

My Children's Future

ENDING GENDER DISCRIMINATION IN NATIONALITY LAWS



EQUAL RIGHTS TRUST

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London, September 2015

The **Equal Rights Trust** is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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Equal Rights Trust
314-320 Gray's Inn Road
London WC1X 8DP
United Kingdom
Tel. +44 (0) 207 610 2786
Fax: +44 (0) 207 833 0277

www.equalrightstrust.org

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The school has asked for birth registration. But I haven't been able to provide it. Now I can see there will be more problems and I am so worried. My sons are also worried about me not getting citizenship. It might raise a problem for my children's further education too. The teachers at school know about my problem but still they keep asking about it. This is a constant worry and I feel I am all alone in this world. I feel particularly worried when I think about my children's future.

Anita, Kathmandu, Nepal.

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Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter of the Rights and Welfare of the Child
AIPJ	Australian Indonesian Partnership for Justice
APAB	Aliansi Pelangi Antar Bangsa
ASEAN	Association of Southeast Asian Nation
CAC	Community Action Centre Nepal
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIDDEF	Centre d'information et de documentation sur les droits de l'enfant et de la femme
CRC	Convention on the Rights of the Child
CRMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRPD	Convention on the Rights of Persons with Disabilities
CRTD-A	Collective for Research and Training on Development – Action
CWIN	Child Workers in Nepal Concerned Centre
FIDA	Federation of Women Lawyers – Kenya
FOCUS	Focus Development Association
FWLD	Forum for Women, Law and Development
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ID	Identification Card
IKI	Indonesian Citizenship Institute
IT	Information Technology
KPC	Keluarga Perkawinan Campuran Melalui Tangan Ibu
KPAI	Komisi Perlindungan Anak Indonesia
MENA	Middle East North Africa region
OHCHR	Office of the High Commissioner for Human Rights
PERCA	Perkawinan Campuran Indonesia
PRWA	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
SBMK	Serikat Buruh Migran Karawang
UN	United Nations

UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees
VDC	Village Development Committee
WHR	Women for Human Rights Single Women Group
WRC	Women's Refugee Commission

Executive Summary

This is a report about gender discrimination in nationality laws, the effects these laws have on women and their families and the process of reforming such laws.

Twenty seven countries still do not allow women to pass their nationality to their children. The report documents the impact of this in two of the 27 countries – Madagascar and Nepal. As a result of the discriminatory nationality laws, children suffer a series of negative impacts. In addition to the inability to acquire citizenship, they are also unable to access a range of critical human rights such as education, health and work. In some cases, the children are stateless. Separately, their mothers often suffer a sense of guilt and helplessness. Women from disadvantaged groups such as racial minority women or those of disadvantaged socio-economic status are, together with their children, acutely affected. The situation is dire. Both political realities and socio-cultural discrimination act as barriers to reform.

Elsewhere, reform of gender discriminatory nationality laws has slowly been taking place and the number of countries which do not allow women to pass their nationality to their children is decreasing. The report examines two countries which have recently reformed their laws, Indonesia and Kenya. While implementation of law reform in these countries remains an ongoing challenge, the report argues that there are valuable lessons to be learned from their experiences. The report concludes in an optimistic tone, arguing that learning from these countries can assist in accelerating the rate of change.

Today, the global movement for the eradication of such laws is growing behind the Global Campaign for Equal Nationality Rights, which was launched in 2014. The Equal Rights Trust, a founding steering committee member of the Global Campaign, is publishing this report as a resource and advocacy tool to contribute to the movement towards legal reform.

Part 1: Introduction

Historically, citizenship laws treated women differently because of the value placed on unity of nationality within the family and the notion that giving precedence to the man's nationality was the best way to achieve this. To ensure that all members of the family shared the same nationality, women's and children's nationality status was made dependent on the husband or father. However, there have been significant changes in the past decades and, following a period of reform, only 27 countries remain in which women cannot pass nationality to their children on equal terms with men.

When exploring the situation in Indonesia, Kenya, Madagascar and Nepal, this report takes as its conceptual framework the unified human rights perspective on equality, as expressed in the Declaration of Principles on Equality. This framework emphasises the integral role of equality in the enjoyment of all human rights. It is a holistic approach which recognises the interconnectedness and multiplying effects of inequalities. The framework requires that, in addition to considering the direct discrimination on grounds of sex that the laws themselves represent, close attention is paid to how the laws are implemented and who is affected. Are some groups suffering disproportionately?

The research undertaken for this report included a comprehensive desk review which was followed, from October 2014 to February 2015, by participatory field research in the four target countries. This field research was conducted in close collaboration with an in-country implementing partner with local expertise. A total of 156 interviews were carried out: 96 interviews with members of the affected population and 60 interviews with stakeholders.

Part 2: Country Profiles

Part 2 of the report explains the situation in each country at the time of the research, describing in particular the current legislative framework and what problems the law or practice on nationality present.

The report identifies that both Madagascar and Nepal have explicitly discriminatory nationality laws which, amongst other things, prevent women from conferring their nationality on their children. While the legal regimes themselves are different, they are both out of step with the countries' international obligations. Furthermore, in both countries the laws are implemented in a way which raises issues of racial, religious and socio-economically based discrimination. In Madagascar, in particular, it is clear that as a result of systemic discrimination against minority groups and a high level of discretion power being held by authorities, in practice a person's ability to confer nationality on their children is also directly related to their race, religion and socio-economic status. Bribery and corruption, a lack of awareness, bureaucratic procedures and a lack of judicial oversight are also contributory factors to the ability to access nationality.

The report goes on to explore the law reform which took place in Indonesia in 2006 and Kenya in 2010, and which removed gender discrimination from nationality laws. The approach of each country was different but with the same legal outcome. While the report reaches positive conclusions about these reforms, it also notes that there are a number of practical barriers to individuals benefiting from the reforms. The most acutely felt is the lack of awareness among many affected women of the change in the law and how they can benefit from it. The report concludes that this is particularly pronounced among remote marginalised communities who are the most difficult to reach.

Part 3: Impact of Gendered Nationality Laws

Part 3 of the report analyses the consequences of being left without nationality because of gender discrimination in nationality laws. It presents the common trends in terms of the violations of rights encountered as well as the impact of these problems.

One of the most severe impacts of discriminatory nationality laws is statelessness, as identified in section 3.1. When women are unable to pass on their nationality to their children, children can be left stateless and thereby unable to access their fundamental rights anywhere. Part 3.1 documents the experience of many of those who are stateless as a result of the laws: they are unable to access education or any other crucial rights. In some cases, large numbers of people from particular communities, such as Karana in Madagascar, are living on the margins of society, unable to buy land or work lawfully and in constant fear of being arrested due to their lack of identification documentation.

The cumulative human rights impact of the discriminatory laws is stark, as illustrated in section 3.2. Without nationality, people often face huge barriers to ensuring their livelihood. This is particularly pronounced for families suffering from multiple discrimination, such as Dalits in Nepal. The lack of nationality is often also synonymous with an inability to lawfully own or inherit land, restrictions on liberty and security and a lack of freedom of movement. People reported feeling unable to move around the country due to the fear of arrest at police checkpoints. Accessing healthcare and education was also rarely a possibility.

Finally, section 3.3 identifies serious impacts on the personal well-being of individuals affected. People reported that nationality laws left them doubting their own identity and belonging. Women perceived themselves as unable to provide for their children, who were so deeply affected as a result of not acquiring their mother's nationality, and reported a sense of guilt, shame and despair.

Part 4: The Reform Process

Part 4 of the report provides an explanation of the process by which Indonesia and Kenya were able to reform their laws, the positive impacts of those reforms and the barriers and obstacles still preventing Madagascar and Nepal from doing the same.

In section 4.1 the report argues that, while there has been progress in both countries, significant barriers to reform remain in Madagascar and Nepal. The anti-reform agenda appears to be fuelled by discrimination, in particular both a fear of "the other" and socio-cultural prejudice. In Madagascar reform is seen not as a matter of gender equality but more as an invitation for "non-Madagascan" communities to gain citizenship. Furthermore, there are political barriers. The political stalemate which continues to impede the Nepalese constitutional reform process is not easily surmountable. In Madagascar, the presence of a

number of ministries likely to block any change of law by the government and the National Assembly's reluctance to use its own power are slowing progress. Section 4.2 argues that there are some lessons to be learned from the reform process in Indonesia and Kenya which may assist reform movements. It concludes that key factors which appear to have contributed to reform include: good timing; a united stance and joined up advocacy approach from key stakeholders; advocacy targeted at key individuals; framing the issue in a way which is welcoming to the various stakeholders the campaign is seeking to influence; and taking a carefully considered approach to drafting proposals for reform. Furthermore, section 4.3 identifies a number of positive impacts that have been felt in Indonesia and Kenya as a result of reform. Beneficiaries spoke of the fact that their children were able to enrol in school and access education. They reported that their own access to a livelihood had improved as well as their feeling of belonging and being part of the community.

Part 5: Conclusions and Recommendations

The report recommends a number of possible next steps for all four countries, and for any countries on their respective roads to fully gender neutral nationality laws and practices. The recommendations are made, in particular, to key stakeholders in both pre-reform and post-reform countries: governments, civil society, and the UNHCR and other UN agencies.

1. INTRODUCTION

Twenty-seven countries worldwide continue to discriminate against women in their ability to confer their nationality on their children on an equal basis with men. Such laws contravene the rights to equality and non-discrimination, which are central obligations that bind these countries under international human rights law.¹ These discriminatory laws can lead to statelessness where fathers are stateless, absent, or unable or unwilling to confer their nationality to their children. Where statelessness results from gender discrimination in nationality laws, it can have grave human rights and humanitarian consequences, resulting in substantial violations of fundamental rights and negative impact on the well being of those affected. The effects of living without a nationality, which can include the inability to work, access education or inherit property, are far-reaching, damaging and often intergenerational. Nationality is a central element of many people's lives and identity: it offers a sense of belonging, brings recognition as a member of a community and ensures access to rights and protection. This report demonstrates the diversity, but also severity, of problems that can arise when women's ability to confer nationality has been denied. It also shows how, due to racial, religious or socio-economic discrimination, gender-biased laws often disproportionately impact already disadvantaged groups – for instance, more commonly leaving poor or ethnic minority communities without access to nationality. The consequent statelessness that may arise is often then itself an additional basis for further discrimination.

The Issue

Historically, citizenship laws treated women differently because of the value placed on the unity of nationality within the family and the notion that giving precedence to the nationality of the man was the best way in which such unity could be achieved. To ensure that all members of the family share the same nationality – and reflecting the patriarchal structure of society – women's and children's nationality status was made dependent on the husband or father, as head of the household. Thus, a child acquired his or her father's nationality at birth, and a woman's nationality was subject to change if she married a foreign man. This approach was embedded in the vast majority of early citizenship laws and it was even accepted as legitimate by the first international agreements to

1 The rights to equality and non-discrimination are recognised in, among others, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic and Social Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

deal with the regulation of nationality.² Under colonial rule, gender discriminatory elements of nationality laws were exported around the world and they subsequently made their way into many of the nationality laws adopted by new states upon independence. In the mid-twentieth century, this was therefore a common problem in all regions of the world.

However, there have been significant changes in the past decades. In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted, Article 9 of which specifically prescribes gender equality in nationality law. In the years leading up to or following the adoption of the CEDAW, the majority of countries worldwide repealed their discriminatory provisions. Since the year 2000 alone, reform has been achieved in countries across the globe, including: Sri Lanka (2003); Egypt (2004); Algeria (2005); Indonesia (2006); Iraq (partial reform in 2006); Sierra Leone (partial reform in 2006); Morocco (2007); Bangladesh (2009); Zimbabwe (2009); Kenya (2010); Tunisia (remaining gaps addressed in 2010); Yemen (2010); Monaco (2005, 2011); and Senegal (2013).³ In accordance with the CEDAW and the broader international law principles of equality and non-discrimination, it has now become the norm for men and women to enjoy equal nationality rights, especially with regards to the transmission of nationality from parent to child. Only 27 countries remain in which this reform has yet to be achieved and where women cannot currently pass nationality to their children on equal terms with men.

Recognising that a concerted effort is needed to help this final group of countries to amend their laws, in 2014, an International Coalition was formed to work on the problem of gendered nationality laws and the Global Campaign for Equal Nationality Rights was launched.⁴ The goal of the Global Campaign is to eradicate all remaining gender inequality in nationality matters. One way of moving towards this goal is by increasing awareness as to the crippling effects of this discrimination and the urgent need to address the issue, as well as to share experiences on how reform can be, and has been, achieved.

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- 2 Instruments such as the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Law, the 1930 Protocol Relating to a Certain Case of Statelessness and the 1957 Convention on the Nationality of Married Women did not prohibit gender discriminatory nationality laws, but concentrated instead on addressing some of the negative consequences that such laws had (including statelessness).
 - 3 United Nations High Commissioner for Refugees (UNHCR), *Good Practices Paper – Action 3: Removing Gender Discrimination from Nationality Laws*, 6 March 2015.
 - 4 The Global Campaign for Equal Nationality Rights was launched in June 2014. The steering committee members are Equality Now, the Equal Rights Trust, the Institute on Statelessness and Inclusion, UNHCR, UN Women and the Women’s Refugee Commission (WRC). More information can be found on the campaign website at <http://equalnationalityrights.org>.

The Report

The purpose of this report is to contribute to the Global Campaign for Equal Nationality Rights by adding to the existing body of knowledge⁵ on gendered nationality laws and thereby increasing awareness as to the need for, and modalities of, reform. The report also seeks to further the understanding of the nexus between statelessness and discrimination, and particularly its implications in terms of multiple discrimination. Specifically, the report aims to do this by documenting the impact of gender discriminatory nationality legislation on women and their families, reviewing existing law against international standards and analysing the role of national, regional and international advocacy in the process of reform. Research on the impact of discriminatory laws has already been carried out in the Middle East and North Africa, but there has been limited investigation of whether similar consequences are evident in other parts of the world where this issue is also present. In this light, four countries were identified for study – Indonesia, Kenya, Madagascar and Nepal. Madagascar and Nepal currently maintain discriminatory nationality laws, whilst Indonesia and Kenya have reformed their laws in recent years and now face the challenge of successfully implementing the gender equal nationality provisions.

The report starts with an overview, in Part 2, of the situation in each country at the time of the research, describing in particular the current legislative framework and what problems the law or practice on nationality present in terms of women's nationality rights. Part 3 provides analysis of the data collected through field research relating to the consequences of being left without nationality because of gender discrimination in nationality laws. It presents the common trends in the countries studied in terms of the violations of rights encountered as well as the impact of these problems, whilst also making connections to the findings from previous research conducted in other parts of the world. Part 4 provides an explanation of the process by which Indonesia and Kenya were able to reform their laws, the positive impacts of those reforms and the barriers and obstacles still preventing Madagascar and Nepal from doing the same. The report concludes with a number of recommendations, based on this research and analysis, for potential next steps for the four countries, and for all other countries which are yet to achieve fully gender neutral nationality laws and practices.

5 See, for example, Manby, B., *Citizenship Law in Africa: A Comparative Study*, Open Society Foundations, 2010; UNHCR and Collective for Research and Training on Development – Action (CRTD-A), *Regional Dialogue on Gender Equality and Statelessness*, 2011; Equality Now, *Ending Sex Discrimination in Nationality and Citizenship Laws*, 2014 (updated February 2015); WRC and Tilburg University, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013; UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness*, March 2014; UNHCR, *Preventing and reducing statelessness: Good practices in promoting and adopting gender equality in nationality laws*, 2014.

The Conceptual Framework

This report takes as its conceptual framework the unified human rights perspective on equality, as expressed in the Declaration of Principles on Equality.⁶ This framework emphasises the integral role of equality in the enjoyment of all human rights. It is a holistic approach which recognises both the uniqueness of each different type of inequality and the interconnectedness and multiplying effects of inequalities arising in different contexts or for different reasons.

The unified human rights framework has significant implications for the way in which this report considers gendered nationality laws. For example, in addition to considering the direct discrimination on grounds of sex that the laws themselves represent, we also look more closely at the implementation of the laws in question and consider who is affected. Are all women and their families having the same experience or do other forms of inequality and discrimination mean that particular groups such as racial minorities or the socio-economically disadvantaged suffer disproportionately, as victims of multiple discrimination? Where the discriminatory laws or their discriminatory implementation or both result in individuals not enjoying their right to a nationality, what are the impacts upon them? For example, where the laws result in a person's statelessness, does this then become a ground on which they are discriminated against in enjoyment of other rights, including key socio-economic rights such as those to work, education and healthcare? By requiring us to consider these questions, the unified human rights framework helps illuminate the nature, scope and complexity of the disadvantage faced by affected individuals.

The Research Methodology

At the outset of the project, a legal analysis was conducted to understand the legislative framework in each country and existing information relevant to the project's research objective was compiled in a comprehensive desk review. This included a detailed analysis of each country's nationality laws and related laws, such as personal status laws, which might interact with and influence its application. In post-reform countries, the process of reform and any available information about the context, implementation and impact of the reform was studied. In pre-reform countries, existing research on the impact of the discriminatory laws and the current status of efforts towards law reform were reviewed.

The impact of gender discrimination in nationality laws on women and their families and the extent to which reforms have improved their situation was then assessed through participatory research in the four target countries, which also furthered understanding of the process of and barriers to reform.

6 In 2008, in a process facilitated by the Equal Rights Trust, 128 human rights and equality experts from 47 countries in different regions of the world consulted and agreed on a set of principles of equality: the Declaration of Principles on Equality. The Declaration promotes a unified approach to equality and non-discrimination and its principles are "based on concepts and jurisprudence developed in international, regional and national contexts". The Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008, page 2.

This built on previous projects that have pursued the same goal elsewhere.⁷ The data captured by, and the methodology employed in these earlier projects was used in the development of the research methodology for this project as well as to understand international trends on this issue. By analysing research on the subject globally to date, a set of issues was identified to guide the development of the questionnaire. This facilitated the comparison of data between the different countries and regions, in order to contribute to a reliable global picture. A revised and expanded interview protocol was developed for semi-structured interviews with affected families in the four target countries of this project. The questionnaires were adjusted for those countries which are post-reform to also enable data to be captured on the impact of reform, including on family members who have now acquired nationality as well as persons who have not been able to benefit. The semi-structured interview protocol left space for the identification of different or previously unreported problems in the new countries studied.

A suitable local partner to assist with the implementation of the field research was identified and contracted in each country.⁸ Those affected by gender discrimination in the nationality law – or by the relevant reform – were identified by local partners in close consultation with the research team. The interviews with affected persons in Madagascar and Nepal focused on understanding the impact of the gender discriminatory laws on female citizens and their family members, with a particular interest in exploring situations of statelessness that have arisen among the children of national women as a result of these laws. The interviews with affected persons in Indonesia and Kenya sought to understand what impact the reform of the nationality laws has had in terms of access to nationality for the children of national women and how this has affected the lives of all concerned, as well as to understand cases where the new law is not being implemented. In all countries, the “key informant” interviews were focused on placing the issue within the broader domestic context, getting a better picture of the general operation of the law and the reforms if relevant, and exploring the current status of activities around this issue in the country by local and national actors. Special attention was given to the question of what advocacy strategies have been employed in relation to law reform on this issue, to draw out lessons and good practices.

