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### Acquiring the Mother's Nationality

“A comparative study between international conventions and Iraqi law”

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#### Abstract

Acquiring mother nationality is one of human rights in general and the right of mother and child which international agreements and Iraq constitution 2005 state and also Iraqi nationality Act on 2006 state the mother right to give her nationality to her children according to conditions because of the development of transfer means and travel to many countries and increasing number of marriage from foreigners as it is considered one of fqih subjects that evoke the debates of law scholars between supporters and opponents especially scholars of Islamic fqih as the son is to his father and the laws of countries were different in this matter and in the legal influences resulted from acquiring the mother 's nationality such as dual nationality and inheritance .

The research problem is that the Iraqi legislature stated clearly the right of the child to acquire the mother nationality in case of unknown father and does not state the original right of the mother in transfer the nationality in case if the father is known abroad and the child is born abroad the Palestinian child from Iraqi mother is exempted from the right of having Iraqi nationality.

#### Introduction

Awarding the nationality is from the father and that is applied fin all the worlds' countries. For the mother the general base is that she can't give her nationality to her children in equality with the father <sup>1</sup>.

Naturalization is an act from the country in which it a ward its nationality to whom they require after fulfill the legal conditions.

Iraqi constitution of 2005 recognized the mother equality in transform the nationality to the children in equality with the father. Also, Iraqi Nationality Act 2006 recognized the

right of the mother in transfer its nationality to her children <sup>2</sup>.

Most of nationality acts are not equal in award the nationality between the men and women and that what the United Nation attempt to limit as it is one of the causes of losing the nationality <sup>3</sup>

Most of countries are different in formal and objective conditions of award the nationality but it depends on the state and the individual well<sup>4</sup>.

In the light of social development and openness to the countries of the world, the cases of women marrying

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foreigners have increased, as these marriages produce children, and some of these marriages end in separation and the children remain with their mother, her original home, and in most cases, it is their original homeland, which he did not leave, and her children are treated as foreigners, and they are required to submit a residence application and obtain a residence permit. Work permit.

The objective of the study is to evoke Iraqi legislature to make amendments through suggesting the amendments in nationality act that emphasize the equal right of the mother with the father in transfer the nationality without discrimination to ensure the right in his mother as the nationality is legal and political connect and has no relation in proof of parentage. Also enact an act for mother and child to approve the mother right in transfer the nationality to the child.

Thus, I studied Therefore, I examined the subject according to the comparative approach between Iraqi law and international conventions in order to find the extent of Iraq's commitment to international conventions relating to women, and divided it into two enquiries The first is the child's right to his mother's nationality, while the second is the basis for acquiring the mother's nationality in the Iraqi Nationality Law.

Through the mentioned above I reached to several results and suggestions .We find that transform the nationality of the mother to the child that born in a state territory has a benefit if the father was deprived from his nationality for political reasons .The case of mother transfer her nationality to her children helped in cases of inheritance having properties especially real estates in which the countries impose conditions on the foreigners to have real estates .The countries has to unify their legislations concerning the mother right in award the nationality for her children according to blood right to limit the problem of international law as a case that determined the law that must be implemented and the actual nationality as the woman divorce from a foreigner and return to her home land taking her child so the country of the mother .Thus the child deserve to take the nationality and if he has the nationality of his father but the mother nationality of the mother is the actual nationality and other matters .

The importance of the issue is also represented in the extent to which the mother is able to pass on nationality to her children in order to reduce the phenomenon of statelessness, as well as to protect the rights of the child to his mother from inheritance and other issues of international law.

There are no unified laws in allow the mother to award its nationality to her children nor the legal influences resulted from that, as there are several countries persevered on SEDAO Agreement 1979. Not all countries recognize the mother right to transfer her nationality to her children which cause the case of statelessness<sup>5</sup>.

the Iraqi legislature stated clearly the right of the child to acquire the mother nationality in case of unknown father and does not state the original right of the mother in transfer the nationality in case if the father is known abroad and the child is born abroad the Palestinian child from Iraqi mother is exempted from the right of having Iraqi nationality.

The research method is the comparative study among international agreements, Iraqi constitution, Iraqi Laws and Iraqi Abolished law of nationality with mentioning of some legislative opinion in order to have a solution in the issue of equality of men and women in transfer their nationality to children.

Research plan:

The research plan, it is as follows:

The first enquiry: the right of the child to the nationality of his mother.

The first requirement: what is the nationality of the mother.

The second requirement: equality in the right to acquire nationality.

The second enquiry: Acquisition of the mother's nationality in the Iraqi Nationality Law.

The first requirement: cases of acquiring nationality.

The second requirement: the procedures for acquiring the mother's nationality and its effects.

Conclusion.

## First Enquiry

### Right of the Child in his mother nationality

The nationality importance is not as it is a right instrument in distribution of people in countries to the international general system because the nationality is the base that the state depends in practicing its sovereignty<sup>6</sup>

The right of a child to his mother's nationality is one of the human rights guaranteed in international agreements that equate the mother and father in awarding nationality, which is stipulated in international conventions and internal laws, and it is forbidden to issue any law that prevents or limits this right, so I will look into that in two demands.

### First Requirement

#### What is the Mother Nationality?

The international law state that each country has the right to determine who are their nationals and the countries have to subject to the international laws in award the nationality or deprive from nationality among these law is the right of mother to transfer her nationality to her child in equal to the father .For the purpose of understand the concept of nationality we must define the nationality and the acquired nationality , explain the mother right in transfer her nationality and the reasons for the mother right in transfer her nationality and the most important legal opinions and introduce it as the following :

**First item: First paragraph:** Definition of the mother's nationality: Nationality: (noun), plural: nationalities, a feminine noun attributed to a gender, Nationality: the adjective attached to a person in terms of his affiliation with a people or nation.

