

Joint Submission to the Human Rights Council at the 37th Session of the
Universal Periodic Review

Ruwad al Houkoug FR

&

Legal Agenda

(Third Cycle, November 2020)

Lebanon

Stateless Persons Access to Justice

- 1- Ruwad alHoukoug FR is a Lebanese NGO established in 2014 by a group of human rights defenders active since 1999 in the defense of marginalized groups in Lebanon, particularly stateless persons, refugees, and migrants. Ruwad alHoukoug FR's mission is to promote legal protection of vulnerable population, and to advocate for law reforms and rule of law. Ruwad alHoukoug FR is a member of several international networks specialized in combating statelessness and protecting refugees.
- 2- The Legal Agenda (LA) is a Beirut-based non-governmental, non-profit organization established by a group of legal and social sciences professional with a main office in Beirut and a branch office in Tunisia. It addresses issues of judicial activity, reform, and transformation in the context of social and political change in the Arab world, and monitors judicial and legal policies in Arab countries, with a specific focus on the independence of the judiciary and the access to justice of marginalized communities.
- 3- This submission focuses on the difficulties and obstacles stateless persons face to access justice and put an end to their statelessness during the judicial processes.

The Universal Periodic Review of Lebanon under the First and Second Cycles

- 4- The issue of fair procedures and promotion of access to justice was not raised during the 2 cycles of review of Lebanon by the Human Rights Council.

Lebanon's International Obligations

- 5- Lebanon is a State Party to the International Covenant on Civil and Political Rights that guarantees the right to fair procedures. Lebanon made no reservations on the Covenant.

Lebanon's National Legal Framework

- 6- The Lebanese code of civil procedures, Article 7, provides that everyone has the right to access courts to claim or defend a right.
- 7- The Lebanese code of civil procedures provides for legal aid for litigants who cannot afford the court fees and costs (Art. 425). However, as per Art. 426, this is available for Lebanese nationals only and for foreigners habitually resident in Lebanon on condition of reciprocity. The law provisions exclude the stateless persons who have stateless origins. However, in an interpretation of the law, stateless who are born to Lebanese fathers may benefit if the children are minor and the father is applying to the court. If the adult children of a Lebanese father are submitting their lawsuit by themselves, the text may not apply.
- 8- Stateless persons in Lebanon have the possibility to claim the Lebanese nationality by resorting to courts, if they prove a link with Lebanon by blood, birth or origins.
- 9- The judicial course is the only available solution for those persons to put an end to their statelessness.
- 10- A person born to a Lebanese father is considered Lebanese as per Article 1 para 1 of the nationality law (Decision 15 dated 19/1/1925). However, according to Article 11 of the civil registration law of 1951, the birth should be declared to the Civil Status Administration within one year. After the expiry of this delay, a lawsuit should be filed to register the birth, following Art. 12 of the same law. The same applies on those born in Lebanon to fathers of foreign nationalities who failed to register the birth of their children within the one year since birth.
- 11- A person born in Lebanon and would be otherwise stateless is considered Lebanese, in the following three cases: if it is proven that this person did not acquire a foreign nationality by birth, if the person is born to unknown parents or parents of an unidentified nationality.

Although the law does not specify that acquiring the nationality in these cases requires a lawsuit, the administrative and judicial practices refer these cases to the judiciary, since the 1960s.

- 12- Any person who can prove that they or their ancestors were Ottomans and residing in Lebanon on 30 August 1924 and did not register in the 1932 population census and any of the extensions given for this registration until late 1950s, is entitled to automatic Lebanese nationality by virtue of Article 1 of Decision 2825 of 30 August 1924 that established the Lebanese nationality. However, this automatic right should be declared by a court of law, as per Art. 1 of the law 67/1968 concerning the nationality lawsuits.
- 13- There are no specific procedures for late birth registration or confirmation of nationality lawsuits. These lawsuits follow the law on civil procedures in terms of jurisdiction, costs, representation, delays and proof of evidence.
- 14- The law does not specify the type of lawsuit a stateless person should submit according to the reasons of their statelessness. The jurisprudence considered that late birth registration requests should be submitted by a simple non-contentious lawsuit, while the other lawsuits should be brought against the State.
- 15- However, many judges call the State to join late birth registration lawsuits, especially if they concern adult claimant or children of naturalized persons. This turns the lawsuit into a contentious one and lead to longer process since the State needs to be notified and would submit an opinion and sometimes a legal brief.

Obstacles and Problems to Access Justice

- 16- Legal recourse and judicial processes in Lebanon have been facing chronic and long-term problems that cause individuals to avoid the legal system and that limit access to justice making this right futile.