The field research took place between October 2014 and February 2015. During the field research phase of the project, 156 semi-structured interviews were conducted. This is shown in the table overleaf:

7 WRC and Tilburg University; Equality Now; UNHCR and CRTD-A, above, note 5.

8 These were Forum for Women, Law and Development in Nepal, Amir Antoy in Madagascar, Federation of Women Lawyers – Kenya (FIDA) in Kenya, and Kalyanamitra Women’s Communication and Information Centre in Indonesia.

	Country	Interviews with affected persons	Interviews with key informants (state authorities, civil society actors, lawyers and experts)
Post-reform countries	Kenya	20	5
	Indonesia	16	15
Non-reformed countries	Madagascar	28	13
	Nepal	32	27
	Total	96	60

Methodological Limitations

The research was affected by several methodological limitations. One of the biggest was the difficulty in achieving a fully representative cross-section of socio-demographic profiles in respect of the persons interviewed across the countries. For example, the research in Indonesia and Nepal does not include substantive information on families living in rural and isolated areas, which are often particularly socio-economically disadvantaged. This meant that respondents had different degrees of access to help. In Indonesia and Nepal, the study captured individuals with access to strong NGOs like Forum for Women, Law and Development (FWLD) in Nepal. A small proportion of the research also captured groups of women without links to FWLD living in Nepal and who were unaware of how to resolve the issue. In Madagascar, the majority of those interviewed were from the coastal regions as this is where gender discrimination has the greatest impact. But due to challenges in finding women willing to participate in the project, most of those interviewed in Madagascar were men who were unable to obtain citizenship through their mothers. In Kenya, the vast majority of those interviewed were mothers with Kenyan citizenship who had, or were unable to, transfer citizenship to their children. However, as this project did not seek to offer quantitative data but rather qualitative snapshots into the effect of gender discrimination, this has not affected the purpose or results of this report.

2. COUNTRY PROFILES

2.1 Pre-Reform Countries

2.1.1 Madagascar's Nationality Law

Madagascar, with a population of approximately 22 million, has explicitly discriminatory nationality laws. Madagascar denounced the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) in 1966 and it has never ratified the 1961 Convention on the Reduction of Statelessness (1961 Convention). However, it has ratified a number of international human rights treaties which include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW) and the Convention on the Rights of Persons with Disabilities (CRPD). Madagascar is also a state party to the African Charter on Human and Peoples' Rights (ACHPR) and the African Charter of the Rights and Welfare of the Child (ACRWC). Further, it has signed the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (PRWA). According to Article 137 of the 2010 Constitution of Madagascar, international treaties, once ratified, formally take precedence over other laws.⁹ In addition, Article 6 of the Constitution states that all individuals are equal before the law and prohibits discrimination on grounds of, *inter alia*, sex.¹⁰ Consequently, Madagascan law, if interpreted and applied correctly, is not discriminatory. However, in practice, Article 6 and Article 137 of the Constitution are ignored and instead Madagascar's Nationality Code¹¹ is taken to be the relevant law by the administrative authorities and the courts.

The Madagascan Nationality Code was adopted at Madagascar's independence in 1960. It distinguishes between those who are automatically Madagascan at birth and those who must go through a discretionary application process. Arti-

9 Constitution 2010, Article 137.

10 *Ibid.*, Article 6.

11 Ordonnance n° 60-064 du 22 juillet 1960 portant Code de la nationalité malgache (J.O. n°111 du 23.07.60 p.1305), modifiée par la loi n° 61-052 du 13 décembre 1961 (J.O. n° 201 du 23.12.61, p.2260), la loi n° 62-005 du 6 juin 1962 J.O. n° 228 du 16.06.62, p. 1075), l'ordonnance n° 73-049 du 27 août 1973 (J.O. n° 934 E.S. du 27.08.73, p. 2713) et par la loi n° 95-021 du 18 septembre 1995 (J.O. n° 2341 du 01.01.96, p. 3 et 13). [Madagascar], 1 January 1996, available at: <http://www.refworld.org/docid/4f5473682.html>.

cle 7 of the Nationality Code states that “the dispositions relative to nationality contained in international treaties or agreements duly ratified and published apply, even if they are contrary to the dispositions of the internal Madagascan legislation”, which would suggest that the Nationality Code must be read to be in line with the right to freedom from discrimination on grounds of sex provided in international law. However, the Code goes on to contradict the right to non-discrimination on numerous points in the sections which are applied in practice. Under the Nationality Code, different articles stipulate who is considered to acquire Madagascan nationality automatically at birth, depending on whether the child is born within or outside of marriage:

Article 9

- 1. A child born in marriage to a Madagascan father*
- 2. A child born in marriage to a Madagascan mother and a father who does not have nationality or is of unknown nationality*

Article 10

- 1. A child born outside of marriage if the mother is Madagascan*
- 2. A child born outside of marriage if the mother is of unknown nationality but the father is Madagascan.¹²*

These provisions clearly show an unequal approach to the nationality rights of men and women, as well as significant discrimination between children born in and out of wedlock. In most cases, children will automatically acquire Madagascan citizenship through their father, whereas the opportunity to acquire it through their mother is more limited. Only if the father is stateless or of unknown nationality, or if the child is born out of wedlock, can a Madagascan woman automatically confer her nationality according to the main provisions of the law. Madagascan men also enjoy rights not enjoyed by Madagascan women with regard to conferral of nationality to a foreign or a stateless spouse.¹³ The discriminatory provisions in the law are contrary both to the country’s international obligations and the provision of Article 6 of its own Constitution.¹⁴

The Madagascan Nationality Code also details eligibility to acquire nationality through an application process. Under Article 16, “the legitimate child born to a Madagascan mother and a foreign father can, up till the age of majority, claim Madagascan nationality”. Thus, a child born within marriage to a Madagascan mother and a foreign father may be able to acquire nationality by applying before they reach the age of 21.¹⁵ Those born outside of marriage to a Mada-

12 A further provision, Article 11, confers nationality on a child born in Madagascar to unknown parents, where it is presumed one or both parents is Madagascan. This article relates to the specific question of the enjoyment of nationality by foundlings and may also be problematic in its implementation due to the different ways in which it stipulates how it is to be determined whether the child is of Malagasy origin, for example by considering the child’s name or appearance (grounds which have the potential to engender discrimination against children belonging to minority groups).

13 Nationality Code, Article 22.

14 See above, note 9, Article 6.

15 Article 5 of the Nationality Code states that the age of majority is 21.

gascan father are similarly eligible to acquire nationality by application. However, the government may oppose the individual's acquisition of nationality under Article 18 of the Nationality Code for reasons of their "indignity, default or inadequate assimilation, or serious physical or mental disability". Accordingly, not only are children who seek to claim nationality through this provision required to go through a laborious and challenging application process, but they are also subjected to additional criteria through which the government has the discretion to determine whether they are worthy of citizenship, including by directly discriminating on grounds of disability. This discrimination is also applicable for a child adopted by a person of Madagascan nationality (Article 17) and for a foreigner or stateless woman who wants to acquire the nationality of her spouse (Article 24).

Outside of these provisions, individuals may only acquire nationality by naturalisation, which necessitates that they: are over 18 years old; "of sound mind"; are not a danger to the community due to disease; are of "good moral character" and have not been incarcerated for more than one year or been sentenced for one of a long list of offences; have been resident in Madagascar for the five years preceding the application; and demonstrate their "assimilation" to the Madagascan community.¹⁶

2.1.2 Nepal's Nationality Law

Nepal, with a population of approximately 27 million, currently upholds discriminatory nationality laws. It has not ratified either the 1954 Convention or the 1961 Convention. However, Nepal is a party to several other human rights treaties which call on states to ensure the prevention and reduction of statelessness and to uphold equal access to the acquisition of citizenship. These include CEDAW, ICERD, CRC and ICCPR. Under Nepalese law, international treaties ratified or acceded to by Nepal are directly enforceable, and where national laws contradict such treaty provisions, the national laws are void.¹⁷ The Interim Constitution (2007) also requires the State "to implement effectively international treaties and agreements to which [it] is a party".¹⁸ These provisions are extremely significant, given the strong treaty ratification record of Nepal.¹⁹

There are three legal documents governing citizenship issues in Nepal: the Interim Constitution; the Nepal Citizenship Act (2006); and the Nepal Citizenship Rules (2006). There are also two directives on citizenship mainly concerning certificate distribution procedures. In both the Interim Constitution and the Nepal Citizenship Act, there are provisions for women to independently

16 See above, note 13, Article 27.

17 Treaty Act, 2047 (1990), Section 9(1).

18 Interim Constituion of Nepal, 2063 (2007), Section 33(m).

19 In addition to the conventions listed in the text above, Nepal has also ratified the Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of Persons with Disabilities (CRPD).

pass on citizenship to their children. Article 8(2)(b) of the Interim Constitution states that anyone “whose father or mother is a citizen of Nepal at the birth of such person” is eligible for Nepalese citizenship.²⁰ This provision, on its own, would be compliant with international standards as it is non-discriminatory. However, other articles of the Interim Constitution and the Nepal Citizenship Act and Rules restrict the enjoyment of nationality rights by women. Under Article 8(7) of the Interim Constitution, women cannot automatically convey citizenship to their children by descent if the father is a foreigner. In such cases, the child must instead apply for naturalised citizenship. This restriction is not in place for Nepalese men whose children have a foreign mother and herein lies Nepal’s gendered approach to the attribution of nationality. The impact of this provision is twofold. On the one hand, it directly excludes Nepalese women who have married foreign men from passing on their citizenship pursuant to Article 8(2) of the Constitution. On the other, it indirectly imposes an evidentiary burden on all mothers applying without the father, to establish that the father was not a foreigner.²¹ If an applicant child cannot prove who their father is, then it is assumed the child is a foreigner and again citizenship is not granted but the child must seek naturalisation. This naturalisation procedure is overly bureaucratic and the Nepalese authorities enjoy a wide margin of discretion. Indeed, the discretion is such that for children born to a foreign father “the overwhelming majority of naturalisation applications do not result in the conferral of nationality”.²²

Nepalese law also discriminates against women in the context of marriage. If a woman is married before acquiring citizenship through her parents, then she must be registered with her husband. Thus, according to the 2006 Citizenship Certificate Procedure Directive, a married Nepalese woman applying for citizenship must provide documents including a copy of her marriage certificate and the citizenship certificate of her husband or father-in-law. This also means that Nepalese women married to foreign men are barred from obtaining Nepalese citizenship after marriage. In practice, since a woman must provide a copy of her husband’s citizenship certificate to the district office and must be accompanied by her husband or a member of his family, men wield significant power when it comes to women’s ability to claim citizenship. Women who did not acquire citizenship before their husband passed away or left can also no longer acquire citizenship through their father. Consequently, it is not just children who can be left stateless, but also widowed women and single mothers who are no longer in contact with their ex-partner or whose partner is uncooperative. This may be one of the reasons underlying the results of a household survey by the Forum for Women, Law and Development (FWLD), which

20 See also Nepal Citizenship Act, 2063 (2006), Section 3.

21 National Women Commission and Forum for Women, Law and Development (FWLD), *Analysis of Nepalese Citizenship Laws from a Gender Perspective*, February 2014.

22 Nepal Civil Society Network of Citizenship Rights, the Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion, *Joint Submission to the Human Rights Council at the 23rd session of the Universal Periodic Review: Nepal*, March 2015. This report goes on to add that “research conducted by FWLD reveals that in the first six years of the implementation of these provisions, not a single naturalization application was successful”.

found that 87% of men over 16 had citizenship certificates, compared to only 74% of women.²³ In addition, Nepalese men also enjoy rights not enjoyed by Nepalese women with regard to conferral of nationality to a foreign spouse. A Nepalese man who marries a foreign spouse can convey Nepalese nationality to his spouse through a naturalisation process which takes approximately 35 days. While there are various conditions attached to this process (such as the spouse being required to renounce her previous nationality), it is reasonably straightforward. However, there is no similar process for Nepalese women to convey nationality to their foreign spouse. Instead, foreign men married to Nepalese women can only access Nepalese citizenship through the standard, residence-based naturalisation process which requires 15 years of residence before an application can be made.

Nepal is now debating a new constitution, to complete its transition to democracy. Progress has been hampered by disagreement between political leaders so the drafting process is still ongoing. A new text of the draft constitution was prepared by the first Constitutional Assembly in 2012, which takes the troubling approach of determining that both “mother and father” must be Nepalese for a child to acquire citizenship. This provision, commonly referred to by stakeholders as the “and-clause”, may technically be gender neutral, but if maintained in the new constitution, it would actually mean significant regression in terms of the inclusiveness of Nepalese rules on nationality. Single parents could be expected to provide unattainable evidence that the missing or deceased mother or father is Nepalese which could have the effect of causing many more cases of statelessness. The key focus of organisations promoting gender equal nationality rights in Nepal is therefore to achieve the enshrinement of an “or-clause” alongside the repeal of other discriminatory provisions, rather than the regressive “and-clause”. For now, as set out in the above paragraphs, Nepalese citizenship rules remain gender discriminatory. The Nepalese Supreme Court has largely been progressive, and through its jurisprudence it has addressed gender discrimination. However, the Supreme Court judgments are implemented only with regard to the specific case under consideration, so do not have the effect of creating a broader precedent or bringing about systemic change.

2.1.3 Access to Nationality in Practice in Madagascar and Nepal

As outlined above, the letter of the law itself presents a number of problems with respect to the transmission of nationality from mother to child in Madagascar and Nepal. Nevertheless, in certain circumstances it is, in theory, possible for a Madagascan or Nepalese woman to pass on her nationality. Yet, even where children of national mothers do qualify for citizenship under the law, in practice they are often not considered nationals. Many of those interviewed in Madagascar and Nepal recounted the difficulties they faced in accessing nationality even where they were formally eligible.

23 FWLD, *Acquisition of Citizenship Certificate in Nepal: Understanding Trends, Barriers and Impacts*, February 2014.

District Level Discretion

In both countries, authorities at the district level enjoy significant discretion. The research showed the extent to which different districts apply different rules of their own making, some of which blatantly contradict national legal provisions and others arbitrarily increase the procedural and evidentiary burden on the applicant. In Nepal, an example is that of Anita.²⁴ When she went to the Village Development Committee (VDC) to obtain citizenship for her child, she was unsuccessful in her application because the officials kept asking her to bring her husband who was refusing to co-operate. “Although my father said that ‘he is my grandson’, VDC didn’t approve of issuing citizenship. I told them that the [child’s] father was born here but still they didn’t listen”, she recounted. “What can I do when educated people only behave in this way? They always asked me to bring my husband along.”²⁵ Unfortunately this discretion allowed for power politics in the family to override access to fundamental rights. Anita went on to explain how this played out in her family:

Even when VDC tried to issue my citizenship, my uncle and aunty disapproved of it. The VDC once tried to give and they stopped it (...) my father and uncle are getting their share of ancestral property and maybe that is why [my relatives] fear I might claim property.²⁶

The discretion of the officials meant that the villagers and relatives were able to stop Anita registering the births of her children and acquiring citizenship herself.

Discriminatory attitudes among local officials are often widespread and, given their unfettered discretion, influence decisions made during the application process for citizenship or a national identity card. Religious and racial bias, for example, were two significant prejudices that some families reported. In Nepal this was a problem for Dalit and specifically Terai people who face additional hurdles due to ethnic discrimination. In Madagascar, the documents needed to apply for a national identity card are a birth certificate and residency certificate, but officers may, at their discretion, request further documents if they believe they need further proof that the individual is Madagascan. This is often demanded by the authorities when the individual has a name which is perceived as “foreign” or when the individual is suspected of possessing fraudulent documents.²⁷ Many interviewees indicated that if an official “suspected” an individual of not being a national, they would often turn them away or refuse them documentation. Children who, for example, had names that were not considered Madagascan – such as Arab, Muslim or Comorian sounding names – often encountered problems in application procedures. Yousef from Madagascar was repeatedly told by the dis-

24 In providing accounts from interviews throughout this report, in most cases pseudonyms have been used to protect the identity of the interviewees.

25 Equal Rights Trust interview with Anita, 27 October 2014, Kathmandu, Nepal.

26 *Ibid.*

27 Information provided by United Nations Development Programme Madagascar in their review of the report.

trict official that he was not really Madagascan. He believed that this was mostly due to his name, which is not considered Madagascan, and added: "I have one child and I have given him a Madagascan name. I prefer not to see my child in the same situation as me. I will do the same if I have more children."²⁸

Not obtaining automatic citizenship through their mother leaves scope for a child's application to be subjected to such additional layers of discrimination. In Nepal, strong prejudice against women is apparent in the attitudes of public servants and first instance decision makers, all of whom are men and the majority of whom are upper caste Brahmins.²⁹ So even where, under the law, women were eligible to pass on their citizenship through an application procedure, many prejudiced officials simply rejected such applications outright.

Lack of Awareness

One of the reasons that district level authorities make the process so difficult is their lack of understanding of the law, especially where officers are regularly rotated in and out of post.³⁰ There was also a clear lack of understanding by those attempting to obtain citizenship of their own rights and eligibility. In Madagascar, for instance, families were sometimes unaware that an application for nationality must be submitted prior to the age of majority and consequently missed the deadline. The declaration that a foreign or stateless woman intends to take Madagascan nationality must be made before a civil officer of the state no later than the moment of the marriage celebration – but many people ignore this provision and the civil officer of the state does not necessarily ensure that they are aware of it. As a result, the individuals concerned must go through the regular naturalisation process. From its experience in dealing with the issue on the ground, one NGO in Nepal estimated that 90% of problematic cases concerned people completely unaware of their rights, of any information regarding the content of the law, and specifically of how to overcome statelessness.³¹

Lack of Access

Another problem highlighted in both countries is that an application for citizenship registration has to be made in a particular district. In Nepal, adults must apply for citizenship in their district of birth and children in the district of their father's birth, resulting in the need to travel to make an application. The practical and financial burden of doing so can be prohibitive, especially in such large countries with often limited transportation available.³² In addition, Nepalese women are often compelled to apply in the district of permanent residence of their spouse, even if the spouse is dead, missing or not cooper-

28 Equal Rights Trust interview with Yousef, 24 January 2015, Majungha, Madagascar.

29 Equal Rights Trust interview with Sabin Shrestha, FWLD, 13 February 2015, Kathmandu.

30 *Ibid.*

31 *Ibid.*

32 Equal Rights Trust interview with Suman Adhikari, Ward Secretary, Kathmandu Municipal Council, 11 February 2015, Kathmandu.

ating. In Madagascar, applications must be made in the district of permanent residence. Thus, those who have migrated to another part of the country, or whose family members originate from different areas, have to travel in order to apply for citizenship.³³

Bribery, Corruption and Fear

Various respondents reported, especially in Madagascar, that prohibitively costly bribes were often demanded to complete the application procedure to obtain a national identity card. At the same time, many individuals interviewed were able to access citizenship by paying bribes even though they were not legally eligible. The corrupt practices of some individual decision-makers who exploit their discretion to extract money from applicants led one respondent to observe that “citizenship is a business”.³⁴ Bribery was also reported in Kenya even following reforms.³⁵ Another problem in Nepal is the fear of punishment among officials, since the Citizenship Act stipulates that a person who wrongly verifies the citizenship of a foreign national shall be imprisoned for six months to three years and/or fined NPR 25,000–50,000 (US\$ 245–490).³⁶

Limited Judicial Oversight

Compounding these challenges is the limited possibility of judicial oversight. In Nepal, it is only through the extraordinary jurisdiction of the Nepalese Supreme Court, for instance, that any judicial oversight can be ensured. “Nationality” is in fact a right recognised under the Nepalese Constitution, but unfortunately the courts have no jurisdiction to review decisions of public servants or hear appeals against such decisions. The limitations of this process are evident. Arjun Kumar, for example, whose mother is Nepalese and father of Indian origin but born in Nepal, applied for citizenship in 2002 when he was 18 years old. The VDC said that under the law he could not get citizenship through his mother. A few years later, after he had learnt about the *Sabina Damai* case,³⁷ in which citizenship was granted through the mother, he went back to the VDC, which issued him a letter recommending him for citizenship. However, when he took this letter to the district level authority, they said that one case does not change the law, and refused to grant him a citizenship certificate. In 2013, he filed his own petition with the Supreme Court, which issued a notice to the district authorities, asking them to respond within a month with information on why they had failed to grant him citizenship. However, nine months after this notice was issued, Arjun Kumar was yet to obtain citizenship.³⁸

33 Equal Rights Trust interview with Sheikh Omar, National Council for Muslims, 13 January 2015, Antananarivo.

34 Equal Rights Trust interview with Mahmoud, 16 January 2015, Antananarivo.

35 See below, section 2.2.3.

36 See above, note 20, Section 21(2).

37 *Sabina Damai v Government of Nepal et. al.*, Writ No. 067-WO-0703 of the year 2067 BS (2010 AD).

