



**UNHCR**  
The UN Refugee Agency



**BACKGROUND NOTE ON**  
**Discrimination**  
**in Nationality**  
**Laws and**  
**Statelessness**

**OCTOBER 2021**

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*Discrimination on the basis of ethnicity; race; religion; age; sex; gender; disability; language; or sexual orientation, gender identity and gender expression, and sex characteristics (SOGIESC) is a cause of statelessness.<sup>1</sup> Direct or indirect discrimination on these grounds is currently found in the nationality laws of more than 80 countries. The risks of statelessness associated with discriminatory nationality laws are underscored by the fact that more than 75% of the world's known stateless populations belong to ethnic, religious or linguistic minority groups.<sup>2</sup>*

*This background note provides an overview of discrimination in nationality laws, and complements the UNHCR background note on gender discrimination in nationality laws.<sup>3</sup> The note does not purport to be a comprehensive overview of all discrimination issues related to nationality law and practice, but simply aims to provide relevant examples.*

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<sup>1</sup> As well as compounded and intersectional forms of discrimination on the basis of multiple grounds.

<sup>2</sup> This percentage is based on statistics for stateless populations included in UNHCR's 2016 Global Trends Report that are known to belong to an ethnic, religious or linguistic minority. It does not account for minority groups that compose a proportion of a known stateless population in a country but do not form the majority of that population. The percentage also does not include stateless minority groups for which UNHCR does not have adequate statistical data.

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2020*, 14 July 2020, available at: <https://www.refworld.org/docid/5f0d7b934.html>.

# Introduction

The use of citizenship laws to reinforce certain social hierarchies and distinctions was once common and widespread. For example, European colonial powers instituted racially discriminatory citizenship systems in parts of Africa, Latin America, South Asia, and the Pacific. These approaches had a lasting impact on the national legal systems that emerged after independence.<sup>4</sup> In many countries, sex discrimination that was common in European nationality laws found its way into the laws of newly independent nations, while in some countries new nationality laws were drafted specifically to try to exclude former colonizers from eligibility for citizenship in the newly independent States.

Discrimination in citizenship laws may be direct or indirect. Direct discrimination occurs when a person is treated less favorably than another person is, has been, or would be treated in a comparable situation on the basis of one or more protected grounds; or when a person is subjected to a detriment on the basis of one or more grounds of discrimination. Indirect discrimination occurs when a provision, criterion or practice has or would have a disproportionate, negative impact on persons having a status or a characteristic associated with one or more grounds of discrimination. While this background note focuses primarily on direct discrimination, reference is made to indirect discrimination in the context of disability and SOGIESC discrimination.

The note covers discrimination in the acquisition of citizenship and discrimination in naturalization. It does not however cover discrimination in the context of deprivation of nationality. While discrimination in the acquisition of citizenship at birth is generally a more significant cause of statelessness, discrimination in naturalization procedures can also lead to new instances of statelessness and prevent governments from resolving existing situations of statelessness.<sup>5</sup> The acquisition of citizenship at birth is generally based on the principles of *jus soli* (nationality by birth on the territory) and *jus sanguinis* (nationality by descent). Most countries' nationality laws involve a combination of these two principles.

Acquisition of citizenship later in life is often realized through naturalization or similar procedures. Though grounds for eligibility vary, marriage to a citizen and length of residence in the country are typical factors that governments consider in the review of naturalization applications. Although most discriminatory provisions found in nationality laws apply to naturalization rather than citizenship by birth, these areas are often interconnected. For some populations, discriminatory provisions and practices cause statelessness at birth and then preclude them from resolving their situation through naturalization later in life. As with laws regarding the acquisition of citizenship at birth, conditions surrounding

4 Fitzgerald, "The History of Racialized Citizenship" in Ayelet Shachar et al. (eds.), *The Oxford Handbook of Citizenship*, 2017, Oxford University Press, p. 134.

5 Facilitated naturalization is part of Action 6 of the UNHCR Global Action Plan to End Statelessness by 2024. See UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, at 16, available at: <https://www.refworld.org/docid/545b47d64.html>. For a list of countries that have pledged to take action in this regard, see UN High Commissioner for Refugees (UNHCR), *High-Level Segment on Statelessness: Results and Highlights*, May 2020, available at: <https://www.refworld.org/docid/5ec3e91b4.html>.

naturalization may be overtly discriminatory, or procedural requirements may pose discriminatory barriers. As naturalization procedures are generally discretionary in nature, there is a greater risk that discrimination can play a role.

Nationality alone is not a cure for the stigmatization and discrimination faced by minority groups<sup>6</sup> rendered stateless on the basis of race, ethnic origin, religion, disability, or other grounds. Statelessness intersects with and exacerbates barriers already faced by minority populations and other disadvantaged groups. The cycle of exclusion and marginalization that statelessness reinforces, impedes access to services and prevents the enjoyment of human rights, sometimes afflicting entire communities for generations. However, nationality is generally crucial to the full and equal exercise of human rights and freedoms. Under international law, a State's nationality law must be consistent with international human rights law,<sup>7</sup> which as discussed below, generally prohibits direct and indirect discrimination on the grounds covered in this background note.

