



STATELESSNESS AND NATIONALITY POLICY IN MOROCCO



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I. Introduction

Around the world, nationality serves as the basis for access to the majority of rights, privileges, and public services.¹ While human rights are theoretically guaranteed to all persons under international law, in practice, an individual's ability to exercise the full scope of his or her rights, function as part of society, and live a stable life is dependent upon his or her nationality status.² For this reason, statelessness—a lack of nationality from any state under the operation of its laws—has a devastating impact on people's lives.³ People without a nationality may face a lifetime of exclusion.⁴ They are often unable to obtain formal employment, own land, claim welfare benefits, access healthcare and education, move freely about a country, or even maintain a stable residence.⁵ But despite the debilitating effects of statelessness, surprisingly little information is available about the millions of stateless people across the globe.⁶ In the Middle East and North Africa (MENA) region alone, there are hundreds of thousands of stateless people.⁷ The Boston University International Human Rights Clinic (IHRC) has aimed to address this information gap with a series of reports since 2017 that consider the nationality and citizenship regimes of several MENA countries and assess their ability to protect against statelessness. This Report analyzes issues of statelessness in the Kingdom of Morocco.

Morocco has been recognized as a leader in the MENA region for its domestic law reform addressing gender discrimination in the acquisition of nationality.⁸ Women are now able to confer Moroccan nationality to their children on an equal basis with men, addressing one of the major risk factors for statelessness by extending Moroccan nationality to children whose

¹ See BRONWEN MANBY, CITIZENSHIP IN AFRICA: THE LAW OF BELONGING 25 (2018) [hereinafter MANBY, CITIZENSHIP IN AFRICA].

² See *id.*

³ See *About Statelessness*, UNHCR, <https://www.unhcr.org/ibelong/about-statelessness/> (last accessed May 15, 2023).

⁴ See *id.*

⁵ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 25.

⁶ See Bureau of Population, Refugees, and Migration, *Statelessness*, U.S. DEP'T OF STATE, <https://www.state.gov/other-policy-issues/statelessness/#:~:text=How%20Many%20Stateless%20People%20Are,10%20million%20due%20to%20unde,reporting> (last accessed May 15, 2023) (“At the end of 2022, the UN High Commissioner for Refugees...counted 4.4 million stateless persons worldwide but estimated that the actual number may be over 10 million due to underreporting”).

⁷ See *Who are Stateless People?*, MENA STATELESSNESS PLATFORM, <https://www.statelessnessmena.com/> (last accessed May 28, 2023).

⁸ See e.g., LAURA VAN WAAS, THE SITUATION OF STATELESS PERSONS IN THE MIDDLE EAST AND NORTH AFRICA, 3, 14 (UNHCR, Oct. 2010), <https://www.refworld.org/docid/4cea28072.html> (last accessed May 24, 2023) (noting Morocco as an example of major legislative reform implemented for women's nationality rights); *Background Note on Gender Equality, Nationality Laws and Statelessness*, 2 (UNHCR, Mar. 8, 2018), <https://www.refworld.org/reference/themreport/unhcr/2018/en/120612> (Morocco is not included among the countries where “equality between men and women relating to conferral of nationality upon children has not yet been attained”).

fathers are not Moroccan or who are born to single mothers.⁹ Additionally, the birth registration rate for children under five years old in Morocco is 96%—the fifth highest in Africa.¹⁰ However, significant barriers remain in accessing the civil documentation necessary for establishing Moroccan nationality. Children born outside of hospitals or in the countryside, far from government offices or courts, are at high risk of remaining undocumented and, subsequently, becoming stateless.¹¹ Obstacles to birth registration can be even greater for refugees and migrants, who face difficulties in securing immigration status which guarantees them access to social services in Morocco.¹²

Morocco is home to over 37 million nationals and hosts tens of thousands of migrants.¹³ Though 18,102 refugees and asylum-seekers were registered by the United Nations High Commissioner for Refugees (UNHCR) in Morocco in 2023, it is likely that the number in these categories, when including those unregistered, is far higher.¹⁴ Morocco is a country of transit for many sub-Saharan African migrants trying to reach Europe—but increasingly these migrants remain in Morocco long-term when they cannot complete the journey to Europe.¹⁵ Most migrants in need of international protection (refugees and asylum seekers) in Morocco come from Syria, Sudan, Guinea, Cote d'Ivoire, and the Central African Republic.¹⁶ Similar to findings in previous reports, the research for this Report also concluded that migrants who settle in Morocco and have families there while undocumented risk statelessness for their children. Without access to nationality from Morocco or from their parents' countries of origin, the children of migrants may enter a cycle of intergenerational statelessness. Based on the underlying research, this Report finds that stateless persons and those at risk of statelessness in Morocco are primarily vulnerable migrants and refugees, children born in rural areas without access to civil registration, and children born to stateless or foreign parents.

Morocco is party to a number of international treaties that address the right to nationality, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Convention on the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention). Despite the protections provided by the instruments which Morocco has ratified, the civil registration processes in Morocco do not adequately ensure that all persons entitled to a nationality in the country are able

⁹ See *id.*

¹⁰ See United Nations Economic Commission for Africa & United Nations Children's Fund (UNICEF), *A Statistical Update on Birth Registration in Africa* 29 (UNICEF, 2022).

¹¹ See *infra* Part V.B.

¹² See *infra* Part V.C.

¹³ *Population, total – Morocco*, THE WORLD BANK (2021), <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=MA>; see *Migration Profile: Morocco*, INTEGRAL HUM. DEV. (Dec. 2020), <https://migrants-refugees.va/country-profile/morocco/>.

¹⁴ *Morocco Fact Sheet*, 1 (UNHCR, Jan. 2023), <https://reporting.unhcr.org/document/4447>.

¹⁵ See INTEGRAL HUM. DEV., *Migration Profile: Morocco* (Dec. 2020), <https://migrants-refugees.va/country-profile/morocco/>.

¹⁶ *Morocco Fact Sheet*, *supra* note 14.

to access it. The absence of a stand-alone domestic refugee law in Morocco means that many migrants who might have valid claims to refugee status are unable to obtain that status. As a result, refugees and their children--already stripped of the protection of their state of origin--lose the protections of legal status and nationality in Morocco.

This Report addresses what obligations Morocco has to stateless people (and those at risk of statelessness) who reside there and to harmonize inconsistencies between Moroccan law and regional and international standards that bind Morocco. The Report concludes that, while recent reforms expanded access to nationality for those born to Moroccan nationals, gaps remain in both the letter and the application of domestic Moroccan law. These gaps result in a lack of nationality protection for refugees, migrants, and asylum-seekers—and leave Morocco non-compliant with its international obligations. In light of this, the Report provides recommendations for addressing the problem of statelessness and reducing barriers to nationality or to citizenship in Morocco.

II. Methodology

The Report relies on legal and factual research on the issue of statelessness in Morocco conducted between September 2022 and August 2024. Through desk research, a team of students reviewed the relevant laws and policies as well as reports from non-governmental organizations (NGOs), international non-governmental organizations (INGOs), United Nations (UN) organizations, and academics. This was combined with a series of online and in-person interviews with key UN bodies, INGOs and NGOs, local activists, and statelessness/migration experts. In addition, the team consulted with organizations working in or on Morocco that aid or advocate for: stateless persons; refugees; Moroccans with undocumented citizenship; denationalized persons; gender equality in nationality laws; and humanitarian aid delivery to vulnerable populations.¹⁷

In April 2023, the IHRC hosted a webinar entitled “Citizenship, Nationality, and Stateless Issues in Morocco,” in partnership with the Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut (AUB/IFI). This event fostered discussion among local and regional experts and helped frame the issues for this Report. In May 2023, the IHRC hosted a second workshop in Rabat, Morocco, again in collaboration with the AUB/IFI as well as the Norwegian Refugee Council (NRC). Representatives of the NRC, Association Démocratique des Femmes du Maroc (ADFM), Africa Watch, local Moroccan

¹⁷ Limitations of the study include: (1) many informational interviews were conducted online; (2) interviews were conducted with experts on specific topics and with persons working with affected populations, but not necessarily with directly-affected populations; (3) current quantitative data on affected populations was not always publicly available; (4) lack of existing research specifically focused on nationality status required analyzing research on related questions, and extensive follow-up investigation; and (5) the IHRC was unable to interview members of Morocco’s government and the consulates of the countries of migrant and refugee groups in Morocco as they did not respond to interview requests.

universities, and the IHRC spoke about their work, Morocco’s progress in protecting nationality rights, and present challenges. Attendees also shared their recommendations for addressing gaps in access to nationality in Morocco for vulnerable groups, which have been incorporated into this Report. While in Morocco for the workshop, students conducted further field research, visited the UNHCR office in Rabat, and interviewed experts.

This Report is organized as follows: Part III begins by framing statelessness as a legal and human rights issue, and then presents the nationality framework in historical context in Morocco. The legal framework of Morocco’s obligations regarding nationality and the reduction of statelessness under domestic, regional, and international law is set out in Part IV. The remainder of the Report analyzes access to nationality in Morocco under three main themes: the reduction of gender discrimination in nationality law and access to nationality (Part V.A); access to civil documentation (Part V.B); and the special needs of migrants and refugees (Part V.C, Part VI). The final Part (Part VII) concludes and summarizes recommendations to reduce and prevent statelessness in Morocco.

III. Legal and Historical Context

A. Defining Statelessness

Under international law, a stateless person is one who “is not considered as a national by any State under the operation of its law.”¹⁸ Persons who fall within this definition are often referred to as *de jure* stateless.¹⁹ Although 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.²⁰ Still, 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.”²¹ 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.”²² A person or population considered to be “at risk” of statelessness would not currently

¹⁸ U.N. Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter 1954 Statelessness Convention].

¹⁹ See UNHCR, *Handbook on the Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons* 5 (2014).

²⁰ *Id.*

²¹ *Id.*; 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).

²² LAURA VAN WAAS, AMAL DE CHICKERA, & ZAHRA AL BARAZI, INST. ON STATELESSNESS AND INCLUSION, THE WORLD’S STATELESS 40 (2014) [hereinafter ISI, THE WORLD’S STATELESS].

meet the legal definition of a stateless person, but the circumstances of that person or population indicate there is a “considerable chance that statelessness will arise if preventive action is not taken.”²³ In addition, persons of “undocumented nationality” or undocumented citizenship (sometimes referred to as “evidentiary statelessness” or “unperfected citizenship”) may lack the means to fully prove their nationality status or may remain unregistered with the state of their nationality for other reasons.²⁴ While there are distinctions between the concepts of “citizenship” and “nationality,” this Report occasionally uses the two terms interchangeably.²⁵ Citizenship is determined by the domestic laws of a state, while nationality relates to international law principles to which states must conform in determining their citizenship laws.²⁶ The focus of this Report is statelessness as a lack of nationality—which is defined as “membership in a nation or sovereign state,” or the legal bond that ties a person to a state.²⁷ The bond in question, in turn, is based on a “social fact of attachment, a genuine connection of existence, interests and sentiments together with the existence of reciprocal rights and duties.”²⁸

Morocco has not ratified either of the conventions governing statelessness,²⁹ but the basic definition of a stateless person is a norm of customary international law (CIL).³⁰ These two

²³ LEGAL AGENDA, NATIONALITY AND CASES OF STATELESSNESS IN THE MIDDLE EAST AND NORTH AFRICA 18 (2016).

²⁴ See WENDY HUNTER, UNDOCUMENTED NATIONALS BETWEEN STATELESSNESS AND CITIZENSHIP 5 (2019) (defining and analyzing ‘undocumented nationality’ and ‘evidentiary statelessness’); 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 preventing 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.

²⁵ 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.)*, Judgement, 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.”); see also MANBY, *CITIZENSHIP IN AFRICA*, *supra* note 1, at 7 (“Citizenship and its cognates in other languages—derived from city—have connotations related to civil rights and participation. Nationality and its cognates—derived from nation—have connotations related to ethnicity, family, and culture.”).

²⁶ *Id.*

²⁷ *Nationality: international law*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/nationality-international-law> (last visited May 24, 2023); *Citizenship and Nationality*, INT’L JUSTICE RESOURCES CTR., <https://ijrcenter.org/thematic-research-guides/nationality-citizenship/> (last visited May 24, 2023).

²⁸ *Liech v. Guat.* (1955), *supra* note 25.

²⁹ See 1954 Statelessness Convention, *supra* note 18; see Convention on the Reduction of Statelessness, 30 Aug. 1961, 989 U.N.T.S. 175 [hereinafter 1961 Statelessness Convention]

³⁰ 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

conventions set out the basic rights and protections for stateless persons, so their absence in Moroccan codification is significant. However, refugees and children are two groups entitled to special protection in Morocco through the provisions of the 1951 Convention Relating to the Status of Refugees,³¹ the 1967 Protocol Relating to the Status of Refugees,³² and the Convention on the Rights of the Child (CRC).³³

Worldwide, the key causes of statelessness are gaps and conflicts in nationality laws, legacies of colonization, consequences of state succession, inter-generational transmission of statelessness, arbitrary deprivation of nationality, and restrictive administrative practices (for example, in relation to the issuance of documents necessary to prove nationality).³⁴ Failure to register births can result from restrictive administrative practices and have dire consequences throughout a child's life. Individuals whose births were never registered are often unable to register the births of their own children, since the birth registration process requires that parents provide documentation proving their nationality and identity.³⁵ This creates inter-generational statelessness that gets more and more difficult to address the longer it is unresolved.

Given the range and complexity of causes, these issues feature differently depending on the context. The following sections provide the necessary background for this Report by examining the relevant history and demographics related to nationality in Morocco.

B. Moroccan Nationality: History, Demographics and Current Contentions

Morocco's modern legal regime derives from the nation's complex history, influenced by the period of the French Protectorate, the establishment of Moroccan independence, and subsequent legal reforms. The legal concept of Moroccan nationality is closely connected to cultural, religious, and ethnic aspects of Moroccan identity. Important periods in Moroccan history have contributed to the development of Moroccan national identity, and in turn shaped its nationality law.

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 Statelessness Convention, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012).

³¹ U.N. Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 U.N.T.S. 137. [hereinafter 1951 Refugee Convention]

³² U.N. Protocol Relating to the Status of Refugees, Oct. 4, 1967, 606 U.N.T.S. 267. [hereinafter 1967 Refugee Protocol]

³³ U.N. Convention on the Rights of the Child, Sept. 2, 1990, 1577 U.N.T.S. 3 [hereinafter CRC].

³⁴ ISI, THE WORLD'S STATELESS, *supra* note 22, at 27-28.

³⁵ *Id.*

i. The Pre-Protectorate Period

After its origin in the eighth century, when North Africa was conquered by the Arabs, the Kingdom of Morocco was ruled by successive Moorish dynasties as an independent nation-state.³⁶ The descendants of the last successful dynasty—the Alawi—are the modern Moroccan royals.³⁷ Morocco is ruled by a Sultan: a male royal whose rule was legitimized by the notion that he was descended from the Prophet.³⁸ The first writings referencing the idea of a Moroccan nation as a framework for political life appeared in the mid-nineteenth century, distinguishing “Moroccans” from other peoples.³⁹ But the notion of a Moroccan nation did not exist until after Morocco’s successful struggle for independence.⁴⁰ Though Morocco was never conquered by the Ottoman Empire, making it unique among the North African states, it was eventually affected by European colonization in the nineteenth century.⁴¹ Beginning in 1830, European influence became “an omnipresent reality looming over [Moroccan] political events, the economy, and even social life.”⁴² The middle of the nineteenth century marked a period of growing competition among Great Britain, Spain, and France for influence over Morocco.⁴³ Britain was the first to succeed at “opening up” Morocco to the West, securing the majority of trading power there through two Anglo-Moroccan treaties in 1856.⁴⁴ With English goods flooding in to replace handmade domestic products, Morocco’s economy was weakened by rampant inflation, making the State vulnerable to the strong European powers looking for an opportunity to take control.⁴⁵ After a brief war with Spain from 1859-1860 which ended in a crippling settlement, Morocco was in severe debt and struggling to maintain its autonomy.⁴⁶

During the second half of the nineteenth century, Morocco’s internal and external policies became entangled with Europe through “protection” agreements.⁴⁷ Protection began as a means of stimulating commerce by releasing foreigners from the jurisdiction of Moroccan law (notably, exempting them from taxes), but this “metastasized . . . into a corrupt and abusive practice that embraced hundreds of people and undermined the authority of the [Moroccan government].”⁴⁸ During this time of instability, the unifying presence of Islam offered some hope

³⁶ See GILLIAN FORSTER, MOROCCO AS A SOCIAL AND CULTURAL CONTEXT FOR MANAGEMENT PRACTICE 15 (2014).

³⁷ See *id.*

³⁸ See SUSAN GILSON MILLER, A HISTORY OF MODERN MOROCCO 188 (2013) (describing the function of the Sultan/king as twofold: “a political function, based on his control of a monopoly of coercive power, and a religious function, due to his prophetic lineage and his leadership of the community of the faithful.”).

³⁹ See *id.* at 120.

⁴⁰ See *id.*

⁴¹ See GIANLUCA PAROLIN, CITIZENSHIP IN THE ARAB WORLD: KIN, RELIGION, AND NATION-STATE 92 (2007).

⁴² GILSON MILLER, *supra* note 38, at 7.

⁴³ See *id.* at 22.

⁴⁴ See *id.* at 24.

⁴⁵ See *id.*

⁴⁶ See GILSON MILLER, *supra* note 38, at 25.

⁴⁷ See *id.* at 43.

⁴⁸ *Id.*

to the Moroccan people.⁴⁹ The public's deep connection to their Muslim identity meant that the religious sphere could be a realm for social change, when the *makhzan* was failing them.⁵⁰

The flailing Moroccan government of the early twentieth century faced overt opposition from native Moroccans as well as Europeans. In 1911, the tribes of the Middle Atlas (the mountain range in central Morocco) besieged Fez and took Sultan 'Abd al-Hafiz prisoner.⁵¹ The Sultan appealed to the French for aid, who entered Fez with force and ended "the fiction of Moroccan independence."⁵² On March 30, 1912, Sultan 'Abd al-Hafiz signed the Treaty of Fez, creating a French protectorate ("the Protectorate") over Morocco, with Spain retaining protectorate power over the northern and southern Saharan zones.⁵³

ii. The French Protectorate: 1912 to 1955

Under the French Protectorate, the Moroccan government was only nominally autonomous.⁵⁴ Little remained of the former *makhzan*, and the Sultan was anointed as "guardian of Islamic Affairs," with the French administration controlling essentially all other government functions.⁵⁵ French remains the language of diplomacy, business, and government in Morocco for this reason.⁵⁶ During this time, residents of Morocco became French protected persons (*protégés français*) but were never granted French citizenship.⁵⁷ This was part of the French strategy, to create a socioeconomic hierarchy in Morocco with French citizens and other European expatriates at the top.⁵⁸ The French administration used class and ethnicity to determine who would have access to a modern education—with European, Jewish, Berber and Arab Muslim students each being directed to a separate school system. Most Muslim students were sent to vocational schools to prepare for manual trades. While this stemmed from a French effort to avoid creating an educated, discontented public that might oppose their Protectorate, this also maintained an Arab/Berber Moroccan identity distinct from French influence and identification.⁵⁹

Facing widespread opposition from Moroccans, France tried to subdue the country with a forceful occupation that was especially brutal for rural tribes.⁶⁰ More and more French nationals

⁴⁹ See *id.* at 53-54.

