

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	126
Land:	Diverse emner
Kilde:	UNHCR
Titel:	Preventing and Reducing Statelessness, Good Practices in Promoting and Adopting Gender Equality in Nationality Laws
Udgivet:	Marts 2014
Optaget på baggrundsmaterialet:	2. juli 2014

Preventing and Reducing Statelessness

Good Practices in Promoting and Adopting Gender Equality in Nationality Laws



Achieving universal gender equality in nationality laws would constitute a major step forward in preventing statelessness. International human rights law guarantees that women are to enjoy equal nationality rights as men. Yet statelessness continues to arise in 27 countries in almost all parts of the world with laws that discriminate against women in their ability to confer nationality on their children (1). This is contrary to Article 9(2) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

Fortunately, law reform has successfully introduced equality between women and men in their ability to confer nationality on their children in a number of countries in Asia, the Middle East/North Africa (MENA), Africa and Europe(3). This Information Note explains how such law reforms were achieved in Algeria, Morocco, and Senegal. It also describes an exemplary coordinated advocacy effort in the MENA region through the Arab Women's Right to Nationality Campaign, which helped pave the way for pioneering reforms in a number of countries and continues to promote further progress.

Several common elements emerge from these experiences. Political commitment at the top levels of government and increasing social acceptance have proven to be essential for reform. Women's groups and other civil society actors have been fundamental to establishing such favourable environments. Drawing on these examples, further efforts to promote the prevention of statelessness through adoption of gender-equal nationality laws will benefit from improved collaboration between statelessness stakeholders and traditional women's rights organizations. Governments can be directly engaged, as well as through human rights mechanisms, such as the CEDAW Committee. Ultimately, a careful assessment of the unique opportunities and challenges presented at the national level is best suited to guide all law reform efforts.

The successful law reform processes in Algeria, Morocco, and Senegal present interesting and complementary examples from which lessons can be derived to promote reform in other national contexts.

(1) The majority of these States are found in the Middle East and North Africa (12 countries) and Sub-Saharan Africa (eight countries). Four States in Asia also do not grant mothers equal rights as fathers to confer their nationality on their children, as well as three States in the Americas. For a full discussion on this matter, please see UN High Commissioner for Refugees, *Background Note on Gender Equality, Nationality Laws and Statelessness*, 8 March 2014, available at <http://www.unhcr.org/pages/4f587cbe6.html> and; Equality Now, *Campaign to End Sex Discrimination in Nationality and Citizenship Laws*, January 2013, available at http://www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf.

(2) Article 9 of CEDAW provides that: (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. (2) States Parties shall grant women equal rights with men with respect to the nationality of their children.

(3) For example, law reform granting women equal rights to confer their nationality on their children has been achieved over the last decade in countries as diverse as Sri Lanka (2003), Egypt (2004), Algeria (2005), Indonesia (2006), Sierra Leone (partial reform in 2006), Morocco (2007), Bangladesh (2009), Zimbabwe (2009), Kenya (2010), Tunisia (remaining gaps addressed in 2010) and Monaco (2005, 2011).

Highlights of Law Reform Efforts in Algeria, Morocco and Senegal

Reform achieved through simple legislative drafting granting women equal rights as men with regards to the right to confer nationality. In all instances, complicated legislative provisions were replaced by a one-sentence gender-equal provision.

Advocates in Algeria and Morocco engaged with the CEDAW Committee. In turn, recommendations from that Committee on Implementation of CEDAW obligations encouraged governments to work with advocates at the national level, fostering constructive dialogue for law reform.

Determining the advantages and disadvantages of tying gender equality in nationality matters to broader gender-equality agendas has proved particularly important. For example, the Algerian Nationality Code was successfully reformed at the same time as partial reform of the Algerian Family Code, whereas amendments to the Moroccan Nationality Code were achieved after sweeping reforms were enacted in the Moroccan Family Code.

The experiences from Morocco and Senegal demonstrate that measures that enable women to assume positions of power in parliaments and political processes help create favorable environments to pursue gender equality in nationality law reforms.

Highlights of the Moroccan civil society campaign include gathering and using first-hand testimonials of families affected by the law, a media campaign and strategic partnership with journalists and outreach to government stakeholders. In the cases of Algeria and Senegal, women in the diaspora mobilized to promote law reform.

