



National Council for Women

Women's Rights in the Nationality Laws

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First Edition
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A message to the reader

Islam is the religion of pure nature which calls for equality between all people in rights and duties regardless of religion, creed, gender or color. This fact conflicts with the regressive attitudes which arose in the post 25 of January revolution Egypt and led to an increasing trend towards depriving women of the gains they have achieved throughout the various stages of their struggle and history.

In view of the above, the National Council for Women (NCW) deemed it important to clarify some issues and respond to the erroneous claims being raised with regard to women's rights under the Islamic Shari'a and the international conventions ratified by Egypt. It has, therefore, assigned some specialists from amongst the intellectuals, legal experts and Shari'a scholars to refute these claims through a number of booklets, which explain women's issues and rights under the Islamic Shari'a, laws and international conventions.

NCW would like, in this respect, to express its thanks and appreciation to this distinguished group of specialists who contributed their effort in preparing these booklets. Their contribution is significant in pursuing NCW's goals to enhance the role of women and protect their rights. It will also greatly help in changing the erroneous stereotypes which lead to the negative portrayal of women's image within society.

Ambassador. Mervat Tallawy
President of the National Council for Women



Foreword

The Universal Declaration for Human Rights stipulated that nationality is a right for every individual from which no one should be arbitrarily deprived. Nor should one be deprived from one's right to change it (article 15).

Thus, the basic rule is to equate between men and women in enjoying nationality and in all the aspects related to the nationality of their children. This rule is recognized by special provisions incorporated in Egypt's Nationality Law, in which there is no discrimination between men and women as far as the right to acquire the Egyptian nationality, change or retain it, is concerned.

To remove discrimination against women with regard to the nationality of their children in case of marriage to a non-Egyptian, Law No. 154/2004 was issued to realize full equality between men and women with regard to passing their nationality to their children, a development which was both important and necessary.

Introduction:

Nationality is a legal and political bond which links the individual to a certain state. This bond determines the rights and duties of the individual within the state which he/she carries its nationality. It is further one of the most important human rights in modern times. The right to nationality was enshrined in the Universal Declaration for Human Rights as a right for every individual from which one should not be arbitrarily deprived, Nor should one be deprived from the right to change one's nationality (article 15).

The general rule is that men and women are equated in the right to enjoy nationality, being one of their human rights. It is not also acceptable, when a woman marries a foreigner, or when her husband changes his nationality, to automatically change her nationality or for her to become stateless or to impose on her the nationality of her husband. (article 9/1 of CEDAW). Among the rules provided for by the legislations of civilized countries is that women are equated with men with regard to the nationality of their children, and this is one of the provisions of CEDAW (article 9/2) on which Egypt made a reservation when it ratified the convention. The Egyptian legislations subsequently evolved to recognize women's equal rights to that of man with regard to the nationality of their children.

What are women's rights in the nationality law? And what are the aspects of inequality between them in respect of enjoying the Egyptian nationality?

First, the legal equality between men and women with regard to nationality:

The general rule in this respect is based on the general principles and provisions which provides for equality. This rule was emphasized by specific provisions in the Nationality Law.

a) Equating between men and women in rights:

Equality does not need special provisions, but it is important to emphasize it to remove any confusion which might be raised by some with regard to women's right to demand equality with men in rights and duties in all spheres of life. This equality is derived from the following general legal principles and provisions:

- 1– The rules and provisions of the Islamic Shari'a:** Equating between men and women in religious duties and the right to rewards and punishment are among the general rules of the Islamic Shari'a as indicated by the Holy Quranic Verses and the traditions of the Prophet (PBUH). This is a general Islamic rule with a few exceptions in partial matters which stresses the principle and does not negate it. These exceptions are due to certain historical circumstances existing at the time of the rise of Islam. This means that if these circumstances change, it will be necessary to reconsider them and make amendments to them where necessary in fulfillment of the rule that "rules are to change as time changes".

