

**United Nations Development  
Programme  
Regional Bureau for Arab  
States  
Programme on Governance  
in the Arab Region**

**International Development  
Research Center**

**Presentation of Research Study  
The Nationality of a Woman's Children, Between the Rationale  
Of Affiliation with the Islamic Nation and the Rationale of  
Belonging to the International Community**

Tunis 3-4 July 2003

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## [TRANSLATION]

This summary is a presentation of a completed study entitled, “The Nationality of a Woman’s Children, Between the Rationale of Affiliation with the Islamic Nation and the Rationale of Belonging to the International Community.”

First, before presenting the reasons for this study, we would point out that the object of this study falls within the framework of the Programme on Governance in the Arab Region, from which emanates the Initiative for Women and Citizenship.

— On that basis, it was incumbent upon us to state our position at the beginning of the introduction to the study before presenting the problem which we would like to resolve, to make clear the relationship between government and citizenship and the object of our study which is part of the subject of nationality.

— To that purpose, we begin with a definition of the modern democratic state: which is a state founded on right and law, and which respects the rights of citizens irrespective of sex.

— We highlight the fact that the existence and stature of such a state are founded on what is called democratic government;

— and that the principle of citizenship itself has formed the cornerstone in the building of this modern democratic state. In addition, it was the entry point to establishing the foundations for the systems of democratic government therein. Therefore, such a state is nowadays considered the legal and political framework within which the full, unmitigated legal rights of citizenship and democracy are exercised.

— Whereas citizenship is a relationship between an individual and a state, thus nationality is most probably synonymous with citizenship, as it comprises a relationship between an individual and a state. Therefore, it is imperative to give every citizen who enjoys nationality all the rights and duties of citizenship within a framework of equality between the sexes, because such equality constitutes a foundation for citizenship; and therefore, democracy and equality elevate citizenship to a higher level. Their downfall would lead to an erosion of this citizenship.

— On that basis, we begin by first presenting the reasons for undertaking this study, pointing out that if there exist obstacles to an individual’s exercising of full citizenship in Arab states, these obstacles become compounded when it comes to women.

— Most important of these obstacles is the existence of a series of legal texts that protect and nurture the culture of discrimination, steer social awareness so as to consider women’s position to be inferior to that of men and accept their deprivation of basic rights that would firmly establish full citizenship.

— In this regard, we point out that if the focus of discrimination is centered upon family laws. There are other provisions found among numerous legal texts. Of concern to us in this study are those legal texts that address the right of women to attribute their nationality to their children.

— At this point, the connection between the two objects of the two projects, and the object of our study, is complete. We have begun the process of presenting the problem that we wish to address in the study.

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— In most Arab Islamic countries, the laws of nationality do not provide for an equality between father and mother with respect to attributing nationality to the children. The mother is deprived of such a right whenever there is proof of a marriage and the father has a nationality. In such event, the father has the automatic right to grant such nationality to his children.

— This same discrimination is the impetus for the reservation expressed by most of these states with regard to the second paragraph of Article 9 of the CEDAW [Convention on the Elimination of All Forms of Discrimination Against Women].

— This discriminatory direction tends to infringe upon the rights of mothers and children. In this regard, we show the consequences of depriving a mother of the right to grant nationality to her children. This manifests itself in the suffering, humiliation and difficulties experienced by a woman who is married to a non-citizen living in her country, or in the event she is divorced and living in her country. It is our position that it is a form of violence exercised against her in the name of the law.

— We also show the effects of that on children, as embodied in their deprivation of cultural, social and political rights.

— Because of the seriousness of this situation, we are of the opinion – revealing the problem posed by this study – that it is essential and urgent that we work to overcome this situation as a way to protect the rights of mothers and the rights of children. We examine whether or not there actually exists a legitimate basis in the inference that the rule to violate the equality between the two parents in the transfer of nationality to the children is derived from the provisions of Islamic *sharia* [law].

— If this point represents the core and central problem which this study aims to address, it is our opinion that, prior to addressing this problem with analysis and discussion, the singleness of the subject-matter requires that we present it by briefly addressing: first, the original nationality by virtue of the blood bond in Arab laws; and second, to diagnose the position of the Arab and Islamic states with regard to Article 9 of the CEDAW Convention.

