

Michigan Journal of Gender & Law

Volume 23 | Issue 2

2016

Gender Discrimination and Statelessness in the Gulf Cooperation Council States

Betsy L. Fisher

International Refugee Assistance Project

Follow this and additional works at: <https://repository.law.umich.edu/mjgl>



Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), [International Law Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Betsy L. Fisher, *Gender Discrimination and Statelessness in the Gulf Cooperation Council States*, 23 MICH. J. GENDER & L. 269 (2016).

Available at: <https://repository.law.umich.edu/mjgl/vol23/iss2/1>

This Article is brought to you for free and open access by the Journals at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of Gender & Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

GENDER DISCRIMINATION AND STATELESSNESS IN THE GULF COOPERATION COUNCIL STATES

*Betsy L. Fisher**

ABSTRACT

Using the Gulf Cooperation Council countries as a case study, this Article outlines the ways in which gender and birth status discrimination create new cases of statelessness. These occur when women are legally unable to convey their nationality to their children. This Article studies gender and birth status discrimination in nationality laws and in civil registration, family, and criminal law in each GCC state: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. Ending statelessness will require these states to end discrimination against women and non-marital children in all of its forms in law and practice.

TABLE OF CONTENTS

INTRODUCTION	•	271
A. <i>Statelessness</i>	•	272
B. <i>International Law and Non-Discrimination</i>	•	273
C. <i>Gulf Cooperation Council States</i>	•	274
D. <i>Outline</i>	•	276
I. NATIONALITY LAWS	•	277
A. <i>Provisions of Nationality Law</i>	•	277
1. Bahrain	•	277
2. Kuwait	•	278
3. Oman	•	280
4. Qatar	•	280
5. Saudi Arabia	•	281

* Betsy Fisher, J.D. and M.A. Middle Eastern and North African Studies, University of Michigan, is the Policy Director at the International Refugee Assistance Project. This Article reflects the author's views alone. Deep thanks, as always, to Amit Sen for his support and mentorship. This Article's sections on discrimination in civil registration and family law borrow from a previous paper published in the Institute for Statelessness and Inclusion's Statelessness Working Paper Series. I am grateful to the Working Paper Series editors for their helpful comments on that earlier draft. Finally, many thanks to the Michigan Journal of Gender & Law's able staff for their keen insight and helpful suggestions.

- 6. United Arab Emirates • 282
- B. *Analysis of Nationality Laws* • 283
- II. GENDER DISCRIMINATION IN CIVIL
REGISTRATION LAW • 284
 - A. *Provisions of Civil Registration Law* • 285
 - 1. Bahrain • 285
 - 2. Kuwait • 286
 - 3. Oman • 286
 - 4. Qatar • 286
 - 5. Saudi Arabia • 287
 - 6. United Arab Emirates • 287
 - B. *Analysis of Civil Registration Law* • 288
- III. GENDER DISCRIMINATION IN FAMILY
LAW • 289
 - A. *Inadequate Means to Establish
Paternity* • 290
 - 1. Provisions of Family Law • 291
 - a. *Bahrain* • 291
 - b. *Kuwait* • 292
 - c. *Oman* • 293
 - d. *Qatar* • 293
 - e. *Saudi Arabia* • 294
 - f. *United Arab Emirates* • 294
 - 2. Analysis of Family Law • 296
 - B. *Restrictions on Marriage to
Foreigners* • 296
 - 1. Provisions of Family Law • 297
 - a. *Bahrain* • 297
 - b. *Kuwait* • 297
 - c. *Oman* • 297
 - d. *Qatar* • 298
 - e. *Saudi Arabia* • 298
 - f. *United Arab Emirates* • 299
 - 2. Analysis of Family Law • 300
- IV. CRIMINALIZATION OF ADULTERY • 300
 - A. *Criminalizing Adultery and Protections for
Non-Marital Children* • 303
 - 1. Bahrain • 303
 - 2. Kuwait • 304
 - 3. Oman • 305
 - 4. Qatar • 305
 - 5. Saudi Arabia • 306

- 6. United Arab Emirates • 307
- B. *Analysis of Criminal Law in GCC States* • 309
- V. CONCLUSION • 311

INTRODUCTION

Many children are born without a nationality because their parents' country of nationality discriminates on the basis of gender or birth status¹ in the text or implementation of civil registration, family, and criminal law.² This Article examines the six states of the Gulf Cooperation Council (GCC)—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE)—to address how gender and birth status discrimination in law and practice creates a significant risk of statelessness.³

In each GCC state, it is crucial for governments to correct gender-discriminatory nationality laws.⁴ But to end and prevent new cases of statelessness, GCC states will also have to correct gender and birth status discrimination in law and practice regarding civil registration, civil status, and criminal law.

The United Nations High Commissioner for Refugees (UNHCR) and its global partners launched an ambitious plan in 2014 to end statelessness by 2024, listing ten specific actions that will reduce or prevent statelessness.⁵ Action 3 of the plan aims to “[r]emove gender discrimination from nationality laws,”⁶ and Action 7 aims to “[e]nsure birth registration for the prevention of statelessness.”⁷

-
1. Birth status discrimination refers to discrimination against a child because her parents were not married at the time of conception or birth.
 2. See *infra* Parts II, III, IV, and V (discussing the ways in which gender discrimination in nationality, civil registration, family, and criminal law, respectively, can result in cases of statelessness).
 3. I do not focus on the GCC as an organization. This Article instead focuses on the six states that are members of the GCC as case studies because of their similar legal systems that have extensive gender and birth status discrimination. I use the term “GCC states” as shorthand to refer to the six member states collectively.
 4. See generally U.N. HIGH COMM’R FOR REFUGEES, BACKGROUND NOTE ON GENDER EQUALITY, NATIONALITY LAWS AND STATELESSNESS 2016 (Mar. 8, 2016), <http://www.refworld.org/docid/56de83ca4.html> (denoting the nationality laws of each GCC State as discriminating on the basis of gender).
 5. UNITED NATIONS HIGH COMM’R FOR REFUGEES, GLOBAL ACTION PLAN TO END STATELESSNESS, 2014-2024 (Nov. 2014), <http://www.unhcr.org/en-us/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>.
 6. *Id.* at 1.
 7. *Id.*

This Article reinforces UNHCR's goal of ending statelessness by 2024 by explaining the full range of state action that creates statelessness and must be reformed to reach UNHCR's goal. By studying one group of countries in depth, this Article also provides an analytical framework that researchers and advocates can use to evaluate other countries' laws and practices and to advocate for reforms that will end, reduce, and prevent statelessness.

A. Statelessness

Citizenship is the legal bond between an individual and the state.⁸ A stateless person is someone who is “not considered as a national by any State under the operation of its law.”⁹ Many international human rights treaties indicate that each individual has the right to a nationality, including the Universal Declaration of Human Rights (UDHR),¹⁰ the Convention on the Rights of the Child (CRC),¹¹ and the International Covenant on Civil and Political Rights (ICCPR).¹² All of the GCC states have ratified the CRC¹³ and two have ratified the ICCPR.¹⁴

A person can be stateless not just when they are not *entitled* to nationality in any country's nationality law, but also when no State *considers the*

-
8. European Convention on Nationality art. 2(a), Nov. 6, 1997, E.T.S. No. 166 (“[N]ationality’ means the legal bond between a person and a State . . .”).
 9. Convention Relating to the Status of Stateless Persons art. 1, *opened for signature* Sept. 28, 1954, 360 U.N.T.S. 117 (entered into force Jun. 6, 1960).
 10. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948) [hereinafter UDHR].
 11. G.A. Res. 44/25, Convention on the Rights of the Child, art. 7, *opened for signature* Nov. 20, 1989 (entered into force Sept. 2, 1990) (stating that “each child shall be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality”) [hereinafter CRC].
 12. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 24(1), *opened for signature* Dec. 19, 1966, S. TREATY DOC. NO. 95–20 (entered into force Mar. 23, 1976) (establishing that each child “has the right to acquire a nationality”) [hereinafter ICCPR]; *see also* U.N. Human Rights Council Res. 19/9, Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law, U.N. Doc. A/HRC/RES/19/9 (2012) (discussing governments’ obligation to establish universal birth registration for children born within its territory).
 13. *Signatories to the Convention on the Rights of the Child*, U.N. TREATY COLLECTION (last visited Sept. 27, 2016), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.
 14. To date, Oman, Qatar, Saudi Arabia, and the UAE have yet to ratify the ICCPR. *Signatories to the ICCPR*, U.N. TREATY COLLECTION (last visited Sept. 27, 2016), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en.

person to be a national as it implements its law.¹⁵ As such, determining whether a person is stateless requires study beyond the provisions of nationality law. Adjudicators determining whether a person is stateless must consider other provisions of law that may affect whether an individual is in fact treated as a national, such as civil registration, family, and criminal law. They must also look at how those laws are implemented.

B. International Law and Non-Discrimination

International law states that women should receive equal treatment to men, and non-marital children to marital children,¹⁶ without regard to arbitrary distinction by their governments. The Universal Declaration of Human Rights states that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁷

Numerous widely-ratified international instruments followed the UDHR and include similar language prohibiting discrimination, among them the ICCPR,¹⁸ the CRC,¹⁹ and the International Covenant on Economic, Social and Cultural Rights.²⁰

-
15. U.N. High Comm’r for Refugees, *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons*, ¶ 15, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012), <http://www.refworld.org/docid/4f4371b82.html> (“The reference to ‘law’ in [the definition of statelessness] should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.”); Betsy L. Fisher, *The Operation of Law’ in Statelessness Determinations under the 1954 Statelessness Convention*, 33 WIS. INT’L L.J. 254, 260 (2015) (arguing that “the operation of law” includes not just nationality law but other principles of law and how those laws are implemented).
16. I use the terms “non-marital child” and “birth status” to avoid the pejorative terms “illegitimate child” and “illegitimacy.” See Solangel Maldonado, *Illegitimate Harm: Law, Stigma, and Discrimination against Nonmarital Children*, 63 FLA. L. REV. 345, 345 n.1 (2011) (discussing the evolution of language used to describe children born to parents who are unmarried).
17. UDHR, *supra* note 10, art. 2.
18. ICCPR, *supra* note 12, art. 2(1) (guaranteeing “the rights recognized in the present Covenant, without distinction of any kind, such as . . . sex . . . birth or other status.”).
19. CRC, *supra* note 11, art. 2(1) (guaranteeing “the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s . . . sex . . . birth or other status.”).
20. G.A. Res. 2200A (XXI), International Covenant on Economic, Social, and Cultural Rights, art. 2(2) (Dec. 16, 1966) [hereinafter ICESCR] (guaranteeing that “the

These principles of non-discrimination apply to each substantive right contained within the treaties,²¹ including the right to a nationality²² and the right to be registered at birth.²³ Discrimination is defined widely as “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.”²⁴ Under international law, women and men have an equal right to convey nationality, and every child is entitled to receive a nationality. These rights cannot be contingent on gender or birth status.²⁵

C. Gulf Cooperation Council States²⁶

Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE) are located in the Arabian Gulf.²⁷ Each State has significant wealth, offers citizens comprehensive social services funded from extensive oil reserves,²⁸ and is ruled by absolute or near-absolute monarchs.²⁹

rights enunciated in the present Covenant will be exercised without discrimination of any kind as to . . . sex . . . birth or other status.”).

21. Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights* (art. 2, ¶ 2, of the *International Covenant on Economic, Social and Cultural Rights*), ¶ 7, U.N. Doc. E/C.12/GC/20 (June 10, 2009) [hereinafter *Non-Discrimination in Economic, Social and Cultural Rights*] (referring to the ICESCR to note that “[n]on-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2, paragraph 2, requires States parties to guarantee non-discrimination in the exercise of each of the economic, social, and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights.”).
22. UDHR, *supra* note 10, art. 15; CRC, *supra* note 11, art. 7; ICCPR, *supra* note 12, art. 24(3).
23. CRC, *supra* note 11, art. 7.
24. *Non-Discrimination in Economic, Social and Cultural Rights*, *supra* note 21, ¶ 7.
25. See UDHR, *supra* note 10, art. 2; CRC, *supra* note 11, art. 2(1); ICCPR, *supra* note 12, at 2(1); ICESCR, *supra* note 20, art. 2(2).
26. This Section borrows significantly from a previous working paper. See Betsy L. Fisher, *Statelessness in the GCC: Gender Discrimination beyond Nationality Law* 4 (Ins. on Statelessness and Inclusion, Statelessness Working Paper Series, No. 2015/1, 2015) [hereinafter Fisher, Working Paper].
27. Farea Al-Muslimi, *A History of Missed Opportunities: Yemen and the GCC*, CARNEGIE MIDDLE EAST CENTER (Jan. 5, 2016), <http://carnegie-mec.org/diwan/62405?lang=EN> (discussing how instability and underdevelopment have led GCC states to resist admitting Yemen to the GCC).
28. See Sean L. Yom & F. Gregory Gause III, *Resilient Royals: How Arab Monarchies Hang On*, 23 J. OF DEMOCRACY, Oct. 2012, at 74, 75 (noting that oil reserves in these states have allowed them to maintain generous social services).
29. *Id.* at 76 (noting that each of the monarchies of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE have “near-absolute power.”).