These problems have now become a topic discussed by Lebanese citizens daily, and their negative consequences are not only restricted to stateless individuals. However, in the case of stateless persons, these problems impede the possibility of such individuals to end their statelessness.

- 17- The judiciary is not encouraging ending statelessness and access to justice. The solution of resorting to courts to end statelessness is faced with several obstacles throughout its course, and problems start even before filing the lawsuit and continue until its completion. While some of these obstacles are related to the individuals in question, most of them are related to the judicial system itself.

Proof of evidence

- 18- The most important obstacle that stateless people face as they seek to put an end to their statelessness, is the lack of evidence to prove their right to a nationality, including documentation from official records related to information on their family history and nationalities, their parent's marriage and their births. This problem of providing proof becomes more complicated with the absence of a national documentation and history system and the difficulty to access official information and records, despite the recently issued law of Access to Information.¹ The lack of proof is reflected in the entire course of the lawsuit until reaching the final decision, which usually lacks a strong factual, or even legal basis – especially in relation to denying the individual the nationality. This is due to the lack of an integrated mechanism to gather proof and information from various sources by the court, along with the agencies and authorities assigned with helping it build the case.
- 19- According to Article 132 of the Lebanese Code of Civil Procedure, the burden of proof lies with the person who brings a claim in a dispute. However, it seems that in registration or nationality lawsuits, the

¹ Law 28 dated 10/2/2017

- burden of proof lies with the stateless plaintiff in terms of providing evidence for what they claim or to deny what the state counterclaims against them.
- 20- In registration lawsuits, the elements of proof usually consist of: a) investigations carried out by each of the Gendarmerie and the General Security upon the order of the court; b) DNA tests and a Shari'a (Religious) Court ruling proving kinship for Muslims or a Baptism Certificate for Christians; c) documents proving the information of the claimant; and d) documents proving the marriage of the parents if the child is born within wedlock, or an acknowledgement of paternity if the child is born outside lawful wedlock, and supporting documents for both parents (or one of them).
- 21- In nationality lawsuits, the means of proof vary according to the legal grounds of the case and may include, in addition to the investigations carried out by the security services, official attestations or certificates from registrars or records – if possible – or attestations from foreign embassies, local mayors (*mukhtars*), or witnesses
- 22- In order to file a registration or nationality lawsuit, claimants should procure the basic documents and attach them to the legal complaint brief or legal petition brief. Such documents can generally be obtained from local mayors or religious courts. There is no official unified price for obtaining the necessary documents, and claimants usually encounter many unforeseen costs while carrying out procedures related to procuring the required documents.
- 23- Documents required from stateless individuals usually include attestations, certificates, and other related papers issued by the mayor of the place of residence, the place of birth of the claimant, the location in which the parents of the claimant got married, or the place of the parents' registration and records.

24- Although the Code of Civil Procedures provides that courts should carry out their own investigations in non-contentious lawsuits, the common practice in non-contentious registration lawsuits consists of referring the task of conducting investigations from courts to the Gendarmerie or General Security. Courts rely almost exclusively on the results of these investigations without complementing them by its own investigations. In contentious nationality lawsuits, investigations are conducted by the General Security, upon the request of the Ministry of Justice Committee of Lawsuits in preparation for its counterclaim to the case. The courts may also carry out investigations related to the lawsuits brought before them.

25- In non-contentious proceedings, investigations, according to the Code of Civil Procedures, aim at enlightening the judge on the subject-matter of the request, and in contentious lawsuits, they aim at complementing the presented evidence.

26- However, court documents show that courts do not specify the scope of such investigations in its orders or referrals, nor do they specify whether such investigations should include interrogations or inspections, as it leaves this decision up to the organ conducting the investigation. Investigations conducted in the framework of registration related lawsuits are usually limited to proving and substantiating the claims mentioned in the petition although, in some cases, they might not correspond to reality.

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28- Furthermore, in non-contentious registration lawsuits, courts do not usually complement the investigations by questioning concerned parties or witnesses, as courts rather rely on the commissioned investigations. However, in contentious lawsuits relating to acquisition of nationality, courts conduct interrogations either automatically or upon the requests of the litigants for the purpose of complementing the judicial file or the conducted investigations.

- 29- In nationality lawsuits, investigations by security bodies and by the courts are not elaborate and do not provide either party of the lawsuit with any new elements that can be used to support a claim or refute it.
- 30- In nationality lawsuits, the Committee of Lawsuits, which itself orders the investigation conducted by the General Security, does not give much importance, generally, to the outcome of the investigation as it belittles it and considers it merely a transcription of the statements and attestations made, especially when the investigation confirms the claimant right.