— Based on that, we present our study plan, which includes four sections, and we delve into the heart of the matter:

— In the first section, we initially address the original nationality by virtue of the blood bond, which is acquired according to most Arab laws principally from legitimate filiation in accordance with the lineage and nationality of the father, then by natural filiation in accordance with, first, the nationality of the father, then that of the mother.

— Secondly, we show that the principal source of this nationality is essentially based on a lineage relationship, particularly from the father's side: the newborn child derives its nationality from its lineage to its father, i.e. its lineage forces its father's nationality upon it from the time of its birth.

— Thirdly, we demonstrate that in most of these laws women who are married to non-citizens – even if they are Arab Muslims – do not have the right to grant their nationality to

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their children of this marriage, even if she is divorced or widowed, as long as nationality according to these laws is transferred through paternity.

— She is given the right to grant this nationality in only two exceptional cases, in such a manner that she is not depended upon except in cases where it is impossible to rely upon the father, i.e. in emergency cases. Thus, the mother's role in this instance is only to protect the child from not having a nationality.

— After presenting the two cases, we come to the conclusion in this first section that:

The preponderance of the kinship standard in most of the Arab nationality laws is associated with masculinizing lineage and giving preference to the paternal lineage over the maternal one.

There are blatant inconsistencies in most of these laws, because they give the mother the right to grant her nationality to her natural child, but do not give her that same right when the child is legal.

— In the second section, after taking note that most of the Arab states acceded to the CEDAW Convention, and that most of them expressed reservations with respect to the basic, core and central articles thereof, and that the reservations and justifications presented by these states generally differ from one state to the other, we have determined, for purposes of this study, that what is of concern to us are reservations which pertain to the second paragraph of Article 9.

— Here, we made a lengthy diagnosis of the position of these states vis-à-vis Article 9 of the Convention, indicating which Arab states did not present reservations on the Article in its entirety, those with reservations about it in whole, and those with reservations only with respect to the second paragraph thereof, with a comparison to the Islamic states.

— After that, we collected and read the justifications of most of the Arab states. What became apparent from the reading was that the justifications were not uniform and differed from one Islamic state to another. Among them were those that held the view that the requirements of the paragraph (or two paragraphs) to which they had reservations were inconsistent with the requirements of the nationality law. There were those who added to the latter the family law, and there were those who were of the opinion that it was inconsistent with generally recognized customs. However, the majority of them held the view that the paragraph was in violation of Islamic *sharia* [law].

— At this point, the question becomes self-evident: If all these states are Islamic, then why did only some of them have reservations while the others did not? Why did the justifications differ among those states that had reservations, or why were they not in consensus as to the same justification in the name of Islamic *sharia*? Is the matter then related to this paragraph's violation of Islamic *sharia*, the nationality law or the family law in each state, or does it concern political issues?

— In the subsequent paragraphs, which we allocated to the discussion of these justifications, we tried as much as possible to answer these questions by clarifying many of the points and disproving many of the claims.