The six GCC states have long hosted populations of stateless persons, though data on the numbers of stateless persons in the region is elusive.³⁰ UNHCR estimates that Kuwait hosts 93,000 stateless persons, Saudi Arabia 70,000, and Qatar 1,200, but it does not provide estimates on the number of stateless persons in Bahrain, Oman, or the UAE.³¹

Most stateless people in the region are *bidoon*, an Arabic term which means ‘without,’ short for *bidoon jinsiya*, which means ‘without nationality.’³² These individuals are descendants of people who lived in the Gulf long before the GCC states’ independence from colonial rule.³³ Thousands of residents in the region failed to register as citizens in post-independence censuses, and they and their descendants have been considered stateless ever since.³⁴

Other stateless individuals in the Gulf are refugees. Palestinian refugees migrated there after the founding of the State of Israel.³⁵ Saudi Arabia hosts a large population of Rohingya, an ethnic minority of Muslims from Burma (or Myanmar) who are subjected to significant human rights abuses in Southeast Asia.³⁶ These individuals generally traveled to Saudi Arabia for the *hajj*, or Islamic pilgrimage, and could not or did not leave after completing it.³⁷

30. See INSTITUTE ON STATELESSNESS AND INCLUSION, THE WORLD’S STATELESS 105 (2014), <http://www.institutesi.org/worldsstateless.pdf> (noting “substantial under-reporting on statelessness in UNHCR’s statistics with respect to [the Middle East and North Africa].”).

31. UNITED NATIONS HIGH COMM’R FOR REFUGEES, STATISTICAL YEARBOOK 2014, at 80–83 (United Nations High Comm’r for Refugees ed., 14th ed.), <http://www.unhcr.org/56655f4b3.html>.

32. REFUGEES INT’L & OPEN SOC’Y FOUNDS., WITHOUT CITIZENSHIP: STATELESSNESS, DISCRIMINATION AND REPRESSION IN KUWAIT 2 (Open Soc’y Inst. ed. 2011). The term bears no relationship to the term Bedouin, which refers to nomadic herders.

33. See generally LAURA VAN WAAS, UNITED NATIONS HIGH COMM’R FOR REFUGEES, THE SITUATION OF STATELESS PERSONS IN THE MIDDLE EAST AND NORTH AFRICA 6–7 (United Nations High Comm’r for Refugees, ed. 2010); Elizabeth Dickinson, *Kuwait’s Bidoon may Still be in Limbo*, THE NATIONAL (Apr. 1, 2013), <http://www.thenational.ae/news/world/middle-east/kuwaits-bidoon-may-still-be-in-limbo> (describing the state formation process in the Middle East and North Africa and its effects on the populations that already lived there).

34. *Id.* at 6.

35. BADIL RES. CTR. FOR PALESTINIAN RESIDENCY & REFUGEE RIGHTS, HANDBOOK ON PROTECTION OF PALESTINIAN REFUGEES IN STATES SIGNATORIES TO THE 1951 REFUGEE CONVENTION 2-7 (Badil Res. Center for Palestinian Residency & Refugee Rights ed. 2005), http://badil.org/phocadownload/Badil_docs/publications/Handbook.pdf.

36. Dickinson, *supra* note 33; VAN WAAS, *supra* note 33, at 18.

37. Dickinson, *supra* note 33.

Some stateless populations in the Gulf are direct and recent creations of GCC states' policies. Kuwait and Bahrain have stripped their nationality from political activists as punishment for their vocal dissent.³⁸ Finally, nationals of GCC states may find themselves stateless due to so-called 'technical causes,' or gaps in nationality law or other provisions of law.³⁹ As this Article will discuss, gender discrimination is a particular cause or risk factor for statelessness.⁴⁰

D. Outline

This Introduction is followed by four substantive Parts and a Conclusion. Part I surveys the nationality laws of each GCC State and analyzes the gaps created by gender discrimination in each country's law. By conveying nationality exclusively or primarily through the father, many categories of children are left vulnerable to statelessness. Part II surveys civil registration laws in GCC states, documenting the common law and practices that prevent mothers or single parents from registering the births of their children. Children whose births are not registered may, later in life, be unable to prove their nationality and become stateless. Part III discusses the risks of statelessness that result from gender discrimination in family law, most notably law and policy establishing paternity for non-marital children and restrictions on marriages to non-nationals. Finally, Part IV discusses criminal law, and in particular criminalization of adultery. Non-marital children are generally considered to be children of unknown origin and will receive na-

38. See BAHRAIN CTR. FOR HUMAN RIGHTS, STATELESS IN BAHRAIN 4 (Bahrain Ctr. for Human Rights, ed. 2014); *The New Unpeople: Statelessness as Punishment against Political Dissent in the Gulf*, THE ECONOMIST (Nov. 15, 2014), <http://www.economist.com/news/middle-east-and-africa/21632640-statelessness-punishment-against-political-dissent-gulf-new-unpeople> (both describing denationalization of political activists in Kuwait and Bahrain).

39. See *infra* Part I. The label 'technical causes' refers to a gap in law that renders a person stateless. For example, a child could be born in a country with that conveys nationality on a *jus sanguinis* (through parentage) basis to parents who are nationals of a country with a *jus soli* (through birth in territory) system. The child would not be eligible for nationality from either the place of birth or her parents' country of nationality. This should not obscure that many of these 'technical' gaps in law discriminate on the basis of gender or birth status, and thus are forbidden by international law. Take, for example, a child who is rendered stateless because she cannot receive her mother's nationality. This is not simply an unlucky 'technicality' or gap in law that violates the child's right to a nationality. The country has actively discriminated on the basis of gender. Where statelessness is created by a gap in law relating to discrimination on the basis of gender or birth status, we should not hesitate to name it as a violation of international human rights as well as a 'technical' cause of statelessness.

40. See *infra* Parts I–IV.

tionality on that basis. They will, however, also face significant social stigma and be separated from their families.

I. NATIONALITY LAWS

Part I.A describes the nationality laws of each GCC state, outlining the discriminatory elements of each state's law. Part I.B then analyzes these laws to assess the risks of statelessness created by the gender and birth status discrimination in each country's nationality law. It concludes that allowing women to convey nationality on a basis equal to men is a vital step to ending statelessness in GCC states.

A. Provisions of Nationality Law

Each GCC state's nationality law has a *jus sanguinis*, or hereditary, system that transmits nationality to children at birth by default through the child's father.⁴¹ This default creates significant risks of statelessness, particularly for children of two stateless parents, a stateless father, or a father who for any reason cannot convey his nationality to his children.

1. Bahrain

Bahrain conveys nationality to children born to a Bahraini father, but its law states that children of Bahraini mothers and non-Bahraini fathers receive Bahraini nationality only when the father's identity is unknown or paternity is not established.⁴² This means that the children of two stateless parents, stateless fathers, or fathers unable to convey nationality, will always or almost always be born stateless.

Bahrain reported in a human rights review that "Bahraini law guarantees the right of Bahraini women to enjoy equality with men in respect of the acquisition of Bahraini nationality."⁴³ Technically, Bahraini law does not distinguish between boy-children and girl-children⁴⁴—but the plain text of its law discriminates between fathers and mothers. Its claim that its obviously inequitable law is equitable is troubling. Bahrain reported that the policy of conveying nationality through the father is "a position upheld by

41. UNITED NATIONS HIGH COMM'R FOR REFUGEES, BACKGROUND NOTE ON GENDER EQUALITY, *supra* note 4, at 3.

42. Citizenship Act (as amended in 1981) art. 4 (Bahr.).

43. Comm. on the Elimination of Discrimination against Women, Third Periodic Report of State Parties: Bahrain, ¶ 117, U.N. Doc. CEDAW/C/BHR/3 (Dec. 21, 2011).

44. Citizenship Act (as amended in 1981) art. 4 (Bahr.) (stating that the children of Bahraini fathers are Bahraini, without distinction as to boy-children and girl-children).

experts in private international law [because it affirms] a feeling of national belonging and of the spiritual bond linking a person to the nation to which his forefathers belonged.”⁴⁵ Bahrain also defended its nationality law as being “characterized by a large measure of progressiveness and by conformity to human rights principles.”⁴⁶

Bahrain claimed that its nationality law was in full compliance with international law, but also promised that it would amend its nationality law to eliminate the law’s gender discrimination. In 2010, it reported that “[e]fforts are being made to amend the current Nationality Act in order to ensure that Bahraini women married to foreigners have the right to transmit Bahraini nationality to their children.”⁴⁷ In 2011, Bahrain reported that “measures [were] currently being expedited to formulate a draft amendment to the Nationality Act, which will observe the principle of gender equality.”⁴⁸ No such amendment has been adopted as of this writing in mid-2016.

In the meantime, Bahrain has adopted some interim measures, including granting citizenship to small numbers of children of Bahraini mothers and non-Bahraini fathers.⁴⁹ Bahrain also allows children of Bahraini women married to a non-Bahraini man to access health and education services free of charge, and receive permanent residency with exemptions from the typical application fees.⁵⁰

2. Kuwait

Kuwaiti law conveys nationality to the child of a Kuwaiti father.⁵¹ Children of Kuwaiti mothers and non-Kuwaiti fathers receive nationality only if the father is unknown, paternity is not established, or the non-

45. Comm. on the Elimination of Discrimination against Women, Third Periodic Report of State Parties: Bahrain, ¶ 118, U.N. Doc. CEDAW/C/BHR/3 (Dec. 21, 2011).

46. *Id.*

47. Comm. on the Rights of the Child, Second and Third Periodic Reports of States Parties Due in 1999: Bahrain, ¶ 156, U.N. Doc. CRC/C/BHR/2-3 (March 25, 2010).

48. Comm. on the Elimination of Discrimination against Women, Third Periodic Report of State Parties: Bahrain, ¶ 118, U.N. Doc. CEDAW/C/BHR/3 (Dec. 21, 2011).

49. Comm. on the Rights of the Child, Concluding Observations: Bahrain, ¶ 38, CRC/C/BHR/CO/2-3 (Aug. 3, 2011).

50. Comm. on the Elimination of Discrimination against Women, Third Periodic Report of State Parties: Bahrain, ¶ 119, U.N. Doc. CEDAW/C/BHR/3 (Dec. 21, 2011).

51. Nationality Law (1959) art. 2 (amended) (Kuwait).

Kuwaiti father has divorced the mother or is deceased.⁵² Even when the non-Kuwaiti father dies or divorces the mother, the child receives nationality only by decree (rather than automatically) and only at the age of majority.⁵³ This means that children remain stateless for their entire childhood and are not guaranteed to receive nationality even if their non-Kuwaiti father dies or divorces their mother. Kuwaiti law leaves a significant risk of statelessness for the child of stateless parents, a stateless father, or a father who is unable to convey nationality.

The safeguard granting nationality to children of a divorced or widowed Kuwaiti mother previously married to a non-Kuwaiti man was adopted in 1980.⁵⁴ Kuwait cited this action thirty years later in a human rights review as evidence that Kuwait is “constantly striving to broaden the scope for children of a Kuwaiti mother to be granted Kuwaiti nationality in the light of developments and as warranted by humanitarian considerations.”⁵⁵ Treaty bodies, though, have reported their “concern” about Kuwait’s gender discriminatory nationality law and the lack of safeguards against statelessness for children born in Kuwait.⁵⁶

To these concerns, Kuwait gave its reassurances that “the provisions of Kuwait’s Law No. 15 of 1959 on nationality are consistent with” the requirement that every child receive a nationality because “[e]very child whose father is a Kuwaiti citizen is entitled to Kuwaiti nationality, regardless of whether the child is born in Kuwait itself or abroad.”⁵⁷ Again, this law discriminates against Kuwaiti mothers, and without any other safeguards, leaves significant risk for children of Kuwaiti mothers and non-Kuwaiti

52. *Id.* at arts. 2, 3, 5(2).

53. *Id.* at art. 5(2). It should be noted that naturalization of children at the age of majority “is entirely at the discretion of the Minister of the Interior and is only granted by decree. Attempting to secure their rights, families affected by this issue say they are individually told that ‘You are at the top of the list’ by registration officials. Some have been ‘at the top of the list’ for years.” REFUGEES INT’L & OPEN SOC’Y FUNDS., *WITHOUT CITIZENSHIP: STATELESSNESS, DISCRIMINATION, AND REPRESSION IN KUWAIT*, *supra* note 32, at 10.

54. Comm. on the Elimination of All Forms of Discrimination against Women, Combined Third and Fourth Periodic Report of States Parties: Kuwait, ¶ 76, U.N. Doc. CEDAW/C/KWT/3-4 (Aug. 12, 2010).

55. *Id.*

56. Human Rights Comm., Concluding Observations: Kuwait, ¶¶ 12–13, U.N. Doc. CCPR/C/KWT/CO/2 (Nov. 18, 2011); Comm. on the Elimination of Discrimination against Women, Concluding Observations: Kuwait, ¶¶ 36–37, U.N. Doc. CEDAW/C/KWT/CO/3-4 (Nov. 8, 2011); Comm. on the Elimination of Racial Discrimination, Concluding Observations: Kuwait, ¶ 17, U.N. Doc. CERD/C/KWT/CO/15-20 (Apr. 4, 2012).

57. Human Rights Comm., Second Periodic Report of States Parties: Kuwait, ¶ 195, U.N. Doc. CCPR/C/KWT/2 (Oct. 26, 2009).

fathers to be stateless. In 2011, the Kuwaiti government announced that *bidoon* would have access to certain public services such as education and civil registration documents, but the U.S. Department of State reported that this has been implemented unevenly, and many *bidoon* are still denied access to services.⁵⁸

3. Oman

Omani law grants nationality to any child of an Omani father.⁵⁹ The child of an Omani mother and a non-Omani father will receive Omani nationality only if the child's paternity is unestablished or if the child's father formerly had Omani nationality and had since become stateless.⁶⁰ An additional safeguard states that a child born and residing in Oman can receive nationality if the child's father was born in Oman, was stateless when the child was born, and continues to be stateless.⁶¹ A recent proposal in Oman's legislative body, the Shura Council, sought to remove gender discrimination from the nationality law entirely, but was promptly tabled.⁶² Oman's nationality law means that the child of two stateless parents, a stateless father, or a father who cannot convey nationality, may be stateless.⁶³

Despite the clear discrimination against mothers, Oman reached the puzzling conclusion that its nationality law has "no discrimination between men and women as regards citizenship. Any person, male or female, born in Oman or outside the country to an Omani father is Omani."⁶⁴ Like Bahrain, Oman noted that the children of Omani fathers will receive nationality, regardless of the child's gender. Oman thereby concluded that its law is in full compliance with international law.

