

**Flygtningenævnets baggrundsmateriale**

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# Background Note on *Gender Equality, Nationality Laws and Statelessness 2016*



Nationality laws which do not grant women equality with men in conferring nationality to their children are a cause of statelessness and a concern for UNHCR under its mandate to prevent and reduce statelessness<sup>1</sup>. Since 2012, UNHCR has issued an annual background note on gender equality in legal provisions in nationality laws which relate to conferral of nationality to children. This Background Note provides the most up-to-date information available to UNHCR as at 8 March 2016.

Sixty years ago, the nationality laws of the majority of States did not provide equal rights to women in nationality matters. This has radically changed for the better since the adoption in 1979 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). UNHCR's survey of nationality legislation<sup>2</sup> reveals that equality between men and women relating to conferral of nationality upon children has not yet been attained in 27 countries in almost all parts of the world. These nationality laws do not give mothers the ability to confer their nationality to their children on an equal basis as fathers. The majority of these States are found in Middle East and North Africa (twelve countries) and Sub-Saharan Africa (eight countries). Five States in Asia and the Pacific do not grant mothers equal rights as fathers to confer their nationality on their children, and the same is the case for two States in the Americas. These States are listed in the table on page 2 and an analysis of those countries' laws is presented on pages 3-5. Additional States, not dealt with in this overview, grant equality to men and women with regard to the nationality of children but not with regard to acquisition, change or retention of nationality upon change in civil status<sup>3</sup>.

Gender inequality in nationality laws can create statelessness where children cannot acquire nationality from their fathers. This can occur (i) where the father is stateless; (ii) where the laws of the father's country do not permit him to confer nationality in certain circumstances, such as when the child is born abroad; (iii) where a father is unknown or not married to the mother at the time of birth; (iv) where a father has been unable to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children because, for example, he has died, has been forcibly separated from his family, or cannot fulfill onerous documentation or other requirements; or (v) where a father has been unwilling to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children, for example if he has abandoned the family. Ensuring gender equality in nationality laws can mitigate the risks of statelessness. It is against this background that UNHCR's efforts are deployed towards promoting gender equality in nationality laws.

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(1) Discrimination between men and women in nationality matters is at variance with international human rights law. Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) guarantees women's equality (i) with respect to acquisition, change, or retention of their nationality and (ii) their ability to confer nationality on their children. The International Covenant on Civil and Political Rights and other treaties also address the issue.

(2) Please note, additional information may arise that could alter the conclusions of this analysis.

(3) An assessment undertaken by UNHCR shows that more than 60 States retain such legal provisions.

## Law reform to date

There is a growing willingness and commitment by States to take action to achieve gender equality in nationality laws. In many instances, discriminatory elements of previous nationality laws were ‘inherited’ by new States shortly after gaining independence from former colonial powers. In some cases, these nationality laws have not been reviewed since. In recent years, reform has been undertaken in countries as diverse as 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), Senegal (2013) and Suriname (2014). In many cases, law reform was achieved by simply extending to women the right to confer nationality to their children which had been previously only been granted to men.

Although nationality laws can be complex, reforms to incorporate gender equality can often be achieved through relatively simple changes to the formulation of relevant provisions. This can be seen in the recent reform of the Constitution of Kenya in 2010. Under the prior Kenyan Constitution of 2001, Kenyan mothers and fathers could confer Kenyan nationality on their children born in Kenya on an equal basis, but only Kenyan fathers could confer nationality on children born abroad. The 2010 Constitution of Kenya addressed this, using the following formulation: *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 father of the person is a citizen.*

At the Ministerial Meeting convened by UNHCR in December 2011 to commemorate the respective 60<sup>th</sup> and 50<sup>th</sup> anniversaries of the 1951 Convention Relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness, the Governments of Liberia, and Senegal pledged to address inequality in nationality matters through law reform. Senegal amended its nationality law in 2013, thereby implementing its pledge. The amended law sets out in clear terms that: *A direct descendant to a Senegalese national is Senegalese.* In February 2015, under the Abidjan Declaration of Economic Community of West African States on Eradication of Statelessness, ECOWAS Member States committed to ensuring that women and men have equal rights to confer nationality to their children.