## International Legal Framework

The right to a nationality and the principle of non-discrimination in nationality matters are well established in international human rights law.<sup>8</sup> The 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and 1961 Convention on the Reduction of Statelessness (1961 Convention) establish States parties' obligations to work on a non-discriminatory basis toward the prevention and reduction of statelessness within their territories. The 1961 Convention contains an explicit prohibition on deprivation of nationality on racial, religious or political grounds.<sup>9</sup> Statelessness negatively impacts on rights that are protected in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Individuals and communities affected by statelessness are often unable to exercise the fundamental rights protected by these treaties, such as liberty of movement and the right to marry in the ICCPR, or the right to employment and medical care in the ICESCR.

In addition to the protections set out in the ICCPR and ICESCR which apply to everyone, the international community has recognized that certain groups require specific protection due to persistent inequality or

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6 See United Nations General Assembly (UNGA), *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 3 February 1992, A/RES/47/135, available at: <https://www.refworld.org/docid/3ae6b38d0.html>.

7 United Nations Human Rights Office of the High Commissioner (OHCHR), *OHCHR and the right to a nationality*, available at: <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

8 For example, article 15 of the Universal Declaration of Human Rights states that everyone has the right to a nationality, and articles 2 and 24 of the International Covenant on Civil and Political Rights provide for non-discrimination and every child's right to acquire a nationality, respectively. See Universal Declaration of Human Rights, UNGA Res. 217 A(III) (UDHR), art. 15 and International Covenant on Civil and Political Rights, 999 UNTS 171, (ICCPR), arts. 2 and 24.

9 Convention on the Reduction of Statelessness, 989 UNTS 175, (1961 Convention), art. 9.

abuse. Treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) offer additional protection. States parties to these treaties are obliged to protect the right to nationality of the groups in question through the enactment or reform of relevant laws.

ICERD prohibits racial and ethnic discrimination, requiring States parties to enact or reform legislation and policies to ensure that such discrimination does not impede the right to nationality.<sup>10</sup> Although the treaty contemplates differential treatment for citizens and non-citizens, the CERD Committee has affirmed that deprivation of citizenship due to race or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality and advised States to examine and remove discriminatory barriers to citizenship or naturalization.<sup>11</sup>

CEDAW obliges States parties to ensure women's equal rights with regard to acquisition, transfer, change and retention of nationality.<sup>12</sup> For women with multiple marginalized identities, discrimination compounds discrimination based on race, disability, and other factors, leading to an increased risk of rights violations. The CEDAW Committee addressed aspects of these intersectional concerns and their threat to the right to nationality in General Recommendation No. 32, urging States parties to implement CEDAW to protect women who are refugees, asylum-seekers, or stateless—categories that may themselves overlap.<sup>13</sup>

CRC, which is the most acceded-to international human rights instrument, with 196 States parties, provides that every child has the right to acquire a nationality from birth "without distinction of any kind, such as race, colour, sex, language, religion . . . or other status."<sup>14</sup> The CRC Committee has emphasized that States must grant nationality to otherwise stateless children born on their territory regardless of parents' legal status, race, ethnicity, or religion, among other factors, and non-discrimination has been a principal theme in dozens of the Committee's country recommendations related to the right to a nationality.<sup>15</sup>

10 International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, (ICERD), arts. 2(1), 5(d)(iii).

11 UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXX on Discrimination Against Non Citizens*, 1 October 2002, available at: <https://www.refworld.org/docid/45139e084.html>.

12 Convention on the Elimination of all Forms of Discrimination Against Women, 1249 UNTS 13, (CEDAW), art. 9.

13 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <https://www.refworld.org/docid/54620fb54.html>. See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 27 on older women and protection of their human rights*, 16 December 2010, CEDAW/C/GC/27, available at: <https://www.refworld.org/docid/4ed3528b2.html>, which discusses the combination of gender and age discrimination faced by older women.

14 Convention on the Rights of the Child, 1577 UNTS 3, (CRC), arts. 2, 7 and 8.

15 William Thomas Worster, "The Obligation to Grant Nationality to Stateless Children Under Treaty Law", 2019, *Tilburg Law Review* 204. See also Institute on Statelessness and Inclusion, "Every Child Has the Right to a Nationality", September 2015, p. 2.