Cost

- 31- One of the main reasons that discourages stateless individuals from accessing the justice system to end their statelessness – and sometimes even from continuing with their lawsuits – is the cost of litigation in registration and nationality lawsuits. Although legal and judicial fees are not expensive in themselves, the cost of the entire proceeding exceeds the possibilities of many. The global cost of a lawsuit for one adult person would amount to one million LBP in average, without the lawyer fees, and including the cost of documents, religious decisions on marriage and kinship, power of attorney, registration of power of attorney at the Bar Association. If a DNA test is requested, it would cost around 200 thousand LBP per person plus the court allowance that varies between 250 thousand to 500 thousand Lebanese pounds.
- 32- Although the Law on Mayors stipulates that the tasks carried out by the mayor shall be free of charge, and they may only charge symbolic fees specified by a decree, in practice, mayors usually charge, for every document they issue, fees varying from one mayor to another. Interestingly, some mayors charge big amounts for documents and transactions that usually cost very little, especially if they notice that the individuals concerned do not know much about the procedures. It is also worth mentioning that mayors usually refuse to issue receipts of

- the amounts paid to them by the individuals concerned in exchange for issuing a document or authenticating one.
- 33- Mayors are not accountable to the State bodies as they are an elected local representative and there is no supervision and control on the fees they charge in exchange of the documents they issue or authenticate or services they provide.
 - 34- Furthermore, due to the dual legislative system in Lebanon – whereby validity of marriages and legitimacy of children are regulated by religious laws - persons seeking to put an end to their statelessness will have to bear the burden of costs related to religious court rulings proving marriage and kinship. Such costs also are not unified among courts belonging to the different religious groups, and even between those belonging to the same religious groups.
 - 35- Muslim Shari'a courts are under the authority of the Prime Minister. Christian courts are under the authority of the Church. However, there is no effective control on religious courts by the State.
 - 36- Civil courts that request the religious rulings, based on the dual legislative system, do not consider these rulings as conclusive evidence. Courts are quasi systematically ordering DNA tests to be conducted in late birth registration lawsuits to prove the blood bond, as an almost mandatory means of proof, even if there is a proof of kinship and no conflict on the filiation. As such, courts are creating a new system of mandatory proof of evidence that contradict the legal principles on filiation and the legal system that left the proof of filiation to the religious courts based on a “presumption of parenthood”.
 - 37- One of the main costs incurred in registration and nationality lawsuits is that of the power of attorney, especially after the issuance of the Budget Law of 2017. This cost used to vary from one Notary Public to another, including the official fees of which the value and division

varies. The power of attorney charge is per signature. Every adult claimant should sign on the power of attorney.

- 38- Although a significant percentage of Public Notaries fees are public money and regulated by the Budget law, Public Notaries arbitrarily charge fees, including the official percentage. There is no control by the Ministry of Justice or Ministry of Finance on such practices.
- 39- Attorney fees constitute the major obstacle for individuals willing to file registration or nationality lawsuits aiming to put an end their statelessness although attorney representation is not mandatory in civil status lawsuits. However, on one hand, many individuals are not aware that they may file a lawsuit without having an attorney represent them, and on the other hand, even if they are aware of the latter, they do not know how to manage such lawsuits by themselves.
- 40- Individuals seeking to submit nationality or registration lawsuits face many problems related to attorney fees, and these issues often discourage the individuals who decide to no longer file the lawsuit. One the main problems is that attorneys charge high fees compared to the minimum wage, especially since registration and nationality lawsuits are of unspecified value.
- 41- The Bar Associations did not set a maximum ceiling for lawyers' fees and no specific rate for confirmation of nationality or late birth registration lawsuits. Tripoli Bar Association has a scale of the minimum fees a lawyer may request according to the types of cases, and an advance system to guarantee these fees. This means that the client has to pay a percentage of the fees at the Bar before starting the case, which results in many people refraining from submitting lawsuits if they cannot afford paying the advance.
- 42- There is no State funded legal aid system. The Bar Associations' funds currently cover the limited legal aid, limited to Lebanese and foreigners on condition of reciprocity. As such, it is usually granted for people

charged with serious crimes or in serious commercial or real estate cases where significant interests are on stake. As such, the late birth registration cases would not be considered a priority. Further, many people are unaware of the existence of the legal aid and do not attempt to obtain it. They refrain from submitting registration lawsuits instead.

- 43- Another main cost that obstructs the submission of late birth registration lawsuits is the cost of the DNA tests that became semi systematic in these lawsuits as mentioned above. The children who request the birth registration, their father, and sometimes their mother are required by courts to conduct the DNA tests. The cost of the test becomes double if the father or the mother are deceased since the test would be conducted with a member of their family. The cost of the test includes the laboratory fees that are charged per person, and an allowance for a court staff to accompany the family to the laboratory for authentication. The laboratory cost becomes a burden for big families. The allowance of the staff is arbitrarily set by the court without any clear criteria and regardless of the distance from the court to the laboratory.