Naturalized: (verb), to naturalize, to naturalize, to be naturalized, to naturalize a person who is compliant Gender: to acquire the nationality of a state, affiliation with a non-origin Naturalized by Iraqi nationality<sup>7</sup>.

Nationality (Jensia) in the Arabic language is derived from the subject (genus) with the points of letters, which is more general of the kind (jenis) and every kind of thing, and the camels is kind (Jenis) genus, and the Almujanis is the one who makes problems

The term (nationality) is recent in the Arabic language, even as if you hardly find any reference to this term in the language dictionaries, except for what he mentioned a little while ago regarding (gender).

For the purpose of clarifying the legal links between the individual and the state, he used the term (citizen) not (nationality).

In the English language, the synonym for "nationality" is "Nationality," and in the French language "Nationality," which is of course derived from the word "Nation," which means the nation.<sup>8</sup>

The legal definition is that it is a political and legal collaboration between the individual and the state, resulted in rights and duties meanwhile it is an instrument to distribute the people geographically. Thus, the element of nationality includes the individual and the state and the legal and political connection between the individual and the state<sup>9</sup>

Acquiring the nationality which is the nationality awarded after birth and it is called the emergency nationality or secondary nationality because it is acquired and not imposed and also called the selected nationality because it requires declaration of the person who demand the nationality. It has many features as it is not the first nationality and coming after birth, it is emergency nationality or awarded from the state and it is selected depending on the individual well<sup>10</sup>

And that the law awarded the mother the right to transfer nationality for many reasons, which are exceptional cases when the child is born from unknown or stateless father. In order to take care of the child from a situation of statelessness, international legislation and acts have worked to give the child the right to obtain the nationality of his mother based on the right of blood derived from the mother. This is called the "secondary right of blood" because it is imposed as an exception rather than the rule, and it can be called "the right of mother blood."

Also, it is called " Preventive or substitute blood right " because it is imposed because the purpose is to protect the child from the situation of statelessness or having no nationality<sup>11</sup>

We see from the above mentioned that awarded the nationality " mother nationality "is acquiring the mother nationality that are coming later

**Second Item:** Most important reasons for acquiring mother's nationality:

- 1- When the father has no nationality
- 2- When the country of the father does not allow to award his children the nationality

- 3- In certain cases when the child is born in another country
- 4- When the father is unknown or not married the mother at the time of the child birth.
- 5- When the father could not register his children in states registration to prove the pedigree of his children because of death or because of the imposed separation from his family or his inability to document the event in some cases or other requirements, when the father wants to take the necessary procedures to award nationality in the event of divorce or leaving the family.<sup>12</sup>

Therefore, we find that states and the international community seek to empower women and award them an equal right with men to award their children nationality We believe that the most important reason for awarding a son nationality from his mother is to protect his rights from his mother who is of another country, especially issues of inheritance and the transfer of ownership, such as real estate owned by the mother, which acts do not allow a foreigner to own real estate in the country except under certain conditions, and it is possible in the event of a dispute in the mother's country And he can't live there by sheltering to his mother's country as a national instead of being a refugee and many other reasons that increase with the development of society and changing circumstances.

The third item: The most important jurisprudential opinions: It is known that the mother's right to transmit nationality to her children in an authentic and equal manner to the man (the father) has sparked a jurisprudential controversy, as some of the jurists supported the mother's right to transmit nationality in an authentic manner, while another side of the jurists opposed this, which is What most countries have adopted. Iraq has explicitly recognized the mother's right to pass on nationality to her children based on the right of blood and reinforced with conditions.

The first paragraph: The opposing jurisprudential opinion: This aspect of jurisprudence that opposes equality between the mother and the father in the transfer of nationality to children adheres to some traditional arguments that favor the role of the father over the role of the mother in awarding nationality to her children.

One of these arguments is that the sons are attributed to the father, so it is natural for the sons to acquire the nationality of their father, just as the father is the head of the family, and their argument is that the father is the one who plant in them the love of home country and the basic reason for awarding the original nationality of the newborn child<sup>13</sup>

The father is considered the legal representative of the sons, as he is the one who looks after their interests and takes care of them and wants to protect them, not violate, abuse or marginalize them.<sup>14</sup>

The award of nationality based on the right of blood descended from the father is consistent with the unity of nationality within the same family to avoid the issue of dual nationality in the event that the

mother is awarded the right to transmit nationality to her children<sup>15</sup>.

This jurisprudence sees that award the nationality to the children helps in increasing population number which hurt the countries that suffer from population increasing<sup>16</sup>.

Also, the nationality is sovereign and issue and has no relation with equality between men and women, the state is free in award the nationality according to their policies that support their its internal legislations.<sup>17</sup>

Also there are moral considerations that prevent the mother from transfer her nationality to the children who were born abroad in order to fight the phenomena of illegitimate children as it is illegal phenomena and disconnect the social texture of the society.

Also acquire the mother nationality from foreign father weakens the security in the state as it weakens the security monitoring foreigners it is not known how much they are incorporating in the society.<sup>18</sup>

**Second paragraph:** The Support Jurisprudence Opinion This side of Jurisprudence the equality between men and women in transfer the nationality and they are based on several reasons:

This side of Jurisprudence see the right of equality between men and women and women according to the constitution and no discrimination based on gender and take the right of blood from the mother as a base to award the nationality. It is cope with international agreements such as SEDAO agreement as article (9/second) (The party states award the women the right equal to the men in award the nationality to their children)

Also, it agrees with the World declaration for Human Rights on 1948 article (15) that approve the equality principle among the people in spite the origin, religion, gender, costumes.....etc.<sup>19</sup>.