⁵⁰ The Arabic term for the native Moroccan government. See *Makhzan*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/makhzan> (last visited May 20, 2023) See GILSON MILLER, *supra* note 38, at 53-54.

⁵¹ See *id.* at 78.

⁵² *Id.*

⁵³ See *id.*; FORSTER, *supra* note 36, at 16.

⁵⁴ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 48.

⁵⁵ GILSON MILLER, *supra* note 38, at 92.

⁵⁶ See *Morocco - The World Factbook*, CENTRAL INTELLIGENCE AGENCY (CIA), <https://www.cia.gov/the-world-factbook/countries/morocco/> (last updated May 16, 2023).

⁵⁷ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 51. However, French nationality law became the model for Morocco's eventual Nationality Code, as detailed in the following section.

⁵⁸ See GILSON MILLER, *supra* note 38, at 125.

⁵⁹ See *id.* at 99-100.

⁶⁰ See *id.* at 96.

moved to Morocco, and France initiated a massive transfer of *makhzan*, tribal, and even privately held land from Moroccan to European ownership.⁶¹ The French sought to “divide and conquer” the Moroccan people by demarcating between the native Arabic and Berber ethnic groups.⁶² Colonial officials deemed the Arabs languid, fanatically orthodox, anarchical, and prolix; while Berbers were called industrious, indifferent to religion, respectful of hierarchy, and reticent, in contrast.⁶³

Despite multifaceted attacks on the Moroccan people’s unity and prosperity, their Moroccan identity persisted—and eventually fueled a nationalism that ended the Protectorate. World War I marked a “break from the past” for the native Moroccan elite, who saw the tumult of the time as an opportunity to seek liberation.⁶⁴ Feelings of Moroccan nationalism grew in the 1920s and 1930s, driven by youth who rallied the peasantry along with urban business classes, and harnessed the organizing power of labor unions. Eventually, the nationalist cause radicalized during World War II, finally culminating in the end of the Protectorate.⁶⁵

iii. Moroccan Independence and Modern Morocco

Morocco successfully declared its independence from France in 1956 and became a constitutional monarchy with a democratic government when Mohammed V assumed the role of King on August 11, 1957.⁶⁶ Morocco’s first Constitution was adopted in 1962.⁶⁷ Mohammed V’s son Hassan II ruled after him from 1961-1999, and in 1999 Morocco’s current king, Mohammed VI, began his reign.⁶⁸ Although the King still maintains strong executive powers, most of the modern government and the Parliament are elected democratically.⁶⁹ Retaining the divine monarchy was one of many ways native Moroccans preserved their pre-colonial cultural identity as an independent nation.⁷⁰ Rejecting the French degradation of Arabic culture, Morocco formalized Arabic as its official language and sought to restore “Muslim Arab identity and law.”⁷¹ Islam reemerged as a defining characteristic of the country’s politics and public life.⁷²

⁶¹ See GILSON MILLER, *supra* note 38, at 114.

⁶² See FORSTER, *supra* note 36, at 16.

⁶³ GILSON MILLER, *supra* note 38, at 125.

⁶⁴ See *id.* at 121.

⁶⁵ See *id.* at 123-25, 141.

⁶⁶ See Guilain Denoeux, *Countries at the Crossroads 2011: Morocco*, FREEDOM HOUSE, NOV. 10, 2011, at 1-2, https://freedomhouse.org/sites/default/files/inline_images/Moroccofinal.pdf.

⁶⁷ *Constitutional History of Morocco*, CONSTITUTION NET, <https://constitutionnet.org/country/morocco> (last accessed May 28, 2023).

⁶⁸ See *id.*

⁶⁹ See MOROCCO’S CONSTITUTION OF 2011 July 1, 2011, Title V & Title VI [hereinafter Moroccan Constitution] (establishing the executive power and the balance of powers between the king and the legislative power, respectively).

⁷⁰ See FORSTER, *supra* note 36, at 16; see also GILSON MILLER, *supra* note 38, at 188.

⁷¹ FORSTER, *supra* note 36, at 16.

⁷² See GILSON MILLER, *supra* note 38, at 188.

Though independence was met with great celebration, Morocco faced many difficult years creating and consolidating state institutions, building a national economy, organizing civil society, and providing for a needy population weakened by colonialism.⁷³ The second half of the twentieth century was marked by several attempted coups and discontent with the monarchy.⁷⁴ When King Mohammed VI ascended to the throne in 1999, his youth and accessibility raised hopes for a new, more progressive monarchy.⁷⁵ The past several decades have been a period of reform for Morocco, with the emergence of a powerful women's movement, the pro-democracy protests of the Arab Spring, the adoption of a new Constitution, and major changes to the Code of Family Law that reflected cultural value shifts.⁷⁶

Today, 99% of Moroccans are Muslim, and virtually all Muslims are Sunni.⁷⁷ Minority religions of the remaining 1% of the population include Christianity, Judaism, and Bahaism, while 99% of the population is also of Arab-Berber ethnicity.⁷⁸ This largely homogenous national demographic profile makes a visible contrast between native Moroccans and migrants in the country, who are not accounted for in these statistics. Most migrants, refugees, and asylum-seekers arrive from sub-Saharan African countries (e.g., the Ivory Coast, Cameroon, Sudan, South Sudan, Guinea, and the Central African Republic), but a considerable number come from Yemen, Iraq, Syria, and Palestine as well.⁷⁹ The highest population density is along the Atlantic and Mediterranean coasts, with a number of densely populated areas scattered through the Atlas Mountains.⁸⁰ A number of Berber-speaking tribal groups reside in rural areas of the mountain range, often referred to as “the Forest.”⁸¹ Many migrants also live in these more remote areas of the country, hoping to remain undetected.⁸²

Morocco maintains a close relationship with the United States and, though not a member state, is a strong political partner of the European Union.⁸³ In contrast, Morocco has had more strained relations with other African States, largely due to the dispute over the status of Western Sahara.

⁷³ See *id.* at 160.

⁷⁴ See *id.* at 174-79.

⁷⁵ See *id.* at 221.

⁷⁶ See *id.* at 227. For more on the Arab Spring, see Charles Kurzman, *The Arab Spring Uncoiled*, 17(4) MOBILIZATION: AN INT'L QUARTERLY 377, 377-390 (2012); Sami Zubaida, *The 'Arab Spring' in the Historical Perspectives of Middle East Politics*, 41 ECON. & SOC'Y 568, 568-579 (Dec. 5, 2012).

⁷⁷ See *Morocco - The World Factbook*, *supra* note 56.

⁷⁸ *Id.*

⁷⁹ UNHCR, MOROCCO - FACTSHEET 1 (Jan. 2023), <https://reliefweb.int/report/morocco/unhcr-morocco-fact-sheet-january-2023#:~:text=Attachments&text=Morocco%20is%20both%20a%20transit>

⁸⁰ See *Morocco - The World Factbook*, *supra* note 56.

⁸¹ See DAVID M. HART, *TRIBE AND SOCIETY IN RURAL MOROCCO* 2 (2000).

⁸² Videoconference Interview with Abderrahman Benyahya, Head of the Migration and Asylum Ctr., *Droits et Justice* (Mar. 14, 2023) [hereinafter Videoconference Interview with Abderrahman Benyahya].

⁸³ See Bureau of Near Eastern Affairs, *U.S. Relations with Morocco*, U.S. DEP'T OF STATE (June 6, 2022), <https://www.state.gov/u-s-relations-with-morocco/#:~:text=Morocco%20maintains%20close%20relations%20with> (last accessed May 28, 2023).

iv. Western Sahara

A punctured line separates Morocco on the map from its southern neighbor: the non-self-governing territory of Western Sahara which Morocco claims belongs to the Kingdom.⁸⁴ The status of Western Sahara, and the nationality of its indigenous people, the Sahrawi, is subject to significant contention.⁸⁵ While the territory was controlled by Spain for almost a century until 1976, Morocco and Mauritania had asserted a claim to sovereignty over all or part of it in the context of the 20th-century decolonization of Africa.⁸⁶ The Sahrawi maintain that Western Sahara should be recognized as its own state independent of its neighbors, given the distinct ethnic origin and history of its people.⁸⁷ From the time of Spain's colonial rule, the Sahrawi had their own liberation movement, *Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro* (Frente POLISARIO), named after the two former Spanish provinces making up the territory, and later proclaimed the creation of the Sahrawi Arab Democratic Republic (SADR) in 1976.⁸⁸

Moroccan elites deemed the Sahrawi assertion of a distinct nationality an expression of “the original sin of colonialism,” while emphasizing the intermittent control that Moroccan kings have exercised over Sahrawi tribes and Western Sahara over the centuries prior to colonization.⁸⁹ Neighboring Algeria, meanwhile, has strongly supported the Sahrawi right to self-determination from the beginning of the conflict.⁹⁰ In 1975, the competing claims were considered by the International Court of Justice (“ICJ”) which issued an Advisory Opinion finding that neither Morocco nor Mauritania had a legitimate claim of sovereignty over Western Sahara, and affirming the Sahrawi people's right to self-determination.⁹¹ Despite this authoritative decision issued in October 1975, just a month later Moroccan civilians and military entered into Western Sahara in a coordinated intervention and occupation known as the “Green March,” precipitating Spain's withdrawal in early 1976.⁹² Spain did not complete its decolonization in time to ensure the Sahrawi population could exercise self-determination through sovereignty, and effective

⁸⁴ *State Report of the Kingdom of Morocco to the United Nations Human Rights Committee*, submitted under article 40 of the Covenant, (2015)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FMAR%2F6&Lang=en (“Sahara has been an integral part of the Kingdom of Morocco since time immemorial.”)

⁸⁵ Bronwen Manby, *Nationality and Statelessness Among Persons of Western Saharan Origin*, 34 *Immigr. Asylum & Nat’y L.* 9, 16 (2020).

⁸⁶ *Id.* at 10.

⁸⁷ *Id.* at 10.

⁸⁸ *Id.* at 11. The SADR has been recognized by the African Union and a minority of countries worldwide. It issues identity documents that assert Sahrawi nationality but those are only recognized as valid by the handful of countries recognizing the SADR as an independent state. Andrea Marilyn Pragashini Immanuel, *The Right to Nationality of the Saharawis and Their Legal Identity Documents*, *Citizenship Studies* 27, no. 7 (October 3, 2023): 914–32, <https://doi.org/10.1080/13621025.2024.2321722>.

⁸⁹ STEPHEN ZUNES & JACOB MUNDY, *WESTERN SAHARA: WAR NATIONALISM, AND CONFLICT IRRESOLUTION* xxv (Syracuse University Press, 2d. ed. 2022).

⁹⁰ See Ilhem Rachidi, *Morocco and Algeria: A Long Rivalry*, CARNEGIE ENDOWMENT FOR INT’L PEACE (May 3, 2022), <https://carnegieendowment.org/sada/87055> (last accessed May 28, 2023).

⁹¹ Advisory Opinion on the Western Sahara, 1975 I.C.J. 12 (Oct. 16, 1975).

⁹² Zunes and Mundy, *supra* note 89.

control over Western Sahara was assumed by Morocco through fiat.⁹³ Eventually, Morocco came to occupy over 80% of the territory of Western Sahara, and hundreds of thousands of Sahrawi were displaced to Algeria.⁹⁴

In response to the United Nations Secretary-General's report containing "settlement proposals" for the region, the Security Council established the United Nations Mission for the Referendum in Western Sahara (MINURSO) in 1991.⁹⁵ The Referendum would have allowed the people of Western Sahara to "choose between independence and integration with Morocco."⁹⁶ However, the Referendum never took place because of disagreements over who could vote in it, and a ceasefire has remained between the Polisario Front—the Sahrawi liberation movement—and the Moroccan government since 1992.⁹⁷ Most of the international community and the United Nations organs have followed the ICJ decision in opposing Morocco's claim of sovereignty over Western Sahara.⁹⁸ The Polisario Front has been recognized by the United Nations as the only legitimate representative of the Sahrawi people.⁹⁹ Despite this international consensus, the United States officially recognized Morocco's claims over Western Sahara, with the Israel-Morocco Normalization Agreement in 2020.¹⁰⁰

Of relevance to this Report is the interplay between the unresolved status of Western Sahara and the nationality of the Sahrawi. In the view of the Moroccan government, Western Sahara is part of Morocco, and the Sahrawi people who live there are Moroccan.¹⁰¹ The Sahrawi

⁹³ See, Immanuel *supra* note 88.

⁹⁴ Manby (2020), *supra* note 85 at 13.

⁹⁵ *Background*, MINURSO (Aug. 10, 2023, 11:23 AM), <https://minurso.unmissions.org/background>. The settlement proposals provided for a transitional period before the referendum, conferring on the people of Western Sahara "the right to elect executive and legislative bodies and to have competence over the local government and many functional areas," while reserving power over "foreign relations, national security, and defense" for Morocco. Carol Migdalovitz, *Western Sahara: Status of Settlement Efforts*, U.S. Foreign Affairs, Defense, and Trade Division (Aug 10, 2023, 1:16 PM), <https://web.archive.org/web/20161025055323/http://www.dtic.mil/dtic/tr/fulltext/u2/a457333.pdf>.

⁹⁶ *Mandate*, MINURSO (Aug. 10, 2023, 1:27 PM), <https://minurso.unmissions.org/mandate>.

⁹⁷ See *id.*

⁹⁸ See e.g., Aggrey Mutambo, *AU Sides with Western Sahara on Autonomy Despite U.S. Decision*, THE EAST AFRICAN (Dec. 12, 2020), <https://www.theeastafrican.co.ke/tea/rest-of-africa/au-sides-with-western-sahara-on-autonomy-despite-us-decision-3226802>; ANNA THEOFILOPOULOU, U.S. INST OF PEACE, THE UNITED NATIONS AND WESTERN SAHARA: A NEVER-ENDING AFFAIR 2-3 (July 2006), <https://www.usip.org/sites/default/files/sr166.pdf> ("[T]he UN stated in unambiguous terms from the start that the Western Sahara conflict could be resolved only through an act of self-determination, in keeping with the Declaration on the Granting of Independence to Colonial Countries and Peoples.").

⁹⁹ See G.A. Res. 34/37 (Nov. 21, 1979); see, e.g., *Frente POLISARIO UN Representative Refutes the Allegations of the Occupying State Representative*, SAHARA PRESS SERV. (Mar. 12, 2023), [https://www.spsrasd.info/news/en/articles/2023/03/12/44601.html#:~:text=New%20York%20\(United%20Nations\)%2012,of%20the%20occupying%20state%20of](https://www.spsrasd.info/news/en/articles/2023/03/12/44601.html#:~:text=New%20York%20(United%20Nations)%2012,of%20the%20occupying%20state%20of).

¹⁰⁰ See *Proclamation on Recognizing the Sovereignty of the Kingdom of Morocco Over the Western Sahara*, U.S. EMBASSY & CONSULATES IN MOROCCO (Dec. 10, 2020), <https://ma.usembassy.gov/proclamation-on-recognizing-the-sovereignty-of-the-kingdom-of-morocco-over-the-western-sahara/#:~:text=Therefore%2C%20as%20of%20today%2C%20the,over%20the%20Western%20Sahara%20territory> (The United States recognized Morocco's claims over Western Sahara in exchange for Morocco's acceptance of the Israel-Morocco Normalization Agreement of 2020. See *Joint Declaration*, U.S.-Isr.-Morocco, Dec. 22, 2020).

¹⁰¹ See Manby (2020), *supra* note 85.

living in Moroccan-occupied Western Sahara are considered Moroccan nationals under Moroccan law, hold Moroccan citizenship documentation, and can participate in Moroccan elections.¹⁰² During this Report research, stakeholders and experts in Morocco did not express concerns about the attribution of Moroccan nationality to Sahrawi living in Morocco-occupied Western Sahara.

It is worth noting, however, that there is no opportunity for Sahrawi residing or having resided in Morocco to renounce their Moroccan nationality, except as authorized by decree under the Moroccan Nationality Code's Article 19.¹⁰³ This relative difficulty in renouncing Moroccan nationality by people who may consider themselves nationals of Western Sahara (SADR) raises the possibility that Morocco is seeking to coercively prevent the self-determination of the Saharawi as a people and to restrict their nationality rights as individuals. The question of what nationality applies to such persons emerges not infrequently in the context of statelessness determination procedures or refugee determinations for Sahrawi outside of Morocco.¹⁰⁴ Those Sahrawi residing outside of Morocco, and outside of the portion of Western Sahara under Moroccan control, are understood to be stateless in at least one expert analysis, and by the controlling jurisprudence in Spain and France.¹⁰⁵ Statelessness is also of major concern for Sahrawi in the refugee camps of Tindouf, Algeria. More detailed discussion of Sahrawi statelessness is beyond the scope of this report and will be addressed in the IHRC's country report on Algeria.

IV. Legal Framework on Nationality

A. Domestic Law

i. The Moroccan Constitution

In 2011, King Mohammed VI responded to the Arab Spring demands for strengthened democracy by drafting a new constitution.¹⁰⁶ Over 150,000 Moroccan demonstrators demanded

¹⁰² *See id.*

¹⁰³ *See id.*

¹⁰⁴ Manuel Jesús López Baroni, "Apátridas saharauis en España: Europa y su memoria," 14 *Anuario Mexicano de Derecho Internacional*, 381–433 (January 1, 2014), [https://doi.org/10.1016/S1870-4654\(14\)70011-X](https://doi.org/10.1016/S1870-4654(14)70011-X).

¹⁰⁵ Manby (2020), *supra* note 85; "French Administrative Supreme Court Rejected a Stateless Status Application from a Sahrawi Applicant," European Network on Statelessness, July 13, 2023, <https://www.statelessness.eu/updates/blog/french-administrative-supreme-court-rejected-stateless-status-application-sahrawi>.

¹⁰⁶ *See* Moroccan Constitution, *supra* note 69.

the redistribution of power towards elected representatives and away from the monarchy.¹⁰⁷ The new Constitution was drafted in consultation with a commission of experts who accepted recommendations from Moroccan political parties, unions, businesses, and human rights organizations.¹⁰⁸ However, this input was largely superficial, as the entire constitutional reform process was driven by the King's agenda.¹⁰⁹ The King remains the center of political and constitutional life and maintains significant power over the government's decision-making process.¹¹⁰ Still, the new Moroccan Constitution incorporated many human rights that were not previously recognized in the country, including the right to equality between men and women.¹¹¹ The current Moroccan Constitution passed by referendum on July 1, 2011.¹¹²

The Constitution establishes Morocco as “a constitutional, democratic, parliamentary and social Monarchy,” with Islam as the religion of the State.¹¹³ Title III of the Constitution lays out the structure, responsibility, and powers of the monarchy; Title IV organizes the Parliament and legislative powers; Title V describes the executive power; Title VI sets out the relationship between the branches; Title VII details the judicial powers; and Title VIII establishes the Constitutional Court.¹¹⁴ The Constitution declares that all “physical or moral persons, and including the public powers,” are equal before the law.¹¹⁵ It guarantees equality between men and women,¹¹⁶ and ensures special protections for children and for the preservation of the family.¹¹⁷

While Articles 16-18 detail rights for Moroccan citizens who live abroad, the only other mention of nationality is in Article 71: “[The following] are of the domain of the law, other than the matters that are expressly devolved on it by other Articles of the Constitution: . . . nationality and the status of foreigners.”¹¹⁸ This means that nationality law is left to the Moroccan Parliament to regulate.