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- Perhaps the most important of these justifications are those which pertain to Islamic *sharia*, and which are themselves the core and central problem presented by this study.
- In view of the importance of this point, we address in the following third section, which we have dedicated to a discussion of the reservations from an juristic [*fiqh*] perspective, three important topics: the technical term “Islamic *sharia*” in concept and practice; the relationship of the issue of nationality to Islam; and lastly, the relationship of the issue of nationality to that of lineage.
- At the outset of the first topic, we raise the question, what is meant by the term *Sharia*: Is it Islam? If so, and if the requirements of Article 9 of the Convention are in violation thereof, why have the other Islamic states not expressed reservations about it?
- After that, we address the issue of the word *sharia* in the language and in the Quran, and which means ‘the clear course,’ or ‘the way.’ We show that the meaning in the Quran is itself the linguistic meaning as stated in language dictionaries. Therefore, it does not bear, neither linguistically nor in Quranic usage, the meaning of legislation of law, contrary to common belief.
- *Sharia* is the way or path; and the *Sharia* provisions are the holy Quranic verses and the true traditions [*hadith*] of the prophet (may God’s prayers and peace be upon him).
- After that, we show the evolution of the term *sharia* through its usage according to its original meaning — the way or path, to the point where juristic [*fiqh*] interpretations became incorporated therein, up to the point where it evolved to mean legislation, and is currently being circulated in its technical meaning, which is *fiqh* [Islamic jurisprudence] / doctrine.
- Based on that, the reservation expressed with respect to the requirements of Article 9 regarding the usage of the word *sharia* indicate that they are in violation of the conclusions of Islamic *fiqh* [jurisprudence] or the doctrinal school endorsed by every Islamic state. It does not purport that the requirements thereof are in violation of Islam or the true religion.
- Herein, we emphasize that the distinction between that which is juristic/legislative/positive and that which is divine/*shariite*/sacred, is necessary because they are often confused with one another on many levels. That which does not extend beyond the level of human interpretation is considered holy and sacrosanct, and is adhered to and sought as a cover behind which to justify the reservations and to justify not lifting them.
- After that, we take the position that even if we put aside the issue of the term *sharia*, and focus only on the juristic [*fiqhi*] discussion now underway about the existence or non-existence of *sharia* provisions that regulate the general rules governing the obtaining of nationality by Muslims, this in turn compels us to examine the juristic [*fiqhi*] body of work to determine how strong or weak is the position that precludes equality between the two parents in attributing or transferring nationality to the children on the basis of the *Sharia* provisions.
- These are the contents of the second topic in this second section.
- At its outset, reference is made to a serious and important point meriting pause and reflection. It is the fact that a resort to such juristic discussion puts us at the heart of an important problem alive in modern Islamic thinking. It is the problem of using modern

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concepts to describe old realities, or vice versa, to use old concepts to describe modern realities. Here, one must be aware that a search in religious heritage for the origin of concepts of human rights is nothing more than an interpretive search, i.e. the motive behind it is contemporary — the modern global documents on human rights. If we assume these documents did not exist originally, there would not have been a motive to do a re-search in Islamic heritage for human rights principles.

— If the motive for this was one associated with the “present”, then this means the interpretation will rely on the authority of the “present” as represented in this case by human rights documents.

— And, absent an awareness of the interpretive relationship between the “present”, as represented by the international documents, and the “past” as represented by the “heritage,” the enthusiasm reaches the point of illusion about the historical precedence of Islamic heritage in its awareness of human rights issues, and even in its formulation thereof fifteen centuries ago.

— It is an illusion emanating from an absence of awareness of this organic relationship between the present and the past, and the topic of our study falls within the circle of this problem.

— The nationality bond, in the prevailing legal sense, is at the point where it almost becomes intertwined with the bond that is said to be established by Islam among Muslims. Due to this intertwining, we are faced with two differing juristic [*fiqhi*] directions:

— There are those who deny the existence of the concept of nationality in Islamic regulation, and refuse to talk about nationality from the perspective of the *Sharia*. In their view there is no such thing as nationality in Islam, but rather a Muslim has no nationality other than Islam. Islam is a religion and a nationality.

— There are those who believe the concept of nationality has existed in Islam, and that Muslim jurisprudents have addressed the issue of methods to acquire nationality, as well as the reasons to lose such nationality. However, other names were used to indicate it, such as “*tabi’iya*” and “*ra’awiya*” [both Arabic words mean “nationality” or “citizenship”]. Thus, the provisions for nationality are derived on the basis of the provisions of adherence to Islam; and the provisions concerning the transfer of nationality from the two parents to the children are measured against those provisions concerning the transfer of religion from the parents unto their children.

— What is of primary concern to us is that a review of both positions will allow us to conclude that the ability to state that equality between the sexes in granting nationality to children is inconsistent with Islamic *sharia*. It cannot stand in the face of close scrutiny, as well as criticism from within the circles of *fiqh* [Islamic jurisprudence], and that in order to exercise discrimination between the two parents with regard to this point, one will have to search for an authoritative source other than *Sharia*.

— With respect to the first direction, which is represented by distinguished legalists, scholars and intellectuals who are experts in modern Islamic thinking, the concept of nationality has remained unknown, rather non-existent, in Islamic states and for the jurisprudents therein. The overall notion of nationality did not begin to appear in these states until the latter part of

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the nineteenth century A.D. Before that, the rules of Islamic *sharia*, which are void of any provision regarding nationality, were prevalent in all of the regions which came under Islamic conquest.

