



# General Assembly

Distr.: General  
15 March 2013

Original: English

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## Human Rights Council

Twenty-third session

Agenda items 2 and 3

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report on discrimination against women on nationality- related matters, including the impact on children**

#### **Report of the Office of the United Nations High Commissioner for Human Rights**

##### *Summary*

In spite of some positive developments, many nationality laws still discriminate against women. The present report examines how women in certain countries do not enjoy equal rights with men to acquire, change and retain their nationality and are also not allowed to transfer nationality to their children or spouses on the same basis, which very often results in statelessness. It analyses the negative impact of discriminatory nationality laws on the enjoyment of women's rights and the rights of their children and spouses, and also includes best practices and other measures to eliminate discrimination against women in nationality laws.

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## I. Introduction

1. In its resolution 20/4, the Human Rights Council invited the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare, in consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), the Working Group on the issue of discrimination against women in law and in practice, States and other relevant stakeholders, a report on discrimination against women in nationality-related matters. The present report is submitted pursuant to that request. The Council requested that the report include an analysis of the impact on children and best practices by States and other measures that eliminate nationality discrimination against women and avoid or reduce statelessness.

2. The comments and advice of UNHCR and the Working Group on discrimination against women in law and in practice and the contributions of States, international and non-governmental organizations are gratefully acknowledged.<sup>1</sup>

3. The right to a nationality is a fundamental human right that also has an impact on the enjoyment of other human rights. In an increasingly globalized world, persons without a nationality find themselves in an extremely vulnerable situation. Despite the fact that the right to a nationality is guaranteed under various human rights treaties, discrimination in nationality-related matters persists in many countries. Although each State has the power to determine who its nationals are according to its law, the boundaries of this discretion are found in international human rights guarantees, which are legally binding upon States.

4. An individual nationality may be determined by descent from a national or by being born within the State's territory. Most States have combined these two principles in their laws on nationality. Historically, these two principles have favoured the nationality of the father: the father's descent line was prioritized and a woman was traditionally more likely to move to her husband's State. Nationality may also be acquired by naturalization and through marriage.

5. It was widely accepted at the beginning of the twentieth century that nationality was governed by the principle of "dependent nationality" or "unity of nationality of family". This principle is based on the idea that a family should have the same nationality owing to concerns of divided loyalty and on the patriarchal notion that the nationality of the entire family should follow that of the husband.<sup>2</sup> This principle is still reflected in discriminatory nationality laws in force in different regions of the world.

6. International law on women's nationality rights began to develop in the 1930s within the framework of the League of Nations. Initially, the approach to women's nationality regarded the problem as one of statelessness and dual nationality caused by conflicts among the nationality laws of different States rather than on the basis of gender equality. Progressively, the focus shifted to women's right to equality, and various regional and international human rights instruments were adopted. The adoption of the Convention on the Elimination of Discrimination against Women in 1979 was a turning point, as it was

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<sup>1</sup> All contributions for the present report are available on the OHCHR website at [www2.ohchr.org/english/issues/women/](http://www2.ohchr.org/english/issues/women/).

<sup>2</sup> See International Law Association Committee on Feminism and International Law, Final Report on Women's Equality and Nationality in International Law, London, 2000, p. 17; Marsha A. Freeman, Christine Chinkin and Beate Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: a Commentary*, Oxford Commentaries on International Law, 2012, p. 234.

the first international treaty to recognize the principle of women's equal rights with men with respect to the nationality of their children. Since then, many States have repealed nationality laws that discriminate against women. Many discriminatory laws, however, remain.

7. Nationality laws fully respectful of the principle of gender equality are not only a human rights requirement but are also crucial to women's empowerment. Enjoying the right to nationality and the right to pass their nationality to their husband and children increases a woman's opportunities to participate in public and political life, work, travel and have access to resources and property. The economic and social independence that flows from such rights also enhances a woman's ability to escape an abusive and violent relationship. In addition, discriminatory nationality laws are one of the main causes of statelessness, which is thought to affect as many as 12 million women, men and children across the globe.<sup>3</sup> Non-discriminatory nationality laws are therefore important for preventing and reducing statelessness.

## II. Legal framework

8. The right to a nationality and the principles of equality and non-discrimination are recognized in various human rights instruments, starting with the Universal Declaration of Human Rights in its article 15.<sup>4</sup>

9. The main international human rights treaties include a provision prohibiting discrimination based on, inter alia, sex. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also share an article guaranteeing equality between men and women in the enjoyment of the rights contained in those instruments.

10. The Convention on the Nationality of Married Women is the first international instrument to call upon States to eliminate the principle of dependent nationality; it does not, however, include any provision on the nationality of the children. Its article 1 provides that "each contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife".

11. The Convention on the Elimination of All Forms of Discrimination against Women provides in its article 9.1 that States "shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband." Article 9.2 requires States to "grant women equal rights with men with respect to the nationality of their children". This applies to both biological and adoptive relationships, as well as to children born in and out of wedlock. Articles 2 (policy measures to eliminate discrimination), 3 (equality with men), 5 (sex role stereotyping and prejudice), 15 (equality before the law) and 16 (marriage and family life) respectively are also relevant to article 9, and mutually reinforcing. A significant number of States have made reservations to article 9 of the Convention and to other articles that may potentially affect the nationality rights of

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<sup>3</sup> UNHCR, *The State of the World's Refugees 2012*, Geneva, 2012 (available from [www.unhcr.org/4fc5ceca9.html](http://www.unhcr.org/4fc5ceca9.html)), p. 14.

<sup>4</sup> See also A/HRC/13/34.

women.<sup>5</sup> There are also States that retain discriminatory nationality laws even if they have not entered any reservation to the Convention.

12. The International Covenant on Civil and Political Rights provides in its article 24.3 that “every child has the right to acquire a nationality”. Article 26 sets out the principle of equality before the law.