Also, the nationality is political connection between the state and the individual and it is free in award or in prevent awarding its nationality in the way that serve its high interests.<sup>20</sup>

Also, the claim that the father grew up his children on love the belonging to the country and defend it is something not true because it deny the mother role in grew up the children as she take the main role in that<sup>21</sup>

Also, the Jurisprudence opinion which claim that award the mother nationality increase human numbers especially in the countries that suffer from increasing number of populations is not true as the countries can limit the population increase through enact internal laws.<sup>22</sup>

The dual nationality is normal matter in most countries laws as they permit it with depend on the actual nationality.<sup>23</sup>

Legislation must also keep pace with developments in the world due to the increase in marriages with foreigners and living abroad, and there is a moral and humanitarian duty on any country where a child is born from a mother holding national nationality to award him Iraqi nationality, which was confirmed by the Universal Declaration of Human Rights of 1948<sup>24</sup>.

The researcher believes that the second jurisprudential trend in support of the mother's right to transmit nationality to her children is more likely because it helps the child protect his rights from his foreign mother, such as inheritance or if she decides to return it to her country of origin after separation from her husband to receive health care, education, the right to work and other rights in a country His mother, in this case, the mother's country is considered the real country, and in order to avoid the state of statelessness.

### The second requirement

#### Equality in the right to acquire a nationality

Nationality is one of the basic human rights in accordance with international conventions, declarations, charters and covenants, as these are equal agreements between women and men in awarding nationality to their children, and the Iraqi constitution of 2005 equaled that, as Iraq worked to amend its constitution in line with international conventions, declarations and charters on the right of the mother by awarding her nationality to her children, we will discuss this in two paragraphs:

**First item: Equality of Rights:** International legislation and the effective Iraqi constitution of 2005 gave equal rights to men and women:

**The first paragraph: Equality in international agreements and charters:** There are a number of international agreements and charters that affirm equality between women and men, including:

- 1- The 1945 United Nations Charter, which stress the rule of law, equality between women and men, and the need for the international community to cooperate in Article 1 thereof. The United Nations Economic and Social Council of 1945 was established in the first year as the Commission on the Status of Women to advance the reality of women and achieve equality. between her and the man.
- 2- World Declaration of Human Rights on 1948<sup>25</sup> in article (29) that states (All people are born free and equal in dignity and rights and each human enjoy all rights and freedoms stated in this Declaration without any discrimination because of race , color , gender , language ,religion ,..... or birth or any situations<sup>26</sup>
- 3- The International Covenant on Civil and Political Rights of 1966, Article (1-2), which introduce the right to equality between women and men in awarding nationality<sup>27</sup>.
- 4- The Convention for the Reduction of Statelessness of 1961<sup>28</sup>, which allowed a newborn to obtain the nationality of his mother to reduce statelessness, Article (1/3).
- 5- The Convention on the Elimination of All Forms of Discrimination against Women for the year 1979 AD<sup>29</sup>, which equated women and men and prohibited discrimination<sup>30</sup>.

We observe from what is mentioned above that all agreements, World Declaration and UN Pact emphasize the equality between men and women in

all fields, Iraq is member of United Nations that recognized most of these international pacts.

**Second paragraph: Equality according to Iraqi Constitution 2005:**

Constitutional texts emphasize on the equality between men and women without discrimination and the state guarantee of these rights and forbid any Act that discriminate men and women concerning human rights <sup>31</sup>.

This is in accordance with Article (14) of the Constitution<sup>32</sup>, that states: (Iraqis are equal before the law without discrimination based on gender...), in addition to Article (16) of it, which stipulates: (Equal opportunities are guaranteed to all Iraqis), as well as Article (20). Including: (Nationals, both men and women, have the right to participate in public affairs.).

Also, the constitution permit the nationality acquirement, multitude nationality without any discrimination between men and women according to article (18/Fourth) and that organized in an act, the Act of Nationality and the courts have jurisdiction to hear disputes of nationality according to article (18/ Sixth)

Second Item: Acquisition of the mother’s nationality in accordance with the 1979 Agreement on the Elimination of All Forms of Discrimination against Women and in the Iraqi Constitution: The right to acquire the mother’s nationality is stipulated in international agreements, among these agreements are the SEDAO Agreement of 1979, as well as what cancelled and enforceable Iraqi laws approved, so we will discuss it according to the following:

**First Item:** Acquisition the Nationality According to SEDAO 1979: We find that Iraq Approved this agreement and the article (9/2) of the agreement states (2-The party members award the woman an equal right of men concerning her children nationality)

In article two of ninth paragraph we find the agreement the woman and the man equal right in award the nationality to their children without conditions but Iraq preserved on this article because it contradicts with the legislations of Islamic Legislation and Iraqi Act of Personal Affairs No. (188) on 1959 that are derivate from Islamic Legislation but after 2003 and issuance the constitution of 2005 Iraq cancel the reservation and send that to the United Nations according to the decision of Councils of ministers on 2009 .

**The second item: Acquisition of the mother’s nationality according to the Iraqi constitution of 2005:** The Iraqi constitution in force for the year 2005 came with a new principle that was not stipulated in the Iraqi constitutions that were canceled since the establishment of the Iraqi state, which is the principle of the Iraqi mother’s right to award nationality to her children regardless of the father’s nationality, based on Article (18 Second): (Everyone born to an Iraqi father or an Iraqi mother is considered Iraqi, and this is regulated by law.)

So, the Iraqi mother became the primary role in awarding nationality, not building it alike with the father, thus eliminating a type of discrimination on the basis of gender<sup>33</sup>..

As this constitution is issued in the way that achieved the equality according to international pacts.

Previously it recognizes only the child born from Iraqi father to award Iraqi original nationality. About the mother it was conditioned in addition to has Iraqi nationality to relate to the territory right in addition to another conditions that can be depend on to award Iraqi nationality <sup>34</sup>

**Third item: The Attitude of Islamic Jurisprudence**

The subject transfers the mother nationality to the children has evoked a debate as it is considered contradict to Islamic Legislation because it is one of the modern issues that the scholars attempted to find a rule about it

For the deep believe that Islamic Jurisprudence is valid for each time and place through the ability of its rules to change to cope with the age developments especially in the issues that emerge the mother role in the society and Islam good view about it <sup>35</sup>

I will show the most important Jurisprudence opinions in the mother right to transfer her nationality to her children according to the right of blood in the light of Islamic Jurisprudence.