CRPD likewise obliges States parties to guarantee the right of persons with disabilities to acquire and change their nationality and to access nationality documentation on an equal basis with others.<sup>16</sup>

Regional human rights instruments further reinforce States' obligations to ensure non-discriminatory access to nationality. The African Charter on the Rights and Welfare of the Child provides for the right of every child to acquire a nationality without discrimination.<sup>17</sup> The American Convention on Human Rights similarly prohibits discrimination and guarantees the right of every person to a nationality.<sup>18</sup> The European Convention on Human Rights (ECHR) does not contain an explicit right to nationality, but the European Court of Human Rights (ECtHR) has left open the possibility that the right to respect for the private life of an individual could preclude States from arbitrarily denying citizenship,<sup>19</sup> and ruled that indirect racial discrimination in nationality matters constitutes a violation of the prohibition of discrimination when read in conjunction with the right to family life.<sup>20</sup> The Council of Europe has produced the European Convention on Nationality which contains a clear formulation of the principle of non-discrimination in nationality matters,<sup>21</sup> as well as the Convention on the Avoidance of Statelessness in Relation to State Succession. The League of Arab States has adopted the Arab Charter on Human Rights, which stipulates that all persons shall have the right to a legal identity and a life of dignity. It further enshrines the equality of all human beings.<sup>22</sup>

Indirect discrimination can lead to violations of the right to a nationality and the principle of non-discrimination in international human rights law.<sup>23</sup> Even when nationality laws contain no explicitly discriminatory provisions, practice should be monitored to ensure consistent and equitable application, especially in the case of discretionary procedures. In countries with multi-step processes for the acquisition of citizenship, such as a required period of holding a residence permit or other preliminary status, discrimination may not be explicit in its citizenship laws but present in an earlier part of the process, such as admission to the country.<sup>24</sup> Discrimination in law or practice at any stage can prevent a stateless person from achieving naturalization.

16 Convention on the Rights of Persons with Disabilities, 2515 UNTS 3, (CRPD), arts. 5, 12 and 18. See also UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 1 (2014). Article 12: Equal recognition before the law*, 19 May 2014, CRPD/C/GC/1 and UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 6 (2018) on equality and non-discrimination*, 26 April 2018, CRPD/C/GC/6.

17 Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), art. 3 and 6(3).

18 Organization of American States (OAS), *American Convention on Human Rights*, "Pact of San Jose", Costa Rica, 22 November 1969, art. 20.

19 See e.g., *Karassev and Family v. Finland*, European Court of Human Rights, App. No. 31414/96, 12 January 1999 and *Genovese v. Malta*, European Court of Human Rights, App. No. 53124/09, 11 October 2011.

20 *Biao v. Denmark*, European Court of Human Rights, App. No. 38590/10, 24 May 2016.

21 Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, art. 5.

22 League of Arab States, *Arab Charter on Human Rights*, 2004. See also League of Arab States, Arab Declaration on Belonging and Legal Identity, 28 February 2018.

23 Chrisa Tobler, "Limits and potential of the concept of indirect discrimination", 2008, *European Commission*, pp. 12-13.

24 Fitzgerald, n. 4, p. 29.

# Grounds of Discrimination

## Race and ethnicity

Explicit racial discrimination exists in the nationality laws of a relatively small number of States, usually linked to the State's particular history. Several African States limit nationality, whether by birth or naturalization, to persons of African descent.<sup>25</sup> This practice reflects their founders' intention of prioritizing the rights of those previously restricted under colonial rule, or of creating a haven for formerly enslaved persons and their descendants to return to Africa. For example, Liberia's nationality laws limit citizenship to persons who are "Negro, or of Negro descent,"<sup>26</sup> a policy connected to the idea of Liberia as "a home for the dispersed and oppressed children of Africa."<sup>27</sup> Within Liberia, this provision has been the subject of debate in recent years. A similar provision can be found in Sierra Leone's nationality laws, which has also been subject to debate in recent years.<sup>28</sup>

Citizenship laws that categorically exclude minority ethnic groups highlight how statelessness is both a consequence of prejudice and a source of marginalization in its own right.<sup>29</sup> Exclusion of an ethnic minority sometimes takes the form of a list of ethnic groups who qualify for citizenship at birth, barring all others by default. Often, such lists invoke indigenous origins, designating for inclusion the groups who were present in the country at a certain date, such as the date of independence. As this approach could be considered objective, it can contribute to veiled discrimination passing unquestioned. It could mean that a group is not granted citizenship in a State at the time of its establishment despite presence on its territory or,<sup>30</sup> if enacted later in the State's history, that an entire ethnic group loses the nationality they previously held. Strict *jus sanguinis* nationality laws perpetuate these initial exclusions; when citizenship is conferred only by descent, the descendants of the original excluded group remain ineligible despite generations of continued residence on the territory.

25 Botswana, Chad, Democratic Republic of the Congo, Liberia, Mali, Sierra Leone, Somalia, South Sudan, Uganda are among the African nations that use racial and ethnic criteria to determine citizenship, according to a survey of nationality laws.

26 *Liberian Constitution of 1984*, ch. IV, art. 27, available at: <http://constitutionnet.org/sites/default/files/Liberia%20Constitution%201984.pdf>.