4. Qatar

Qatar grants nationality to any child born to a Qatari father, but it makes no provision whatsoever for Qatari women to transmit their nation-

58. U.S. Dep't of State, Bureau of Democracy, H.R and Lab., Country Reports on Human Rights Practices for 2015: Kuwait 17 (2015).

59. Sultani Decree (No. 3/1983) art. 1(1) (Oman).

60. *Id.* at art. 1(2).

61. *Id.* at art. 1(4).

62. Sunil K. Vaidya, *Allow Women to Pass on Nationality, Says Oman MP*, GULF NEWS (Apr. 9, 2013), <http://gulfnnews.com/news/gulf/oman/allow-women-to-pass-nationality-says-oman-mp-1.1168526>.

63. U.S. Dep't of State, Bureau of Democracy, H.R and Lab., Country Reports on Human Rights Practices for 2015: Oman (2015).

64. Comm. on the Elimination of Discrimination against Women, Initial Periodic Report of States Parties: Oman, ¶ 95, U.N. Doc. CEDAW/C/OMN/1 (July 20, 2010).

ality to their children.⁶⁵ The only provision for children of Qatari women and non-Qatari men is that these children are supposed to be given priority for naturalization.⁶⁶ Naturalization will provide only very limited relief to children of Qatari mothers, since “Qatari nationality shall not be granted to more than fifty (50) applicants in one calendar year.”⁶⁷ Further, naturalized Qataris receive second-class citizenship rights to those of native-born Qataris.⁶⁸ This law is discriminatory and leaves stateless nearly every child whose father cannot convey nationality.

5. Saudi Arabia

Saudi Arabia automatically transmits nationality to children of Saudi fathers.⁶⁹ The nationality law dictates that the child of a Saudi mother and non-Saudi father receives the mother’s nationality only if the father is of an unknown nationality or is stateless.⁷⁰ Children born outside Saudi Arabia to a Saudi mother and non-Saudi father can apply for Saudi nationality at the age of majority if the individual meets several conditions.⁷¹ However, human rights reports note that citizenship law in Saudi Arabia is not implemented as written. In practice, nationality is “legally derived only from the father” and the child of a Saudi mother and a stateless father would be stateless.⁷² Children of two stateless parents, a stateless father, or fathers who cannot convey their nationality are extremely vulnerable to being stateless.

Gender discrimination in Saudi Arabia’s nationality law has been noted by several UN treaty bodies.⁷³ Saudi Arabia’s assessment of its own performance is rather glowing, asserting that “there is no discrimination

65. Acquisition of Qatari Nationality (Law No. 38/2005).

66. *Id.* at arts. 1(4) & 2.

67. *Id.* at art. 17.

68. *Id.* at art. 16 (noting that “[n]aturalized Qataris shall not be equated with Qatari nationals in terms of the right to work in public positions or work in general until five (5) years after the date of naturalization. Naturalized Qataris shall not be entitled to participate in elections or nominations or be appointed in any legislative body.”).

69. Citizenship System (Res. No. 4/1954) art. 7 (amended) (Saudi Arabia).

70. *Id.*

71. *Id.* at art. 8.

72. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices for 2015: Saudi Arabia 29 (2015), <http://www.state.gov/documents/organization/253157.pdf> [hereinafter Country Reports 2015: Saudi Arabia].

73. Comm. on the Elimination of Discrimination against Women, Concluding Comments: Saudi Arabia, ¶¶ 27–28, U.N. Doc. CEDAW/C/SAU/CO/2 (Apr. 8, 2008); Comm. on the Rights of the Child, Concluding Observations: Saudi Arabia, ¶¶ 38–39, U.N. Doc. CRC/C/SAU/CO/2 (Mar. 17, 2006); Comm. on the Elimination of Racial Discrimination, Concluding Comments: Saudi Arabia, ¶ 214, CERD A/58/18 (2003).

against women in the provisions of the Nationality Law.”⁷⁴ Nonetheless, its law discriminates against women and creates significant risks of statelessness.

6. United Arab Emirates

Emirati law conveys nationality to children of an Emirati father.⁷⁵ The child of an Emirati mother receives Emirati nationality only if the child’s paternity is unestablished, the child’s father is unknown, or the father does not have a nationality.⁷⁶ In practice, though, the U.S. Department of State reports that children of stateless fathers also remain stateless.⁷⁷

Human rights treaty bodies have regularly noted that the UAE’s nationality law discriminates against women and recommended reform of these provisions.⁷⁸ Despite the plain discrimination of these laws, the UAE boldly proclaimed that its laws “do not distinguish among its citizens on grounds of sex.”⁷⁹ UAE has announced plans to grant over 2,000 children nationality based on their mother’s Emirati nationality.⁸⁰ This is not reflective of a policy change, but is instead a one-time grant of nationality to children of Emirati mothers and foreign fathers. Emirati law discriminates against women and leaves children vulnerable to being stateless.

74. Comm. on the Elimination of Discrimination against Women, Combined initial and second periodic reports of States Parties: Saudi Arabia, ¶ 28, U.N. Doc. CEDAW/C/SAU/2 (Mar. 29, 2007).

75. Nationality Law (No. 17/1972) art. 2(b) (amended 1975) (U.A.E.).

76. *Id.* at art. 2(c).

77. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices for 2015: United Arab Emirates 17 (2015) [hereinafter Country Reports 2015: U.A.E.] (stating that “[b]ecause children derive citizenship generally from the father, bidoon children born within the country’s territory remained stateless”).

78. Comm. on the Elimination of Discrimination against Women, Concluding Observations: United Arab Emirates, ¶¶ 32-33, U.N. Doc. CEDAW/C/ARE/CO/133 (Feb. 5, 2010); Comm. on the Elimination of Racial Discrimination, Concluding Observations: United Arab Emirates, ¶ 17, U.N. Doc. CERD/C/ARE/CO/17 (Sept. 21, 2009); Comm. on the Rights of the Child, Concluding Observations: United Arab Emirates, ¶¶ 396-97, U.N. Doc. CRC/C/118 (Sept. 3, 2002).

79. Comm. on the Elimination of Discrimination against Women, Initial Periodic Report of State Party: United Arab Emirates, U.N. Doc. CEDAW/C/ARE/1 (Sept. 17, 2008).

80. Peter Hellyer, *Citizenship law is a step towards even greater equality*, THE NATIONAL (Apr. 10, 2012), <http://www.thenational.ae/thenationalconversation/comment/citizenship-law-is-a-step-towards-even-greater-equality>.

B. Analysis of Nationality Laws

Gender discrimination in these nationality laws creates many gaps in which children may be born without a nationality. No GCC country has a residual clause indicating that children of its nationals who would otherwise be stateless will receive nationality, nor does any GCC country have a residual clause indicating that children born in their territory who would otherwise be stateless will receive nationality.⁸¹ Thus, in each country, the child of two stateless people will be stateless.

Qatar's law has the widest gaps of all, since its law contains no circumstances in which the child of a Qatari mother and non-Qatari father can receive Qatari nationality.⁸² Thus, if for any reason the child of a Qatari mother and non-Qatari father is not able to take her father's nationality, the child will be stateless. If a child is born in any of these states to a national mother and a foreign father whose State conveys nationality purely on a *jus soli* basis, that is, conveying nationality through birth in territory, the child will be stateless.

In most cases, it seems that the child of a GCC national mother and a stateless father will also be stateless. Only Oman, Saudi Arabia, and the UAE's nationality laws provide a safeguard if the father is stateless.⁸³ Human rights reports indicate that the safeguards are not implemented in Saudi Arabia and the UAE.⁸⁴ It is unclear if Oman's safeguard for the children of stateless fathers is implemented.

Five of the GCC countries have safeguards that allow women to convey nationality to their children in situations when the father is unknown or paternity is unestablished.⁸⁵ As I have written elsewhere:

Provisions that allow children to take the mother's nationality where the father's identity or nationality is unknown, taken literally, mean that the mother does not know who the father is.

81. Convention on the Reduction of Statelessness arts. 1(1), 3–4, Aug. 30, 1961 (entered into force Dec. 13, 1975) (requiring signatory states to grant nationality to several groups of individuals in its territory who would otherwise be stateless).

82. Arabic Title [Acquisition of Qatari Nationality] (Law No. 38/2005) arts. 1–2.

83. Saudi Arabian Citizenship System (Res. No. 4/1954), as amended, art. 7.

84. Country Reports 2015: Saudi Arabia, *supra* note 72; Country Reports 2015: U.A.E., *supra* note 77, at 17 (“Because children derive citizenship generally from the father, bidoon children born within the country's territory remained stateless”).

85. Citizenship Act (1963) art. 4 (amended 1981) (Bahr.); Nationality Law (1959) arts. 2, 3, 5(2) (amended) (Kuwait); Nationality Law, art. 1 (Oman); Nationality Law (No. 38/2005) arts. 1, 2 (Qatar); Nationality Regulations (No. 4/1954) arts. 7, 8 (amended) (Saudi Arabia); Nationality Law (No. 17/1972) art. 2 (amended 1975) (U.A.E.).

Such provisions do not include situations in which a woman knows who the father of the child is, but is not married to the father. Thus, if a child results from adultery or even [rape], the child would not take the mother's nationality because the father is not unknown.⁸⁶

As this Article will discuss below, each of the GCC states criminalizes at least some forms of sexual contact between unmarried individuals.⁸⁷ If a mother were to request that her child receive her nationality but the father's identity or nationality is unknown or paternity is not established, the woman would be admitting to criminal conduct.

By establishing a default in which women cannot convey nationality to their children, each GCC State creates a significant risk of statelessness for a child of two stateless parents, a stateless father, or a father who is unable to convey nationality. A few safeguards are in place allowing some GCC national mothers to convey her nationality to her children when the father's identity or nationality is unknown or paternity is not established. However, it is unclear whether these safeguards are implemented, and the criminal penalties for adultery make it unlikely that children can access those provisions. The laws create statelessness and discriminate on the basis of gender, and these cases of statelessness are directly attributable to the laws' gender discrimination.

II. GENDER DISCRIMINATION IN CIVIL REGISTRATION LAW

This Part describes how children can become stateless as a result of gender and birth status discrimination in civil registration law. Part II.A outlines the legal provisions for civil registration in each GCC state, and Part II.B provides an analysis of the risk of statelessness created by each.

While gender discrimination in nationality law is a major cause of statelessness in the region, statelessness can result from causes other than gaps in nationality law. A person is stateless any time no State considers them to be a national under the operation of its law.⁸⁸ Gender discrimination in civil registration law impedes women's ability to register their children's births, and restrictions on registering non-marital children may

86. Betsy Fisher, *Why Non-Marital Children in the MENA Region Face a Risk of Statelessness*, HARV. HUM. RTS. J. ONLINE (Jan. 6, 2015), <http://harvardhrj.com/2015/01/why-non-marital-children-in-the-mena-region-face-a-risk-of-statelessness/> (“[T]hese safeguards are simply not implemented in many countries and thus remain illusory.”) (citations omitted).

87. See Part IV *infra*.

88. U.N. Convention Relating To the Status of Stateless Persons art. 1(1), Sept. 28, 1954, <http://www.ohchr.org/Documents/ProfessionalInterest/stateless.pdf>.

prevent mothers and fathers alike from registering the births of their children, thereby limiting the children's ability to gain nationality.

All of the GCC states have ratified the Convention on the Rights of the Child, which requires governments to register the births of all children within its territory.⁸⁹ When a country conveys nationality on a *jus soli* basis, a birth certificate showing the child's birth in the country's territory verifies the child's entitlement to nationality.⁹⁰ Likewise, when a country conveys nationality on a *jus sanguinis* basis, a birth certificate showing the child's birth to her parents shows the child's entitlement to nationality.⁹¹ When a child's birth is not documented, the child's nationality may not be recognized by her state of nationality for lack of proof that she is entitled to that nationality. If she does not have another nationality, she will likely be left stateless.⁹² Even where nationality law technically allows a woman to convey nationality to her children, this right may be completely theoretical if the mother cannot register the births of her children and thereby prove the child's nationality.⁹³

A. Provisions of Civil Registration Law⁹⁴

1. Bahrain

Bahrain's civil registration law lists several categories of people with responsibility to report a birth, among them "one of the parents of the child."⁹⁵ Human rights reports suggest that, in practice, the father is required to submit an application for a birth certificate in person.⁹⁶ Further, Bahraini law requires a marriage certificate for parents to register a birth, and without a marriage certificate, the child is treated as the child of unknown parents.⁹⁷ In the latter situation, the child would receive Bahraini

89. CRC, *supra* note 11, at art. 7.

90. LAURA VAN WAAS, NATIONALITY MATTERS 155 (2008).

91. *Id.*

92. *Id.* at 153.

93. *Id.*

94. Civil registration laws from these countries are not widely published. This Section is based on the best information available to the author after extensive research of English and Arabic legal sources. The most recent versions of the civil registration laws here are on file with the author, and the references here are based on the author's translation of the original versions of the laws in Arabic, which are also on file with the author.

95. Law for Birth and Death Registration (No. 6/1970) art. 3(1) (Bahr.).

96. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices for 2015: Bahrain (2015).

97. Law for Birth and Death Registration Law (No. 6/1970) art. 1 (Bahr.) (outlining that, in cases of unestablished paternity, a child is treated in the same manner as a foundling, or the child of unknown parents).

nationality, but her birth certificate would record her birth as if she had been found in the street, with no legal relationship to her biological parents.