The rules of the Islamic Shari'a equate between men and women in rewards and punishments. Therefore, it is not permissible to discriminate between them in rights including the right to own and dispose of one's property and manage one's money, in addition to the political rights and the right to enjoy nationality in the state in which one lives. This includes

any form of other discrimination which is not covered by the rules of the Islamic Shari'a, but was mentioned by some Islamic jurists whose opinions make it illicit for women to assume some public office posts or practice certain activities. It is well known that juristic opinions are reasoning based on deduction and are therefore not binding. The proof is that there are other juristic opinions which do not approve depriving women from any of their rights. Thus, while some public posts are denied for women by some jurists, they are approved by others.

2– Constitutional provisions

Constitutional provisions emphasize the principle of equality among all citizens in rights and duties without any discrimination based on race or gender. Egyptian constitutions which existed prior to the January 25, 2011 revolution provided for the principle of equality between all citizens before the law. Also, the Constitutional Declaration of March 30, 2011 stresses in its seventh article that all citizens are equal before the law, and they are equal in rights and duties with no discrimination between them on the basis of sex or gender. It is hoped the new constitution which is currently being drafted will further stress the principle of equality between men and women without condition and restriction, and will ensure that the state will guarantee this equality and prohibit discrimination against them in human rights.

3– International provisions

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These international conventions emphasize the principle of equality between men and women whether these are general conventions for human rights or pertaining only to women's rights. With regard to the nationality law, these covenants emphasized the right of every person, man or woman, to enjoy nationality, the impossibility of arbitrarily depriving him/her from this nationality and the right to pass it to his/her children males, or females, without discrimination.

b) Applying the principle of equality in the area of nationality

The current Egyptian nationality law is compatible with the provisions of article 9 of CEDAW whether with regard to women's right to nationality or their right to pass their nationality to their children.

1– The nationality of Egyptian women:

The Egyptian law does not discriminate between men and women in the right to enjoy the Egyptian nationality, and the manifestations of this equality are as follows:

- The Egyptian law does not differentiate between men and women with regard to their right to acquire, change or retain the Egyptian nationality.

- When an Egyptian woman marries a non-Egyptian man she does not lose her Egyptian nationality. Rather she retains it, and she can even request to acquire the nationality of her husband upon marriage or during the marital life if this is permissible by the nationality law of her husband's country. Also when an Egyptian man marries a non-Egyptian woman, he does not lose his nationality.
- When an Egyptian woman acquires the nationality of her non-Egyptian husband, she can retain her Egyptian nationality if she indicates her desire to do that within one year of the date of acquiring the nationality of her husband.
- When an Egyptian man acquires the nationality of another country and loses his Egyptian nationality, his wife does not lose her Egyptian nationality unless she requests to acquire the nationality of her husband according to the laws of the country of his new nationality. However, she can still maintain her Egyptian nationality.
- It is permissible for an Egyptian woman who lost her Egyptian nationality when she acquired the new nationality of her husband and did not declare her desire to retain her Egyptian nationality to regain the Egyptian nationality upon the approval of the Minister of Interior.
- An Egyptian wife who lost her Egyptian nationality and the wife who was of Egyptian origin may acquire the Egyptian nationality once it is granted to her husband or once she gets married to an Egyptian national when she advises the Minister of Interior of her desire to do so. This is an aspect of equality between men and women with regard to the enjoyment of the Egyptian nationality.

2– The nationality of the children of an Egyptian mother:

Previously, the Egyptian Nationality Law No. 26/1975 provided in its second article that the Egyptian nationality is granted to:

1) a child born to an Egyptian father. 2) a child born in Egypt to an Egyptian mother and his father is of unknown nationality or has no nationality. 3) a child born in Egypt to an Egyptian mother and his lineage to his father is not proven.

With regard the child born to an Egyptian mother and a non-Egyptian father whose nationality was known, the child did not have the right to enjoy the Egyptian nationality. He only had the right to enjoy the nationality of his non-Egyptian father. This means that the Egyptian nationality law did not recognize equality between Egyptian fathers and Egyptian mothers in their right to pass their nationality to their children. This right was granted to the Egyptian father alone whose children become Egyptians regardless of whether their mothers were Egyptian or not. If an Egyptian mother who gets married to a non-Egyptian, her children from that marriage do not acquire the Egyptian nationality even if they were born in Egypt. Rather, they acquire the nationality of their father if he had a known nationality and it was proven that they were his children.