Other States have recently initiated discussions to reform their nationality laws or for changes to laws and regulations to alleviate the impact on children and families of unequal nationality legislation. For example, the forthcoming constitutional referendum in the Bahamas will consider recommendations by the Constitutional Commission that the Constitution be reformed to ensure equality between women and men in nationality matters. In the on-going reform process in Madagascar, a broad consensus has formed among Members of Parliament and other governmental and civil society stakeholders to introduce full gender equality in the future Madagascan Nationality Act. In Sierra Leone, a Constitutional Review Committee is currently reviewing the 1991 Constitution and has proposed a gender neutral provision for acquisition of nationality by children born to a national of Sierra Leone. A review of the Alien and Nationality Law in Liberia is also underway to bring it in line with the Liberian Constitution, which provides for equality between women and men in their ability to confer their nationality to their children. In Somalia, once enacted, a newly drafted Citizenship Bill will abolish discriminatory provisions and permit Somali women to confer nationality to their children on an equal basis as Somali men.

UNHCR’s [Campaign to End Statelessness in 10 years](#), envisages the achievement of gender equality in all nationality laws by the year 2024 as part of the Campaign’s broader goals, and sets out a practical strategy through which this can be achieved in Action 3 of the [Global Action Plan](#). UNHCR continues its works with a range of other governments and civil society groups to promote reform to nationality laws and assist in their implementation.

## *Uneven ability of women to confer nationality on their children*

The table below uses a color scheme to divide the laws of the 27 States into three categories. The laws of the first group of countries (dark orange) have nationality laws which do not allow mothers to confer their nationality to their children with no, or very limited, exceptions— these laws create the greatest risk of statelessness. The laws of the second group of countries (orange) have some safeguards against the creation of statelessness (for example making exceptions for mothers to confer nationality if the father is unknown or stateless). The laws of the third group of countries (yellow) also limit the conferral of nationality by women but additional guarantees ensure that statelessness will only arise in very few circumstances.

|                   |                      |
|-------------------|----------------------|
| Bahamas           | Malaysia             |
| Bahrain           | Mauritania           |
| Barbados          | Nepal                |
| Brunei Darussalam | Oman                 |
| Burundi           | Qatar                |
| Iran              | Saudi Arabia         |
| Iraq              | Sierra Leone         |
| Jordan            | Somalia              |
| Kiribati          | Sudan                |
| Kuwait            | Swaziland            |
| Lebanon           | Syria                |
| Liberia           | Togo                 |
| Libya             | United Arab Emirates |
| Madagascar        |                      |

## *Overview of nationality laws*

### **Middle East and North Africa**

A great deal of progress has been achieved in recent years, with reforms in five States since 2004. However, twelve countries in the Middle East and North Africa (MENA) region do not yet grant equality to women with regard to the right to pass their nationality to their children.

The law in **Qatar** does not allow mothers to confer nationality to their children, without exception, even if this would result in statelessness. The law in **Kuwait** also allows only fathers to confer their nationality on their children in all circumstances. If a Kuwaiti mother has a child with a father who is unknown or whose paternity has not been established, the individual concerned may apply for Kuwaiti citizenship at majority. In such cases, nationality is granted by Decree based on the discretionary recommendation of the Minister of Interior. However, this is an extraordinary measure that occurs rarely in practice.

The nationality law of **Lebanon** also allows only Lebanese fathers to confer their nationality to their children in all circumstances. Women can only confer their citizenship if the child is born out of marriage and recognized while a minor by the Lebanese mother.