2. Kuwait

Kuwaiti civil registration law does not clearly state whether mothers can register the births of their children or not.⁹⁸ It gives primary responsibility for reporting the birth to the child's father, and if he is not available, "other adult relatives" then assume responsibility for reporting the births.⁹⁹ It is not clear whether this refers only to male relatives or whether mothers might also be included. Migrant workers giving birth in Kuwait have had difficulties receiving birth certificates for their children.¹⁰⁰

3. Oman

Under Oman's Civil Status Law, a newborn must be registered within two weeks of birth.¹⁰¹ Responsibility for registration falls first on the father, then on a variety of other individuals in a specified order—a person is made responsible only if the preceding individuals are unavailable.¹⁰² Last on the list of eligible persons to register the child's birth is the mother.¹⁰³ It is unconfirmed whether women can register their children's birth in practice.

4. Qatar

The text of Qatari civil registration law was updated in 2016 to explicitly allow the mother to register the birth of a child.¹⁰⁴ Qatari government publications state that marriage certificates are required to register the birth of a child.¹⁰⁵

98. Birth and Death Registration Law (No. 36/1969) art. 3 (Kuwait).

99. *Id.*

100. See, Michelle Fe Santiago, *No Birth Report of Kids: Kuwait Pinoy Hit Embassy*, ARAB TIMES ONLINE (Sept. 8, 2014), <http://www.arabtimesonline.com/newsdetails/tabid/96/smId/414/articleid/187678/refTab/36/t/no-birth-report-of-kids/default.aspx> (noting cases of Filipina migrant laborers in Kuwait who had difficulty obtaining birth certificates for their children).

101. Civil Status Law art. 14 (Oman), http://www.civilstatus.gov.om/english/law_03.asp.

102. *Id.* at art. 16.

103. *Id.*

104. Birth and Death Registration Law (No. 3/2016) art. 3(5) (Qatar).

105. *Issuing the Birth Certificate*, QATARI GOVERNMENT http://portal.www.gov.qa/wps/portal!/ut/p/a0/NYoxFolwEETPYpE6QTs71EJrCpVuE1bYR9jkhSVeX7awmpn_x_b2ZXuGSiMIJYa47_c3LOcMMpnm1N63OaWFTHN0T_Qa18SCLMb9leuwVAq4GvfggSoNG0R9Rtgnj1ozjOovVGRaFexK44agwCUvQOxVByxCHwogaDtkm-f28APWYaki/ (last visited Sep. 23, 2016) (requiring a marriage certificate to register a child).

5. Saudi Arabia

Saudi Arabia's civil registration law gives health institutions primary responsibility for reporting births. The law does explicitly mention that mothers can register the births of their children if health facilities, delivering doctors and midwives, and fathers are each unavailable.¹⁰⁶ However, human rights reports state that "only the father can register a birth."¹⁰⁷ Saudi government publications indicate that birth registration requires the parents to present a marriage certificate.¹⁰⁸

6. United Arab Emirates

Emirati civil registration law does not clearly give women the ability to register the births of their children.¹⁰⁹ However, ministerial regulations implementing civil registration law are clear that births can only be registered with a marriage certificate. If parents cannot provide a marriage certificate, they must present a "final court judgment" before the child can be registered.¹¹⁰ This "judgment" likely refers to a criminal judgment against the parents.¹¹¹ When non-Emirati women have children out of wedlock in the

106. Civil Registration Act of 2001 art. 28 (Saudi Arabia) ("Health centers and other health institutions in which a birth occurs must send a photo reporting the birth to the correct regional birth registrar within fifteen days from the date of birth."); *Id.* at art. 29 ("29(1) The Persons in charge of reporting the birth are: A) The doctor . . . B) The midwife . . . C) The father if present at the time of the birth D)The mother if illness does not prevent her from reporting the birth in person or in writing E) Any adult living with the mother . . . F) A person in whose home the birth occurred. 29 (2) A person mentioned in clauses (c), (d), (e), (f) of subsection (1) is excused of their responsibility if the birth is reported under the provisions of Article 28.").

107. Country Reports 2015: Saudi Arabia, *supra* note 72, at 40.

108. *Services*, SAUDI MINISTERIAL AGENCY OF CIVIL AFFAIRS, https://www.moi.gov.sa/wps/portal/Home/sectors/civilaffairs/contents!/ut/p/z0/04_Sj9CPykssy0xPLMnMz0vMAfljo8ziDTxNTDwMTYy8LUwC3AwcA428nB2dPY3cfc31vfSj8CsAmpCZVVgY5agflZyfV5JaUaIfkZxZlpmjkJiWlphZVKxqgMYtTi0qy0xOLVYw1C_IjooEANMXHRQ! (requiring a family register to register the birth of a child; in turn, a couple must present a marriage certificate to be issued the family register, as it is "issued to married couples only.").

109. Law on Birth and Death Registration (No. 18/2009) art. 5 (U.A.E.).

110. Ministerial Decree (No. 44/2011) art. 8 (U.A.E.) (requiring a marriage certificate); *id.* at art. 9 ("In case there is no official birth report, the home birth will be recorded and the birth certificate issued under a formal decision from the court showing the child's father's name and mother's name, place and date of birth.").

111. *Id.* at art. 8.

UAE, “only the courts can issue a birth certificate, and . . . they normally do so after a conviction [for having sexual contact outside of marriage].”¹¹²

B. Analysis of Civil Registration Law

Every GCC country’s civil registration law provides a list of individuals responsible for documenting a child’s birth, with legal responsibility falling to each individual in the order they are listed (meaning that the second person on the list faces personal liability for failure to register only if the first person on the list is unavailable to do so, and so on). Qatar explicitly allows mothers to register births of their children.¹¹³ While Saudi law explicitly allows a mother to register the birth of her child, it appears that in practice, Saudi Arabia requires the father to register the birth of a child.¹¹⁴ Under Kuwaiti civil registration law, there is no way for a woman to register the birth of her child.¹¹⁵ In Bahrain, Oman, Qatar, and the UAE, preference is given to registration by the father and it is unclear whether mothers can register the births of their children or not.¹¹⁶

Some, possibly all, GCC states have significant restrictions on the registration of non-marital children. While Kuwait and Oman’s policies are unclear, birth registration in Bahrain, Qatar, Saudi Arabia, and the UAE requires the parents to show documentation of their marriage.¹¹⁷ It appears that non-marital children can only be registered as foundlings or orphans—

112. Wafa Issa, *Children Jailed with their Mothers in UAE Visa Amnesty*, THE NATIONAL (Mar. 31, 2013), <http://www.thenational.ae/news/uae-news/children-jailed-with-their-mothers-in-uae-visa-amnesty>.

113. Birth and Death Registration Law (No. 3/2016) art. (Qatar).

114. Civil Registration Act of 2001 art. 29 (Saudi Arabia).

115. See Law Concerning the System of Registering Births and Deaths (No. 36/ 1969) art. 3 (Kuwait) (listing individuals responsible for registering the birth of a child, none of which is the mother).

116. Law Organizing Birth and Death Registration (No. 6/1970) art. 3 (Bahr.) (amended by Law No. 17/1998) (“Responsibility for each listed individual to report falls according to the preceding list and reports shall not be accepted from others than those listed here,” but list does not include mother); Civil Status Law art. 16 (Oman), http://www.civilstatus.gov.om/english/law_03.asp; Law on Birth and Death Registration (No. 5/1982) art. 3 (Qatar) (list of responsible people does not include mother), http://www.sjc.gov.qa/lawlib/criminal_law/criminal/laws/5-1982/1.htm; Law on Birth and Death Registration (No. 18/ 2009) art. 5 (U.A.E.).

117. Amiri Decree (No. 6/1970) art. 1 (Bahr.) (outlining that, in cases of unestablished paternity, a child treated in the same manner as a foundling, the child of unknown parents); *Issuing the Birth Certificate*, QATARI GOVERNMENT, *supra* note 105 (requiring a marriage certificate to register a child); *Services*, SAUDI MINISTERIAL AGENCY OF CIVIL AFFAIRS, https://www.moi.gov.sa/wps/portal/Home/sectors/civilaffairs/contents!ut/p/z0/04_Sj9CPykyssy0xPLMnMz0vMAfljo8ziDTxNTDwMTYy8LUwC3AwcA428nB2dPY3cfc31vfSj8CsAmpCZVVgY5agflZyfV5JaUaIfkZxZlpmjkJiWlphZVKxqgMYtTi0qy0xOLVYw1C_IjooEANMXHRQ!/ (requiring a family reg-

meaning that for the child's birth to be registered and to receive nationality, the State must treat the child as one without known parents.¹¹⁸ The child would receive nationality, but would then have no documented or legal relationship to her biological parents.

When women are deprived of the ability to register their children and non-marital children cannot be registered, international norms forbidding discrimination on the basis of gender and birth status are violated. This discrimination also increases the likelihood that children will go undocumented and will face difficulty accessing services like education or health care. As noted above, birth registration is crucial to ensuring that children receive the benefits of nationality and do not become stateless later in life because they lack proof of their identity.¹¹⁹ To ensure that all children are registered at birth, the international community must address gender discrimination in civil registration law.

III. GENDER DISCRIMINATION IN FAMILY LAW

This Article has outlined how gender discrimination in nationality law and civil registration law can result in new cases of statelessness. This Part describes how two issues in family law, often referred to as civil status or personal status law, can create a risk of statelessness.

Part III.A describes how law and policies on establishing paternity can leave children vulnerable to statelessness. When, as seen in Part I, a child must receive nationality from her father, proving the relationship to the father becomes extremely important to avoid statelessness. Throughout the GCC states, there are limitations on ways to establish paternity outside of marriage or against a husband who disclaims paternity of his wife's children.

Part III.B describes how restrictions on marriage to foreigners can leave children vulnerable to statelessness. When the State does not recognize a marriage between its citizen and a non-national, it may treat the child of that marriage as non-marital children. When the State also discriminates on

ister to register the birth of a child; in turn, a couple must present a marriage certificate to be issued the family register, as it is "issued to married couples only.").

118. *See* Citizenship Act (1963) art. 5 (amended 1981) (Bahr.) ("A person shall be regarded a Bahraini national if born in Bahrain for unknown parents. An illegal child shall be deemed to have born in Bahrain, unless proved to be otherwise"); Nationality Law (1959) art. 3 (amended) (Kuwait); Royal Decree (No. 38/2014) art. 11(5) (Oman); Nationality Law (No. 38/ 2005) art. 2 (Qatar) ("Those born in Qatar to unknown parents shall also be deemed to be a naturalised Qatari. Foundlings shall be considered as born in Qatar unless proven otherwise."); Nationality Law (No. 17/ 1972) art. 2 (amended 1975) (U.A.E.) (each giving nationality to children born to unknown parents in territory).

119. LAURA VAN WAAS, NATIONALITY MATTERS 155 (2008).

the basis of birth status, a non-marital child may be left stateless. This Part establishes how layers of discrimination on the basis of gender and birth status mean that even the child of a father with nationality of a GCC State can face a serious risk of statelessness.

*A. Inadequate Means to Establish Paternity*¹²⁰

Family law that prevents children from documenting paternity leaves children vulnerable to statelessness. The absence of policies to allow or compel fathers to acknowledge their children is discriminatory on the basis of birth status. Put simply, if a child is entitled to receive her father's nationality but has no legal process to confirm her relationship to the father, then the child will not benefit from her father's nationality and may become stateless.

The risk that a child will be left stateless can arise when the biological parents are "married but the father disclaims paternity; the parents are married but the marriage is not recognized by the state; the father wants to verify paternity but is legally barred from doing so because the couple is not married; or the parents are not married and the mother or the child want to verify paternity but do not have a way to force the father to acknowledge paternity."¹²¹

Gulf countries are generally recalcitrant to use DNA testing to establish paternity because, throughout the region, traditional interpretations of *sharia*, or Islamic canonical law, remain foundational to family law systems. Interpretations of *sharia* are extremely detailed when addressing family law and propose traditional ways of establishing paternity other than scientific methods of proving biological relationship.¹²²

Under traditional interpretations of Islamic law, the legal notion of paternity "has always been connected with licit sexual relationship . . . [C]hildren born within wedlock are automatically attached to the

120. Family laws from these countries are not widely published. This Section is based on the best information available to the author after extensive research of English and Arabic legal sources. The most recent versions of the civil status laws are on file with the author, and the references for several countries' civil status laws are based on the author's translation of the original versions laws in Arabic, which are also on file with the author.

121. Fisher, Working Paper, *supra* note 26, at 4; *see also* Rebecca Torr, *DNA Test to Decide Boy's Future*. . ., GULF DAILY NEWS (Bahr.) (Aug. 17, 2008), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=226531> (discussing a case in Bahrain in which the parents had not registered their marriage, and DNA testing was necessary to verify the child's paternity).

122. Ayman Shabana, *Negation of Paternity in Islamic Law between Li'an and DNA Fingerprinting*, 20 ISLAMIC L. & SOC'Y 157, 158 (2013).

bona fide husband who also becomes the bona fide father.”¹²³ More than a question of biology, paternity is a matter of a legal relationship (marriage) between the child’s mother and father. Every GCC State except Saudi Arabia has a codified family law that draws upon the *sharia*, though Bahrain in 2009 only codified family law for the Sunni population (leaving the Shia’ population without a codified family law).¹²⁴

1. Provisions of Family Law

a. Bahrain

Bahrain’s Sunni family code establishes maternity automatically at birth¹²⁵ and presumes paternity for the husband of the child’s mother.¹²⁶ A husband can disclaim paternity of his wife’s child, but only when DNA evidence confirms that the husband is not the father.¹²⁷ This DNA prerequisite ensures that a biological father cannot disown a child through mistake or fraud; this is an important safeguard against statelessness.