In 1981, Egypt ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), thus it acquired the force of law in Egypt. However, Egypt made a reservation on article 9/2 which obliges the Member States to grant women an equal right with regard to the nationality of their children. This provision means that countries are required to recognize the right of their female citizens to pass their nationality to their children regardless of the nationality of their father

Egypt justified its reservation on this article on the grounds that **“it was intended to avoid giving the child two nationalities in case the nationality of his parents were different in order not to negatively affect his future, as the best situation for a child is to acquire the nationality of his father, and**

this does not affect the principle of gender equality as a mother would customarily agree that her child acquires the nationality of his father”

However, the Egyptian reservation on this article retained the discrimination between Egyptian mothers and fathers with regard to the nationality of their children if the mother was married to a non-Egyptian, while the children of an Egyptian man married to a non-Egyptian woman, could acquire the Egyptian nationality of their father, in addition to the nationality of their mother if the law of her country permits that.

Calls to remove this kind of discrimination did not meet with success, although this stipulation contradicts the provisions of the Egyptian constitution which provides for equality between men and women without discrimination on the basis of gender. It also contradicts the CEDAW as the reservation on article 9/2 contradicts with the purpose and substance of the Convention. The Egyptian organizations advocating women’s rights, men of law and activists did not stop calling on the Egyptian legislators to remove this discrimination between Egyptian men and women, which harmed the children of Egyptian mothers, especially those whose marriage to non-Egyptian husbands did not succeed. They returned to Egypt with their children to be considered foreigners in their homeland and among their relatives and acquaintances.

In 2004, law No. 154 was promulgated to amend the Egyptian Nationality Law No. 26/1975 eliminating the discrimination between Egyptian fathers and mothers in their right to pass their nationality to their children and providing for equality between those born to Egyptian fathers and mothers with regard to the right to acquire the Egyptian nationality. Article 2 of this law stipulated that “Anyone who is born to an Egyptian father or mother shall be an Egyptian”. According to his provision, a

child, born to an Egyptian mother becomes Egyptian whether he was born in Egypt or abroad, and regardless of the condition of his father: whether or he carries a known nationality.

Law No. 154/2004 addressed the situation of children of Egyptian mothers and non-Egyptian fathers, prior to putting this law in force. Those were non-Egyptian according to the nationality law, but under the new law they can advise the Minister of Interior of their desire to acquire the Egyptian nationality and they are to be considered Egyptian by a decree issued by the Interior Minister or after a period of one year of their declaration that they wish to be Egyptians in case no decision was issued to reject their request.

Thus law No. 154/2004 conformed to recent trends with regard to granting the right to men and women to pass their nationality to their children. This is a positive development in which many Arab and non-Arab countries were ahead of Egypt. It is also compatible with Egypt's international commitments and adds new gains to the rights of Egyptian women, in addition to removing a form of discrimination against them, which was always the subject of severe criticism on the part of people of law and activists. Now the question is: has equality really been fully achieved between men and women under the Egyptian Nationality Law?

Second, the real discrimination on the ground between men and women with regard to nationality:

The nationality has two types: original nationality and acquired one.

- 1– The original nationality is the one which is granted to a child by force of law once he is born, without the need to take any measures whether upon birth or when to child comes to age.

- 2– The acquired or emergency nationality is the one which is granted to the person, subsequent to the date of birth, even if it was based on a cause related to his birth, so the person would acquire the nationality through naturalization according to measures and conditions determined by the law or the statutes implementing it.

a) The aims of the legal intervention of 2004:

All aspects of the Egyptian nationality are regulated by Law No. 26 for 1975, as amended by law No. 154 for 2004, which was intended to eliminate discrimination against women with regard to the nationality of their children and achieve full equality between men and women regarding their right to pass their nationality to their children.

This legislative intervention was imperative and necessary and it was even considered late, but it achieved the following important objectives:

- 1– It achieved the right of equality between Egyptian fathers and mothers in passing their nationality to their children. In this way, Egyptian legislators remedied an injustice which was considered a flaw in the Egyptian nationality law, and this is in keeping with the developments taking place in Egypt to support gender equality.
- 2– The above development was compatible with the recent trends of nationality laws across the civilized world, which equates between men and women in their right to pass their nationality to their children.
- 3– Fulfilling Egypt's international commitment to remove discrimination against women with regard to their right to pass

their nationality to their children, a commitment from which Egypt is not exempted because of its reservation on article 9/2 of CEDAW.