— Jurisprudents [*fiqh* experts] did not differentiate between individuals on the basis of the bond of nationality; but rather, their opinion was based on a different vision represented by the division of the world into two, the House of Islam and the House of War. A Muslim would move from one Islamic country to another while bearing one identity, which is the identity of Islam. Therefore, the Islamic religion was the sole standard used by Islamic jurisprudence [*fiqh*] in the Islamic world to differentiate between Muslims and non-Muslims.

— However, contact between the Islamic state and the European states, as well as the subsequent division of the Islamic countries into multiple political units in the form of states separated by political borders, has led to the appearance of the concept of nationality in the Islamic world. The purpose is the differentiation between the citizens of each one of these states and others, not on the basis of religion, but rather on the basis of nationality.

— In this regard, we give examples of Arab laws that did not take religious adherence into consideration when legislating nationality laws. In addition, we present certain judicial rulings that confirmed that religion is not one of the conditions of nationality.

— The conclusion of this directionality is that nationality is a newly emerged concept. Those who state that Islamic legislation contains requirements with regard to nationality are confusing the two concepts of nationality and Islam, despite the vast difference between the two. Therefore, there is no such thing as nationality in Islam, and no relation exists between nationality and Islamic *sharia* whereby it could be used as a basis for expressing reservation.

— This direction does not omit to point out that, even while *fiqh* [Islamic jurisprudence] remained unaware of the notion of nationality until recently, the consequences of its conception remained alive and present in the Arab legal systems even after the states legislated nationality laws. The intermingling between nationality and paternal lineage remained in existence. Therefore, the duality of affiliation with the Islamic nation, and the rationale of belonging to an international community, are the features which characterize Arab nationality laws.

— Based on this direction, founded on the notion that there is no nationality in Islam, and therefore on the basis that the provisions of the *Sharia* have a bearing on nationality, we conclude that any discussion that “Islamic *sharia*“ violates the equality between the two parents in the transfer of nationality to their children, does not stand on original, genuine evidence, neither from the Book nor from the prophetic tradition.

— Adherents of the second direction, who are the majority of contemporary explainers and jurisprudents, criticize the adherents of the first direction and hold a view opposite of theirs.

— This direction emanates from the relation between the concept of nationality and the concept of statehood, and that *Sharia* recognized the notion of nationality since the rise of the Islamic state. Thus, denying the existence of the notion of nationality in Islamic *sharia* is a denial of the existence of the Islamic state, although the latter did exist, even if the jurisprudents referred to it by a different name: The House of Islam.

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— The meaning of the concept of nationality exists in the Islamic juristic [*fiqhi*] body of work. However, the jurists [*fiqh* experts] in referring to it used other names, such as: “*tabi’iya*” and “*ra’awiya*” [both words mean “citizenship” or “nationality”] and the People of the House of Islam. Therefore, the adherents to this direction criticize contemporary jurists for their use of the concept of nationality and abandoning the concept of “*ra’iya*” [subject or citizen]. They reference the fact that the Messenger (may God’s prayers and peace be upon him) and some of the Caliphs used the word “*ra’iya*” [subject or citizen] to refer to a political and legal bond that is not based on sex, race or color, but on recognition, intermixing, faith, a feeling of unity of destiny and an exchange of responsibilities.

— In general, we addressed the two sides of this position. It was not for the purpose of assessing the strength of the comparison it draws between concepts used by the Islamic jurists, such as “*tabi’iya*” [citizenship or nationality] and the House of Islam, and modern concepts such as the concept of nationality and statehood, and the extent of usefulness of this comparison. It was neither for the purpose of evaluating the basis upon which the distinction was made between the House of Islam and the House of War, which is religious adherence, nor the assessment of the relationship between the juristic [*fiqhi*] conception of the world and the relation between the states, and the reality of life which now controls the distribution of nationalities.