13. Article 7 of the Convention on the Rights of the Child provides that children “shall be registered immediately after birth and shall have (...) the right to acquire a nationality” from birth. It also mandates States to ensure the implementation of these rights in accordance with their national law and international obligations, “in particular where the child would otherwise be stateless”. According to its article 8, States are also obliged “to respect the right of the child to preserve his or her identity, including nationality (...) as recognized by law without unlawful interference.”

14. Article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families specifies that children of a “migrant worker shall have the right to a name, to registration of birth and to a nationality.”

15. The Convention on the Rights of Persons with Disabilities provides in its article 18 that States should recognize the right of persons with disabilities, including children, “to a nationality, on an equal basis with others, including by ensuring that...[ they] are not deprived (...) of their ability to obtain, possess and utilize documentation of their nationality”.

16. Article 5 (d)iii of the International Convention on the Elimination of All Forms of Racial Discrimination also addresses State obligations to eliminate racial discrimination in nationality-related matters.

17. Regional human rights treaties also recognize the right to a nationality: the Inter-American Convention on the Nationality of Women, the American Convention on Human Rights, the African Charter on the Rights and Welfare of the Child, the European Convention on Nationality and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms. Other regional instruments also have provisions on equality with regard to nationality-related matters, even though they qualify this with deference to domestic laws, which effectively nullifies women’s equality in countries with discriminatory laws.<sup>6</sup>

18. This human rights framework is complemented by two conventions specifically dealing with the issue of statelessness. According to articles 1 and 4 of the Convention on the Reduction of Statelessness, a contracting State “shall grant its nationality to a person born in its territory” or born to one of its nationals abroad in a non-State party “who would otherwise be stateless”.<sup>7</sup> Its article 5 provides that “if the law of a contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage (...), such loss shall be conditional upon possession or acquisition of another nationality”. Article 32 of the Convention relating to the Status of Stateless Persons provides that the States “shall as far as possible facilitate the assimilation

<sup>5</sup> As at 5 February 2013, 17 of 187 States maintained their reservation to article 9 of the Convention: see [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#2](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#2).

<sup>6</sup> On the nationality of children, see the Protocol on the Rights of Women in Africa, art. 6 (h), and the Arab Charter on Human Rights, art. 29.2.

<sup>7</sup> See the UNHCR Guidelines on Statelessness No.4 (HCR/GS/12/04) (available from [www.unhcr.org/refworld/docid/50d460c72.html](http://www.unhcr.org/refworld/docid/50d460c72.html)), para. 2.

and naturalization of stateless persons.” These conventions complement article 9 of the Convention on the Elimination of All Forms of Discrimination against Women. Read together, this international legal framework imposes an obligation on States to reform their nationality laws to ensure that they do not discriminate against women or their children and that they do not create or perpetuate situations of statelessness.

### III. Discrimination in the acquisition, change and retention of nationality

19. In many countries, nationality laws still do not grant women equal rights with men to acquire, change and retain their nationality; some laws contain discriminatory provisions that do not allow women to transfer nationality to their spouses on the same basis as men. These discriminatory laws are based on the principle of “dependent nationality”, which provides that a married woman’s nationality is dependent on that of her husband.

20. Where both the countries of the husband and the wife follow the principle of dependent nationality, the woman automatically acquires the nationality of her husband but loses her own. Where only the country of the wife follows the principle of dependent nationality, she will lose her nationality when marrying a foreigner, even if she does not automatically acquire the nationality of her husband. Women in those cases will become stateless, even if they remain in their country of origin. Where the husband’s country follows the principle of dependent nationality, the husband’s nationality will be imposed on the wife, regardless of whether she would like to acquire such a nationality.

21. In all of the above cases, if the nationality of the husband changes or is lost during the marriage, the wife’s nationality also changes. Similarly, in the event of termination of the marriage by death or divorce, the married woman may lose her entitlement to her husband’s nationality. Sometimes, couples divorce before the wife has gained her husband’s nationality. Women in these circumstances will be able to revert to their nationality of origin only if the laws of that State permit her to do so. Women are often not able to regain easily their nationality in a timely manner because of cumbersome procedures and, as a result, may become stateless.<sup>8</sup>

22. Women are also subjected to discrimination through laws that do not allow women to pass their nationality to their husbands or that impose on husbands stringent requirements before they are able to acquire the nationality of their wives; conversely, no such requirements or prohibitions are imposed on foreign wives married to male nationals.<sup>9</sup> Such discriminatory laws are based on the State’s concern that men as the “head of the family” and by virtue of being a male are more likely to take advantage of economic opportunities.<sup>10</sup> These laws discriminate against women and men of different nationalities who marry: for instance, foreign husbands may not be permitted to obtain a work permit, which may then force women to accept precarious and exploitative conditions of work that

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<sup>8</sup> See UNHCR, “No husband, no country”, *Refugees*, issue 3, No.147, 2007, available from [www.unhcr.org/46d2e8dc2.html](http://www.unhcr.org/46d2e8dc2.html).

<sup>9</sup> See Equality Now, Campaign to End Sex Discrimination in Nationality and Citizenship Laws, 2012 (available from [www.equalitynow.org/nationality\\_report](http://www.equalitynow.org/nationality_report)); and Women’s Right to Nationality and Citizenship, Asia Pacific Occasional Paper Series No. 9, International Women’s Rights Action Watch Asia Pacific, 2006, pp. 6-7.

<sup>10</sup> United Nations Division for the Advancement of Women, “Women, nationality and citizenship”, *Women 2000 and Beyond*, 2003 (available from [www.un.org/womenwatch/daw/public/jun03e.pdf](http://www.un.org/womenwatch/daw/public/jun03e.pdf)), p. 8; Bronwen Manby, *Citizenship Law in Africa*, Open Society Foundations, New York, 2010, p. 48.

have a negative impact on their human rights. These laws also perpetuate statelessness where they prevent a stateless husband from acquiring his wife's nationality.