38 Equal Rights Trust interview with Arjun Shah, 10 February 2015, Kathmandu.

2.2 Post-Reform Countries

2.2.1 Indonesia's Nationality Law

Indonesia is the fourth most populated country in the world with a population of 234 million, of which more than 32 million live below the poverty line. It has not ratified either the 1954 Convention or the 1961 Convention. However, Indonesia has ratified a number of international human rights treaties, including CEDAW, CRC, ICERD and ICCPR. Indonesia is also a member of the Organisation of Islamic Cooperation which has elaborated norms relating to children's right to nationality and the prevention of statelessness.³⁹ Indonesian law is silent on the position of international law and whether it takes precedence over domestic legislation.

Following a long period of authoritarian rule by General Suharto, Indonesia transitioned to democracy in 1998 and held direct presidential elections in 2004. The previous law on citizenship was Law No. 62 from the year 1958, which provided that citizenship be exclusively transferred through the male line. In cases where the father was a foreign citizen the child would also be a foreigner in Indonesia, regardless of the mother's nationality. The transition to democracy made way for the reform of the nationality law under the first directly elected president, Susilo Bambang Yudhoyono. The amended law recognised that "citizenship is a basic right" and determined that the old law was "no longer in line with the development of the civic administration of the Republic of Indonesia".⁴⁰ The 2006 law reform removed the gender discriminatory provisions. Children under 18 years of age were permitted retrospective acquisition of Indonesian citizenship, by application, until 2010.

Article 4 of the new Indonesian Citizenship Law states that the following are Indonesian citizens by birth:

- (2) children born through legal wedlock from an Indonesian father and mother;*
- (3) children born through legal wedlock from an Indonesian father and an alien mother;*
- (4) children born through legal wedlock from an alien father and an Indonesian mother; and*
- (...)*
- (7) children born out of wedlock from an Indonesian mother.*

The reform of 2006 also brought with it other important changes for the Citizenship Law, such as removing ethnic discrimination and putting certain safeguards in place to prevent persons from becoming stateless. This included ensuring that

39 See the Covenant on the Rights of the Child in Islam, 2005, adopted at the 32nd Islamic Conference of Foreign Ministers, 28–30 June 2005.

40 See preambles b and c to the Law on the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia, 1 August 2006 (Citizenship Law).

Indonesians living abroad would not become stateless if they were to lose their citizenship as a consequence of long-term absence from the country.

2.2.2 Kenya's Nationality Law

Kenya, with a population of approximately 40 million, is the country in this research that has most recently changed its nationality rules, through constitutional and statutory reform. It has not ratified either the 1954 Convention or the 1961 Convention. However, it has ratified a number of international human rights treaties which include CEDAW, CRC, ICERD, CRPD and ICCPR. Kenya is also a party to a number of regional human rights treaties including the ACHPR, ACRWC and the PRWA. The new Constitution, adopted in August 2010, gave international law a prominent position in the domestic system with ratified treaty law now having direct effect in the Kenyan legal system.

Under the previous Constitution, Kenyan women conferred nationality to their children born in Kenya on an equal basis to men. However, if the child was born abroad, only a Kenyan father had the right to confer nationality. This meant that, under the law, Kenyan women who gave birth outside Kenya to a child with a non-Kenyan father were not able to transfer their nationality. In practice, this biased approach to nationality rights also contributed to discriminatory attitudes and restrictions on transmission of nationality by women who gave birth inside Kenya.

The new Constitution brought with it a whole host of progressive rights, including a push towards legislative gender equality. This included the removal of the provision that discriminated against women with respect to their nationality rights. The Constitution now provides the following in Article 14: "A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or the father of the person is a citizen."

Article 14 is applied with retroactive effect so that children born to Kenyan mothers abroad before the new Constitution came into force should also be considered Kenyan nationals.⁴¹ The current Constitution also permits dual nationality, which was previously prohibited. The Constitutional provision is further expounded by Section 8 of the Kenya Citizenship and Immigration Act that outlines the procedure for obtaining and denouncing dual citizenship. This has a positive effect in terms of children's nationality rights as it means that children who had obtained the nationality of their foreign fathers should now be able to also obtain the nationality of their Kenyan mothers and that a child under eight years old whose citizenship is unknown is presumed to be a Kenyan national. Moreover, with this constitutional reform, Kenyan women now enjoy the right to confer their nationality to their non-Kenyan spouses on an equal basis to Kenyan men.⁴² The Citizenship and Immigration Act which

41 See also United Nations High Commissioner for Refugees (UNHCR), *UNHCR and the Kenya Human Rights Commission: Kenya Dialogue on Gender Equality, Nationality and Statelessness*, 23 March 2015.

42 Constitution of Kenya, Article 14.1.

ensures the coming into force of the constitutional articles on nationality was adopted in 2011, at which time all of the new eligibility rules entered into effect.⁴³ Section 6 of the Kenyan Citizenship and Immigration Act provides for citizenship in accordance with Article 14 of the Constitution, when read together with Clause 30 of the Sixth Schedule of the Constitution. Clause 30 acts as a savings provision by providing for citizenship by birth for those who acquired citizenship under the former Constitution, and crucially extends the application of the former Constitution to include those who would have acquired citizenship if the former Constitution had included the right to be granted citizenship from both a Kenyan born father or mother (not just father) for those born outside.

2.2.3 Access to Nationality in Practice in Indonesia and Kenya

Both Indonesia and Kenya should be commended for their reforms towards gender neutral nationality law. The positive implications of these reforms for individuals and families are significant.⁴⁴ Nevertheless, with legislative reform having been achieved only recently, both countries continue to face some obstacles with regard to ensuring that everyone can effectively access nationality through their mother, as stipulated by law. It is critical to acknowledge these remaining obstacles and take further steps to address them in order for these countries to become a true example of successful nationality law reform.

Lack of Awareness

In both Indonesia and Kenya there is a lack of awareness that reform has taken place, and what it entails, both among potential beneficiaries and government officials responsible for implementing the law. In terms of the potential beneficiaries, in Indonesia the research suggested that, on the whole, only a specific circle of individuals who had been involved in the campaign for reform knew that the law had changed. According to an article in the *Jakarta Post*:

Indonesians with foreign husbands have also said they still faced difficulties regarding the nationality of their children, despite the 2006 law on dual citizenship for children under 18. "The information was not adequately spread," Yoshitani, an Indonesian woman married to a Japanese man said, "especially among housewives."⁴⁵

Disseminating information on the reform to the substantial number of Indonesian female migrant workers living around the world presents a particular challenge. In Kenya, the lack of awareness of the reform is most acute among women from

43 Section 7 of this Act limits those who can transfer nationality to their children abroad to those who were Kenyan by birth. This is not gender discriminatory but may present an obstacle for some children's access to nationality.

44 For more detail on some of these positive impacts see below, section 4.3.

45 "Indonesia seeing 'positive' signs on dual citizenship", *The Jakarta Post*, 24 August 2014, available at: <http://www.thejakartapost.com/news/2013/08/24/indonesia-seeing-positive-signs-dual-citizenship.html>.

disadvantaged socio-economic backgrounds. Many of these women were aware that the Constitution was amended in 2010 and some may have participated in the referendum vote that passed the Constitution, but were unaware of what this entails. As a result, many of them had not even tried to secure documentation of nationality for their children through the available procedures. With respect to the officials responsible for implementing the law, in Indonesia, NGOs reported an evident lack of awareness on the part of the responsible authorities. In Kenya, the research indicated that government officials, particularly in rural areas, were also unaware of the new law; as they had not been provided with clear guidelines, they continued to operate as they had prior to the reform.⁴⁶ In both countries, there was also a lack of capacity on the part of civil society to provide individual legal counselling and assistance to help affected populations deal with the challenge of claiming their nationality under the new law.

Reaching Marginalised Communities

Against this background, the legal reforms appear to have had the least practical benefit for marginalised women and their children. Female migrant workers are a particularly marginalised group in Indonesia, often returning to the country as single mothers of children from men in the Middle East. These women migrant workers are less likely to have access to information on the reform and, for a number of reasons, are less likely to take advantage of any information they have. For instance, they are less likely to have the documentation required in order to acquire or confirm nationality.

In order to record both parents' names on the birth certificate, both must be present. The parents must also present a marriage certificate, yet more than half of marriages in Indonesia are unregistered⁴⁷ and in most cases only persons of the same religion can legally marry.⁴⁸ Accordingly, children whose parents have entered into a "temporary marriage contract" are particularly vulnerable as this often means they cannot legally prove who their father is. In the absence of a marriage act, a DNA test can be used for proof of the paternal link, but societal pressures may prevent women from registering their child altogether when they would have to present themselves as single mothers or mothers who have had children out of wedlock. Discrimination against single mothers and children born out of wedlock is compounded by the practice of district officials writing "a child of a mother only" on the birth certificate, something that is a deep cultural stigma. It should also be noted that individuals of Chinese and Indian descent have traditionally faced greater difficulties in asserting their claim to Indonesian

46 Equal Rights Trust interview with Richard Olela, Head of Registration, District Office, 6 February 2015, Kisumu, Kenya.

47 A study in Indonesia found that "in the poorest 30% of households, the failure to obtain legal documentation relating to marriage and divorce is associated with 75% of children from those marriages not obtaining birth certificates." (Australian Indonesian Partnership for Justice, *AIPJ Baseline Study on Legal Identity: Indonesia's Missing Millions*, 2014.)

48 This is true for Islamic law and Islamic registered (Religious Matter Office/KUA) marriages but there is another registration office, the Civil Registration Office (Kantor Catatan Sipil) for those who are not Muslims and in some cases for inter-religious marriages.

nationality, despite having been settled in the country for several generations. In Kenya, regulations enforcing the right of the child to know their father mean that the father's name must be put on the birth certificate. Often when the father is foreign, this would be very difficult to do due to the lack of documentation of the father. Therefore, the children would be unable to acquire a birth certificate and hence a national identification card once they turned 18 years. Discrimination on grounds of ethnicity and national origin also continue to affect the possibility for some individuals to benefit from the reform. For example, when the family resides in one of the border regions of Kenya or the father is from a stateless minority, specific "vetting committees" must be satisfied before national identity documents are issued.⁴⁹ The research indicated that it was harder to convince such committees that a child is Kenyan if they had a foreign father. Some families reported resorting to fraud to try to overcome such discrimination. For example, some women faked documents to manipulate the place of birth or the father's name, or pretended to be a single mother with the father unknown, in order to obtain a birth certificate.

Limited Retroactive Application

In Indonesia, children born before the reform in 2006 were given four years to retrospectively benefit from the law. However, as the law limits dual nationality to those under 21, retrospective acquisition was only available to minors. Additionally, several of the key informants interviewed indicated that they knew of cases where people did not benefit from the law during the four year window. Two common causes for missing the deadline were lack of knowledge of the reform and lack of understanding of the benefits of acquiring nationality (for example in the event that a father dies and the family returns to Indonesia from living abroad).

In Kenya, children who had already accessed the nationality of their foreign fathers found it difficult to apply for Kenyan citizenship.⁵⁰ Although dual nationality is now allowed, in order to apply for their mother's nationality retrospectively, an individual must register the fact that they are a citizen of another country. Although this is possible and should be unproblematic, the process does incur costs, which prevents some families from fulfilling this step and therefore from claiming Kenyan nationality.

49 Equal Rights Trust interview with Richard Olela, Head of Registration, District Office, 6 February 2015, Kisumu, Kenya.

50 Equal Rights Trust interview with Alan Nyangi, Legal Officer at Kituo Cha Sheria Office, 3 February 2015, Mombasa, Kenya.

Corruption

Another barrier to benefitting from the law reform reported by some families in Kenya was the endemic corruption encountered amongst officials. A number of families reported that they had resorted to paying bribes in order to obtain documents in circumstances where, before they did so, they were presented with apparently insurmountable bureaucratic barriers. In Indonesia, some key informants reported that although the marriage certificates and birth certificates were free of charge, there were still cases of government officials demanding bribes. Circumstances such as these can heavily impede one's access to claiming nationality.

3. IMPACTS OF GENDERED NATIONALITY LAW ON THE ENJOYMENT OF RIGHTS

Possessing the citizenship of a country is often the key that allows an individual to access a wide range of rights and benefits. Foreigners in a country may be excluded from certain rights – such as political rights or access to certain free government services – which they would be expected to obtain in their own country of nationality. Coupled with the fact that, as discussed earlier, gender discriminatory laws disproportionately affect families from vulnerable groups (women from ethnic or religious minorities, low socio-economic backgrounds or female-headed households, for example), making the laws amount and contribute to particularly invidious violations of the right to non-discrimination, this then often leaves those affected in dire circumstances with limited access to other most basic rights. By preventing access to citizenship, gender discriminatory nationality laws open up new pathways through which families can be further discriminated against within society.

*Mom, why is it difficult? What is wrong with us? We are good students, I am studying well, we are good daughters, we have not done anything wrong. Why are we facing this hardship? Why are my friend and I treated differently? Why is she able to travel everywhere outside of Nepal and have a birth certificate and why can't I? What is wrong, what have I done?*⁵¹

This is how Deepti, a Nepalese woman, described the questions she had been asked by her two teenage daughters, who were left stateless because she had been unable to transfer her nationality to them as she could not prove who their father was. Their statelessness has led to further disadvantage and frustration. Deepti spoke of the problems her daughters were facing in accessing some of the most basic rights, and the emotional toll this was taking on the whole family.

Analysis of the research data reveals various ways in which children's lack of access to their mother's citizenship negatively affects families. The wide-reaching human rights consequences have an impact on all aspects of the lives of those affected. This Part presents the most common problems reported by families in all four countries in those cases where individuals have been unable to acquire

51 Equal Rights Trust interview with Deepti, 13 October 2014, Kathmandu.

their mother's nationality.⁵² The analysis focuses on the prominent consequences identified during the research and illustrated through the testimonials collected.⁵³ As discrimination is a key dimension in all of the rights impacts, it is a key thread running throughout the consideration of impacts discussed below.

3.1 The Right to a Nationality and the Problem of Statelessness

When women are unable to pass on their nationality to their children, children can be left stateless and thereby unable to access their fundamental rights anywhere. Most people do not have any other country where they would be recognised as a citizen, so that with the denial of citizenship in the mother's country, statelessness emerges. It is important to note that many of the problems faced by those interviewed started off due to gender discrimination in obtaining birth registration documents for their children. Although this does not automatically mean that the children would not go on to obtain citizenship, in reality this was often the case. In these countries, birth registration is the first step towards ensuring recognition as a person before the law and is often needed to secure citizenship. When gender-based and other forms of discrimination play a role in the acquisition of citizenship, not having a birth certificate may add a further layer of precariousness and aggravate the risk of statelessness.

Zahra from Kisumu in Kenya had four children with her Tanzanian partner. They never legally married but instead only carried out the Islamic Nikkah, and the children were therefore never registered as Tanzanian. The children had to go through a vetting system to ascertain whether they were really Kenyan or not, despite having proof that their mother was Kenyan. Zahra talked about how problematic this process had been, especially as she did not want the authorities to know that the children's father was foreign as she did not believe they would give them citizenship: "The vetting people say to my child, you don't have a father? How were you born? They are afraid as they are foreigners here".⁵⁴ Whilst the family awaited the decision of the committee, which had already taken more than a year, the children were not recognised as citizens by either Tanzania or Kenya, and were therefore stateless.

Statelessness itself can become a further ground for discrimination against those affected. Siwani, the stateless daughter of a Nepalese woman, talked about how she was discriminated against by her community as well as authorities:

52 This includes not only cases in Madagascar and Nepal where access to nationality is restricted under the law, but also cases from Indonesia and Kenya where families have not (yet) been able to benefit from the reform allowing women to transmit nationality to their children. For more on implementation problems in the post-reform countries see above, section 2.2.3.

53 Please note that this is not an exhaustive overview of all challenges faced by families affected by gender discriminatory nationality law or practice. Other problems were also raised by respondents during the research, such as difficulty in obtaining a driving licence, opening a bank account or possessing a phone SIM card. However, the report focuses on the most significant and widely reported problems.

54 Equal Rights Trust interview with Zahra, 7 February 2015, Kisumu, Kenya.

Yes, my neighbours speak badly to me because I am stateless. They tell me that I am not worthy of doing anything. They mean that I can't study further, I can't get my certificates, I can't fight for common man posts, I can't do anything to make something of myself and so why would they want to speak to me. They are my neighbours, my relatives. If I had citizenship, obviously they would respect me because in our country respect is given to fathers and only girls who have a father get respect.⁵⁵

In Madagascar, there is also often a negative public perception of the stateless and stateless persons are often believed to be illegal immigrants who do not in fact “deserve” to be citizens. “It is not OK to discriminate against someone because they are stateless. But they do. They do all the time”, said Mamadada, a stateless woman in Madagascar.⁵⁶ Stateless persons there often talked of how they felt they were treated as the least deserving of help in the country because of their situation. They compared themselves with people who were ill, stating that ill persons had access to treatment as they were not seen to be at fault for what had befallen them, whereas stateless persons were seen to have done something wrong to acquire that status. Stateless persons in Madagascar felt that they were not only excluded by the authorities, but were also shunned by society, and were even neglected by precisely those organisations that were there to help marginalised persons. As another stateless person in Madagascar explained, “stateless people have no value, no NGOs are taking care of them, they have lived their whole lives like this and no-one cares”.⁵⁷

This precarious situation – the lack of a nationality or of any other legal status – in turn hinders access to rights and impacts negatively on the social and emotional welfare of the family, further disadvantaging the already marginalised.