¹⁰⁷ MOHAMED MADANI ET. AL., INT'L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, THE 2011 CONSTITUTION: A CRITICAL ANALYSIS 6 (2012).

¹⁰⁸ See *Constitutional History of Morocco*, *supra* note 67.

¹⁰⁹ See MADANI ET. AL., *supra* note 107, at 6.

¹¹⁰ See *id.*

¹¹¹ See *id.*

¹¹² See *Constitutional History of Morocco*, *supra* note 67.

¹¹³ LEILA HANAFI, THE LEGAL SYSTEM OF MOROCCO: AN OVERVIEW 7 (Konrad Adenauer Stiftung 2020).

¹¹⁴ See Moroccan Constitution, *supra* note 69.

¹¹⁵ See *id.*, at art. 6.

¹¹⁶ See *id.*, at art. 19 (“The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural, and environmental character . . . The State works for the realization of parity between men and women.”).

¹¹⁷ See *id.*, at art. 32 (“The family, founded on the legal ties of marriage, is the basic unit of society. The State works to guarantee, by the law, the protection of the family under the juridical, social, and economic plans, in a manner to guarantee its unity, its stability, and its preservation. It assures one equal juridical protection and one equal social and moral consideration to all children, [being the] abstraction made from their familial situation.”).

¹¹⁸ *Id.*, art. 71.

ii. The Moroccan Nationality Code

There are significant differences in how the legal bond of nationality has developed and been interpreted in various cultural contexts and legal traditions. Since the colonial period, Moroccan nationality law and conceptions of citizenship have evolved to “reflect changing views of allegiance and belonging.”¹¹⁹ In common with all Arab countries, the traditional social structure in Morocco has been based on kinship. An individual’s identity is defined by his or her membership in a kinship group, and family is the foundation of society. Simultaneously, religious affiliation has remained a dominating feature of life.¹²⁰ As in most MENA countries, Islam has been the cornerstone of Moroccan identity and is closely connected to kinship ties: according to Islamic law, every child of a Muslim man is a Muslim, a Muslim woman is obliged to marry a Muslim man and can only give birth to a Muslim child.¹²¹ Though modern Moroccan law de-links religion from citizenship, these concepts of belonging provide important context for understanding the evolution of Moroccan nationality.

In pre-colonial North Africa, and to some extent even today, the notion of the Muslim community (*umma*) provided a sense of common identity across political boundaries.¹²² When the idea of a “nation state” gained traction in the nineteenth century, individuals increasingly identified with the physical territories in which they lived.¹²³ A turning point in the external recognition of a distinct Moroccan nationality in the pre-independence period was the 1903 *affaire Abdel-Hakim*—in which a Tunisian-born counselor to the Moroccan court appeared before a French court to contest the French authorities from banning him from re-entering Morocco.¹²⁴ He claimed that there was but one Islamic citizenship which should grant him domicile in Morocco, but the court rejected this argument. It held that “Islamic citizenship no longer existed” and Abdel-Hakim’s nationality was under Morocco’s jurisdiction, as the Islamic citizenship concept had been replaced by the formation of many nationalities “in the fold of Islam.”¹²⁵

Nationality as a formal legal concept was incorporated into the Fez Treaty of 1912 between France and Morocco for the first time, distinguishing between individuals based on their “national” origin.¹²⁶ During the Protectorate period, nationality regulations varied by zone of influence: in the Spanish zone, nationality was attributed according to local customs; and in the French zone, Moroccan nationality was not questioned, but also not formally regulated.

¹¹⁹ Delphine Perrin, *Morocco: Report on Citizenship Law*, CITIZENSHIP RTS. IN AFR. (Oct. 1, 2011), <https://citizenshiprightsafrika.org/morocco-report-on-citizenship-law/>.

¹²⁰ See PAROLIN, *supra* note 41, at 26.

¹²¹ See PAROLIN, *supra* note 41, at 48-49.

¹²² See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 39.

¹²³ See *id.*

¹²⁴ See PAROLIN, *supra* note 41, at 92.

¹²⁵ See *id.*

¹²⁶ See Perrin, *supra* note 119.

Generally, Moroccan nationality was transmitted by virtue of paternal bloodlines, with no possibility of naturalization.¹²⁷

Morocco's first Nationality Code was adopted in 1958, two years after independence. The Code was largely modeled on France's 1945 *Code de la Nationalité*, but also drew on the nationality legislation of other Arab and non-Arab Muslim countries.¹²⁸ The Moroccan Nationality Code was based primarily on paternal descent, and resulted in discrimination against women, who were not able to pass citizenship to their children or to foreign husbands.¹²⁹ The Code was amended once in 2007 to allow for the conferral of Moroccan nationality by maternal descent (with retroactive effect); to provide for the acquisition of Moroccan nationality through adoption; and to withhold or revoke Moroccan nationality from persons who committed terrorist acts.¹³⁰

Jus sanguinis, or "right of blood"—inherited from the French legal tradition—remains the primary way in which Moroccan nationality is acquired.¹³¹ Children born in Morocco to a Moroccan mother or father are deemed Moroccan. *Jus soli*, or "right of soil," is not available in Morocco.¹³² Thus, a child born on Moroccan soil to foreign parents is not Moroccan and is instead expected to acquire the nationality of the parents. Protections do exist, though, for "foundlings"—children found abandoned or otherwise alone in Morocco whose parents cannot be identified.¹³³ Foundlings are presumed to have been born in Morocco and receive Moroccan nationality, unless parentage is established during the child's minority and the child is found to have a foreign nationality. Prior to 2007, a child born in Morocco to stateless or "unknown" parents was considered Moroccan.¹³⁴ The word "stateless" was removed from the 2007 Nationality Code, leaving no nationality protections for children born to stateless parents in Morocco.¹³⁵ The Nationality Code also provides for the adoption ("kafala") of non-Moroccan children by Moroccan parents. The law allows Moroccan parents/guardians to apply for Moroccan nationality for their adopted children by presenting a declaration before the Ministry of Justice. To qualify, the parents must have cared for the child for at least five years before the age of majority.¹³⁶

The only other way to acquire Moroccan nationality is through naturalization, the conferral of citizenship upon a foreigner. While several forms of naturalization are available

¹²⁷ See PAROLIN, *supra* note 41, at 92-93.

¹²⁸ See PAROLIN, *supra* note 41, at 93.

¹²⁹ See *id.*; MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 88-89.

¹³⁰ See Code de La Nationalité Marocaine (Moroccan Nationality Code) art. 7 (2007) [hereinafter Moroccan Nationality Code]; See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 89, 107-08.

¹³¹ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 10; PAROLIN, *supra* note 41, at 92-93.

¹³² See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 107-08.

¹³³ See Moroccan Nationality Code, *supra* note 130, art. 7.

¹³⁴ See Moroccan Nationality Code, *supra* note 130; Interview with Hind Tak Tak, Professor of L., La Faculté des sciences juridiques, économiques et sociales Aïn Chock de Casablanca, Université Hassan II, in Casablanca, Morocco (May 9, 2023) [hereinafter Interview with Hind Tak Tak].

¹³⁵ See Moroccan Nationality Code, *supra* note 130; Interview with Hind Tak Tak (May 9, 2023).

¹³⁶ See Moroccan Nationality Code, *supra* note 130, at art. 9.

under the law, the process is considered extremely difficult and is rarely successful.¹³⁷ Like many nationality codes based on the French model, the Moroccan Nationality Code provides for a child born in the country to be able to acquire nationality on application if he or she still resides in Morocco on reaching majority. However, it is difficult to find statistics about this process and is claimed to be rarely used in practice.¹³⁸ The category of persons who can most easily naturalize is foreign wives of Moroccan men, who may naturalize after a five-year residency period. This simplified process is not available for foreign husbands of Moroccan women—a vestige of the gender-discriminatory origins of the Nationality Code.¹³⁹ Children born to foreign parents in Morocco who have had a “habitual and regular” residence in Morocco and whose father comes from an Arabic-speaking Muslim country may declare within two years of reaching majority that they intend to claim Moroccan nationality. All other foreigners may, in theory, naturalize if they meet the following conditions: (1) complete a five-year requirement of habitual and regular residence in Morocco; (2) are of legal age at the time of the submission of the application; (3) are of sound body and mind; (4) possess “good conduct and morals”; (5) have a sufficient knowledge of the Arabic language; and (5) provide proof that they can support themselves.¹⁴⁰ However, information is unavailable on how many people actually naturalize through this process, and there is no indication that this avenue is available for stateless persons or for refugees and migrants.¹⁴¹

iii. The Moroccan “Moudawana” and Other Relevant Domestic Law

The reforms following the Arab Spring included a massive restructuring of the *Moudawana*, or the Code of Family Law.¹⁴² Family law is related to nationality as it regulates relationships through marriage, divorce, and child custody; these relationships affect the conferral of nationality.¹⁴³ In Morocco, the Family Code takes precedence over nationality law if there are conflicts between the two.¹⁴⁴

Originating as the Personal Status Code in 1957 that imposed traditional Islamic law (e.g., requiring wives to obey their husbands under the principle of “*Quiwamah*”), the now-*Moudawana* is unique among Moroccan laws because its source is in religious teachings rather

¹³⁷ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 89.

¹³⁸ See *id.* at 107.

¹³⁹ See Moroccan Nationality Code, *supra* note 130, at art. 10.

¹⁴⁰ Moroccan Nationality Code, *supra* note 130, at art. 9-11; see also MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 107-08.

¹⁴¹ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 89.

¹⁴² See GILSON MILLER, *supra* note 38, at 227.

¹⁴³ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 107-08.

¹⁴⁴ See *id.* (citing Dahir No. 1-04-22 du 12 Hija 1424 (3 Fevrier 2004) portant promulgation de la Loi No. 70-03 portant Code de la famille, arts 2 and 39; Code de la nationalité marocaine. Loi No. 62-06 promulguée par le dahir No. 1-07-80 du 23 mars 2007).

than in the secular model of French civil law.¹⁴⁵ Additionally, the Family Code does not apply to all Moroccans: Christian and Jewish citizens are not held to the same Islamic-based law that applies to Muslim citizens.¹⁴⁶ The *Moudawana* was first amended in 1992 after women's rights organizations collected over one million signatures calling for changes to the Code.¹⁴⁷ This effort towards reform was ultimately only partially successful. Although the new provisions required a man to notify his first wife before he married a second one, the Code upheld a man's unilateral right to divorce his wife, and failed to expand women's rights in marriage or divorce.¹⁴⁸ Finally, in 2004, with the support of King Mohammed VI, the Personal Status Code became the *Moudawana*—which was revolutionary by most accounts.¹⁴⁹ The legal age of marriage was raised to eighteen, spouses were given equal status in courts of law, and women were given the right to initiate divorce proceedings. The *Moudawana* also placed severe constraints on polygamy, permitted divorce by mutual consent, and protected the rights of divorcées, such as allowing them to keep their children and their possessions when husbands divorced or repudiated them.¹⁵⁰

Another major innovation of the *Moudawana* has been that, in child custody decisions, judges must take into account the best interests of the child.¹⁵¹ This was the first introduction of the best-interests standard into Moroccan law.¹⁵² As detailed in Part IV.C, the best interests of the child is a core concept of the Convention on the Rights of the Child (CRC), and is a major source for a child's right to nationality that should ground Moroccan domestic law.

B. Regional Law

The relevant regional bodies for stateless populations or persons at risk of statelessness in Morocco are the African Union (formerly known as the Organization of African Unity), the League of Arab States (Arab League), and the Organization of Islamic Cooperation (formerly known as the Organization of Islamic Conference). These sources of law are grouped here because they are of international yet non-universal application, and adherence to them depends on geographical or religious belonging.

¹⁴⁵ See HANAFAI, *supra* note 113, at 3; Collectif pour une Législation Égalitaire, *Analyse Genre des Lois*, UN WOMEN 37 (June 2023), https://morocco.unwomen.org/sites/default/files/2023-05/Rapport%20CLE%20V%20FR_VF.pdf [hereinafter UN Women Report].

¹⁴⁶ See HANAFAI, *supra* note 113, at 2.

¹⁴⁷ See Katie Zoglin, *Morocco's Family Code: Improving Equality for Women*, 31 HUM. RTS. Q. 964 (2009).

¹⁴⁸ See *id.*

¹⁴⁹ Moroccan Family Code (*Moudawana*) (2004). [hereinafter Moroccan Family Code]; See GILSON MILLER, *supra* note 38, at 227.

¹⁵⁰ See *id.*

¹⁵¹ See Moroccan Family Code, *supra* note 149; see Zoglin, *supra* note 147.

¹⁵² See Zoglin, *supra* note 147.

i. African Union

The African Union (AU) has promulgated several human rights instruments pertaining to persons who are stateless or are at risk of becoming stateless. The relevant instruments are the African Charter on Human and Peoples' Rights (the "Banjul Charter"); the Draft Protocol to the African Charter on Human and People's Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa; the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa; and the African Charter on the Rights and Welfare of the Child.¹⁵³

In 1984, the AU permitted the seating of the Polisario Front as representatives of the Sahrawi Arab Democratic Republic (SADR), which the AU has recognized as an independent state.¹⁵⁴ Morocco left the AU in response to this decision.¹⁵⁵ Morocco rejoined the African Union in 2017 but has not yet acceded to any of the African Union's human rights treaties.¹⁵⁶ The fraught relationship between the African Union (AU) and Morocco over Western Sahara has had a significant impact on the influence the AU can exert in protecting the rights of stateless populations or persons at risk of statelessness in the country.

ii. Arab League

On October 1, 1958, two years after it gained independence, Morocco joined the Arab League.¹⁵⁷ However, Morocco has not ratified the Protocol for the Treatment of Palestinians in

¹⁵³ African Charter on Human and People's Rights, 27 June 1981, No. 26363 [hereinafter Banjul Charter], <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf>; Draft Protocol to the African Charter on Human and People's Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, May 2017, https://au.int/sites/default/files/newsevents/workingdocuments/35139-wd-pa22526_e_original.pdf; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted by the Assembly Heads of State and Government at its Sixth Ordinary Session, Addis-Ababa, 10 Sept. 1969, U.N.T.S. No. 14691, <https://www.unhcr.org/media/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted-assembly-heads>, Ratification by Morocco, Signatory (10 Sept. 1969); African Charter on the Rights and Welfare of the Child, 29 Nov. 1999, https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf.

¹⁵⁴ See Ben Quinn, *Morocco rejoins African Union after more than 30 years*, THE GUARDIAN, <https://www.theguardian.com/global-development/2017/jan/31/morocco-rejoins-african-union-after-more-than-30-years> (last accessed May 29, 2023).

¹⁵⁵ See *id.*

¹⁵⁶ *OAU/AU Treaties, Conventions Signed by Morocco*, African Union, https://au.int/sites/default/files/treaties/7758-treaty-0021_-_CONSTITUTIVE_ACT_OF_THE_AFRICAN_UNION_E.pdf (last accessed May 29, 2023); See Quinn, *supra* note 154.

¹⁵⁷ *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Morocco*, U.S. OFFICE OF THE HISTORIAN, <https://history.state.gov/countries/morocco> (last accessed May 29, 2023).

Arab States (“Casablanca Protocol”).¹⁵⁸ Additionally, although Morocco was signatory to the 2004 Arab Charter on Human Rights (“Arab Charter”), it has not ratified the instrument.¹⁵⁹

The Arab Charter, adopted by the League of Arab States, guarantees the right to nationality in Article 29, stating that “[e]veryone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.”¹⁶⁰ Article 29(2) addresses gender equality in matters of nationality, though it ties this equality to compliance with domestic laws.¹⁶¹ Additionally, the Casablanca Protocol calls upon Member States to take necessary measures to provide Palestinians with full residency rights, freedom of movement among Arab countries, and the right to work on par with citizens.¹⁶² The Protocol also requires signatory states to guarantee Palestinians the right to receive travel documents.¹⁶³

Although it lacks the force of law, the 2018 Arab Declaration on Belonging and Legal Identity, issued by the Arab League, is a recent and significant commitment aimed at improving policy regarding statelessness in the MENA countries. The Arab Declaration was issued at an Arab League conference of ministers in Tunisia on February 14, 2018, and, among other recommendations, encouraged LAS member states to undertake measures to “reduce statelessness in the context of the international obligations of member states and the application of the Sustainable Development Goals.”¹⁶⁴

iii. Organization of Islamic Cooperation

Morocco was an original member of the Organization of Islamic Cooperation (“OIC”) after its establishment in Rabat on September 25, 1969.¹⁶⁵ In the context of statelessness, the most relevant OIC instrument to which Morocco is a State Party, is the Covenant on the Rights of the Child in Islam (CRCI).¹⁶⁶ The CRCI guarantees certain rights to all Muslim children, and references a child’s right not to be made stateless—setting out States Parties’ obligations to

¹⁵⁸ League of Arab States, *Protocol for the Treatment of Palestinians in Arab States*, Sept. 11, 1965, REFWORLD, <https://www.refworld.org/docid/460a2b252.html> (last accessed May 29, 2023) [hereinafter Casablanca Protocol].

¹⁵⁹ *Ratification and signature state of the Arab Charter on Human Rights*, HUMAN RIGHTS CENTER ANTONIO PAPISCA (Sept. 27, 2013), <https://unipd-centrodirittiumani.it/en/spilli/Ratification-and-signature-status-of-the-Arab-Charter-on-Human-Rights-2004/147>.

¹⁶⁰ Arab Charter on Human Rights art. 29, Sept. 15, 1994, [ST/HR/CHR/NONE/2004/40/Rev.1, <https://digitallibrary.un.org/record/551368?ln=en&v=pdf>.

¹⁶¹ *Id.*

¹⁶² *See id.*; *Treatment and Rights in Arab Host States*, HUMAN RIGHTS WATCH (Apr. 23, 2002), <https://www.hrw.org/news/2002/04/23/treatment-and-rights-arab-host-states>.

¹⁶³ *See Casablanca Protocol supra* note 158.

¹⁶⁴ Arab Declaration on “Belonging and Legal Identity,” League of Arab States, ¶ 14, Feb. 28, 2018, <https://www.unhcr.org/eg/wp-content/uploads/sites/36/2021/06/Final-Ministerial-Conference-Declaration-on-Belonging-and-Identity-English.pdf> (*hereinafter* Arab Declaration on Belonging and Legal Identity).

¹⁶⁵ *Member States*, ORG. ISLAMIC COOP., <https://www.oic-oci.org/states/?lan=en> (last accessed May 29, 2023).