Law Reform in Algeria, Morocco and Senegal

Algeria

When Algeria became party to the CEDAW in 1996, it entered a reservation to CEDAW Article 9(4). According to provisions of the Algerian Nationality Code then in force, an Algerian mother could only confer Algerian nationality to a child if the father was stateless, unknown, or a foreigner who was himself born in Algeria. Children born to an Algerian mother in Algeria of a foreign-born foreign father could apply to acquire Algerian nationality at majority provided they had established habitual and regular residence in Algeria, subject to the approval of the Minister of Justice.

After Algeria first appeared before the CEDAW Committee in 1999, the Committee issued Concluding Observations recommending that Algeria reform its nationality law to conform with CEDAW Article 9 (2), among other gender equality reforms to respect its CEDAW commitments. Algerian women's organizations then used the CEDAW Committee's recommendations to press the government for comprehensive change. The government initiated a law reform process in 2003 examining a wide range of measures to improve gender equality. The same year, Algerian and French women's groups created the "*20 Ans Barakat*" movement, the title of which referred to the 20-year anniversary of Algeria's 1984 Family Code.

By the time Algeria appeared for the second time before the CEDAW Committee in January 2005, the government had introduced a bill before parliament to grant women equal nationality rights as men. This was debated in the Parliamentary Committee on Juridical Affairs, where it benefited from several amendments put forth by parliamentarians in favour of strengthening women's rights. President Bouteflika signed and promulgated the revised Nationality Code on 27 February 2005, the same day as he signed and promulgated revisions to the Algerian Family Code. The new Nationality Code repeals the limitations on Algerian mothers' ability to confer nationality on their children, replacing them with a simple overarching provision granting Algerian nationality to all children born in or outside Algeria to an Algerian mother or father without distinction. The new provision provides that a person is considered Algerian if he/she is born to an Algerian father or an Algerian mother. The new nationality law provisions apply with retroactive effect. As a result, individuals born to Algerian mothers and foreign fathers before the reform are also considered to be nationals and the reform not only serves to prevent future statelessness but to resolve existing cases. Algeria subsequently lifted its reservation to CEDAW Article 9 in 2009(5).

(4) A table of the relevant legislative texts pre- and post-reform is provided in the Annex to this Information Note.

(5) This movement gained prominence by producing a music video sung by women musicians from Algeria, France, and Argentina to promote reform of the Algerian Family Code that aired on radio and French television and was widely disseminated on the internet. More about the impact of the music video on the law reform campaign can be found in the article, *Singing for Change, Women's Musicians Unite to Overturn Algeria's Family Code*, available at: <http://www.imow.org/wpp/stories/viewstory?storyid=1328>.

Morocco

When Morocco became party to the CEDAW in 1993, it entered a reservation to CEDAW Article 9(2). Its Nationality Code at the time only permitted Moroccan women to confer their nationality in two circumstances: either to a child born to an unknown father, or to a child born in Morocco to a stateless father.

Nationality law reform in Morocco was achieved as the result of high level government support and a sophisticated advocacy strategy implemented by Moroccan women's groups. The process began, however, with a grassroots campaign in 1992 focused on reforming the Moroccan personal status, or family code, known as the *Mudawana*. In his first speech to the Moroccan Parliament in 1999, King Mohamed VI announced his support for the principle of gender-equality. In this context, a coalition of women's groups issued a broad-ranging platform for legal change. While this was endorsed by the Prime Minister, it was not universally welcomed in Moroccan society and there were no immediate changes in law or policy. Given the stalemate that ensued, the King assumed leadership of his gender-equality initiative in 2001 in his role as *Amīr al-Mu'minīn*, or Commander of the Faithful. He created a Commission, the *Oulema*, comprised of religious, legal, and sociological experts to examine options for reforming the *Mudawana* in light of universal human rights and Islamic principles. The Commission embarked on a three-year process of consultations and analysis to propose revisions to the family code. In February 2004, the legislation to reform the *Mudawana* was unanimously passed by the Moroccan parliament after the King endorsed the Commission's work.