23. Indirect discrimination in the implementation of nationality laws also threatens women's right to equality. Very often, identical naturalization procedures for women and men may actually discriminate against women in practice.<sup>11</sup> Where non-national women have lesser opportunities to learn the local language and culture (for instance because of domestic responsibilities limiting their interaction with the community), standard tests for the acquisition of nationality may put them at a disadvantage. Naturalization criteria requiring economic self-sufficiency or adequate housing may also be more difficult for women to meet, especially if they are female-headed households with little income or are financially dependent on their spouses.

24. When women are unable to document their nationality, they can be at risk of statelessness; for instance, women may lack access to the documentation necessary to prove or claim their nationality, such as passports, identity cards or birth or marriage certificates. Their birth may not have been registered owing to laws and practices discriminating against and excluding girls, in particular girls from poor families, minority and foreigner communities or with disabilities.<sup>12</sup> Their marriage may not have been registered either owing to the lack of the husband's consent, lack of awareness or any other reason. In certain circumstances, such as in cases of trafficking or situations of violence and abuse, women's documentation may have been deliberately appropriated or destroyed as a means of control. In some countries, discriminatory practices, such as requirements of third-party male authorization to obtain nationality documents, further affect women's enjoyment of their right to nationality.<sup>13</sup>

25. Women living in poverty, women with disabilities, older women, migrant women or women belonging to racial or ethnic minorities, facing sometimes multiple forms of discrimination, bear additional administrative, financial and other burdens when claiming their right to nationality.

26. Restrictions on retention of dual nationality also have the potential to discriminate against women in practice. Where dual nationality is not allowed, women can be disproportionately affected, as they tend to reside in their husband's country. If dual nationality is forbidden, they will have to decide between retaining their nationality or acquiring that of their husband's. If they do not take on the nationality of their husband, they will not be able to enjoy fully their political, civil, economic and social rights in their husband's country. They will be especially vulnerable to abuse because of the inherent powerlessness of their position. If they lose their nationality of origin upon acquiring the nationality of their spouses, they risk statelessness in the event that the marriage ends by death or divorce, and may be cut off from the enjoyment of a range of human rights in their country of origin. They may also become stateless by "administrative delay" pending the granting of new nationality.<sup>14</sup>

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<sup>11</sup> International Law Association, Final Report on Women's Equality (see footnote 2), p. 20.

<sup>12</sup> Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights, UNHCR and Plan, 2012 (available from <http://plan-international.org/birthregistration/files/under-the-radar-english>), p. 12. See also the contributions of the International Disability Alliance and Movimiento Sociocultural para los Trabajadores Haitianos.

<sup>13</sup> Contribution of Human Rights Watch.

<sup>14</sup> UNHCR, Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women, Legal and Protection Policy Research Series, Geneva, 2009 (available from [www.unhcr.org/refworld/docid/4a8aa8bd2.html](http://www.unhcr.org/refworld/docid/4a8aa8bd2.html)), p. 43.

27. Under international human rights law, States are required to take all measures necessary to remove laws and procedures and to abolish practices that directly or indirectly discriminate against women.<sup>15</sup> States must also take proactive measures to achieve substantive equality between men and women in nationality-related matters. Ensuring access to legal assistance and literacy, language courses, subsidies for fees related to residence permits, and facilitating dual nationality are important measures for addressing de facto discrimination against women in this area.

28. The Committee on the Elimination of Discrimination against Women has repeatedly reminded States that they are required to amend discriminatory nationality provisions that violate article 9.1 of the Convention.<sup>16</sup> The Committee further clarified in its general recommendation No. 21 (para. 6) that “nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality”.

29. The Committee has also clearly stated that laws that do not allow women to transmit nationality to their foreign spouses on the same basis as men are discriminatory and in violation of the Convention.<sup>17</sup> This opinion is also consistent with the jurisprudence of other human rights mechanisms.<sup>18</sup>

30. The Committee has also reminded States that they must address those cases where foreign wives waiting for the acquisition of their husband’s nationality are put in a vulnerable situation and at risk of violence, exploitation and abuse.<sup>19</sup>

31. With regard to passport entitlement, the Committee has explained that domestic laws that require a woman to obtain her husband’s consent to include the name of children in her passport or to have a passport violate article 9.<sup>20</sup> Concerning birth registration, it also recalled the obligation of States to facilitate birth registration for girls and women, in particular to indigenous and rural women, so they may claim nationality.<sup>21</sup> The Committee has also welcomed amendments by States to their nationality laws in order to allow dual nationality.<sup>22</sup>

32. The Working Group on the issue of discrimination against women in law and in practice is actively involved in promoting women’s equal right to nationality as part of its work on discrimination against women, including in relation to political and public life.<sup>23</sup> Other human rights mechanisms, such as the Human Rights Council, including through the

<sup>15</sup> See for example the Convention on the Elimination of All Forms of Discrimination against Women, art. 2.

<sup>16</sup> See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 38 (A/55/38)*, para. 188, *ibid.*, *Fifty-ninth Session, Supplement No. 38 (A/59/38)*, para. 210, CEDAW/C/COD/CO/5, CEDAW/C/TGO/CO/5, CEDAW/C/IDN/CO/5, CEDAW/C/MAR/CO/4 and CEDAW/C/MWI/CO/6.

<sup>17</sup> See CEDAW/C/NER/CO/2, CEDAW/C/PAK/CO/3, CEDAW/C/BHR/CO/2, CEDAW/C/MDG/CO/5, CEDAW/C/MAR/CO/4, CEDAW/C/LBN/CO/3, CEDAW/C/BDI/CO/4, CEDAW/C/YEM/CO/6, CEDAW/C/EGY/CO/7, CEDAW/C/TUN/CO/6, CEDAW/C/NPL/CO/4-5, CEDAW/C/OMN/CO/1 and CEDAW/C/JOR/CO/5 (2012).