Bahraini civil registration law has a strong preference for establishing paternity through marriage between parents: “The principal means of proving filiation is through the existence of a valid marriage; the other means are exceptional and serve to establish the filiation of those born out of wedlock and the consequent rights to inheritance, custody and guardianship.”¹²⁸

News reports from Bahrain seem to indicate that paternity can be established in *sharia*’ court through DNA testing.¹²⁹ Human rights activists in

123. *Id.* at 158–59.

124. Lynn Welchman, *Bahrain, Qatar, UAE: First time Family Law Codifications in Three Gulf States*, in 2010 INTERNATIONAL SURVEY OF FAMILY LAW 163, 163 (Bill Atkin, ed., 2010); KHALID AL-AZZAWI, SOCIAL AND GENDER INEQUALITY IN OMAN: THE POWER OF RELIGIOUS AND POLITICAL TRADITION 87 (2013).

125. Family Law (No. 19/2009) art. 71 (Bahr.) (“Filiation of the mother is established and its effects ensue whether it was the result of a legal relationship or an illegal relationship resulting in birth, or the admission of the mother”).

126. *See id.* at art. 75 (Bahr.). Article 75 establishes two prerequisites for this presumption to stand: (1) the marriage has lasted at least as long as the legally prescribed minimum period of pregnancy, and (2) the absence of proof that the two have not consummated the marriage or have a disability preventing consummation. *See id.* at art. 75(a) and (b).

127. *See id.* at art. 79; *see also* Welchman, *supra* note 124, at 176–177.

128. Comm. on the Rights of the Child, *Second and Third Periodic Reports of States Parties Due in 1999*, ¶¶ 113–14, U.N. Doc. CRC/C/BHR/2-3 (Feb. 12, 2009); *see also* Family Law (No. 19/2009) (Bahr.) (establishing paternity for the husband of a mother, for a parent who acknowledges a child, or provision of evidence as outlined in *Shari’a*).

129. *See, e.g.*, Rebecca Torr, *DNA test to decide boy’s future*, GULF DAILY NEWS (Bahr.) (Aug. 17, 2008), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=226531>.

Bahrain confirm that a father can be forced to acknowledge the child on the basis of DNA. It seems that establishing paternity may only occur through criminal proceedings in which paternity is established, but the father also faces criminal judgment for fathering a non-marital child.¹³⁰

New cases of statelessness appear to arise with some frequency for children born to single mothers in Bahrain who are unable to prove paternity.¹³¹ In many cases, the child is entitled to the nationality of the parent's country, but that government will not recognize a child without birth documents.¹³²

b. Kuwait

Under Kuwaiti civil status law, the husband of a child's mother is presumed to be the father.¹³³ If the husband swears a series of oaths that he is not the father, the presumption of paternity is rebutted.¹³⁴ There does not appear to be a DNA requirement before the father can deny paternity. Kuwaiti law allows parents to acknowledge paternity outside of the presumption of paternity in marriage, but there is an explicit exception for children resulting from adultery.¹³⁵

It is apparently possible to force a father to take a paternity test to prove the paternity of a child, but this again appears to be in the context of criminal proceedings to establish criminal responsibility for the act of fa-

130. See E-mail from Bahraini human rights activist, to author (Oct. 7, 2014) (on file with author).

131. See, e.g., Raji Unnikrishnan, *Nationality Plea at Embassy Meeting*, GULF DAILY NEWS (Bahr.) (Aug. 30, 2014), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=384860>; Aniq Haider, *Toddler's Reunion Hopes Setback*, GULF DAILY NEWS (Bahr.) (March 23, 2014), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=373275>; Geoffrey Bew, *Stateless Man to be Free Soon*, GULF DAILY NEWS (Bahr.) (Oct. 21, 2007), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=197429>.

132. See, e.g., Aniq Haider, *Stateless Girl May Miss Her Schooling*, GULF DAILY NEWS (Bahr.), <http://www.gulf-daily-news.com/Print.aspx?storyid=275953>; Begena George, *Maid's Misery*, GULF DAILY NEWS (Bahr.) (Jan. 29, 2007), <http://www.bahrainrights.org/en/node/992>.

133. Personal Status Law (No. 51/1984) art. 169 (Kuwait). There are numerous exceptions, including if the child is born outside the legally prescribed period of pregnancy or if the man is proven to be infertile. See *id.* at arts. 169, 168, 172.

134. Fisher, Working Paper, *supra* note 26, at 4; see also Personal Status Law (No. 51/1984) arts. 166, 169, 177–80 (Kuwait). Note that news reports included at least one case of DNA testing against a potential father. See *Pregnant Filipina - 6 Kuwaitis Called to Take DNA Test*, KUWAIT TIMES (Apr. 11, 2014), <http://news.kuwaittimes.net/pregnant-filipina-6-kuwaitis-called-to-take-dna-test/>.

135. See Personal Status Law (No. 51/1984) art. 173 (Kuwait).

thering a non-marital child.¹³⁶ An official, quoted in a newspaper article, stated that:

“[I]f a pregnant married woman comes to the hospital without a marriage certificate, she will be placed in this ward till she brings the certificate. If the unmarried mother is a Kuwaiti national, the police will arrest the father and force him to marry her. If he denies and the DNA test proves he is not the father, then she as the rest of expat single mothers will go to jail until the court decides what will happen with her.”¹³⁷

c. Oman

Omani civil status law automatically establishes a mother's parentage.¹³⁸ It also automatically establishes a mother's husband as the father of the child,¹³⁹ though the husband is allowed to deny paternity by swearing an oath that he is not the father.¹⁴⁰ It does not appear that there is a DNA requirement before a husband can deny paternity of his wife's child.¹⁴¹

d. Qatar

Qatari law is silent on whether the mother's parentage is automatically established, but one scholar suggests that Qatari law presumes maternity for a child.¹⁴² It explicitly establishes a mother's husband as the father automatically,¹⁴³ though the law allows the husband to deny paternity by swearing an oath that he is not the father.¹⁴⁴ It does not appear that Qatar requires the father to pass a DNA test before disclaiming paternity for his wife's child.¹⁴⁵ Qatar recently passed legislation to establish a DNA database that is primarily intended for use in criminal investigations.¹⁴⁶ Since adultery is a crime

136. See *Pregnant Filipina*, *supra* note 134.

137. Nawara Fattahova, *Innocence Lost*, KUWAIT TIMES (Mar. 20, 2014), <http://news.kuwaittimes.net/innocence-lost/>.

138. See Personal Status Law (No. 32/1997) arts. 73, 75 (Oman).

139. See *id.* at arts. 70–71. Exceptions include if the childbirth occurs outside the legally-prescribed period of pregnancy. *Id.*

140. See *id.* at arts. 70, 79–89.

141. See *id.* at arts. 78–79.

142. See Welchman, *supra* note 124, at 173–74.

143. See Family Law (No. 22/2006) arts. 86, 88 (Qatar). Exceptions include if the childbirth occurs outside the legally prescribed period of pregnancy. See *id.*

144. See *id.*

145. See *id.* at art. 96; see also Welchman, *supra* note 124, at 176–77 (describing means to disclaim paternity in Bahraini, Qatari, and Emirati law).

146. See *Qatar to Set up DNA Database*, ARABIAN BUSINESS (Sept. 22, 2013), <http://www.arabianbusiness.com/qatar-set-up-dna-database-519337.html>.

in Qatar, DNA testing for paternity is consistent with a criminal DNA database. It is not clear if Qatar uses DNA merely to punish or also to establish paternity and convey nationality.

e. Saudi Arabia

Saudi Arabia's Basic Law of 1992 declares Islamic *sharia*' law to be the basis of the country's entire legal system, but Saudi Arabia has not codified a personal status or family law.¹⁴⁷ As a concept of *sharia*' family law, a husband can disclaim paternity of his wife's child without passing a DNA test through a series of oaths that also result in divorce.¹⁴⁸ For mothers and children seeking to establish paternity, it is not clear that there is any way for a child born to unmarried parents to confirm paternity or receive nationality from her Saudi father.

Children who are not acknowledged by their fathers are at a severe risk of statelessness. In one case in Saudi Arabia, a woman's son was born with a congenital heart defect, but because the father refused to acknowledge the child, the child could not obtain Saudi nationality, a Saudi nationality card, or, derivatively, treatment in public Saudi hospitals.¹⁴⁹ The Saudi government intervened to insure that the child could receive access to life-saving medical treatment.¹⁵⁰

f. United Arab Emirates

Emirati law automatically establishes a mother's parentage,¹⁵¹ and also establishes a mother's husband as the child's father.¹⁵² Like other states listed above, Emirati fathers can disclaim paternity without DNA tests by taking a series of oaths.¹⁵³ The putative father must disclaim paternity by swearing in *sharia*' court four times that the child is not his within seven

147. Article 48 reads, "The Courts shall apply rules of the Islamic Sharia in cases that are brought before them, according to the Holy Qur'an and the Sunna, and according to laws which are decreed by the ruler in agreement with the Holy Qur'an and the Sunna." See also arts. 1 and 7 (affirming the role of Islam in Saudi law and government); Fisher, Working Paper, *supra* note 26, at 5.

148. Ayman Shabana, *Negation of Paternity in Islamic Law between Li'an and DNA Fingerprinting*, 20 ISLAMIC L. & SOC'Y 157, 158 (2013).

149. *Saudi Divorcee in Paternity Row with Ex*, SAUDI GAZETTE (Aug. 19, 2013), <http://www.sauss.com/en/saudigazette/177336>.

150. *Id.*

151. Family Law (No. 28/2005) art. 90(3) (U.A.E.).

152. Family Law (No. 28/2005) art. 90(1) (U.A.E.). Exceptions are listed if the childbirth occurs outside the legally prescribed period of pregnancy or if intercourse between the couple is physically impossible. *Id.*

153. *Id.* at art. 96; see also Welchman, *supra* note 124, at 12–13 (describing means to disclaim paternity in Bahraini, Qatari, and Emirati law); Bassma Al Jandaly, *Paternity Denial Cases on the Rise in Courts*, GULF NEWS (U.A.E.) (Nov. 28, 2007), <http://>

days of learning of the child's birth and file an affidavit stating the same within one month of learning of the child's birth.¹⁵⁴ While Emirati family law states that "scientific means" can be used to negate paternity where paternity has not been legally established, it does not explicitly require DNA testing before allowing a father to deny paternity.¹⁵⁵

Principles allowing a father to acknowledge a child explicitly exclude children of adultery.¹⁵⁶ When a mother attributes paternity to a man but the alleged father disputes paternity, the father is essentially being accused of the crime of adultery, and DNA tests are used to determine the father's guilt.¹⁵⁷

A husband who disclaims paternity may face criminal time if his accusation that his wife committed adultery proves false. The mother, of course, faces criminal time if it is proven that she is pregnant with another man's child.¹⁵⁸ If the couple are long divorced, or were never married, demonstrating paternity would be a criminal matter from the beginning. DNA tests are the "last option for courts" and are treated as corroborative rather than determinative.¹⁵⁹ In some instances, Emirati courts "could not force a man to accept paternal responsibility"—even when DNA tests conclusively proved parentage.¹⁶⁰

gulfnews.com/news/gulf/uae/crime/paternity-denial-cases-on-the-rise-in-courts-1.214211.

154. *Id.* at art. 96(5).

155. *Id.*

156. *Id.* at art. 92 (allowing a father to admit paternity unless paternity resulted from adultery).

157. Marie Nammour, *Nurse on Trial for Claiming Love Child is of Estranged Husband*, KHALEEJ TIMES (U.A.E.) (Sept. 3, 2014), http://www.khaleejtimes.com/nation/in-side.asp?xfile=/data/court roundup/2014/September/court roundup_September6.xml§ion=court roundup; Nasouh Nazzal, *Egyptian Man, Indonesian Woman Held for Adultery*, GULF NEWS (U.A.E.) (Mar. 23, 2004), <http://gulfnews.com/news/gulf/uae/general/egyptian-man-indonesian-woman-held-for-adultery-1.317115> (discussing cases in which a legal father used DNA tests to dispute paternity); *but see* Iman Sherif, *Emirati Man Declared Father despite Negative Result in DNA Test*, GULF NEWS (U.A.E.) (July 3, 2012), <http://gulfnews.com/news/gulf/uae/complaints/emirati-man-declared-father-despite-negative-result-in-dna-test-1.1043708>; Fisher, Working Paper, *supra* note 26, at 4.

158. Bassma Al Jandaly, *Paternity denial cases on the rise in courts*, GULF NEWS (U.A.E.) (Nov. 28, 2007), <http://gulfnews.com/news/gulf/uae/crime/paternity-denial-cases-on-the-rise-in-courts-1.214211>.

159. *Id.*

160. U.S. Dep't of State, Bureau of Democracy, H.R and Lab., Country Reports on Human Rights Practices for 2013: United Arab Emirates (2013).

2. Analysis of Family Law

While each of the five GCC codified family laws provides some way for a husband to disclaim paternity for his wife's child, none of them explains how a non-marital child can force her father to acknowledge paternity. Kuwaiti, Omani, Qatari, and Emirati law provide that a mother's husband is automatically established as the father, but the husband is given an opportunity to deny paternity by swearing an oath that he is not the father.¹⁶¹ However, none of these states' family laws establish a way to force a man to acknowledge paternity, whether with DNA testing or otherwise.