The revised family code enshrined the principle of gender equality and this also became a rallying point for efforts to reform the Moroccan Nationality Code. Several additional factors helped this process. At the international level, Morocco appeared before the CEDAW Committee in 1997 and again in 2003, with the Committee issuing broad-ranging recommendations for law reform to comply with CEDAW, including calling upon Morocco to bring its nationality laws into compliance with Article 9.

At the national level, political developments helped usher more women into the legislature, creating a more favorable environment to pursue reforms to the nationality law. Between 1999 and 2001, most political parties adopted internal quotas for women to play a greater role in party affairs and also reserved national level party seats for women. In the 2002 legislative elections a record 35 women were elected among the 325 members of the Chamber of Representatives.

On the side of civil society, several particularly effective good practices emerged from the Moroccan campaign to reform the Nationality Code, which was led by the *Association Démocratique des Femmes du Maroc* (ADFM). Throughout the country, a network of listening centers was created at the grassroots level, inviting women married to foreigners who were unable to pass their citizenship to their children to explain the law's impacts on them and their families, including the resulting statelessness of their children. These testimonials were used in the campaign and affected families joined NGOs to pressure the government for reform.

The campaign collaborated with reform-minded journalists to help convey their message to different audiences within the government. Campaign leaders met with various stakeholders, including parliamentarians, to influence the drafting of a reform bill, and cabinet members, such as the Ministers of Justice and Women's Affairs, to ensure political support for law reform. This was accompanied by sustained media coverage of their campaign through television, newspapers, magazines, and radio explaining the objectives of introducing gender equality into the Moroccan Nationality Code. Finally, the campaign organized a series of massive public rallies on the issue, including establishing a tent in front of the parliament on the national day to fight discrimination against women.

Invoking again his role as *Amīr al-Mu'minīn*, King Mohamed VI gave a speech in July 2005 calling for the reform of Morocco's Nationality Code to conform with the principle of gender equality. The government then submitted a reform bill to the Moroccan parliament for debate. In March 2007, the bill to amend the Nationality Code passed unanimously, granting Moroccan women equal rights as men to confer nationality on their children with retroactive effect. The new provision sets out that a child born to a Moroccan father or a Moroccan mother is Moroccan. Morocco moved quickly to lift its reservation to CEDAW Article 9 in 2008. Assisted by the outreach efforts of Moroccan women's organizations, the amended law has been successful in allowing Moroccan women to confer their nationality on their children, with documented improvements on the impact that citizenship has on the enjoyment of rights for the children concerned(6).

Senegal

Senegal's 1961 Nationality Code only allowed Senegalese mothers to confer their nationality on children born of stateless fathers or those of unknown nationality. The 1961 Nationality Code also contained complicated rules distinguishing between children born in and out of wedlock. These provisions remained in place when Senegal became a party to CEDAW and later to the 1961 Convention on the Reduction of Statelessness.

At the UNHCR Ministerial Meeting commemorating the 50th anniversary of the 1961 Statelessness Convention in December 2011, the government of Senegal announced a pledge to reform its nationality law to grant Senegalese women equal rights as men in their ability to confer nationality on their children. The Senegalese government had already demonstrated a commitment to women's equality and empowerment. For example, the Senegalese parliament passed a gender parity law in 2010 requiring that women comprise 50% of candidates presented by all political parties in local and national elections.

In 2012, the Ministry of Justice assumed leadership of implementing the Senegalese government's pledge to eradicate gender discrimination in its nationality law. It formed a Task Force comprised of representatives from the Presidency, as well as the Ministries of Justice, the Interior, and Foreign Affairs. The Task Force completed a draft bill to reform the Nationality Code in August 2012. It then embarked on a consultative process to review the bill. UNHCR provided observations and suggestions on the draft. In October 2012, the Ministry of Justice convened a high-level day of reflection to review the bill. Twenty members of the National Assembly were invited to take part in the discussions to pave the way for parliamentary review and approval of the government's bill. Women's groups and civil society representatives also contributed to these deliberations alongside other government officials and experts from the international community.