27 *Liberian Constitution of 1847*, art. V, sec. 13, available at: <http://crc.gov.lr/doc/CONSTITUTION%20OF%201847%20final.pdf>. The 1847 Constitution governed Liberia from the time of its founding until its suspension in 1980.

28 See Haberler.com, *Lebanese Born in Sierra Leone Denied Birth Citizenship*, 7 November 2016, available at: <https://en.haberler.com/lebanese-born-in-sierra-leone-denied-birth-946231/>. See also Lina Beydoun, "The Complexities of Citizenship among Lebanese Immigrants in Sierra Leone", April 2013, *African Conflict and Peacebuilding Review* 3(1) 112-143.

29 See e.g., UN High Commissioner for Refugees (UNHCR), "*This is Our Home*" *Stateless Minorities and their Search for Citizenship*, 3 November 2017, p. 8, available at: <https://www.refworld.org/docid/59e4a6534.html>; Lindsey N. Kingston, "Worthy of Rights: Statelessness as a cause and symptom of marginalization" in Tendayi Bloom et al. (eds.), *Understanding Statelessness*, 2017, Routledge.

30 This was for example the case in Uganda where a number of groups were not included in the Constitutional Schedule of ethnic groups considered as indigenous communities despite residing in the country at the cut-off date which preceded the date of independence.



In the context of State succession, racial discrimination can lead to statelessness due to the failure or refusal to register minority ethnic groups. Some of the ethnic Kurds in Syria, for example, were not registered as citizens of the newly established Syrian territory after the breakup of the Ottoman Empire in the 1920s.<sup>31</sup> Following Syria's formal independence in 1945 and a 1962 census in the al-Hasakah province, a region inhabited predominantly by Kurds, many ethnic Kurds were registered as "Hasakah foreigners" and consequently left stateless.<sup>32</sup> While Legislative Decree No. 49 of 2011 granted citizenship to thousands of ethnic Kurds, many of them are believed to remain stateless.<sup>33</sup> In Kuwait, many persons of nomadic tribes native to the Arabian Peninsula were unable or unwilling to register as nationals when the country gained independence in 1961. They are commonly referred to as "Bidoon".

Beyond the context of State succession, racial discrimination in nationality laws is highly visible in Myanmar, where the 1982 Citizenship Law excluded the Rohingya from the list of ethnic groups that are eligible for citizenship and rendered them stateless.<sup>34</sup> Ever since Myanmar enacted this Citizenship Law, the Rohingya have experienced extreme forms of persecution, and State-sponsored violence has led to loss of life and forced displacement on a large scale.

In 2010, in the Dominican Republic, a new Constitution was adopted which prevented the automatic acquisition of citizenship by Dominican-born children of parents in an irregular migratory status. In 2013, the Constitutional Court's judgment 168-13 established that only persons born in the Dominican Republic to Dominican parents or legal residents are considered to be citizens. As a result, children born in the Dominican Republic to parents with irregular immigration status were not entitled to Dominican citizenship. Without explicitly mentioning race or ethnic origins, the ruling's retroactive application resulted in the revocation of nationality for thousands of people who were born in the Dominican Republic after 1929, most of them of Haitian descent.

Racial or ethnic prejudice, even when not codified in laws, can have a serious effect on the ability to acquire nationality. Characteristics of race, ethnic origin, religion, and language can contribute to the general perception of a minority group as foreigners within a nation. This stigma can make it more difficult for them to navigate administrative procedures and undermine public support for legislation to include them as citizens. One such community is the Roma, who live primarily in Europe and whose members are at risk of statelessness. Their access to nationality has been a long-standing issue, aggravated by displacement and other effects resulting from the breakup of the former Republic of Yugoslavia.<sup>35</sup> No State has laws specifically targeting the Roma, but racial discrimination against them in Europe can be severe and is one of the factors inhibiting their access to nationality. The CERD

31 Minority Rights Group International, *Causes of Minority Statelessness*, available at: <http://stories.minorityrights.org/statelessness/chapter/causes-of-statelessness>.

32 Human Rights Watch, "Syria: The Silenced Kurds", 1 October 1996, E804, available at: <https://www.refworld.org/docid/3ae6a8260.html>.

33 Zahra Albarazi, "The Stateless Syrians", 2013, *Tilburg University*, available at: <https://www.refworld.org/pdfid/52a983124.pdf>.

34 Human Rights Watch, "Discrimination in Arakan", 2000, available at: <https://www.hrw.org/reports/2000/burma/burm005-02.htm>.

