

# **The Institute on Statelessness and Inclusion**

## **Submission to the Human Rights Council at the 29<sup>th</sup> Session of the Universal Periodic Review**

### **The United Arab Emirates**

#### **Introduction**

1. The Institute on Statelessness and Inclusion (the Institute) welcomes the opportunity to make this submission to the Universal Periodic Review (UPR) in relation to discrimination in nationality laws and deprivation of nationality in the United Arab Emirates (UAE), and related human rights and statelessness concerns.
2. The Institute<sup>1</sup> is an independent non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 15 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under the 23<sup>rd</sup> to the 28<sup>th</sup> UPR Sessions.<sup>2</sup>
3. This submission addresses two main issues: discrimination against women in nationality legislation, and the discriminatory and arbitrary practices of Emirati authorities in the deprivation of nationality. Both practices either prolong or create statelessness, and also impact a range of other human rights, including access to socio-economic rights and the practice of civil and political rights such as freedom of speech, political participation, and freedom of assembly.

#### **The Universal Periodic Review of The UAE under the Second Cycle (2013).**

4. In 2013, under the second UPR cycle, several recommendations were made to the UAE to address the issue of arbitrary deprivation of nationality.<sup>3</sup> Austria recommended that the UAE 'Take steps to protect human rights defenders, journalists and religious minorities from discrimination, harassment or intimidation, including the arbitrary deprivation of nationality,<sup>4</sup> and Denmark was 'concerned about alleged violations of freedoms of expression, assembly and association, including attempts to deprive political activists of their citizenship.'<sup>5</sup>
5. Unfortunately, there were no recommendations regarding gender discrimination in Emirati nationality law, or to remove its reservation to Article 9 of CEDAW. Notably, the UAE's 2013 UPR report stated that

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<sup>1</sup> For more information see <http://institutesi.org/>

<sup>2</sup> For more on the Institute's UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>.

<sup>3</sup> A/HRC/WG.6/15/L.11

<sup>4</sup> Ibid. at 128.105.

<sup>5</sup> Ibid. at 44

“In 2011 the United Arab Emirates had taken another important step in cementing the rights of women when the United Arab Emirates President issued a decree according citizenship rights to children born to Emirati women but whose father is not Emirati. It accords them citizenship rights, and at the age of 18 they have the choice of taking United Arab Emirates nationality or retaining the father’s nationality. The Government was taking the implementation of recommendations on women’s rights very seriously and was in the process of adopting a National Strategy for the Advancement of Women for 2013 to 2017.”<sup>6</sup>

While the Institute acknowledges this positive development, it reiterates that the UAE’s law, policy, and practice nonetheless falls short of international standards on gender equality. The fact that a mother cannot transfer nationality to her children on an equal basis to men must be addressed.

## Relevant international and national law

6. The UAE has not ratified the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, the UAE, as a Member of the United Nations is obligated by the Charter of the United Nations to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.<sup>7</sup> The human rights and fundamental freedoms referred to in Article 55 (c) of the UN Charter are specified in the Universal Declaration of Human Rights (UDHR), and many are also recognised as principles of customary international law and are therefore universally applicable. Article 15 of the UDHR states that “everyone has the right to a nationality” and “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.
7. According to Article 7 of the Convention of the Rights of the Child (CRC), which the UAE is party to enshrines every child’s right to be registered immediately after a birth and to acquire a nationality, and protects all children from statelessness.
8. Article 24 of the Arab Charter on Human Rights states that “No citizen shall be arbitrarily deprived of his original nationality, nor shall his right to acquire another nationality be denied without a legally valid reason.”
9. The UAE therefore has strong international treaty obligations to ensure that all children born on its territory, regardless of their ethnicity or status or that of their parents or guardians, will acquire Emirati nationality if they would otherwise be stateless.
10. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states in Article 9 that: **(2) States Parties shall grant women equal rights with men with respect to the nationality of their children.** The UAE has been a State party to CEDAW since 2004. However, it has in place a reservation to Article 9.<sup>8</sup>

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<sup>6</sup> Ibid. at 16

<sup>7</sup> Article 55 (c) of the Charter of the United Nations. According to Article 56 of the Charter, It is the obligation of all member states of the UN to take “joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”

