

**Flygtningenævnets baggrundsmateriale**

|                                 |                                                                             |
|---------------------------------|-----------------------------------------------------------------------------|
| <b>Bilagsnr.:</b>               | <b>552</b>                                                                  |
| Land:                           | Libanon                                                                     |
| Kilde:                          | UN High Commissioner for Refugees (UNHCR)                                   |
| Titel:                          | Background Note on Gender Equality, Nationality Laws and Statelessness 2018 |
| Udgivet:                        | 8. marts 2018                                                               |
| Optaget på baggrundsmaterialet: | 22. juni 2018                                                               |



## Background Note on Gender Equality, Nationality Laws and Statelessness 2018

**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 of 8 March 2018.**

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 25 countries, and these countries are located in almost all parts of the world. These nationality laws do not give mothers the ability to confer their nationality on their children on an equal basis as fathers. The majority of these States are found in the Middle East and North Africa (twelve countries) and Sub-Saharan Africa (six 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 6 and an analysis of those countries' laws is presented on pages 7-10. It is important to note that an additional group of States 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 conferral of 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

<sup>1</sup> Discrimination between men and women in nationality matters is addressed in a number of international human rights treaties. 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.

<sup>2</sup> Note that this information is current as of 8 March 2018.

<sup>3</sup> An assessment undertaken by UNHCR shows that more than 60 States retain such legal provisions.

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 promotes gender equality in nationality laws as part of its mandate to prevent and reduce statelessness.

## 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), Morocco (2007), Bangladesh (2009), Zimbabwe (2009), Kenya (2010), Tunisia (remaining gaps addressed in 2010), Yemen (2010), Monaco (2005, 2011), Senegal (2013), Suriname (2014), Madagascar (2017), and Sierra Leone (2006, 2017). In many cases, the relevant law reform simply extended to women the right to confer nationality on their children.

Indeed, 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 example of Kenya’s Constitutional reform in 2010. Under the prior Kenyan Constitution of 1969, 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 60th and 50th 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 of a Senegalese national is Senegalese.



More recently, commitments made at the regional level have been instrumental in promoting change. In February 2015, under the Abidjan Declaration of Economic Community of West African States on Eradication of Statelessness<sup>4</sup>, and subsequently pursuant to the legally binding Banjul Plan of Action<sup>5</sup> adopted in May 2017, ECOWAS Member States committed to ensuring that women and men have equal rights to confer nationality on their children. In October 2017, Member States of the International Conference of the Great Lakes Region Member States signed a Declaration on the Eradication of Statelessness<sup>6</sup> and an accompanying Plan of Action which commits those States to ensuring that women and men have equal rights to acquire, change and retain their nationality and to confer their nationality on their children and spouses.

In October 2016, a Regional Expert Meeting entitled “*Our Children, Our Future: Belonging and Identity*”, was convened in partnership with the League of Arab States (LAS), which resulted in the development of a LAS Declaration to strengthen rights to legal identity, including rights to birth registration, nationality and family unity. In October 2017, a Conference for Arab States on Good Practices and Regional Opportunities to Strengthen Women’s Nationality Rights was organized by the LAS and resulted in the adoption of an Outcome Statement<sup>7</sup> that promotes gender equality in the acquisition, change, retention or conferral of nationality. These events paved the way for the LAS to adopt a Ministerial Declaration on Belonging and Legal Identity in February 2018, which combines the main provisions of the 2016 Arab Declaration and 2017 Outcome Statement. The Ministerial Declaration calls for gender equal nationality rights in all countries in the region, as well as for all children to enjoy their right to a legal identity.

In 2017, Madagascar and Sierra Leone became the first countries since the launch of UNHCR’s #IBelong Campaign to End Statelessness to reform their nationality laws to allow mothers to confer their nationality to their children on an equal basis as men. In Madagascar, although the reform does not permit Malagasy women to confer their nationality on their non-national spouses (as Malagasy men can), it does allow both spouses and children to retain their nationality if a partner or a parent loses theirs. In

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<sup>4</sup> Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness, 25 February 2015, available at: <http://www.refworld.org/docid/54f588df4.html>

<sup>5</sup> Economic Community of West African States (ECOWAS) Plan of Action on Eradication of Statelessness, 2017 – 2024, 2017, available at: <http://www.refworld.org/docid/5915c88a4.html>

<sup>6</sup> Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness, 16 October 2017, CIRGL/CIMR/DEC/15/10/2017, available at: <http://www.refworld.org/docid/59e9cb8c4.html>

<sup>7</sup> The First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women’s Nationality Rights League of Arab States Secretariat General, 1-2 October 2017 – Outcome Statement, available at: <http://www.refworld.org/docid/5a256c4a4.html>

Sierra Leone, prior to the 2017 reform, Sierra Leonean women were denied the right to confer nationality on their children born abroad (unlike Sierra Leonean men).

Other States have recently initiated discussions to reform their nationality laws. For example, reviews of the Alien and Nationality Law in Liberia and of the *Code de nationalité* in Togo are underway to bring them in line with their countries' respective Constitutions which provide for equality between women and men in their ability to confer their nationality on their children. In Somalia, once enacted, a newly drafted Citizenship Bill will abolish discriminatory provisions and, *inter alia*, permit Somali women to confer nationality to their children on an equal basis as Somali men. In early 2018, the Sudanese Council of Ministers approved a bill, which if passed, will result in the partial reform to the nationality law of Sudan. This amendment will allow Sudanese women to confer their nationality on children where the father is from South Sudan in the same way that a Sudanese father can confer his nationality on his child where the mother is South Sudanese. However, Sudanese women who have children with men who are nationals of other countries are still unable to confer their nationality on their children on an equal basis as Sudanese men who have children with foreign spouses. In addition, unlike Sudanese men married to foreign women, Sudanese women cannot pass their nationality on to their foreign spouses. The Parliaments of Bahrain and Kuwait are currently examining proposals to review their respective nationality laws and consider reforms that would allow women to confer citizenship on their children at birth.

UNHCR's [#IBelong 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 25 States into three categories. The laws of the first group of countries (red) have nationality laws which do not allow mothers to confer their nationality on 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              | Somalia              |
| Jordan            | Sudan                |
| Kiribati          | Swaziland            |
| Kuwait            | Syria                |
| Lebanon           | Togo                 |
| Liberia           | United Arab Emirates |
| Libya             |                      |

## 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 on 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 on 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 on 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 on 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 on 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 on 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 on 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 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. Six 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>8</sup>

The laws of **Somalia** and **Swaziland** do not allow mothers to confer their citizenship on their children under the same conditions as fathers. Under the 1962 Somali Citizenship Law only children of Somali fathers acquire Somali citizenship. Swaziland's Constitution of 2005 stipulates that any child born inside or outside Swaziland prior to 2005 to at least one Swazi parent acquires Swazi citizenship by descent. However, children born after 2005 only acquire Swazi citizenship from their fathers, unless the child was born out of wedlock and has not been claimed by the father in accordance with customary law.

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<sup>8</sup> The laws of Guinea and Mali also treat women differently with regard to conferral of nationality on 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, which 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 on their children if the father is stateless or of unknown nationality, contrary to Article 32 of the 1992 Constitution, which 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 the 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.

In **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.

# Background Note on Gender Equality, Nationality Laws and Statelessness 2018

8 March 2018

## COVER PHOTOGRAPH:

Syrian refugees in the Bekaa Valley, Lebanon. Gender discrimination in nationality laws remains a leading cause of statelessness globally. Syria is one of the 25 countries with nationality laws that prevent women from conferring their nationality to their children on an equal basis as men. © UNHCR/David Azia

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