3.2 Cumulative Human Rights Violations

The day to day, year to year, generation to generation struggles experienced as a result of lack of access to citizenship are better understood in the light of the consequential restrictions in accessing even the most fundamental rights, as set out below. Many of the families interviewed lived in very poor areas. Statelessness and the inability of children to obtain nationality from their mothers in these countries prolongs and exacerbates poverty, and reduces the ambitions and expectations of all families involved.

55 Equal Rights Trust interview with Siwani, 14 October 2015, Kathmandu.

56 Equal Rights Trust interview with Mamadada, 12 January 2015, Antananarivo.

57 Equal Rights Trust interview with Hussein, 23 January 2015, Majungha, Madagascar.

3.2.1 Livelihoods

Sarita, from Nepal, had not been able to pass nationality onto her children. She managed to get citizenship herself from her father after her husband abandoned her when she was pregnant, but the authorities have kept demanding that her husband be present in order for them to give nationality to her son. Her son was in turn unable to find a job. “He is educated and has studied but he doesn’t have what is needed for working”, she explained.⁵⁸ Job opportunities are seriously curtailed for those without citizenship. Employers often require people to produce their citizen’s identity card when applying for or accepting a job. In all of the countries researched, non-citizens are further unable to open a bank account or access credit if, for instance, they wished to start their own business. The impact on livelihoods is the issue that the vast majority of respondents talked of, and can therefore be seen as one of the biggest challenges that faces those who were left without citizenship. Nisa’s testimony is representative of the way many of the respondents perceived their situation. Born in Nepal to a Nepalese mother, and now aged 23, she had been fighting for two years to get citizenship, without success. She talked about why she felt employers required proof of citizenship:

*Without citizenship we are not considered to be trustworthy. If we do anything wrong in their organisation and we run away, where will they find us? If they have citizenship details, they will know where we are from, which our birth place is, and who our parents are. That is why they ask for the citizenship.*⁵⁹

Nisa believed that this situation left her unable to reach her full potential. “I wonder whether, if I had citizenship, I would have been in a higher post than this today. Because if we apply for a higher post they always ask for the citizenship so I cannot do that”, she explained.⁶⁰

In the countries studied, some jobs are reserved for nationals, including working for the government. Most jobs require the applicant to provide an identity document. This means that many of the respondents were faced with major impediments in accessing most forms of formal employment. Mamadada had a Madagascan mother but a Yemeni father through whom she was never able to obtain Yemeni citizenship. Now in her late 50s and still without citizenship because the authorities had repeatedly denied her application, she talked of how her legal status had been a huge impediment to accessing teaching jobs:

On one occasion I was asked to apply for a job at the Ministry of Education MINESEB to be a teacher, which is what I was trained to do. But I was late applying because I did not have a citizenship form. I was rejected on the basis that the Ministry couldn’t continue

58 Equal Rights Trust interview with Sarita, 15 October 2015, Kathmandu.

59 Equal Rights Trust interview with Nisa, 16 October 2014, Kathmandu.

60 *Ibid.*

*waiting for me to sort out my papers. This happened even though it was them who asked me to apply. I was really sad that I could not get the job as a teacher in the public sector. Now I am applying for private sector roles.*⁶¹

Mahmoud, the son of a Madagascan woman from the northern coast of Madagascar, was a carpenter by trade. However, after being left stateless when he lost his documents and the authorities refused to recognise him as a national (and consequently refused to renew his documents), he lost the right to practise this trade. He found this out when he went back to the organisation that provided the tools for his business. They would not serve him as he could no longer present them with his citizenship card. He said: "I can no longer work as a carpenter, so I left my family and moved to the capital to start a ColaTea business. I sell my ColaTea in front of the mosque here."⁶² He said the ColaTea business was a short-term solution. Despite being repeatedly turned away by authorities he remained optimistic he would get his documents:

*I don't want to beg, which is why I need this short-term business for now. It is not a very stable job. Some days I make good money - especially on Fridays after prayer – but some days I do not.*⁶³

In Kenya, those left without nationality face similar problems. Although not all jobs require appointees to be citizens of Kenya, problems arise early on in the recruitment process during which applicants are usually required to provide a photocopy of their national identity card. Many respondents stated that this immediate obstacle meant that they did not apply for jobs as they knew that they would be immediately rejected, regardless of their qualifications or skills. Jane was a Kenyan national whose children were struggling to benefit from the country's law reform and who had not yet been able to secure nationality for them despite having all the necessary documents. She said she could not tell if this was because of ignorance or discrimination at the district level, and she spoke of her fears for her daughters. Her 19 year old daughter faced problems because she had not been able to obtain an identity card and as a result she was yet to get a job. Jane spoke of how prospective employers had specifically given her daughter the lack of nationality as a reason for not taking her on:

*She is scared. Last week she was called for interview for an office job in town and they requested that she bring her identity card, so she did not even bother going. Even if she were to get a job, she cannot register for electronic banking. She is scared about her future.*⁶⁴

61 Equal Rights Trust interview with Mamadada, 12 January 2015, Antananarivo.

62 Equal Rights Trust interview with Mahmoud, 16 January 2015, Antananarivo.

63 *Ibid.*

64 Equal Rights Trust with Jane, 29 January 2015, Nairobi.

The obstacles to using the regular routes to achieve adequate livelihoods leave families with little choice but to find work through family members or to work in the informal sector. Working without official contracts or in the black market often means that they are vulnerable to discrimination and exploitation in the workplace and to other labour rights violations, and are at an increased risk of police arrest. Even when some sectors of formal employment were accessible in some cases, stateless persons interviewed complained that wages were always far lower for them, even compared to foreign migrant workers, with secondary benefits and opportunities for promotion also severely limited.

In Nepal, 20 year-old Siwani explained that she was only able to get a job in a small organisation where they were personally aware of her abilities and where she was told that they could hire her but without an official contract. She explained how she saw her situation and how she felt she was paid less because of her lack of citizenship:

The employer thinks, “she cannot get a job in any other places since she doesn’t have citizenship and legal documents so she needs to work here by hook or by crook”. I think they have this idea and so they are paying me low wages because they know I can’t fight and I can’t leave the job because I will be unemployed.⁶⁵

A woman from the Karana community⁶⁶ in Madagascar similarly felt that her children were left in precarious conditions in the workplace because of their lack of citizenship. Shavana said that her daughter always told her employer that she was in the process of trying to get citizenship:

My daughter is working, her boss asks her for her ID card but she just tells him it is in process. He knows her situation so he will wait, but there is always the risk that he might lose patience and employ someone who has citizenship instead.⁶⁷

Shavana worried that her daughter was vulnerable if, for example, someone sexually harassed her in the workplace, as she had no formal contract.

It is clear that the detrimental impact of the denial of citizenship on livelihoods disproportionately affects families from vulnerable groups, including minorities. In Nepal, for example, caste plays a significant role in the process of acquiring citizenship and adds an additional layer of discrimination, further impeding people’s chances to provide for their families. Existing research has shown, for instance, that members of the Dalit community not only face discrimination in

65 Equal Rights Trust interview with Siwani, 14 October 2015, Kathmandu.

66 An ethnic group in Madagascar with Indian heritage, believed to have originally migrated to the country in the 1880s. Although no official statistics are available, estimates suggest they make up approximately 25,000 individuals. They are a marginalised minority group of Madagascar.

67 Equal Rights Trust interview with Shavana from the Karana community, 23 January 2015, Majungha, Madagascar.

acquiring documents but are also often prevented from applying.⁶⁸ With limited access to employment, the lack of nationality prolongs and often exacerbates poverty in the countries studied. As Laxmi from Nepal, who failed to get her beauty parlour training because of her statelessness, highlighted:

*I suffer economic hardship. If I had citizenship, I would have a better job. I would be earning more money and be able to help my mother.*⁶⁹

This sense of the inability to progress in their lives due to employment problems was reiterated again and again by respondents. Maya, also from Nepal, expressed this hardship further:

*It has been difficult. My brother is the only bread-winner now, although I still work. It is difficult to live everyday life (...) When you do a minor job, naturally you get paid less. You can get a decent job when you have your citizenship. That is why I need to obtain my citizenship.*⁷⁰

In addition to not having equal access to livelihood, access to welfare is often restricted or prohibited when one is stateless. Widowed Nepalese women, for instance, are unable to access the widow's allowance without citizenship; other state benefits such as disability allowance are out of reach for stateless mothers and fathers.

Limitations in access to livelihood are a common reality amongst families affected by gender discriminatory laws around the world. For example, in 2013, Abdulrahmen, a Kuwaiti Bidoon, explained that he could not access a well-paid job and saw no opportunity to improve his situation:

*In my job now, I get paid much less than anyone else. If I get married I won't get any benefits. This is different from a Kuwaiti citizen who, if they marry they get financial benefits for their kids. I can't go out and solve this situation, to leave, to have my own house, it's very difficult.*⁷¹

3.2.2 Land, Property and Inheritance

Owning land or property is deeply important in both Madagascan and Nepalese society, because it often underlies the ability to enjoy an adequate livelihood, par-

68 See Forum for Women, Law and Development (FWLD), *Acquisition of Citizenship Certificate in Nepal: Understanding Trends, Barriers and Impacts*, February 2014.

69 Equal Rights Trust interview with Laxmi, 19 October 2014, Kathmandu.

70 Equal Rights Trust interview with Maya, 21 October 2014, Kathmandu.

71 Women's Refugee Commission (WRC) and Tilburg University, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013, p. 11.

ticularly in certain parts of the country.⁷² In Madagascar, stuck in a vicious cycle, stateless people are often impeded from accessing land or property because they do not have the money to buy land due to their lack of access to employment. In Nepal, whereas most families other than Dalits historically own their own property, those who have been unable to access documentation are excluded from inheritance/partition and so remain landless. Dalits are particularly disadvantaged in this context, as the difficulties they face in owning property due to their caste and socio-economic status also have an impact on their claim to nationality, and vice versa. In both countries, the right to own and inherit land or property is strongly connected with citizenship. This issue was a very common concern among those who had been left without documentation due to gender discriminatory nationality laws, many of whom reported their inability to buy land or property.

Furthermore, the question of the right to land and the context of land disputes features strongly in political debates about access to citizenship. For example, citizenship in Nepal is deeply entwined with society's patriarchal and agricultural roots. Property laws are so restrictive that ownership is almost seen as synonymous with citizenship. Thus, the ability to convey citizenship or to prevent someone else from doing so becomes a weapon to secure and maintain property. For example, under the partition laws of Nepal, a married daughter loses her right to her parent's property. There have been cases, therefore, of brothers resisting their father conveying his nationality to their sister after her divorce, as this would entitle her to family property. Similarly, there have been cases of grandparents refusing to cooperate with the acquisition of citizenship of their grand-children, where their son was dead and the application was made by their daughter-in-law.⁷³ Concern that they stand to lose something if other members of the family obtain citizenship – including the fear that children from previous relationships would claim their right to property on acquisition of citizenship – is an element that also features in debate around the proposed draft citizenship law. Indeed, the worry that new citizens will start to own land and property was a theme that recurred in many interviews across the different countries studied.

In Madagascar, when not having proof of his nationality meant that he lost his job as a carpenter, Mahmoud thought that farming would be a viable option as that would not require the possession of documents. The only way to farm would be to own your own land, which he had enough money to do, but he again faced obstacles due to his citizenship status:

*I have tried to buy land when I could not be a carpenter anymore. But over and over again, they tell me that I cannot as there is no citizenship so there is no land. I have thought about buying it under the name of my wife, but I worry that might be too complicated.*⁷⁴

72 Please note that "property" refers to real estate as opposed to all types of movable property.

73 Equal Rights Trust Interviews with Shiva Gaunle, Nepalese journalist, 10 February 2015; and Sabin Shrestha, FWLD, 13 February 2015, Kathmandu.

74 Equal Rights Trust interview with Mahmoud, 16 January 2015, Antananarivo.

Jane from Kenya talked about the problems her husband, who was unable to obtain nationality from her, experienced as he was unable to buy anything in his name. She explained that at times she believed this created tension between them:

Sometimes I want to buy something with my ID but my husband says that he is the head of this house, he says, "what if you buy property and leave me", yes we are together but he is not comfortable with the fact that he doesn't have ID.⁷⁵

We interviewed Layla, a woman from the Karana community. Despite having a Madagascan mother, due to the discrimination the Karana community face in access to nationality, she was stateless and so were her children. A few years ago her husband passed away. She explained that although she could afford it, she was not able to purchase the house in which she lived with her children:

It is not possible for me to buy land or property without nationality, which makes things difficult for us. The land which I live in now is not in my name. I do not even have anyone under whose name I could put the land in, we are all stateless.⁷⁶

Apparently, discrimination against Karana as a stateless person added to the discrimination she faced as a Karana in exercising her rights. Some stateless persons were able to acquire land through a nominee, but anecdotal narratives suggest that many were scammed later due to the vulnerable dynamics of this situation.

As a direct consequence of the restrictions on property rights, a stateless person may also be unable to inherit anything, whether this is a house, a car or a business. As such, a considerable hurdle to the socio-economic welfare of families in these countries is the pervasive inability of those affected to inherit land and other property. Citizenship can be at the heart of battles over the partition of property and who is entitled to inherit family land. Often this means that a female national who has property registered in her name must assume the responsibility of owning everything family members may want, yet she does not have the right to leave this to her family when she dies. Layla continued her story by describing the problem of inheritance in her household:

The parents of my deceased husband want to put a house which should have been for him in mine and my children's names, but this is not possible as I am stateless and so are my children. We are therefore left with nothing. Nothing, even though they want it to be for us and it should be for us.⁷⁷

As Deepti who had two stateless daughters in Nepal further explained: "If I earn something as property as a mother and I want to give it to my daughter, she

75 Equal Rights Trust with Jane, 29 January 2015, Nairobi.

76 Equal Rights Trust interview with Layla, 23 January 2015, Majungha, Madagascar.

77 *Ibid.*

cannot have it.” This impediment, she discussed, also reduced her willingness to strive to succeed in buying anything or putting anything under her name: “Even if I want to earn money and buy a piece of land, why would I do that, for whom, because I am not able to pass that land to my children?”⁷⁸

Matters of inheritance can provoke tension among family members and with the wider community. In Madagascar, several of the respondents talked of how the only way to resolve their problem was to be adopted by a Madagascan family. These families were often neighbours or family friends who would agree to help the children to obtain the documents they needed to obtain nationality certificates. However, tensions revolving around the worry that the adopted child would be able to inherit from the adoptive family was discussed by several of the respondents. Danny from Madagascar told us that at the age of 18, his neighbours agreed to adopt him so that he could obtain citizenship, which he had previously failed to do. He talked of how he did not have anything to inherit from his biological parents so was not missing out as a result of no longer being legally their child. However, being adopted into a new family did cause tension between the family members at times, since they did own property:

My adoptive parents realised that I could inherit. Their children in particular would speak about how that worried them. My adoptive parents always made it clear that the only reason for adopting me was to help me because I had the problem of getting ID, and for nothing else.⁷⁹

Although Danny stated that he had no desire to try and inherit from his adoptive family, he was worried about the tensions this sometimes caused amongst the family members.

Difficulties around gender discriminatory laws and the inability for stateless persons to own or inherit property also exist in the MENA region. For example, the report *Our motherland, Our Country* tells the story of Heba who had a Jordanian mother and stateless father:

My dad bought a car to go to work in. To formalise this he got a work partner, his uncle, who bought it under his name. Then my father would pay him instalments. Once the instalments finished the car was now my father’s. But of course there are no papers to show this, it is officially in the name of the other guy, as we are not allowed to own anything. So, this partner just took the car. Just took it. The law does not protect my father.⁸⁰

78 Equal Rights Trust interview with Deepti, 13 October 2014, Kathmandu.

79 Equal Rights Trust interview with Danny, 24 January 2015, Majungha, Madagascar.

80 See above, note 71, p. 20.

3.2.3 Freedom of Movement, Liberty and Security

Those left without citizenship due to gender discriminatory nationality laws are very often confronted with impediments to their freedom of movement. It is often impossible to travel abroad or even travel freely inside the country in which they reside, or their ability to do so is severely restricted. Many stateless persons fear being stopped and potentially arrested when travelling in their own country; this was a prominent theme among respondents and the link between travel and security fears were significant. Therefore, in addition to the impediments to freedom of movement, discrimination in nationality laws also raises concerns regarding security and liberty of the person.

A lack of citizenship means that one is unable to obtain a passport anywhere.⁸¹ The inability to travel affects families in many different ways. First, they are unable to visit other countries and visit friends and family abroad. Such visits are very important, as often the father and his family come from abroad. Second, the impossibility of travel obstructs access to overseas employment. This is of particular concern in countries where remittance from migrant workers abroad is an important source of family income.

Kivan from Nepal talked about how he was denied jobs consistently because of his lack of citizenship. He decided therefore to focus on playing his guitar and he got involved in a band. However, his inability to travel affected his ability to perform in the band:

*All my friends have gone to foreign countries. My friends are educated. My band mates all go to foreign countries to do their performances. But I haven't been able to go anywhere as I don't have my citizenship. That's why I feel if I could obtain my citizenship, doors of opportunities will be opened. I would feel happy if I had my citizenship.*⁸²

In Madagascar, commerce is a key sector of the economy and the majority of trade is carried out between the coastal areas and some of the islands north of Madagascar such as the Comoros or Reunion. Accessing these trade routes, however, is only possible with a passport.⁸³ People often therefore travel illegally, despite this being very risky in view of the potential for being caught and denied re-entry. One respondent from Madagascar talked about how he really needed to travel to the island of Mayotte⁸⁴ for his business, but could not:

81 With the exception of those situations in which a person is recognised as stateless and issued a stateless person travel document, in accordance with the terms of the 1954 Convention relating to the Status of Stateless Persons (to which none of the countries included in this study were a party at the time of writing).

82 Equal Rights Trust Interview with Kivan, 22 October 2014, Kathmandu.

83 Previously, stateless persons could travel with a "safe-conduct" issued by the Malagasy authorities, but today even the Comoros no longer accept these travel documents.