<sup>8</sup> A/HRC/WG.6/15/ARE/2

11. As stated by the CEDAW, Article 9 among others is “central to the object and purpose of the Convention and that the reservations impact negatively on the enjoyment by women of their rights.”<sup>9</sup> Therefore, the maintenance of nationality laws which discriminate on the basis of gender are themselves in conflict with the object and purpose of the CEDAW and with the general obligation of all state parties to “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”<sup>10</sup>
12. The UAE is not party to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness or the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The United High Commissioner for Refugees (UNHCR) and CEDAW recommended that the UAE accede to all of these treaties.<sup>11</sup>
13. In terms of the arbitrary deprivation of nationality, the report of the Secretary-General on ‘Human rights and arbitrary deprivation of nationality’<sup>12</sup> discusses the regulation of loss and deprivation of nationality, particularly emphasising that
 

‘Any interference with the enjoyment of nationality has a significant impact on the enjoyment of rights. Therefore, loss or deprivation of nationality must meet certain conditions in order to comply with international law, in particular the prohibition of arbitrary deprivation of nationality.’<sup>13</sup>

## Gender discrimination in nationality law

14. Article 2 of the United Arab Emirates: Federal Law No. 17 for 1972 Concerning Nationality states that a citizen is:
  - B. Anyone born in the country or abroad to a father who is a citizen by law.
  - C. Anyone born in the country or abroad to a mother who is a citizen by law, whose fatherhood is not substantiated.
  - D. Anyone born in the country or abroad to a mother who is a citizen by law, whose father is unknown or without nationality.

Emirati law is therefore based on paternal *jus sanguinis*, nationality is transferred through an Emirati male, although some exceptions exist for females.

15. A decree issued in November 2011 by President, Sheikh Khalifa, gives children of Emirati women married to non-Emiratis the opportunity to apply for citizenship when they reach the age of 18. When this decree was announced it resulted in the acquisition of Emirati nationality by 1,117 children born to Emirati women married to foreigners.<sup>14</sup> However, this

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<sup>9</sup> The CEDAW Committee has noted this on a number of occasions and in Concluding Recommendations for State Parties under review, including in CEDAW/C/ARE/CO/1, para 16.

<sup>10</sup> Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and nineteenth sessions), A/53/38/Rev.1, page 47.

<sup>11</sup> UN High Commissioner for Refugees (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: United Arab Emirates, June 2012, available at: <http://www.refworld.org/docid/4ffd31262.htm>

<sup>12</sup> OHCHR, Secretary-General ‘Human rights and arbitrary deprivation of nationality’ 2013

<sup>13</sup> A detailed report of the impact of deprivation of nationality on the enjoyment of human rights is contained in A/HRC/19/43.

<sup>14</sup> UN High Commissioner for Refugees (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: United Arab Emirates, June 2012, available at: <http://www.refworld.org/docid/4ffd31262.htm>

decree does not eradicate gender discrimination, and is not compatible with the principle of the best interests of the child, as children can only access nationality upon attaining majority. Furthermore, a mother's transmission of nationality according to this decree is neither automatic nor non-discretionary, as required under international standards.<sup>15</sup>

16. The UAE is thus, one of 26 countries around the world that continues to discriminate against women in their ability to confer their nationality to their children on an equal basis with men. Given that gender discrimination in nationality laws has no basis under international human rights law, that it is easily remedied through law reform and that it continues to have significant detrimental human rights impacts including statelessness, the international community has come together to address this phenomenon under the banner of the Global Campaign for Equal Nationality Rights.<sup>16</sup> Furthermore, UNHCR's Global Campaign to end statelessness prioritises the removal of gender discrimination from nationality laws through its Action Point 3.7.<sup>17</sup>
17. As Emirati nationality law does not have a provision that would entitle a child born on its territory to Emirati nationality if it would otherwise be stateless, the discriminatory nature of Emirati nationality law also puts children at heightened risk of statelessness, when a child cannot obtain the nationality of the father.<sup>18</sup> With a substantial number of stateless individuals in the country, this is a particular problem since if the father is stateless, the child will then become stateless regardless of the status of the mother. In order to transfer nationality to their children—unless the father is stateless—women have to actively demonstrate that the father is unknown or that fatherhood was not substantiated, which can be very difficult to do, especially in a culture where having children outside of wedlock is often not accepted and may lead to stigmatisation, further exacerbating the risk that their children will remain stateless.
18. It is reasonable to conclude, that despite the creation of the National Strategy for the Advancement of Women in the UAE, there has been no attempt to remove existing discrimination against women in nationality laws. Parliament has not discussed it since and there has been limited media coverage on the issue. While the authorities appear to consider this issue as resolved, in reality, this remains an important human rights and gender equality challenge.

