mutual recognition of education certificates. While UNHCR has negotiated an agreement to permit Syrian children to sit for the national examinations without such documentation, the agreement has been conditioned on the child’s parents acquiring valid residency in Egypt.⁸⁶⁶ Reports state that “required documentation can include government-issued residence permit, birth certificate, valid passport or a national identity document, original school certificate from the country of origin and a letter from UNHCR Egypt.” However, the Ministry of Education established a placement test for children who lacked such documents so they could “access school and receive a residency permit, based on their

⁸⁶⁰ CONSTITUTION OF EGYPT, *supra* note 4, at art. 19 (the same article makes education compulsory until after the end of secondary school, and sets a threshold for government spending on education (i.e., requiring that 4% of gross national product be spent on public education programs)).

⁸⁶¹ *Id.*

⁸⁶² CRC, *supra* note 292, at art. 28.

⁸⁶³ BRIT. INST. OF INT’L AND COMPAR. L. AND PROTECT EDUC. IN INSECURITY AND CONFLICT, PROTECTING EDUCATION IN THE MIDDLE EAST AND NORTH AFRICA REGION 56 (June 2016).

⁸⁶⁴ *Id.* at 56-57.

⁸⁶⁵ *Id.* at 61-62. *But see* WANNES CARLIER, THE WIDENING EDUCATIONAL GAP FOR SYRIAN REFUGEE CHILDREN, KIDS RIGHTS (2018) (noting that in a survey conducted by Plan International in 2015, 4% did not attend school, while “56% attended public schools, 15% attended private schools, and 37% attended educational centres” and in 2016, UNHCR reported that: “82% of Syrian refugee children were attending school; of whom more than 87% attended through the public school system.”).

⁸⁶⁶ BRIT. INST. OF INT’L AND COMPAR. L., PROTECTING EDUCATION IN THE MIDDLE EAST AND NORTH AFRICA REGION, *supra* note 863, at 56, 61-62.

registration in school.”⁸⁶⁷ These requirements can prevent many children from being able to enroll in school. Substituting educational assessments for those who lack documentation may also prove to be problematic, as children displaced by conflict may not be able to do well in assessment tests and need additional support to remain in their age group, rather than be held back or barred from schooling entirely.

3. Healthcare

The Egyptian Constitution states that “only citizens have the right to social security and comprehensive health care”⁸⁶⁸ and thus the central distinction in eligibility for these benefits is between citizens and non-citizens.⁸⁶⁹ As far as non-nationals’ access to health care, Egyptian law does not distinguish between “the rights of refugees, asylum seekers, and regular migrants based on their legal status or nationality.”⁸⁷⁰ Article 18 of the Egyptian Constitution criminalizes “denying any form of medical treatment to any human” in emergency circumstances, which means that in emergency situations, non-citizens and non-nationals “cannot be denied access to clinics or hospitals.”⁸⁷¹ Children, regardless of their nationality, are guaranteed at a minimum the rights stated in the CRC.⁸⁷² Pursuant to the Egyptian Child Law, “free compulsory vaccinations, health care and basic nutrition, and special care for those with disabilities” are guaranteed to all children regardless of their legal status, but it is unclear the extent to which delivery of healthcare may in practice depend on documentation.⁸⁷³

Egypt is currently developing a comprehensive health insurance scheme pursuant to Law No. 2 of 2018.⁸⁷⁴ It is unclear whether this law will distinguish on the basis of nationality or citizenship status, or whether it will specifically include refugees and migrants.⁸⁷⁵ However, the planned health insurance scheme “only encompasses foreign nationals with a permanent or temporary residence permit for work, tourism or educational purposes.”⁸⁷⁶ For the moment, this scheme is not in force, and will be implemented in several phases over a period of fourteen years.⁸⁷⁷ Once Law No. 2 of 2018 is fully implemented, many existing health insurance laws will be cancelled, but there are several that will continue to operate.⁸⁷⁸ These include Law No. 79 of 1975 providing insurance for workers under Egyptian Labor Law and “specific health insurance

⁸⁶⁷ UNICEF, CURRICULUM, ACCREDITATION AND CERTIFICATION FOR SYRIAN CHILDREN IN SYRIA, TURKEY, LEBANON, JORDAN, IRAQ AND EGYPT 97 (Mar. 2015).

⁸⁶⁸ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 173 (citing the CONSTITUTION OF EGYPT, *supra* note 4, at art. 17-18).

⁸⁶⁹ *Id.* at 173.

⁸⁷⁰ *Id.*

⁸⁷¹ *Id.* (citing the CONSTITUTION OF EGYPT, *supra* note 4, at art. 138).

⁸⁷² *Id.* at 174.

⁸⁷³ *Id.* at 173-174.

⁸⁷⁴ *Id.* at 174.

⁸⁷⁵ *Id.*

⁸⁷⁶ *Id.* at 175.

⁸⁷⁷ *Id.*

⁸⁷⁸ *Id.* at 175-176.

laws for women supporting themselves, for farmers and agrarian workers, for children of pre-school age, and for students.”⁸⁷⁹ People who do not fall into these categories must “finance their medical care and necessary treatment on their own.”⁸⁸⁰ Prior governmental decrees have stated that “foreigners pay different hospital fees than Egyptians,”⁸⁸¹ but it is unclear precisely which fees are currently allocated to Egyptians as opposed to non-nationals, or how this may change in the future.⁸⁸²

Even Egyptian nationals face challenges in providing required documents to access health care. For example, there are reported cases of Baha’i who hold identification cards with a dash for ‘religion’ who have been denied access “to public services such as health.”⁸⁸³ Since Baha’is face continued difficulties in “acquiring identity cards” as well as in the “recognition of marriages and the sponsorship of a foreign spouse’s permanent residence,” Baha’i adults and their children can have problems in accessing healthcare.⁸⁸⁴ Reports indicate that Baha’i children without birth certificates have been barred from receiving immunizations from the Health Ministry and its local branches.⁸⁸⁵ In another case, an Egyptian Baha’i man noted that due to discrimination against Baha’is, he was led to marry his wife (a Muslim woman and Egyptian citizen) in the U.S.; upon return to Egypt, he was unable to secure a birth certificate for his son (who was also born in the U.S.)⁸⁸⁶ This illustrates the necessity of an Egyptian birth certificate to access healthcare, but also the continued discrimination against Baha’i connected to their identification documentation.

4. Housing, Land, and Property Rights

Under the 2014 Constitution, only citizens have the right to housing,⁸⁸⁷ although discrimination is prohibited on the basis of race, ethnicity, or religion,⁸⁸⁸ and the Child’s Law protects housing rights for “all children, not only citizens.”⁸⁸⁹ Generally, property ownership and tenancy rights are regulated by Egypt’s Civil Code, Law No. 136 of 1981 Regulating Leasing and Selling Properties, and Law No. 136 on the Relationship Between Lessee and Lessor.⁸⁹⁰ Law No. 236 generally guarantees non-nationals the same property rights as nationals, although leases held by irregular migrants can be terminated (this does not apply to refugees or regular migrants

⁸⁷⁹ *Id.* at 176.

⁸⁸⁰ *Id.* at 178.

⁸⁸¹ *Id.* at 179.

⁸⁸² *Id.* at 179 n.212.

⁸⁸³ Shahira Amin, *The landscape for religious freedom in the new Egypt*, 42 INDEX ON CENSORSHIP 108 (2013).

⁸⁸⁴ MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 16.

⁸⁸⁵ EIPR AND HRW, STATE INTERFERENCE WITH RELIGIOUS FREEDOM, *supra* note 531, at 40.

⁸⁸⁶ Vargha Dana, Family law and citizenship: the case study of Egyptian Baha’is 25 (June 1, 2014) (M.A. dissertation, American University in Cairo) (on file with the American University in Cairo, AUC Knowledge Fountain).

⁸⁸⁷ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 210.

⁸⁸⁸ *Id.* at 210; CONSTITUTION OF EGYPT, *supra* note 4, at art. 154.

⁸⁸⁹ *Id.*

⁸⁹⁰ *Id.*

holding valid residence permits).⁸⁹¹ In addition, all non-nationals are “prohibited from owning farmland like cultivable barren, desert land.”⁸⁹² Non-nationals are prohibited “from owning land in the border region[s]” without approval of the Minister of Defense.⁸⁹³ Egypt’s State of Emergency Law also “grants the government the right to confiscate moveable and immoveable property” and permits it to “evacuate or cordon off territory in the interest of national security.”⁸⁹⁴ Since the State of Emergency Law “applies to all people in Egypt,”⁸⁹⁵ it is unclear whether specific deprivations of property (as in the Sinai) may be due to lack of citizenship status alone.⁸⁹⁶ Egypt recently ended the nationwide state of emergency; while this is a welcome development, it is unclear if this will have a significant impact on property rights, let alone other civil rights.⁸⁹⁷

The prohibitions against owning farmland (including cultivable barren or desert land) and the prohibitions against owning land in border regions⁸⁹⁸ have a disparate impact on Bedouin populations, particularly in the Sinai.⁸⁹⁹ Egypt has imposed restrictions on property ownership in Sinai, disadvantaging many Bedouin who lack “birth certi[fi]cates or ID cards,”⁹⁰⁰ and who cannot pay the fees to register land.⁹⁰¹ Lacking birth certificates and identification documents leaves many Bedouin (particularly adults) likely to face land or property confiscations by the Egyptian Government. This has been exacerbated by the Egyptian Government’s displacements of Bedouin communities in the Sinai.⁹⁰² In addition, Decree-Law No. 14 of 2012 Concerning the Integrated Development of the Sinai Peninsula states that naturalized citizens, dual nationals, and Egyptians with a foreign parent are prohibited from ownership of land and property in the Sinai Peninsula, and requires the disposal (i.e., sale) of such land within six months.⁹⁰³ Ministerial Decree No. 959 of 2012 restricts the sale of such land or property “to an Egyptian citizen whose parents are both Egyptian and who do not possess another nationality.”⁹⁰⁴ Decree No. 95 of 2015 amended these laws to permit non-Egyptians (or dual citizens) with title to land in the Sinai to

⁸⁹¹ *Id.*

⁸⁹² *Id.* at 211 (citing Decree No. 15 of 1963, *supra* note 185, at art. 1).