**First: Opposite Jurisprudence Opinion:** The Nationality is modern idea and it is political bond between the state and the individual which appeared two centuries ago, meanwhile Islamic Jurisprudence existed fourteenth centuries age and see the people as Moslems and fighters and considered the people from none Islamic countries as foreigners

Also, the Islamic state included Muslims and non-Muslims, and counting Muslims as those who hold Islamic nationality are citizens of the Islamic state, and that non-Muslims who are Themees who do not hold nationality are not citizens of the Islamic state<sup>36</sup>.

The guardianship of the man over the woman because of the Almighty’s saying: (Men are the guardians of women by what God has given them over others, and by what they spend from their mothers).<sup>37</sup>

Also, the Qur’an does not equate the inheritance between a woman and a man <sup>38</sup> because of the Almighty’s saying:

This idiosyncratic trend measures the transfer of nationality as a transfer ratios in the absence of Oaataqranejoohedit prophetic talk about sex, a trend that scholars of the Maliki school of the subordination of children to their parents says: (and those who believe and follow them their descendants in faith we inflict their descendants and Oltnahm of their work is something every man including gain depends on<sup>39</sup>, as they promise that the word “our right” is lineage, and the offspring follows the father<sup>40</sup>.

. And he says: (I call upon them to their parents is a premium on God, have not learned to their brothers in religion and slaves not you stand as sinned against him but deliberately your hearts, God is Forgiving, Merciful. (5) <sup>41</sup>God Almighty says: call who you adopt who in Power genealogy to their parents, He says to his Prophet Muhammad, peace be upon him: Add the lineage of Zaid to his father Haritha, and do not leave him Zaid bin Muhammad, peace be upon him, and his saying: (He is more just in the sight of God) he says: Your

supplication to them for their fathers is more just with God, and truer and more correct than your supplications to them other than their fathers and your lineage, and they are to those who adopted them and their sons.<sup>42</sup>

**The second Point : The supporting opinion:** It is historically approved that Islam established a state called it Dar Alsalam and it is approved in the international Jurisprudence that the idea of the nationality and the state are correlative .None of them is achieved without the other and no one can imagine a state exist without people live in. this state and it practice its authority on .Thus the state must has an instrument to practice it authority on it and that is achieved through the nationality<sup>43</sup>.

There is no definitive legal text in the Noble Qur'an, nor the Sunnah of the Prophet, or a jurisprudential consensus that prevents acquiring nationality by adopting the right of blood descended from the mother<sup>44</sup>, which is a matter up to the guardian, as the Islamic state used to award all rights to all Muslims and other People of the Book who reside in the House of Islam , says: (O people, fear your Lord, who created you from creating one of them her husband and transmit them many men and women, and fear God, who asks by the kinship of God you were an observer)<sup>45</sup>as stipulated Islamic law on equality between men and women, but what it came from it with a special text<sup>46</sup> for the Almighty's saying: (for the male is equal to the share of two females)<sup>47</sup>because the duty of spending in Islam is on the male and not the female.

The three jurists of Sharia law: the Hanafis, the Shafi'is and the Hanbalis

The interpretation of the verse (and those who believe and their offspring follow them their faith in their offspring and doing a disservice We does not impose of their work is something every man including gain depends)<sup>48</sup>

Here it does not mean that we descend the children to their fathers but it means relate the children with their father in the other world by their deeds. The interpreters said that the fathers mean the father and the mother. But it is taken in general as fathers mean the father.

Ibin Cather mention what Ibin Abas said (They are the fathers offspring dead on believe, if their fathers have higher position they shall accompany their fathers without missing their deeds)

“And those whose offspring embraced faith and acted upon My obedience, I will join them with their faith to Paradise, and their young children will join them.”<sup>49</sup>

The interpretation of the verse was based on the saying of the Prophet, peace be upon him, “Verily the believers and their children will be in Paradise”<sup>50</sup>and the word believers in the context of the hadith was meant by the Messenger himself and his wife Khadija<sup>51</sup>.

And I think that the supported jurisprudence is the most correct of the saying of the Highest: “And when We took from the Prophets their covenant, and from you, and from Noah, and Abraham, and Moses.”<sup>52</sup>

All the prophets have fathers except the Prophet of God, Adam, peace be upon him, who had neither a mother nor a father, and Jesus, son of Mary, was created from dust,

because of the Almighty's saying: (The likeness of Jesus with God is the likeness of Adam, then He created him from dust and said come to being)<sup>53</sup>.Thus it is true to descend the child to his mother as we think that if the father is unknown in foreign country or has no nationality for political reasons or convicted in a crime concerning state security violation and the nationality is revoked or the state forbid the second marriage and gives complex conditions for divorce and marry another woman and he has a child from his second wife the mother seeks the nationality for her children in afraid from statelessness and the father is afraid of the conviction

### First Requirement

#### Cases of Acquiring the mother nationality according to Iraqi Nationality Law

Many Nationality acts has been issued since the establishment of Iraq State on 1920 that Affirm the mother right in transfer the nationality to her children in different reasons and conditions in response for international agreements. We shall study these laws as the following.

**First item: Acquisition of the mother's nationality according to the two repealed Nationality Laws:** We will discuss here the repealed Nationality Law of 1924 and the Nationality Law of 1963 according to the following:

**The first Paragraph: Acquisition of the mother's nationality according to the repealed Nationality Law No. (42) of 1924<sup>54</sup>:** With regard to the role of an Iraqi mother in transferring nationality to her children in this law, we find that Article (8/A) stipulates:The person is considered Iraqi in spite of his place of birth if coming from Iraqi father ),we observe from the text that the mother has no right to transfer her nationality to the children .