84 An overseas department of France.

*Risking the travel can come with grave consequences – I can no longer travel abroad as, if I get caught by the French authorities, they will put me in jail. This has huge effects on my work. If you do not have citizenship you can buy travel documents, but if they catch you abroad without the other documents you will get into trouble. I do not want to have to do this.*⁸⁵

The inability to go on pilgrimage in Saudi Arabia due to the impossibility of travel was also a problem repeatedly discussed as one consequence that many families were affected by in Kenya and Madagascar. A Karana woman in her 60s talked about why she wished to travel with her husband:

*At this age our main desire from citizenship is to be able to travel. Also we really want to go on pilgrimage. I cannot go to hajj and do the pilgrimage because I cannot get a passport. It is a very serious and sad thought for both of us that we may never be able to go to Mecca.*⁸⁶

As well as impeding international travel, being able to move freely from one place to another inside a country can also be problematic when individuals are left without legal status or any proof of identity. Some individuals explained that there were regular police checkpoints at which individuals were required to show their identity card, as well as laws that require everyone to carry proof of identity with them. This often created fear in many families who were left undocumented. It is her fear of what might happen that compelled Monana to pay visa fees to ensure that she and her daughter had some form of legal status in Madagascar: “If the police find my daughter without a visa she will go straight to jail. That is very worrying.”⁸⁷

The fear of being stopped and potentially arrested by police has kept some individuals in hiding throughout their lives. Mohammed, who was in his 70s and from Madagascar, had been sleeping in a mosque for years as he had not been able to access a secure job. He was stateless as a result of gender discrimination in the nationality law and explained that he had spent most of his life hiding from the authorities. Worried about responding to questions, he left it to his nephew – who was also stateless – to talk about the effect this has had on their lives:

My uncle is scared to do anything. He always has been. He lives underground, he doesn't leave the mosque or the surrounding areas much as he worries someone will ask him for his documents. (...) He knows he is in this country illegally, living like an illegal immigrant,

85 Equal Rights Trust interview with Mahmoud, 16 January 2015, Antananarivo.

86 Equal Rights Trust interview with Jacqui from the Karana community, 23 January 2015, Majungha, Madagascar.

87 Equal Rights Trust interview with Monana, 15 January 2015, Antananarivo.

*so he hides. He never even dared apply for a job as he felt someone would tell on him. This is just his life. He is used to it now.*⁸⁸

The fear of being stopped at checkpoints in Madagascar was not specific to the undocumented. In most cases citizenship offered some security against the discrimination faced at these checkpoints but on some occasions the nationality of members of racial or religious minority groups was questioned despite their possessing nationality documents.

3.2.4 Education

Preena, the daughter of a Nepalese woman who had been left stateless due to discrimination despite her many efforts to obtain citizenship, spoke longingly of her desire to pursue further studies:

*Regarding my present condition of statelessness, I will just say that I will not get a chance to study my masters, so I will be deprived of education. I can't afford to help my family. If I could get a better education I would have better opportunities and could achieve a better life for my family.*⁸⁹

In fact, access to all forms of education is widely reported to be a problem for children who have been unable to secure nationality through their mother. The barriers range from the inability to enrol a child in school, to the inability to sit exams, to problems where college and university fees are often higher for non-citizens, who are moreover not eligible for the scholarships that are available. There can also be problems in receiving diplomas because the educational institution demands that the student shows his or her citizen's identity card to do so.

Without citizenship or identification documents, accessing or completing schooling can be a problem even at the elementary level. Recently, children in Nepal, for instance, have increasingly been required to show a birth certificate in order to enrol in school. Anita had two sons, aged 10 and 14, who had not been able to obtain birth registration certificates as she herself did not have citizenship:

*The school has asked for birth registration. But I haven't been able to provide it. Now I can see there will be more problems and I am so worried. My sons are also worried about me not getting citizenship. It might raise a problem for my children's further education too. The teachers at school know about my problem but still they keep asking about it. This is a constant worry and I feel I am all alone in this world. I feel particularly worried when I think about my children's future.*⁹⁰

88 Equal Rights Trust interview with Mohammed, 18 January 2015, Antananarivo.

89 Equal Rights Trust interview with Preena, 24 October 2014, Kathmandu.

90 Equal Rights Trust interview with Anita, 27 October 2014, Kathmandu.

Ana in Indonesia was married to an Afghan refugee, and had not been able to get documents for her children as the authorities refused to put their father's name on the certificates. Her husband, Moshtaq, talked about the worries they had regarding the education of their children:

My eldest is going to enrol in school. If she doesn't have a birth certificate with her, her schoolmates will hurt her, call her names. My wife wants to home-school our children because we cannot enrol them in normal school. If you want to enrol your kid in school, they will ask why there's no father's name.⁹¹

Even if a child gets into school in Nepal, there are still problems when the child has to sit examinations as this requires a form of identification. If the student does not submit a birth certificate, she is not eligible for the exam. This was a further worry and current problem that many of the respondent mothers spoke of. Kenyan mothers who had still been unable to get birth certificates for their children due to the absence of the fathers spoke of the same worry. One mother described her despair in getting her daughter into school after her daughter's Tanzanian father abandoned them and she was unable to obtain a birth certificate for her:

My daughter lives with her grandparents. I sent her there as in their region there are better schools. When my mother tried to get her into school they refused as she had no papers. We tried to explain the problem to them but they said they could do nothing about it. She was only a child, but she was being punished for what her father had done. I had no other choice but to register her under my parents' name. Now my own daughter is legally my sister. That was the only thing I could think to do to make sure to get her into school.⁹²

Fraudulent registration of children under different names in order for them to access a birth certificate and enrol in school was an approach reported by several respondents. The possible consequences that this could have (such as being caught for fraud, being unable to access child support from the father and inheritance problems) were not considered by mothers desperate to ensure their children's ability to access education.

The obstacles to accessing education continue throughout all higher levels of education. The tertiary education sector in Nepal, for instance, is divided into two broad categories: technical and general. Professions such as medicine, IT and engineering are considered technical subjects and a citizenship certificate, along with several other documents, is required to enrol. Technical subjects, for the most part, are taught only in private colleges; they are highly sought after subjects to study, with high associated fees, such that students also want to earn a scholarship. Applying for a scholarship requires a citizenship certificate. On

91 Equal Rights Trust interview with Ana, 13 January 2015, Jakarta.

92 Equal Rights Trust with Sidia, 29 January 2015, Kibera, Nairobi.

the other hand, courses considered to be general subjects, such as bachelors of arts, humanities, business and commerce, are taught in public colleges and do not require citizenship. In some cases, courses in government colleges are not accessible to non-citizens, blocking their access to certain fields of study and forcing those non-citizens who wish to pursue higher education to compete for a place and pay the higher fees in private institutions.

Surendra, from Nepal, said he would really like to study IT:

I am really good at IT, I am working as a hardware and software technician with my neighbour. I didn't do any research or study. I have just worked by googling, YouTube and being helped by some friends. In order to study I would need to show citizenship. (...) Even to apply for a scholarship I would need to show proof of citizenship.⁹³

The obstacles Surendra faced in accessing the education he craved are not only faced by him, but affect the whole family:

My brother has a problem now. He wants to study engineering, but he can't, his dream was to be an engineer. But he has left and he tries to study physics now because of his lack of citizenship. He is very good at studying, he was top of high school but right now he can't study anymore because of his lack of citizenship.⁹⁴

In Madagascar, the situation is similar when it comes to accessing further studies. Non-citizens are required to pay much higher fees to study at university than citizens. Raliya's mother was Madagascan but Raliya was not entitled to inherit her citizenship. She was studying at university in the capital and faced a problem: "As it is a technical university the fees are higher for me than they would be for a Madagascan. I pay around 60,000 Ariary, where it is only around 16,000 for citizens." Raliya talked about how her situation affected her hopes and ambitions:

When I finish studying I want to go and work in science. But I want to go to Comoros to work there. I don't want to stay here because of this situation. And because living here with my mum I have to pay for a visa.⁹⁵

3.2.5 Healthcare

Another regularly reported problem was a lack of, or poor access to, healthcare. Those without citizenship of the country are almost always required to pay higher fees for visits to doctors or hospitals than citizens, which can impede access to health services. At the same time, a number of interviewees reported that the stress caused by the nationality problems they or their family members

93 Equal Rights Trust interview with Surendra, 17 October 2014, Kathmandu.

94 *Ibid.*

95 Equal Rights Trust interview with Raliya, 15 January 2015, Antananarivo.

faced had consequential health impacts such as lack of sleep, high blood pressure, lack of concentration and depression.

In Madagascar, Mona, from the Karana community, indicated that she was left with no choice but to rely on charitable organisations when she required medical assistance. Her husband explained the extent of the challenge.

She got these glasses from the church when they were offering help. It was the only way. She would never have been able to get glasses otherwise. I do not know what would have happened to her eyes if the church did not offer it.⁹⁶

Mona's husband was becoming increasingly worried as now she was in her 60s and he feared that her healthcare needs would increase and that would mean they would have to find a way to cover the costs. Yousef, also from Madagascar, spoke of the discrimination he experienced in hospital because he was not a citizen:

I once had a serious problem with my nose that I had to fix, so I went to the hospital. Just by looking at me they thought I was Comorian as I am darker, so they made me pay a higher fee. They didn't even ask me to show any documents, they just judged me. I didn't argue with them that I am not because I could not show any documents anyway. It was so expensive to fix my nose.⁹⁷

This experience again emphasises the multi-layered discrimination most stateless persons face as impediments in access to citizenship disproportionately affects families from vulnerable groups. Deepti in Nepal talked about the worries she had for her two stateless children. If her daughters could not access healthcare in Nepal, she said, they were stuck as they would not be able to access it elsewhere:

Tomorrow, if one of my daughters is dying in hospital, (...) if she has to be treated abroad, suppose, my daughter will not be able to go abroad and save her own life because she doesn't have citizenship and a passport.⁹⁸

Sandra was a Kenyan national whose foreign partner abandoned her after Sandra found out that he had been secretly married. They had one daughter together called Tamara, who was 3 years old. Despite the law reform giving Sandra the right to pass her nationality to her child independently of the father's status, she had not succeeded in obtaining a birth certificate for Tamara due to the absence of the father. Last year, Tamara had been very sick and she was left with no choice but to take her to the hospital:

96 Equal Rights Trust interview with Mona, 23 January 2015, Majungha, Madagascar.

97 Equal Rights Trust interview with Yousef, 24 January 2015, Majungha, Madagascar.

98 Equal Rights Trust interview with Deepti, 13 October 2014, Kathmandu.

We went to the hospital where they asked for my daughter's birth certificate. I didn't know how to explain to them the situation of my partner and that my daughter had nothing. So I just told them that my house got burnt and everything inside was destroyed. I had to lie, but this was the only way to get them to attend to my daughter.⁹⁹

In Kenya, there is a government contributory fund for health cover, the National Insurance Fund. However, to be able to benefit from it, one needs to show a birth certificate and an identity card. Sandra was therefore unable to register her child in the Fund; she had tried previously and had failed, so the only possibility she had to make sure her daughter was treated was to lie.

Access to healthcare has also been one of the most commonly identified impacts in other countries. For instance, in Jordan, if a family is comprised of just one national, the family is only entitled to one fourth of social security entitlements available to other poor families. One woman explained how her children were not entitled to national health insurance as they were stateless. This forced her to take risks she would not have contemplated otherwise, waiting till her children fell seriously ill before paying for expensive private medical care.¹⁰⁰

3.3 Personal Well-Being

The consequences of not having a nationality extend beyond access to rights. There are also emotional wellbeing consequences, impacts on a person's sense of identity or belonging, and the guilt, fear, depression and isolation that sometimes stem from this situation.

Hussein's wife, Sara, had spent her lifetime stateless. Her parents were stateless but her mother was able to obtain citizenship through a second marriage, something Sara was not able to benefit from. Decades later, as Hussein explained, she still remained upset that she was not a Madagascan national: "If we receive nationality now, at the age of 62, then all I can do is thank God. My wife always gets emotional about it, and always asks, when will I finally get nationality?"¹⁰¹

Several issues repeatedly surface from the research data, highlighting the emotional and psychological impact that not being able to obtain nationality is having on individuals and families.

3.3.1 Identity and Belonging

Many respondents talked of the strong feelings of belonging to their country. Patriotism seemed to increase where individuals and families wanted to assert that

99 Equal Rights Trust interview with Sandra, 29 January 2015, Nairobi.

100 See above, note 71.

101 Equal Rights Trust interview with Hussein, 23 January 2015, Majungha, Madagascar.

they felt a part of the country and wanted to belong to the country. As Deepti, a Nepalese woman with stateless children, explained:

*It definitely hurts, it is very, very emotional for us because this is a place where our ancestors, our forefathers have lived their lives and left their legacy. It is a place where we want to live and be bonded with, and want it for our children, for generations to come by.*¹⁰²

Neha was the daughter of a single mother who, along with her mother, had fought for citizenship for years, to no avail. Despite this, she talked confidently about her own identity as Nepalese:

*It doesn't make any difference whether they give the citizenship certificate, or whether they say "you are my citizen I'll accept you, or not". But I know I am born here, I am the daughter of my Nepalese mother, I think no matter what the papers say or don't say, or the people say or don't say, I am Nepalese, I am Nepalese and I don't feel any different than that.*¹⁰³

Feelings of frustration rarely overshadow strong feelings of belonging to the country of the mother. Anger and frustration were often expressed at the system, the authorities or the person's own actions, but never at the country. "The fact that you don't have nationality makes you think that you have nothing to be proud of. But I am pure Madagascan. My mother is from Velo", stated the carpenter Mahmoud from Madagascar.¹⁰⁴

However, maintaining a feeling of belonging is difficult for affected persons who are often considered outsiders by everyone else, including both authorities and the community. Seventeen year-old Saga from Nepal and 20 year-old Yunis from Madagascar both remained patriotic despite others' perception of them. Saga said:

*I have nothing with me even though I am a Nepalese. I have to be a stateless person. I am like a foreigner. The police tell me that I am like a foreigner when I don't have my citizenship.*¹⁰⁵

Yunis and his siblings struggled for years to get Madagascan nationality, but he was rejected over and over again and the authorities told him he was not a citizen because of his name:

I tell them my mother is a citizen but they refuse to believe me. Being questioned by the authorities made me sad because we feel

102 Equal Rights Trust interview with Deepti, 13 October 2014, Kathmandu.

103 Equal Rights Trust interview with Neha, 14 October 2014, Kathmandu.

104 Equal Rights Trust interview with Mahmoud, 16 January 2015, Antananarivo.

105 Equal Rights Trust interview with Saga, 22 October 2014, Kathmandu.

*like we are Madagascan. When I came to apply for the ID card and they kept questioning whether I was really Madagascan, that made me really sad and ashamed.*¹⁰⁶

3.3.2 Guilt and Shame

Individuals, most often mothers of children who are unable to obtain citizenship, often feel guilty and ashamed, feeling they have let down their family. Laxmi, a female Nepalese citizen whose son was stateless, explained: "I feel very bad that I am unable to confer citizenship to him. I gave him birth, raised him, and now I am unable to give him the citizenship."¹⁰⁷ Many mothers feel it is their life choices that have resulted in their children's suffering rather than blaming the government for their family's predicament. In Kenya, mothers who had been unable to secure citizenship for their children often shared their concerns that they had done something wrong by having had a relationship with a non-Kenyan man. Lillian had not been able to get a birth certificate for her daughter as her foreign partner returned to his country of origin, Ethiopia, and she had no proof as to who he was: "It was already difficult enough to be with a foreigner as my family was not happy with that. Now it is also a problem that my daughter is suffering from. Maybe I should not have done it."¹⁰⁸

At times it is not only that the mother blames herself, but she is also blamed by family members. Those left without a nationality will sometimes blame their parents for leaving them in that situation. Nela from Madagascar, who found it very difficult to obtain nationality, asserted his frustration that his parents did not give him a Madagascan name:

*Sometimes I blame my parents for giving me this name, maybe it is because they love me, I don't know. Sometimes I even feel angry and shocked that my parents called me this name. People should know it's not my fault for this name, my parents gave it to me.*¹⁰⁹

However, he said that ultimately he did understand why they gave him his name, but he was just angry. He admitted: "I will give my children both Madagascan and Muslim names. Because I am proud of being both."¹¹⁰

The issue of changing one's name to obtain nationality in Madagascar can also be a heavy emotional burden on families. After years of his mother fighting to get him nationality, Danny was eventually successful when he changed his name from Mohammed Ali Tabio to Danny: "I feel very sad and upset that I had

106 Equal Rights Trust interview with Yunis, 24 January 2015, Majungha, Madagascar.

107 Equal Rights Trust interview with Laxmi, 19 October 2014, Kathmandu.

108 Equal Rights Trust interview with Lillian, 29 January 2015, Kibera, Nairobi.

109 Equal Rights Trust interview with Nela, 17 January 2015, Antananarivo.

110 *Ibid.*

to change my name – but having a nationality is more important than keeping my name. That’s the law - you must change with it.”¹¹¹

In Nepal similar sentiments of anger that were feeding into blame were apparent. Sarita’s son had been unable to get citizenship despite her many efforts on his behalf:

*After he didn’t get his certificate, my son in turn blamed me for the entire problem. Nobody listens to me whenever I go and now there is no place left for me to go also. He must have had awkward moments with his friends.*¹¹²

In Kenya and Madagascar, asserting that she is a single mother and that the father of her children is unknown is one method for a woman to facilitate obtaining nationality for her children. However, many women are ashamed of claiming this status, and many children are confused and ashamed of this too. Zahra from Kisumu in Kenya had not been able to give nationality to her children. She did not include the name of her husband on the birth certificate, but unfortunately even claiming to be a single mother did not work. She talked about her two sons whom she had with her Tanzanian partner: “They are just scarred emotionally. In Kenya you usually have three names, your name, your surname and your father’s name. If everyone else has three names and you have two names it will scar you.”¹¹³

In Madagascar, Monana spoke about how it felt that pretending to be single was one of the few options available to her to ensure her daughter could resolve her stateless status: “It makes me very sad to have to claim that I am single even though my daughter does have her father. It is a shame that I have to pretend that she doesn’t have a father.”¹¹⁴

In Nepal, the fact of being stateless was, in itself, experienced as shameful by many of those who participated in the research. Intrinsic misogynistic beliefs permeate present day society so that single mothers are generally believed to have done something wrong, perceived as having driven their husband away or had an illicit relationship, which is now the cause of their child’s statelessness. The belief that a member of the family, most probably the mother, must have done something wrong in order for that person to be stateless makes victims feel as though they are at fault, and this is not helped by the judgmental attitude of the community. As Deepti, an activist and affected mother, described:

When three people are standing by and two people have citizenship and the one person is stateless, when we are talking, the automatic thing comes in my head: something must be wrong in their family

111 Equal Rights Trust interview with Danny, 24 January 2015, Majungha, Madagascar.

112 Equal Rights Trust interview with Sarita, 15 October 2014, Kathmandu.

113 Equal Rights Trust interview with Zahra, 7 February 2015, Kisumu, Kenya.

114 Equal Rights Trust interview with Monana, 15 January 2015, Antananarivo.

line. Something is wrong, someone is a wrong doer, or this person is a wrongdoer, so that this person isn't acceptable in the society. Yes there is a lot of self-blame. So the self-blame is about existing, the existence itself is a shame for the person. So that is the biggest trauma for the person. It is one of the reasons it is still very difficult for the person to openly come up and talk.¹¹⁵

She went on to talk about one of her friends who suffered because he was left stateless, and not only felt ashamed of his status, but also angry:

I have one person, I loved him very much as a kid brother, he is a journalist, he has so much rage in him, his girlfriend left him a long time ago because he does not have citizenship. He was not able to reveal the fact to his family and other friends that his girlfriend left because he does not have citizenship. The girl was a smart girl and knew that "if I have a child from a stateless person then my child is also going to be stateless". So she left and for him his whole existence is going to be one of shame because of his own identity. Had the girl left him because he didn't have money or a job it is something else. It is about the materialistic thing that can be produced. But about his existence he cannot do anything about it.¹¹⁶

The sense of guilt experienced by mothers over the notion that they have caused the suffering in the lives of their children through their choice of spouse is a sentiment that is shared by women who are affected by similarly discriminatory laws in other parts of the world. Sana, a Jordanian national, married an Egyptian man whose identity card has expired and could not be renewed as he had not satisfied his military service:

If I had known that there would be these problems, I would never have married my husband. Why are my children to blame for a mistake I made? I made a choice to marry someone who does not have the same nationality as me. Now my kids can't access education or healthcare, and my husband really suffers from this problem, emotionally it really affects him. I really regret it sometimes, but I didn't think that there would be these problems when I wanted to marry.¹¹⁷

3.3.3 Despair

Siwani, a daughter of a Nepalese mother, had been rejected in her citizenship application and had been stateless for several years:

115 Equal Rights Trust interview with Deepti, 13 October 2014, Kathmandu.

116 *Ibid.*

117 See above, note 71, p. 19.

I cry a lot at a night. I do cry a lot at night thinking all the things, thinking about all the responses that people give me, thinking about my status right now. I do cry a lot. The next morning I make myself busy and that is how my life is going on, this has been so for two or three years.¹¹⁸

The negative emotions expressed by interviewees as a result of the lack of access to citizenship and its consequences included fear, anxiety, insecurity, guilt and, most worryingly perhaps, a feeling of hopelessness that any solution lied entirely outside their control. This often led to a sense of despair among the victims. Affected persons differ in whether they feel demoralised or remain optimistic and hopeful that the situation will change, but in many cases the research uncovered hopelessness. The problem was experienced as one which could not be resolved just by working or trying harder, or by sacrificing more, or even by running away. Sadness was commonly expressed when respondents reflected on their lives or the lives of their family members, with typical phrases such as:

Life is depressing. I am all alone but I feel my daughter's future is also in darkness. I feel it's not useful talking about this.¹¹⁹

Half of my life is almost gone now. Now I am worried about my children's future. Sometimes I just can't sleep also.¹²⁰

I feel like I am alone in this whole world, without citizenship, without the support from anyone. Everybody talks about my issue of citizenship wherever I go.¹²¹

Sleeping problems were also brought up quite often by respondents, who believed this was related to the nationality problems they faced.