— All are important topics and problems, but despite the strong relation to our topic of discussion, the focus of our attention in this study is primarily on the question of the position of the mother, and her relation to her children within this traditional, conceptual field. Within this intermediary, juristic treatise, and on the basis of the juristic division of people and of the world, is it possible to assert that a mother’s granting of her nationality to her children who are assumed to be children of Muslims is a violation of *Sharia* provisions? And is it possible, based on an examination of the Islamic jurists’ treatment of the concepts of “*ra’awiya*” [citizenship] and the House of Islam, etc., to assert authoritatively that Islam prohibits a mother from attributing her nationality to her children whenever the father exists?

— What has been confirmed through analysis is that the juristic [*fiqhi*] position, which relies upon measuring certainty of, or appurtenance to, nationality against certainty of, or appurtenance to, Islam, concludes by clarifying that the Islamic legislative body of work in the area of acquiring nationality is serious and progressive, compared to nationality legislations in most of the Islamic Arab countries.

— It clarifies the inconsistency which exists among nationality laws in these countries with an enforceable *Sharia* rule – at all times whenever we measure nationality against Islam – where it entails the transfer of Islam to the children through one of the parents, transferring to them their affiliation to the state through the right of blood or lineage; whereas the conventional legislator in most of these countries restricts the transfer of the nationality bond to the children to conditions of transfer of lineage through the father, and not allowing such transfer through the mother unless the father is unknown or has no nationality.

— Based on this conception, all male Muslims, and of course female Muslims, enjoy Islamic nationality or the nationality of the House of Islam, and the rights and duties and those rights that it guarantees.

— Since a Muslim woman is not permitted juristically [according to *fiqh*] to marry an adherent of the Scriptures [Bible], then she may not marry anyone but a Muslim. Thus, both

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of them together shall have the same Islamic nationality, irrespective of the country where the husband settles. Therefore, and in accordance with the conception of the jurists whose view is that the concept of nationality did exist in the juristic legacy – but with different names – there will not be a *sharia* problem as a result of the mother's transfer of her nationality to her children. Thus, the discrimination between the two parents in this case cannot be established upon *Sharia*, and in that case the objectionists must look for proof outside the bounds of *fiqh* [Islamic jurisprudence].

— For added emphasis, we present the methodology with which the old jurists and modern jurists, in their reliance upon the body of work of those jurists, handled the matter of transfer of nationality to children, rather the equality between the two parents in such transfer.

— This study of the juristic [*fiqhi*] body of work has shown that seeking cover behind Islamic *sharia* in this instance does not reveal any support for the persistence in discrimination. On the contrary, it shows a support for equality between the two parents in the transfer of the Islamic nationality to the children. Even more, it shows a preference for the mother in the transfer of nationality / *tab'iya* / *ra'awiya* [nationality/citizenship] in the event that this preference is in the best interest of the children.

— Juristic [*fiqhi*] literature has revealed two opposing conceptions with respect to the transfer of nationality:

— The position that denies equality between father and mother in the transfer of nationality to the children. In particular it measures the transfer of nationality against lineage, and in general it emanates from its support and justification of non-equality between men and women.

— In the absence of [Quranic] verses concerning the matter of nationality -- since it is a new issue -- this position relies upon an interpretation of a series of verses concerning specific issues, as well as its reliance upon the position of the jurists of the Al-Malki doctrine with regard to the children's succession of their parents. Its view is that in Islam a child does not succeed its mother, but that succession falls within the competency of the father since lineage and guardianship are his.

— As for the position that a married woman has the right to transfer her nationality to her children, it is supported by the positions of the three juristic doctrines except that of Al-Malki. Normally, when we are faced with a predominant opinion, the majority opinion is used, and therefore we can say that this position is the position of the majority of jurists.

— This second position stands on various foundations of interpretations and *hadith* [prophetic traditions], which we have presented in this study. And here, we need only to present one point concerning a serious and important principle with regard to the acquiring of *tab'iya* [nationality/citizenship], as illustrated by juristic [*fiqhi*] literature, which is the beneficial *tab'iya* [nationality/citizenship], particularly because based upon this principle, which was discussed in numerous juristic works, there can be equality between the two parents in the transfer of nationality, and in several cases even giving precedence to the mother.