A jurisprudence debate appears about the right of the mother to transfer the nationality to her children if the father is unknown the reason behind that is to the interpretation of the word (father ) if it is limited to the father or the mother is limited to the father and it is taken from the Father ) Some of the jurists argue that the word ( father )in the English text of nationality Act .Thus the illegitimate child shall not has the Iraqi mother nationality according to the article (8/A)mentioned above and thus the child is in stateless state.

The other jurisprudential opinion holds that Article (8/A) allows an Iraqi mother to transfer her nationality to her illegitimate children born from an unknown father outside the framework of marriage, and their argument in this is that every masculine in the law is predicated on femininity, unless there is a presumption to the contrary, in application of the article (2) of the Nationality Law<sup>55</sup>, due to the absence of the presumption, the word father mentioned in Article (8/a) includes the mother as well.

This is what the Court of Legal Codification adopted in one of its decisions dated May 14, 1934 when it recognized the mother the right to pass the nationality to her young children in the event of the father's death, and the Ministry of Interior supported the second opinion when it decided to award Iraqi nationality to the children of the Iraqi mother of unknown parentage to their father. Even if the father was stateless<sup>56</sup>.

We believe that the legislator should have explicitly mentioned the mother's equal right to the father's transfer of nationality to avoid jurisprudential and judicial differences in interpretation.

**The second paragraph: Transfer the mother nationality according to revoked Act 43, 1963:** The revoked Iraqi Nationality Act is one of the acts that did not allow to transfer the mother nationality to her children unless in expiations.

**First case:** to support the blood right taken from the mother in the territory in the article (2/4) stipulated the following (Consider Iraqi the person who (born in Iraq from Iraqi mother that and unknown father or has no nationality) From the text it is explained that the person is considered Iraqi if he born in Iraq from Iraqi mother and unknown father either is illegitimate child or the father has stateless situation

**The second case: Acquisition of the nationality according to blood right which is stipulated in article (5)** (the minister has the right to consider the person who born abroad from Iraqi mother and unknown father or in stateless situation Iraqi national in condition to ask for it within one year from adulthood and reside in Iraq and has no foreign nationality.

We observe from the text that the legislator put a condition to acquire the mother nationality is to has Iraqi nationality at giving birth to the child either it was original or acquired , the father is unknown ( means the child is illegitimate ) ,or stateless , for political reasons and the child was born abroad and at the time of ask for the nationality he reside in Iraq, does not has foreign nationality , the request is submitted to the Minister of Internal Affairs , from one year from become adult in condition of the minister agreement and no time determined for accept or reject the request<sup>57</sup>

We note from the text that the Iraqi legislator prevented the acquisition of nationality if the child had a foreign nationality, that is, it prevented dual nationality. It shows us that the legislator's goal is to spare the Iraqi mother the state of statelessness in line with or in compliance with international trends.

**Paragraph Two: Acquisition of the mother's nationality according to the Nationality Law in force of 2006:** Although the Iraqi constitution is based on gender equality, as it affirms the right of the mother and father to award nationality to their children based on Article (18/Second), the Nationality Law of 2006 limits the ability of the mother and father to award nationality to their children. The Iraqi woman in awarding her nationality to her children<sup>58</sup>, as he did not explicitly refer to the equality of women and men in obtaining or acquiring the original nationality, leaving the matter to the jurisprudence of the judiciary and jurisprudence.

**The first item: Cases of acquiring the nationality:** As for the cases of acquiring the nationality of the mother in the applicable law, which are two cases:

**The first case: Acquisition of nationality by birth from an Iraqi mother:** The issue of proving parentage is not limited to the father only, but can also be extended to the mother in accordance with international laws and modern legislation related to nationality, including the Iraqi Nationality Law in force for the year 2006.

Article (3/a) stipulates that: (A person who is born...or an Iraqi mother is considered an Iraqi).

From the text it is clear that a child born from one parent, whether the father or the mother holds Iraqi nationality, can obtain Iraqi nationality based on the right of blood descended from the mother or father, and it is considered an original nationality and not acquired, even if one of the parents is a foreigner.

The legislator did not differentiate between if the mother or father had an original Iraqi nationality or an acquired Iraqi nationality, and the legislator did not require the continuation of the marital relationship to award Iraqi nationality to the newborn, nor did it require that the birth be inside Iraq, so the In Iraq, the legislator considered this law to be effective from the date of its publication in the Official Gazette, which is on March 7, 2006<sup>59</sup>.

We believe that the legislator was not successful in counting the son of an Iraqi, of Iraqi nationality, from the date of publication of the law, which is the date on which the law came into force, so he had to count every child of an Iraqi mother of Iraqi nationality, even if he was born before the law came into force.

We find that the Iraqi legislator allowed the child to acquire two nationalities, i.e. the nationality of the mother and the nationality of the father in Article (4) of the Nationality Law in force 2006<sup>60</sup>.

We find that the text is general in awarding Iraqi nationality to children, whether from the mother or father, and we believe that the legislator took the same provisions as the Iraqi constitution of 2005, which equalized between women and men in acquiring Iraqi nationality, which affected and implemented international agreements, declarations and international covenants that equalized women and men in obtaining Iraqi nationality. of the original nationality.

**The second case: Acquisition of nationality by birth outside Iraq from an Iraqi mother and an unknown or stateless father:** This case is adopted by countries that do not adopt the principle of absolute equality between women and men in awarding nationality, not building it from birth. A stateless father or from an unknown father (i.e. a foundling) in order for the legislator to allow her son to obtain nationality<sup>61</sup>.

Article (4) stipulates that: (The Minister may consider a person born outside Iraq to an Iraqi mother and an unknown or stateless father, who has an Iraqi nationality if he chooses it within a year from the date of his attaining the age of majority, unless difficult circumstances prevent that, provided that he resides in Iraq at the time of submitting the application for Iraqi nationality).child can be born from one of the Iraqi parents outside Iraq and obtain nationality

We note that the Iraqi legislator in the applicable law quoted the text of this article from Article (5) of the repealed Iraqi Nationality Law No. (43) of 1963, but with the addition of the phrase "unless difficult circumstances prevented it"<sup>62</sup>.