<sup>18</sup> See also the advisory opinion of the Inter-American Court of Human Rights on the Constitution of Costa Rica.

<sup>19</sup> See Freeman, Chinkin and Rudolf, *The UN Convention* (see footnote 2), p. 242.

<sup>20</sup> See also *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38 (A/57/38)*, para. 141.

<sup>21</sup> See CEDAW/C/PER/CO/6, CEDAW/C/BLZ/CO/4 and CEDAW/C/GRD/CO/1-5.

<sup>22</sup> See also CEDAW/C/TUV/CO/2.

<sup>23</sup> See also A/HRC/20/30, p. 70.



universal periodic review, and the Human Rights Committee have also reminded States of their obligations to ensure equal rights for men and women in the acquisition, change and retention of nationality.<sup>24</sup>

33. UNHCR and the Inter-Parliamentary Union (IPU), in accordance with the Convention on the Reduction of Statelessness, have recommended that where women have lost their citizenship through dissolution of marriage, their former State should introduce provisions to allow these women to automatically reacquire that nationality through a simple declaration.<sup>25</sup>

#### **IV. Discrimination relating to the nationality of children**

34. Despite the progress witnessed in many countries since the adoption of the Convention on the Elimination of All Forms of Discrimination against Women, laws in around 30 countries still do not grant women equal rights with men with regard to the nationality of their children.<sup>26</sup> These countries attribute nationality to children solely on the basis of the father's nationality; this constitutes discrimination against women.

35. Often women discover that they cannot transmit their nationality to their children only when they have their first child or when their husband leaves the family or dies, sometimes leaving them stateless.<sup>27</sup> As a direct result of such discriminatory laws, women become disempowered, as their rights and opportunities are restricted. In such situations, for example, women are more reluctant to return to their country of origin for a job opportunity or a position in public services because their children will have no opportunity to attend school or have access to health services, given that they lack the nationality of their mothers.

36. Children living under laws that do not allow women to pass on nationality to their children risk becoming stateless, for instance when the father is stateless, unknown or not married to the mother at the time of birth; the father has been unable to take the administrative steps necessary to confer his nationality or acquire proof of nationality for his children owing to death, forcible separation from his family or inability to fulfil onerous documentation or other requirements; the father is unwilling to fulfil administrative steps to confer his nationality or acquire proof of nationality for his children (for example, if he has abandoned the family); or the laws of the father's country do not permit him to confer nationality in certain circumstances, such as when the child is born abroad.<sup>28</sup> In addition, some contemporary families formed by single women or lesbian couples may find that their children are rendered stateless, because women are prevented from conferring their nationality.

37. Discriminatory laws in some countries allow no, or very limited, exceptions to their rules preventing mothers from conferring their nationality to their children. Other countries

<sup>24</sup> See CCPR/CO/75/YEM, A/HRC/8/36 and A/HRC/10/75.

<sup>25</sup> UNHCR and IPU, *Nationality and Statelessness: A Handbook for Parliamentarians*, Geneva, 2005 (available from [www.ipu.org/pdf/publications/nationality\\_en.pdf](http://www.ipu.org/pdf/publications/nationality_en.pdf)), p. 33.

<sup>26</sup> UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness, 2012, available from [www.unhcr.org/4f5886306.html](http://www.unhcr.org/4f5886306.html).

<sup>27</sup> Laura van Waas, The situation of stateless persons in the Middle East and North Africa, UNHCR, 2010 (available from [www.unhcr.org/4ce63e079.html](http://www.unhcr.org/4ce63e079.html)), p. 39.

<sup>28</sup> UNHCR, Background Note on Gender Equality (see footnote 26) and UNHCR and the Collective for Research and Training on Development – Action, Regional Dialogue on Gender Equality, Nationality and Statelessness, 2011, available from [www.unhcr.org/4f33ea656.html](http://www.unhcr.org/4f33ea656.html).

have included some safeguards in their discriminatory nationality laws to prevent the creation of statelessness. For instance, some make exceptions to allow mothers to pass their nationality on to children born within their territories or, more exceptionally, abroad, if the father is stateless, of unknown nationality or unknown. In some countries, children born to national women and foreign fathers may apply to acquire citizenship if they reside in the country; this provision is, however, reportedly not often implemented in practice owing to the overly bureaucratic requirements.<sup>29</sup> In other countries, even if the law is apparently gender-neutral, often, in practice, the children of national women and foreign men are not regarded as nationals.<sup>30</sup>

38. Women are also discriminated against in nationality-related matters, when different rules apply to children born in or outside of wedlock. In some countries, the nationality of children born out of wedlock or to a foreign mother living abroad is determined by that of the mother, to the exclusion of the father. Women in those circumstances may face many challenges in claiming support for their children. Since the children do not have the nationality of the father, the father's State of origin might be reluctant to accept the mother's claim for support.<sup>31</sup>

39. Women with disabilities, women belonging to ethnic or racial minorities, migrant women and imprisoned foreign women, among others, may face additional difficulties in transferring their nationality to their children, an issue that States also must address.<sup>32</sup>

40. Various human rights mechanisms, such as the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Human Rights Council, including through the latter's universal periodic review, regularly remind States of their obligation to ensure equal rights to men and women with regard to the nationality of their children, and urge them to amend discriminatory laws.<sup>33</sup> The Working Group on discrimination against women in law and in practice is also actively involved in promoting women's equal right to transfer nationality to their children as part of its work on discrimination against women in political and public life.<sup>34</sup>

41. The Committee on the Elimination of Discrimination against Women has noted that failure to amend discriminatory laws in this area cannot be justified by arguments based on diversity in culture or religion.<sup>35</sup> It has also explained that the prohibition of dual nationality cannot result in the nationality of children being determined by the father's nationality alone.<sup>36</sup> The consequences for children of not having a nationality on their enjoyment of

<sup>29</sup> See contribution of Human Rights Watch.