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— Beneficial *tab'iya* [nationality/citizenship] means that the acquisition of *tab'iya* or nationality is not dependent upon the degree of kinship alone or the residence in a certain country, but consideration is given to what is in the best interest of the child. Among the benefits of the beneficial *tab'iya* standard is the fact that a child succeeds its mother in many instances. This is the position of the majority of jurists, except Imam Malik.

— At the heart of the juristic legacy we find justification for granting a mother the right to transfer her nationality to her children, and a forbiddance of separation between child and mother.

— In the latter position, the adherents of this direction conclude that a mother by blood relation has the right to transfer her nationality to her child. In so doing, she shall be on equal footing with the father due to the unity of cause which necessitates a unity of judgment; and in restricting this to the father while depriving the mother therefrom would result in harm to her. In addition, it would result in giving precedence to one of the marriage partners over the other with regard to parenthood, without good reason, because a child's right to his mother's nationality is the same as his right to his father's nationality.

— At the conclusion of this point, we emphasize that the purpose of the tour we took of the opinions that address the issue of nationality in Islamic *sharia*, is to examine the statement that equality between the two sexes in the granting of nationality to their children is inconsistent with the provisions of Islamic *sharia*.

— The result was that discrimination between the two sexes in the matter of transfer of nationality to children does not stand up in the face of close scrutiny and criticism from within the juristic structure. In order to advocate such a position, one must search for a different corroborating authority other than the provisions of Islamic *sharia*, because it is based upon cultural considerations, i.e. it is incorporated within the framework of the discriminatory perspective which traverses a number of cultures and has become more firmly rooted by a retardation of development.

— Therefore, advocates for human rights, women's rights and children's rights will always have to show the different forms in which a culture of discrimination hides behind the cover of sanctity. We emphasize that this is a duty incumbent upon the defenders of *Sharia* as well, so that it is not used as a façade to protect the culture of discrimination.

— The conclusion of this tour is that the system of nationality in the modern state is based on a human conception far from all religious systems. Nationality, according to the nationality laws of those states that had reservations about the second paragraph [of Article 9], is founded in accordance with such standards and factors that an individual's religious creed has nothing to do with the creation or determination thereof. In the determination and creation of nationality, all the legislations of the international community are based on non-religious standards. Therefore, religious creed has nothing to do with the creation of nationality, nor with the legislation or codification therefor. Thus, reservations made in its name have no basis in truth.

— There remains the question: Is the reservation with respect to this paragraph, as being in violation of the requirements of the Family Law, and in particular in violation of its requirements with regard to lineage, a "proper" reservation?

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— We have responded to this question in the third point of this section, wherein we addressed the relationship between the issue of nationality and lineage. We showed therein how the jurists [experts in *fiqh*], through one single right granted to men -- which is the right to establish a family and become its head and handle its affairs -- also gave them a number of rights which are considered components for the existence of the right to head a family.

— As family laws in the Arab states are derived from these doctrines, thus, based on the foregoing, they gave men a number of rights derived from the right to head a family. In his capacity as guardian of the family, this requires – among other requirements – he alone shall have the right to have his children become descendants of him, and to bear his name and follow his religion.

— Since the juristic [*fiqhi*] rule states that the child shall follow his father's religion and lineage, it was then established and ruled that, among the consequences of lineage, the father's nationality shall be applied to the child.

— Based on that, and in drafting the requirements of the nationality laws, the rules of paternal families were preserved, as well as the rules of legitimate lineage. In addition, they were laid down by the juristic doctrines applied in the Arab states. The consequences of this lineage were given consideration with respect to nationality, i.e. granting the father alone the absolute and automatic right to grant his nationality to his children, and not give women the same right. This demonstrates clearly the extent to which the Arab legislator adhered to the paternal family rules and the extent of his adherence to the preservation of such rules, striving to ensure the permanence of these rules in all laws.

— Therefore, based only on the lineage rule that was established by the juristic doctrines, the nationality of the children has also become one of the rights granted to the father alone, and it has become one of those rights derived from the right to head a family, thereby increasing the rights given to men in return for one duty which is that of alimony. Thus, nationality, as is the case with names, became something that is inherited based on the lineage rule.