However, the legislator in the repealed law prohibited dual nationality, as it stipulated that the child should not have a foreign nationality other than the Iraqi nationality, which he

is seeking to obtain based on the right of blood descended from the mother.

As for the legislator in the applicable law, he did not stipulate the same, so he permitted dual nationality and ignored the principle or rule of actual nationality, as the birth of a child abroad and his obtaining and retaining foreign nationality and his unwillingness to abandon it indicates that he is a foreigner, even if he submits an application for Iraqi nationality because of residence for a period in Iraq.

**The second item: Exception from acquiring the nationality of the mother (born of an Iraqi mother and a Palestinian father):** The legislator mentioned some of the exceptions to the right to acquire nationality in general that can be applied to preventing the mother's right to transmit nationality to her children, in Article (6/Second): (Second: Iraqi nationality may not be awarded to Palestinians to guarantee their right to return to their homeland.

We note from the text that the legislator distinguished between a mother married to an Arab or a foreigner on the one hand and a mother married to a Palestinian on the other, as it was not allowed for an Iraqi mother married to a Palestinian to transfer Iraqi nationality to her children, even if the birth was inside Iraq, while the married Iraqi mother was allowed to do so. From an Arab or a foreigner, the reason is to ensure the return of the Palestinians to their land, Palestine, and not to remain outside the homeland, and to forget and eliminate the Palestinian issue due to the migration of Palestinians and the choice of other countries with the intention of remaining as their home instead of occupied Palestine<sup>63</sup>.

However, we found that such a text contradicts what Iraq has ratified of the international covenants that equalize between women and men in awarding nationality to their children, and this text also contradicts the provisions of the Iraqi constitution in force for the year 2005, Article (18/Second), the aforementioned, which gave the mother an equal right For the father to award nationality for their children in compliance with international law, and this text is also contrary to the text of Article (3/A) and Article (4) of the Iraqi Nationality Law in force.

The Iraqi legislator took the same direction as the legislator in the repealed Nationality Law of 1963 Article (8/1-g) <sup>64</sup>in depriving the Palestinians of obtaining Iraqi nationality to guarantee the right of return and to ensure that the Palestinian cause is not forgotten and eliminated because it is one of the fundamental and fundamental issues of the Arab and Islamic nation.

I support the tendency of the Iraqi legislator not to forget the Palestinian cause and to protect the right of the Palestinians to return to their country and restore their identity and their stolen lands in Palestine.

### **The second requirement**

#### **How to acquire the mother's nationality and its effects?**

For the purpose of obtaining Iraqi nationality from the mother, the legislator stipulated several conditions and determined the procedures through which nationality could be transferred to the children of the Iraqi mother.

Paragraph One: Conditions and procedures for acquiring the mother's nationality: For the purpose of acquiring the mother's nationality, the legislator stipulated several conditions and procedures, which are:

**The first item: Conditions: For the purpose of transferring the mother's nationality to her children,** the legislator laid down several conditions, which are:

1- The mother should be of Iraqi nationality at the time of the birth of the child, whether her Iraqi nationality was original or acquired.

2- That the father is unknown, i.e., if the child is not legally related to him or has no nationality, or if he cannot prove his nationality at the time of the birth of the child who is required to obtain the nationality of his Iraqi mother.

3 - That the child be born outside Iraq, and the legislator has set this condition in order to protect the child born of an Iraqi mother, in the case of a country that does not award nationality on the basis of the right of the region, so the legislator did not require that the birth be reinforced by the right of the region.

4- Residency in Iraq when the child reaches the age of majority in Iraq before submitting an application for nationality<sup>65</sup>.

These conditions are mentioned above in the effective Iraqi Nationality Law. As for the repealed Nationality Law of 1963, it is stipulated that the child should not acquire a foreign nationality when submitting an application for naturalization, because the goal of the Iraqi legislator is to protect the son of an Iraqi born abroad from statelessness in application of international agreements that enabled him to obtain a nationality his mother and provided him with protection from referral of statelessness.

**The second item: Procedures:** We note from the text that the legislator mentioned procedures that the applicant for his mother's nationality must follow, which are:

1- To submit an application to the Minister of Interior, accompanied by all the priorities that indicate his right to acquire the nationality of the Iraqi nation according to the conditions set by the legislator.

2- The son of the Iraqi mother submits an application to acquire his mother's nationality within a year from the date of his attaining the age of majority while in Iraq he has completed eighteen years and be fully qualified according to Iraqi law. And the sudden event, as if the country was in a state of war and the government departments were closed, or he was sick in the hospital because of an operation.

The Iraqi legislator did not allow, in the repealed Nationality Law of 1963, to extend the period for submitting an application for nationality due to the difficult circumstances.

And the Iraqi legislator did well in the law in force 2006 by giving the circumstances a reason to extend the application period for acquiring nationality.

3- The approval of the Minister of Interior, because he is the authority competent to accept or reject in accordance with the



conditions set by the legislator. However, we note from the text that the legislator did not require the minister to state the reasons for the rejection in case he did not accept, nor did he specify the period for acceptance or rejection because the legislator did not specify the necessary period<sup>66</sup>.

However, the minister's approval or lack thereof is subject to the supervision of the administrative judiciary, as Article (19) of the law in force states that: (administrative courts shall have jurisdiction over cases arising from the application of the provisions of this law) in implementation of the provisions of the 2005 constitution.

And he was allowed to appeal the decision before the Court of Cassation, as Article (20) stipulates that: (Each naturalization applicant and the minister, in addition to his position, have the right to appeal the decision issued by the administrative courts to the Court of Cassation)<sup>67</sup> After the recent amendment of the State Council Law and the establishment of the Supreme Administrative Court, the discriminatory appeal against the decisions of the administrative courts is before the Supreme Administrative Court.