⁸⁹³ *Id.* at 210 (citing Military Order No. 62 of 1940, *supra* note 186, at arts. 1, 4).

⁸⁹⁴ *Id.* at 213 (citing Law No. 162 for the Year 1958 (Concerning the State of Emergency), 28 Sept., 1958 (Egypt)).

⁸⁹⁵ *Id.* at 213 (citing Decree No. 15 of 1963, *supra* note 185, at art. 1).

⁸⁹⁶ See, e.g., HRW, WORLD REPORT 2020: EGYPT EVENTS OF 2019 3 (2020).

⁸⁹⁷ *Egypt: Ending State of Emergency a Start but Insufficient*, HRW (Oct. 26, 2021); Vivian Yee, *Egypt’s Leader Ends State of Emergency, Says It’s No Longer Needed*, N.Y. TIMES (Oct. 25, 2021).

⁸⁹⁸ AUC, REFUGEE ENTITLEMENTS IN EGYPT *supra* note 1, at 211 (2020) (citing Decree No. 15 of 1963, *supra* note 185, at Article 1).

⁸⁹⁹ See Soraya Altorki and Donald Cole, *Land and Identity among Awlad ‘Ali Bedouin: Egypt’s Northwest Coast, in NOMADIC SOCIETIES IN THE MIDDLE EAST AND NORTH AFRICA* 634, 639 (Dawn Chatty ed., 2006) (describing the “thorny issue” of land and property ownership in Marsa Matruh).

⁹⁰⁰ Amelia Smith, *Under the war on terror Egypt is ethnically cleansing the Sinai Bedouin*, MIDDLE EAST MONITOR (Aug. 7, 2019).

⁹⁰¹ E-mail from Confidential Informant, *supra* note 595 (noting that fees vary on the place and size of property; in St. Katherine alone it may vary between 175-700 EGP per square meter, while in other areas of Egypt such fees are commonly much higher).

⁹⁰² See *Egyptian army launches wide-scale operation in Sinai*, MIDDLE EAST MONITOR (Feb. 10, 2018).

⁹⁰³ MALEK, REPORT ON CITIZENSHIP LAW EGYPT, *supra* note 33, at 1.

⁹⁰⁴ *Id.*

“retain some rights such as the right of usufruct . . . [and] title to immoveable properties established on the land” but with the requirement that disposal of the land title must still be to an individual with solely Egyptian citizenship.⁹⁰⁵ In practice, since “many Bedouins are descendants of parents with no identity records and/or acquired additional citizenship when they left Sinai during the Israeli occupation,” coupled with other barriers, they may be unable to comply with these regulations.⁹⁰⁶ These requirements are impossible to meet for populations that are entirely stateless, such as members of al-Azazma.

5. Protection Against Detention and Expulsion

The right to be free from arbitrary detention or unlawful expulsion is an accepted norm of international human rights law.⁹⁰⁷ This applies with particular force in the case of refugees and asylum seekers, particularly in protection against *non-refoulement*.⁹⁰⁸ Irregular migrants generally have a right to humane treatment if they are detained.⁹⁰⁹ Irregular migrants have a right to an individualized process (including an appeal) before they can lawfully be expelled.⁹¹⁰ The 2014 Egyptian Constitution prohibits torture in detention, and Egypt’s domestic law also provides basic standards for persons who are detained. However, Egypt’s law does permit “the detention of [noncitizens] pending deportation.”⁹¹¹ Procedural requirements during imprisonment exist, although non-nationals face particular issues in some cases since courts “may temporarily detain non-residents until the establishment of a fixed address in the Court’s jurisdiction” which can be impossible as a matter of practice for many refugees and migrants.⁹¹² The State of Emergency Law also severely limits procedural protections, as it allows for individuals to be detained if they are suspected of presenting a danger to the security or public order of Egypt, and detained persons may be held for a one-month renewable period without trial.⁹¹³ As noted above it is unclear whether the recent rollback of the 1958 State of Emergency Law will ensure stronger protections in the future.⁹¹⁴ Moreover, the 2014 Amendment to the State of Emergency Law permits detainees to complain against an order of arrest, but only if they have already been subjected to six months of detention.⁹¹⁵

⁹⁰⁵ *Id.*

⁹⁰⁶ Evrim Görmüş, *Bedouins and in-between border space in the northern Sinai*, 25 MEDITERRANEAN POLITICS 289, 299-301 (2020).

⁹⁰⁷ *See, e.g.*, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Oct. 12, 1984, 1465 U.N.T.S. 85.

⁹⁰⁸ *See supra*, Part III.B.4.

⁹⁰⁹ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 240.

⁹¹⁰ *Id.* at 244.

⁹¹¹ *Id.* at 241.

⁹¹² *Id.* at 241.

⁹¹³ *Id.* at 242 (citing Law No. 162 for the Year 1958 (Concerning the State of Emergency), 28 Sept., 1958 (Egypt)).

⁹¹⁴ *See, e.g.*, *Egypt: Ending State of Emergency a Start but Insufficient*, HRW (Oct. 26, 2021).

⁹¹⁵ *Id.*

Refugees and migrants in Egypt are vulnerable to detention or expulsion, particularly if they are stateless or lack identification documents. In practice, few refugees or migrants have sufficient access to protections against violations of their rights. Refugees, asylum seekers, and migrants can be subject to criminal sanctions or administrative detention for unauthorized entry, stay or exit, though administrative detention is most commonly employed.⁹¹⁶ While Egypt does not operate separate facilities for immigration-related detention, according to Decree No. 659, five prisons are designated for temporary custody of non-Egyptians awaiting deportation.⁹¹⁷ Human rights organizations have documented intolerable conditions in such facilities, including overcrowding and lack of medical care, leading to serious illnesses among detainees.⁹¹⁸

Refugees can also be detained if state officials do not recognize official UNHCR identification cards as valid residency permits, though registered refugees are commonly released in a matter of weeks.⁹¹⁹ However, non-registered individuals are vulnerable to extended periods of administrative detention, for which there is no maximum length specified in Egyptian Law.⁹²⁰ For those detained longer, criminal sanctions are not “systematically applied” but administrative detention is often imposed until migrants can be deported or their cases are otherwise resolved.⁹²¹

Egypt has previously been criticized for its deportation of refugees in violation of the principle of *non-refoulement*.⁹²² Hundreds of Syrians were reported to have been deported following a change from the open-door policy for Syrian refugees to much stricter entry requirements.⁹²³ According to the Global Detention Project, approximately 476 Syrians were deported or denied entry to Egypt in July 2014 alone,⁹²⁴ and EIPR reported 6,800 Syrians were arrested and detained from August 2013 and September 2014.⁹²⁵ Between January and August 2016, UNHCR stated that Egyptian authorities detained 4,600 refugees, asylum seekers and migrants attempting to cross to Europe, a 25% increase from the total number detained in

⁹¹⁶ GLOB. DET. PROJECT, IMMIGRATION DETENTION IN EGYPT: MILITARY TRIBUNALS, HUMAN RIGHTS ABUSES, ABYSMAL CONDITIONS, AND EU PARTNER 8 (2018).

⁹¹⁷ The facilities include: Qanater El-Kharereya Men’s Prison, Qanater El-Khayereya Women’s Prison, Alexandria Prison, Port Said Prison, and Tora Prison. GLOB. IMMIG. DET. PROJECT, EGYPT IMMIGRATION DETENTION DATA PROFILE 5 (2020).

⁹¹⁸ *Egypt: Syria Refugees Detained, Coerced to Return*, HRW (Nov. 10, 2013). See also Press Release, EIPR, Egyptian Government Must Provide Urgent Health Care to Syrian Refugees Detained in Egypt (Nov. 25, 2013).

⁹¹⁹ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 245; GLOB. DET. PROJECT, IMMIGRATION DETENTION IN EGYPT, *supra* note 916, at 7.

⁹²⁰ *Id.* at 5, 7.

⁹²¹ *Id.* at 8.

⁹²² *Rights Groups Call on Egypt to End Arbitrary Detention of Refugees*, INT’L REFUGEE RTS. INITIATIVE (Mar. 15, 2015).