As seen above, children are generally unable to take their mother's nationality or to have their births registered by their mothers. If the child cannot establish her relationship to her father, the child will likely be stateless.¹⁶² Inability to establish paternity creates statelessness only in conjunction with other forms of discrimination. When women are prevented from registering the births of children, inability to establish paternity becomes a serious issue that could create new cases of statelessness. In order to ensure that all children are born with a nationality and to eradicate statelessness, the international community must address birth status discrimination in civil status law.

B. Restrictions on Marriage to Foreigners

The GCC states violate international principles of non-discrimination by placing limitations on marriages between their citizens and foreigners.¹⁶³ Some of these regulations are also gender-discriminatory because they limit one gender's choice of partner more strictly than the other's. Most limit the rights of husbands to marry foreign wives. Since citizenship is conveyed through fathers, in essence these restrictions give the government authority to scrutinize who will marry its male citizens and become mothers of its next generation of citizens. These regulations can result in statelessness because, when nationals break these rules, the children resulting from unrecognized unions may be viewed as non-marital children and as such be unable to receive nationality.

161. Personal Status Law (No. 51/1984) arts. 169–71, 177–80 (Kuwait); Personal Status Law (No. 32/1997) arts. 70, 89–79 (Oman); Welchman, *supra* note 124, at 12–13 (describing means to disclaim paternity in Bahraini, Qatari, and Emirati law). However, in at least one case in Kuwait, there were reports of DNA testing against potential fathers. See *Pregnant Filipina*, *supra* note 134.

162. See Fisher, Working Paper, *supra* note 26, at 5.

163. ICCPR, *supra* note 12, art. 2(1); ICESCR, *supra* note 20, art 2(2); CRC, *supra* note 11, art. 2(1); Fisher, Working Paper, *supra* note 26, at 5.

For nationals living overseas, it may be difficult to obtain all the necessary paperwork to complete an application for governmental approval prior to marriage. Some couples may not even be aware of the restrictions and may marry without government approval. Some couples may decide to defy a rejected application and marry despite the regulation. In any of these cases, children resulting from an unrecognized union are likely to be treated as non-marital children. As outlined above, non-marital children may not receive nationality or may face significant obstacles to registration.

1. Provisions of Family Law

a. Bahrain

Bahrain requires Bahraini nationals to seek court approval before a Bahraini man over the age of 60 can marry a woman who is not a GCC national, and before a Bahraini woman under the age of 20 can marry a foreigner who is over the age of 50.¹⁶⁴

b. Kuwait

Kuwait's restrictions on marriages to foreigners are limited, requiring men serving in the Kuwaiti military to receive government approval before a marriage to a foreign woman. Human rights reports show that in practice this prior approval requirement is a formality that does not prohibit marriages."¹⁶⁵

c. Oman

In Oman, marrying a foreigner "without ministry approval may result in denial of entry for the foreign spouse at the border and preclude children from claiming citizenship rights. It also may result in a bar from government employment and a fine of 2,000 rials (\$5,200)."¹⁶⁶ Oman's restrictions appear to leave children vulnerable to statelessness at birth.

164. Family Law (No. 19/2009) art. 21 (Bahr.); Welchman, *supra* note 124, at 163–78.

165. U.S. Dep't of State, Bureau of Democracy, H.R and Lab., Country Reports on Human Rights Practices for 2013: Kuwait (2013); Fisher, Working Paper, *supra* note 26, at 5.

166. U.S. Dep't of State, Bureau of Democracy, H.R and Lab., Country Reports on Human Rights Practices for 2013: Oman (2013); Fisher, Working Paper, *supra* note 26, at 5.

d. Qatar

Qatar requires its citizens to obtain prior approval before marrying non-Qataris, but government permission is “generally granted.”¹⁶⁷ Prior to registering the birth of a child to a Qatari father and a non-GCC national mother, however, the father must present documentation of his permission to marry the child’s mother as part of the birth registration process.¹⁶⁸ In some instances, this may create a risk of statelessness.

e. Saudi Arabia

Saudi Arabia has long imposed restrictions that require prior approval for a Saudi man to marry a woman from outside GCC states. The Saudi government recently enacted further regulations as well as total prohibitions on marriages between Saudi men and women of Pakistani, Bangladeshi, Chadian, or Burmese nationalities.¹⁶⁹ These new restrictions will increase the number of children born to Saudi men vulnerable to statelessness.¹⁷⁰ The Saudi Gazette summarized the recent requirements:

Applicants should be over 25 and attach identification documents signed by his local district mayor as well as all other identity papers, including a copy of his family card. If the applicant is already married, he should attach a report from a hospital proving that his wife is either disabled, suffering from a chronic disease or is sterile Saudi men have been prohibited from marrying expatriate women from Pakistan, Bangladesh, Chad and Myanmar. According to unofficial statistics, there are about 500,000 women from these four countries currently residing in the Kingdom.¹⁷¹

The child of any Saudi man who breaks this law will be at a severe risk of statelessness. Because Saudi Arabia does not recognize foreign marriage

167. U.S. Dep’t of State, Bureau of Democracy, H.R and Lab., Country Reports on Human Rights Practices for 2011: Qatar (2011).

168. See *Obtain Birth Certificate*, QATAR E-GOVERNMENT, http://portal.www.gov.qa/wps/portal/!ut/p/a0/NYoxFoIwEETPYpE6QTs71EJrCpVuE1bYR9jkhSVeX7awmpn_x_b2ZXuGSiMIJYa47_c3LOcMMpnm1N63OaWFTHN0T_Qa18SCLMb9leuwVAq4GvfggSoNG0R9Rtgnj1ozjOovVGRaFexK44agwCUvQOxVByxCHwogaDtkm-f28APWYakI/ (last visited Oct. 3, 2016).

169. *Tougher rules for Saudis marrying foreign women*, AL ARABIYAH ENGLISH (Aug. 5, 2014), <http://english.alarabiya.net/en/perspective/features/2014/08/05/Tougher-rules-for-Saudi-men-marrying-foreign-women-.html> [hereinafter *Rules for Saudi Men Marrying Foreign Women*].

170. See Country Reports 2015: Saudi Arabia, *supra* note 72, at 29.

171. *Rules for Saudi Men Marrying Foreign Women*, *supra* note 169.

certificates, the child of an unapproved union would be treated as a non-marital child, could not be registered, and would thus be stateless.¹⁷²

There are many possible combinations of a Saudi father, a non-GCC mother, and a given place of birth that would result in statelessness. Consider a Saudi man married to a Burmese national, one of four nationalities the Saudi man is prohibited from marrying. Burma's nationality law recognizes a child as a Burmese national only when *both* parents are Burmese nationals.¹⁷³ Since Burma does not allow for dual nationality,¹⁷⁴ the child could not receive Burmese nationality, nor would the child receive Saudi nationality.

Of more than 1,800 cases filed in Saudi Arabia in 2014 seeking to establish paternity, most "were filed by Saudi husbands who had married foreign women without government approval."¹⁷⁵ Saudi fathers whose marriages are not registered can apply for an entry visa for their children and finish the paperwork granting nationality once in Saudi Arabia.¹⁷⁶ If the father is deceased, does not take these necessary steps, or has married a woman whom he was forbidden from marrying, it is not clear that the child has any way to receive Saudi nationality. If a marriage is not registered and approved, and if the Saudi father refuses to acknowledge the child as his, the child will not receive Saudi nationality.¹⁷⁷

f. United Arab Emirates

An Emirati woman must seek government approval prior to marrying a foreign man, and if she does not, she may be denationalized.¹⁷⁸ Emirati men who serve in the Emirati military must apply for government

172. See Sarah Abdullah, *Children of Saudi fathers cry for help*, ARAB NEWS (June 2, 2012), <http://www.arabnews.com/children-saudi-fathers-cry-help>; see also Country Reports 2015: Saudi Arabia, *supra* note 72, at 29.

173. See Country Reports 2015: Saudi Arabia, *supra* note 72, at 25.

174. See *id.*

175. *Over 1,850 paternity, maternity rows brought before Saudi courts*, AL-ARABIYA ENGLISH (Oct. 27, 2014), <http://english.alarabiya.net/en/News/middle-east/2014/10/27/Over-1-850-paternity-maternity-rows-brought-before-Saudi-courts.html>.

176. See High Comm'r for Refugees, *Universal Periodic Review: The Kingdom of Saudi Arabia*, 3 (2013).

177. See Country Reports 2015: Saudi Arabia, *supra* note 72, at 29.

178. See INT'L FED'N FOR HUMAN RIGHTS, WOMEN'S RIGHTS IN THE UNITED ARAB EMIRATES (UAE): NOTE SUBMITTED TO THE 45TH SESSION OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) ON THE OCCASION OF ITS FIRST EXAMINATION OF THE UAE 4 (2012) [hereinafter FIDH SUBMISSION TO CEDAW ON THE UAE].

permission to marry a foreign woman,¹⁷⁹ but are otherwise “free to marry foreign women.”¹⁸⁰

2. Analysis of Family Law

Each GCC country imposes restrictions on marriage to foreigners, ranging from restrictions that do not prevent marriages to restrictions, particularly those of Oman, Saudi Arabia, and the UAE, that are severe and can create new cases of statelessness.

Restrictions on marriage to foreigners result in statelessness because of other layers of gender and birth status discrimination. Children born to couples whose marriages are not recognized will be treated as non-marital children. As seen above, non-marital children will often not receive nationality from their fathers. Gender discrimination means that mothers cannot convey nationality. Birth status discrimination means that non-marital children cannot receive nationality from their fathers. Even the child of a married couple can be left stateless when states refuse to recognize marriages between their citizens and foreigners. GCC states must reform these restrictions and the other forms of discrimination that leave children without a nationality in order to prevent new cases of statelessness within their borders.

IV. CRIMINALIZATION OF ADULTERY

This Part discusses criminal bans on non-marital sexual intercourse in GCC countries. For the sake of simplicity, this Part refers to “adultery” to include cases both where at least one partner is married and where neither partner is married.¹⁸¹

Laws that criminalize adultery violate international law in at least three ways. First, adultery prohibitions violate an individual’s right to pri-

179. See *Getting Married*, ABU DHABI E-GOVERNMENT, https://www.abudhabi.ae/portal/public/en/citizens/family/getting_married?_adf.ctrl-state=19os6dlozb_4&print=true&_afLoop=6139635392558383#! (last visited Oct. 3, 2016).

180. FIDH SUBMISSION TO CEDAW ON THE UAE, *supra* note 178, at 4; Fisher, Working Paper, *supra* note 26, at 7.

181. In U.S. jurisdictions, “adultery” is the term for sexual intercourse between a married person and someone not their spouse, while “fornication” is the term for sexual intercourse between two unmarried people. See *Adultery*, BLACK’S LAW DICTIONARY (10th ed. 2014). The term in Islamic law, “zina,” though subject to different interpretations, generally refers to any form of sexual intercourse between a man and woman who are unmarried. PETERS, R., *Zinā or Zinā’*, in *ENCYCLOPAEDIA OF ISLAM* (P. Bearman et al. eds., 2d ed. 2012).

vacy and family life.¹⁸² Second, when drafted or implemented in ways that discriminate against women, as is usually the case, adultery prohibitions violate the international norm of non-discrimination on the basis of gender. Third, if a single parent must choose between abandoning the child and facing criminal penalties, the parent is forced to choose between fundamental human rights of the child's nationality and family unity. Yet these laws exist in each of the GCC states and are actively enforced in at least five.

No international instrument demands that states decriminalize adultery, but it is clear from numerous widely-ratified instruments that private behavior of consenting adults should not be criminalized. The Universal Declaration of Human Rights prohibits interference with an individual's privacy or with an individual's freedom of association.¹⁸³ The right to found a family is guaranteed equally to men and women and is not conditioned on marital status.¹⁸⁴ A child's right to know and be cared for by her parents, not conditioned on her parents' marital status,¹⁸⁵ is recognized in numerous instruments.¹⁸⁶ Consenting adults have the right to associate as they see fit, and, if they bear children, to raise and care for those children, regardless of their marital status.

Adultery laws disproportionately burden women, who are more easily determined to be parents and whose sexuality is more often the subject of scrutiny and societal control.¹⁸⁷ Adultery laws have been consistently implemented in ways that discriminate against women.¹⁸⁸ In places where

-
182. Press Release, U.N. Working Group on Discrimination Against Women in Law and in Practice, "Adultery should not be criminal offence at all," says UN expert group on women's human rights (Oct. 18 2012).
 183. See UDHR, *supra* note 10, arts. 12, 20 (right against arbitrary interference with privacy or family life and freedom of association); see also ICCPR, *supra* note 12, arts. 17, 22, 23(3) (right against arbitrary or unlawful interference with privacy and family life, right to freedom of association, and right to marriage free from coercion).
 184. See, e.g., UDHR, *supra* note 10, art. 16(1); ICCPR, *supra* note 12, at art. 23(2); U.N. Human Rights Comm., General Comment 19, U.N. Doc. HRI/GEN/1 (1990); see also Convention on the Rights of Persons with Disabilities art. 23, *opened for signature* Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008).
 185. See CRC, *supra* note 11, art. 2(1) (indicating that the rights in the CRC are not conditioned on distinctions of "sex, nationality, ethnicity or any other status of a child's parents or legal guardians").
 186. See, e.g., CRC, *supra* note 11, arts. 7(1), 8(1), and 9(1); African Charter on the Rights and Welfare of the Child arts. 4(1), 19, July 11, 1990, OAU Doc. CAB/LEG/24.9.49 (1990).
 187. Liat Kozma, *The Pregnant Bride: Non-Marital Sex in Middle East Societies*, in UN-TOLD HISTORIES OF THE MIDDLE EAST 70, 73 (Selçuk Akşin Somel et al. eds. 2010) (discussing how Middle Eastern society places greater control on women's than men's sexual behavior).
 188. Frances Raday, *Decriminalizing Adultery: Eliminating Discrimination and Violence against Women*, OXFORD HUMAN RIGHTS HUB (Nov. 2, 2012), <http://>

traditional Islamic penal laws are used, “nearly all those sentenced . . . to lashing, imprisonment or death by stoning, have been women.”¹⁸⁹ The potential for criminal charges is often compounded by lifelong societal discrimination against single parents and their children, as well as the threat of violent retribution for transgressing traditional notions of family “honor.”¹⁹⁰

The UN Working Group on Discrimination against Women in Law and in Practice has stated that “the mere fact of maintaining adultery as a criminal offence, even when it applies to both women and men, means in practice that women mainly will continue to face extreme vulnerabilities, and violation of their human rights to dignity, privacy and equality.”¹⁹¹

Laws that criminalize adultery violate international law and can generate new cases of statelessness. The Committee on the Rights of the Child has noted its concern “that the criminalization of sexual relations outside marriage prevents the registration of children born out of wedlock and may lead to their abandonment.”¹⁹² In at least one GCC state, parents cannot usually register a non-marital child’s birth until they have served a criminal sentence as punishment for adultery.¹⁹³

Laws criminalizing adultery also pit a child’s nationality against a child’s right to family life. As a result of harsh criminal provisions and societal repercussions, many children in GCC states are simply abandoned in

ohrh.law.ox.ac.uk/decriminalizing-adultery-eliminating-discrimination-and-violence-against-women/ (“Adultery laws have usually been drafted and almost always implemented in a manner prejudicial to women.”); United Nations High Comm’r for Human Rights, *Joint Statement by the United Nations Working Group on Discrimination Against Women in Law and in Practice* (Oct. 18, 2012), <http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>.