¹⁶⁶ Covenant on the Right of the Child of Islam, Organization of the Islamic Conference (OIC), June 2005, <https://www.refworld.org/legal/agreements/oic/2005/en/19313> [hereinafter Covenant on the Rights of the Child in Islam]; *Moroccan Government Adopts Bill on Rights of Children*, MOROCCO WORLD NEWS, <https://www.moroccoworldnews.com/2019/08/280921/bill-rights-of-children> (last accessed May 29, 2023).

address the issue.¹⁶⁷ All States Parties must take necessary steps to implement and enforce the CRCI.¹⁶⁸ However, the requirement to avoid a child's statelessness is relatively weak, as it only requires implementation "in accordance with [States'] domestic regulations."¹⁶⁹

In relevant part, the CRCI sets out that States Parties must make every effort to resolve the issue of statelessness for any child born on their territories or born to any of their citizens outside of their territory.¹⁷⁰ Article 7 also states that "the child of unknown descent or who is legally assimilated to this status shall have the right guardianship and care but without adoption. He shall have a right to a name, title, and nationality."¹⁷¹ Every child has the right to benefit from social security, health care, and free education under the CRCI.¹⁷² Lastly, States Parties are required to ensure that refugee children enjoy the rights that are stipulated in the CRCI, and this must be reflected in their national legislation.¹⁷³

C. International Law

Sources of international law bind states in two ways: customary international law (CIL), and international treaties. CIL refers to obligations arising from established international practice, as opposed to written agreements or laws.¹⁷⁴ CIL is created by "the consistent conduct of states acting out of the belief that the law required them to act that way."¹⁷⁵ Treaties are formal, written agreements between two or more sovereign states which create specific obligations for the signatory parties.¹⁷⁶ The Vienna Convention on the Law of Treaties regulates treaties among sovereign states, and provides that, "every treaty in force is binding upon the parties to it, and must be performed by them in good faith."¹⁷⁷ Morocco is obliged to follow CIL and the treaties to which it is a party in all matters. The right to a nationality and several protections for stateless persons are grounded both in United Nations treaties and in CIL, as discussed further below.

¹⁶⁷ Covenant on the Rights of the Child in Islam, *supra* note 166.

¹⁶⁸ *Id.* at art. 4.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at art. 7.

¹⁷¹ Covenant on the Rights of the Child in Islam, *supra* note 166.

¹⁷² *Id.* at art. 12, 14, and 15.

¹⁷³ *Id.* at art. 21.

¹⁷⁴ *Customary International Law*, LEGAL INFORMATION INSTITUTE (Jul. 2022), https://www.law.cornell.edu/wex/customary_international_law.

¹⁷⁵ SHABTAI ROSENNE, *PRACTICE AND METHODS OF INTERNATIONAL LAW* 55 (1984).

¹⁷⁶ See Vienna Convention on the Law of Treaties, art. 2(a), May 23, 1969, 1155 U.N.T.S. 331 ("‘treaty’ means an international agreement concluded between States in written form and governed by international law”) [VCLT].

¹⁷⁷ *Id.* at art. 26.

i. The Right to a Nationality for All Persons

Several international instruments establish the right to nationality and require countries to safeguard that right. Treaties Morocco has ratified and norms that are binding on Morocco under customary international law are discussed here. Morocco is a State Party to the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹⁷⁸ CERD requires States Parties to “guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . [t]he right to nationality.”¹⁷⁹ CERD codifies principles first expressed in Article 15 of the Universal Declaration of Human Rights (UDHR), including that “[e]veryone has the right to a nationality,” and “[n]o one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality.”¹⁸⁰

Notably, Morocco is not a party to the key instruments relating to the right to nationality: the 1954 Convention Relating to the Status of Stateless Persons (1954 Statelessness Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Statelessness Convention).¹⁸¹ The two Statelessness Conventions create the most specific protections for stateless persons and those at risk of statelessness, and their ratification would significantly strengthen the international legal framework applicable to Morocco.

The 1954 Convention on Stateless Persons is the primary international legal instrument defining and regulating the status and treatment of stateless persons.¹⁸² It defines a stateless person as a “person who is not considered as a national by any state under the operation of its law,” and establishes minimum standards of treatment for stateless persons.¹⁸³ These include, but are not limited to, freedom of religion and association, and the rights to housing, education, public assistance, and employment.¹⁸⁴ The Convention also requires State Parties to apply its provisions without discrimination, to provide identity papers to stateless persons residing within their borders who do not have valid travel documents, and to “as far as possible facilitate the assimilation and naturalization of stateless persons.”¹⁸⁵

¹⁷⁸ Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD].

¹⁷⁹ *Id.* at art. 5.

¹⁸⁰ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

¹⁸¹ See UNHCR, *Universal Periodic Review: Morocco* (2012), https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session13/MA/UNHCR_UPR_MAR_S13_2012_UNHCR_E.pdf (noting that Morocco is not a party to the CSSP or the CRS and recommending accession to these Conventions).

¹⁸² 1954 Statelessness Convention, *supra* note 18. See also *UN Conventions on Statelessness*, UNHCR USA, <https://www.unhcr.org/us/about-unhcr/who-we-protect/stateless-people/ending-statelessness/un-conventions-statelessness> (last visited Oct. 10, 2023).

¹⁸³ 1954 Statelessness Convention, *supra* note 18, at art. 1.

¹⁸⁴ See *id.* at art. 4, art. 15, art. 21, art. 22, art. 23, and art. 17.

¹⁸⁵ See *id.* at art. 24(b), art. 27, and art. 32 (noting exceptions when there are legitimate reasons to believe an individual committed a crime against peace, a war crime, or a crime against humanity, or a non-political serious crime).

The 1961 Statelessness Convention requires States Parties to implement particular measures to prevent statelessness and reduce its prevalence over time.¹⁸⁶ This Convention has a critical provision in Article 1, stating:

A Contracting State *shall* grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) At birth, by operation of law, or (b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by national law. Subject to [certain conditions], *no such application may be rejected*.¹⁸⁷

The 1961 Statelessness Convention also aims to reduce statelessness by requiring States Parties to grant nationality to children born in their territory whose mothers are nationals of their State; to “foundlings” in their territory; and to refrain from withdrawing individuals’ nationality if that would result in statelessness.¹⁸⁸ During the drafting of the 1961 Statelessness Convention, the United Nations Conference on the Elimination or Reduction of Future Statelessness recommended that “persons who are stateless *de facto* should as far as possible be treated as stateless *de jure*, to enable them to acquire an effective nationality.”¹⁸⁹

Following the 2016 agreement by 193 UN member states and the adoption by the UN General Assembly of the New York Declaration for Refugees and Migrants, two intergovernmental consultations resulted in the Global Compact for Safe, Orderly and Regular Migration (GCM), and the Global Compact on Refugees (GCR).¹⁹⁰ Although the Compacts are non-binding, they represent significant commitments by UN member states towards progressive policies and adherence to human rights protections of refugees and migrants, including nationality rights. Morocco hosted the final conference at which the GCM was adopted on 10 December 2018.¹⁹¹ Significantly, the GCM commitments include a recognition of statelessness as a root cause of forced displacement, re-affirm the iBelong campaign, and encourage states to accede to the 1954 and 1961 conventions on statelessness.¹⁹² Objective 4 of the GCM states that countries are to ensure that all migrants have legal identity and necessary documentation. It sets

¹⁸⁶ See 1961 Statelessness Convention, *supra* note 29.

¹⁸⁷ See *id.* at art. 3 (emphasis added) (subject to non-discrimination as to race, religion or country of origin).

¹⁸⁸ See *id.* at art. 1, art. 2, and art. 6.

¹⁸⁹ United Nations Conference on the Elimination or Reduction of Future Statelessness, Resolution I, 989 U.N.T.S. 279; *but see*, LAMBERT, *supra* note 21.

¹⁹⁰ Global Compact for Safe, Orderly and Regular Migration, G.A. Res. 73/195 (Dec. 19, 2018), <https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf> [hereinafter GCM]; Global Compact on Refugees, G.A. Res. 73/151 (Dec. 17, 2018), <https://www.unhcr.org/media/global-compact-refugees-booklet> [hereinafter GCR].

¹⁹¹ Morocco has taken a prominent role in advancing the Global Compact on Migration (GCM), hosting the ministerial meeting in 2022 and issuing the ‘Rabat Declaration’ of 25 March 2022, which re-affirmed the protection aims spelled out in the New York Declaration of the GCM. The Rabat Declaration, Ministerial Meeting of GCM Champions Joint Statement, Mar. 25, 2022, <https://migrationnetwork.un.org/system/files/docs/Champion%20countries%20Joint%20Statement%20-%20Rabat%20Declaration.pdf>.

¹⁹² New York Declaration for Refugees and Migrants, G.A. Res. 71/150 (Sept. 13, 2016), https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/NY_Declaration.pdf

out the commitment: “to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights.”¹⁹³ Among the detailed measures are: to improve civil registry systems; harmonize travel documents; ensure accessible and adequate consular documents; facilitate access to personal documents; and take a range of measures to reduce statelessness.¹⁹⁴

ii. The Child’s Right to Nationality

Children are afforded special protections under international law. Three international treaties are especially important regarding children’s rights and statelessness: the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1989 Convention on the Rights of the Child (CRC), and the International Convention on the Rights of All Migrant Workers and Members of Their Families (“Migrant Workers Convention”).¹⁹⁵ Morocco has ratified all three of these instruments and is therefore bound to their provisions.¹⁹⁶

The ICCPR asserts that protection against statelessness begins at birth.¹⁹⁷ It requires that all children be guaranteed a nationality and should be registered immediately after birth.¹⁹⁸ The CRC requires States to ensure children’s fundamental rights, “in particular where the child would otherwise be stateless.”¹⁹⁹ The Migrant Workers Convention affirms that every child born to a migrant worker has a right to birth registration and to a nationality.²⁰⁰

A similar document, the Convention on Rights of the Child in Islam (CRCI), has slightly different language than the CRC. The CRCI requires that States must “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.”²⁰¹ When necessary, the CRCI requires states to “end action based on customs, traditions, or practices that are in conflict with the rights stipulated.”²⁰² Since

¹⁹³ GCM, para. 20. <https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf>

¹⁹⁴ GCM, para. 20 (a)-(e).

¹⁹⁵ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; CRC, *supra* note 33; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* December 18, 1990, 2220 U.N.T.S. 3 [hereinafter Migrant Workers Convention].

¹⁹⁶ *See Ratification Status for Morocco*, UN HUMAN RIGHTS TREATY BODIES - BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=117&Lang=EN (last accessed Nov. 12, 2023) (noting that Morocco ratified ICCPR May 3, 1979; CRC June 21, 1993; and Migrant Convention June 21, 1993).

¹⁹⁷ *See* ICCPR, *supra* note 195, at art. 24.

¹⁹⁸ *Id.*

¹⁹⁹ CRC, *supra* note 33, at art. 7.

²⁰⁰ *See* Migrant Workers Convention, *supra* note 195.

²⁰¹ Covenant on the Rights of the Child in Islam, *supra* note 166, at art. 7.

²⁰² *Id.* at art. 4.

Morocco is a party to both, it must interpret its obligations under the CRCI in a way that is consistent with the CRC.²⁰³

iii. Gender Equality in Nationality Law

Women are also entitled to special protections under international law with regard to nationality rights. The primary international instrument that delineates nationality protections for women is the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²⁰⁴ CEDAW requires States Parties to grant women equal rights to acquire, change, or confer their nationality to their children.²⁰⁵

CEDAW Article 2 establishes that States Parties agree to "condemn discrimination against women in all its forms," and create domestic mechanisms and legislation to protect women from discrimination.²⁰⁶ When Morocco signed and ratified CEDAW, it submitted a declaration attached to Article 2, which is considered a core provision.²⁰⁷ The CEDAW Committee and UN Women, an organization within the UN that focuses on gender equality and women's empowerment, have stated that CEDAW's Article 2 is central to the objectives of the Convention.²⁰⁸ Morocco's declaration states that it will adhere to the guidelines of Article 2 of CEDAW as long as the related obligations do not conflict with Moroccan law regarding succession to the throne of the Kingdom of Morocco, or with Islamic Shariah law.²⁰⁹ The declaration asserts that provisions in domestic Moroccan law that set out different rights for men and women may not be infringed upon because they derive from Islamic Shariah.²¹⁰ Though not specifically identified in the declaration, this statement could refer to Morocco's laws regarding marriage, polygamy, and divorce.

²⁰³ Under the VCLT, States parties to successive treaties on the same subject matter are bound to the provisions of both, and thus must interpret them consistently. VCLT, *supra* note 176, arts 26, 27, 30.

²⁰⁴ See Convention on the Elimination of All Forms of Discrimination Against Women, Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW].

²⁰⁵ See *id.*

²⁰⁶ See CEDAW, *supra* note 204, at art. 2.

²⁰⁷ See *Morocco: Gender Justice & The Law*, UN DEVELOPMENT PROGRAMME ET. AL. (Dec. 2019), <https://www.undp.org/sites/g/files/zskgke326/files/migration/arabstates/Morocco.Summary.Eng.pdf> ("Morocco ratified CEDAW in 1993 and maintains . . . a declaration to Article 2, stating that the government of Morocco is ready to apply the provisions of the Article as long as these do not conflict with Islamic law.").

²⁰⁸ See *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, Advisory Opinion, <https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/Reservations-English.pdf>.

²⁰⁹ See Convention on the Elimination of All Forms of Discrimination Against Women, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en (last accessed May 31, 2023).

²¹⁰ See *id.* ("It should be noted that certain of the provisions contained in the Moroccan Code of Personal Status according women rights that differ from the rights conferred on men may not be infringed upon or abrogated because they derive primarily from the Islamic Shariah. . .").

iv. Rights and Protections for Refugees

Refugees' rights to nationality are also addressed by international treaties and customary international law principles. Refugees are particularly vulnerable to loss of nationality due to a lack of valid status documentation. Additionally, many refugees face both a risk of statelessness and the violation of *non-refoulement*.²¹¹ The principle of *non-refoulement* is incorporated in the 1951 Convention Relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), although with a different scope of application.²¹² This principle prohibits States from expelling or returning persons to other States where there are "substantial grounds" for believing that they will face "persecution, torture, ill-treatment or other serious human rights violations" upon return.²¹³ Because of how broadly it is accepted and practiced, *non-refoulement* is a binding principle of customary international law.²¹⁴ Morocco has an obligation to protect refugees by not forcing them to return to a country where they will face ill-treatment, persecution, or torture.

The Global Compact on Refugees (GCR) also includes commitments towards reducing statelessness and its risks. A separate section on registration and documentation in the GCR emphasizes the need for UNHCR, states and other stakeholders to cooperate "to strengthen national capacity for individual registration and documentation, including for women and girls, regardless of marital status..."²¹⁵ It highlights the importance of "identification and referral of stateless persons and those at risk of statelessness, including to statelessness determination procedures."²¹⁶ As noted above, Morocco has taken a significant role in advancing the commitments of the GCM, but the parallel commitments on statelessness in both Global Compacts have Morocco's agreement to these important principles and the means by which it has committed to carrying them out with regard to nationality rights.

²¹¹ The principle of *non-refoulement*, considered customary international law, is a core obligation in the 1951 Refugee Convention (Article 33) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3). This principle prohibits States from expelling or returning persons to other States where there are "substantial grounds" for believing that they will face "persecution, torture, ill-treatment or other serious human rights violations."; See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

²¹² See CAT, *supra* note 211. U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, Depositary Notification (Nov. 7, 1956). U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, Depositary Notification (June 21, 1993).

²¹³ *The Principle of Non-Refoulement Under International Human Rights Law*, United Nations High Comm'r for Hum. Rts., <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (last accessed June 1, 2023).

²¹⁴ See *Customary International Law*, BLACK'S LAW DICTIONARY (9th ed. 2009); OHCHR, *The principle of non-refoulement under international human rights law*, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (last visited Nov. 12, 2023).

²¹⁵ GCR, Sec. 1.4, para.58.

²¹⁶ *Id.*, para. 60.

V. Current Gaps in Law and Policy

A. Gender Discrimination

Morocco's nationality laws were historically gender-discriminatory in that they only allowed men to confer Moroccan nationality to their wives and children.²¹⁷ In 2007, Morocco responded to organizing efforts advocating for gender-equal nationality laws, and amended Article 6 of the Nationality Code.²¹⁸ This article, which formerly provided that only a child born of a Moroccan father was Moroccan, now provides that a child "born of a Moroccan father *or a Moroccan mother* is Moroccan."²¹⁹ Morocco, along with Tunisia, has received well-deserved recognition for reform in this area of law.²²⁰

The 2007 Nationality Code reform had retroactive effect, but children born to a Moroccan mother before April 2, 2007, must take affirmative steps to secure their nationality.²²¹ Under current law, Moroccan nationality can be established for these children if they can provide: (1) an identity document for the child; (2) a complete copy of the child's birth certificate; (3) a complete copy of the Moroccan parent's birth certificate; (4) a photo ID from the Moroccan parent; (5) two photos of the child; (6) a copy of the parents' marriage certificate (if they are married); and (7) payment for a chancery fee.²²² If all of these requirements are met, the child can receive a "certificate of Moroccan nationality."²²³ At the time of writing, the related chancery fee is 60 Moroccan Dirham (approximately \$5.88 USD).²²⁴

While many advocates and scholars praise the 2007 Nationality Code Amendment, some gaps remain. As the next Section will discuss, there is a complicated documentation process to establish parentage and nationality. The burdensome and sometimes prohibitive nature of the registration process increases the risk of statelessness for children who are Moroccan nationals under law, but whose parents lack the time, resources, or knowledge needed to complete the

²¹⁷ See PAROLIN, *supra* note 41, at 92-93.

²¹⁸ Moroccan Nationality Code, *supra* note 130, at art. 6; See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 107.

²¹⁹ Moroccan Nationality Code, *supra* note 130, at art. 6 (emphasis added).

²²⁰ See VAN WAAS, *supra* note 8 and accompanying text.

²²¹ See *Moroccan Nationality Certificate for Children Born to a Moroccan Mother and a Foreign Father*, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFAIRS, AFR. COOP., AND MOROCCAN EXPATRIATES, <https://www.consulat.ma/en/moroccan-nationality-certificate-children-born-moroccan-mother-and-foreign-father> (last accessed May 29, 2023).

²²² *Id.* A chancery fee is a fine for a consular service which must be paid to the Moroccan government in local currency. See *Chancery Fees*, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFAIRS, AFR. COOP., AND MOROCCAN EXPATRIATES, <https://www.consulat.ma/en/node/5225> (last accessed Oct. 8, 2023).

²²³ *Moroccan Nationality Certificate for Children Born to a Moroccan Mother and a Foreign Father*, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFAIRS, AFR. COOP., AND MOROCCAN EXPATRIATES, <https://www.consulat.ma/en/moroccan-nationality-certificate-children-born-moroccan-mother-and-foreign-father> (last accessed May 29, 2023).

²²⁴ See *Chancery Fees*, *supra* note 222.

process and secure the child's nationality.²²⁵ This can be especially difficult for single mothers.²²⁶ Further, disparities in literacy can prevent less educated women from being able to take advantage of the reform and confer their Moroccan nationality upon their children if they are not informed of their rights.²²⁷ Though the female literacy rate has been steadily rising in Morocco, still only 67.4% of Moroccan women were literate as of 2021.²²⁸

Despite these concerns, the 2007 reform to the Nationality Code is widely considered to have been highly effective.²²⁹ It is estimated that, since the reform, around 33,750 children have been able to secure Moroccan nationality from their Moroccan mothers.²³⁰ However, advocates for gender equality continue to demand that the Moroccan Nationality Code be reformed with regard to naturalization through marriage.²³¹ Article 10 of the Nationality Code currently allows a foreign woman married to a Moroccan man to be able to acquire Moroccan nationality after regular residence in Morocco for five years, but no such provision is made for foreign (or stateless) men who marry Moroccan women.²³² Women's rights groups such as Association Démocratique des Femmes du Maroc ("ADFM") and Mobilising for Rights Associates ("MRA") recommend that Article 10 be amended to allow foreign men married to Moroccan women to acquire Moroccan nationality.²³³ Press reports indicate that such an amendment is being drafted and is being strongly considered by a majority bloc in the government.²³⁴ If this proposed reform

²²⁵ See *infra* Part V.B.