<sup>30</sup> Manby, *Citizenship Law in Africa* (see footnote 10), p. 53.

<sup>31</sup> UNHCR Guidelines on Statelessness No.4 (see footnote 7), para. 15.

<sup>32</sup> See contributions of International Disability Alliance, Equality Now and Quakers.

<sup>33</sup> See also CEDAW/C/TGO/CO/5, CEDAW/C/BDI/CO/4, CEDAW/C/LBN/CO/3, CEDAW/C/SAU/CO/2, CEDAW/C/LBR/CO/6, CEDAW/C/YEM/CO/6, CEDAW/C/TUV/CO/2, CEDAW/C/KWT/CO/3-4, CEDAW/C/NPL/CO/4-5, CEDAW/C/OMN/CO/1, CEDAW/C/JOR/CO/5 2012; CRC/C/15/Add.219, CRC/C/SWZ/CO/1, CRC/C/MLI/CO/2, CRC/C/QAT/CO/2, CRC/C/MDG/CO/3-4; CCPR/C/IRN/CO/3; E/C.12/MCO/CO/1, E/C.12/MDG/CO/2; CCPR/C/KWT/CO/2; A/HRC/8/19 and A/HRC/10/75.

<sup>34</sup> See also A/HRC/20/28/Add.1.

<sup>35</sup> Freeman, Chinkin and Rudolf, *The UN Convention* (see footnote 2), p. 244.

<sup>36</sup> See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 38 (A/56/38)*, para. 75.

human rights, such as the rights to education and to health care, have also been raised.<sup>37</sup> With regard to the entitlement to a passport, the Committee has raised concerns about the requirement for the father as legal guardian to consent to the inclusion of children in the married women's passport.<sup>38</sup> The Committee has also recommended that States raise awareness about the equality of spouses or guardians in their right to apply and collect passports or birth certificates on behalf of their children without the need for the spouses' written consent.<sup>39</sup>

42. The Committee on the Rights of the Child has reminded States about their obligation to register births and its relevance to the acquisition of nationality.<sup>40</sup> It is also crucial that States ensure prompt, equal and independent access to marriage registration. The registration of births and marriages is crucial for the formal recognition by the State of the new child in the family and the newly formed family bond.<sup>41</sup> The ability of women to have independent, equal access to these documents is critical, especially if the father or husband dies or leaves the family, given that birth and marriage registration certificates are used to prove the child's filiation. The non-registration of births and marriages is one of the main sources of statelessness. The Committee has also called on States to amend their nationality laws to ensure that no discrimination exists against children born out of wedlock.<sup>42</sup>

## V. Impact on the enjoyment of human rights

43. As discussed above, gender-discriminatory nationality laws often lead to the statelessness of women and children or situations where women, their children or husbands are deprived of the nationality of the country where they reside. Such laws result also in situations where children are denied the nationality of their mothers, causing direct prejudice to the enjoyment of their rights and in the achievement of women's human rights. In its general recommendation 21 on equality in marriage and family relations, the Committee on the Elimination of All Forms of Discrimination against Women stated that nationality was critical to full participation in society, adding that, without status as nationals or citizens, women were deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence.

44. According to the main international human rights instruments, everyone is entitled to the enjoyment of rights and freedoms recognized in them without distinction of any kind, including national origin. Exceptions to this rule generally relate to the right to participate in political and public life and freedom of movement. Also regarding economic rights, the International Covenant on Economic, Social and Cultural Rights in its article 2.3, includes the possibility for developing countries, "with due regard to human rights and their national economy", to "determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals". Many States, however, go far beyond these limited exceptions and do not always guarantee basic human rights to non-nationals.

<sup>37</sup> See *ibid.*, *Fifty-ninth Session, Supplement No. 38 (A/59/38)*, para. 300, CEDAW/C/EGY/CO/7 and CEDAW/C/JOR/CO/5.

<sup>38</sup> See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38 (A/57/38)*, para. 141.

<sup>39</sup> For example, see CEDAW/C/ZMB/CO/5-6.

<sup>40</sup> CRC/C/15/Add.128, CRC/C/15/Add.138, CRC/C/KEN/CO/2, CRC/C/15/Add.261.

<sup>41</sup> Laura van Waas, *Nationality Matters. Statelessness under International Law* (Antwerp, Intersentia, 2008), p. 153.

<sup>42</sup> CRC/C/MDG/CO/3-4, CRC/C/OMN/CO/2.

45. Lack of nationality has serious negative implications for the enjoyment of political, civil, economic, social and cultural rights of women and their children and husbands.<sup>43</sup> Current State practice reflects the predominant view that the exercise of political rights, such as the right to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service, is an entitlement of citizens alone. Women and their children, who later will become adults without nationality, are subsequently excluded from political and public life in the country where they reside.

46. Non-nationals also see their freedom of movement restricted. They may face severe limitations on their ability to travel, to choose a place of residence, and to leave or enter the country, given that they have no passport. They might also see their access to medical care, education and employment barred.

47. Non-nationals may also be confronted with violations of their right to liberty, a fair trial and an effective remedy. Fearful of detention or deportation, women, their children or husbands may be reluctant to claim their rights. In addition, they do not benefit often from services available to nationals, such as free legal aid or interpreters. Sometimes, such as in cases of trafficking, women's documents are taken away from them, preventing them from establishing their identity.