The dissolved Revolutionary Command Council prevented the courts from considering cases of nationality<sup>68</sup>.

**The second paragraph: Effects of acquiring the mother's nationality:** The legal effects on authenticating the nationality according to Article (3) or acquiring the mother's nationality based on Article (4) and Article (14/First).

So, we will divide these effects into two items:

**The first item:** The legal effects on the authentication of nationality: These are the same effects that result from an Iraqi of Iraqi origin born of Iraqi parents. The person whose Iraqi nationality is proven at birth is considered an Iraqi, based on Article (3) of the Nationality Law in force for the year 2006, and therefore he enjoys All rights and freedoms stipulated in the Iraqi Constitution of 2005, and he cannot be deprived of these rights and freedoms or restrict or limit them according to the law without touch the origin and essence of the right or the freedom<sup>69</sup> and he has the right to assume offices in Iraqi state such as to be a minister or member in the parliament<sup>70</sup>.

**The Second Item: The Legal Effects of Acquiring the Mother Nationality consequent to the person that acquire Iraqi nationality.**

Individual effects are the same rights that the person of Iraqi origin unless if there are exceptions in private act ,he has no right to assume highest office in Iraqi state such as to be a minister or member of the parliament or highest employee in diplomatic career .Also he has no right to be a member of the parliament until pass of ten year according to article (9/second ) of enforced Iraqi Nationality Act<sup>71</sup>.This text does not distinguish between the Arabic and the foreigner in acquisition of Iraqi nationality<sup>72</sup> to insure his loyalty to Iraq and incorporate to Iraqi society<sup>73</sup>.

He is never allowed to be a president or vice president according to article (9/third) even he has long residence because the risky nature of these offices on the state existence<sup>74</sup>.

The collective effects are the effects related to the naturalized wife and his young children that does not reach adulthood age according to principle of family unity

The legislature gives the wife freedom in acquiring the husband Iraqi nationality according to articles (11,12,13), Also this direct from the legislature agree with what the Agreement of Married Woman Nationality in New York articles 1957.

### Conclusion

Through the mentioned above I reached to several results and suggestion

#### First: The Results:

- 1- We do not find an obstacle prevent the mother from transfer the nationality to her children because the nationality is legal, political bond that connect the individual with the state and has no relation with approve the descent.
- 2- Transfer the nationality from the mother to the unknown descent be canceled because the development of DNA and other analysis and each country has a sample for each person from the cells of approve the descent and DNA
- 3- - We find that the transfer of nationality from a mother to a child born in the territory of a country is beneficial if the father has revoked his nationality for political reasons and traveled outside Iraq, or because the authorities did not renew the nationality at the request of the authorities.
- 4- - Acquiring the mother's nationality is useful in case that the father cannot award him the nationality because the law forbids marriage to a second woman.
- 5- - Acquiring the mother's nationality is useful in the event that the father cannot award him the nationality because the law forbids marriage to a second woman.
- 6- - The awarding of nationality from the mother to the children helps in the case that their marriage contract is not recognized in the state, i.e., did not complete the formal and objective legal procedures for convening according to the law of the foreigner's country. There are children. Here it is necessary to award nationality to the children by the mother to avoid case of statelessness.

#### Second: Suggestions:

- 1- Permit the mother to ward nationality to her children in all cases, in equal man, whether inside Iraq or outside of a known or unknown father who has a nationality or a stateless person, while keeping the name of the child attributed to his father.
- 2- We suggest the enactment of a law on women's rights in general and the rights of mothers and children in particular, the "Mother and Child Rights Law" that recognizes the mother's right to pass on nationality to her children, just like men.
- 3- The countries must be unify their legislation with regard to the mother's right to award nationality to her children based on the right of blood to reduce the problems of international law, such as determining the applicable law, actual nationality, inheritance issues and others.

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<sup>24</sup>The Charter of the United Nations was signed on June 26, 1945 in San Francisco, at the conclusion of the United Nations Conference on the International Organization, and entered into force on October 24, 1945. The Statute of the International Court of Justice is an integral Vol. of the Charter. <https://www.un.org/en/charter-united-nations/>

<sup>25</sup>The Universal Declaration of Human Rights—an important historical document in the history of human rights—was drafted by representatives from various legal and cultural backgrounds from all over the world, and the General Assembly adopted the Universal Declaration of Human Rights in Paris on December 10, 1948 by resolution 217 A as the common standard which should be aimed at all peoples and nations. It defines for the first time the basic human rights to be protected universally and these rights have been translated into 500 languages of the world.

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<sup>29</sup>The Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW, is an international treaty adopted by the United Nations General Assembly on December 18, 1979. It describes it as a Bill of Rights The International Women's Convention was ratified on September 3, 1981 and was signed by more than 189 countries, including more than fifty countries that agreed with some reservations and objections, including 38 countries that refused to implement Article 38 of the Convention, which relates to ways to settle disputes related to understanding Convention. Australia indicated in its reservation that there were some limitations due to its constitutional system. The United States and Palau have both signed the agreement but

have not done so. The agreement was not signed by the Holy See, Iran, Somalia, Sudan and Tonga.

<sup>30</sup>As Article (9/1) stipulates equality between women and men in the right to acquire, retain or change the nationality, we will discuss it more in the second paragraph, the first clause of this requirement.

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<sup>32</sup>The Iraqi constitution is the federal law by which Iraq is currently governed. The constitution was approved in a referendum on October 15, 2005, and entered into force in 2006. The new permanent constitution of Iraq is the first legal document approved by an elected constituent assembly and national referendum since the year 1924

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<sup>37</sup>Surah Alnisa Verse 34.

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<sup>39</sup>Alnisa (verse 11)..