²²⁶ See Lucilla Valentina Berwick, *Single Mothers in Morocco: Social Stigma and Struggle for Identity* 38-39 (Sept. 15, 2017) (M.A. dissertation, University of London) (Moroccan Children's Trust) (explaining how registration requirements can be burdensome for single mothers with limited time and resources, especially because due to social stigmatization they often have little or no support from family members).

²²⁷ See *id.* at 27 ("The link between single motherhood, poverty, and illiteracy is clear, especially in rural areas where there are still high percentages of female illiteracy."); Zoglin, *supra* note 147 ("The entire experience at the courthouse is not a positive one for the average citizen. Citizens do not know where they can turn to obtain information. Those without lawyers find it difficult to navigate the complexities of the legal system. These problems are compounded when the litigants are illiterate.") See also Videoconference Interview with Katleen Maes, Dir., Hum. Mobility Hub Norwegian Refugee Council (Feb. 3, 2023) (noting literacy as a concern for women's rights in the MENA region) [hereinafter Interview with Katleen Maes]; Videoconference Interview with Malak Benslama-Dabdoub, Ph.D. Candidate, Queen Mary U. London (Apr. 7, 2023) (expressing concern for women's equal access to education and how that impacts their access to other rights).

²²⁸ See *Gender Data Portal - Morocco*, WORLD BANK, <https://genderdata.worldbank.org/countries/morocco/> (last accessed Nov. 12, 2023).

²²⁹ Aatifa Timjerdine, Vice President, Association Démocratique des Femmes du Maroc, Presentation at BU IHRC Workshop: Access to Nationality in Morocco: Positive Progress & Remaining Barriers, in Rabat, Morocco (May 11, 2023) [hereinafter Timjerdine Presentation (May 11, 2023)].

²³⁰ *Id.*

²³¹ *Id.*

²³² See Moroccan Nationality Code, *supra* note 130, at art. 10.

²³³ See Association Démocratique des Femmes du Maroc, et. al., *Joint Submission to the Human Rights Council at the 41st Session of the Universal Periodic Review* (Mar. 31, 2022), https://files.institutesi.org/UPR41_Morocco.pdf; The Advocates for Human Rights & MRA Mobilising for Rights Associates, *Morocco's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women* for the 82nd Session of the Committee on the Elimination of Discrimination Against Women, para. 81 (May 16, 2022).

²³⁴ See Amira El Masaiti, *Foreign Spouses of Moroccan Women Can Soon Obtain Moroccan Citizenship*, MOROCCO WORLD NEWS (Dec. 19, 2017), <https://www.moroccoworldnews.com/2017/12/236757/foreign-spouses-moroccan-women-moroccan-citizenship/>; Press Release, Committee on the Elimination of Discrimination Against Women, Experts of the Committee on the Elimination of Discrimination Against Women Praise Morocco for Legislation

takes place, it will provide relief for stateless men who are married to Moroccan women. However, it seems that this change would not contribute significantly towards alleviating statelessness more broadly.²³⁵

The gender-discriminatory effects of allowing only men to confer nationality on a spouse are both a vestige of past patriarchal policy and an ongoing source of challenge and instability for families of Moroccan wives and non-Moroccan husbands. Non-Moroccan husbands have difficulty securing stable employment, owning property, and even face deportation.²³⁶ This puts great pressure on the Moroccan wife, who may be her family's only breadwinner.²³⁷ Additionally, since the couple's ability to continue residing in Morocco may be at risk, their status creates instability for their children.²³⁸

It is also important to note the gendered effects of statelessness. Along with the serious challenges faced by all stateless persons, when a woman is stateless she is more vulnerable to gender-based violence.²³⁹ Without legal status, she faces obstacles in accessing judicial process, healthcare, and social services.²⁴⁰ The limitations that statelessness places on education and economic opportunity leaves women more dependent on male family members—making it difficult to leave abusive marriages or family situations.²⁴¹ Nationality documentation is typically necessary to acquire inheritance, including family homes, and to own property, among other benefits and rights that are critical to autonomy.²⁴²

Experts have noted that for women to access and exercise the full scope of nationality rights, gender discrimination in other areas of the law must be addressed as well.²⁴³ For example, the Moroccan Family Code, the *Moudawana*, maintains some elements of past patriarchal

Prohibiting Discrimination, Ask About High Maternal Mortality and Female Illiteracy Rates in Rural Areas (June 22, 2022) (“An amendment to the nationality law was being prepared that would allow a Moroccan wife to confer her nationality to her foreign spouse.”)

²³⁵ Videoconference Interview with Bronwen Manby, Senior Pol’y Fellow, London Sch. of Econ. Middle East Ctr. (Nov. 28, 2022).

²³⁶ See *The Problem*, GLOB. CAMPAIGN FOR EQUAL. NAT’Y RTS., <https://equalnationalityrights.org/the-issue/the-problem> (last accessed May 29, 2023).

²³⁷ See *id.*

²³⁸ See *id.*; Timjerdine Presentation (May 11, 2023), *supra* note 229.

²³⁹ See *The Problem*, GLOB. CAMPAIGN FOR EQUAL. NAT’Y RTS., <https://equalnationalityrights.org/the-issue/the-problem> (last accessed May 29, 2023); Neda Shaheen, *Discriminatory Nationality Laws Must Be Eliminated in Order to Eradicate Statelessness*, 11 DEPAUL J. SOC. JUST. 1, 14 (Aug. 2018) (“[S]tateless women are more vulnerable to gender-based violence because of the lack of security and opportunity that follows [statelessness].”).

²⁴⁰ See *The Violence of Gender Discrimination in Nationality Laws*, GLOB. CAMPAIGN FOR EQUAL. NAT’Y RTS., <https://equalnationalityrights.org/news/76-gender-violence-discrimination-nationality-laws> (last accessed May 29, 2023).

²⁴¹ See *id.*

²⁴² See *The Problem*, GLOB. CAMPAIGN FOR EQUAL. NAT’Y RTS., <https://equalnationalityrights.org/the-issue/the-problem> (last accessed May 29, 2023); Interview with Katleen Maes (Feb. 3, 2023).

²⁴³ Interview with Katleen Maes (Feb. 3, 2023); Videoconference Interview with Stephanie Willman Bordat, Founding Partner, MRA Mobilising for Rts. Assocs. (Mar. 3, 2023 [hereinafter Interview with Stephanie Willman Bordat]); Timjerdine Presentation (May 11, 2023), *supra* note 229.

standards even after its major 2004 reform.²⁴⁴ Organizations such as MRA, ADFM, and UN Women recommend a range of reforms, including: increasing restrictions on child marriage; completely abolishing polygamy; eliminating provisions placing mothers at risk of losing custody of their children in the case of remarriage or relocation after divorce; ensuring equal access to divorce for men and women; and eliminating discrimination against children born out of wedlock.²⁴⁵ Additional reforms to bring all Moroccan law into conformity with CEDAW will be necessary to achieve complete gender equality.²⁴⁶

Women's rights advocates also maintain that broader cultural and social shifts in Moroccan society are needed to fully effectuate gender-equal nationality law.²⁴⁷ For women in Morocco to be truly equal citizens they must have equal access to literacy, secondary education, property rights, and more. Local advocates recognize this and are taking an intersectional approach to organizing for both law reform and changing social attitudes.

B. Access to Civil Documentation

In Morocco, lack of proper documentation is often a barrier to nationality to those born in and outside of the country. As discussed earlier, the main sources of domestic law regarding the acquisition of nationality are the Moroccan Nationality Code and the Moroccan Family Code.²⁴⁸ Although there are high birth registration rates in Morocco, there are still barriers to nationality due to issues with accessing documents.²⁴⁹ Under the Moroccan Nationality Code, children born of Moroccan parents are considered Moroccan.²⁵⁰ However, there are other groups whose nationality is not so easy to determine. For example, children born in Morocco to stateless parents, foreign women who marry Moroccan men, and those wishing to be naturalized must all go through a complicated and somewhat adversarial administrative process to obtain nationality.²⁵¹ Although nationality status may be easily determinable under the Moroccan Nationality Code for some, accessing documents to prove nationality is a much more difficult problem. It also appears that the law on the books differs from the law in practice regarding accessing nationality for those most at risk of statelessness in Morocco.

²⁴⁴ See Zoglin, *supra* note 147 (noting remaining gender discrimination in default-guardianship for children and in implementation, with judges conforming to traditional practice rather than new law).

²⁴⁵ Timjerdine Presentation (May 11, 2023), *supra* note 229; The Advocates for Human Rights & MRA Mobilising for Rights Associates, *Morocco's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women* for the 82nd Session of the Committee on the Elimination of Discrimination Against Women, para. 81 (May 16, 2022); UN Women Report, *supra* note 145.

²⁴⁶ For more on remaining gender discrimination in Moroccan law, see UN Women Report, *supra* note 145.

²⁴⁷ Interview with Stephanie Willman Bordat (Mar. 3, 2023); Timjerdine Presentation (May 11, 2023), *supra* note 229.

²⁴⁸ See Moroccan Nationality Code, *supra* note 130; Moroccan Family Code, *supra* note 149.

²⁴⁹ See UNICEF & UN ECON. COMM'N FOR AFR., A STATISTICAL UPDATE ON BIRTH REGISTRATION IN AFRICA 29 (2022) (noting that 96% of children under five in Morocco have had their births registered).

²⁵⁰ See Moroccan Nationality Code, *supra* note 130, at art. 6.

²⁵¹ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 21.

i. Documents to Prove Moroccan Nationality

There are two main forms of documentation that can be used in Morocco to prove Moroccan nationality, the *Carte Nationale d'Identité Electronique* (CNIE) and the *Extrait Intégral de Naissance*, or full birth certificate.²⁵²

Carte Nationale d'Identité Electronique (CNIE)

Under the national electronic identity system in Morocco, identity cards called CNIEs are issued to all Moroccan nationals.²⁵³ This system was started in the late 1970s and has been modernized to involve enrollment with biometrics to ensure the uniqueness of identity documents of enrolled individuals. To obtain a CNIE, an individual must be eighteen years old, pay a 75 Moroccan dirham fee, provide fingerprints, and present a copy of birth registration or family book.²⁵⁴ Although the majority of recipients of the CNIE are eighteen years of age or older, there is a small population of children between the ages of twelve and eighteen who have received CNIE documentation in order to acquire an electronic passport.²⁵⁵

L'Extrait Intégral de Naissance

There are two types of birth certificates in Morocco: a short form birth certificate and a full birth certificate that is called *l'extrait intégral de naissance*.²⁵⁶ Short form birth certificates, known in Morocco as *l'acte de naissance*, contain less information than full birth certificates, and are generally given to parents at the place and time of birth. Full birth certificates are obtained during the birth registration process and include information that can be used to prove nationality. Full birth certificates can be acquired at local registration offices, Moroccan consulates, or through declaratory judgements.²⁵⁷

ii. Birth Registration

One of the most common ways that individuals can become stateless is by not having their birth registration. In Morocco, births must be registered with the appropriate government office within thirty days.²⁵⁸ Late registration is possible, but it requires a declaratory judgment by a tribunal.²⁵⁹ As part of the birth registration process, parents of newborn children must provide

²⁵² See *Personal Documents*, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFAIRS, AFR. COOP., AND MOROCCAN EXPATRIATES, <https://www.consulat.ma/en/node/5225> (last accessed Nov. 12, 2023).

²⁵³ See World Bank, *Morocco ID4D Diagnostic*, 6 (2018), https://id4d.worldbank.org/sites/id4d/files/2018-04/Morocco_ID4D_Diagnostic_Web404018.pdf.

²⁵⁴ *Id.*

²⁵⁵ The World Bank report did not indicate why a small proportion of children received an electronic passport, and there is no other available information on this issue. See *Morocco ID4D Diagnostic*, *supra* note 253, at 6.

²⁵⁶ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

²⁵⁷ *Id.*

²⁵⁸ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 14.

²⁵⁹ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

specific documents to prove their own identity and nationality, and often must show proof of residency or provide a marriage certificate as well.²⁶⁰ In particular, the parents or guardians of the child must possess a family book.²⁶¹ A Moroccan family book is an official state document that proves the legal ties between and among members of a family.²⁶² It is written in Arabic and usually includes the date of birth, place of birth, and first and last names of family members. The family book can only be requested by and delivered to a man in the family, who must be Moroccan.²⁶³

In practice, it can be difficult to meet the documentation requirements within the legal time limit for a number of reasons. Many parents are not aware of the birth registration requirements, and as a result fail to register their children within the 30-day window. Additionally, when parents are unable to provide their own civil documentation, they cannot complete the registration process for their children.²⁶⁴

a. The Law as Written and the Law in Practice

There are some situations during the birth registration process where the law in practice does not align with the law as it is written. The law does not give discretion to administering officials regarding what documents are required. Yet experts and practitioners have confirmed that sometimes civil employees working in administrative offices choose not to precisely follow the law, either because they are not sufficiently familiar with it or because they act in discriminatory ways towards those seeking documentation.²⁶⁵ For example, when registering a child, the government agency might ask for more documentation than is actually required.²⁶⁶ Typically, when registering a child, parents or guardians must produce the child's short form birth certificate, issued by the doctor or midwife who performed the delivery, and a copy of the parents' CNIE, or parents' birth certificates, or the parents' family book.²⁶⁷ Some registration officials ask parents for marriage certificates when parents are attempting to register their children, when these are not required for the process for single mothers and non-Muslim parents.²⁶⁸ This is especially problematic because some parents, especially non-Moroccans, may be unaware of what the law actually requires, and may not know their rights when it comes to the registration process.²⁶⁹

²⁶⁰ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 14.

²⁶¹ Interview with Abderrahman Benyahya, Head of the Migration and Asylum Ctr., *Droits et Justice*, in Rabat, Morocco (May 10, 2023).

²⁶² *Delivery of Family Booklet*, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFAIRS, AFR. COOP., AND MOROCCAN EXPATRIATES, <https://www.consulat.ma/en/delivery-family-booklet> (last visited May 5, 2023).

²⁶³ See *id.*

²⁶⁴ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

²⁶⁵ Interview with Abderrahman Benyahya (May 10, 2023).

²⁶⁶ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

²⁶⁷ *Full Copy of Birth Certificate*, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFS. AFR. COOP. & MOROCCAN EXPATRIATES, <https://www.consulat.ma/en/full-copy-birth-certificate> (last visited May 5, 2023).

²⁶⁸ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023) (noting that a marriage certificate should only be requested from a Muslim, Moroccan couple).

²⁶⁹ *Id.*

Morocco also has a law dictating what names people are allowed to give their children. Names must be of "a Moroccan character and must be neither a name of a family nor a name composed of more than two first names, nor the name of a city, village or tribe."²⁷⁰ According to the law, this naming requirement does not apply to non-Moroccans.²⁷¹ However, some civil servants refuse to register the child of a foreign single mother because the mother did not give her child a Moroccan name. Advocates report that this is a discriminatory misapplication of the law.²⁷²

b. Particularly Vulnerable Groups

Several groups of people are particularly vulnerable to statelessness due to their inability to access documentation. These groups include individuals who live in remote or rural areas, children of single mothers, indigent families, and foreigners who do not speak Arabic. Refugees and migrants are also among the most vulnerable to statelessness due to lack of documentation.

Children of Foreign Single Mothers

Children born in Morocco to single, foreign mothers are particularly vulnerable to statelessness due to a lack of registration. This is because, according to the Moroccan Nationality Code, children born in Morocco to foreign single mothers must obtain their mothers' nationality, rather than acquire Moroccan documentation and Moroccan nationality.²⁷³ This becomes problematic when foreign single mothers come from countries that do not allow women to transfer their nationality to their children. In circumstances where a single mother's home country does not allow women to pass nationality to their children, her child becomes stateless—unable to claim Moroccan nationality or the nationality of the mother.²⁷⁴

Individuals Who Live in Rural Areas

Individuals from rural areas are often unable to obtain birth certificates for their children. This is because parents in rural environments who give birth outside of hospitals often go through additional administrative procedures to register their children's births.²⁷⁵ Two thirds of all rural births in Morocco occur at home, so this problem affects the majority of rural parents.²⁷⁶

The law requires that when parents attempt to register their child they must present a notice of birth—a short form birth certificate from the doctor who delivered the child—to the civil registration office.²⁷⁷ This can be impossible for individuals who give birth outside of hospitals. In the case of a home birth, the mother must go to a government office to verify that she gave birth to a living child. She must bring witnesses to the administrative office to testify to

²⁷⁰ Moroccan Family Code, *supra* note 149, at Law 37-99.

²⁷¹ *See id.*

²⁷² Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

²⁷³ *See* Moroccan Nationality Code, *supra* note 130, at art. 6, 8-9.

²⁷⁴ Elkbir Lemseguem, Lemseguem Legal Office, Presentation at BU IHRC Workshop: Access to Nationality in Morocco: Positive Progress & Remaining Barriers, in Rabat, Morocco (May 11, 2023).

²⁷⁵ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

²⁷⁶ Amira El Masaiti, *50% of Pregnant Women in Rural Areas Risk Dying during Pregnancy* (Dec. 23, 2017), <https://www.moroccoworldnews.com/2017/12/237030/pregnant-women-rural-areas-pregnancy-morocco>.

²⁷⁷ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

this fact, and sometimes government officials will ask the witnesses to provide documentation to prove their own identity. If the mother is successful, the official will issue a short form birth certificate, which can be used to register the child and acquire a full birth certificate.²⁷⁸ This administrative birth verification process is an additional step that parents in rural areas must complete during the narrow thirty-day birth registration window and poses an additional barrier to a child's successful birth registration.

Non-Arabic Speakers

Although Morocco is often described as a transit country for sub-Saharan African migrants *en route* to Europe, all of the legal documents and proceedings for civil registration are only provided in Arabic.²⁷⁹ This poses difficulties for non-Arabic speakers in Morocco attempting to access civil documentation. Parents coming from non-Arabic speaking countries wishing to register their children or to access their own civil documentation need to go through extra steps and expenses to have their documents officially translated to Arabic. In particular, individuals forced to go through judicial proceedings must have all their documents translated, often on top of the expense of securing legal assistance.²⁸⁰

Indigent Families

Fees can also be a significant barrier to accessing nationality documents. Requesting missing or damaged documents comes with a fee. Both types of Moroccan birth certificates cost 30 Dirham, and a Moroccan family book costs 170 Dirham.²⁸¹ Certified copies of birth certificates are only valid for three months.²⁸² Thus, if a parent is not able to complete the birth registration process for her child before the certified copy of her own birth certificate expires, she will have to obtain a new certified copy for an additional fee.²⁸³ For individuals who are unable to afford such an expense, the fees can be a barrier to registering their children. Additionally, hospitals sometimes withhold a child's birth certificate until the parents pay their hospital bills.²⁸⁴ This is especially troublesome for individuals who are not expecting to be charged, and for indigent parents it may be prohibitive. When a hospital or birthing center withholds a child's birth certificate, it can delay the parents' ability to register the child and cause them to miss the 30-day registration window. This practice leaves indigent people at a higher risk of statelessness. When birth certificates are withheld, indigent parents will often not register their children at all, or are forced to go through the more expensive, confusing and lengthy judicial registration process.²⁸⁵

²⁷⁸ Videoconference Interview with Abderrahman Benyahya (Mar. 14, 2023).