Sami, a single mother from Nepal, had a son aged 12 and could not pass on her nationality because she was divorced and was told by officials that her ex-husband was the only family member who could provide nationality. She talked about the sadness she felt that her son had not obtained her nationality:

Emotionally when I consider that my son has no ID, I feel so bad, emotionally, but if I start to cry how will my son think of me? So I hide my tears (...) I am often depressed. And I can't sleep in night time, sometime till one in the morning, sometimes till two or four. (...) I feel very bad for my son. If my son has no citizenship then his future is going where? I don't know. That is why I am so scared.¹²²

118 Equal Rights Trust interview with Siwani, 14 October 2014, Kathmandu.

119 Equal Rights Trust interview with Deumaya, 27 October 2014, Kathmandu.

120 Equal Rights Trust interview with Lila, 27 October 2014, Kathmandu.

121 Equal Rights Trust interview with Tulshi, 27 October 2014, Kathmandu.

122 Equal Rights Trust interview with Sami, 13 October 2014, Kathmandu.

She then talked about her anxiety at the thought that one option to resolve her son's situation would be to send him away from her to live with his father, as there he would be able to get citizenship:

*Sometimes I blame myself. Sometimes I feel I want to send him there because he will get citizenship. I told my son: "better you go live with your father, you will get an identity card there". And my son said, "I don't want to go, I don't want to leave you, if I am going there then you are alone mummy so I don't want to."*¹²³

Despair is a theme which has also come up in previous data on this issue globally. In 2011, Zeyneb, who could not travel to Canada for her education as she could not obtain Lebanese citizenship from her mother, said:

*Sometimes I hate myself. I feel like I am not a human being. I can't handle it. My friends can live a natural life. I can't. My dream to own a car, I can't have it. Even if I have the money to buy it, it would never be registered in my own name. I dream of getting married, but one man has turned me down because I don't have a citizenship. I feel like a prisoner. Lebanese papers are worth more than gold, you can pay millions but still not get them. It's hard for me to see Lebanese girls who have nationality and their papers, especially when they're not taking advantage of their status as they could – studying, working, fulfilling the dreams I wish I could achieve, but can't.*¹²⁴

The despair can become very serious, leading to extreme states of hopelessness where, according to Milan, a stateless man in Nepal, "you really feel like your arms have been cut off or your legs have been cut off".¹²⁵ Preena from Nepal discussed the extreme emotions she had been going through and how she had struggled to cope. Born to a Nepalese mother and an Indian father, she spoke about all the difficulties she faced in being stateless – from not being able to work to not even having a SIM card in her name. She then went on to talk about how this affected her emotionally:

*I have no citizenship and it is changing my psychology, I am not able to think freely about my future (...) I don't have a single line that I can say yeah I am happy with these things, I am just unsatisfied, and I am discriminated against from all directions. I am not satisfied with my life and those who are not satisfied with their life can never be happy or think positively about the future.*¹²⁶

123 *Ibid.*

124 United Nations High Commissioner for Refugees (UNHCR) and Collective for Research and Training on Development – Action (CRTD-A), *Regional Dialogue on Gender Equality and Statelessness*, 2011.

125 Equal Rights Trust interview with Milan, 13 October 2014, Kathmandu.

126 Equal Rights Trust interview with Preena, 24 October 2014, Kathmandu.

She also talked about the extent to which this frustration had started to take over:

Sometimes when I get frustrated I think that I should kill myself, this life is just nothing, no meaning in this life and I won't kill myself but you know. Yeah those feelings arise. (...) But you know so many people have hanged themselves, so many people have killed themselves just because of this.¹²⁷

It is clear that not only is gender discrimination in nationality laws contrary to international human rights law standards, but the impact on those who are directly affected is profound. Gendered laws have a devastating effect on victims everywhere. In contrast, the introduction of gender neutral nationality rights – and especially where there is also the opportunity to benefit retroactively – holds the potential to transform people's lives.

4. THE REFORM PROCESS

Given the evident benefits of reform, this Part explores the status of the reform process that each of the four countries studied is going through. In particular, it explores the obstacles that stand in the way of legal reform in Madagascar and Nepal, which are both at differing stages in the struggle for gender neutral laws. There are many distinct features of their struggle, but also significant similarities in the road they are taking. This Part then goes on to reflect on what lessons can be drawn from the reform process in Kenya and Indonesia. Throughout this Part, positive trends and lessons learnt are highlighted to help identify ways in which all four countries can continue to move the issue forward.

4.1 The Struggle for Legal Reform: Madagascar and Nepal

Among the majority of stakeholders, including many government actors, there is a clear recognition, in both Madagascar and Nepal, that the explicit legislative discrimination against women in nationality rights must be changed. Both countries have witnessed movements for change that often stemmed from the broader willingness to move to more gender equal societies. National and international pressure on the issue has also resulted in a deep discourse on reform between all stakeholders.

There has been significant work both within civil society and government, with technical support from the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations High Commissioner for Refugees (UNHCR), to reform the Nationality Code of Madagascar, although Madagascar's civil society movement is comparatively smaller than that of Nepal. UNHCR and FOCUS Development Association (one of the main NGOs working on this issue) began to work on the statelessness issue in 2011, including through lobbying the Ministry of Justice and the Parliament in particular. Madagascar referred to its ongoing reform process in its second cycle report to the Universal Periodic Review¹²⁸ which was considered in November 2014. A number of states welcomed the news and urged Madagascar to ensure that the reform took place.¹²⁹ The two key aims of the reform efforts have been to remove gender discrimination from the Nationality Code and to address the issue of statelessness. The advocacy mes-

128 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review; Madagascar*, UN Doc. A/HRC/28/13, 23 December 2014.

129 *Ibid.*

sages have focused more on the broader human rights and equality arguments than on statelessness, since this is a particularly challenging political issue. Nevertheless, early on in the discussions on law reform, it was decided that any draft law should address both issues. The view was taken that if the two were separated, the statelessness question would never be resolved, which would leave a major human rights blot on Madagascar's landscape.¹³⁰ Significant advocacy work throughout 2013 and 2014 culminated in the establishment of a working group¹³¹ which was tasked with developing an *avant-projet de loi* – a draft law, supported by the Ministry of Justice. In September 2014, the civil society organisation FOCUS, in partnership with UNHCR, OHCHR and a number of others, convened a consultation with key stakeholders within government and civil society to discuss this preliminary draft.¹³² The *avant-projet de loi* drew on the results of the workshop, which were then finalised by the Ministry of Justice. The draft law proposes significant amendments to the Nationality Code.¹³³ Of particular note, it proposes a new Article 9 which declares that a child born to a Madagascan mother or father, whether in or out of marriage, is Madagascan – replacing the discriminatory rules.¹³⁴ The draft law also proposes to amend Article 11 such that children born in Madagascar to unknown parents, or who would otherwise be stateless, are Madagascan. It further removes gender discrimination from Article 22 of the Code by stipulating that the spouse of any Madagascan (i.e. male or female) may acquire Madagascan nationality. If adopted in the form currently presented, the draft law would bring Madagascar in line with its international obligations with respect to gender equal nationality rights. Before this can be celebrated, the draft law must be approved by all ministries and the President, and then passed to the National Assembly for consideration and adoption. The draft has so far stalled at the Ministry of Justice and has not yet been circulated further. According to FOCUS, a major challenge for the new Code will be the resolution of the numerous existing cases of statelessness – a task which confronts an unfavourable socio-political environment. In this light, UNHCR and OHCHR, in partnership with FOCUS, will be organising two activities (a sensitisation and advocacy session as well as a capacity building workshop) on the draft nationality code for the benefit of all members of the gender and legal commissions of the national assembly. These activities were originally planned to take place in the May 2015 session of the National Assembly but have had to be postponed as a result of the vote to impeach the President derailing that session.

130 Equal Rights Trust interview with Noro Ravaozanany and Mina Rakotoarinsrasata, Focus Development Association, Focus Development Association, 17 January 2015, Antananarivo.

131 The working group comprised four persons: the Director of Cabinet of the National Assembly, the Human Rights Advisor to the President of the National Assembly, and representatives of the Ministry of Justice and the Office of the High Commissioner for Human Rights (OHCHR).

132 Amongst others, key ministers of government present at the consultation were the Ministry of Justice, the Interior Ministry, the Ministry for Public Security, the Ministry of Population, Social Protection and Women's Promotion, the Ministry of Foreign Affairs, the Secretary of State in Charge of National Gendarmerie, the President's Office and the Prime Minister's Office.

133 The Draft is not currently finalised or publicly available. It continues to be subject to amendments at the ministerial level. This analysis is based on a draft dated 23 September 2014, which was shared by a member of the working group responsible for its production for consideration at the Ministry of Justice.

134 See above, section 2.1.1.

In Nepal, there is a strong civil society movement that has been advocating for law and policy reform with respect to the citizenship framework for many years. This group has come together as the Nepal Civil Society Network of Citizenship Rights. With the support of civil society groups, affected persons are increasingly organising themselves as well, and also joining this network.¹³⁵ There is a strong youth movement which regularly organises rallies, protests and demonstrations. In addition to awareness raising campaigns and public protests, many of the key informants were engaged in diplomatic advocacy efforts. The media is also increasingly taking up the issue.¹³⁶ Within the state sector too, there are many actors¹³⁷ who believe the present legal framework is internally inconsistent and non-compliant with international standards and therefore requires reform.¹³⁸ Certain members of the Constituent Assembly have spoken out in favour of reform of the law.¹³⁹ The reform remains, however, blocked by the Ministry of Home Affairs, under whose jurisdiction the matter of citizenship falls, as well as by some members of the Constituent Assembly who have aligned themselves against the issue. Unfortunately, this stalemate has resulted in a regressive – albeit gender neutral – proposal to replace the “father OR mother” provision of the 2007 Interim Constitution with a “father AND mother” provision. This provision threatens to impose the same high barriers that single female parents face in conferring nationality to their children on single male parents as well. Furthermore, it will undermine the positives of Article 8(2) of the Interim Constitution and of the progressive jurisprudence of the Supreme Court in this regard. It is likely to increase the incidence of statelessness rather than reduce it.

Despite the emerging consensus, the barriers to reform remain significant in both countries. The two countries are at different stages of their struggle, the level of civil society engagement differs significantly between them, and the domestic historical and political contexts are different. Yet in assessing the obstacles to reform, some recurring themes can be identified. The following subsections describe in more detail the challenges which Madagascar and Nepal appear to have broadly in common as they attempt to eradicate their discriminatory nationality law. These challenges have been loosely categorised under three sub-headings: demographic factors, socio-cultural factors and political factors. In reality, there is much overlap between them all.

135 Equal Rights Trust interview with Sabin Shrestha, Forum for Women, Law and Development (FWLD), 13 February 2015, Kathmandu.

136 Equal Rights Trust interviews with judges of the Kathmandu District Court, 11 February 2015; Madan Dhami, Govt. Attorney, Attorney General's Department, 12 February 2015; and Phanindra Gautam, Under Secretary, Ministry of Law and Justice, 12 February 2015, Kathmandu.

137 Equal Rights Trust interviews with Constituent Assembly members Hon' Krishna Bhakta Pokharel, 12 February 2015; Hon' Kamala Pant, 13 February 2015; and Hon' Ranju Jha, 13 February 2015, Kathmandu.

138 Equal Rights Trust interviews with judges of the Kathmandu District Court, 11 February 2015; Madan Dhami, Govt. Attorney, Attorney General's Department, 12 February 2015; and Phanindra Gautam, Under Secretary, Ministry of Law and Justice, 12 February 2015, Kathmandu.

139 Equal Rights Trust Interviews with Constituent Assembly members Hon' Krishna Bhakta Pokharel, 12 February 2015; Hon' Kamala Pant, 13 February 2015; and Hon' Ranju Jha, 13 February 2015, Kathmandu.

4.1.1 Demographic Considerations

One of the factors impeding change is the perception within society, fuelled by a fear of “the other”, that reform will bring about a dramatic and detrimental change to the country’s demographic composition. Such concerns strengthen racist and xenophobic sentiments and ultimately fuel the desire for an exclusive citizenship policy.

A demographics-based argument arises in Madagascar, where it revolves around a fear of foreigners “infiltrating” Madagascan society. This fear stems from apprehension that ethnic and religious minorities would thereby gain in influence, the racial question being intertwined with concerns in relation to the political and economic division of power in Madagascar. The issue of reform of the nationality law is not seen as a matter of gender equality in Madagascar, but rather it is viewed as a proposal to naturalise the Karana, thereby extending the power base of a community who are still seen as outsiders. The perception of the Karana community is that it is wealthy and has significant influence and many fear that if they are also granted citizenship, they will wield too much political power.¹⁴⁰ This sense of the Karana having economic supremacy overshadows the reality that there are also very poor Karana, who do not have access to another nationality and who remain stateless. Among the general public, in the media and within the government, many espouse the view that enabling members of this community to gain nationality would destabilise the country and damage the economic position of “Madagascans” as well as allowing “foreigners” to become members of the citizenry. This powerful narrative is exploited to foster fear and increase division, with Madagascan society still very closed off to the integration of foreigners and minority populations commonly facing multiple discrimination in everyday life.¹⁴¹

In Nepal, the principle argument against reform, championed by the Ministry of Home Affairs and supported by certain political leaders, is that it will have a significantly detrimental impact on the country’s demographics and, ultimately, its sovereignty. Those who hold this position refer to the open border between India and Nepal and to the marriages between Indian men and Nepalese women. The fear expressed is that if the children of Indian men have access to Nepalese citizenship, there will be an increasing number of Nepalese citizens loyal to India. While this position is widely articulated, there is no research to substantiate this claim.¹⁴² Proponents of the law reform believe that this argument can be combatted by evidence-based advocacy, including by analysing historical trends in migration and current economic patterns.¹⁴³

140 Equal Rights Trust interview with Noro Ravaozanany and Mina Rakotoarinsrasata, Focus Development Association, 17 January 2015; and Omer Kalameu, Human Rights Advisor to the Resident Co-ordinator of the Office on the UN in Madagascar, 19 January 2015, Antananarivo.

141 Equal Rights Trust interview with Saaeed, Leader of Karana Community, 22 January 2015, Majhunga, Madagascar.

142 Equal Rights Trust interview with Shiva Gaunle, Nepalese journalist, 10 February 2015, Kathmandu.

143 Equal Rights Trust interview with Mohna Ansari, FWLD, 13 October 2015, Kathmandu.

Demography-based considerations also feature in other situations around the world in which a gendered nationality law is helping governments to fulfil a policy of excluding certain communities, by prohibiting women from transferring their nationality. An evident example is Lebanon, which has long hosted vast communities of refugees that have become a significant proportion of its population.¹⁴⁴ Lebanon claims that allowing women to pass on their nationality would mean that the “Lebanese” would become minority citizens in their own country.¹⁴⁵ Yet, this claim is clearly undermined by data demonstrating that only a limited number of women marry foreigners and when considering that men who marry foreign women can transfer their nationality.

Given that lobbying strong women leaders and female parliamentarians to raise their voices on this issue was one of the integral elements of the successful reform process in Indonesia and Kenya,¹⁴⁶ the way that the “demographics argument” is clouding the debate is problematic. Unfortunately, many female parliamentarians and other leaders are still unaware of the issue or do not take it up because of the way in which public attitude against, and counter-arguments to, reform are framed around the state’s demography, sovereignty and security – outweighing the sense of this being a women’s rights issue.

4.1.2 Socio-Cultural Prejudice

While various reasons and justifications are given to uphold the existing status quo, the reality is that in all instances, the existing framework disadvantages and discriminates against women and minorities – and through them, their offspring who are both men and women.

In Madagascar, at both the institutional and public level, the question of gender equality does not present a significant barrier to reform. The research indicates that, on the whole, people are supportive of removing gender discrimination from the law. In general, the key barrier is one of race discrimination and the politically sensitive issue of the recognition of citizenship for the Karana community. Some took the view that the only way in which politicians might be persuaded to reform the law was if there was a shift in public opinion on that matter.¹⁴⁷ Those involved in the reform process were not optimistic and pointed out, for instance, that even the media is not supportive of reform on the whole. It was clear that even among some of the comparatively sensitised stakeholders stere-

144 This mainly includes some 400,000 Palestinians and currently more than a million Syrian refugees. See United Nations High Commissioner for Refugees (UNHCR), “2015 UNHCR country operations profile – Lebanon”, available at <http://www.unhcr.org/pages/49e486676.html>; and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), “Lebanon profile”, available at: <http://www.unrwa.org/where-we-work/lebanon>.

145 See Abou Aad, S.G. and Mansour, M.W., Women’s Citizenship Rights in Lebanon, American University of Beirut, May 2012; and Weatherbee, S., “Lebanese support giving nationality to children of Palestinian fathers”, *The Daily Star*, 23 March 2015, available at: <http://www.dailystar.com.lb/News/Lebanon-News/2015/Mar-23/291777-lebanese-support-giving-nationality-to-children-of-palestinian-fathers.ashx>.