The nationality laws of **Jordan**, **Libya**, **Saudi Arabia**, and the **United Arab Emirates** do not allow women nationals married to foreign nationals to pass their nationality to their children. However, they do permit women nationals to confer their nationality to their children in certain circumstances such as where fathers are unknown, stateless, of unknown nationality or do not establish filiation.

In **Iraq**, although the Iraqi Constitution of 2005 establishes gender equality by providing that nationality is acquired by descent from either men or women, Iraq's 2006 Nationality Law limits the ability of Iraqi women to confer nationality to children born outside the country. For such births, the child of an Iraqi mother may apply for Iraqi nationality within one year of reaching majority, providing that the child's father is unknown or stateless and the child is residing in Iraq at the time of the application.

In **Syria**, mothers can only confer nationality if the child was born in Syria and the father does not establish filiation in relation to the child. Syria has a safeguard in place to prevent statelessness among children born in the territory but is not clear that this is implemented in practice.

The law of **Bahrain** allows mothers to confer their nationality to their children born either in their home countries or abroad if the fathers are unknown or stateless. Under the law of **Oman**, mothers confer nationality to their children born either in their home countries or abroad if the fathers are unknown or are former Omani nationals.

In **Mauritania**, mothers can confer nationality to children when the father is unknown or stateless. Children born in Mauritania to Mauritanian mothers and foreign fathers, or to mothers who were born in Mauritania themselves, also acquire Mauritanian nationality. However, in the latter two instances, these children can renounce their nationality at majority, even if this leaves them stateless. Children born abroad to Mauritanian mothers and foreign fathers can opt for Mauritanian nationality in the year before reaching majority.

## Africa

Africa has witnessed numerous reforms to nationality laws in recent years which have granted equality to women and men with regard to conferral of nationality on their children. Several States in Africa maintain legislative provisions that do not yet do so but are in the process of reviewing them from a gender equality perspective. Eight countries in Africa do not provide mothers equal rights as fathers to confer their nationality on their children, leading to a risk of statelessness for such children<sup>4</sup>.

The laws of **Somalia** and **Swaziland** do not allow mothers to confer their citizenship on their children. Under the 1962 Somali Citizenship Law only children of Somali fathers acquire Somali citizenship. Although Swaziland's Constitution of 2005 stipulates that any child born inside or outside of Swaziland prior to 2005 to at least one Swazi parent acquires Swazi citizenship by descent, children born after 2005 only acquire Swazi citizenship from their fathers.

In **Madagascar**, mothers are only permitted to confer nationality on children born in wedlock if the father is stateless or of unknown nationality. Children born to Madagascan mothers and foreign national fathers can apply to acquire Madagascan nationality until they reach majority and the same applies to children born out of wedlock, when the person who establishes filiation to the child is Madagascan and the other parent a foreign national.

Following reform in 2006, the laws of **Sierra Leone** provide that a child born in Sierra Leone after 1971 acquires Sierra Leonean citizenship by birth if their father, mother or any grandparent was born in Sierra Leone and is a person of "Negro African descent". Children born abroad, however, only acquire Sierra Leonean citizenship by descent if their father is a Sierra Leonean citizen. Nevertheless, the Sierra Leonean Nationality Law contains a safeguard granting Sierra Leonean citizenship to any child born to a Sierra Leonean mother who has not acquired another nationality.

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(4) The laws of Guinea and Mali also treat women differently with regard to conferral of nationality to their children. However, the scope of the exceptional circumstances in which women are permitted to transmit their nationality, or the fact that the nationality laws contain general safeguards against statelessness, means that despite the discriminatory nature of these nationality laws, children are nonetheless protected against statelessness. In Benin, although children can acquire nationality from their mothers, if the father is a foreign national, such children are allowed to renounce Benin nationality within 6 months of reaching majority.