⁹²³ On July 8, 2013 a new entry policy required Syrians arriving in Egypt to obtain a visa and security clearance before arriving. *Egypt: Do Not Return Asylum Seekers to Syria*, HRW (July 10, 2013). GLOB. DET. PROJECT, IMMIGRATION DETENTION IN EGYPT, *supra* note 916, at 11. Jihad Abaza, *Employment, Detention, and Registration: On Syrian Refugees in Egypt*, DAILY NEWS EGYPT (Apr. 7, 2015).

⁹²⁴ GLOB. DET. PROJECT, IMMIGRATION DETENTION IN EGYPT, *supra* note 916, at 11.

⁹²⁵ Patrick Kingsley, *Desperate Syrian Refugees Risk All in Bid to Reach Europe*, THE GUARDIAN (Sept. 18, 2014).

2015.⁹²⁶ Amnesty International also reported that Egypt deported at least fifty asylum seekers, including two children, from Ethiopia, Eritrea, and the Sudan between January and April 2017.⁹²⁷

Any failed asylum seeker who is over the age of eighteen is subject to immediate deportation, but those who are not eighteen (or those who are over eighteen but have children), are less likely to be deported.⁹²⁸ Persons not registered with UNHCR, including economic migrants, are at risk of extended administrative detentions.⁹²⁹ This also leaves Palestinians who do not have a valid refugee document or other form of accepted nationality status in a particularly vulnerable position, and as a result “there are many Palestinians living illegally without residency in Egypt who are at risk of being jailed or deported.”⁹³⁰ As noted, Egypt has carried out multiple deportations of Palestinians displaced by the conflict in Syria, in violation of Egypt’s *non-refoulement* obligation.⁹³¹

B. Stakeholder Efforts and Achievements

As highlighted throughout this Report, numerous stakeholders have taken steps to combat statelessness in Egypt. This section briefly summarizes and acknowledges some of the important efforts already made by the Egyptian government, Egyptian civil society and domestic organizations, the United Nations and its agencies, and regional IGOs.

1. The Egyptian Government

Egypt has taken several positive steps to alleviate statelessness. Egypt’s revisions to its Nationality Law in 2004 and 2011 have provided nationality status to thousands of individuals, and exemplify good practices in addressing statelessness within the MENA region.⁹³² The codification of the right to pass nationality through either parent in Article 6 of the 2014 Egyptian Constitution ensures the fundamental nature of this right on a non-discriminatory basis.⁹³³ These achievements are significant for individuals who would otherwise be stateless.

⁹²⁶ *Migrant and Refugee Boat Tragedy and Irregular Departures from Egypt*, UNHCR (Sept. 23, 2016); *see also* GLOB. DET. PROJECT, IMMIGRATION DETENTION IN EGYPT, *supra* note 916, at 6-7 (noting that Egyptian-EU cooperation in ‘migration management’ has resulted in heightened efforts to prevent migrants and refugees from entering Europe).

⁹²⁷ AMNESTY INT’L, AMNESTY INTERNATIONAL REPORT 2017/18 THE STATE OF THE WORLD’S HUMAN RIGHTS 155 (2018).

⁹²⁸ AUC, REFUGEE ENTITLEMENTS IN EGYPT, *supra* note 1, at 246.

⁹²⁹ GLOB. DET. PROJECT, IMMIGRATION DETENTION IN EGYPT, *supra* note 916, at 15.

⁹³⁰ ASEM KHALIL, PALESTINIAN REFUGEES IN ARAB STATES, *supra* note 378, at 37.

⁹³¹ *See, e.g., Egypt: Don’t Force Palestinians Back to Syria*, HRW (Jan. 18, 2013); *Egypt Departs Palestinian Syrians back to Conflict Zones*, AL-MONITOR (Aug. 25, 2014).

⁹³² Law No. 154 of 2004, *supra* note 145.

⁹³³ CONSTITUTION OF EGYPT, *supra* note 4, at art. 16; *see also* Law No. 154 of 2004, *supra* note 145.

Egypt has also taken steps, both in the past and currently, to make civil registration easier for otherwise vulnerable populations. For example, prior to 2012, Egyptian registration officers traveled to the homes of remote communities in the Sinai, primarily Bedouin, in order to help individuals complete their civil registration – this service has apparently not continued.⁹³⁴ In 2021, the Minister of Interior also opened new civil registration offices, included additional automated systems for translation, and extended hours for some areas with the goal of better serving public needs.⁹³⁵ These innovative practices provide an important means for Egyptian nationals to access civil registration processes, and could be developed further to reduce vulnerabilities, particularly for rural populations.

Egypt's innovations are particularly important due to its role as a major regional actor. Egypt has historically been an important member of the League of Arab States headquartered in Cairo, and continues to play an important role today. Egypt has supported coordination efforts between UNHCR and the LAS to develop regional strategies in addressing statelessness.⁹³⁶ Egypt was also one of three LAS Member States (along with Yemen and Iraq) to affirm an intent to revise the Arab Convention on Nationality.⁹³⁷ Egypt has already implemented some of the outcomes determined in the 2016 Ministerial Conference, such as the use of innovative technologies in registration.⁹³⁸ Aside from the LAS, Egypt has also participated in the UPR reporting system to the ACHPR, and has withdrawn several reservations to AU legal instruments over past decades.⁹³⁹ All of these are important developments in addressing statelessness across the MENA region. The Egyptian government's efforts to address statelessness and streamline civil registration within its borders while also advocating within the LAS, are highly commendable and model good practices for the region.

2. Civil Society in Egypt

The important amendments to the 1975 Nationality Law did not occur in a vacuum, as Egyptian civil society has been critical in driving the amendments to Egypt's nationality law and advocating against statelessness. For example, in preparation for the UN International Conference on Population and Development in Cairo in 1994, over 400 Egyptian NGOs created a discussion forum, and women's groups addressed a number of gender discrimination issues, including the nationality law.⁹⁴⁰ Many judges, commissioners, and human rights lawyers have

⁹³⁴ *No ID, no government services*, IRIN (July 18, 2012) (citing Bakr Sweilam, head of the Al Gora Community Development Association in Sinai).

⁹³⁵ *Egypt's Interior Ministry opens new civil register offices to the public in several malls*, EGYPT INDEP. (Mar. 7, 2021).

⁹³⁶ Interview with UNHCR, *supra* note 5.

⁹³⁷ *Id.*

⁹³⁸ *Id.*

⁹³⁹ *Egypt*, AFR. COMM'N H.P.R., <https://www.achpr.org/states/detail?id=16> (last visited Jan. 28, 2022).

⁹⁴⁰ Amal Abdel Hadi, *Engendering the Egyptian Law on Nationality*, *supra* note 67, at 42 ("The governmental National Women's Committee (NWC) convened two National Women's Conferences in 1994 and 1995. The NWC

engaged with these topics, including by bringing court cases on behalf of individuals claiming nationality rights through Egyptian mothers. An NGO coalition was also formed to monitor Egypt's implementation of CEDAW, and organized a workshop on the topic of nationality to call for changes to the Egyptian nationality law. This was later followed by a March 2004 Women's Day Celebration with the slogan "nationality is my right and my family's right."⁹⁴¹ The State Commissioners Authority also issued a report on the constitutionality of Law No. 26 of 1975 stating that Articles 2 and 3 were unconstitutional, referencing in particular Egypt's international obligations under CEDAW.⁹⁴² In 2004, the Supreme Constitutional Court also held that the nationality law was unconstitutional and discriminated against women on the basis of gender, and on July 14, 2004, Law No. 154 of 2004 amended the 1975 Nationality Law to include those born to Egyptian mothers in addition to Egyptian fathers with retroactive effect.⁹⁴³

A number of organizations also provide important assistance to affected populations, including enabling access to essential humanitarian protections, services, and to registration processes. For example, the Egyptian Foundation for Refugee Rights (EFRR) and United Lawyers provide legal aid to refugees and migrants in Egypt, including facilitating birth certificates; this work is also done through UNHCR referrals.⁹⁴⁴ EIPR has worked in Egypt since 2002 to strengthen and protect basic rights and freedoms within the country, including access to documentation for marginalized populations such as the Baha'i.⁹⁴⁵ EIPR's research, advocacy, and litigation in civil liberties, economic and social rights, and criminal justice have been essential to implement guarantees and expand rights to status and protect citizenship.⁹⁴⁶ Caritas Egypt provides child protection for street children, healthcare, and educational programming; these services are provided to all populations, though Caritas also works in partnership with UNHCR.⁹⁴⁷ St. Andrew's Refugee Services (StARS) began serving refugees through community support in 1979, and provides client-centered programs in education, psychosocial services, legal aid, and community outreach.⁹⁴⁸

It is worth noting, however, that under Law No. 149 of 2019 (while an improvement over the more restrictive Law No. 70 of 1970) domestic and foreign NGOs are prohibited from

died unnoticed and was replaced in 2000 by the National Council on Women (NCW), which in turn had its "First" National Women's Conference in 2001.").

⁹⁴¹ *Id.* at 46-47.

⁹⁴² *Id.* at 43, 48 (citing Commissioners Authority Report on the Case 115 for Judicial Year 19, Constitutional Court 2002, 59-74).