189. Ziba Mir Hosseini, *Criminalizing Sexuality: Zina Laws as Violence Against Women in Muslim Contexts*, VIOLENCE IS NOT OUR CULTURE 11 (Mar. 2010), http://www.violenceisnotourculture.org/sites/default/files/Mir_Hosseini.pdf.

190. Abdallah A. Adlan & Henk A. M. J. ten Have, *The Dilemma of Revealing Sensitive Information on Paternity Status in Arabian Social and Cultural Contexts: Telling the Truth About Paternity in Saudi Arabia*, 9 J. BIOETHICAL INQUIRY 403, 404–05 (2012); Rashida Manjoo (Special Rapporteur on Violence Against Women), *Rep. on Violence Against Women, Its Causes and Consequences*, ¶¶ 43–50, U.N. Doc. A/HRC/20/16 (May 23, 2012); Fisher, *supra* note 86, at 5–6.

191. United Nations High Comm’r for Human Rights, *Joint Statement by the United Nations Working Group on Discrimination Against Women in Law and in Practice* (Oct. 18, 2012), <http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>.

192. Comm. on the Rights of the Child, *Concluding Observations on the Second Periodic Report of the United Arab Emirates*, ¶ 33, U.N. Doc. CRC/C/ARE/CO/2 (Oct. 30, 2015).

193. Issa, *supra* note 112.

public places.¹⁹⁴ It is some small comfort that GCC states have foundling provisions that allow abandoned children to receive a legal identity and nationality,¹⁹⁵ as required by the Convention on the Rights of the Child (CRC) in Article 7(1).¹⁹⁶

An abandoned non-marital child will not receive nationality from her parents, since her parents will be unknown. Instead, she will receive a legal identity and nationality because she will be treated as a foundling—an infant whose identity is unknown and who is taken as a ward of the state.¹⁹⁷ The child's legal identity and nationality comes at a cost of the child's right to family unity, which is also guaranteed in Article 7(1). When parents are forced to choose between imprisonment for themselves and statelessness for their children or abandoning their children so that their children can legally exist, the human rights of both the parents and child have been violated.

A. Criminalizing Adultery and Protections for Non-Marital Children

1. Bahrain

Bahrain criminalizes adultery only if at least one partner is married.¹⁹⁸ A spouse who commits adultery is subject to two years' imprisonment. It is presumed that one partner's marriage is known unless the other could not have known of the marriage, which may be the case if the married partner actively deceives the partner as to their marital status.¹⁹⁹ Bahraini criminal law does not require a complaint from the adulterer's offended spouse.²⁰⁰

194. Joseph George, *Sharjah's Abandoned Babies—4 in 3 Months*, EMIRATES 24/7 (U.A.E.) (Mar. 14, 2012), <http://www.emirates247.com/crime/local/sharjah-s-abandoned-babies-4-in-3-months-2012-03-14-1.448315>; Anika Haider, *SMC Takes in Abandoned Baby Found Near Mosque*, GULF DAILY NEWS ONLINE (Bahr.) (Mar. 12, 2013), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=349134>; *Mum Jailed for Leaving Baby Near Mosque*, GULF DAILY NEWS ONLINE (Bahr.) (Feb. 2, 2015), <http://archives.gdnonline.com/NewsDetails.aspx?date=04/07/2015&storyid=395138>.

195. Citizenship Act art. 5(b) (amended 1981) (Bahr.); Nationality Law (1959) art. 3 (amended) (Kuwait); Royal Decree (No. 38/2014) art. 11(5) (Oman); Nationality Law (No. 38/2005) art. 2 (Qatar); Nationality Regulations, (No. 4/1954) art. 7 (amended) (Saudi Arabia); Nationality Law (No. 17/1972) art. 2(E) (amended 1975) (U.A.E.) (each giving nationality to children born to unknown parents in territory).

196. CRC, *supra* note 11, art. 7(1).

197. Fisher, *supra* note 86, at 7.

198. Penal Code of 1976, art. 316 (Bahr.).

199. *Id.*

200. *See id.* (listing the elements of the crime of adultery, which do not include a complaint filed from the adulterer's spouse or guardian).

The text of the penal code does not discriminate on the basis of gender.²⁰¹ Bahrain vigorously enforces its criminal ban on adultery.²⁰²

2. Kuwait²⁰³

Kuwaiti criminal law criminalizes non-marital sexual conduct only if at least one partner is married.²⁰⁴ Adulterers are subjected to imprisonment of up to five years and/or fined 5,000 dinars.²⁰⁵ If an unmarried participant knows that their partner is married, they are subject to imprisonment of up to three years and/or fined up to 3,000 dinars.²⁰⁶

An individual cannot be prosecuted for adultery in Kuwait without charges from the offended spouse, and if the offended spouse reunites with the offending spouse, the criminal proceeding stops.²⁰⁷ The text of the penal code does not discriminate on the basis of gender.²⁰⁸

Kuwait actively enforces its criminal ban on adultery.²⁰⁹ During the pregnancy period, unmarried women are confined to an “illicit pregnancy

201. *See id.* (describing an offender as a “spouse”).

202. *Adultery Trial Is Adjourned*, GULF DAILY NEWS ONLINE (Bahr.) (Sept. 2, 2010), <http://archives.gdnonline.com/NewsDetails.aspx?date=04/07/2015&storyid=285963>; Noor Zahra, *Wife Convicted of Adultery*, GULF DAILY NEWS ONLINE (Bahr.) (Apr. 3, 2013), <http://archives.gdnonline.com/NewsDetails.aspx?date=04/07/2015&storyid=350712>; *Adultery Couple Jailed for One Year*, GULF DAILY NEWS (Bahr.), Sept. 1, 2010, at 14, available at <http://www.gulf-daily-news.com/source/XXXIII/165/pdf/page14.pdf>; *Couple Jailed For Six Months Over Adultery*, GULF DAILY NEWS ONLINE (Bahr.) (May 29, 2007), <http://archives.gdnonline.com/NewsDetails.aspx?date=04/07/2015&storyid=183510>; Mohammed Aslam, *Husband and Maid Cited for Adultery*, GULF DAILY NEWS ONLINE (Bahr.) (Feb. 4, 2005), <http://archives.gdnonline.com/NewsDetails.aspx?date=04/07/2015&storyid=103525>.

203. References to Kuwait’s penal code are based on the author’s translation of the original versions laws in Arabic, which are on file with the author.

204. Penal Code (No. 16/1960) arts. 195–97 (amended 1970) (Kuwait).

205. *Id.*

206. *Id.*

207. *Id.*

208. *See id.* at art. 195 (“[E]very married person—man or woman—who has sexual intercourse with a person not their spouse . . . shall be punished . . .”).

209. *See e.g. Ethiopian Maid Stranded After Baby Delivery*, KUWAIT TIMES (May 10, 2014), <http://news.kuwaittimes.net/ethiopian-maid-stranded-after-baby-delivery/>; *Filipino Girlfriend and Saudi Man Caught Red-Handed Having Sex in a Restaurant Cabin*, ARAB TIMES ONLINE (Kuwait) (Jan. 28, 2016), <http://www.arabtimesonline.com/news/filipino-girlfriend-and-saudi-man-caught-red-handed-having-sex-in-a-restaurant-cabin/>; *Indian Woman, Bangladeshi Boyfriend Caught in Bed by Husband*, ARAB TIMES ONLINE (Kuwait) (Jan. 27, 2016), <http://www.arabtimesonline.com/news/indian-woman-bangladeshi-boyfriend-caught-in-bed-by-husband/>; *Woman, Lover in Police Custody for Adultery*, KUWAIT TIMES (July 27, 2013), <http://news.kuwaittimes.net/woman-lover-in-police-custody-for-adultery/>.

ward” from which “[t]hey are not allowed to leave and outsiders are not allowed to enter.”²¹⁰ An official stated that:

Even if a pregnant married woman comes to the hospital without a marriage certificate, she will be placed in this ward till she brings the certificate. If the unmarried mother is a Kuwaiti national, the police will arrest the father and force him to marry her. If he denies and the DNA test proves he is not the father, then she as the rest of expat single mothers will go to jail until the court decides what will happen with her.²¹¹

These policies impose significant costs on non-marital parents and mean that non-marital children will receive nationality only after separation from their parents.

3. Oman

Omani criminal law criminalizes all non-marital sexual contact, and adulterers are subject to imprisonment for terms ranging from three months to three years.²¹² An individual cannot be prosecuted without a complaint from the adulterer’s spouse or guardian, and if the complainant drops the charges, all procedures and punishment ceases.²¹³ The text of the penal code does not discriminate on the basis of gender.²¹⁴ No reports of prosecution for adultery were found.

4. Qatar

Qatar’s penal code criminalizes all non-marital sexual contact.²¹⁵ Any man or woman having sexual contact with another person above 16 years of age without compulsion, duress, or ruse, is subject to seven years of imprisonment.²¹⁶ Penalties are enhanced for aggravating factors including lack of consent, ruse, and if the perpetrator knew that the victim was of diminished

210. Nawara Fattohova, *Innocence Lost*, KUWAIT TIMES (Oct. 6, 2014), <http://news.kuwaittimes.net/innocence-lost/>.

211. *Id.*

212. Penal Code (No. 7/1974) arts. 225–27 (Oman).

213. *Id.* at art. 227.

214. *See id.* at art. 225 (“Every man or woman who committed the act of sexual intercourse without a legally valid marriage contract between them shall be punished . . .”).

215. *See* Penal Code (No. 11/2004) arts. 281–87 (Qatar).

216. *Id.* at arts. 281–82, 285.

capacity.²¹⁷ The text of the penal code does not discriminate on the basis of gender.²¹⁸ Qatar enforces its criminal ban on adultery.²¹⁹

A recent news report from a Qatari English-language news outlet summarized the situation for women who are pregnant out of wedlock:

[M]any unmarried women who find themselves [pregnant] leave the country to avoid prosecution, . . . [o]thers are unable to leave because their sponsor will not give them an exit permit. These women serve their jail terms with their infants. Many women whose sponsors refuse to let them leave Qatar run away and seek help from their embassy – but most still land in jail, as the deportation center which they are required to pass through carries out regular pregnancy tests

Others are excused from jail time if the father of the baby agrees to marry the mother The authorities check the immigration records of unaccompanied mothers to find out whether they visited their home countries around the time of conception, or whether their husband visited them in Qatar around the same time²²⁰

Single parents in Qatar, whether Qatari or otherwise, face significant penalties for having non-marital children. Non-marital children's right to a nationality comes at a cost of their ability to live with their family.

5. Saudi Arabia

Saudi Arabia is the only GCC State that does not have a general, codified criminal law. Saudi criminal judgments are determined by Islamic judges according to Saudi Arabia's strict interpretation of *sharia*' law, which includes criminalization of adultery.²²¹ A top official in 2005 promised to

217. *Id.* at arts. 283–84, 286–87.

218. *See id.* at art. 281. (“Whoever copulates with a female . . . shall be punished The same penalty shall also be imposed on the female for her consent.”).

219. *See, e.g., Facing Jail, Unmarried Pregnant Women in Qatar Left with Hard Choices*, DOHA NEWS (Qatar) (Aug. 27, 2013), <http://dohanews.co/facing-jail-unmarried-pregnant-women-in-qatar-left/>; Rebecca Falconer, *Qatar's Foreign Domestic Workers Subjected to Slave-Like Conditions*, THE GUARDIAN (Feb. 26, 2014), <https://www.theguardian.com/global-development/2014/feb/26/qatar-foreign-workers-slave-conditions>.

220. *Facing Jail, Unmarried Pregnant Women in Qatar Left with Hard Choices*, DOHA NEWS (Qatar) (Aug. 27, 2013), <http://dohanews.co/facing-jail-unmarried-pregnant-women-in-qatar-left/>.