## *States with constitutional guarantees of equality that have not yet reformed nationality laws to introduce gender equality*

Four African States – **Burundi**, **Liberia**, **Sudan**, and **Togo** – have enshrined the principle of gender equality in recent constitutions but have yet to reform the relevant provisions of their nationality laws. In principle, constitutional provisions prevail over the nationality law in each State. However, because nationality laws tend to be more specific and practice-oriented, administrative authorities may be more likely to apply the older provisions of these laws rather than look to constitutional guarantees of gender equality.

For example in **Burundi**, the 2000 Nationality Code does not allow mothers to transfer nationality to children except when maternal filiation is established when they are born out of wedlock to unknown fathers or if disowned by their fathers. This is at variance with Article 12 of Burundi's 2005 Constitution that guarantees Burundian men and women equality in nationality matters.

In **Liberia**, the Aliens and Nationality Law of 1973 allows children born in Liberia to acquire Liberian citizenship at birth. Children born abroad to Liberian mothers, however, are excluded from acquiring Liberian citizenship. These provisions are inconsistent with Article 28 of the Liberian Constitution of 1986, which establishes that any child who has a parent who was a Liberian citizen at the time of birth acquires citizenship, provided that the person renounces any other nationality upon attaining majority. During the December 2011 Ministerial Meeting Liberia pledged to amend the relevant provisions of the Aliens and Nationality Law to bring them into line with the Constitution.

In **Togo**, while the 1978 Nationality Law contains a safeguard to grant citizenship to children born in its territory who cannot claim the nationality of another State, it only allows mothers to confer their nationality to their children if the father is stateless or of unknown nationality, contrary to Article 32 of the 1992 Constitution that grants Togolese nationality to children born to Togolese fathers or mothers.

In **Sudan**, the 1994 Nationality Act provides that all children born in Sudan whose male ancestors were residing in Sudan since 1956 acquire Sudanese nationality by descent. After 1994, the Act grants citizenship to children born to a father who was a Sudanese national by descent. The law was amended in 2005 to allow a child born to a Sudanese mother to acquire Sudanese nationality by birth by following an application process. These provisions from the 1994 Act are at variance with Article 7 of the Interim Sudanese Constitution that guarantees that "every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship." After the creation of the independent State of South Sudan, the Republic of Sudan amended its nationality law in 2011, but has yet to amend the relevant sections of the 1994 Act. The Interim Sudanese Constitution remains in force until Sudan adopts a permanent constitution.

## **Asia**

Five countries in Asia and the Pacific maintain laws that do not provide mothers equal rights as fathers to confer their nationality on their children. In **Brunei Darussalam** and the **Islamic Republic of Iran**, only fathers can confer their respective nationalities on their children in all circumstances.

In **Kiribati**, children born in the country to an i-Kiribati father or mother can acquire nationality of Kiribati; however, only children born abroad to i-Kiribati fathers, not mothers, acquire nationality of Kiribati. In **Malaysia**, children born in the country to either Malaysian mothers or Malaysian fathers automatically acquire Malaysian nationality. But children born to Malaysian mothers outside of Malaysia may only acquire Malaysian citizenship at the discretion of the Federal Government through registration at an overseas Malaysian consulate or at the National Registration Department in Malaysia.

As for **Nepal**, children born to Nepalese fathers acquire Nepalese citizenship in all circumstances. Children born in Nepal to Nepali mothers and foreign citizen fathers can apply to acquire citizenship through naturalization, provided they have permanent domicile in Nepal and have not acquired the foreign citizenship of their fathers; to date, however, there are no known cases of children acquiring citizenship through this naturalization process.

## Americas

Two States in the Caribbean do not allow women to confer nationality on their children on the same terms as fathers. In **The Bahamas**, children born in the country to either a Bahamian father or mother acquire Bahamian nationality; however, only children born abroad to Bahamian fathers, not mothers, can acquire Bahamian nationality. The same applies in **Barbados**, where children born in Barbados to either Barbadian mothers or fathers acquire Barbadian nationality, but Barbadian mothers cannot confer nationality on their children born abroad, whereas Barbadian fathers can.

*8 March 2016*