35 See UNHCR, No. 29, pp. 20-27.

Committee issued a General Recommendation in 2000 specifically about the situation of the Roma, calling on States parties to eliminate all forms of discrimination against Roma.<sup>36</sup>

## Religion or belief

Discrimination based on religion or belief in nationality laws is found in many States in the Middle East and North Africa region, including Algeria<sup>37</sup> and Kuwait.<sup>38</sup> Discriminatory provisions in these States' nationality laws typically mix discrimination based on religion or belief with racial discrimination by drawing an equivalency between Muslims and persons of Arab descent. This equivalency and its connection with citizenship law have deep roots in history. With the advent of Islam, the kinship bonds that dominated societal organization in pre-Islamic Arabia became somewhat less important, eventually paving the way for the idea that the Islamic faith was the common bond among Islamic citizens.<sup>39</sup>

Explicitly differentiated treatment on grounds of religion can also be found in India's 2019 Citizenship Amendment Act (CAA), which creates an expedited pathway to Indian citizenship for religious minorities of six religions in Pakistan, Bangladesh and Afghanistan who have resided in India since 2014. Muslim and other religious or belief minorities are excluded from the CAA even though Muslims, in particular, face persecution in countries covered by it.

Nationality laws may also include ambiguous religion- or belief-related provisions that leave the possibility of discriminatory application and thus a risk of statelessness. Such is the case in Mongolia, where an applicant may be denied for having a religion considered "inconsistent with the Mongolian national customs and law."<sup>40</sup>

## Disability

Disability discrimination is the most prevalent form of discrimination in nationality laws around the world. The highest risk of disability discrimination occurs when applying for citizenship through naturalization or similar procedures. Naturalization laws in many parts of the world contain provisions requiring an applicant to be at "full capacity," "of sound mind," or other analogous terminology in order to qualify. The

36 UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXVII on Discrimination Against Roma*, 16 August 2000, available at: <https://www.refworld.org/docid/45139d4f4.html>.

37 Article 32 of the Code de la Nationalité Algérienne (2005) includes a condition that persons claiming the Algerian nationality as nationality of origin must be Muslim.

38 Article 4 of the Kuwaiti Nationality Law, 1959, stipulates that Kuwaiti nationality may be granted by decree to persons meeting five conditions, including being of Muslim faith; *Nationality Law, 1959* [Kuwait], 1959, available at: <https://www.refworld.org/docid/3ae6b4ef1c.html>.

39 Gianluca P. Parolin, "Citizenship in the Arab World", 2009, *Amsterdam University Press*, pp. 44-45 and 61-62.

40 *Law of Mongolia on Citizenship (as amended on 7 December 2000)* [Mongolia], 5 June 1995, available at: <https://www.refworld.org/docid/4af7dec62.html>.

laws of several countries, such as Cameroon,<sup>41</sup> and Panama,<sup>42</sup> explicitly bar people with mental or physical disabilities from acquiring citizenship. More often, however, vague language leaves room for discriminatory application of official discretion. Certain procedural requirements, such as oaths or language tests, also present obstacles for persons with particular disabilities.

Recently, some countries have taken steps to resolve situations of disability discrimination that lead to statelessness. In the United States, an amendment to the nationality laws in the year 2000 created an exception to the oath requirement, allowing for the naturalization of persons whose disabilities had previously precluded them from obtaining citizenship.<sup>43</sup> However, even in countries where a legal exception exists, the discretionary nature of waiver rules can leave open the possibility of discrimination in their application. The complexity of this issue in the United States is highlighted by ongoing litigation challenging denials of testing waivers for certain applicants with disabilities.<sup>44</sup>

In Italy in late 2017, the Constitutional Court ruled that requiring an oath from persons who are unable to swear it due to a disability was unconstitutional, stating that the law as it stood resulted in an unacceptable limitation on the constitutional rights of persons with disabilities.<sup>45</sup> This decision marks a welcome reform that will help allow persons with disabilities to access their fundamental right to nationality.<sup>46</sup> Significantly, the Court based part of its reasoning on Italy's obligations under international law, noting that article 18 of the CPRD provides that everyone, including persons with disabilities have the right to acquire and change citizenship, and they may not be deprived of this right.<sup>47</sup>

In addition to oath or testing requirements, many countries stipulate that the ability to contribute to society or the means to support oneself financially is a condition for naturalization, which can present a discriminatory barrier for persons with disabilities. This potential obstacle is further discussed below in the context of age discrimination.

41 *Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code*, 1968-LF-3, 15 July 1968, section 25, available at: <https://www.refworld.org/docid/3ae6b4db1c.html>.

42 *Constitution of Panama 1972*, art. 12, available at: [https://adsdatabase.ohchr.org/IssueLibrary/PANAMA\\_Constitution.pdf](https://adsdatabase.ohchr.org/IssueLibrary/PANAMA_Constitution.pdf).

43 *Public Law No. 106-448, 114 Stat. 1939, 2000* (codified as amended at 8 U.S.C. § 1448 (2018)).