## Arbitrary deprivation of nationality

19. Article 8 of the United Arab Emirates Constitution states that:

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<sup>15</sup> See UN High Commissioner for Refugees (UNHCR), *Good Practices Paper - Action 3: Removing Gender Discrimination from Nationality Laws*, 6 March 2015, available at: <http://www.refworld.org/docid/54f8377d4.html>

<sup>16</sup> The Global Campaign for Equal Nationality Rights (the Global Campaign) is a coalition of international and national organisations that promotes gender equality in nationality laws, so that women and men can confer, acquire, change and retain their nationality on an equal basis. The Campaign has a Steering Committee comprising Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, UNHCR and Women's Refugee Commission. The Campaign was launched in June 2014 at a Side Event at the 26th Session of the Human Rights Council in Geneva, and has conducted numerous international advocacy activities to encourage states that still maintain gender discriminatory nationality laws to reform their laws and bring them into compliance with international human rights standards.<sup>3</sup>

<sup>17</sup> See UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>

<sup>18</sup> For more information see UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2016*, 8 March 2016, available at: <http://www.refworld.org/docid/56de83ca4.html>

“The citizens of the Union shall have a single nationality which shall be prescribed by law. When abroad, they shall enjoy the protection of the Union Government in accordance with accepted international principles. No citizen of the Union may be deprived of his nationality nor may his nationality be withdrawn except in exceptional circumstances which shall be defined by law”<sup>19</sup>.

20. This article prohibits dual nationality and prohibits arbitrary deprivation of nationality. The law in which ‘exceptional circumstances’ are defined is Chapter two of the United Arab Emirates: Federal Law No. 17 for 1972 Concerning Nationality. This law regulates the loss and deprivation of Emirati nationality and states as follows:

“Article (15) Nationality of the country shall be lost from any person enjoying such nationality in the following cases:

- A. If he engages in military service for any foreign country without permission and refuses to abandon such service when requested to do so.
- B. If he works for the interest of an enemy country.
- C. If he has adopted, voluntarily, a nationality of another country.

Article (16) Nationality shall be withdrawn from a person who has acquired the nationality by naturalization in the following cases:

- 1. If he commits or attempts to commit an action which is deemed dangerous for the security or safety of the country.
- 2. If he has been punished repeatedly for crimes of dishonour.
- 3. If the data upon which the nationality has been granted was proved to be forged, fraud or containing deception.
- 4. If he resides outside the country without reason for a period exceeding four years.

If nationality is withdrawn from a person, it may be accordingly withdrawn from his wife and under-aged children.

Article (17) A national by virtue of law who has acquired a foreign nationality may regain his original nationality if he renounces his acquired nationality. A woman who is national by virtue of law, who has acquired the nationality of her alien husband, may regain her original nationality, if her husband dies, or has deserted or divorced her, on condition that she renounces the nationality of her husband; and her children from this husband may request to have the nationality of the country in case their ordinary residence has been in the country and they express their intention to renounce the nationality of their father.

Article (18) Under-aged children who have lost nationality may regain this nationality upon their request when they reach the age of maturity.”

21. Contrary to these regulations, the UAE’s authorities have been arbitrarily depriving Emirati citizens of their nationality with increasing frequency. This practice is regulated through a decree issued by the president who was requested to issue this by the Minister of Interior.

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<sup>19</sup> Article 8 United Arab Emirates: Constitution, 2 December 1971, available at: <http://www.refworld.org/docid/48eca8132.html>