⁹⁴³ Tarek Badawy and Abdallah Khalil, *Rights of Foreigners and Access to Citizenship*, *supra* note 210 at 13. While this amendment excluded Palestinians, see the discussion on Decree No. 1231 of 2011 decree above in Part IV.E.7.

⁹⁴⁴ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 63; *Egyptian Foundation for Refugee Rights*, CITIZENSHIP RTS. IN AFR. INITIATIVE, <https://citizenshiprightsafrika.org/network/egyptian-foundation-for-refugee-rights/> (last visited May 7, 2021).

⁹⁴⁵ *Who We Are*, EIPR, <https://eipr.org/en/who-we-are> (last visited May 7, 2021); EIPR, IDENTITY PAPERS, MARRIAGES, AND BURIALS, *supra* note 528.

⁹⁴⁶ *Id.*

⁹⁴⁷ *About Us*, CARITAS-EGYPT, <https://www.caritas.org/where-caritas-work/middle-east-and-north-africa/egypt/> (last visited May 7, 2021).

⁹⁴⁸ *Welcome to StARS*, St. Andrew's Refugee Services, <http://stars-egypt.org/> (last visited May 7, 2021).

engaging in activities that violate a number of vaguely-termed offenses concerning national security, public morals, or public order.⁹⁴⁹ The law hampers the work of civil society organizations, particularly as the Egyptian government uses it to arrest prominent members of NGOs and human rights activists.⁹⁵⁰ Egyptian civil society efforts have been essential in reducing statelessness and publicizing the issues related to civil status documentation described throughout this Report. Egyptian civil society and local NGOs remain best-placed to address issues related to ensuring nationality status and the safeguarding of fundamental human rights, and should be supported in this work.

3. Efforts of the United Nations and its Agencies

Under its mandate with Egypt pursuant to the 1954 MOU, UNHCR works closely with the Egyptian Government to conduct RSD procedures and implement measures to enhance the effectiveness of UNHCR's RSD functions.⁹⁵¹ To strengthen the RSD process and afford protection services to those who qualify, UNHCR also develops and delivers specialized RSD training for UNHCR staff, and supports initiatives to improve delivery of services.⁹⁵² UNHCR has advocated for a national asylum framework in Egypt, which includes an RSD system that is "fair, efficient, adaptable . . . and that produce[s] quality decisions."⁹⁵³

UNHCR Egypt pursues three main strategies to address barriers to accessing citizenship related to birth registration. First, it provides legal aid directly to asylum seekers and refugees for registration of their children's birth; such legal aid services include explaining birth registration processes, accompanying individuals to ministries and consulates, and facilitating obtaining necessary documentation.⁹⁵⁴ Second, UNHCR conducts awareness trainings to counsel refugees and asylum seekers on the requirements of birth registration, including required documentation and restrictions following the initial fifteen day period.⁹⁵⁵ Third, UNHCR launched an "early" birth registration system in 2018.⁹⁵⁶ This early birth registration procedure identifies cases in which birth registration may be problematic, or the "simple"/primary birth registration process is not available.⁹⁵⁷ This can be the case for sexual and gender-based violence (SGBV) survivors,

⁹⁴⁹ See TAHRIR INST. FOR MIDDLE EAST POL'Y, TIMEP BRIEF: LAW NO. 149 OF 2019 (NGO LAW) (Aug. 21, 2019).

⁹⁵⁰ *Egypt: New NGO Law Renews Draconian Restrictions*, HRW (July 24, 2019).

⁹⁵¹ *Refugee Context in Egypt*, UNHCR, *supra* note 202.

⁹⁵² *Id.*

⁹⁵³ Remote Interview with UNHCR, *supra* note 5 (indicating that there is movement on the development of a national asylum framework); *Refugee Status Determination*, UNHCR, <https://www.unhcr.org/en-us/refugee-status-determination.html> (last visited May 20, 2021).

⁹⁵⁴ Remote Interview with UNHCR, *supra* note 426; see also AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 63

⁹⁵⁵ UNHCR Interview (noting also that information on how to contact UNHCR and other partner organizations for legal aid is also distributed, although the COVID-19 pandemic has made disseminating information through community-awareness trainings more difficult).

⁹⁵⁶ Remote Interview with UNHCR, *supra* note 426.

⁹⁵⁷ *Id.*

children born out of wedlock, or when documentation is unavailable because it was confiscated or not brought to Egypt.⁹⁵⁸

UNHCR has enumerated several key priorities for 2021 including: “[w]orking closely with Egyptian authorities to preserve the existing protection space, enhance access to asylum and prevent refoulement . . . [and] encouraging longer residency permits and regularization;” harmonizing assistance to refugees of various nationalities through a “one refugee approach;” and “[c]ontinuing collaboration with the League of Arab States, including supporting the conclusion of the Arab Convention on Regulating the Status of Refugees in Arab Countries and supporting the drafting of a convention on protection and assistance to IDPs, among others.”⁹⁵⁹ IOM also has partnerships with organizations that work with migrants through a referral system in a similar manner to UNHCR, which helps ensure newborn children are able to acquire a birth certificate.⁹⁶⁰ Other UN agencies, such as UNICEF, also provide important protection and data analysis to examine statelessness in Egypt.

4. Regional Organizations

The LAS has made issues of citizenship and nationality a primary area of concern and is attempting to form regional consensus on the issues. The Charter of the Arab League identifies six areas of cooperation between Arab Nations, including on nationality.⁹⁶¹ The LAS, in cooperation with UNHCR,⁹⁶² has engaged in two recent conferences focusing on the rights of children and women, including nationality rights: (1) *Our Children, Our Future: Belonging and Legal Identity* (2016),⁹⁶³ and (2) *Good Practices & Regional Opportunities to Strengthen Women’s Nationality Rights* (2017).⁹⁶⁴ These conferences have promoted further ratification and removal of reservations to key international human rights treaties, including the CRC and CEDAW. They have discussed adoption of a Model Nationality Law to harmonize nationality provisions within the region, and also addressed ratification (and possible revision) of the LAS Nationality Convention (1954) by additional Member States.⁹⁶⁵ These efforts are enormously important, and while they will require further coordination and advocacy, provide a helpful government-driven framework to address statelessness within the MENA region.

⁹⁵⁸ *Id.*

⁹⁵⁹ *Refugee Status Determination*, UNHCR, <https://www.unhcr.org/en-us/refugee-status-determination.html> (last visited May 20, 2021).

⁹⁶⁰ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 63

⁹⁶¹ Charter of the Arab League art. 2(D), 1945, League of Arab States.

⁹⁶² In September 2017, the LAS and UNHCR also signed an MOU to establish a cooperation framework on refugee and stateless matters. Janmyr and Stevens, *Regional Refugee Regimes: Middle East*, *supra* note 302, at 337.

⁹⁶³ *Our Children, Our Future: Belonging and Legal Identity*, UNHCR <https://www.unhcr.org/en-us/regional-expert-meeting-on-belonging-and-legal-identity-in-the-arab-region.html> (last visited July 30, 2021).

⁹⁶⁴ The First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women’s Nationality Rights League of Arab States Secretariat General, Final Declaration (Oct. 1-2, 2017).

⁹⁶⁵ Remote Interview with UNHCR, *supra* note 5.

All twenty-two member states of the LAS are members of the OIC as well. While there is a dearth of OIC legal instruments to reinforce the rights of stateless communities, or those at risk of statelessness, in expert meetings between UNHCR and the LAS, the CRCI has been raised as an important instrument in addressing statelessness.⁹⁶⁶ The 2008 revision of the OIC Charter also initiated the OIC's Independent Permanent Human Rights Commission ("IPHRC") designed to strike a balance between Islamic norms and the international human rights regime, which may provide an additional forum for discussions of statelessness.⁹⁶⁷ In addition, in 2020 the OIC Council of Foreign Ministers requested the OIC Secretary-General to convene an intergovernmental working group to discuss a final revision of the CRCI.⁹⁶⁸ The IPHRC also paved the way for the revision of the Cairo Declaration,⁹⁶⁹ and the ODHR is intended to incorporate a right to nationality.⁹⁷⁰

The AU has developed a robust human rights legal regime in many ways, and as noted earlier, it has developed important jurisprudence on the right to a nationality, although there remains a gap in addressing statelessness.⁹⁷¹ The lack of a legal instrument dedicated to nationality rights in Africa has prompted engagement by the AU, its agencies, and UNHCR.⁹⁷² Resolution 234 of 2013 called upon Member States to adopt and implement legislation to reduce statelessness.⁹⁷³ The ACHPR was particularly concerned with reaffirming the principles of the ACRWC and the UN Statelessness Conventions, as well as strengthening civil registration services.⁹⁷⁴ In 2014, Resolution 277 formally commissioned the Special Rapporteur to create a Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa ("Draft Protocol"), although the Draft Protocol is not yet open for signature.⁹⁷⁵ As of 2017, the Draft Protocol

⁹⁶⁶ *Id.*

⁹⁶⁷ Ioana Cismas, *Introductory Note to the Statute of the OIC Independent Permanent Human Rights Commission*, 50 I.L.M. 1148 (2011).

⁹⁶⁸ Resolution No. 1/47 on Matters Pertaining to the Work of the OIC IPHRC adopted by the 47th Session of the Council of Foreign Ministers, Organization of Islamic Cooperation 4 (Nov. 2020).