- 4– Activating the provisions of the Egyptian constitution which provides for equality between men and women in rights and duties. The above-mentioned amendment removed the suspicion of unconstitutionality marring the nationality law.
- 5– Respecting the principle of equality provided for by the Islamic Shari'a between men and women. As the principles of Islamic Shari'a are the main source of legislations in Egypt and hence, these should not be violated because of the nationality law.
- 6– Putting an end to the sufferings of Egyptian women and their children in trying to obtain the basic rights pertaining to citizenship e.g. permanent residence, education, work and political rights etc.

Evidently the objective of the legislative amendment was to enable the children of a non-Egyptian husband to enjoy the Egyptian nationality once they are born without the need to resort to other measures to obtain it, as is the case of the children of Egyptian fathers. Yet, the way of granting the Egyptian nationality to children of Egyptian mothers made the legislative amendment devoid of its purpose whether they were born prior to or after the date of Law 154/2004 coming into force.

b) The nationality of the children of Egyptian mothers born after the date of the new law came into force:

The Decree of the Interior Minister No. 12025/2004 was issued to determine the measures for granting the children of Egyptian mothers born to non-Egyptian fathers the Egyptian nationality

in implementation of Law No. 154/2004. The first article of the decree indicates that it covers the children of Egyptian mothers born after the new law came into force. These children are required to submit requests to obtain the Egyptian nationality to the passports departments or the civil register offices. The law also include those children born before the new law came into force, and they have to notify the Interior Minister of their desire to obtain the Egyptian nationality. The issuance of a decision by the Minister of Interior approving their request or the elapse of one year without rejecting the request is required in order for them to obtain the Egyptian nationality.

The following notes can be made on the Interior Minister's Decree:

- 1- The Decree contradicts the law it was issued to implement, because article 1 of the decree makes the procedures for enjoying the Egyptian nationality cover the children of an Egyptian mother born to a non-Egyptian father before or after the new law came into force, while the law did not make obtaining the nationality for children born after it came into force conditional on taking any procedures as is the case with the children of an Egyptian father. In this respect the law states that " Anyone who is born to an Egyptian father or an Egyptian mother shall be Egyptian, without stating any specific measures to be taken.
- 2- The nationality to be enjoyed by the children of an Egyptian mother from an Egyptian father who are born after the new law came into force is an original nationality, which is proven by the force of law once they are born, and without any need to submit any requests to obtain it. Hence, there is no need to make a discrimination in this respect.
- 3- The Minister of Interior's Decree requires submitting a request to enjoy the Egyptian nationality for the children of an Egyptian

mother from a non-Egyptian father, even if they were born after the new law came into force, and this condition is not required for the children of an Egyptian father born to a non-Egyptian mother, a discrimination which does not exist in the new law.

- 4– The above law discriminates between the children of Egyptian fathers and Egyptian mothers and it has no grounds in the new law; rather, it contradicts it in letter and spirit. While the law aims to eliminate discrimination, the administrative body insists on maintaining it, turning the nationality of the children of Egyptian mothers into an acquired nationality not an original one.

In view of the above, the Minister of Interior's Decree has to be amended to limit the procedure therein to the children of Egyptian mothers born before the new nationality law come into force.

c) The nationality of the children of Egyptian mothers born before the new nationality law came into force:

Children born when the nationality law No. 26/1975 was in force did not have their right to the nationality of their mothers recognized under this law. That is why, legislators wanted to address the problem of these children in law No. 154/2004, and article 3 therefrom provided for the right of those children to enjoy the nationality of their mother if they so desire through advising the Interior Minister of this request. A decision from the latter has to be issued to approve their request, upon which they will have acquired the Egyptian nationality. Otherwise, a period of one year has to pass from the date of their request without a justified decision being issued from the Interior Minister to reject the request.