44 See e.g., *De Dandrade v. U.S. Department of Homeland Security*, No. 19-1002 (2d Cir. argued June 12, 2019). For news coverage of the lawsuit, see *Telemundo, Demanda Alega Proceso de Ciudadanía Discriminatorio*, 18 December 2017, available at: [https://www.telemundo47.com/responde/demanda-alega-proceso-de-ciudadan\\_a-discriminatoria\\_tlmd-nueva-york/33900/](https://www.telemundo47.com/responde/demanda-alega-proceso-de-ciudadan_a-discriminatoria_tlmd-nueva-york/33900/).

45 Dante Figueroa, "Italy: Constitutional Court Issues Decision on Citizenship Oath", 2018, *Law Library of Congress*, available at: <https://www.loc.gov/item/global-legal-monitor/2018-01-18/italy-constitutional-court-issues-decision-on-citizenship-oath/> ("To accept the contrary of this reasoning would mean that legally and in fact there would be two classes of persons vis-à-vis the enjoyment of constitutional rights: those with disabilities and those without, and that hypothesis is unacceptable.").

46 In 2015, UNHCR highlighted the situation of a stateless young Roma woman living in Italy, Christina, who was unable to qualify for naturalization due to disability discrimination. This reform recognized the challenges experienced by young people like Christina and has mitigated their risk of statelessness due to discrimination. See UN High Commissioner for Refugees (UNHCR), *I Am Here, I Belong: The Urgent Need to End Childhood Statelessness*, 3 November 2015, available at: <https://www.refworld.org/docid/563368b34.html>.

47 Figueroa, No. 45.

## Age

Overt age discrimination in nationality laws is rare. Libya's nationality laws appear to provide an example of express age discrimination as they prohibit application for naturalization by anyone over 50 years old.<sup>48</sup> In effect, however, many common provisions of naturalization laws turn on age as a practical matter. One example is lengthy residency requirements. This restriction, by definition, excludes anyone under a certain age and likely anyone whose period of eligible residency begins after they have reached a certain age. Examples of countries with lengthy residency requirements include Andorra, Bhutan and Uganda, where 20 to 30 years of residence can be required to apply for naturalization.

Other provisions, such as requirements that an applicant for naturalization contribute to society or be self-reliant, can effectively bar persons over retirement age. In these cases, disability discrimination and age discrimination often coincide. The likelihood that someone has a disability that inhibits their ability to be self-reliant may increase with age, and depending on the specificities of a State's laws, may disqualify those who lack family members or other connections with the financial resources to sponsor their application. In these situations, the individual's right to a nationality is made contingent on the presence of family members with financial means and, often, resident or citizen status in the country in question.

While age-of-majority requirements are a basic feature of most States' laws, they can present an issue when a minor's parent or guardian is ineligible for naturalization, such as when the parents are stateless or when they are minors themselves. Although children are most often naturalized as derivatives of adult applicants, children of parents who are ineligible for naturalization may be at risk of childhood statelessness due to the bar against their naturalization until they reach the age of majority.

## Sexual Orientation, Gender Identity and Gender Expression, Sex Characteristics (SOGIESC)

The link between statelessness and discrimination on the basis of sexual orientation, gender identity and gender expression, and sex characteristics has yet to be fully explored as the visibility of these issues remains inconsistent around the world. Consensual same-sex acts are criminalized in 70 UN Member States, 68 of which have laws explicitly criminalizing consensual same-sex acts, and 2 of which prosecute such acts indirectly using other legal provisions.<sup>49</sup> In those States, lesbian, gay, bisexual,

<sup>48</sup> *Law Number (24) for 2010/1378 On The Libyan Nationality* [Libya], 28 May 2010, section 9, available at: <https://www.refworld.org/docid/4e2d8bf52.html>.

<sup>49</sup> Lucan Ramón Mendos, "State-Sponsored Homophobia", 2019, *International Lesbian, Gay, Bisexual, Trans and Intersex Association*, p. 15, available at: [https://ilga.org/downloads/ILGA\\_State\\_Sponsored\\_Homophobia\\_2019\\_light.pdf](https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019_light.pdf); Transgender persons are also frequently targeted based on laws criminalizing consensual same-sex conduct, as well as laws that criminalize persons based on their gender expression; see United Nations Human Rights Office of the High Commissioner (OHCHR), *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*, 2019, Chapter 3, available at: [https://www.ohchr.org/Documents/Publications/Born\\_Free\\_and\\_Equal](https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal).

transgender persons and other persons with diverse sexual orientation, gender identity or expression are likely to fear interaction with government officials. The threat of criminal penalties may deter them from accessing government services, including naturalization procedures or nationality documentation in the case of stateless persons. Lack of equal protection under the law necessarily inhibits the exercise of human rights and freedoms, risking protracted statelessness and adding an additional dimension of marginalization on top of their lack of documents. Lack of recognition of the gender identity of transgender persons can also lead to problems in the use and updating of nationality documentation.<sup>50</sup>