146 See below, section 4.2.

147 Equal Rights Trust interview with Saaed, Journalist at Radio Sky, 4 January 2015, Majungha, Madagascar.

otypes and prejudice towards the Karana and other racial minority populations are commonplace.

The situation in Nepal differs. The explanation, which multiple interviewees (affected persons, state officials and civil society representatives) gave as to what was impeding reform in Nepal was the deep-seated patriarchal attitudes in society at large and the strong socio-cultural bias against women. The idea that after marriage a woman belongs to her husband and his family, and that a child gets his or her identity from their father, is the logical thread that unites many of the discriminatory laws and practices described above. While this dominant opinion is being increasingly challenged within Nepalese society, this has not yet led to the type of change that is required for legal reform. Neha, the daughter of a single Nepalese mother, spoke of the lack of support even from family members for reforming the law:

I spoke to the aunts and uncles, their mothers and their fathers. When we had conversations they don't feel pity and don't feel bad about not having the provision. They don't feel bad about the constitution. They don't feel any responsibility about being a citizen – that mother should be able to give it. They directly start thinking that there must be something wrong with the social status: "why do you want it from your mother's side, why can't you take it from your father?"¹⁴⁸

Discrimination against women makes it particularly difficult to rally public support behind the campaign. Stateless people in Nepal are looked down upon primarily because their mother is a single parent. In Nepal, Sami expressed the view that being stateless was like being told, "you're characterless and that is why your husband leaves you".¹⁴⁹ Preena, who had suffered a lot from being stateless in Nepal, explained how she felt about this discrimination:

If I marry a Nepalese man then there is a way I would get citizenship, but then again why should I marry? Why should I marry? I need my rights on the basis of myself, why should I need to marry and only then get my rights? That is my personal life, that is my self-respect, and it will touch my self-respect.¹⁵⁰

Here a stateless person is discriminated against for what statelessness implies: that their father has left and that it was the fault of their mother. That women are not seen as equal citizens with the same rights as men and thus are unliberated was a popular topic in the majority of the interviews. However, due to the mainstreaming of this debate, public opinion appears to be shifting – there is wider support for the campaign and the media is increasingly picking up the issue.

148 Equal Rights Trust interview with Neha, 14 October 2014, Kathmandu.

149 Equal Rights Trust interview with Sami, 13 October 2014, Kathmandu.

150 Equal Rights Trust interview with Preena, 24 October 2014, Kathmandu.

Again a societal distrust and stigmatisation of women, minorities, stateless groups or foreigners is a common obstacle worldwide in achieving gender equal nationality rights. In Kuwait, for example, there is little public support of the amendment of the current discriminatory law for two main reasons. Firstly, with a wealthy rentier system coupled with a substantial immigrant population, fears that women transferring nationality to their children would open the door to foreigners joining their citizenry are commonplace. Secondly, there is widespread hostility against the “Bidoon” stateless group in Kuwait among many of the citizens. Many perceive them as foreigners trying to illegally obtain Kuwaiti nationality. The stigmatisation of members of this stateless group,¹⁵¹ some of whom are married to Kuwaiti nationals, is another reason why so many Kuwaitis would not want to see gender neutral nationality laws.¹⁵²

The lack of awareness that the affected populations themselves had of their rights or of what the current legislation states is also a barrier to reform. A vast majority of those interviewed believed that the nationality law of Madagascar, for instance, stated that one could not obtain nationality if one had a foreign name. Of those who had this misconception, some believed that this was a discriminatory clause that needed to be changed whilst others felt that it was the responsibility of parents not to give their children foreign-sounding names.

4.1.3 Political Factors

Due to Madagascar’s political history, it is only in recent years that the National Assembly has had any real power to legislate and stakeholders report that many deputies still do not feel empowered to do so in any meaningful way.¹⁵³ There are a number of individuals and ministries which are likely to disrupt or potentially bar the passage of legal reform through government. Crucially, a number of sources expressed doubts about the possibility of getting support from the President of the Republic. The position is a political one and not only is the issue of nationality law reform not considered a priority; it is generally viewed as being too politically sensitive to be touched.¹⁵⁴ Additionally, there are notable gaps in support for reform from other key stakeholders. While these groups may only have a limited ability to impact on legal reform taking place, they would, should such reform occur, have a significant stake in the extent to which it would lead to effective change.

151 Al Shammari, A., “Kuwait Sentences 1,000 Bidoon Children to Illiteracy”, *Global Voices*, 16 November 2014, available at: <https://globalvoicesonline.org/2014/11/16/kuwait-stateless-bidoon-children-barred-from-school/>.

152 Refugees International, “Kuwait: Gender Discrimination Creates Statelessness and Endangers Families”, 17 October 2011, available at: <https://www.refintl.org/policy/field-report/kuwait-gender-discrimination-creates-statelessness-and-endangers-families>.

153 Equal Rights Trust interviews with Juvence Ramsay, Chief of staff of the President of the National Assembly, 19 January 2015; Lova Rajoarinelina, Advisor to the President of the National Assembly on Human Rights, 19 January 2015; and Lydia Toto, Member of the National Assembly, 24 January 2015, Antananarivo.

154 Equal Rights Trust interview with Noro Ravaozanany and Mina Rakotoarinsrasata, Focus Development Association, 17 January 2015, Antananarivo. A number of people took the view that the situation would be improved if the President of the Republic had a human rights advisor on staff (as does the President of the National Assembly) to help influence his decisions on matters such as the reform of the nationality law.

For example, reform of the Code is not, reportedly, supported on the whole by the judiciary. As a matter of law in Madagascar, international conventions which have been ratified are supposed to be applied where national laws are not in line with them, but judges still apply the discriminatory provisions of the domestic law. Stateless people are also an apparent “source of income” or “business” for judges and others within the administration. Saaeed told us that it took him two months to go through the process of obtaining citizenship, and it was only resolved once money was paid: “I gave them the money as it was the only way they would do the research to see that I wasn’t lying about my claim to citizenship. All of my brothers and sisters had to pay bribes to get nationality.”¹⁵⁵

If Madagascar’s draft law is not adopted at the government level then it will be necessary to work with parliamentarians. Legislation can be passed without the need for the approval of all ministries of government if it is introduced at the National Assembly through a private member’s bill. There are reportedly a number of deputies who may be willing to introduce a bill to reform nationality law in similar form to the draft. Much work would still be necessary to achieve a sufficiently sizable caucus of MPs to vote in favour of such a bill.¹⁵⁶ Some believe that it will be difficult for the government to allow parliamentarians to introduce legislation as important as the code of nationality, but that their role would rather be to exert pressure to speed up its presentation and influence its content. The current socio-political context is therefore a complex one. The national assembly’s vote in May 2015 to impeach the president indicates the state’s political fragility. The political landscape and the support for the ruling regime remain unclear; municipal elections took place on 31 July 2015 but the results are not yet known at the time of writing.¹⁵⁷ Sources within the government told us that the government was hesitant to introduce the draft law on the nationality code that would benefit the Karana community at such a politically uncertain time.

The constitutional reform process in Nepal has come to be viewed as a significant barrier. Well into the term of the second Constituent Assembly, the political stalemate continues. The constitutional drafting principle of “consensus”, while commendable, does not sit easily with the fractious and divisive nature of Nepalese politics. Consequently, political parties are more likely to barter with issues, compromising on some in order to achieve their objectives with others. It appears that the citizenship issue has suffered as a result of this process. Thus, while on the one hand there is a fear that the constitutional stalemate will continue indefinitely, with no reform likely, there is also the danger that when a new constitution is finally agreed, the citizenship provision will be a regression and not an improvement of the 2007 Constitution, as the “and/or” argument highlights.¹⁵⁸ It is broadly believed that the real barrier to reform in this context is the Ministry of Home Affairs.

155 Equal Rights Trust interview with Saaeed, 16 January 2015, Antananarivo.

156 Equal Rights Trust interview with Noro Ravaozanany and Mina Rakotoarinsrasata, Focus Development Association, 17 January 2015, Antananarivo.

157 The results are expected to be announced on 15 September 2015.

158 See above, section 4.1.

In 2006, Nepal issued citizenship certificates to 2.6 million people through mobile clinics. While there was a perception that this process primarily benefited the children of non-nationals born in the country (citizenship by birth), in reality, the overwhelming majority of persons who received citizenship certificates through this process were recognised as citizens by descent. The 2006 process has been tarnished by this perception of undeserving “non-Nepalis” being given citizenship for political gain – which feeds into the demographic argument discussed above – but this is not a fair representation of what actually happened. Some respondents made a connection between the 2006 process and the elections, stating that they had family members who were granted citizenship through these mass campaigns and who would ordinarily have had difficulties acquiring citizenship.¹⁵⁹ The controversy around this has politicised citizenship issues more generally and shows how during the current reform process the campaign must contend with the (perceived) potential for the state to utilise citizenship as a political tool.

4.2 Overcoming Barriers to Legal Reform: Indonesia and Kenya

The previous section outlined some, but not all, of the obstacles hindering the success of reform campaigns that are taking place in Madagascar and Nepal. This section turns to how Indonesia and Kenya were eventually able to overcome the obstacles they faced, potentially providing some good practice examples for those countries still involved in the reform or which have not yet started it.¹⁶⁰

Indonesia and Kenya both reformed their laws relatively recently, i.e. in the last decade. Despite some resistance, the reform was ultimately successful – a result of a variety of factors including transition to democracy, political open-mindedness and, most importantly, the strong reform campaigns carried out by stakeholders. In Indonesia, this campaign was largely led by women who were in mixed-nationality marriages, whereas in Kenya the leaders of the campaign were more general women’s rights groups who were also lobbying on other issues of gender discrimination. In Indonesia, there were targeted campaigns that specifically focused on amending the nationality law, whilst in Kenya the campaign aimed to achieve broader gender equality within the process of constitutional reform. Although obvious contextual and strategic differences in the methods of advocating for reform existed, the following sub-sections highlight some of the overlapping trends and techniques that paved the way to success.

159 “That time near the election, near election time they give all citizenship, my family all have citizenship because politicians need a vote, they want more voters, and so they give (...) They come, election time, door-to-door. They say ‘give me the votes’ and that time they give citizenship”. (Equal Rights Trust interview with Sami, 13 October 2014, Kathmandu.)

160 For more examples of good practices, see UNHCR, *Preventing and reducing statelessness: Good practices in promoting and adopting gender equality in nationality laws*, 2014. In making these observations, sight is not lost of the fact that reform is the first part of a process and that, as indicated in section 2.2.3 above, implementation problems remain in both Indonesia and Kenya. Detailed research of those problems was beyond the scope of this project.

The material presented here is a compilation of information gathered through key informant interviews.

4.2.1 Good Timing

All stakeholders interviewed emphasised how timing was the most essential ingredient in the advocacy work. In Indonesia, many key informants spoke of how the 2004 to 2006 period was an era of “reformation” where people, including parliamentarians, were becoming more open to new ideas. It was also believed that at the time of the campaign they had strong, if limited in number, supportive women parliamentarians. These ingredients, alongside general advancements in thinking on women’s rights, meant that it was good timing to launch a campaign to remove the gender bias from the nationality law.

In Kenya, following the 2007 post-election violence which caused significant concern that the country would cease developing and fall into conflict, the idea of reforming the Constitution was born. The renewed constitutional review process was a highly momentous one and brought with it much hope of progress in the country. Pushing for an inclusive, progressive and encompassing constitution became the agenda to prevent the country returning to violence.¹⁶¹ This environment, coupled with strong women’s rights actors within civil society, provided apt timing to push for reform.

Choosing an appropriate time has also been an essential ingredient in other countries’ strategies for reforming their law. In Egypt, for example, it was during the period of the Tahrir Square revolution that activists were able to make their voices heard and push for full gender equality in nationality laws. The activists utilised the atmosphere of change and the call on parliamentarians to listen to the requests of the people to amend the laws, piggy-backing on the momentum for achieving greater gender equality in the country.¹⁶²

4.2.2 A United Stance

An important step in the advocacy process was for the various stakeholders to unite, rather than individuals and organisations fighting the battle alone or even presenting contradicting messages. In Indonesia, there was a core group of NGOs advocating together which included Aliansi Pelangi Antar Bangsa (APAB), Keluarga Perkawinan Campuran Melalui Tangan Ibu KPC Melati, and Perkawinan Campuran Indonesia (PERCA) (all of whom had only formed after the turn of the century). This main body was joined by a wide range of stakeholders including activists, affected persons and organisations representing the Indonesian-Chinese community such as the Indonesian Citizenship Institute (IKI). Newspapers in Indonesia helped the campaign of the mixed-nationality mar-

161 Equal Rights Trust interview with Alan Nyangi, Legal Officer at Kituo Cha Sheria Office, 3 February 2015, Mombassa, Kenya.

162 Albarazi, Z. and Van Waas, L., “The Transformations of Nationality Legislation in North Africa”, in Isin, E.F. and Nyers, P. (eds), *Routledge Handbook of Global Citizenship Studies*, Routledge, 2014.

riage groups significantly. A foreign woman who married an Indonesian man worked at the Jakarta Post and sympathising with the campaigners, she began to help to promote the issue and keep it on the public agenda. Radio-appearances were also regularly made by the campaign group. Serikat Buruh Migran Karawang (SBMK), an NGO working on migrant worker rights in Karawang, also took the issue to the public audience by organising a rally and arranging a press conference to push their agenda.

In Kenya, the struggle for gender equality in the Constitution was led by powerful women's rights organisations such as the Federation of Women Lawyers (FIDA-Kenya), but a variety of other stakeholders, including women's rights groups from more rural areas, also put their weight behind it. A concerted effort to bring in broad stakeholder support was made, particularly engaging with the media to encourage societal support. In Kenya, every opportunity for radio or air time to talk about the benefits of reform was seized. Even when TV stations asked activists onto programmes in the early hours of the morning, they would still join to make sure they were making the most of every chance of increasing public awareness.

In other parts of the world, similar campaigns of solidarity had been built leading up to reform. In Morocco campaigners used similar tactics. "Listening centres" were set up in rural areas to compile the stories of affected women and these testimonials became an essential element in the campaign. The stories were used in social media campaigns and radio coverage as well as to produce publications and brochures.¹⁶³ Given the negative characterisation of the stateless and of the proposed introduction of gender equal nationality rights in many people's minds in Madagascar and Nepal, strong use of mainstream media could also play a pivotal role in changing the public perception of the issue, where explaining the impacts of this problem can help to engender empathy and support for the reform process.

4.2.3 Targeted Advocacy

In both Indonesia and Kenya, an important step was convincing key parliamentarians on the messages of the campaign and the need for reform. This was partly achieved through the utilisation of any existing relationship between activists and parliamentarians. In Kenya, there is strong engagement between many of the most powerful women's rights organisations and parliamentarians. FIDA-Kenya explained how they would try to visit the offices of significant MPs as often as possible so the cause would not be forgotten. There were many women's rights activists who were also involved in politics which helped to drive the issue forward.

163 UNHCR and Collective for Research and Training on Development – Action (CRTD-A), *Regional Dialogue on Gender Equality and Statelessness*, 2011. See also examples from the *20 Ans Barakat* campaign in Algeria, including a song regarding gender discrimination, available at: <http://www.youtube.com/watch?v=DP3XF0ncvCw>. The Organisation Centre d'Information et de Documentation sur les Droits de l'Enfant et de la Femme (CIDDEF), also in Algeria, created a substantial number of brochures and leaflets on the issue.

Indonesian activists used similar methods. Staff at the women's rights NGO Kalyanamitra engaged in informal meetings with parliamentarians in cafes whilst APAB convened seminars on various issues to provide space to socialise with government representatives. A strong partnership between the NGO APAB and Nursyahbani, a former Minister of Women's Affairs and now Minister of Social Affairs, was also pivotal. This relationship was seen to be critical right from the first invitation to propose the issue to the legislative council, up until the moment of the decision on the reform. Additionally, most of the founders of another involved organisation, IKI, came from various political parties and went on to also become MPs and even ministers. IKI was initially concerned with advocating for the revision of the citizenship law to remove ethnicity-based discrimination, but later added the women's issue to their advocacy. This influence is believed to have helped make citizenship reform a priority. Campaigners even emphasised small factors that they felt were important to sell their issue to the decision makers, such as ensuring they were always polite and never aggressive, and took note of relevant protocol and dress code. These examples show how the atmosphere of a cooperative and engaged relationship between advocates and government representatives made a substantive difference in achieving their aims.

4.2.4 Framing the Issue

Those advocating for reform in Indonesia and Kenya were very aware of making sure that they framed the issue in a way that was welcoming to different stakeholders. Both countries were parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) at the time of advocacy (as are Madagascar and Nepal), and neither had reservations to Article 9. Activists in both countries emphasised that this was an important tool that they used in the campaign. Yet it was also found to be important not to paint the problem as purely a women's rights matter, but also as one that affected other issues such as children's rights and even impacted the lives of many men. Pushing the issue of child protection and human rights was seen by the majority of key informants as a trump card in their respective campaigns. One Indonesian campaigner noted that "our voice at that time cried about children protection, that is our strong point and of course when you as a legislative parliament heard about child protection you have to grant them the right".¹⁶⁴ This could also be a tool to combat the distracting discourse on demographics in Nepal and Madagascar – ensuring that the relevant stakeholders look beyond just the women's rights issue and see the issue as a child rights issue.

The campaign in Indonesia, for instance, was at first seen to be unimportant, not affecting a large population of the country and being carried out by people who did not have any "real" problems. There was a somewhat negative perception of Indonesians married to expats – of Indonesian women with foreign husbands in particular, who were often perceived as being wealthy, upper class and largely unaffected by substantial problems. Initially, as in Madagascar and Nepal, the general public was not aware of the different dimensions of the problem, but with

continuous effort from all organisations to demonstrate how this discrimination had significant negative impacts on their families, public opinion slowly turned, in recognition that women who marry foreigners do also have problems. The prejudices of the government began to dwindle when they saw that Indonesian men married to foreign women could also have negative experiences with the law. The campaigners needed to create empathy and truly convince people that these problems could happen to anyone. One Indonesian stakeholder explained the importance of a well-targeted campaign and that after the campaign's target is decided, be it rural or urban dwellers, a strong dialogue should be built with them, which is another strategy that could be adopted in Madagascar and Nepal. This dialogue was important to explain to people, through a story, the kind of impacts on their lives or the lives of their children if they were in the same position. Clear and colourful bulletin-like pamphlets on the issue were also created to assist with this process and simplify the issue for the target audience.

In Kenya too, in campaigning on the nationality issue, there was a move away from the women's rights discourse and increased attention given to the aspect of the rights of the child. This was a strong angle to take as it steered the debate away from the complexities of adult relationships and the often negative attitudes towards women marrying foreigners. Indeed, the issue was often made appealing to both women and men by focusing on the issue of "family rights". Messaging was also developed to target men specifically: how would these men feel, as Kenyans, if their own grandchildren were born foreign in their country because their daughters had married someone from outside of Kenya?¹⁶⁵ This built on the idea that as good, patriotic, family-oriented men, they should support the right for their grandchildren to belong to their country. This was perceived as a very strong message that was able to convince many men of the importance of this reform.