The government took several recommendations and observations discussed at the day of reflection into account in revising the bill it submitted to the Senegalese National Assembly. The revised bill not only eliminated gender-discriminatory provisions, it also eliminated distinctions on nationality attribution for children born in or out of wedlock and made additional changes that contribute to the prevention of statelessness. The government's bill was passed unanimously by the National Assembly on 28 June 2013 without debate and was promulgated by the President on 8 July 2013. The new provision established that any child born as a direct descendant of a Senegalese national is Senegalese.

Several factors contributed to parliamentary support for the bill. For one, the July 2012 legislative elections ushered in a record number of 65 women among the 150 members of the National Assembly as a result of the gender parity law. Furthermore, the parliament was led by a coalition of parties that supported the government's gender equality platform.

(6) For additional information, please see the report by the Women's Refugee Commission and Tilburg University, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa* (June 2013), available at: <http://www.refworld.org/docid/51c02a084.html>.

To be sure, as elsewhere, Senegalese women's groups and civil society played an important advocacy role throughout the nationality law reform process. This included Senegalese women in the diaspora who pressed the government for nationality law reform on the margins of the United Nations General Assembly in September 2012 in New York. According to the representative of the Senegalese NGO, ONUFEM, the reformed nationality code could allow up to two million Senegalese women to confer their Senegalese nationality to their children(7).

A key driver of nationality law reform in the MENA region has been the Arab Women's Right to Nationality Campaign. An overview of the genesis of this campaign helps inform how success was achieved at the national level and can serve as a model for further reform initiatives.

Arab Women's Right to Nationality Campaign

Highlights of the Arab Women's Right to Nationality Campaign

- A coalition of women's rights organizations in the Middle East and North Africa (MENA) has joined efforts since 2002 to achieve gender equality in nationality laws in the region.
- The initial phase of the campaign involved comprehensive reviews of each country's nationality laws and how they are applied in practice. This informed research-based advocacy.
- Regional networking has allowed for the sharing of information on areas of opportunity, overcoming obstacles, and improving strategic planning of campaigns tailored to unique national contexts. Successful law reform in certain countries in the region has helped produce knock-on effects in promoting further reform in neighboring countries.
- Engagement with the CEDAW Committee is a key component of all national campaigns.
- The campaign promotes dialogue with governments at the national level, urging the forging of partnerships with sympathetic policy-makers.
- Effective use of the media and social networking has drawn attention to the campaign at both the national and regional levels.
- Launch of the campaign coincided with important donor support at the regional and national levels based on donor's acknowledgement of the importance of gender equality in nationality matters to promote women's empowerment.
- The campaign continues in countries that have yet to achieve reform, as well as to ensure implementation in countries with amended laws. The campaign receives ongoing support from international NGOs, including the Women's Learning Partnership and collaborates with other regional gender equality platforms.

This effort emerged in 2002 under the initiative of the Collective for Research and Training on Development -Action (CRTD.A), a Lebanon-based NGO(8). A loose coalition of women's rights NGOs from across MENA met that year at a workshop in Morocco hosted by the *Association Démocratique des Femmes du Maroc* (ADFM) and identified the unequal treatment of women in their countries' nationality laws as the heart of women's social disadvantage in the region. The coalition anchored its campaign on the fact that although most Arab countries are party to the CEDAW, many had entered reservations to CEDAW Article 9 to avoid changing nationality laws that do not grant women the same rights as men. Acknowledging the shared challenges to achieving women's equality in the MENA Region, while recognizing that each country presents unique circumstances and opportunities, the NGOs decided to join efforts to seek gender equality in nationality laws.

The formation of the campaign in 2002 coincided with major donor interest in women's empowerment in the Arab region. Understanding that the right to nationality is often the foundation for enjoying other rights, the Programme on Governance in the Arab Region (POGAR) of the United Nations Development Programme (UNDP) and the International Development Research Centre (IDRC)(9) launched the Gender

(7) Please see *Réforme du Code de la nationalité, un signe de la volonté d'en finir avec les discriminations*, available at: http://www.demarches.gouv.sn/ressource.php?id_esp=1&th=7&ss_th=&id_actu=1399.

(8) Please see CRTD.A's Arab Women's Right to Nationality Campaign website, available at: <http://crtda.org.lb/project/22>.

(9) The International Development Research Centre (IDRC) is a long-standing partner of CRTD.A. Its website is available at: <http://www.idrc.ca/EN/Pages/default.aspx>.