Intersex persons and persons with diverse sex characteristics, likewise may face challenges in the context of nationality laws, statelessness, and discrimination, though these challenges remain under-examined, as is the case more broadly for the situation of intersex persons. For example, intersex people face barriers in having their births registered, in changing sex or gender markers on official documents, and some also report being forced into unwanted sex or gender categories. In some countries, registration has been made dependent on parental consent for a child to undergo unnecessary and irreversible surgeries that can cause life long suffering and have been condemned by the United Nations as violations of the rights to freedom from torture, harmful practices, physical integrity and health, among others.<sup>51</sup>

Many States that criminalize persons based on their actual or perceived sexual orientation, gender identity or expression also have nationality laws that contain requirements that applicants be “of sound mind”, show “good moral character” or have “knowledge of civic values.” These States may interpret such provisions to discriminate against applicants based on sexual orientation, gender identity or gender expression grounds. For example, in the United States, until the amendment of the Immigration and Nationality Act in 1990, a provision barring persons “afflicted with a psychopathic personality” was interpreted to exclude lesbians and gay men from obtaining entry visas and naturalizing on the basis of their sexual orientation.<sup>52</sup> Analogous situations may continue to impede access to nationality in the UN Member States whose laws sanction persons on the basis of their actual or perceived sexual orientation or gender identity or expression, or who engage in consensual same-sex acts, risking new or prolonged instances of statelessness. In these situations, discrimination on grounds of disability and sexual orientation, gender identity and gender expression, intersect.

Though the most extreme cases of discrimination on the basis of sexual orientation, gender identity and gender expression occur where persons are persecuted under national law on these grounds, indirect discrimination due to gaps in nationality laws can also result in a risk of statelessness for persons with diverse sexual orientation, gender identity and expression and their families. Many States do not legally recognize same-sex relations through marriage or other forms of partnerships and do not allow for

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[WEB.pdf](#).

50 Thomas McGee, “‘Rainbow Statelessness’ – Between Sexual Citizenship and Legal Theory”, 2020, *The Statelessness and Citizenship Review* 2(1), 86-111.

51 United Nations Human Rights Office of the High Commissioner (OHCHR), *Background Note on Human Rights Violations against Intersex People*, 2019, Chapter 6, available at: <https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>.

52 Shannon Minter, “Sodomy and Public Morality Offenses under U.S. Immigration Law: Penalizing Lesbian and Gay Identity”, 1993, *Cornell International Law Journal* 26(3), p. 771.

naturalization of same-sex partners on an equal basis as partners of a different sex. The ability of same-sex parents to confer nationality to their children is often also limited, making the risk of statelessness most acute when parents have different nationalities or are living outside of the country in which they hold citizenship. Gaps in legal recognition of parenthood can lead to statelessness by preventing same-sex parents from conferring citizenship upon their children on an equal basis with heterosexual parents. When one or both parents is not biologically related to the child, as with children who are adopted or born via surrogacy or assisted reproductive technology (ART), government recognition of their legal relationship is often essential to reduce the risk of statelessness. Furthermore, surrogacy and adoption frequently take place in countries other than the country of residence, potentially implicating additional conflicts of laws that can result in children being born stateless.

As these legal gaps become increasingly visible, some States have begun to change or clarify their laws in order to prevent statelessness. One example is Canada, where until recently the laws governing citizenship by descent for children born abroad was interpreted as requiring the child to have a biological Canadian parent.<sup>53</sup> This requirement affected same-sex couples in mixed-nationality relationships by blocking them from passing on citizenship to their children when the relationship with the Canadian parent was legal but not biological, as is commonly the case with surrogacy or some forms of ART. Depending on the nationality laws of the non-Canadian parent's home State, conflict of laws threatened to leave children stateless. To resolve this issue, the Canadian courts declared that the Citizenship Act must be interpreted as including legal as well as biological parenthood.<sup>54</sup>

## Sex

There are currently 25 countries with nationality laws which do not grant women equality with men in conferring nationality to their children. A significant number of these States are found in the Middle East and North Africa (twelve countries), while six States in Asia and the Pacific, six States in Sub-Saharan Africa and two States in the Americas discriminate on these grounds in their nationality laws.

Sex discrimination in nationality laws can lead to statelessness, *inter alia*, in situations where mothers are unable to confer their nationality to their children and the children are unable to acquire the nationality of their fathers. This can occur, for instance, when the father is stateless, unknown, unable to fulfill administrative steps to confer nationality, or where the laws of the father's country do not permit conferral of nationality in certain circumstances, for instance when the child is born abroad. UNHCR issues an annual background note on gender equality in nationality laws which relate to conferral of nationality to children.<sup>55</sup>

<sup>53</sup> CBC News, *Canada Makes it Easier for Same-Sex Couples to Obtain Citizenship for Children Born Abroad*, 9 July 2020, available at: <https://www.cbc.ca/news/politics/same-sex-couple-child-citizenship-1.5643675>.