⁹⁶⁹ MOHAMMAD HOSSEIN MOZAFFARI, CTR. FOR DIALOGUE AMONG RELIGIONS AND CULTURE, IRAN, OIC DECLARATION ON HUMAN RIGHTS: CHANGING THE NAME OR A PARADIGM CHANGE? 1 (Draft Paper, Dec. 2020).

⁹⁷⁰ Turan Kayaoglu, *The Organization of Islamic Cooperation's Declaration on Human Rights: Promises and Pitfalls*, *supra* note 304.

⁹⁷¹ See AFR. COMM'N. H.P.R., THE RIGHT TO NATIONALITY IN AFRICA, *supra* note 22, at 3 (stating that the right to a nationality is a fundamental human right, yet "is not really protected in Africa, for reasons including the arbitrary denial or deprivation of the nationality of persons on grounds of race, ethnicity, language, religion, gender discrimination, non-compliance with the rules on the prevention of statelessness pursuant to transfers of territory between States, and the failure of many African States to ensure that all children are systematically registered at birth.").

⁹⁷² Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa Explanatory Memorandum, June 2018, African Union.

⁹⁷³ Afr. Comm'n H.P.R., Resolution 234 on the Right to Nationality, 53 I.L.M. 416 (Apr. 2013).

⁹⁷⁴ *Id.*

⁹⁷⁵ Afr. Comm'n H.P.R., Resolution 277 on the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa (2014).

recognizes that all persons have the right to a nationality,⁹⁷⁶ that no one may be arbitrarily deprived of a nationality,⁹⁷⁷ and that states have the obligation to eradicate statelessness.⁹⁷⁸ In addition, the current draft of Article 5 provides protections for attributing nationality to children, including retroactively. Article 6 also provides for a number of avenues for the acquisition of nationality,⁹⁷⁹ and Article 7(1) acknowledges that stateless persons should not be excluded from or discriminated against in residency laws.⁹⁸⁰ Article 8 would also recognize rights for cross-border and nomadic communities.⁹⁸¹ It remains to be seen whether the Draft Protocol will be adopted by the AU in its current state, or whether Egypt will sign and ratify it. However, it would provide significant protections and a legal basis to combat statelessness in Africa, and should be promoted by civil society and other actors.

VI. Conclusions and Recommendations

Despite amendments to Egypt's nationality law and the sustained efforts of many stakeholders, this Report highlights the many populations and individuals who are stateless or continue to face the risk of statelessness in Egypt. They are not limited to migrants and refugees, although these populations face some of the most readily-identifiable risks in accessing citizenship. Difficulties in navigating Egypt's nationality law and civil registration process – obtaining birth certificates, marriage certificates, and national identification documentation – all contribute to leaving some Egyptian national populations without security in their nationality status as compared to other groups of Egyptian nationals who are able to obtain such documents. These national populations face risks of statelessness for themselves and their children.

This Report has noted many gaps in quantitative and qualitative data that are needed for a better understanding of which populations face statelessness, risks of statelessness, or particular vulnerabilities in documentation status. An overall recommendation is for Egypt to revise census policies and facilitate, rather than hamper, research by civil society organizations. For example, specifically identifying certain groups and communities, such as 'Bedouin' or 'Nubian,' in the official census would clarify which particular populations face certain vulnerabilities, and provide a foundation on how best to address them. This data would also enable local civil society organizations that work with affected communities across a wide range of issues to provide more efficient and effective assistance in accessing birth registration, marriage certificates, civil registration, and other critical forms of documentation.

The problems leading to statelessness cut across many populations, and are linked to factors such as poverty, rural location, and discrimination both systemic and individual. It is

⁹⁷⁶ Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa art. 3(a), 2017, African Union.

⁹⁷⁷ *Id.* at art. 3(b).

⁹⁷⁸ *Id.* at art. 3(c).

⁹⁷⁹ *Id.* at art. 6.

⁹⁸⁰ *Id.* at art. 7(1).

⁹⁸¹ *Id.* at art. 8.

incumbent on the Egyptian government to take steps to enable vulnerable individuals and communities to obtain nationality status. This section provides a series of recommendations to address some of the problematic issues.

A. Reform of Egyptian Nationality Law

Egypt's revision to the 2004 Nationality Law by passing Law No. 154 that allows children born after 2004 to parents when the mother is Egyptian to acquire Egyptian nationality is a major step towards reducing statelessness. However, there remain both gaps and inconsistencies that prevent many thousands of individuals from benefiting from their right to secure nationality status. First, the final provision of Article 15 of Law No. 154 of 2004 should remove the gender-discriminatory element that attaches to only permitting the birth certificate of a newborn registered solely by the mother to be used for the proof of the birth and for no other purposes. A birth certificate registered only by a woman should be given equal weight as a birth certificate registered under any of the other circumstances listed in Article 15, and this should be explicitly clarified in the law.

Second, the documentary requirements to acquire citizenship under the law are burdensome, and should be both simplified and permit a range of documents for ones that may be difficult to obtain, especially when the father may be absent. Providing the mother's birth certificate and identity card should be sufficient, in addition to the child's birth certificate, rather than birth certificates of both parents and the grandparents' birth certificates. These additional documents are unnecessary to prove the basic facts of the mother's Egyptian nationality. Citizenship applications should be accepted in administrative offices throughout Egypt, not just at the *Mugamma* in Cairo, as the central bureaucracy is overwhelmed, slow, and inconvenient if not impossible to reach by many thousands of individuals living outside Cairo.

Third, although Decree No. 1231 of 2011 was another major advancement in specifically extending the 2004 law to children born to a Palestinian father and an Egyptian mother, its application has been inconsistent. Although thousands of individuals have so far benefited from the Decree, it has not been applied uniformly, requiring individuals to challenge the failure to apply its provisions in court. Decree No. 1231 of 2011 must be clarified so that it applies retroactively in all cases, without exception, and officials and staff must be trained accordingly. These revisions would simplify the citizenship procedures and clarify the status of Palestinians under the conditions of Decree No. 1231 to provide for protections of children born prior to 2011.

Fourth, Law No. 26 of 1975 must be amended so that a child does not lose his or her Egyptian citizenship if the father's nationality changes. To fully comply with Egypt's international legal obligations, Egyptian law must protect the child's Egyptian citizenship no matter what change occurs to either parent's nationality, unless it is without doubt that the child has alternative citizenship. Withdrawal of citizenship must be very rarely permitted, and only in cases where the same circumstances affect a woman's Egyptian nationality as that of a man.

Fifth, it must be noted that Egypt's recent proposed amendments to the Nationality Law are highly problematic, both from the point of view of likelihood of increasing statelessness and from their incompatibility with Egypt's human rights obligations.⁹⁸² The amendments would give enormous discretion to the Egyptian Government to revoke citizenship of any person deemed a threat to the regime, regardless of their status as naturalized or natural-born citizens. The language of the proposed bills is extremely vague, overbroad, and subject to abuse. The arbitrary application of any of these amendments, should they be adopted, risks violating international law that prohibits the arbitrary deprivation of nationality, and threatens untold numbers of Egyptians with loss of nationality. Egyptian lawmakers are urged to reject these proposals.

B. Removal of Marriage Certificate Requirements and Institution of Civil Marriage

Egypt should eliminate the marriage certificate requirement, as it is a major barrier to registering births of children in Egypt. Removing the marriage certificate requirement for birth registration may be among the most effective ways to address statelessness in Egypt. This is particularly important in the case of unwed mothers or mothers who have had children as a result of rape. As noted above and in prior reports, Egyptian law does in theory permit other means of proving a relationship, but in practice a marriage certificate is still required to register a birth, even if the child is born due to rape.⁹⁸³ For refugees and migrants whose marriage has been registered in their country of origin, the requirement that they secure a letter of authentication from their embassy also presents a significant barrier (sometimes an impossible one) to registering their children.⁹⁸⁴

Eliminating the marriage certificate requirement may also eliminate a major element that enables discrimination on the basis of religion, as with the Egyptian Baha'is, or with certain individuals or communities that utilize 'urfi marriage practices. However, Egypt should urgently address the need to institute and recognize civil marriages. Recognizing marriages only within the three Abrahamic faiths ignores the needs and desires of thousands of Egypt's citizens who do not identify with Islam, Christianity or Judaism; who do not wish to be married in any of those faith traditions; who do not wish to convert from other faiths; and, of particular importance, impinges on the civil recognition of members of Egypt's longstanding Baha'i communities. Egypt has a well-established administrative and judicial system that can readily implement a civil marriage process, which would be a major step towards reducing the undocumented (or precariously documented) children of marriages from other than the three recognized religions.

⁹⁸² See *supra*, Part IV.C.

⁹⁸³ Remote Interview with Mohamed Farahat, *supra* note 687.

⁹⁸⁴ MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 11, at 19.

C. Simplification and Standardization of Civil Registration Processes and Birth Registration

The Egyptian civil registration process places excessive burdens on refugees, migrants, and Egyptian nationals, particularly those of low socioeconomic status and in rural regions. The fifteen-day initial registration for births (pursuant to Law No. 154 of 2004) provides a narrow time frame for birth registration, and it is difficult for individuals to fulfill this requirement if they give birth outside of a hospital and far from a civil registration office.⁹⁸⁵ It is also a difficult requirement for refugees and migrants less familiar with the Egyptian registration system. The additional documentation requirements placed upon births after fifteen days makes this burden even higher.