48. The right of non-nationals to family life is also curtailed, given that members of the family who do not possess the same nationality as that of others are sometimes not allowed to freely enter, exit, move, work or study in that country. A mother whose child has a nationality different from her own and who has no permit of residence in the State where the child resides may face legal obstacles when claiming custody of or access to the child, in particular if the marriage has been terminated by divorce or death. If the mother has custody of the child, the father may seek possession of the child with the support of his State, which is also the State of nationality of the child; in such a case, the State of the mother will not be able to exercise its diplomatic protection to recover the child, and its capacity to protect the mother's interests will be limited. Women are often not allowed to take their children out of the country when they do not have the same nationality.

49. Women and their husbands and children who are non-nationals also face difficulties in their access to work. Some countries restrict the access of non-nationals to certain professions or fix quotas for them. Non-nationals are also exposed to poor, dirty or even dangerous working conditions; sexual, physical, psychological and verbal abuse and violence; racial discrimination and other discriminatory attitudes; intimidating workplace environments; low salaries and long working hours; and absence of holidays.<sup>44</sup> Limited access to social security and other benefits available to nationals often lead to instability for and the marginalization of non-nationals.

50. Non-nationals also face challenges in their access to health services owing to various causes, ranging from formal exclusion from some or all public health-care services through to the practical inability to benefit from such services because of the fees charged to non-nationals or their lack of a regular immigration status or of any basic identity documentation.<sup>45</sup> This lack of access to health services disproportionately affects women who may be unable to receive proper sexual and reproductive health care, including maternal and neonatal care. The lack of nationality and statelessness may also have psychosocial effects, such as anger, resentment, frustration and depression.

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<sup>43</sup> See also A/HRC/7/23, A/HRC/19/43; general recommendation No. 30 of the Committee on the Elimination of Racial Discrimination; and contributions for the present report.

<sup>44</sup> See also E/CN.4/Sub.2/2003/23/Add.3, para. 11.

<sup>45</sup> A/HRC/19/43, para. 32.

51. Women and their husbands and children who are non-nationals also face obstacles in their access to adequate housing because of the restrictions imposed by States on the enjoyment of property rights by non-nationals, the absence of freedom of movement, discriminatory practices of housing agencies or lack of access to social housing.

52. Not all States ensure the right to education to non-national children as required by human rights law. Such children, who may lack the required documentation, are often excluded from public schools or have to pay fees to attend school. They may also be specifically excluded from certain levels of education, such as higher education, vocational training or university.

53. Non-national women and children are also exposed to a higher risk of violence, including domestic violence and trafficking.<sup>46</sup> While waiting to acquire the nationality of their husbands or a residence permit, women may suffer from violence and abuse perpetrated by their husbands. In other circumstances, women may be reluctant to leave their husbands for fear of losing their children who have a different nationality. When women lack nationality, they face greater challenges to leave these abusive relationships and to seek help from authorities. In some countries, it has also been reported that non-national parents seek to marry off their daughters at a young age to nationals in order to gain security.<sup>47</sup>

54. In situations of conflict, disaster, displacement or emergency, non-nationals, in particular those who are stateless, may face difficulties in obtaining food, shelter and other assistance required, as well as in tracing their families. Children thus very often remain in orphanages or foster care.

55. The rights of persons with disabilities and the minority rights of non-nationals are also often disrespected; for instance, minority non-nationals may face additional challenges to the realization of their right to enjoy their own culture.

56. Intimidation and threats to activists involved in nationality-related campaign have also been reported. States have an obligation to create an enabling environment for the realization of human rights, which includes the protection of the rights of human rights defenders involved in such campaigns.

## VI. Best practices

57. In recent years, many countries have repealed or amended discriminatory nationality provisions in laws and Constitutions. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have welcomed various instances of such reform or initiation of reform, such as the ones reported in Algeria, Bangladesh, Belarus, the Democratic Republic of the Congo, Eritrea, Fiji, Gabon, the Gambia, India, Japan, Kenya, Malawi, Maldives, Malta, Pakistan, Saint Lucia, Samoa, Singapore, Sri Lanka, Switzerland, Thailand, Uganda and Zambia.<sup>48</sup> Law reform to allow women to transfer nationality to their children, and in some exceptional cases to their

<sup>46</sup> Ibid., para. 39.

<sup>47</sup> See “My mother is Jordanian and her nationality is my right” campaign in “Jordan: Give women equal citizenship rights to men”, available from [www.equalitynow.org/take\\_action/discrimination\\_in\\_law\\_action451](http://www.equalitynow.org/take_action/discrimination_in_law_action451).

<sup>48</sup> See also CEDAW/C/COD/CO/5, CEDAW/C/LCA/CO/6, CEDAW/C/ERI/CO/3, CEDAW/C/MWI/CO/5, CEDAW/C/PAK/CO/3, CEDAW/C/JPN/CO/6, CEDAW/C/LKA/CO/7, CEDAW/C/BGD/CO/7, CEDAW/C/ZMB/CO/5-6, CEDAW/C/KEN/CO/7, CEDAW/C/DZA/CO/3-4; and CRC/C/SGP/CO/2-3.

foreign husbands, has been at least partially made in Algeria, Australia, Bangladesh, Botswana, Egypt, Ethiopia, Indonesia, Kenya, Monaco, Morocco, Rwanda, San Marino, Sierra Leone, Tunisia, Turkey and Zimbabwe.<sup>49</sup>

58. Reform in nationality laws has often accompanied broader initiatives to reach gender equality in various fields. For instance, in Rwanda, women parliamentarians created the Forum for Women Parliamentarians in 1996 with the objective of integrating gender at all levels through, notably, sensitization, strengthening women empowerment, and integrating gender into laws, policies, programmes, projects and budgets.<sup>50</sup> Their efforts led to the revision of various laws that discriminated against women, in particular the law on nationality.

59. In addition, certain countries such as Algeria, Morocco, Cyprus, Egypt, Fiji, Ireland, Jamaica, Liechtenstein, Malaysia (partially), the Republic of Korea, Thailand and Turkey have lifted their reservations to article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, an important step towards ensuring women's equality with men in nationality-related matters. The lifting of reservations should be followed by appropriate legal and policy reform to ensure the realization of rights in practice.