Citizenship Initiative in 2001(10) to support partnerships and build the capacity of women's groups in the region, as well as to fund advocacy-oriented research(11).

Given the synergies in their common interests and goals, the Gender and Citizenship Initiative funded two phases of the Arab Women's Right to Nationality Campaign's work from 2002-2004 and again from 2006-2008. The first phase allowed for national NGOs in the coalition to conduct research and analysis on gender inequality in citizenship matters – both as a matter of law and practice – in their respective countries. This led to the publication of a synthesis report in 2004(12). Against the backdrop of this baseline research, the second phase of the project focused on elaborating advocacy strategies at both the country and regional levels to achieve a nationality law reform.

Support for the Arab Women's Right to Nationality Campaign contributed to the development of a dynamic coalition working across Algeria, Bahrain, Egypt, Jordan, Lebanon, Morocco, Syria, Tunisia, and Yemen, with more limited outreach in other States. The campaign has fostered the sharing of information on the challenges faced in each country and strategies to overcome them, garnering support for efforts at the national level. Coalition members have developed country-specific legal reform initiatives, undertaking activities promoting policy debate and outreach to and coalition-building with national parliamentarians, unions, and lawyers. The organizations have submitted shadow reports to the CEDAW Committee to highlight inequality in their national laws, thereby increasing pressure through this international body. The campaign appealed to the Arab League to promote nationality law reform at the regional inter-governmental level.

Promoting law reform through the media and awareness-raising efforts – such as rallies – is a hallmark of the campaign's strategy. More recently, the campaign has embraced social media tools to raise awareness of their objectives and better coordinate their efforts.

These campaigns have contributed to successful reforms that have introduced gender equality with respect to the right to confer nationality in Egypt (2004), Algeria (2005), Morocco (2007), and Tunisia (2010). All campaign partners acknowledge that Egypt's pioneering reform helped pave the way for additional countries to follow suit in the region and that each success has had a further persuasive knock-on effect. However, reform has yet to be achieved in 12 countries in the MENA region. The Arab Women's Right to Nationality Campaign continues to network, share information, and strategize at the regional level with support from the Women Learning Partnership's "Claiming Equal Citizenship Campaign"(13) and as part of the Arab regional Equality without Reservation Coalition(14).

7 March 2014

(10) A copy of the UNDP/POGAR and IDRC report launching their Gender and Citizenship Initiative, *Women are Citizens too: The Laws of the State, the Lives of Women* (December 2001), is available at: <http://www.unrol.org/files/Gender-Pub-women%20are%20citizens%20too-EN.pdf>.

(11) The theme was further endorsed in the Regional Arab Human Development Report in 2002, co-sponsored by the Arab Bureau of the United Nations Development Program (UNDP) and the Arab Fund for Economic and Social Development, which identified women's empowerment as one of three key deficits to overcome the Arab world.

(12) The synthesis report by CRTD.A, *Denial of Nationality: the Case of Arab Women* (February 2004), is available at: http://www.policylibanon.org/Modules/Ressources/Ressources/UploadFile/7998_17.08.YYcrtda%20-%20Nationality%20full%20Research-Feb04.pdf.

(13) Information on this campaign is available at: <http://www.learningpartnership.org/citizenship>. Further information about ongoing national campaigns such as the one in Lebanon led by CRTD.A entitled "My Nationality is a Right for Me and My Family" is available at: <http://nationalitycampaign.wordpress.com/>.

(14) Further information on this coalition, which calls for lifting CEDAW reservations, full implementation of CEDAW and ratification of the CEDAW-Optional Protocol is available at: <http://cedaw.wordpress.com/>.