First, the Egyptian Government should extend this fifteen-day requirement for birth registration to a minimum of one year without penalty. This would particularly benefit women having at-home births, and, in combination with allowing women to register and provide proof of parentage of the child by themselves, have an enormous positive impact on the problem of unregistered street children. These two changes in tandem would benefit thousands of rural Egyptians, women who have been abandoned by spouses, whose children are born of rape, or unregistered *'urfi* marriages. The Ministry of Social Solidarity must have the authority to accept a wide range of documents to register orphan and abandoned children, including sworn affidavits of witnesses, identification documents of caregivers and the like. In the absence of proof to the contrary, abandoned, orphan and street children must be given Egyptian nationality with minimal documentation requirements. Organizations providing services and shelter to orphans and street children must be trained to complete registration requirements for their wards, and required to do so as part of their routine duties. Advocates in other countries of the MENA region are calling for one to three years to allow birth registration, and Egypt should lead the way on this. The government should remove any fees associated with the registration process to enable equitable access, requiring stamps only from authorized officials at no cost, and establishing fines for entities charging fees for birth registration documents.

Second, the government urgently needs to expand services to enable civil registration for rural populations, including those unable to travel long distances. This includes re-starting mobile registration clinics throughout the country, such as those operating before 2012 in the Sinai that visited Bedouin homes to help them register.⁹⁸⁶ This should include establishing additional government offices in certain regions to ensure adults (for example, Bedouin in remote areas) who lack full documentation status easy access without being barred by security checkpoints.

Third, there must be a nationwide training protocol for all officials handling birth, marriage, divorce and citizenship/naturalization procedures in terms of what documents are

⁹⁸⁵ Law No. 154 of 2004, *supra* note 145, at art. 14.

⁹⁸⁶ *No ID, no government services*, IRIN (July 18, 2012).

required and how they are to be registered in the national registry system. The Egyptian government must institute formal and regular trainings to address the persistent problem noted in various reports and by experts, which is the lack of consistency faced by Egyptian nationals and non-citizens seeking to complete various civil registration processes or obtain the relevant birth/marriage certificates.⁹⁸⁷ Women who attempt to complete the birth registration process on their own have particular problems, exacerbated by inconsistent procedures by different officials. The Egyptian Government would be able to provide such consistency by ensuring adequate training of all public officials assisting people in completing the civil status registration processes.

D. Implementation of a National Education Campaign

Egypt must launch a national campaign to raise awareness of the process for civil registration to help parents unfamiliar with the procedures and requirements involved to register their children. Such awareness-raising measures are particularly important for refugee and migrant populations less familiar with the Egyptian legal system. As noted previously, legal aid services provided by Egyptian NGOs and INGOs (such as IOM, UNHCR, and UNICEF) do provide such services, yet many refugees and migrants are not aware that they may seek help from these organizations.⁹⁸⁸ An awareness-raising campaign to explain the Egyptian civil registration process should include television advertisements, social network messages, widely-distributed brochures, and other media publicity to inform the public about deadlines, costs, fees, and procedures for registering births and other forms of civil status. Additional steps are needed to reach isolated or rural populations in Egypt, since some media formats may be unavailable or impractical in certain regions.

E. Naturalization and a Path from Residency to Citizenship

First, Egypt must address its discriminatory citizenship provisions. Acquiring Egyptian nationality through naturalization is both discretionary and gender-discriminatory. As discussed earlier, the Nationality Law allows foreign women who marry Egyptian men to become citizens after a period of two years, but does not permit foreign men married to Egyptian women to naturalize. Egypt must reform this requirement to allow both women and men to naturalize on the petition of an Egyptian spouse in order to come into compliance with its obligations under CEDAW not to discriminate on the basis of sex in conferring nationality.

Second, the Nationality Law also incorporates discriminatory grounds for naturalization on the basis of ethnic/religious origin. The naturalization provisions give preferred pathways to

⁹⁸⁷ See, e.g., MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO *supra* note 11, at 19, 27.

⁹⁸⁸ AUC, PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEE CHILDREN IN NORTH AFRICA: THE CASE OF EGYPT, *supra* note 11, at 63.

persons of Egyptian or Arab origin and Muslims, allowing them to naturalize after five years of residence. Individuals who are not of Egyptian or Arab origin, or Muslim, can only apply for citizenship after ten years of residence. In order to comply with its obligations under ICERD, Egypt must eliminate racial, ethnic or religious discrimination in its naturalization law, and provide the same pathway and process for all persons applying for citizenship, preferably for the shorter residency period of five years.

Third, Egypt's 2019 investor citizenship provision is also discriminatory, in that it allows a speedy pathway to naturalization for those with high income and/or net worth, but not for thousands of individuals who have had long-term residence in Egypt or other genuine links that should allow them to naturalize, but who cannot meet the investor provision criteria. Egypt's investor visa provision should permit naturalization on the same basis as others who are entitled to it through parentage links, marriage, or long-term stay, with a single five-year residence requirement.

Fourth, naturalization should not be discretionary, but must be part of a uniform, non-discriminatory, eligibility-based process overseen by the Ministry of the Interior, and granted to all who meet the requirements. As noted above, Egyptian lawyers and experts report that naturalization is rarely granted, even for applicants who have met all the legal requirements, other than to those born in Egypt, with a father of Egyptian origin or from an Arab or Muslim country. Egypt must issue official statistics on the number of naturalizations it grants and denies, which it does not currently have (or publicly provide).

F. Refugees, Asylum-Seekers, and the Status and Rights of Stateless Persons

First, stateless persons must be entitled to a status determination with guaranteed rights and protection. This requires implementation of commitments on behalf of the Government of Egypt and the UN agencies mandated to protect refugees and stateless persons, in particular UNHCR. The Egyptian Government must codify refugee law and develop a national asylum framework, which it has indicated it plans to do.⁹⁸⁹ UNHCR reported in October 2020 that Egypt had begun drafting an asylum law, but later noted that the effort had slowed due to the COVID-19 pandemic.⁹⁹⁰ Egypt's new refugee law, whenever it is enacted, should include a stateless status determination, to which all stateless persons and refugees must have non-discriminatory access.

Second, until a domestic legal framework is established that will afford rights for stateless persons, UNHCR must specifically incorporate a status determination process for the recognition of stateless persons, including Palestinians, in Egypt. This requires UNHCR to

⁹⁸⁹ Remote Interview with UNHCR, *supra* note 5 (indicating that have been continued internal discussions on the development of a national asylum framework).

⁹⁹⁰ UNHCR Egypt (@UNHCREgypt), TWITTER (Oct. 20, 2020 8:59 PM), <https://twitter.com/UNHCREgypt/status/1313479087319650306>; *Egypt*, UNHCR GLOBAL FOCUS: UNHCR OPERATIONS WORLDWIDE, <https://reporting.unhcr.org/egypt> (last visited May 20, 2021).

incorporate a stateless status determination into its MOU with Egypt, allowing stateless refugees and non-refugees access to an internationally-recognized status that would trigger Agency obligations for protection and services. UNHCR has been given the mandate for international protection of stateless persons under both the 1961 Convention on the Reduction of Statelessness, and a series of United Nations General Assembly Resolutions beginning in 1995.⁹⁹¹ UNHCR administers or advises many states around the world in implementation of stateless status determinations, and there is no legal impediment for it to incorporate such a process in Egypt.

Third, Egypt must amend its position that it is not a country of asylum, as the reality is that thousands of refugees and asylum-seekers remain in Egypt without meaningful prospect of resettlement elsewhere. Egypt's obligations under the 1951 Refugee Convention and the 1969 OAU Convention require it to burden-share in providing durable solutions for refugees, and to provide increasingly greater benefits once an individual is recognized as a refugee in its territory. As such, refugees, putative refugees and closed-file asylum seekers who live in Egypt for years, sometimes decades, must have a pathway to at least short-term legal residency. Egypt must amend its laws to provide for refugees and putative refugees staying more than five years with a pathway to residency status, and permanent residence and citizenship if they remain for ten years. As discussed earlier, refugees who fear registering with UNHCR do not have access to durable solutions, and at the same time remain without identification in Egypt. They cannot legally marry, divorce, or obtain a birth certificate for their children. Many closed-file refugees cannot approach their embassies or consulates to get birth certificates for their children. Providing such individuals with even a short-term, renewable legal status would give them time and a pathway to obtain valid documentation and would significantly decrease the risk of statelessness among these populations.

Furthermore, since UNRWA has no mandate to provide assistance or protection for Palestinians in Egypt, UNHCR is not precluded from extending its international protection mandate towards them, whether as refugees or stateless persons. UNHCR's MOU should be amended to include stateless status determinations for Palestinians. Extending its authority of stateless persons to include a determination that Palestinians are stateless will be a major advancement to reduce the stateless Palestinian problem in the region. A stateless status determination should cover Palestinians who have been displaced from their prior residence outside of Palestine such as Syria, or Palestinians residing in Egypt who have no effective nationality, whether they have arrived from decades-old or more recent displacements. UNHCR should recognize the status of all Palestinian refugees as stateless persons, although holding (ineffective) Palestinian nationality, and confer recognition and the rights resulting from this formal legal status for all Palestinians who do not currently hold Egyptian nationality. Finally, as UN agencies have been advocating, Egypt should fully implement existing legal frameworks

⁹⁹¹ See, e.g., G.A. Res. 50/152 (Dec. 21, 1995); G.A. Res. 61/137 (Dec. 19, 2006) (entrusting UNHCR with the identification, prevention and reduction of statelessness and the protection of stateless persons).

protecting stateless refugees and non-refugees, and ratify both the 1954 and 1961 international conventions on statelessness.