Ensuring that good practice examples and case-studies were drawn from the right circle of countries was also important. Drawing comparisons between Indonesia and its ASEAN neighbours and not countries in the Americas, for instance, was deemed important. Similarly, comparing Kenya with other East African countries, which mostly have gender equal nationality laws, was also deemed a successful tactic. Both Indonesia and Kenya can now be seen as champion countries for other countries in their respective regions addressing discriminatory nationality laws.

4.2.5 Researching and Drafting Reform Proposals

It was a shared belief between the campaigns in Indonesia and Kenya that contributing to the discussion of what an alternative law would look like and even participating in formulating specific amendments to the law were significant in shaping a successful discourse. This allowed those lobbying for change to emphasise that they had done their research, knew what reform would entail and understood

165 Equal Rights Trust interview with Patricia Nyaundi, Kenyan National Human Rights Commission, 13 February 2015, Nairobi.

what a changed law should contain. Advocates believed that this would also make it easier for stakeholders, and particularly parliamentarians, to envision what the law would look like. In Indonesia, for example, academics and civil society members were ultimately invited to put forward an academic draft with the government team. The draft was attached to the proposed bill and submitted by the government to parliament, helping to inform the discussion of reform. Additionally, Indonesian campaigners would always make sure they had done good research on the issue so as to be able to counter any arguments that might be raised against reform. APAB, for example, carried out a study on the nationality laws of 122 countries which was presented to the legislative council. Indonesian Minister Nursyahbani invited APAB to join her when she confronted the government delegation on the issue in order for her to make sure that any discussion was coming from a well-informed and well-researched position. As mentioned, similar research has been conducted in Nepal and could be utilised in more targeted advocacy among decision makers as well as to inform public debate.

In Kenya, many different stakeholders and organisations were involved from the start in drafting the new Constitution. Following a failed referendum in 2005 and, indeed, 20 years of floundering attempts to reform the Constitution, the Kenyan government was keen to have an inclusive process. This paid off: the new Constitution achieved 67% approval from its population. Civil society organisations, especially FIDA-Kenya, put great effort into ensuring that they were a part of the discourse and also contributed research which could inform the discussions.

4.3 The Impact of Reform

Aminah from Indonesia, whose son was previously unable to access Indonesian citizenship, expressed her delight when she heard of the reform: “We were so happy having this article put in the new law. We cried a lot, we were so happy, we were so happy, we were so excited.” She went on to explain the importance of this law for her, as before the reform her son would just consider himself Japanese as his father, and did not feel welcome in his own country: “For other people it might be like, ‘ugh what is that, it is not important’. No you are wrong, it is very important because it is a sense of identity and we can give our identity to our children.”¹⁶⁶

The legal reforms in Indonesia and Kenya have resulted in individuals acquiring nationality, who had not previously been entitled to do so, even if some problems of implementation remain.¹⁶⁷ In other words, the change in the law in both countries has brought change on the ground for those who previously encountered problems. Beneficiaries in both countries reported a number of positive impacts on their lives. These ranged from tangible matters such as their access to education, employment and services and their ability to travel, to less tangible matters such as their sense of identity and empowerment and an overall sense of security through having legal rights.

166 Equal Rights Trust interview with Aninah, 13 January 2015, Jakarta.

167 See above, section 4.2.

Previously, in Indonesia, having children with a foreign man meant a heavy burden on the family in terms of both time and money, which was coupled with the weight of insecurity. This was because if there was to be a change in marital circumstances, the mother could lose her rights to keep her children in Indonesia. One of the greatest impacts obtaining nationality had was therefore the ability for children to remain in the country legally without the need for a residency permit or visa. This significantly contributed to a sense of security for these families. Sandra, from Indonesia, used to have to travel in and out of the country every few months to obtain a stay permit for her daughter before the reform – which she described was a big burden on the family. She talked about how she supported and took the opportunity of reform mainly as it stopped “this hecticness of bringing my daughter outside of Indonesia and coming back”.¹⁶⁸

Improved access to employment for these families, which in turn contributed to their financial stability, was also an issue that the respondents were very positive about. Access to education, particularly public schools, similarly lifted a real burden off families who had previously either had to send their children to private schools – or as was often reported in Kenya – had to produce fraudulent birth certificates to ensure their children were able to enter school.¹⁶⁹ Ernesto, the son of an Indonesian woman and a Spanish man, was over 18 at the time of the 2006 reform and so unable to directly benefit himself. However, as a Spanish citizen married to an Indonesian woman, he was thrilled with the new rights that his children had acquired through their Indonesian mother as he explained:

*Now I don't have any problems sending my children to any school. Even the public school if I would like to, they have the Indonesian passports as well to be able to travel for example in Asia as well. Those benefits. (...) at this time have quite an impact, there is a big difference between their era and mine.*¹⁷⁰

Feelings of confidence, particularly among the women when speaking about supporting their families, also grew after benefiting from the laws. Sandra was going through a divorce when she was able to obtain nationality for her child. Her husband's lawyer would always question the nationality of her daughter and finally she was able to submit paper work that proved that her daughter had become legally an Indonesian. “I think this law empowered women. And it also provided security for them,” she said.¹⁷¹

168 Equal Rights Trust interview with Sandra, 8 January 2015, Jakarta.

169 Equal Rights Trust interview with Richard Olela, Head of Registration, District Office, 6 February 2015, Kisumu, Kenya.

170 Equal Rights Trust interview with Ernesto, 18 January 2015, Jakarta.

171 Equal Rights Trust interview with Sandra, 8 January 2015, Jakarta.

5. CONCLUSIONS AND RECOMMENDATIONS

The findings highlighted in Part 3 indicate the very significant impacts that gender discriminatory nationality laws can have on women and their children. These impacts can reach into almost every aspect of their lives, affecting their access to a wide range of rights including healthcare, education and employment. Part 3 also identifies that those who are unable to access nationality as a result of these laws suffer very real emotional impacts including detrimental effects on their personal wellbeing and feelings of despair. In the worst cases the laws result in statelessness which often leads to families living on the margins of society. Our findings show that discrimination is a key thread which not only explains the existence of the laws but also weaves the narrative of each affected family. Those most likely to suffer are often the most socio-economically marginalised or members of ethnic or religious minorities. The research from Indonesia and Kenya set out in Part 4 gives some cause for optimism: we heard families who spoke of the significant difference that reform had made to their lives. However, it also gives cause for caution, with research indicating a series of implementation problems including lack of public awareness and corruption standing in the way of effective implementation. Our exploration of the reform efforts in Madagascar and Nepal also identified that there is some way to go before reform takes place in both countries and an ongoing effort is required to ensure this happens.

Given these conclusions and the findings in the previous Parts of this report, this Part offers a set of recommendations to pre and post-reform countries, civil society, the United Nations High Commissioner for Refugees (UNHCR) and other UN agencies. The purpose of these recommendations is to assist the work towards the elimination of gender discrimination in nationality laws and the prevention of the consequent statelessness and further discrimination that these laws create. These recommendations are intended to complement the Global Action Plan to End Statelessness, particularly in achieving Action 3 to remove gender discrimination from nationality laws.¹⁷²

1. General

Equality and Non-discrimination

All actors should mainstream the principles of equality and non-discrimination in all initiatives aimed at combating gender discriminatory nationality laws and statelessness, with a view to recognising and eliminating discrimi-

172 UNHCR, *Global Action Plan to End Statelessness – 2014–2024*, November 2014.

nation, including multiple discrimination, as both a cause and consequence of the denial of citizenship.

Accession to International Treaties and Compliance with International Obligations

Those countries that have not yet ratified international and regional human rights instruments which protect the rights to equality and non-discrimination are urged to do so, in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). States which have entered reservations to CEDAW are urged to retract them. Civil society and UN agencies should support the ratification of these treaties and the removal of reservations.

2. Pre-Reform Countries

The recommendations below aim to address the situation in countries which are yet to reform their nationality laws to remove discrimination and to highlight efforts that can be made by civil society and UNHCR and other UN agencies to encourage reform.

Government

The governments of countries that are yet to reform their nationality laws to remove gender discrimination are urged to take the following steps:

- a. Reform their nationality law and practice to remove gender discrimination in accordance with international law, in particular to ensure that children of citizen mothers can acquire nationality and do not continue to suffer the consequences of denial of citizenship.
- b. Ensure that the reform of the nationality law is enacted with retroactive effect to allow individuals born before the change in the law to acquire nationality through their citizen mothers and to confirm their nationality through simple and accessible procedures.
- c. Provide adequate information and training to all relevant staff to ensure the full and fair application of existing provisions within the nationality law which allow children born to citizen mothers to acquire nationality in specified circumstances and ensure that any related application procedure is simple and accessible.
- d. Take urgent steps to provide access to basic rights and services for those currently affected by gender discrimination in the nationality law, in particular with regard to access to a secure immigration status, identity and travel documents, employment, education, and healthcare.

Civil Society

In order to support the reform of gender discriminatory nationality laws, civil society is urged to:

- a. Draw lessons from civil society efforts in countries which have successfully campaigned for reform of the nationality law to remove gender discrimination, continue and expand advocacy efforts to realise equal nationality rights for women and men.
- b. Continue to raise awareness on the need for reform through public events, traditional and social media, including by finding further ways to involve affected families in such activities.
- c. Identify and utilise further opportunities to raise the issue of gender discrimination in nationality law and its impacts in the country in relevant international forums, including by strengthening and expanding collaboration with other organisations working on the issue internationally and engaging with the Global Campaign for Equal Nationality Rights.

UNHCR and Other UN Agencies

UNHCR and other UN agencies are urged to:

- a. Work with governments to promote law reform to grant women equal nationality rights and ensure that all children enjoy the right to a nationality, including through providing good practice examples from other countries and highlighting the positive social impacts of nationality reform.
- b. In collaboration with civil society, provide information and legal advice to persons who are unable to access nationality due to the poor or discriminatory application of existing provisions of the nationality law, and to help those excluded from nationality to access basic rights and services.
- c. Encourage and support civil society organisations to bring this issue to the attention of relevant international forums.

3. Post-Reform Countries

As the findings of this report have highlighted, reforming nationality laws to remove gender discrimination is one of several steps that need to be taken to ensure equal access to citizenship. The following recommendations cover steps to be taken to ensure equal access.

Government

Governments that have taken the positive step of reforming their nationality laws to remove gender discrimination are urged to continue to work towards ensuring equal access to citizenship by:

- a. Taking urgent steps to ensure that the reformed laws are implemented in practice, fully and without discrimination, including by:
 - i. Providing adequate information and training to all relevant staff on the amended nationality rules and their application, including in complex cases such as with regard to children born outside marriage.
 - ii. Putting in place mechanisms to ensure that local officials, including in rural and border areas, apply the law fairly and without discrimination based on the nationality, statelessness or legal status of a child's father.
 - iii. Taking further steps to disseminate information about the amended nationality rules throughout the general population, making particular efforts to reach rural and migrant worker populations, as well as nationals of the country who are residing abroad.
- b. Reviewing the process of retroactive application of the nationality law reform to ensure that it is accessible and effective, including by reconsidering any deadlines or other procedural matters that may act as a barrier to acquisition of nationality.
- c. Identifying opportunities to champion reform of gender discriminatory nationality regulations at the regional and international level, including by participating in peer-learning on law reform with governments from non-reform countries as well as by considering accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Civil Society

Civil society can support efforts to ensure the effective and non-discriminatory implementation of nationality rules through the following steps:

- a. Monitoring and assessing the implementation of the amended nationality rules by the administrative authorities and the courts and report problems to relevant government actors and in relevant international forums.
- b. Working with government and UN agencies, as relevant, to further raise awareness of and disseminate information on the new nationality rules, including through traditional and social media.
- c. Establishing or expanding legal counselling and assistance projects to assist beneficiaries who encounter problems claiming nationality under the new rules.
- d. Participating in information sharing and capacity building initiatives with civil society actors in other countries to share good practices on successful advocacy for legal reform, including by engaging with the Global Campaign for Equal Nationality Rights.

UNHCR and Other UN Agencies

UNHCR and other UN agencies should:

- a. Encourage and support relevant government stakeholders to take the necessary steps to ensure that the reformed laws are implemented in practice, fully and without discrimination.
- b. Work with government and civil society organisations to identify and address knowledge gaps among beneficiaries on the new nationality rules.
- c. Support legal assistance projects aimed at helping individuals encountering problems to access their rights under the new legislation.
- d. Encourage and assist governments that have enacted reform to share information and experiences with other governments that have not yet amended their laws on the benefits of and modalities for reform.

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Annex 1

List of Stakeholders Interviewed and/or Providing Input for This Report

Kenya	Alan Nyangi, Legal Officer at Kituo Cha Sheria Office Naila Sabani, Muslims for Human Rights Richard Olela, Head Of Registration, Kisumu District Office Director Major Gen. Gordon Kilahangwa, Ministry of Immigration Patricia Nyaundi, Kenyan National Human Rights Commission
Indonesia	Dewi Tjakrawinata, APAB Rita Pranawati, KPAI Masruchah Ketua, Komnas Budi Mahdan Ahdani, Sapa Institute Dadang, Serikat Buruh Migran Karawang Eddy Setiawan, Institute of Citizenship IKI Jeffrey Savage, UNHCR Anis Hidayah, Migrant Care Prof. Dr. M. Machasin Deputy Minister in Guidance for Islamic Community Prof. Harkristuti Harkrisnowo, Director General for Ministry of Law and Human Rights Prof. Zudan Fakrulloh, Head of Legal Department in Ministry of Home Affairs Gender expert and ex-parliamentarian, Nursyahbani Katjasungkana Rina Prihatiningsih, KPC Melati Ani Luthan, PERCA Suma Mihardja, Legal Aid Foundation Lilis listyowati Rena Herdiyani, Kalyanamitra Fransiska Ditta, Kalyanamitra Grata Werdaningtyas, Deputy Director for the Rights of Vulnerable Groups

Madagascar

Mina Rakotoarinsrasata, Focus Development Association
Noro Ravaozanany, Focus Development Association
Anna Sterzi, Regional Protection Officer (Statelessness),
UNHCR Regional Representation for Southern Africa
Omer Kebiwou Kalameu, Human Rights Advisor to the Resi-
dent Co-ordinator of the Office of the UN in Madagascar
Lydia Marie Toto Raharimalala, Member of the National Assem-
bly for Fadriana
Rova Harimboahangy Rabetaliana, Director for the Promotion
of Minorities at the Ministry of Population, Social Protection
and Women
Juvence Ramsay, Director of the Cabinet of the President,
National Assembly
Lucien Rakotoniainie, Director of Human Rights and Interna-
tional Relations, Ministry of Justice
Fanja Rajoelison, Advisor to the Director of Human Rights, Min-
istry of Justice
Mohamed Yanalde, Director of the Cabinet of the Vice-Presi-
dent, National Assembly
Lova Rajaoarinelina, Advisor to the President of the National
Assembly on Human Rights
Hassan Soufiane, Head of Police, Ministry for Public Security
Saeed, Journalist, Radio Sky, Majungha
Raissa, District office, Majungha
Sheikh Omar, Imam, Majungha
Alain Raharison, Justice et Paix Madagascar
Shagur, Leader of the Karana Community, Majungha

Nepal	<p>Cecile Fradot, UNHCR</p> <p>Luma Singh Bishowkarma, UNHCR</p> <p>Sheikh Chand Tara, National Women's Commission</p> <p>Hasta Bahadur Sunar, Dalit NGO Federation</p> <p>Dipendra Jha, Terai Justice Centre</p> <p>Dev Gurung, Inclusive Forum Nepal</p> <p>Tika-Maya Jirel, Women for Human Rights single women group (WHR)</p> <p>Mohna Ansari, National Human Rights Commission</p> <p>Meera Dhungana, FWLD</p> <p>Subin Mulmi, FWLD</p> <p>Sushma Gautam, FWLD</p> <p>Subin Mulmi, FWLD</p> <p>Hom Lamsal, FWLD</p> <p>Munaslu Gurung, FWLD</p> <p>Sabin Shrestha, FWLD</p> <p>Sami Thapa, Samida Women Development Forum</p> <p>Sumnima Tuladhar, Child Workers in Nepal Concerned Centre (CWIN)</p> <p>Yagya Koirala, Assistant CDO Kathmandu, Ministry of Home Affairs</p> <p>Sunil Khanal, Under Secretary, Ministry of Home Affairs</p> <p>Tulsa Lata Amatya, Community Action Centre Nepal (CAC)</p> <p>Suman Adhikari, Ward Secretary, Kathmandu Municipal Council</p> <p>Two Judges, Kathmandu District Court</p> <p>Phanindra Gautam, Under Secretary, Ministry of Law and Justice</p> <p>Hon' Kamala Pant, Constituent Assembly Member, Member of Constitution Drafting Committee</p> <p>Umesh Shrestha, Blue Diamond Society</p> <p>Madan Dhami, Govt. Attorney, Attorney General's Department</p> <p>Members of the Nepal Civil Society Network of Citizenship Rights</p> <p>Hon' Ranju Jha, Constituent Assembly Member, Chair of the Parliamentary Committee on Women, Children and Social Welfare</p> <p>Shiva Gaunle, Former President of Federation of Nepal Journalists</p>
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Annex 2

International Standards Relating to Gender Equality in the Transmission of Nationality from Parent to Child

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Article 9	9.1. States Parties 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. 9.2. States Parties shall grant women equal rights with men with respect to the nationality of their children.
Convention on the Rights of the Child (CRC)	Article 7	7.1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 7.2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
	Article 2.1	2.1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Organisation of Islamic Cooperation's Covenant on the Rights of the Child in Islam	Article 7	<p>7.1. A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined and to know his./her parents, all his/her relatives and foster mother</p> <p>7.2. State parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside the territory.</p>
African Charter on the Rights and Welfare of the Child	Article 6	<p>6.1. Every child shall have the right from his birth to a name.</p> <p>6.2. Every child shall be registered immediately after birth.</p> <p>6.3. Every child has the right to acquire a nationality</p>
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	Article 6	<p>6.g. a woman shall have the right to retain her nationality or to acquire the nationality of her husband;</p> <p>6.h. a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;</p>

The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and advance equality worldwide. The Trust promotes a unified human rights framework on equality, focusing on the complex relationships between different types of disadvantage and developing strategies for translating the principles of equality into practice.

"I am all alone but I feel my daughter's future is also in darkness," said Deumaya from Kathmandu. She may feel alone, but she is one of many mothers throughout 27 countries around the world who cannot pass their nationality to their children. Instead, Deumaya must watch despairingly as her daughter remains on the fringes of society – facing a future without nationality, employment or basic freedoms. For the sake of her daughter, she wants change.

This change may come. The movement towards the reform of gender discriminatory nationality laws is growing – through organised grassroots movements and the Global Campaign for Equal Nationality Rights. The number of countries reforming these laws is increasing. Their experiences provide useful lessons.

This report aims to increase the research base and act as an advocacy tool. It argues that reform can and must be achieved. The report identifies the impact of discriminatory nationality laws on the lives of women and their children in Madagascar and Nepal; barriers to law reform in Madagascar and Nepal; and key tools which overcame reform barriers in Indonesia and Kenya. It makes recommendations for key stakeholders in the reform of Malagasy and Nepali law.



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