²⁷⁹ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 22.

²⁸⁰ *Id.*

²⁸¹ See *Chancery Fees*, *supra* note 222.

²⁸² Research Directorate, Immigration and Refugee Board, Canada, *Immigration and Refugee Board of Canada, Morocco: Description of a birth certificate*, Dec. 22, 1999, REFWORLD, <https://www.refworld.org/docid/3ae6ad6644.html> (last accessed May 29, 2023).

²⁸³ *Id.*

²⁸⁴ Interview with Abderrahman Benyahya (May 10, 2023).

²⁸⁵ Interview with Abderrahman Benyahya (May 10, 2023).

C. Laws Affecting Refugees and Migrant Populations

Previous sections discussed issues pertaining to nationality that Moroccan nationals face. Many of the gaps described in the previous section, Access to Civil Documentation, also apply to Morocco's migrant and refugee population. However, migrants and refugees face some unique problems in Morocco. Morocco's proximity to Europe has caused it to become a transit country for migrants and refugees seeking safety and "better opportunities" in Europe.²⁸⁶ Morocco has also become a host country for thousands of migrants and refugees who are unable to move on to Europe and remain in Morocco for long periods of time or settle in the country permanently.²⁸⁷ Morocco has recently made a few strides to provide nationality protections to refugees, migrants, and asylum-seekers. However, the laws and decrees Morocco has passed make brief mention of protections for refugees and migrants. Furthermore, Morocco does not have asylum legislation.²⁸⁸ This section explores the gaps and barriers to nationality and citizenship that migrants and refugees in Morocco face, and the recent progress the Moroccan government has made to address this problem. This section also discusses the status of UNHCR in the country, and its practices and policies.

i. Moroccan Immigration and Asylum Policy Prior to 2013

a. UNHCR and the BRA

In 1957, the Moroccan government passed Decree No. 2-57-1256 of 2 Safar 1377 (August 29, 1957) ("Decree No. 2-57-1256").²⁸⁹ The Decree established the Bureau des Réfugiés et Apatrides (BRA), Morocco's national office for Refugees and Stateless Persons.²⁹⁰ Under article 2 a refugee is any individual who meets the definition of Article 1 of the 1951 Convention Relating to the Status of Refugees or falls within the mandate of UNHCR.²⁹¹

²⁸⁶ Jamal Bahija, *Current Moroccan Immigration and Asylum Policy: Eight years after the adoption of the "New Policy,"* ARRIBAT - INT'L J. HUM. RTS., 110, 130 (May 2021).

²⁸⁷ *Id.*

²⁸⁸ Interview with Salma Agnaou, Nat'l Prot. Officer, UNHCR, in Rabat, Morocco (May 10, 2023) [hereinafter Interview with Salma Agnaou].

²⁸⁹ See Decree no. 2.57.1256 of 2 Safar 1377 (Aug. 29, 1957) [hereinafter Decree no. 2.57.1256].

²⁹⁰ HUMAN RIGHTS WATCH, ABUSED AND EXPELLED ILL-TREATMENT OF SUB-SAHARAN AFRICAN MIGRANTS IN MOROCCO 47 (2014), <https://www.hrw.org/report/2014/02/10/abused-and-expelled/ill-treatment-sub-saharan-african-migrants-morocco> (last accessed May 29, 2023) [hereinafter HUMAN RIGHTS WATCH]

²⁹¹ See Decree No. 2.57.1256, *supra* note 289.

UNHCR has had an office in Morocco since 1959.²⁹² However, it was not until July 20, 2007, that it signed a cooperation agreement with the government.²⁹³ From 1959 to 2013, UNHCR gave refugee recognition to very few individuals, registering only 853 individuals during that time.²⁹⁴ UNHCR defines asylum-seekers as individuals waiting to receive UNHCR-refugee recognition. In contrast, UNHCR recognizes as refugees either those who have completed a refugee status determination (RSD), or those who have received *prima facie* refugee status.²⁹⁵

Under Decree No. 2-57-1256, all UNHCR-recognized asylum-seekers and refugees are required to file separate applications with the BRA.²⁹⁶ According to the Decree, UNHCR refugee status determinations are not officially recognized by the Moroccan government.²⁹⁷ Only once the applications of asylum-seekers or refugees are approved by the BRA can UNHCR-recognized asylum-seekers and refugees be given temporary residence and the necessary documentation to “perform the various acts of civil life.”²⁹⁸ The most important Moroccan documentation is the residence permit, which provides the holder with full access to education, housing, healthcare, and work authorization.²⁹⁹ Holders of residence permits have access to the labor market, with the only restriction being positions in civil service.³⁰⁰ Under this Decree, no government agency provides residence permits to UNHCR-registered refugees who have not had their refugee status confirmed by the BRA.³⁰¹

Article 4 of Decree No. 2-57-1256 establishes an appeal process for asylum-seekers and refugees whose applications to the BRA are denied.³⁰² Article 4 states that there should be an appeals committee consisting of a president who is the Minister of Justice or its representative, the Minister for Foreign Affairs or its representative, and a representative of Morocco’s UNHCR office. Article 5 provides that the Appeals Committee is responsible for (1) ruling on the appeals of persons whose refugee status the BRA has denied, and (2) formulating an opinion on the application of the BRA’s refugee determinations. Article 6 stipulates that all appeals must be lodged within thirty days of decisions from the BRA, and that the decisions of the Committee are final.³⁰³

Even though Decree No. 2-57-1256 established the BRA, Moroccan authorities suspended it in 2004.³⁰⁴ As a result, from 2004 until 2013, UNHCR was the sole agency

²⁹² See HUMAN RIGHTS WATCH, *supra* note 290, at 48.

²⁹³ See Decree no. 1.08.90, 20 Chaoual 1429 (Oct. 20, 2008) (adopting law 37.07 approving the ratification of the Cooperation Agreement signed by UNHCR and the Kingdom of Morocco).

²⁹⁴ See HUMAN RIGHTS WATCH, *supra* note 290, at 48.

²⁹⁵ Interview with Salma Agnaou (May 10, 2023).

²⁹⁶ See HUMAN RIGHTS WATCH, *supra* note 290, at 47.

²⁹⁷ See *id.*

²⁹⁸ See *id.*; see also Decree No. 2.57.1256, *supra* note 289.

²⁹⁹ See HUMAN RIGHTS WATCH, *supra* note 290, at 48-49.

³⁰⁰ Interview with Abderrahman Benyahya (May 10, 2023).

³⁰¹ See HUMAN RIGHTS WATCH, *supra* note 290, at 48.

³⁰² See Decree No. 2.57.1256, *supra* note 289.

³⁰³ *Id.*

³⁰⁴ See HUMAN RIGHTS WATCH, *supra* note 290, at 47.

responsible for refugee determinations.³⁰⁵ While this did not affect those refugees registered with the BRA prior to 2004, the suspension of the BRA has led to subsequently-registered UNHCR refugees being unable to receive residence permits from Moroccan authorities.³⁰⁶ Refugees who could do so, have resorted to other methods of obtaining residency permits, such as applying for student status, or marrying Moroccans.³⁰⁷

b. Law n°02-03

In 2003, Morocco passed its Law n°02-03 on the Entry and Stay of Foreign Nationals into Morocco, Emigration, and Irregular Immigration (“Law n°02.03”).³⁰⁸ The law criminalizes the entry and stay of irregular migrants in Morocco.³⁰⁹ The law describes the circumstances that permit deportation or expulsion at the Moroccan border, defines individuals who are exempt from deportation and expulsion, and imposes penal sanctions for violations. National civil society groups such as the Anti-Racist Group for the Support and Defense of Migrants (GADEM)³¹⁰ and international groups such as the Committee on the Protection of the Migrant Convention heavily criticized the 2003 law for its criminalization of irregular migrants.³¹¹ Since the law was passed shortly after terrorist attacks on Casablanca in 2003, the law is widely viewed by civil society and experts to be a response to the government’s fear of future terrorist attacks by migrants.³¹²

There are three articles under the law that are relevant to refugees. Article 17(5) guarantees a residence card to foreigners who obtained refugee status (pursuant to Decree No. 2-57-1256).³¹³ Article 17(5) also grants the spouse of a refugee and their minor children a residence card.³¹⁴ After they receive refugee status from the BRA, refugees can obtain residence permits from the Ministry of Foreign Affairs.³¹⁵ Article 26(6) stipulates that foreigners legally residing in Morocco cannot be expelled if: i) they have a residence permit under this law or under international treaties and; ii) they have not been sentenced to a penalty equal to one year’s imprisonment.³¹⁶ Article 29 prohibits the expulsion of refugee applicants and asylum-seekers from Morocco before a final decision on their cases.³¹⁷ The law also prohibits *refoulement*,

³⁰⁵ *See id.*

³⁰⁶ *See id.* at 48.

³⁰⁷ Interview with Abderrahman Benyahya (May 10, 2023).

³⁰⁸ Law n°02.03 of Nov. 11, 2003, on the Entry and Stay of Foreign Nationals into Morocco, emigration, and irregular immigration, promulgated by Royal Decree [Dahir] n° 1-03-196 [hereinafter Law n°02.03].

³⁰⁹ *Id.*

³¹⁰ Mohammed Yachoulti, *Morocco’s Migration Reforms: From the 2003 Law to the 2014 Regularization Program, in Dynamics of Inclusion and Exclusion in the MENA Region: Minorities, Subalternity, and Resistance*, HANNS SEIDEL FOUND. AND TAKAMUL CTR. INTERDISC. STUD. & RSCH. 58, 346 (Sept. 2019).

³¹¹ *See Bahija, supra* note 286, at 111.

³¹² *See Yachoulti, supra* note 310, at 33, 58.

³¹³ *See* Law n°02.03, *supra* note 308, at art. 17(5).

³¹⁴ *Id.*

³¹⁵ Interview with Salma Agnaou (May 10, 2023).

³¹⁶ *See* Law n°02.03, *supra* note 308, at art. 26(6).

³¹⁷ *Id.* at art. 29.

stating that no foreigner can be expelled to a country where his or her freedom or life is threatened, or where she or he will be exposed to inhuman, cruel, or degrading treatment.³¹⁸

ii. Immigration and Asylum Policy after 2013

a. Regularization Campaigns

Towards the end of 2013, the Moroccan government began developing additional protections for migrants and refugees. This was the result of a Moroccan National Human Rights Council (CNDH) thematic report assessing Morocco's immigration and asylum policy that concluded that Morocco lacks adequate protections for migrants and refugees.³¹⁹ CNDH is an independent body that advocates for the promotion and implementation of human rights in Morocco.³²⁰ The Report called for the collaboration of Moroccan authorities, civil society, and Morocco's partner countries to work together to improve the circumstances of migrants and refugees in the country. The Report included recommendations to King Mohamed VI to improve Morocco's immigration and asylum policy. The King accepted the recommendations in CNDH's Report and instructed his government to develop an immigration and asylum policy in line with the recommendations.³²¹

On September 11, 2013, the Moroccan government introduced a new immigration and asylum policy and established a National Commission to implement it.³²² The Commission was divided into four sub-committees responsible for the following areas: regularization of irregular immigrants; regularization of UNHCR-recognized refugees; revision of the legal and institutional framework on immigration, asylum, and human trafficking; and promotion of international and regional cooperation regarding migration through diplomatic and other measures.³²³ In 2014, the Moroccan government launched its National Immigration and Asylum Strategy (SNIA).³²⁴ The SNIA is an inter-ministerial integration strategy aimed at guaranteeing equal opportunities for migrants and refugees. The SNIA includes eleven programs that cover areas such as education, housing, healthcare, and employment.³²⁵

On September 25, 2013, the Moroccan government re-activated the BRA and, "established an inter-ministerial ad hoc Commission for the Regularization of Refugees Registered with UNHCR ("ad hoc Commission"), pending the development of a national asylum

³¹⁸ *Id.*

³¹⁹ See Bahija, *supra* note 286, at 113.

³²⁰ *About us*, NATIONAL HUMAN RIGHTS COUNCIL (CNDH), <https://www.cndh.org.ma/about-cndh/about-us> (last accessed May 29, 2023).

³²¹ *Id.*

³²² See Bahija, *supra* note 286, at 115.

³²³ *Id.*

³²⁴ *Id.* at 112.

³²⁵ *Id.* at 117-118.

system.”³²⁶ By November 21, 2013, the ad hoc Commission processed 532 out of the 853 requests, and granted refugee status to 524 persons.³²⁷ In May 2016, 1,493 UNHCR- registered refugees were interviewed, 687 non-Syrians and 814 Syrians.³²⁸ All non-Syrian refugees who went through the process were given refugee cards and one-year renewable residence cards.³²⁹ The Commission set up a separate process for Syrian refugees and held hearings for 1,363 Syrian refugees who were given receipts that provided them access to the SNIA programs. However, experts have reported that Syrians holding these receipts have not received full access to the SNIA programs.³³⁰

In October 2013, the Commission created a work plan aimed at achieving the above four components of the new immigration and asylum policy.³³¹ In 2014, in keeping with the work plan, the Moroccan government held its first regularization campaign for irregular and undocumented migrants.³³² Morocco is the first and only country in the MENA to have established a regularization campaign.³³³ To be regularized, migrants had to fall in one of the following six categories: (1) foreign spouses of Moroccan citizens, married and living together for two years or more (before December 31, 2011); (2) foreign spouses of non-Moroccans in a regular situation in Morocco, married and living together for four years or more (before December 31, 2009); (3) children of the two above categories, provided they hold a valid birth certificate; (4) foreign nationals holding a valid work contract, employed for at least the past two years (since January 1st, 2012); (5) foreign nationals able to prove a five-year-long continuous residence in Morocco; or (6) chronically ill persons receiving care in Morocco since December 31st, 2013.³³⁴ All applications for regularization were to be submitted by December 31, 2014.³³⁵ All regularized migrants were granted one-year residence permits.³³⁶

In early 2015 the Moroccan government concluded its regularization campaign and celebrated it as a success.³³⁷ Authorities had approved 17,916 out of the 27,332 applications received (or 65 percent).³³⁸ The major accomplishment of the campaign was the 100 percent approvals of applications received from women and children.³³⁹ Moroccan authorities granted

³²⁶ UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 27th Session 2*, 15 (Sept. 2016) [hereinafter UNHCR, *UPR Compilation Report*].

³²⁷ See Bahija, *supra* note 286, at 119.

³²⁸ See UNHCR, *UPR Compilation Report*, *supra* note 326, at 2.

³²⁹ See Bahija, *supra* note 286, at 119.

³³⁰ *Id.* at 126-127.

³³¹ *Id.*

³³² See Bahija, *supra* note 286, at 116.

³³³ *Id.* at 118.

³³⁴ *Id.*

³³⁵ See Yachoulti, *supra* note 310, at 69.

³³⁶ See Bahija, *supra* note 286, at 119.

³³⁷ See Yachoulti, *supra* note 310, at 69; See Bahija, *supra* note 286, at 118.

³³⁸ See Yachoulti, *supra* note 310, at 69.

³³⁹ See *id.*; see also Interview with Khadija Elmadmad, Professor of L. and Expert, Clinique Juridique de la Faculté de Droit de Casablanca, in Rabat, Morocco (May 9, 2023) [hereinafter Interview with Khadija Elmadmad].

10,178 applications from women and children.³⁴⁰ Nationals from 116 countries received residence permits; the majority of the approved populations were Senegalese (6,600), Syrians (5,250), Nigerians (2,380), and Ivoirians (2,281).³⁴¹

In 2017, Morocco held a second regularization campaign. While the requirements were identical, experts and civil society noted that the Commission was more selective in approving applications in the second campaign.³⁴² The selectivity was in part due to a change in the political situation. During the first campaign, the Commission was led jointly by the Ministry of Interior and the Ministry of Exterior. The second campaign, in contrast, was led by the Ministry of Interior, whose Minister was perceived to have made personal decisions, disregarding the formal criteria of the regularization program.³⁴³ Another difference from the first campaign was that residence permits were granted for three years, not one.³⁴⁴ Everyone granted a residence permit during the first regularization campaign was given the opportunity to renew it.³⁴⁵ In addition to those previously approved, approximately 16,000 migrants were newly regularized.³⁴⁶ Overall, the government has promoted both regularization campaigns and the ad hoc Commission to be a big success, as it regularized nearly 50,000 individuals.³⁴⁷

Following the regularization campaign in 2017, Moroccan authorities have been processing regularized migrants seeking renewal of their residence permits under the standard criteria set by Law n°02-03 and the Minister of Interior decision n°500-12 of February 13th 2012.³⁴⁸ Migrants are required to present documents such as a work contract, rental agreement and criminal record checks, documents that were not required during the regularization campaign.³⁴⁹ Due to economic constraints, most regularized migrants either do not have the required documents or cannot gain access to them.³⁵⁰ Moreover, the Covid-19 pandemic made it more difficult for regularized migrants to procure the required documentation due to the closure of consulates and the loss of jobs.³⁵¹ Regularized migrants are required to renew their permits at the office that issued their documents the first time, which for many was in the capital Rabat. Thus, most people seeking residence renewal have to travel to the Rabat Office of Foreigners, even though many migrants moved to other areas in Morocco during the pandemic, which made travel back to the office of original issuance difficult.³⁵² Moreover, during the pandemic, the Moroccan authorities shut off access to some major cities, making it even more difficult for individuals trying to return to the Office of Foreigners to renew their documents. These problems

³⁴⁰ See Yachoulti, *supra* note 310, at 69.

³⁴¹ *Id.*

³⁴² Interview with Hind Tak Tak (May 9, 2023).

³⁴³ *Id.*

³⁴⁴ *Id.*; see also Bahija, *supra* note 286, at 119.

³⁴⁵ See Bahija, *supra* note 286, at 119.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 118.

³⁴⁸ *Id.* at 125.

³⁴⁹ See Bahija, *supra* note 286, at 125-126.

³⁵⁰ *Id.*

³⁵¹ Interview with Abderrahman Benyahya (May 10, 2023).