Access to information

- 44- Individuals in Lebanon, and particularly marginalized groups, face difficulty in accessing information, especially as regards laws and official procedures adopted to carry out different transactions, processes, and formalities.
- 45- In Lebanon, unlike most countries in the world, a comprehensive civic education is not available to citizens and the relevant information is not accessible to all in a free, systematic, and automatic way. Citizens do not know where to go to obtain the necessary information when needed and the authorities concerned do not make an effort to disseminate this information properly or regularly raise awareness regarding related topics.

- 46- The official offices of various departments do not have information desks or posters clarifying the different laws, procedures, and steps that should be taken in order to complete a certain transaction. There are also no local or central legal advice and consultation centers in governorates, municipalities, Mukhtar offices, social centers, or other places that citizens seek for specific services.
- 47- Stateless individuals lack information on the available solutions for their statelessness in the laws in force, and many marginalized families lack information on the procedures that would prevent statelessness.
- 48- Stateless persons usually resort to mayors or religious clerics for information on solutions to their statelessness. Mayors or religious clerics sometimes give wrong, inaccurate or incomplete advices that complicates the access of these persons to the solutions.
- 49- Mayors and clerics are not accountable and there is no authority to resort to complaint in case they give counter effective advices.

Delays

- 50- All judicial processes in Lebanon are still dominated by long delays which, in fact, constitute one of the main obstacles facing litigants and impeding the right to access justice which, in turn, becomes stripped from its true meaning and leads to denial of justice. For stateless individuals, such delays slow down the process of ending their statelessness.
- 51- The reasons for prolongations and delays in lawsuits lie within the conduct of both the litigants and the court, and their effects reach various aspects and stages of the lawsuit including the execution of rulings.
- 52- One of the main reasons for delays are that judges examining registration and nationality lawsuits may sit in another courts in the

same time and are as such overloaded. As a result, they postpone hearings and procedures for long time intervals.

- 53- Another reason is that there are no summary procedures non-contentious registration lawsuits. These lawsuits follow the same procedures as all lawsuits and may last for years consequently.
- 54- The court procedures followed during the process of the registration and nationality lawsuits are lengthy. These include the investigations by the security forces, the court hearings, the preliminary decisions by the court to complete the documentation or facts. In addition, at many instances, the information obtained by the investigations and the various procedures is not complete and require additional procedures that require more time.
- 55- The major reason of delay is however the State's approach to the nationality related lawsuits, be it late birth registration or confirmation of nationality. The State delays its notification – beyond legal deadlines and without any legal ground but using the vagueness of the legal provisions related to the time delay for a lawsuit party to be notified – until it prepares its legal response. Before responding, it asks for investigations and for the Administration opinion; both of which can take several months to be completed. Once ready and notified, the State submits its response. The answers are usually not grounded and sometimes not directly related to the claim, resulting in a long process of exchange of legal briefs with the claimant. However, it seems that this approach is starting to change in the last years. The State representatives are being more cooperative and trying to avoid unnecessary delays in the judicial processes.

Recommendations

- 1- Lebanon must put statelessness as a priority in the political agenda, and as a first step must set a clear policy to shifting the focus of the judiciary

- and the State towards putting an end to statelessness and protecting from statelessness.
- 2- Lebanon should work on enhancing access to information, disseminating knowledge, and providing guidance on the procedures of registering civil status events and the acquisition of the nationality, through cooperation between the different directorates and ministries concerned.
 - 3- Lebanon should make sure that persons wishing to submit nationality lawsuits have a facilitated access to official records and information as needed to substantiate their claims.
 - 4- Lebanon should create free legal counseling centers in all Palaces of Justice, in collaboration with the Bar Association, so that individuals wishing to file a lawsuit may turn to such centers to inquire about the relevant conditions, required documents and procedures.
 - 5- Lebanon should adopt a comprehensive legal aid system funded by the state and accessible by everyone, making sure that the system is not limited to an exemption of attorney and judicial fees, but also includes all necessary costs such as conducting DNA testing and obtaining religious court rulings. Meanwhile, the costs of legal procedures should also be lowered, including the costs for power of attorney authentication, for filing procedures at the religious courts and for clerks allowance to authenticate DNA testing.
 - 6- Lebanese courts should adopt all standards of fair trial, especially in terms of time limits and ensuring the flow of proceedings within a reasonable time frame that helps each entitled individual to reach his/her right effectively regardless of the capacity of the litigants.
 - 7- Lebanon should adopt summary and simplified procedures for later birth non-contentious registration in order to facilitate access to nationality on the basis of fair and reasonably fast procedures.