G. Ensuring Palestinian Rights as Stateless Nationals

First, Egypt should affirm that under the Casablanca Protocol, it is obliged to confirm Palestinian nationality and the right to return, but at the same time preserve the human rights of Palestinians in the MENA region and provide dual nationality for Palestinians who need to acquire an effective nationality in a host state. Egypt ratified the Casablanca Protocol without reservation, and Egypt's obligations under the Protocol include recognizing that Palestinians retain their nationality status of Palestine while residing in Egypt. As has been noted in past work by the IHRC, "Palestinian nationality has remained intact since 1924, despite their stateless status: they are stateless nationals of Palestine" and all Arab states should come to an agreement "about the implications of Palestinians as stateless nationals, in terms of implementing their rights as such."⁹⁹² This Report also emphasizes that Egypt, as Jordan or the rest of the world, must effectuate the unbroken nationality status of Palestinians and the right to return to Palestine.

Second, as discussed earlier, Egypt must uniformly and consistently apply Decree No. 1231 of 2011 retroactively to provide citizenship to children born to Palestinian mothers. This is an important Decree for those who would not otherwise be able to acquire citizenship status, but if not fully implemented regardless of when the child was born, it is insufficient, as it leaves a significant number of adult Palestinians unable to access Egyptian nationality, even though their children may be able to do so.

Third, Egypt must eliminate or reduce the barriers to retaining residency permits for Palestinians traveling out of the country. Significant problems have been noted with the strict renewal requirements for identity documents and permits of Palestinians who hold such documentation but travel abroad for any reason.⁹⁹³ These requirements should be made less strict such that Palestinians may continue to enjoy freedom of movement without losing their residency ties in Egypt. Making renewal requirements less stringent will result in Palestinians being able to travel outside Egypt without fear of losing their Egyptian residence and travel permits, in accordance with the rights provided by the Casablanca Protocol.

Fourth, since UNRWA does not formally operate in Egypt, Palestinians should not be prevented from UNHCR protection and assistance if they meet the operational definition under the 1951 Refugee Convention or the OAU 1969 Refugee Convention; this should also be the case for Palestinians displaced from former countries of residence such as Syria. It has been noted that Palestinians displaced from Syria have been barred from seeking UNHCR protection, leaving Palestinians suffering multiple displacements in a particularly vulnerable position⁹⁹⁴

⁹⁹² BU IHRC, CAMPAIGN TO END STATELESSNESS IN JORDAN, *supra* note 10, at 87.

⁹⁹³ ASEM KHALIL, PALESTINIAN REFUGEES IN ARAB STATES, *supra* note 378, at 84.

⁹⁹⁴ BU IHRC, PROTECTING SYRIAN REFUGEES, *supra* note 766, at 85.

H. Humanitarian Framework

NGO's and experts confirm that Egypt and UNHCR implement policies that discriminate in terms of prioritizing certain groups over others for refugee processing, distribution of humanitarian assistance, and access to resettlement. UNHCR has had special and accelerated processing for Syrian refugees since the beginning of the Syrian conflict, for example. Although all NGOs recognize the urgent and overwhelming needs of the massive displaced and stateless populations from Syria, they are opposed to aid distribution based on nationality or any other discriminatory basis, since all forcibly displaced persons, refugees and others, have similar vulnerabilities and urgent needs.

As in Jordan, the IHRC strongly urges UNHCR, the Egyptian Government and NGO's providing assistance to refugees and stateless persons to implement a 'one-refugee' approach, which would provide assistance to all refugees on a non-discriminatory basis. Since most humanitarian assistance organizations working with refugees and stateless persons in Egypt operate through implementing partner contracts with UNHCR, they are bound by the Government of Egypt's policies towards aid recipients. Hence, it is UNHCR that must insist on this approach, and include it in a revised MOU with the Egyptian Government.

Independently of UNHCR, INGO's that receive international aid and are not dependent on UNHCR contracts should immediately incorporate a 'one-refugee' policy. This will not address statelessness directly, but would mitigate the systemic marginalization, poverty and vulnerability faced by stateless and at-risk adults and children who cannot access UNHCR or Egyptian state benefits and services.

I. Protections for Civil Society Organizations

As many international watchdog organizations have been demanding, Egypt must stop targeting and oppressing its national civil society organizations under overbroad security measures.⁹⁹⁵ To ameliorate statelessness, civil society actors, including NGOs and INGOs, must have freedom to do their work without harassment by the state for legitimate legal and social activities. Current measures tightly regulating and prohibiting the important work of Egyptian NGOs, including overly restrictive measures against receiving foreign funding, inhibit protection space necessary to tackle the enormous problems discussed in this Report. While the Egyptian Government maintains concerns about national security, overbroad laws that lack due process in applying them, undermine Egypt's security, as they prevent much-needed assistance for Egyptian nationals to perfect their legal status. Domestic Egyptian organizations and legal

⁹⁹⁵ See, e.g., *Egypt: Chance to end seven-year sham case against brave NGOs*, AMNESTY INT'L (Sept. 1, 2021); *Egypt Crackdown on Civil Society*, HRW, <https://www.hrw.org/tag/egypt-crackdown-civil-society> (last visited Feb. 22, 2022).

services provide assistance that the Egyptian government cannot in serving populations that otherwise have no ability to correct their civil status. In thousands of cases, remedies may be available through resort to the courts, but access to courts is difficult or impossible for most individuals without assistance, financial or otherwise, from experienced lawyers and civil society organizations.

Appendix I: Glossary

Asylum seeker refers to an individual who: “is claiming or applying for protection as a refugee and who has not yet received a final decision on his or her claim”; or “has not yet submitted an application for refugee status recognition (has not yet formalized the administrative requirements in national law) but may nevertheless be in need of international protection.”⁹⁹⁶

Citizenship refers to the relationship between an individual and a state. Citizenship “entitles the individual to the protection of the state, and provides a legal basis for the exercise of many civil and political rights.”⁹⁹⁷ For the purposes of this Report, citizenship is used to refer to having identity documents and recognition by a State as a citizen under its domestic laws.

Civil Registration refers to the registration of life events, including birth, marriage, divorce, and death. Civil registration is required in Egypt to obtain identity documents proving citizenship.

⁹⁹⁶ EU AND UN, EXPERT GROUP ON REFUGEE AND INTERNALLY DISPLACED PERSONS STATISTICS – INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS 22 (Mar. 2018).

⁹⁹⁷ UNHCR, THE STATE OF THE WORLD’S REFUGEES: A HUMANITARIAN AGENDA CH. 6, 1 (1997).

Civil society organizations are community-based organizations that operate independently of any government. Civil society organizations may include those that are registered as NGOs but do not include those registered as international NGOs.

Islamist refers to persons who are considered to be Islamic political or social activists.⁹⁹⁸

International non-governmental organizations (INGOs) are NGOs that carry out programming in multiple countries.

Migrant is any person “who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”⁹⁹⁹

Mugamma or Mogamma is the building in Cairo that houses Egyptian Government administrations.

Nationality is broadly defined under international law as “membership in a nation or sovereign state.”¹⁰⁰⁰ This definition is used in international and regional treaties and does not attach to a particular State’s domestic laws. Outside of international and regional treaties, nationality is alternatively defined as the overarching idea of connection between an individual and a territory.¹⁰⁰¹

Non-governmental organizations (NGOs) are non-profit organizations, operating independently of any government.

Palestine refugees (as defined by UNRWA) are those “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict [and] descendants of Palestine refugee males, including legally adopted children.”¹⁰⁰²

Palestinian refugees “commonly comprises all persons of Arab origin who were displaced from the territory of the former British Mandate Palestine, but also from the Gaza Strip and the West Bank including East Jerusalem, which Israel occupied in 1967, as well as their descendants.”¹⁰⁰³

Undocumented Nationality¹⁰⁰⁴ is the term used in this Report to describe the process of acquiring identity documents for Jordanians who, for whatever reason, are unable to obtain

⁹⁹⁸ See *supra* note 127 (providing a brief introduction to the term ‘Islamist’ in context).

⁹⁹⁹ IOM Definition of “Migrant”, IOM, <https://www.iom.int/who-is-a-migrant> (last visited June 1, 2021).

¹⁰⁰⁰ *Nationality: international law*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/nationality-international-law> (last visited May 8, 2021).

¹⁰⁰¹ *Citizenship and Nationality*, INT’L JUSTICE RESOURCES CTR., <https://ijrcenter.org/thematic-research-guides/nationality-citizenship/> (last visited Mar. 30, 2020).

¹⁰⁰² EU AND UN, EXPERT GROUP ON REFUGEE AND INTERNALLY DISPLACED PERSONS STATISTICS – INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS 21-22 (Mar. 2018).