60. Other countries have pledged to reform or are considering reforming their laws on nationality.<sup>51</sup> For instance, Lebanon reported that it had set up a ministerial commission to study claims made by civil society organizations to amend the law on nationality. The National Commission for Lebanese Women submitted a project to amend the law on nationality to the commission in June 2012. Senegal also reported that it was considering reforming its nationality code to allow women to transfer their nationality to their husbands and children.

61. Various States indicated in their contributions for the present report that they had also incorporated safeguards into their nationality laws to prevent or reduce statelessness, from which stateless women and their children may benefit such as the conferral of nationality to children born of stateless parents, the prohibition of losing nationality if this results in statelessness, and facilitated procedures for the naturalization of stateless persons. Awareness-raising campaigns to inform the stateless about their options to acquire a nationality have also been conducted.

62. Discriminatory laws on nationality have been challenged in the courts of many countries, as well as before international human rights mechanisms. In some cases, following court decisions, discriminatory laws were amended. The arguments used by petitioners and in the decisions taken by these courts and mechanisms declaring such laws as discriminatory and in violation of human rights provisions could serve as an example of a best practice for other countries.

63. One of the most relevant cases is *Attorney General of the Republic of Botswana v. Unity Dow* (1992), where the Botswana High Court ruled that the 1984 Citizenship Act violated the Constitution of Botswana in that it discriminated against women on the basis of sex. According to the Act, while the children of Botswana men married to foreigners or children born out of wedlock were entitled to Botswana nationality by birth, children of Botswana women married to foreigners were not. The Court referred in its decision to the

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<sup>49</sup> See contributions of Australia, Morocco, San Marino, Tunisia and Turkey; UNHCR, Background Note on Gender Equality (see footnote 26); Manby, *Citizenship Law in Africa* (see footnote 10), p. 45.

<sup>50</sup> See [www.rwandaparliament.gov.rw/parliament/forumrwpf.aspx](http://www.rwandaparliament.gov.rw/parliament/forumrwpf.aspx).

<sup>51</sup> Contributions of Lebanon and Senegal. See also UNHCR, Background Note on Gender Equality (see footnote 26) for more information on specific pledges made by Senegal and Liberia at the UNHCR Ministerial Meeting in 2011.

Convention on the Elimination of All Forms of Discrimination against Women. The Citizenship Act was amended in 1995 to conform to the ruling.

64. In the advisory opinion on the *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* (1984), the Inter-American Court of Human Rights stated that the constitutional provision discriminating between men and women in the acquisition of nationality through marriage with a citizen of Costa Rica was in violation of the right to equal protection recognized in the Inter-American Convention. The Court recommended that the Constitution should be amended, which promptly ensued.

65. In *Genovese v. Malta* (2011),<sup>52</sup> the European Court of Human Rights ruled that nationality fell under the scope of protection of the European Convention of Human Rights as part of a person's social identity, which in turn is part of that person's private life, and that discrimination between a child's father and mother was not permitted with regard to access to nationality.

66. Other cases not directly dealing with nationality-related matters have also had an important impact in strengthening the prohibition of discrimination based on sex in relation to nationality-related matters: discrimination against foreign husbands to attain resident status (*Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius* (1981) Human Rights Committee);<sup>53</sup> the right to family life (*Berrehab v. the Netherlands* (1988) and *Beldjoudi v. France*, European Court of Human Rights); and freedom of movement (*Rattigan and Others v. Chief Immigration Officer, Zimbabwe*), among others.

67. Some countries in the Middle East and in the North African region offer good examples of how Governments have engaged in reforms of their laws on nationality to bring greater equality to nationality-related matters. The role of civil society in advocating for changes in the region has been also noteworthy. Some of the factors contributing to the success of these civil society campaigns included the adoption of a clear vision and strategy of action, the strengthening of the campaign through both a regional and a national focus, investment in comprehensive research and building broad coalitions, and the effective use of the media.<sup>54</sup>

68. One regional campaign, led by the Collective for Research and Training on Development – Action, maintained its focus on documenting the processes, developing advocacy skills, undertaking political lobbying, mobilizing women and the general public, working with media and maintaining regional linkages and the solidarity aspect of the campaign.<sup>55</sup> It also provided direct support to women affected by the current nationality laws through legal counselling. Various other strategies were then adopted at national level; for instance, in Morocco press conferences, protests and other activities targeting Government, Parliament, the general public and media were organized by the Association démocratique des femmes du Maroc and its local allies.<sup>56</sup> A network of “listening centres” was created where women's organizations recorded how the discriminatory law had an impact on families throughout the country. One of the strengths of the campaign was its ability to mobilize Moroccan women married to foreigners able for the first time to speak out about their situation. They were also able to capitalize on the momentum when the

<sup>52</sup> René de Groot and Olivier Vonk, “Nationality, Statelessness and ECHR’s Article 8: Comments on *Genovese v. Malta*”, *European Journal of Migration and Law*, vol. 14, no. 3, 2012.

<sup>53</sup> *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40)*.

<sup>54</sup> Laura van Waas, The situation of stateless persons (see footnote 27), p. 4.

<sup>55</sup> See Arab Women’s Rights to Nationality Campaign, available from <http://crtida.org.lb/project/22>.

<sup>56</sup> Contribution of Association démocratique des femmes du Maroc.

Family Code was reformed in 2002. Following the amendments to the nationality code, awareness-raising activities were organized to inform women about changes in the law.