³⁵² See Bahija, *supra* note 286, at 126-127.

caused many regularized migrants to fall out of status.³⁵³ That also has meant that many migrants lost access to the SNIA programs that guaranteed them healthcare, legal work, and other critical benefits. Individuals receiving refugee status by the ad hoc Commission have also been facing similar difficulties in renewing their residence permits.³⁵⁴

b. Draft Laws on Immigration, Asylum, and Human Trafficking

In addition to the regularization campaign, the Commission began drafting three laws on immigration, asylum, and human trafficking.³⁵⁵ By the end of 2014, the laws were finalized and ready for adoption.³⁵⁶ The law on immigration and asylum, Draft Law n°66-17, is set to replace Law n°02-03.³⁵⁷ Draft Law n°66-17 is also expected to regulate the conditions for granting asylum.³⁵⁸ Since 2014, there have been multiple drafts of Law n°66-17.³⁵⁹ UNHCR's representative states that the Agency has provided input to the 2014, 2016, and 2018 drafts, but that the current status of the law is uncertain.³⁶⁰ To date the only one of these draft laws that has been adopted by the Moroccan government is the law on combatting human trafficking.³⁶¹ Experts and civil society in Morocco express frustration with the Moroccan government's delay in adopting the new laws that are anticipated to bring about major progress in migrant and refugee rights.³⁶²

The BRA is still operating as an ad hoc commission and failed to function at all from 2017 to 2019.³⁶³ As a result of the BRA failing to review their claims and applications for residence permits, many UNHCR-recognized refugees were not given legal status by the Moroccan government and were unable to access work authorization and social services. The BRA occasionally ceases operations for as long as a year and a half and currently is meeting irregularly to review applications. Moreover, the BRA only holds hearings in Rabat. Due to the BRA's inconsistent and irregular functioning, only approximately 10% of UNHCR-registered refugees are able to appear before it and obtain documentation since its reopening at the end of 2019.³⁶⁴ The bifurcated processing between UNHCR and the BRA means that refugees have varying rights: some are only registered with UNHCR, while others are registered with UNHCR and the BRA, with full access to rights only available to the latter. However, according to UNHCR, the applications of most refugees who are able to appear before the BRA are approved

³⁵³ *Id.* at 125-127.

³⁵⁴ *Id.* at 126-127.

³⁵⁵ *Id.* at 117.

³⁵⁶ *See* Bahija, *supra* note 286, at 117.

³⁵⁷ *Id.* at 112, 120.

³⁵⁸ *Id.* at 120.

³⁵⁹ Interview with Salma Agnaou (May 10, 2023).

³⁶⁰ *Id.*

³⁶¹ *See* Bahija, *supra* note 286, at 112.

³⁶² Interview with Salma Agnaou (May 10, 2023); Interview with Khadija Elmadmad (May 9, 2023); Interview with Hind Tak Tak (May 9, 2023).

³⁶³ Interview with Salma Agnaou (May 10, 2023).

³⁶⁴ *Id.*

without problems. While the BRA is also responsible for registering stateless people, UNHCR claims that there is no official procedure in place for stateless individuals.³⁶⁵ This issue will be discussed further below.

c. Detentions, Deportations Removal of Documents

There are no accurate figures available on the numbers of refugees and migrants that Morocco detains and deports.³⁶⁶ However, experts note that there is a direct relationship between Morocco's detention and deportation numbers and the European Union's (EU) migration policies.³⁶⁷ The EU engages in partnerships with MENA countries to stop the influx of migrants and refugees crossing over to Europe.³⁶⁸ Most recently, Spain entered into an agreement with Morocco for the latter to increase its efforts to stop migrants and Moroccan nationals from crossing to Spain, in exchange for Spanish investments and funding for education, trade, and job training for Moroccans.³⁶⁹ Due to this, deportations have become rarer as Morocco, driven by political agendas, is instead displacing people without documentation to Southern cities and keeping them out of the North.³⁷⁰

Even though *non-refoulement* is obligatory on Morocco as a matter of customary international law and Morocco's national laws, Morocco had been regularly detaining and deporting UNHCR-registered refugees who did not have proper documentation.³⁷¹ Now, instead of deporting refugees, Moroccan authorities forcibly displace them from cities closer to Spain to other cities in the South and rural areas. When refugees are detained, UNHCR claims to intervene in two ways. First, UNHCR has an emergency line through which refugees can call to report their detention. Second, in areas where UNHCR cannot be physically present, it works with partner organizations outside of Rabat to assist refugees. In most instances, refugees are released with UNHCR or its partner organizations' interventions. However, refugees have had difficulties informing UNHCR of their detention because police often take refugees' phones and documentation.³⁷²

Morocco routinely detains migrants.³⁷³ This disproportionately affects migrants in Morocco who are primarily from sub-Saharan Africa.³⁷⁴ Morocco recently has lowered its rates of deporting migrants and instead forcibly displaces them further away from cities closer to

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ Interview with Salma Agnaou (May 10, 2023); Interview with Katleen Maes (Feb. 3, 2023).

³⁶⁸ Interview with Salma Agnaou (May 10, 2023); Interview with Katleen Maes (Feb. 3, 2023).

³⁶⁹ *Spain and Morocco renew ties with migration, business deals*, ASSOCIATED PRESS NEWS, <https://apnews.com/article/politics-morocco-government-spain-28b1e94fa2abaa7b092ea92499cd13b1> (last accessed May 29, 2023).

³⁷⁰ Interview with Salma Agnaou (May 10, 2023).

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ See HUMAN RIGHTS WATCH, *supra* note 290, at 21.

³⁷⁴ Interview with Salma Agnaou (May 10, 2023).

Spain.³⁷⁵ Additionally, Moroccan authorities have stolen and even destroyed identity documents of sub-Saharan migrants.³⁷⁶

iii. UNHCR's Mandate in Morocco

UNHCR attempts to maintain a diplomatic relationship with the Moroccan government while seeking to protect refugee rights in the country.³⁷⁷ UNHCR's representative states that unless the Agency needs to directly enforce international refugee laws in urgent cases or issues, it does not pressure the government about conforming to international norms because the UN system in Morocco is not as strong as in other countries. UNHCR liaises with Moroccan authorities, the Minister of Interior, Minister of Foreign Affairs, and the BRA. As discussed earlier, UNHCR is responsible for conducting an initial RSD and registering refugees before they can appear before the BRA for legal status under Moroccan law. UNHCR's office in Morocco also works to resettle refugees in third countries, particularly Canada; monitors mixed movements to analyze regional trends; and conducts outreach to refugees and asylum-seekers.³⁷⁸ UNHCR also connects refugees and asylum-seekers with attorneys for legal assistance, assists women refugees with hospital fees when they give birth, and educates refugees on the importance of registering with the BRA.³⁷⁹

UNHCR also regularly communicates with foreign consulates in Morocco.³⁸⁰ Some consulates provide funding to UNHCR or assistance in specific cases where advocacy with the Moroccan government is needed. Except in rare cases, most refugees and asylum-seekers UNHCR works with do not interact with their consulates, as they fear their governments' knowledge of their whereabouts. However, in cases where they suffered persecution by non-state actors, some refugees and asylum-seekers do visit their consulates to acquire or renew documentation. When refugees or asylum-seekers marry Moroccans, they must obtain documentation from their consulates to register their marriages. According to UNHCR, most refugees and asylum-seekers (in particular those from Cameroon, Guinea and Cote d'Ivoire) do not have trouble getting documentation from their consulates in these situations.³⁸¹

³⁷⁵ *Id.*; see also *In Dialogue with Morocco, Experts of the Committee on Migrant Workers Commend Migration Policy Development, Raise Issues Concerning Children of Migrants and Treatment of Migrants by Border Police*, UN Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/news/2023/03/dialogue-morocco-experts-committee-migrant-workers-commend-migration-policy> (last accessed May 29, 2023).

³⁷⁶ See HUMAN RIGHTS WATCH, *supra* note 290, at 21.

³⁷⁷ Interview with Salma Agnaou (May 10, 2023).

³⁷⁸ See UNHCR, MAPPING OF PROTECTION SERVICES: A ROUTES-BASED APPROACH TO PROTECTION SERVICES ALONG MIXED MOVEMENT ROUTES (April 2024); see also MIXED MIGRATION CENTRE, A ROADMAP FOR ADVOCACY, POLICY DEVELOPMENT, AND PROGRAMMING: PROTECTION IN MIXED MOVEMENTS ALONG THE CENTRAL AND WESTERN MEDITERRANEAN ROUTES 2021 (UNHCR 2021).

³⁷⁹ Interview with Salma Agnaou (May 10, 2023).

³⁸⁰ *Id.*

³⁸¹ *Id.*

a. Statelessness Examinations

UNHCR has additional programs aimed at preventing statelessness in Morocco.³⁸² To overcome barriers in the convoluted birth registration process that put migrant and refugee children at risk of statelessness, UNHCR assists refugees and asylum-seekers with the process even after the thirty-day period has elapsed.³⁸³ UNHCR conducts information campaigns to inform refugees and asylum-seekers of the importance of birth registration, and how to go through the process. UNHCR and the Moroccan government have established a program for four to six government officials from various ministries to take courses at European universities to learn about statelessness prevention.³⁸⁴

In addition to conducting RSD procedures, UNHCR conducts statelessness determinations pursuant to its mandate under the 1961 Statelessness Convention.³⁸⁵ If an asylum-seeker's situation indicates that he or she may be stateless during the RSD process, UNHCR will conduct a stateless status determination; however, UNHCR notes that this is rare. As of the date of interview with UNHCR in Rabat, there were only two UNHCR-recognized stateless persons in Morocco identified through the RSD process. UNHCR registered them as stateless refugees.³⁸⁶

UNHCR has discussed a procedure for stateless status recognition with the BRA, but so far the BRA has not instituted a process to recognize stateless persons. To accommodate the two stateless refugees, the BRA allowed them to go through the same process that refugees do, even though they lack a nationality. However, according to UNHCR, the BRA has created a new field for them in its database and has recorded them as stateless refugees.³⁸⁷

b. Prima Facie Refugee Recognition

UNHCR provides Central African, Syrian, and Palestinian asylum-seekers with prima facie refugee recognition. If they have documentation proving that they are from any of the above-mentioned countries, they are automatically granted refugee status without UNHCR conducting an RSD. Refugees granted prima facie recognition are automatically given access to all UNHCR services and legal assistance. If an individual is from a country whose nationals are granted prima facie refugee recognition, but the individual does not have documentation to prove it, she must go through the traditional RSD process for refugee status.³⁸⁸

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ Interview with Salma Agnaou (May 10, 2023).

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Id.*

VI. Gaps in Protections for Specific Refugee and Migrant Populations

Different migrant and refugee groups are affected in differing ways from the gaps in Morocco's immigrant and refugee policy. The consequences of these gaps place certain groups at increased risk of statelessness. This Section explores specific issues affecting particularly vulnerable groups of refugees and migrants in Morocco.

A. Syrians

There are over 5,000 UNHCR-registered Syrian refugees and asylum-seekers in Morocco.³⁸⁹ The real figure is likely higher as many Syrians have not registered with UNHCR. Although UNHCR recognizes Syrians in Morocco as *prima facie* refugees, there is currently no legal basis for *prima facie* recognition under Moroccan law.³⁹⁰ Moroccan authorities have also cited security reasons and religious reasons for withholding refugee status from Syrians without individualized RSD.³⁹¹ Most UNHCR-registered Syrian refugees are thus not granted refugee status by the BRA. Instead, when a *prima facie* refugee from Syria is referred to the BRA by UNHCR, the BRA issues a receipt stating that they are recognized as asylum-seekers and are protected from *refoulement*. UNHCR Morocco considers Syrian refugees “people under UNHCR protection,” and they remain persons of concern to UNHCR in the absence of government recognition.³⁹² Syrian refugees cannot use this receipt to acquire a residence permit.³⁹³ As noted earlier, without residence permits Syrian refugees are denied access to social services and are not authorized to work. Many Syrians have resorted to other means of obtaining lawful immigration status, whether by marrying Moroccans, or seeking student visas by enrolling in universities.³⁹⁴

Since the second regularization campaign in 2017, Syrians face many of the same challenges as other migrants, and are held to the same requirements as other migrants when renewing their residence permits.³⁹⁵ However, Syrians face an additional hurdle because there is no Syrian consulate in Morocco.³⁹⁶ Consequently, Syrians cannot renew their documents or

³⁸⁹ *Morocco Operations*, UNHCR, <https://reporting.unhcr.org/operational/operations/morocco?year=2023#toc-populations> (last accessed July 18, 2024).

³⁹⁰ Interview with Abderrahman Benyahya (May 10, 2023).

³⁹¹ *Id.*

³⁹² Interview with Salma Agnaou, in Rabat, Morocco (May 10, 2023).

³⁹³ *Id.*; *see also* Interview with Abderrahman Benyahya (May 10, 2023).

³⁹⁴ Interview with Salma Agnaou (May 10, 2023).

³⁹⁵ Interview with Abderrahman Benyahya, in Rabat Morocco (May 10, 2023).

³⁹⁶ *See Diplomatic Missions and Consulates*, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFS. AFR. COOP. & MOROCCAN EXPATRIATES, <https://www.diplomatie.ma/en/directory> (last accessed June 1, 2023) (reporting no Syrian embassy or consulate present in Morocco).

procure documents that may have been lost or damaged during their journey.³⁹⁷ However, some Syrians in Morocco have been resourceful in securing legitimate documents.³⁹⁸ Syrians with the means to do so have had documents brought over to them from Algeria, the nearest consulate to Morocco, and other countries where there are Syrian consulates.³⁹⁹

Children born to Syrian mothers and non-Syrian fathers are susceptible to statelessness. According to Syrian law, women cannot pass on Syrian nationality to their children when the children are born abroad. Hence, children born in Morocco must have their births registered or they will become stateless as they cannot claim Syrian nationality.⁴⁰⁰

B. Sub-Saharan Migrants

There are approximately 700,000 sub-Saharan migrants in Morocco.⁴⁰¹ However, because many sub-Saharans are irregular migrants, the real figure is likely to be higher. Many Sub-Saharan migrants enter Morocco on a ninety-day visa and remain after the visa expires.⁴⁰² When their visas expire, their situations become precarious because they do not have a residence permit that allows them to get regular, legal work.⁴⁰³

Sub-Saharan migrant children are at the highest risk of statelessness for four reasons. First, many migrant families are unaware of the need to register their children.⁴⁰⁴ For many, by the time they learn of the registration process, the thirty-day period has already passed, and the parents need to go to court to register their children—a daunting prospect for irregular migrants who fear deportation.⁴⁰⁵ Second, the birth registration process is especially difficult when there is a language barrier. Many sub-Saharan migrants cannot speak Arabic, and the entire birth registration process is conducted in Arabic.⁴⁰⁶ All documentation that migrants have to submit

³⁹⁷ *Id.*; see also Interview with Salma Agnaou, in Rabat, Morocco (May 10, 2023).

³⁹⁸ Interview with Salma Agnaou (May 10, 2023).

³⁹⁹ *Id.*

⁴⁰⁰ See *Nationality, Documentation and Statelessness in Syria*, ISI & NRC, <http://www.syrianationality.org/index.php?id=18> (last visited May 29, 2022) (“When born abroad an individual will only be Syrian if their father is Syrian.”).

⁴⁰¹ Driss El Ghazouani, *A Growing Destination for Sub-Saharan Africans, Morocco Wrestles with Immigrant Integration*, MIGRATION POL’Y INST. (July 2, 2019), <https://www.migrationpolicy.org/article/growing-destination-sub-saharan-africans-morocco#:~:text=An%20estimated%20700%2C000%20sub%2DSaharan,country%20of%20about%2034%20million> (last accessed May 29, 2023).

⁴⁰² Interview with Abderrahman Benyahya, in Rabat, Morocco (May 10, 2023).

⁴⁰³ Interview with Ilham Hamdai, Professor of L., U. Mohammed V, Rabat-Agdal, in Rabat, Morocco (May 8, 2023) [hereinafter Interview with Ilham Hamdai].

⁴⁰⁴ Interview with Hind Tak Tak (May 9, 2023).

⁴⁰⁵ BRONWEN MANBY, LONDON SCH. OF ECON., PREVENTING STATELESSNESS AMONG MIGRANTS AND REFUGEES: BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO 24 (June 2019) [hereinafter “BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO”].

⁴⁰⁶ See MANBY, CITIZENSHIP IN AFRICA, *supra* note 1, at 22.

must be translated into Arabic.⁴⁰⁷ Third, translation of foreign documents have additional costs that many migrants cannot afford, as most have precarious and low-paying jobs because of their irregular status.⁴⁰⁸ Lastly, many sub-Saharan migrants are uncomfortable with going to their consulates to request the necessary documentation for birth registrations because they fear deportation, since consulates are required to report migrants who do not have legal status to the police.⁴⁰⁹ All four of these factors affect sub-Saharan African migrants' ability to obtain documentation for their children, and therefore increase the likelihood of their children becoming stateless.

C. Migrants and Refugees Outside Central Cities

While most migrants and refugees live in central Moroccan cities such as Rabat, some migrants and refugees live in rural areas and cities closer to the Algerian and Spanish borders such as Oujda and Nador.⁴¹⁰ There is also a large migrant population residing in Laayoune in Western Sahara due to its proximity to the Spanish islands.⁴¹¹ Migrants in rural areas have difficulty accessing the resources and services that civil society offers that may prevent statelessness—such as informational sessions on birth registration and assistance with the process.⁴¹² Refugees and asylum-seekers face an additional challenge due to UNHCR having only one country office located in Rabat.⁴¹³ Asylum-seekers who do not have the means to travel to the Rabat office cannot register with UNHCR. UNHCR does occasionally conduct remote registrations. However, UNHCR works with various organizations near the Oujda border and in rural areas to try to provide services to refugees and asylum-seekers living in those areas.⁴¹⁴

VII. Conclusion & Recommendations

As this Report has highlighted, Morocco has become a destination country for regular and irregular migrants, asylum seekers and refugees. Morocco's transformation from a primarily migrant-sending country to a migrant-receiving one requires it to adjust its laws and policies concerning both migration and citizenship. Morocco has made significant strides with regard to

⁴⁰⁷ Interview with Hind Tak Tak (May 9, 2023).

⁴⁰⁸ MANBY, BIRTH REGISTRATION AND CONSULAR ASSISTANCE IN EGYPT AND MOROCCO, *supra* note 404, at 23.

⁴⁰⁹ Interview with Ilham Hamdai (May 8, 2023).

⁴¹⁰ See HUMAN RIGHTS WATCH, *supra* note 290, at 20.

⁴¹¹ Videoconference Interview with Abdelwouhab Gain Brahim, President, Afr. Watch (Mar. 23, 2023).

⁴¹² Interview with Salma Agnaou (May 10, 2023).

⁴¹³ Morocco, UNHCR, <https://www.unhcr.org/countries/morocco> (last accessed May 29, 2023).

⁴¹⁴ Interview with Salma Agnaou (May 10, 2023).

reducing statelessness and the risk of it in other ways, including reducing gender discriminatory laws and policies, and significantly expanding children's birth registration. This Report concludes with recommendations that will assist in further reducing the risk of statelessness in Morocco, protect the human rights of stateless persons, and bring Moroccan laws into closer conformity with its international legal commitments. These recommendations are based on research and consultation with national and international civil society actors working in Morocco and the MENA region.

A. Ratify Relevant International and Regional Conventions

As discussed in this Report, the most important instruments that provide protections on the scope of obligations of host states that guarantee access to nationality rights are the international statelessness treaties. Though Morocco has ratified other instruments protecting nationality rights, there are still gaps in its commitments to the international legal framework governing nationality and statelessness. Morocco should continue its progress in protection of vulnerable groups by ratifying relevant international and regional conventions aimed at providing protections against statelessness. As UNHCR has been urging, it is important for Morocco to ratify the following international and regional treaties: the 1954 Convention Relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness; the African Charter on Human and Peoples' Rights; the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa; the African Charter on the Rights and Welfare of the Child; and the Arab Charter on Human Rights.⁴¹⁵

The Moroccan government should ratify the above instruments and fully implement them into Moroccan domestic law in order to help address pressing challenges related to statelessness, including gender discrimination, refugee and migrant protection, and children's rights.