This means that the children of Egyptian mothers who were born

before the new law was issued have the right to acquire the emergency nationality through a notice to be submitted to the Interior Minister. Acquiring the nationality in this case would be explicit or implicit in the following way:

- 1- An explicit approval can be issued by the Interior Minister, who has the discretion to accept granting or rejecting the nationality request on the grounds of not meeting the required conditions contained in a decree to be issued by him,. The refusal has to be justified so that it can be challenged before the administrative court.
- 2- The nationality can be acquired implicitly by the elapse of one year from the date of submitting the request to obtain it. The non-issuance of a justified decision rejecting the request implies that there is no reason why the nationality should not be granted to the applicant; otherwise, the Minister would have rejected the request.

The law requires that a number of conditions be met in order for the acquired Egyptian nationality to be granted to non-Egyptians and this applies to children of an Egyptian mother born to a non-Egyptian father, before law No. 154/2004 came into force. These conditions are as follows:

- 1- He/she has to be of sound mind, not inflicted by a disability which makes him/her dependent on society. The latter condition contradicts the international convention for the rights of individuals with special needs, which was ratified by Egypt.
- 2- He/she has to be of good manners, conduct and reputation, and not convicted for a felony or a sentence restricting freedom in a crime involving a breach of honor, unless he was vindicated.
- 3- He/she has to have legitimate means of livelihood.

- 4– He/she has to be fluent in Arabic.
- 5– He/she has to have a residence in Egypt.
- 6– He/she has to obtain the approval of the Interior Minister for granting him the Egyptian nationality.

Since the issuance of Law 154/2004, approvals have been issued from the Interior Minister to grant the Egyptian nationality to the children of Egyptian mother from non-Egyptian fathers, and no requests have been refused except for security reasons related to preserving the interests of the country, which is a legitimate right for any country. Previously, requests from children of Egyptian mothers born to Palestinian fathers were rejected to maintain the Palestinian identity, but the administrative court cancelled this practice as it violates the principle of equality in rights between the Egyptian wives of non-Egyptian husbands.

d) Legal discrimination between male and female Egyptians in passing their nationality to their spouses:

The main feature of the Egyptian nationality law is protecting the rights of Egyptian women and equating between men and women in the right to pass their nationality to their children, and retaining the nationality of the Egyptian woman even after her husband loses it or acquires another foreign nationality etc. Yet, the nationality law still contains gender discrimination when the Egyptian man gets married to non-Egyptian woman and the Egyptian woman gets married to a non-Egyptian man, the wife of the man can obtain his nationality while the husband of the woman cannot.

The foreign wife of an Egyptian man can acquire the Egyptian nationality by virtue of a decision to be issued by the Interior Minister if she declares her desire to do so, and the marital relation did not cease to exist for any reason other than the death of the husband until after two years of submitting the application for the

nationality (article 7 of the nationality law), while the law does not recognize this right for the husband of the Egyptian wife. He cannot obtain the nationality of his Egyptian wife no matter how long he has been married to her, and he has no other option but to try to obtain the Egyptian nationality for reasons other than marriage, such as residence etc.

e)The administrative discrimination between men and women with regard to moving and travelling:

There have been no legal restrictions on women's right to move and travel abroad after the constitutional court cancelled in 2000 the legal provisions which made women's right to obtain or renew a passport conditional upon the approval of the husband who can also request its withdrawal.

However, the administrative department still refuses to issue women with passports if their husbands do not approve it. The administrative court, however, obliges the administrative department to issue such women with passports upon their initiation of a legal action. The administrative court further emphasizes in its rulings that it not the right of husband to prevent his wife from travelling, and the administrative authority does not have the right to withdraw the passport of the wife upon the request of her husband. Nor is it the right of the director of the Passports and Immigration Department to do that. This ruling is based on the established right of every individual to personal freedom, which is considered a national right for each Egyptian man, woman. The freedom to move is part of the personal freedom, and the Egyptian constitution guarantees the right to permanent and temporary immigration to all Egyptians. Moreover, the Supreme Constitutional court has ruled that the Minister of Interior's Decree No. 3937 for 1996 which made women's right to obtain a passport conditional upon the approval of the husband, was unconstitutional. So, will Egyptian women continue to retain this right after the January 25, 2011 revolution?