69. Following the amendments to nationality provisions in Egypt, civil society engaged in a variety of activities, including monitoring the implementation of the new code at both the executive and judicial levels. Campaign activists also sought and obtained favourable court rulings against discriminatory practices in the implementation of the law.<sup>57</sup>

70. Other strategies employed by civil society include establishing broad partnerships; bilateral meetings with members of Parliament and the Government; theatre performances, roundtables, workshops and petitions; field studies as advocacy tools to provide relevant stakeholders with first-hand data on the extent and forms of suffering endured by women and their families; protests and sits-in; and using new technologies, sometimes with support from international non-governmental organizations, to raise awareness and collect signatures.<sup>58</sup>

71. Civil society in countries such as Malaysia and Jordan have also engaged with international human rights mechanisms, such as the Committee on the Elimination of Discrimination against Women, and submitted alternative reports and other relevant information to promote their cause when their States were examined.<sup>59</sup>

## VII. Conclusions and recommendations

**72. The right to nationality is a fundamental right for everyone – women, men and children – and must be regarded as such by all States. Equal nationality rights are an essential dimension of ensuring women’s human rights and crucial to preventing statelessness. The discretion of States to confer nationality on their citizens is limited by international law, in particular by international human rights law. Constitutions and nationality laws must therefore ensure the full enjoyment of women’s equal right to nationality and introduce safeguards to prevent statelessness. Despite positive developments in some countries, nationality laws in many others still discriminate against women. Women and men do not enjoy equal rights to acquire, change and retain their nationality, and are not allowed to transfer nationality to their children or spouses on the same basis. Discrimination against women in nationality-related matters is still prevalent in law and practice. OHCHR therefore recommends that States and other stakeholders:**

**(a) Withdraw all reservations to the Convention on the Elimination of All Forms of Discrimination against Women that impede women’s enjoyment of their nationality rights on the same basis as men, in particular their reservations to article 9, and ratify relevant international human rights instruments, including the optional protocols providing for individual complaints.**

**(b) Remove all provisions in Constitutions and nationality laws that discriminate against women, thereby ensuring full equality between men and women regarding the acquisition, change and retention of their nationality. In particular, States should ensure that marriage to a foreigner or a change to the husband’s nationality during marriage will not automatically change the nationality of the wife,**

<sup>57</sup> Collective for Research and Training on Development – Action Nationality Campaign.

<sup>58</sup> See for example the contribution of KARAMA/Arab Women Organisation in Jordan and “My mother is Jordanian” campaign (see footnote 47).

<sup>59</sup> Contributions of Women’s Aid Organisation (Malaysia) and United Nations Relief and Works Agency for Palestine Refugees in the Near East.



force her to take the nationality of the husband, or put her at risk of statelessness. States should introduce safeguards to nationality laws to ensure that any loss of nationality is conditional upon the possession or acquisition of another nationality. States should also ensure that women may transfer nationality to their foreign spouses on the same basis as men, and that those who have acquired nationality on the basis of marriage to a national do not lose that nationality in the event of dissolution of the marriage, or death.

(c) Amend nationality laws to allow women to confer their nationality to their children on the same basis as men. In addition, with regard to the acquisition of nationality laws should not distinguish between children born in and out of wedlock. States should also ensure consistency among all laws, policies and regulations dealing with nationality.

(d) Amend nationality laws and allow women whose marriage has been dissolved to automatically reacquire their former nationality through a simple declaration in cases where women automatically lose or have to renounce their nationality when they marry. States should also raise awareness among women on how to reclaim their nationality.

(e) Recognize dual nationality for children born to parents from different nationalities and for spouses married to foreigners and residing in the State of the spouse who express their wish to acquire the nationality of their spouse without losing their nationality of origin.

(f) Take the measures necessary to address practices that discriminate against women in nationality matters as well as indirect discrimination in nationality laws, so that substantive equality between women and men in nationality matters may be achieved. States should also address the specific challenges faced by women who suffer from multiple forms of discrimination, especially in their enjoyment of the right to nationality.

(g) Guarantee the full enjoyment of human rights for non-national family members, in particular the rights to education, health, work, residence and freedom from violence. Access to administrative and judicial remedies should be also available to them.

(h) Improve data collection, research and dissemination of information relating to women's equal right to nationality. This includes information on legal provisions and the consequences of discrimination against women in nationality-related matters on the enjoyment of their human rights.

(i) Take all the measures necessary to ensure that all girls and boys are registered immediately after birth, without discrimination based on sex, race, disability, social or other status. Marriages should also be registered in a timely manner.

(j) Ensure equal access to documents used to prove nationality, in particular passports, identity documents and birth and marriage certificates. Laws and practices requiring women to secure the consent and assistance of their husband, husband's family or father in order to obtain nationality documents should be amended, including those that require the husband's consent to add children names to the mother's passport. Alternative systems of proof of identity in contexts where documentary evidence is not available or cannot reasonably be obtained should be provided.

(k) Facilitate the acquisition of nationality for those who do not benefit from recent reforms in nationality laws because the law is not retroactive or has other stringent requirements.

(l) Ensure that effective remedies are available and accessible to those affected by sex discriminatory provisions in nationality laws. States should also widely disseminate all relevant judicial decisions and recommendations of human rights mechanisms on nationality, and ensure their implementation.

(m) Implement training programmes for Government officials, the judiciary and other relevant stakeholders at all levels on reformed nationality laws. States should also raise awareness of the public, in particular women, on their equal right to nationality and on recently amended laws and procedures.

(n) Protect women human rights defenders involved in nationality-related campaigns and ensure effective representation of women in all reforms to nationality law, whether at national, regional or international level.

(o) Strengthen collaboration between stakeholders working to end discrimination against women in nationality laws and those working to prevent statelessness. This includes States, international organizations, civil society groups and affected individuals themselves.

(p) The Human Rights Council, including the universal periodic review, the special procedures and the treaty bodies should continue to review the laws and practices of States with respect to discrimination against women in nationality-related matters, including where this results in statelessness of women or their children. Such mechanisms should continue to engage with civil society, in particular with women's organizations.

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