ANNEX:
**Relevant provisions of the Algerian, Moroccan,
and Senegalese Nationality Codes pre– and post-reform**

Country	Reformed Legislative Provisions	Previous Legislative Provisions
Algeria Date of Reform: 27 February 2005 (with retroactive effect)	Article 6(15) A person is considered Algerian if he/she is born to an Algerian father or an Algerian mother.	Article 6(16) The following are of Algerian nationality by descent: (1) the child born to an Algerian father; (2) the child born to an Algerian mother and unknown father; (3) the child born to an Algerian mother and stateless father. Article 7 The following are of Algerian nationality by birth in Algeria: ... (2) the child born in Algeria to an Algerian mother and a foreign father who was born in Algeria, unless the child renounces Algerian nationality within one year preceding his becoming of age. ... Article 9 Algerian nationality by birth and residence in Algeria: Except when opposed by the Minister of Justice . . . the following acquires Algerian nationality if, within twelve months preceding his coming of age, he declares his intention to obtain this nationality and if, at the time of the declaration, he has his habitual and regular residence in Algeria: A child born in Algeria of an Algerian mother and a foreign father himself born outside Algeria. The silence of the Minister of Justice, after a delay of 12 months from the time of completion of an application, indicates acquiescence.

(15) The text in this table represents an informal English translation. For the original French text, please see *Ordonnance n° 05-01 du 18 Moharram 1426 correspondant au 27 février 2005 modifiant et complétant l'ordonnance n° 70-86 du 15 décembre 1970 portant code de la nationalité algérienne*, 27 February 2005, available at : <http://www.unhcr.org/refworld/docid/447aa6514.html>.

(16) For the original French text, please see *Ordonnance no. 70-86 du 15 décembre 1970 portant Code de la nationalité algérienne*, 18 December 1970, available at: <http://www.unhcr.org/refworld/docid/3ae6b52c4.html>.

Morocco Date of Reform: 23 March 2007, published in the Official Bulletin No. 5514 of 5/4/2007 (with retroactive effect)	Article 6(17) Is Moroccan, a child born to a Moroccan father or a Moroccan mother. <i>Transitional provisions:</i> The new provisions on the allocation of Moroccan nationality, under this article, by the birth of a Moroccan mother, are applied to all persons born before the date of publication of this Act. Article 7 Is Moroccan, a child born to unknown parents in Morocco.	Article 6(18) Is Moroccan: a. a child born to a Moroccan father; b. a child born to a Moroccan mother and unknown father. Article 7 Is Moroccan, a. a child born in Morocco to a Moroccan mother and a stateless father; b. a child born in Morocco to unknown parents; ...
Senegal Date of Reform: 8 July 2013 (with retroactive effect)	Article 5(19) Any child born as a direct descendant of a Senegalese is Senegalese. Article 8 (Abrogated in full)	Article 5(20) A person is Senegalese if that person is (1) a legitimate child of a Senegalese father; (2) a legitimate child of a Senegalese mother and a father with no nationality or of unknown nationality; (3) an illegitimate child of a Senegalese who was the first parent with whom filiation was established; or (4) an illegitimate child of a Senegalese who was the second parent with whom filiation was established, if the other parent is without nationality or of unknown nationality. Article 8 The following may opt for Senegalese nationality between the ages of 18 and 25 years: (1) A legitimate child born of a Senegalese mother and a father of foreign nationality; or (2) an illegitimate child of a Senegalese who was the second parent with established filiation, if the other parent is of foreign nationality, The option must be exercised by declaration before the President of the Departmental Court in the jurisdiction where the declarant resides. If the declarant is abroad, the declaration must be made before Senegalese consular agents. At the request of the President of the Departmental Court or of the consular agents, this declaration shall be registered with the Ministry of Justice.

(17) For the original French text, please see *Dahir n° 1-58-250 du 21 safar 1378 (6 septembre 1958) portant la Code de la nationalité marocaine (révisée 2007)*, 12 September 1958, available at: <http://www.unhcr.org/refworld/docid/3ae6b5778.html>.

(18) For the original French text, please see *DAHIR n. 1-58-250 portant Code de la nationalité marocaine*, 6 September 1958, available at: <http://www.unhcr.org/refworld/docid/501fc9822.html>.

(19) For the original French text, please see *Loi n° 61-70 du 7 mars 1961, Code de la nationalité sénégalaise*, available at: <http://www.refworld.org/docid/46cebc2e2.html>.

(20) For the original French text, please see *Loi 2013-05 portant modification de la loi no 61-10 du 7 mars 1961 déterminant la nationalité*, 8 July 2013, available at: <http://www.refworld.org/docid/51ed5ef14.html>.