¹⁰⁰³ MINISTRY OF IMMIGRATION AND INTEGRATION THE DANISH IMMIGRATION SERVICE, PALESTINIAN REFUGEES – ACCESS TO REGISTRATION AND UNRWA SERVICES, DOCUMENTS, AND ENTRY TO JORDAN 7 (June 2020).

¹⁰⁰⁴ HUNTER, UNDOCUMENTED NATIONALS, *supra* note 13, at 8.

identity documents to prove their Egyptian citizenship, and are therefore effectively denied citizenship status. This term is commonly used in conjunction with Egypt’s discriminatory system of civil registration, which leaves many Egyptians unable to register their citizenship.

Registered refugee refers to a refugee who is registered with either UNHCR’s registration system, or UNRWA’s registration system. Based on their respective mandates, UNRWA registers Palestine refugees, whereas UNHCR registers non-Palestine refugees.¹⁰⁰⁵

Right to return is the term used to describe Palestinians’ right to return to their homes in Palestine, as established by United Nations General Assembly Resolution 194.¹⁰⁰⁶

Stateless persons, according to the 1954 Convention Relating to the Status of Stateless Persons, are those who are “not considered as a national by any State under the operation of its law.”¹⁰⁰⁷ Egypt is not a party to the 1954 Convention Relating to the Status of Stateless Persons and does not have a statelessness determination in its domestic legislation, therefore it does not apply this definition to persons within its jurisdiction.

Constitution refers to the Egyptian Constitution of January 2014.

Law No. 154 refers to Egyptian Law No. 154 of 2004 Amending Some Provisions of Law No. 26 of 1975 Concerning Egyptian Nationality. This law specifically amends Egyptian law to allow both Egyptian mothers and fathers to transfer nationality to their children. It also allows for children born before 2004 to apply for Egyptian nationality.

Law No. 12 refers to Law No. 12 of 1996 – Promulgating the Child Law as amended by Law No. 126 of 2008. This law includes the requirements for registering a child with the Egyptian state.

Appendix II: Stakeholders

A. Government

Central Agency for Public Mobilization and Statistics (CAPMAS) is the central body in Egypt responsible for conducting censuses and engaging in quantitative demographic analysis.¹⁰⁰⁸

Government (throughout this Report) refers to the Egyptian Government within the state, including its various branches, components, and agencies, with regard to how it functions both domestically and internationally.

¹⁰⁰⁵ INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS, *supra* note 1001, at 21-22 (Mar. 2018).

¹⁰⁰⁶ G.A. Res. 194 (III), ¶ 11 (Dec. 11, 1948).

¹⁰⁰⁷ See Convention Relating to the Status of Stateless Persons, *supra* note 16.

¹⁰⁰⁸ CENTRAL AGENCY FOR PUBLIC MOBILIZATION AND STATISTICS, <https://www.capmas.gov.eg/> (last visited Feb. 22, 2022).

The Ministry of Interior is integrally responsible for law enforcement of Egypt which includes regulation of Egypt's borders along with broad power in naturalization procedures and passport regulation.¹⁰⁰⁹

National Council for Childhood and Motherhood (NCCM) is an entity under the Ministry of State for Family and Population, and has played an important role in policy making and coordinating actions regarding children in Egypt.¹⁰¹⁰

B. Inter-Governmental Organizations

The African Union is a regional intergovernmental organization comprising all African states. The AU has a robust human rights legal framework, and has been highly influential in human rights throughout the region. It also encompasses a number of smaller regional economic organizations.¹⁰¹¹

The League of Arab States is an intergovernmental organization in the MENA region formed of twenty-two Arab nations. It was formed in 1945, and cooperates on a number of economic and security issues.¹⁰¹²

The Organisation of Islamic Cooperation is a pan-Islamic organization encompassing fifty-seven member states across Africa and Asia.¹⁰¹³

C. Non-Governmental Organizations

Caritas is an international humanitarian organization. It has multiple centers spread across Egypt that provide health, education, humanitarian, and counseling services; these services are provided to refugees and Egyptian nationals alike.¹⁰¹⁴

Egyptian Foundation for Refugee Rights (EFRR) is an Egyptian NGO that provides legal aid to refugees who face detention or unlawful expulsion, suffer crimes in Egypt, or are unjustly prosecuted for criminal acts (it also has more recently expanded to assisting with personal registration status assistance).¹⁰¹⁵

¹⁰⁰⁹ *Classification by Ministries*, EGYPT GOVERNMENT SERVICES PORTAL, <https://www.egypt.gov.eg/english/info/directory.aspx> (last visited Feb. 22, 2022).

¹⁰¹⁰ THE NATIONAL COUNCIL FOR CHILDHOOD AND MOTHERHOOD, <http://www.nccm-egypt.org/> (last visited Feb. 22, 2022).

¹⁰¹¹ AFRICAN UNION, <https://au.int/> (last visited Feb. 22, 2022).

¹⁰¹² LEAGUE OF ARAB STATES, <http://www.lasportal.org/Pages/Welcome.aspx> (last visited Feb. 22, 2022).

¹⁰¹³ ORGANISATION OF ISLAMIC COOPERATION, <https://www.oic-oci.org/> (last visited Feb. 22, 2022).

¹⁰¹⁴ CARITAS – EGYPT, <https://www.caritas.org/where-caritas-work/middle-east-and-north-africa/egypt/> (last visited Feb. 22, 2022).

¹⁰¹⁵ *About EFRR*, EGYPTIAN FOUNDATION FOR REFUGEE RIGHTS, <https://www.efrr-egypt.org/index.php/content/?id=53> (last visited Feb. 22, 2022).

St. Andrew's Refugee Services (StARS) is an NGO that provides a number of services to refugees, including education, psychosocial services, legal aid, and community outreach programming.¹⁰¹⁶

Egyptian Initiative for Personal Rights (EIPR) is an NGO that provides extensive legal services including litigation in defense of human rights and civil liberties in Egypt; this has in particular included litigation regarding access to civil registration systems.¹⁰¹⁷

United Lawyers is an NGO that provides protection services to refugees, including regarding legal emergencies and interviews.¹⁰¹⁸

D. United Nations Organizations

International Labor Organization (ILO) is an organization that promotes labor standards, policies, and decent work internationally.¹⁰¹⁹

International Organization for Migration (IOM) is an agency affiliated with the UN that provides a variety of services to migrants; its work is to be distinguished from that of the UNHCR, which is an agency under the UN and provides services solely related to refugees.¹⁰²⁰

United Nations Children's Fund (UNICEF) provides a variety of services for children around the world and in Egypt. Its work includes research and advocacy, and in Egypt it is responsible for providing a variety of educational and health-related services.¹⁰²¹

United Nations High Commissioner for Refugees (UNHCR), also known as the UN Refugee Agency, is the organization in charge of registering non-Palestinian refugees, with the aim of providing humanitarian assistance and, where resettlement to a third country is viable, making a refugee status determination that enables such resettlement.¹⁰²² With three main offices in Amman, Irbid, and Mafraq, the UNHCR works with the Government of Jordan to aid and to protect refugees and persons seeking asylum.¹⁰²³ A 1954 Memorandum of Understanding (MOU) between UNHCR and the Government of Jordan states that UNHCR will try to find refugees a durable solution in Jordan, whether that be voluntary repatriation to the country of origin or resettlement in another country.¹⁰²⁴

¹⁰¹⁶ *Programs*, ST. ANDREW'S REFUGEE SERVICES, <https://www.stars-austria.org/> (last visited Feb. 22, 2022).

¹⁰¹⁷ *Who We Are*, EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, <https://eipr.org/en/who-we-are> (last visited Feb. 22, 2022).

¹⁰¹⁸ *See, e.g., United Lawyers*, UNHCR EGYPT, <https://help.unhcr.org/egypt/en/partners/ul/> (last visited Feb. 22, 2022).

¹⁰¹⁹ *About the ILO*, ILO, <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last visited May 7, 2021).

¹⁰²⁰ *IOM Egypt*, IOM, <https://egypt.iom.int/> (last visited Feb. 22, 2022).

¹⁰²¹ *UNICEF Egypt*, UNICEF, <https://www.unicef.org/egypt/> (last visited Feb. 22, 2022).

¹⁰²² *About Us*, UNHCR, <https://www.unhcr.org/en-us/about-us.html> (last visited May 8, 2021); Convention Relating to the Status of Refugees, *supra* note 27, at art. 1.

¹⁰²³ *Who We Are*, UNHCR, <https://www.unhcr.org/jo/who-we-are> (last visited May 8, 2021).

¹⁰²⁴ *What We Do*, UNHCR, <https://www.unhcr.org/eg/what-we-do> (last visited May 8, 2021).

United Nations Relief and Works Agency (UNRWA) was established in 1949 to carry out direct relief and work programs for Palestine refugees, including education, health care, relief and social services, camp infrastructure and improvement, and microfinance and emergency assistance.¹⁰²⁵

¹⁰²⁵ *Who We Are*, UNRWA, <https://www.unrwa.org/who-we-are> (last visited May 7, 2021). UNRWA does not provide relief services to Palestinians in Egypt, and so its accomplishments are not directly considered by this Report.