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<sup>42</sup>Surah Al-Ahzab (33) verse (5).

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<sup>46</sup> Dr. Raad Miqdad Mahmoud, Nationality of the Iraqi Mother's Children, previous source, p. 69.

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<sup>48</sup> Altur Surah (52) verse (21).

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<sup>50</sup> The hadith is authentic, narrated by Abu Hurayrah, the source is Sharh al-Sudour, p.308

<sup>51</sup> Al-Sha'bi says..... on the authority of Ali, he said: I asked Khadija the Prophet about two sons who died for her in the pre-Islamic period, and the Messenger of God, peace be upon him, said: "They are both in Hell." When he saw the hatred in her face, he said: "If I saw their place, I would hate them." She said, "O Messenger of God, my child is from you." He said: "In Paradise." Then the Messenger of God said, "Indeed, the Muslims and their children are in Paradise, and the polytheists and their children are in Hell." Then the Messenger of God and those who believed and followed their offspring with faith read. .."Ibn Katheer, the previous reference, the same page. Referred to by the Muslim Mother and the Nationality Law, Dr. Zainab Al-Maadi, Women's Network under Muslim Laws, the same source, the same page.

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<sup>54</sup> The Iraqi Nationality Law No. 42 of 1924 on October 9, 1924 is the first law issued after the establishment of the Iraqi state that established Iraqi citizenship. It was issued in accordance with the Treaty of Lausanne concluded in 1923 between Britain and its allies in World War I on the one hand, and the Ottoman Empire on the one hand. On the other hand, according to which the Ottoman Empire recognized the independence of Iraq and the establishment of the Iraqi state, the agreement entered into force on August 6, 1924, as Article (30) of it obligated the regulation of the nationality of the people of the regions estranged from the Ottoman Empire according to a local law. Therefore, Iraq issued in 10/9/1924 The first law of Iraqi nationality is the aforementioned law, provided that it becomes effective on the day the Treaty of Lausanne on August 6, 1924 comes into force.

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<sup>57</sup> Dr. Nibras Dhaher Jabr Al-Ziyadi, Private International Law (Provisions of Nationality, Domicile and Foreigners Status), previous source, pp. 74-75, Ghaleb Ali Daoudi and Dr. Hassan Muhammad Headway, Nationality, Foreigners Center and Its Provisions in Iraqi Law, Vol.1, Al-Atek Book Industry - Beirut, Legal Library - Baghdad, 2017-2018, pp. 88-89

<sup>58</sup> UNHCR, Information Paper on Gender Equality and Nationality and Statelessness Laws, op. cit., p. 4.

<sup>59</sup> Dr. Raad Miqdad Al-Dawla and researcher Adalah Abdel-Ghani Mahmoud, Childhood considerations in establishing and acquiring Iraqi nationality, Tikrit University Journal of Law, Q(2), Vol.(2), P(3), C(2), March 2018, pp. 6-7

<sup>60</sup> Contrary to the repealed law of 1963 which prohibited dual citizenship, as it stipulated that the applicant for naturalization had acquired the citizenship of another country, d. Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) for the year 2006, previous source, p. 82. .

<sup>61</sup> Dr. Iyad Mutashar Saihud, Encyclopedia of Comparative Nationality Provisions, "An original and analytical study in the light of the effective Iraqi Nationality Law No. (26) of 2006 compared to the latest amendments to all Arab nationality laws and most of the laws of Asian and European countries, the American law of 2001 and the latest amendments to the French law - the legal system of national nationality, Vol.1, Al-Sanhoury Library, Beirut, 2019, p. 95.

<sup>62</sup> Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) for the year 2006, Vol.1, previous source, pp. 80-81.

<sup>63</sup> Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) for the year 2006, previous source, p. 86.

<sup>64</sup> Article (8/1-g) of the repealed law of 1963 states: (g- Iraqi citizenship shall not be awarded to Palestinians until Palestine is liberated and return to it is achieved).

<sup>65</sup> Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) for the year 2006, previous source, p. 81

Dr. Nibras Dhaher Jabr Al-Ziyadi, Private International Law (Provisions of Nationality, Domicile, and Status of Foreigners), previous source, p. 75.

<sup>67</sup> Dr. Nibras Dhaher Jabr al-Ziyadi, Private International Law (Provisions of Nationality, Domicile, and Status of Foreigners), previous source, ref. Eyad Mutasharsihud, Encyclopedia of Comparative Nationality Provisions, "An original and analytical study in the light of the effective Iraqi Nationality Law No. (26) of 2006 compared to the latest amendments to all Arab nationality laws and most of the laws of Asian and European countries, the American law of 2001 and the latest amendments to the French law - the legal system of national nationality, source Previous, pg. 98. 75.

<sup>68</sup> Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) for the year 2006, previous source, p. 82.

<sup>69</sup> Dr. Raad Miqdad Al-Dawla and researcher Adalah Abdel-Ghani Mahmoud, Childhood Considerations in Proving and Acquiring Iraqi Nationality, previous source, pp. 31-32.

<sup>70</sup> Dr. Raad Miqdad Al-Dawla and researcher Adalah Abdel-Ghani Mahmoud, Childhood Considerations in Proving and Acquiring Iraqi Nationality, same source, p. 33.

<sup>71</sup> Dr. Raad Miqdad Al-Dawla and researcher Adalah Abdel-Ghani Mahmoud, Childhood Considerations in Proving and Acquiring Iraqi Nationality, same source, pp. 33-34.

<sup>72</sup> Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) of 2006, previous source, p. 100

<sup>73</sup> Iyad Mutasharsihud, Encyclopedia of Comparative Nationality Provisions, "An original and analytical study in the light of the effective Iraqi Nationality Law No. (26) of 2006 compared to the latest amendments to all Arab nationality laws and most of the laws of Asian and European countries, and the American law of 2001 AD and another

<sup>74</sup> Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) of 2006, previous source, p. 100