<sup>54</sup> *Caron v. Attorney General of Canada*, Supreme Court of Canada, 2020 QCCS 2700; see also CIC News, *Canada changes definition of "parent" for the 21st century*, 16 July 2020, available at: <https://www.cicnews.com/2020/07/canada-changes-definition-of-parent-for-the-21st-century-0715052.html#gs.ds4ucy>.

<sup>55</sup> See UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2021*, 5 March 2021, available at: <https://www.refworld.org/docid/604257d34.html>.

# Conclusion

Discrimination in nationality laws varies considerably in form, substance, and cultural context, but it remains common and it creates risks of statelessness. Countries are strongly encouraged to examine their laws and consider reforms to bring them in line with their international legal obligations. As statelessness often affects already marginalized communities, its prevention and resolution are crucial steps on the path to equality for disadvantaged groups. As long as statelessness persists, the international community will not have achieved the core ambition of the Sustainable Development Agenda to “leave no one behind.”

At the 2019 High-Level Segment on Statelessness (HLS), both Uganda and the Republic of the Congo made pledges to remove discrimination from their nationality laws in order to reduce the risk of statelessness. Many other pledges made at the HLS relating to different Actions of the Global Action Plan to End Statelessness<sup>56</sup> will positively impact communities experiencing statelessness due to discrimination, such as Zambia’s pledge to facilitate naturalization procedures for stateless persons and their children by 2023 or pledges from Bulgaria, Rwanda, Somalia and others to accede to or remove reservations from the UN Statelessness Conventions. Under its statelessness mandate, UNHCR will continue to work with States and other partners to increase awareness of statelessness as a vital issue and to support appropriate law reforms.

Despite progress made in recent years, more remains to be done. UNHCR calls on States to take the following steps to remove discrimination from their nationality laws, in line with international standards relating to non-discrimination and the right to a nationality:

- **Remove discriminatory provisions from nationality laws, rules and procedures:** States should remove discriminatory provisions from their nationality laws, rules and procedures, and review and reform their laws, rules and procedures in order to prevent the denial, loss or deprivation of nationality on discriminatory grounds. States are encouraged to include non-discrimination clauses in their Constitutions and nationality laws.
- **Review and reform discriminatory policies and practices relating to nationality and citizenship:** States should review and reform discriminatory policies and practice relating to nationality and citizenship, as well as procedures to access civil and identity documentation to prevent the denial, loss or deprivation of nationality on the basis of discriminatory grounds.

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<sup>56</sup> See UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <https://www.refworld.org/docid/545b47d64.html>.

- **Adequately supervise and enforce non-discriminatory application of laws and policies and procedures relating to nationality and citizenship:** States should ensure that State institutions and national and local authorities comply with the principle of non-discrimination in the application of laws, policies and procedures relating to nationality and citizenship. States should ensure that persons subjected to discrimination have access to effective complaints mechanisms and judicial review.
- **Ensure equal and meaningful access to civil registration and identify documentation:** States should ensure that all persons, including persons with disabilities and those belonging to racial and ethnic minorities, are able to access civil registration and adequate documentation, including birth certificates and documentation to prove nationality or the entitlement to nationality, without discrimination.
- **Address root causes of discrimination in nationality laws:** States should address root causes of discrimination in nationality matters. These include harmful social and cultural norms and stereotypes that promote inequality on the basis of any prohibited grounds of discrimination, including, race, ethnic origin, religion, age, sex, gender, disability, language or sexual orientation, gender identity, gender expression or sex characteristics.
- **Remove administrative and financial barriers that disproportionately impact minorities and other marginalized persons or groups, women and girls, and others threatened with discrimination in nationality matters:** States are encouraged to remove any barriers that disproportionality impact on the ability of women and girls and marginalized groups, including minorities, persons with disabilities, older persons, persons with diverse sexual orientation, gender identity, gender expression, sex characteristics, among others, to access documentation and enjoy their right to nationality. These include but are not limited to requirements to be self-reliant or contribute to society or procedural requirements such as language tests.
- **Provide proactive support to stateless persons, including through legal, administrative, psycho-social, health and other services** in regularizing their status, as well as in addressing the effects and impact of protracted and intergenerational statelessness.

Nationality laws should be free from all forms of discrimination and everyone should enjoy the right to a nationality. For more information on statelessness, including resources and support available from UNHCR on how to address it, see <https://www.unhcr.org/ibelong/>.









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Cover photo: A Rohingya man waits for aid distribution at Kutupalong refugee camp in Bangladesh, having fled violence in Myanmar. The Rohingya are stateless due to Myanmar's citizenship law (which confers citizenship at birth to members of certain ethnic groups only) and its application. As a direct result of their statelessness, the Rohingya suffer serious rights deprivations. Since 2017 alone over 600,000 Rohingya have fled the country in search of refuge in Bangladesh. © UNHCR/Roger Arnold



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