— When nationality laws are drafted, a man is considered a citizen first on the basis that he belongs to the homeland, and secondly that he is the head of the family. He alone gives his children their political identity, in addition to the right given to him to grant them religious identity, thereby strengthening the relationship between religious and political identities and lineage, i.e. between the nation, the state and the family.

— In addition to our discussion about the justifications of the Arab states from the juristic perspective, it is our opinion for the sake of coherency, to present a brief discussion in the fourth and last section of this study about the reservations, and not the justifications, of these states from the legal perspective.

— The purpose of our discussion is to contribute on another important problem presented by legal researchers -- the problem of ratifications of international conventions or certain terms thereof, which are accompanied by reservations. We present this problem in the form of a question: When ratifying a convention, do states have the right to express reservations or not?

— We show that there are two opposing directions in addressing this problem:

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— One direction views that states have the right to express reservations when ratifying the Convention. The legal grounds on which it stands concern the first and third paragraphs of Article 28 of the Convention.

— The other direction is of the opinion that states do not have the right to express reservations, based on multiple and various legal grounds, which are not confined solely to the articles of this Convention but rather go beyond them to address articles and provisions of other international agreements and conventions. Following is a summary of the opinions held by this direction:

— The reservation is illegal and unacceptable, because it violates: first, Article 19 of the Vienna Convention, which, even if it allowed states upon subscribing to any treaty to express reservations, it stipulated that no reservation may be incompatible with the object and purpose of the treaty. In addition, Article 21 of this Convention asserts that reservations shall not be applicable and shall have no effect on international law.

— Secondly, and pursuant to the provisions of paragraph 2 of Article 28 of the same Convention, it states that: “A reservation incompatible with the object and purpose of the present Convention shall not be permitted.” If the purpose of this Convention is to eradicate all forms and appearances of discrimination against women and between the two sexes, and if its purpose is to achieve complete equality between men and women with regard to rights, then this reservation is inconsistent with the object and purpose of such Convention, and therefore, and pursuant to the provisions of the two aforementioned articles, the reservation is inadmissible.

— After that, we show that both the purpose and goal are central principles of the United Nations. Moreover, they are two principles that constitute a binding duty in accordance with the United Nations Charter and other international charters.

— We point out that most states which acceded to this Convention had previously ratified the international convention on civil and political rights, and thus were required to fulfill all of its requirements. The reservations they had regarding the CEDAW Convention are considered to be of the same kind as those that were made subsequent to the convention on civil and political rights. This is not only unacceptable, but rather inadmissible.

— Therefore, the reservations are null and void. In legal terms, the ratification remains good and standing, and the reservations null and void. Thus, they are of no legal value because they are in violation of the basic rule which stems from the rules of international law on conventions, which states that no reservation may be permitted to be made with regard to a convention where such reservation is inconsistent with the principal object and purpose of the Convention.

— To reinforce this opinion, we rely upon that which the World Human Rights Conference conceded with respect to the issue of reservations on this Convention, as well as the many recommendations issued by the committee for this Convention.

— Some of the Arab states’ legislations consider an international convention to be in force once it is ratified. It becomes part of the national legal system, and the judiciary is required not only to enforce it, but rather to give it preponderance over national legislation. Thus, if the reservations are illegal, then this Convention is to be deemed an internal law giving the

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right to whom it may concern to invoke its requirements and rely on its provisions to state that the nationality laws are unconstitutional in their discrimination between the sexes.

— The conclusion here is that a ratification of an international convention has legal weight and value, thus requiring the lifting of the reservation on this second paragraph and compatibility of nationality law requirements with the requirements of the Convention, so as to do away with the discrimination that exists between men and women in ascribing original nationality to their children. Otherwise, the ratification will be merely a diplomatic gesture and nothing else, or, dare we say, a means by which to boast and brag in international circles and gatherings.

— After this two-pronged legal and juristic [*fiqhi*] discussion, the question remains: Is the reservation with respect to this paragraph actually concerned with how its requirements have violated this and that, etc. Or does the issue concern political matters?

— We left the answer to that question to the clarification expressed by one of the Arab Islamic states, which stated that this nationality law is governed by political circumstances that make it incumbent upon the government to make such a decision.