22. Procedures stipulate that after being signed by the President, the decree should be published in the Official Gazette, as stated in Article 114 of the UAE Constitution.<sup>20</sup> Despite this, the authorities have not published the Decree in the Gazette, and have so far prevented those who have been arbitrarily deprived of their nationality from seeing the Decree. Therefore, it is unclear what legal grounds form the basis for the deprivation of their nationality.<sup>21</sup>
23. The practice of citizenship revocation started with the famous trial of the accused in the “UAE 94”<sup>22</sup> case, a trial which UN Special Rapporteurs and the Working Group on Arbitrary Detention determined was unfair and arbitrary due to lack of due process.<sup>23</sup> Seven of those on trial, all political opponents of the government, were stripped of their nationality. Since then, at least 60 people have been arbitrarily stripped of their nationality.<sup>24</sup> While the state claims that these measures are to combat terrorism, it is evident that the deprivation of nationality is politically motivated.
24. The UAE has yet to demonstrate that its practice of arbitrary deprivation of nationality is not incompatible with its own constitution as well as its international obligations. In addition to being arbitrary, this practice is also indiscriminate, with some reports of entire families having had their nationality stripped off them, in retaliation to the political views of the husband/father. For example, Mr. Obaid Ali Al Kaabia, was arrested and forcibly disappeared by the State Security Apparatus in 2014. When he was released his citizenship was arbitrarily revoked, along with that his wife and children, on grounds of them being a ‘threat to national security’.<sup>25</sup>
25. Others stripped of nationality include: Sheikh Mohammed Abdul-Razzaq Siddiq, Dr. Hussein Al Hammadi, Dr. Shaheen Abdullah Al Hosni, Mr. Hussein Munif al-Jabri, Mr. Hassan Munif al-Jabri, Prof. Ibrahim Hassan Al Marzouki, Prof. Ahmed Ghaith Al Suwaid, all opposition activists.

## Human rights consequences

26. Being denied the right to acquire a nationality at birth due to discrimination, or being arbitrarily deprived of nationality are both egregious violations of human rights law, including the right to a nationality, non-discrimination, equality before the law and due process. Additionally, lack of nationality can lead to other significant violations of human rights. Being stateless in the UAE may result in the inability to access various employment opportunities, or, in violation of Article 7 of the CRC, to register a new-born baby. The Emirates have also stated that those who have been deprived of their nationality may be at risk of arrest for being

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<sup>20</sup> Article 114 United Arab Emirates: Constitution, 2 December 1971, available at:

<http://www.refworld.org/docid/48eca8132.html>

<sup>21</sup> International Centre for Justice and Human Rights, <http://ic4jhr.org/en/activites/reports/619-uae-revocation-of-nationalities-in-the-united-arab-emirates-2.html>

<sup>22</sup> The Guardian, *The UAEs bizarre political trail of 94 activists*, <https://www.theguardian.com/commentisfree/2013/mar/06/uae-trial-94-activists>

<sup>23</sup> HRW, The UAEs intolerance of criticism continued in 2016.

<sup>24</sup> International Centre for Justice and Human Rights, <http://ic4jhr.org/en/activites/reports/619-uae-revocation-of-nationalities-in-the-united-arab-emirates-2.html>

<sup>25</sup> ICFAUE, Revocation of nationalities in the United Arab Emirates, 2017, <http://icfuae.org.uk/research-and-publications/revocation-nationalities-united-arab-emirates>

illegally resident in the country.<sup>26</sup> A stateless individual may not be able to instruct a lawyer, own property, have access to health and social services and they may have difficulties accessing education at schools and universities. Being stateless in the UAE may mean that an individual is denied their freedom of movement, but may also lead to deportation, despite there being no country of nationality to remove such persons to.

## Recommendations

27. To address the multifaceted issue of discriminatory and arbitrary nationality law and policy, the Institute urges states to make the following recommendations to the UAE:
- i. Remove the UAE's reservation to and ensure full compliance with Article 9 CEDAW.
  - ii. Amend the Citizenship Law to enable Emirati women to transfer nationality to their children without restriction, on an equal basis to men. Ensure that this is completed without delay, in accordance with international standards.
  - iii. Accede to and fully implement the 1954 and 1961 Statelessness Conventions, the ICCPR and the ICESCR.
  - iv. Withdraw the Ministry of Interior's authority to deprive persons of their nationality through the issuance of orders under decree, and in particular, prohibit any deprivation of nationality that is disproportionate, discriminatory, indiscriminate and arbitrary, including by resulting in statelessness.
  - v. Ensure equality before the law, access to justice, redress and the right of appeal for all persons who have been deprived of their nationality.
  - vi. Reinstate the nationality of all persons whose nationality was arbitrarily deprived, prioritising those who have consequentially been left stateless, reinstate immediately the nationality of spouses and children who have been stripped of their nationality.
  - vii. Ensure that stateless individuals living in the UAE enjoy full access to their fundamental human rights, including the right to education, travel, healthcare, own property, liberty and security of the person and access social services.

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<sup>26</sup> *ibid.*