B. Address Remaining Gender Discrimination

⁴¹⁵ African Union, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, U.N.T.S. No. 14691 (Status List), <https://au.int/sites/default/files/treaties/36400-sl-OAU%20Convention%20Governing%20the%20Specific%20Aspects%20of%20Refugee%20Problems%20in%20Africa.pdf>; *Ratifications Table*, AFRICAN COMMITTEE EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC), <https://www.acerwc.africa/en/member-states/ratifications>; *Ratification and signature state of the Arab Charter on Human Rights*, *supra* note 159.

i. Amend the Nationality Code to Eliminate Gender Discrimination

Conferral of nationality should be completely free of gender bias. Article 10 of the Moroccan Nationality Code remains gender-discriminatory in that it only allows the foreign wives of Moroccan men to acquire Moroccan nationality by naturalization through marriage; foreign husbands of Moroccan women are not provided with the same access. The Association Démocratique des Femmes du Maroc, Mobilising for Rights Associates, and the Global Campaign for Equal Nationality Rights recommend amending Article 10 to provide a path to nationality for men married to Moroccan women who are stateless or at risk of statelessness. We urge Morocco to adopt this reform, which would provide stability for families of Moroccan wives and non-Moroccan husbands and would move the country closer to treating men and women equally in all areas of the law. Amending Article 10 is necessary to bring Morocco into compliance with international law, which requires the equality of men and women under law in all spheres. Morocco is bound to ensure this equality by its ratification of ICCPR and CEDAW. This change would both conform Morocco fully to its international legal obligations towards equal nationality rights and reduce gender inequality in a range of ways discussed in this Report.

ii. Continue Expanding Women's Rights Generally

As mentioned in Part V.A, women's access to nationality can be improved by increasing gender equality more generally in Moroccan law and public life. The Moroccan government should continue reforming its laws to elevate women's place in society and the family, particularly by amending the *Moudawana* in line with recommendations made by the Association Démocratique des Femmes du Maroc, Mobilising for Rights Associates, and UN Women. Adopting the recommendations based on the research and experience of these expert organizations will help to create policy informed by the lived experiences of Moroccan women. Full gender equality will also address gaps in a range of Moroccan laws that risk deepening vulnerability due to consequences of statelessness for women and their children.

C. Enact a Comprehensive Legal Framework for Refugees, Asylum-Seekers, and Migrants

The Moroccan government has demonstrated a serious commitment to drafting an asylum law and new laws for migrants. This is evident from introduction of the new immigration and

asylum policy in 2013. The new policy led to the creation of Draft Law n°66-17.⁴¹⁶ However, Morocco has suspended work on the law since the end of 2014. According to experts, the Moroccan government has not made public why this important law has not been enacted.⁴¹⁷ Experts claim that the current law, Law n°02-03, is discriminatory towards migrants.⁴¹⁸ It criminalizes irregular migrants and does not guarantee migrants rights to essential social services.⁴¹⁹ Although the law permits foreigners who have resided continuously in the country for four or more years to apply for permanent residence cards that can be renewed, the law is opaque and the requirements for residency are not clear. It fails to provide a clear path for migrants to regularize their status and a means to obtain residency, regardless of the length of time in the country.

Important stakeholders have requested the opportunity for civil society experts, including UNHCR, to review and provide input to Draft Law n°66-17 before it is finalized. Nearly ten years have passed since the law was first drafted. Since 2014, Morocco has progressively shifted its migration policy and the number of migrants and refugees in Morocco has risen significantly. Unlike prior years, migrants are entering Morocco with the intention of staying rather than crossing over to Europe. Draft Law n°66-17 must also be reviewed to see if Morocco is adhering to its international and regional responsibilities, particularly with respect to Article 21 of the CRCI (ensuring that refugee children enjoy the rights provided for in the Covenant). A review of the pre-passage version of Draft Law n°66-17 would ensure that the law is comprehensive and relevant to the current circumstances of migrants, refugees, and asylum-seekers in Morocco. The input of civil society organizations, such as CNDH, GADEM, and UN organizations like UNHCR and IOM, is critical, as their experience and knowledge will ensure that the law is not discriminatory to migrants and refugees and fully protects their access to and guarantee of nationality rights. Another aspect of the current law that must be addressed is that it does not provide a pathway to citizenship for refugees and migrants, nor does Draft Law n°66-17 include naturalization pathways for those who might qualify. For refugees, the main problem is the refugee recognition issue. However, in general, the Draft Law should provide refugees and migrants with a pathway to citizenship if they cannot safely return to country of origin or cannot confirm nationality in another country.

i. Reform the Refugee Recognition Process

Morocco must reform its process of recognizing refugees. Currently, there is a convoluted process for the BRA to recognize a UNHCR-registered refugee. Since 2014, the BRA has been operating as an ad hoc Commission and meets irregularly, even ceasing operations entirely from

⁴¹⁶ See Bahija, *supra* note 286, at 120.

⁴¹⁷ *Id.*; Interview with Hind Tak Tak (May 9, 2023).

⁴¹⁸ See Yachoulti, *supra* note 310, at 58.

⁴¹⁹ Law n°02-03, *supra* note 308.

2017 and 2019.⁴²⁰ As a result, only about 10% of every 10,000 UNHCR-registered refugees have been granted a hearing to be recognized a refugee by the BRA.⁴²¹ The process disadvantages refugees and prevents them from accessing social services in Morocco. Consequently, this violates Articles 17, 21, 24, 27, and 28 of the 1951 Refugee Convention.⁴²²

First, the BRA should become permanent and hold regular interviews to allow refugees to receive a formal determination of their refugee status. Second, the BRA should consider holding sessions in various areas around Morocco— with a special preference for cities where many refugees reside. Third, the BRA could streamline the process for automatic recognition and residency for the majority of individuals who have received UNHCR refugee recognition. This should include refugees granted *prima facie* status by UNHCR, such as Syrians. Currently, Syrians are not considered refugees by the BRA despite their would-be *prima facie* refugee status and are not afforded any benefits besides being protected against *refoulement*. All refugees who successfully obtain RSD from UNHCR should be able to register with the BRA and have the right to work and access to social services in Morocco. Finally, the BRA must establish a process for stateless status determination, and the new law should codify provisions that set out the process for a stateless status determination.

ii. Simplify the Process of Renewing a Residence Permit

Morocco has successfully completed two regularization campaigns and has regularized nearly 50,000 migrants.⁴²³ This program is the first and only of its kind within the MENA region.⁴²⁴ However, Morocco has deviated from its efforts to implement an improved immigration and refugee policy. Now migrants are facing difficulties in renewing their residence permits, and as a result are falling into irregular status. Morocco must simplify its process of renewing a residence permit to continue the progress that it achieved in 2013 and 2017.

To simplify the process, Morocco should allow migrants to travel to the closest Office of Foreigners in their vicinity. Traveling adds additional costs, time, and effort, and many do not have the means to follow through and renew their residence permits. Allowing migrants to travel to their nearest Office of Foreigners removes the barrier that migrants are currently facing by requiring travel to the office of foreigners where they registered in 2017. Second, migrants should have the same requirements that they did when they were regularized in 2017. Moreover, documentary requirements should be simplified, as migrants often do not have access to documentation that is required of them, and do not always have the means to procure required documents. Accordingly, allowing migrants to renew their residence permits under the same

⁴²⁰ Interview with Salma Agnaou (May 10, 2023).

⁴²¹ *Id.*

⁴²² 1951 Refugee Convention, *supra* note 31, at arts. 21, 24, 17, 27, and 28.

⁴²³ *See* Yachoulti, *supra* note 310, at 69.

⁴²⁴ *See* Bahija, *supra* note 286, at 118.

circumstances as in the 2017 regularization campaign will further reduce these barriers and ensure they can maintain legal status and those with undocumented citizenship do not risk becoming stateless.

iii. Implement Additional Regularization Campaigns

To maintain its efforts to improve its immigration and asylum policy, Morocco should consider implementing additional regularization campaigns. It has been 10 years since Morocco's first regularization program. Many migrants and refugees in Morocco have not been able to regularize their status since the country's last regularization campaign. This includes UNHCR-registered refugees who have not been recognized by the BRA due to inconsistent interview schedules, as well as migrants facing challenges in renewing their residence permits. If Morocco is to implement future regularization campaigns, it should maintain the same criteria as the previous two campaigns. Additionally, Morocco should continue to prioritize the regularization of all women and children who apply. The IHRC commends Morocco for its successful campaign efforts and encourages the continuation of such initiatives. As noted above, regularizing the status of thousands of individuals in migrant and refugee situations reduces the risk of undocumented citizenship and loss of nationality.

D. Codify and Simplify the Birth Registration Process

i. Amend Birth Registration Laws and Procedures to Increase Accessibility

The Moroccan government should increase the amount of time that parents have to register their child during the birth registration process. With a window of just 30 days to register children after birth, the birth registration process is often too difficult to achieve for some individuals in Morocco. Increasing the amount of time individuals have to register their children to one year would make it easier for parents to successfully complete the process.

Additionally, Morocco should allow for in-hospital birth registration. Allowing civil registration procedures in hospitals where children are born would make it easier for parents wanting to register their children. This would eliminate the need to have to travel to a local civil status office in the 30 days after a child is born. With in-hospital birth registration procedures, birth registration would be more accessible and could be completed practically instantly.

To increase access to birth registration for individuals in rural areas located far away from hospitals and civil registration offices, Morocco should establish a state-sponsored mobile

birth registration program. This would bring the civil status offices and birth registration procedures to those unable to travel to a civil status office. The legal clinic at Mohammad V University has started such a program.⁴²⁵ The legal clinic travels to clients who cannot travel to the university and provides them with legal aid.⁴²⁶ A state-sponsored program that eliminates the barrier of travel and distance would help increase birth registration rates for those unable to make the trip to a civil status office. Lack of access to birth registration is among the major barriers to documenting and confirming citizenship, leading to loss of nationality among children and later, adults.

ii. Prohibit Hospitals from Withholding Birth Certificates Due to Unpaid Bills

Morocco must address the problem of hospitals withholding documentation from parents who have unpaid hospital fees. This is a violation of Moroccan and international law. As it stands, individuals who are prohibited from receiving documentation due to unpaid and often unforeseen bills are unable to confirm their citizenship and risk loss of nationality. The withholding of documents for unpaid bills may not target specific ethnic or national groups but it has disproportionate discriminatory impact on migrants who are often in highly precarious situations.⁴²⁷ This goes against Morocco's obligation under CERD to "guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law" with respect to nationality.⁴²⁸ Therefore, Morocco must either enforce existing law regulating how hospitals handle documentation in the face of unpaid fees or create new legislation to address the problem.

E. Provide Procedures to Access Documentation in Multiple Languages

Morocco should make the relevant information regarding birth registration and citizenship criteria more accessible by providing the information about the procedures in languages common to its diverse population. A significant barrier to registration is the fact that documentation is currently accepted and provided only in Arabic, which complicates access for foreigners, migrants, and refugees. This issue disproportionately affects indigent communities, who may not afford translation services or have access to free or low-cost legal assistance, leaving them unable to navigate the civil documentation system. To address this, Morocco should prioritize providing multilingual information and consider additional measures, such as offering translation support or legal assistance, to ensure all individuals can access essential civil

⁴²⁵ Interview with Ilham Hamdai (May 8, 2023).

⁴²⁶ *Id.*

⁴²⁷ See CERD, *supra* note 178, at art. 1

⁴²⁸ See CERD, *supra* note 178, at art. 5.

documentation. This approach would help mitigate the risk of statelessness among non-Arabic speakers and create a more inclusive and equitable system for accessing vital documentation and legal status.

VIII. 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.”⁴²⁹

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.”⁴³⁰ 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.⁴³¹ Civil registration is required in Morocco to obtain identity documents proving citizenship.

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.

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.”⁴³²

Nationality is broadly defined under international law as “membership in a nation or sovereign state.”⁴³³ 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

⁴²⁹ EU AND UN, EXPERT GROUP ON REFUGEE AND INTERNALLY DISPLACED PERSONS STATISTICS – INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS 22 (Mar. 2018), <https://ec.europa.eu/eurostat/documents/3859598/9315869/KS-GQ-18-004-EN-N.pdf/>. [hereinafter “RECOMMENDATIONS ON REFUGEE STATISTICS”]

⁴³⁰ UNHCR, THE STATE OF THE WORLD’S REFUGEES: A HUMANITARIAN AGENDA CH. 6, 1 (1997).

⁴³¹ *Id.*

⁴³² IOM Definition of “Migrant”, IOM, <https://www.iom.int/who-is-a-migrant> (last visited May 4, 2023).

⁴³³ *Nationality: international law*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/nationality-international-law> (last visited May 24, 2023).

alternatively defined as the overarching idea of the legal bond between an individual and a territory.⁴³⁴

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.”⁴³⁵

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.⁴³⁶

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.”⁴³⁷

IX. Appendix II: Stakeholders

A. Non-governmental Organizations

Association Democratique des Femmes du Maroc (ADFM) is a feminist, independent Moroccan NGO, focused on the promotion of equality between men and women; the defense and promotion of legal, political, economic, social, cultural, and civic rights of women with a vision to achieving gender equality; and contributing to strengthen democracy, sustainable climate justice and access to modernity.⁴³⁸

Association Marocaine de Planification Familiale (AMPF) is a Moroccan NGO based in Rabat that is a member of the International Federation for Family Planning.⁴³⁹ Its mission is to “promote, offer and facilitate, as a leader, access to sexual and reproductive health rights for the entire population and in particular the least served and vulnerable.”⁴⁴⁰

⁴³⁴ *Citizenship and Nationality*, INT’L JUSTICE RESOURCES CTR., <https://ijrcenter.org/thematic-research-guides/nationality-citizenship/> (last visited May 24, 2023).

⁴³⁵ RECOMMENDATIONS ON REFUGEE STATISTICS, *supra* note 429, at 21-22.

⁴³⁶ *Id.*

⁴³⁷ See 1954 Statelessness Convention, *supra* note 18.

⁴³⁸ *Association Démocratique des Femmes du Maroc (ADFM)*, WOMEN GENDER CONSTITUENCY, <https://womensgenderclimate.org/member/association-democratique-des-femmes-du-maroc-adfm/> (last accessed May 25, 2023).

⁴³⁹ *About AMPF*, Association Marocaine de Planification Familiale, <https://www.ampf.org.ma/language/en/a-propos-de-lampf-2/> (last accessed May 29, 2023).

⁴⁴⁰ See *id.*

Cent Pourcent Mamans is a Moroccan NGO based in Tangier, which supports single mothers through direct services and advocacy.⁴⁴¹ Its mission is to “defend and promote the dignity, citizenship and full exercise of the human rights of single mothers and their children.”⁴⁴²

Fondation Orient-Occident is a Moroccan NGO based in Rabat but has multiple offices throughout Morocco.⁴⁴³ It provides services to migrants and refugees in Morocco in the form of job training, education, and more.⁴⁴⁴ Additionally, it facilitates migrants’ voluntary return to their countries of origin.⁴⁴⁵

Mobilising for Rights Associates (MRA) is an INGO based in Rabat and working across the Maghreb.⁴⁴⁶ Its mission is to “contribute to changes in four domains – legal, structural, cultural and relational – to promote women’s human rights.”⁴⁴⁷ MRA works for grassroots micro-level changes in behaviors as well as macro-level reform initiatives.⁴⁴⁸

Moroccan Organization of Human Rights (OMDH) is a Moroccan NGO based in Rabat that works with lawyers, experts, academics, and both national and international organizations to publish reports and provide services to victims of human rights violations.⁴⁴⁹ OMDH aims to “diffuse and deepen the awareness of individual and collective human rights in socio-economic, cultural, civil and political matters.”⁴⁵⁰

National Human Rights Council (CNDH) is a Moroccan pluralistic and independent institution.⁴⁵¹ CNDH deals with, “all questions relating to defending and protecting human rights and freedoms, guaranteeing their full exercise and promotion as well as preserving the dignity, rights and freedoms of citizens, individuals and collectives, in strict compliance with national and universal standards in this area.”⁴⁵²

Norwegian Refugee Council (NRC) is an INGO working to protect the rights of displaced and vulnerable people during crises.⁴⁵³ NRC provides assistance to meet immediate humanitarian needs, prevent further displacement, and contribute to durable solutions in 40 countries. It specializes in six areas of expertise, or “core competencies”: shelter and settlements; livelihoods

⁴⁴¹ See *Welcome and Support*, CENT POURCENT MAMANS, <https://centpourcentmamans.com/accueil-et-accompagnement/> (last accessed May 25, 2023).

⁴⁴² *Id.*

⁴⁴³ *Who We Are*, FONDATION ORIENT OCCIDENT, <http://www.orient-occident.org/who-we-are/> (last accessed May 29, 2023).

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

⁴⁴⁶ See *About Us*, MOBILISING FOR RIGHTS ASSOCIATES, <https://mrawomen.ma/about-us/background/> (last accessed May 25, 2023).

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ *Organisation Marocaine des Droits Humains*, WORLD COALITION AGAINST DEATH PENALTY, <https://worldcoalition.org/membre/organisation-marocaine-des-droits-humains/> (last accessed May 29, 2023).

⁴⁵⁰ *Id.*

⁴⁵¹ *About us*, NATIONAL HUMAN RIGHTS COUNCIL (CNDH), <https://www.cndh.org.ma/an/about-cndh/about-us> (last accessed May 29, 2023).

⁴⁵² *Id.*

⁴⁵³ See *About Us*, NORWEGIAN REFUGEE COUNCIL, <https://www.nrc.no/who-we-are/about-us/> (last visited May 25, 2023).

and food security; information, counseling, and legal assistance (ICLA); education; camp management; and water, sanitation, and hygiene promotion (WASH).⁴⁵⁴

B. United Nations Organizations

United Nations Children’s Fund (UNICEF) performs research and advocacy around children’s rights and wellbeing.⁴⁵⁵ It provides a variety of services for children around the world and in Morocco.

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.⁴⁵⁶ In 2016, a Memorandum of Understanding (MOU) was signed between the Moroccan Migration Ministry and interested UN agencies to provide support to the National Immigration and Asylum Policy.⁴⁵⁷

United Nations Women (UN Women) is the UN organization delivering programs, policies, and standards that uphold women’s human rights.⁴⁵⁸ UN Women-Morocco office raises awareness for women’s rights and reports on gender discrimination in Moroccan law and policy.⁴⁵⁹

⁴⁵⁴ *Id.*

⁴⁵⁵ *What We Do*, UNICEF, <https://www.unicef.org/what-we-do> (last accessed May 29, 2023).

⁴⁵⁶ *What We Do*, UNHCR, <https://www.unhcr.org/us/what-we-do#:~:text=UNHCR%20protects%20people%20forced%20to,safe%20place%20to%20call%20home> (last accessed May 29, 2023).

⁴⁵⁷ See *Morocco Fact Sheet*, *supra* note 14.

⁴⁵⁸ UN WOMEN, <https://www.unwomen.org/en> (last accessed May 29, 2023).

⁴⁵⁹ UN WOMEN MOROCCO, <https://www.unwomen.org/en/taxonomy/term/1641> (last accessed May 29, 2023).