The conclusion of the study:

— Based on what was stated above in the introduction, which is that citizenship is an affirmation of objective principles, such as justice, liberty and equality, and that by achieving them the dignity of citizens is realized, and that equality between the sexes in rights and duties is a foundation for citizenship, and that democracy and equality elevate citizenship, and their downfall would result in the erosion of that citizenship, it became clear to us, after doing our research of the matter, that the requirements of Arab nationality laws, the subject of our study, are inconsistent with these principles that are provided for in international human rights conventions. Thus, they are inconsistent with citizenship. If they continue to exist in their present form, they will not achieve dignity for women citizens, and neither will they establish the foundation of citizenship/equality, and therefore the right of the two sexes to enjoy full citizenship on an equal footing will be delayed.

— Furthermore, it is clear to us from another perspective that to say that the requirements of the second paragraph are in violation of Islamic *sharia*, is nothing but a statement, the purpose of which was first to give the states' justifications a cover of sanctity. More correctly, they are inconsistent with the requirements of family laws, particularly those requirements concerning lineage. These laws are not the provisions of Islamic *sharia*, *per se*, but explanations and interpretations of a jurisprudent/human being of their sources.

— Secondly, it is a statement that does harm to Islam. If the term "Islamic *sharia*", which the majority of states used as justification for their reservation, is intended to mean religious texts, then the implication is that inequality between men and women, and the inferiority of women, are established in these texts. And, based thereon, it would be difficult to achieve equality between the sexes in this matter. Hence, Islam would be responsible for this inequality with respect to the right of attribution of nationality to the children. And thus, it would be responsible for creating the legal status in which the mother finds herself in Arab nationality laws legislated in the twentieth century, thereby making it necessary to raise the question that represents the core of the problem addressed by this study.

## [TRANSLATION]

— At this final stage, we reaffirm the importance of clarifying the distinction between religion and religious opinion, which is not religion and cannot be as pure as religion. From another angle, it is impossible that this opinion can ever be right. The probability is that it can be right or wrong, and can be confused with the purpose as can any human opinion.

— The status of women in the Arab Islamic countries today is no longer a regional issue, but an international one. Modernization cannot be achieved with the continued existence of women as second class citizens. Our general recommendation is that it is incumbent upon Arab and Islamic states to put an end to the duality of authority and to the inconsistency and hesitation between the commitment to the virtues of international human rights, and the obstinate adherence to a unilateral human reading of the religious text. Also to put an end to the hesitation between the rationale of affiliation with the Islamic nation and the rationale of belonging to an international community, which is the title of this study.

The statement of our study: The reservations of the Arab states are illegal and their justifications are unfounded.

— The only thing left is for us to point out that, in order for the majority of the readers of this study not to find themselves estranged by the terminology used or inserted therein, we did the following:

First: Listed the majority of the terms used in the various Arab states next to every term we used, such as: Good Government: we put next to it: The Prudent, Good, Democratic Government. Derived/Acquired Nationality. The Original/Assumed. The Subsequent, The Emergency. The Blood Bond: The Blood Connection [Bond]. The Land Bond: The Soil Bond [Connection].

Second: We worked on specifying the terms and concepts, and illustrating the intended meaning thereof in this study, as well as distinguishing between them and the rest of the known terms to avoid any confusion, and so that we may speak one language, thereby making it easier to conduct dialogue, such as: the concept of nationality and citizenship. We differentiated between the concept of citizenship and patriotism, which refers to a belonging to a homeland; and between the notion of nationality and the notion of nationalism; between the concept of nationality and certain similar concepts, such as the concept of “race/races” of *ra’awiya* [citizenship/nationality] or *tabi’iya* [nationality/citizenship]; between the concept of legal marriage and the *sharia* marriage, and thus between the legal child and the natural and legitimate [according to *sharia*] child; and between biological lineage and legal lineage; and between lineage and filiation.

Third: For the sake of facilitating the comparison between the majority of Arab laws, reference is made to them while mentioning certain chapters therefrom in variation, indicating the exceptions and highlighting the differences between them.

Fourth: In addition to the sources, we make reference to excerpts from the statements of their authors. The purpose is not to fill space, but for more authentication of certain basic information in this study.