221. Country Reports 2015: Saudi Arabia, *supra* note 72, at 2 (“Since the country lacks a written penal code . . . punishment—including the imposition of capital punish-

promulgate non-binding guidance on what conduct would be considered criminal;²²² it does not appear that this was ever done. Instead of a fixed penal code, the Saudi criminal justice system fixes criminal punishments based on its interpretation of *sharia*' law.²²³

Sexual contact outside of marriage can carry a death sentence.²²⁴ Saudi Arabia's criminal justice system does not appear to give spouses or guardians a particular role in prosecution. Saudi Arabia's criminal ban on adultery is actively enforced.²²⁵

6. United Arab Emirates

The UAE's criminal law considers all sexual contact outside of marriage to be "the crime of indecent assault with mutual consent"—essentially a "simple" form of sexual assault, with rape or sexual assault treated as an aggravated form of the same crime.²²⁶ It is punishable by imprisonment for at least one year, but is subject to greater penalties if the partner is under fourteen years of age or the act is committed by coercion.²²⁷ Emirati law does not require spouses or guardians to file a complaint before the State can prosecute adultery. The text of the penal code does not discriminate on the basis of gender. The UAE's criminal ban on adultery is actively enforced

ment—is subject to considerable judicial discretion in the courts [but includes adultery]").

222. HUM. RTS. WATCH, *PRECARIOUS JUSTICE ARBITRARY AND UNFAIR TRIALS IN THE DEFICIENT CRIMINAL JUSTICE SYSTEM OF SAUDI ARABIA* 17 (2008), https://www.hrw.org/sites/default/files/reports/saudijustice0308_1.pdf [hereinafter *PRECARIOUS JUSTICE*].
223. *See* Country Reports 2015: Saudi Arabia, *supra* note 72, at 2 ("Since the country lacks a written penal code . . . punishment—including the imposition of capital punishment—is subject to considerable judicial discretion in the courts [but includes adultery]").
224. *See id.* at 2–3 (noting that adultery or sexual relations outside of marriage, including allegations of rape, are punishable, including by the death penalty).
225. *See, e.g., Armed Rapists to Get Death*, ARAB NEWS (May 18, 2014) <http://www.arabnews.com/news/572641>; *PRECARIOUS JUSTICE*, *supra* note 222, at 8; Rori Donagy and Mary Atkinson, *Crime and Punishment: Islamic State vs Saudi Arabia*, MIDDLE EAST EYE (Jan. 20, 2015), <http://www.middleeasteye.net/news/crime-and-punishment-islamic-state-vs-saudi-arabia-1588245666>; *Saudi Arabia Commutes Maid's Death Sentence: Sri Lanka*, SAUDI GAZETTE (Dec. 23, 2015), <http://saudiga.zette.com.sa/saudi-arabia/saudis-commute-maids-stoning-death-sentence-sri-lanka/>; *Saudi Arabia: Five Beheaded and 'Crucified' Amid 'Disturbing' Rise in Executions*, AMNESTY INTERNATIONAL (May 21, 2013), <http://www.amnestyusa.org/news/news-item/saudi-arabia-five-beheaded-and-%E2%80%98crucified-amid-%E2%80%98disturbing-rise-in-executions>.
226. Federal Law (No. 3/1987) arts. 1, 356 (U.A.E.).
227. *Id.*

against Emiratis and migrant workers, and often overlooked for expatriate nationals of Western countries.²²⁸

Only a court can issue a birth certificate to a non-marital child, and “they normally do so after a conviction [for adultery].”²²⁹ Prosecutions for adultery included a 2010 door-to-door campaign to locate and prosecute unmarried couples living together.²³⁰ In 2012, the UAE announced an amnesty for residents who had overstayed their visas and promised that individuals with expired visas could come forward and simply be sent home.²³¹ But when non-Emirati single mothers came forward with children, they “instead were imprisoned for adultery, sex outside marriage and having [non-marital children].”²³² For non-Emiratis, a conviction of adultery generally includes an order of deportation.²³³ For the woman to leave the country with the child, she must finish a jail sentence for adultery, and the child will be imprisoned with her.²³⁴ As with other GCC states, the UAE’s criminal law imposes significant penalties for adultery.²³⁵ This is the only State where it is clear that a non-marital child’s birth can be registered, though the child’s

228. See, e.g., Yasin Kakande, *Sharjah police conduct door to door hunt for unwed couples*, THE NATIONAL (U.A.E.) (Apr. 22, 2010), <http://www.thenational.ae/news/uae-news/sharjah-police-conduct-door-to-door-hunt-for-unwed-couples>; Muby Asger, *Living Together in the UAE? Think Twice*, GULF NEWS (U.A.E.) (June 9, 2011), <http://gulfnews.com/news/uae/general/living-together-in-the-uae-think-twice-1.819369>; *Sharjah Police question housemaid who gave birth to twins*, THE NATIONAL (U.A.E.) (Sept. 22, 2014), <http://www.thenational.ae/uae/sharjah-police-question-housemaid-who-gave-birth-to-twins>; *Elderly Man Jailed for Adultery with Housemaid*, EMIRATES 24/7 (Sept. 14, 2011), <http://www.emirates247.com/news/emirates/elderly-man-jailed-for-adultery-with-housemaid-2011-09-14-1.418426>; Jay B. Hilotin, *What is it with Expats and Sex Offenses?*, GULF NEWS (U.A.E.) (July 31, 2013), <http://gulfnews.com/about-gulf-news/al-nisr-portfolio/xpress/news/what-is-it-with-expats-and-sex-offences-1.1215403>; *Expatriate faces death by stoning after admitting in court to cheating on husband*, 7 DAYS IN DUBAI (May 6, 2014), <http://7daysindubai.com/expat-faces-death-stoning-admitting-court-cheating-husband/>.

229. Issa, *supra* note 112.

230. Yasin Kakande, *Unmarried Sharjah couple arrested for living together*, THE NATIONAL (U.A.E.) (Apr. 21, 2010), <http://www.thenational.ae/news/uae-news/unmarried-sharjah-couple-arrested-for-living-together>.

231. Issa, *supra* note 112.

232. *Id.*

233. See, e.g., Bassma Al Jandaly, *Man insists abandoned baby girl is not his*, GULF NEWS (U.A.E.) (Feb. 21, 2010), <http://gulfnews.com/news/uae/crime/man-insists-abandoned-baby-girl-is-not-his-1.585998> [hereinafter Jandaly, *Baby Girl*].

234. Bassma Al Jandaly, *A look into the fate of abandoned children in the UAE*, GULF NEWS (U.A.E.) (Nov. 20, 2009), <http://gulfnews.com/news/gulf/uae/a-look-into-the-fate-of-abandoned-children-in-the-uae-1.530127>.

235. Penal Code (No. 3/1987, amended 2005 and 2006) art. 356 (U.A.E.).

mother must first complete a prison term in most instances for this to occur.²³⁶

B. Analysis of Criminal Law in GCC States

GCC states' definitions, punishment, and enforcement of adultery prohibitions differ on several key points. While most GCC states consider adultery to be a distinct crime, the criminal codes of two countries, the UAE and Qatar, treat consensual sexual relations between unmarried adults as just another form of sexual assault, grouped with offenses such as incest and rape.²³⁷

States' definitions of adultery can be divided along several axes. First, states differ as to whether adultery between unmarried people is criminal. In Bahrain, adultery is criminalized only if one or both partners is married, and if both partners are unmarried, the sexual contact falls beyond the definition of criminal adultery.²³⁸ In Kuwait, Oman, Qatar, Saudi Arabia, and the UAE, all sexual relations between unmarried individuals is criminal adultery in all cases even if neither partner is married.²³⁹

States also vary on whether complainants, which can be either the offended spouse or an unmarried woman's guardian, must bring charges before a prosecution can begin, or whether the State can bring charges without a complainant. This essentially gives the offended spouse the choice to keep the affair private or to bring the State into the matter, initiate prosecution, and make the affair public. The criminal laws of Kuwait and Oman explicitly require a spouse or guardian to file a complaint before an individual can be prosecuted.²⁴⁰ The complainant also has the right to drop charges at any point, including after sentencing, and thus stop any stage of prosecution or imposition of punishment.²⁴¹ The other countries do not

236. Jandaly, *Baby Girl*, *supra* note 233.

237. Penal Code (No. 11/2004) arts. 281–88 (Qatar); Penal Code (No. 3/1987 art. 356 (amended 2005 and 2006) (U.A.E.).

238. Amiri Decree (No. 15/1976) art. 316 (Bahr.).

239. Penal Code (No. 16/1960) art. 194 (amended 1970) (Kuwait); Sultani Decree (No. 7/1974) arts. 225–27 (Oman); Penal Code (No. 11/2004) arts. 281–88 (Qatar); Country Reports 2015: Saudi Arabia, *supra* note 72, at 2 (“Since the country lacks a written penal code . . . punishment—including the imposition of capital punishment—is subject to considerable judicial discretion in the courts [including for adultery].”); Penal Code (No. 3/1987) art. 356 (amended 2005 and 2006) (U.A.E.).

240. Penal Code (No. 16/1960) arts. 195–97 (amended 1970) (Kuwait); Sultani Decree (No. 7/1974) arts. 225–27 (Oman).

241. Penal Code (No. 16/1960), art. 197 (amended 1970) (Kuwait); Sultani Decree (No. 7/1974) arts. 225–27 (Oman).

require a complaint from a spouse, meaning that the State can initiate prosecution.²⁴²

Punishments vary widely for adultery across the GCC states. The UAE allows for a one-year sentence.²⁴³ Oman and Bahrain provide for up to two years' imprisonment.²⁴⁴ Kuwait provides for up to five years' punishment.²⁴⁵ Qatari law provides for seven to fifteen years of punishment.²⁴⁶ Saudi Arabia enforces its law, including the possibility of death by stoning for married adulterers, though its punishment is not codified.²⁴⁷ Prosecutions are widespread in the Gulf. Bahrain, Kuwait, Qatar, Saudi, and the UAE each rigorously enforce bans on adultery, particularly against foreign, female domestic laborers.²⁴⁸

Laws that criminalize adultery violate an individual's human right to privacy and freedom to found a family and enjoy family unity. Because they are consistently drafted or implemented in gender-discriminatory ways, they generally violate the well-established norm of non-discrimination in international law. And when criminal laws condition a child's ability to receive nationality on her parent abandoning her to the State or completing a prison term, the laws leave children vulnerable to statelessness. They demand a choice between the fundamental human rights of nationality and legal identity, on one hand, and the right to family life, on the other hand.

242. See Amiri Decree (No. 15/1976) art. 316 (Bahr.) (listing the elements of the crime of adultery, which do not include a complaint filed from the adulterer's spouse or guardian); Penal Code (No. 11/2004) arts. 281–88 (Qatar); Penal Code (No. 3/1987) art. 356 (amended 2005 and 2006) (U.A.E.).

243. Penal Code (No. 3/1987) art. 356 (amended 2005 and 2006) (U.A.E.).

244. Sultani Decree (No. 7/1974) arts. 225–27 (Oman); Amiri Decree (No. 15/1976) art. 316 (Bahr.).

245. Penal Code (No. 16/1960) arts. 194–96 (amended 1970) (Kuwait).

246. Penal Code (No. 11/2004) arts. 281–82, 285 (Qatar).

247. See Country Reports 2015: Saudi Arabia, *supra* note 72, at 2 (“Since the country lacks a written penal code . . . punishment—including the imposition of capital punishment—is subject to considerable judicial discretion in the courts [including for adultery].”).

248. For examples of criminal prosecutions for adultery in GCC states, see Noor Zahra, *Wife convicted of adultery*, GULF DAILY NEWS (Bahr.) (Apr. 3, 2013), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=350712>; *Woman, lover in police custody for adultery*, KUWAIT TIMES (July 27, 2013), <http://news.kuwaittimes.net/woman-lover-in-police-custody-for-adultery/>; *Facing Jail, Unmarried Pregnant Women in Qatar Left with Hard Choices*, DOHA NEWS (Qatar) (Aug. 27, 2013), <http://dohanews.co/facing-jail-unmarried-pregnant-women-in-qatar-left/>; *Saudi Arabia commutes maid's death sentence: Sri Lanka*, SAUDI GAZETTE (Dec. 23, 2015), <http://saudigazette.com.sa/saudi-arabia/saudis-commute-maids-stoning-death-sentence-sri-lanka/>; Yasin Kakande, *Sharjah police conduct door to door hunt for unwed couples*, THE NATIONAL (U.A.E.) (Apr. 22, 2010), <http://www.thenational.ae/news/uae-news/sharjah-police-conduct-door-to-door-hunt-for-unwed-couples>.

V. CONCLUSION

This Article has expanded on current literature by providing a comprehensive survey of gender and birth status discrimination in one region of the world, the six countries of the GCC. In doing so, it illustrates the need to survey risks of statelessness beyond nationality law. Scholars and advocates seeking to identify causes of statelessness in any region or legal system should take a broad view of possible causes of statelessness. They should closely study nationality law and practice—as well as civil registration, family, and criminal codes and the implementation of each of these areas of law.

Discrimination on the basis of gender and birth status can result in children being born without a nationality. As legal systems layer forms of discrimination, the potential causes of statelessness increase. Mothers in the GCC states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE have extremely limited abilities to convey nationality to their children or to register their children's births. States also discriminate against non-marital children, meaning that children who are born to unmarried parents may not be able to receive their parent's nationality.

Discrimination in countries' family law and criminal law combines with nationality and birth registration discrimination to create even further risks of statelessness. When a child cannot establish her legal connection to her father by verifying paternity but nationality is conveyed through the father, the child is at a severe risk of statelessness. The child is in a similar situation if the parent's country does not recognize the parents' marriage. Finally, criminal prohibitions against non-marital sexual conduct pit a parent's ability to raise the child against the child's right to a nationality.

Each of these forms of discrimination inherently contravenes international law and human rights guarantees, and by creating new cases of statelessness, perpetuates other human rights deprivations. To reach the goal of ending statelessness by 2024, these forms of discrimination must be addressed and reformed. ❁