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BACKGROUND NOTE ON GENDER EQUALITY, NATIONALITY LAWS AND STATELESSNESS 2020

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 statelessness¹. 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 14 July 2020.

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 legislation² reveals that equality between men and women relating to conferral of nationality upon children³ has not yet been attained in 25 countries, and these countries are located in almost all parts of the world. A significant number of these States are found in the Middle East and North Africa (twelve countries). Six States in Asia and the Pacific and six States in Sub-Saharan Africa do not grant mothers equal rights as fathers to confer their nationality on their children, and the same is the case in 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.⁴

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)

1 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.

2 Note that this information is current as of 14 July 2020.

3 The scope of the survey is limited to issues concerning conferral of nationality by maternal descent to biological children born as of 14 July 2020. For example, it is known that a number of countries do not allow naturalised mothers to confer their nationality to their children on the same basis as men. Other countries place limitations on the ability of adoptive mothers to confer their nationality equally with adoptive fathers. Some countries that have reformed their laws to ensure equal rights concerning transmission of nationality by mothers and fathers have not done so with retroactive effect, such that children born before the date of the reform may not be able to acquire nationality from their mothers on the same basis as they can from their fathers. These examples are not included within the scope of this survey.

4 An assessment undertaken by UNHCR shows that more than 50 States retain such legal provisions.

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 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 thus helps to 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 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), Kenya (2010), Tunisia (remaining gaps addressed in 2010), Yemen (2010), Monaco (2005, 2011), Senegal (2013), Suriname (2014), Madagascar (2017), Sierra Leone (2006, 2017), the United Arab Emirates (partial reforms in 2011 and 2017) and Iran (partial reform in 2019). 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.*

Commitments made at the regional level have been instrumental in promoting change. In February 2015, under the Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness⁵, and subsequently pursuant to the legally binding Banjul Plan of Action⁶ 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 signed a Declaration on the Eradication of Statelessness⁷ and an accompanying Plan of Action⁸ 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 December 2018, Member States of the Economic and Monetary Community of Central Africa, endorsed the N'Djamena Initiative on the Eradication of Statelessness in Central Africa,⁹ under which they also commit to ensuring equal nationality rights for women and men to acquire, change, retain and transmit their nationality. In February 2018, the League of Arab States (LAS) adopted the Arab Declaration on Belonging and Legal Identity, which calls for gender equal nationality legislation in all LAS Member States.

In 2018, the African Union Specialized Technical Committee on Migration, Refugees and Internally Displaced Persons reviewed the text of draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, which enshrines equal nationality rights for women and men to acquire, change or retain their nationality and with respect to the nationality of their children. The next step will be a legal review of the text of the draft Protocol by the African Union Specialized Technical Committee on Justice and Legal Affairs, prior to adoption of the Protocol by the African Union Assembly and its opening for signature and ratification by African Union Member States. At the High-Level Segment on Statelessness in October 2019, the African Union Commission committed to submit the draft protocol for adoption to the African Union Assembly no later than by the end of 2020.

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

6 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>

7 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>

8 Action Plan of the International Conference on the Great Lakes Region (ICGLR) On the Eradication of Statelessness 2017-2019, available at: <https://www.refworld.org/docid/5a7c16aa4.html>

9 N'Djamena Initiative on the Eradication of Statelessness in Central Africa, 12 December 2018, available at: <https://www.refworld.org/docid/5c2f3f8b4.html>

The #IBelong Campaign to End Statelessness

UNHCR's [#IBelong Campaign to End Statelessness in 10 years, launched in November 2014](#), envisages the achievement of gender equality in all nationality laws by the year 2024 as part of the Campaign's broader goals. A practical strategy through which this can be achieved is set out in Action 3 of the [Global Action Plan](#). The objective of achieving gender equality in nationality laws is also supported by Goal 5 of the Sustainable Development Goals.¹⁰ UNHCR continues its work with a range of governments and civil society groups to promote reform to nationality laws and assist in their implementation.

In 2017, Madagascar and Sierra Leone became the first countries since the launch of the #IBelong Campaign to reform their nationality laws to allow mothers to confer their nationality to their children on an equal basis as men.

In 2017, the United Arab Emirates (UAE) also partially reformed its law to allow Emirati women married to foreigners to confer their nationality to their children aged six years and above, subject to a number of conditions. This adds to the existing circumstances in which Emirati women can confer their nationality, for example where children are born in the UAE and their fathers are unknown, stateless or where the paternal relationship has not been substantiated. In 2019, Iran partially reformed its law to allow Iranian women to submit an application to confer their nationality to their children wherever they are born. The Government retains discretion as to whether to grant or deny conferral of nationality requested in the application. While the reform still does not put mothers and fathers on a fully equal footing with respect to their ability to confer nationality to their children, it represents a significant incremental improvement.

The year 2019 marked the mid-point of the #IBelong Campaign. To commemorate this occasion, UNHCR organized a High-Level Segment on Statelessness on 7 October 2019 as part of its annual Executive Committee Meeting. At this meeting, States and other actors were invited to deliver pledges to address statelessness, including by

¹⁰ UNHCR, The Sustainable Development Goals and Addressing Statelessness, March 2017, available at: <https://www.refworld.org/docid/58b6e3364.html>

removing provisions in nationality laws that discriminate against women in their ability to confer their nationality to their children on an equal basis as men. Of the 66 States that delivered pledges, two States, Liberia and Eswatini, pledged to resolve issues of gender discrimination in their respective nationality laws before the end of the #IBelong Campaign in 2024.¹¹

Unequal 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) allow women to confer nationality in some circumstances (for example, some make exceptions for mothers to confer nationality if the father is unknown or stateless and some establish a discretionary procedure for conferral of nationality upon application). The laws of the third group of countries (yellow) also limit the conferral of nationality by women but additional guarantees ensure that statelessness will rarely arise.

The Bahamas	Eswatini	Kuwait	Mauritania	Somalia
Bahrain	Iran	Lebanon	Nepal	Sudan
Barbados	Iraq	Liberia	Oman	Syria
Brunei Darussalam	Jordan	Libya	Qatar	Togo
Burundi	Kiribati	Malaysia	Saudi Arabia	United Arab Emirates

11 An additional four States made pledges concerning gender discrimination that are outside the scope of this survey.

Overview of nationality laws

Middle East and North Africa

Nationality laws in twelve countries in the Middle East and North Africa (MENA) region do not grant equality to women with regard to the right to pass their nationality to their children.

The nationality law in **Qatar** does not permit Qatari mothers to confer their nationality on their children, without exception, even if this would result in statelessness. Under the Kuwaiti nationality law, where 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. The same applies to a person born to a Kuwaiti mother whose foreign father has divorced the mother or who has died. In all such cases, nationality is granted by Decree based on the discretionary recommendation of the Minister of Interior.

Under the nationality law of **Lebanon**, Lebanese women can only confer their citizenship if the child is born out of wedlock and recognized by the Lebanese mother while a minor.

The nationality laws of **Jordan** and **Libya** do not allow women married to foreign nationals to pass their nationality to their children. However, in certain circumstances, they do permit women to confer their nationality on their children born in the territory, for example where fathers are unknown, stateless, of unknown nationality or do not establish filiation.

In **Saudi Arabia** under the nationality law, Saudi women can only confer their nationality to children born in and outside the country if the fathers are unknown or stateless. In addition, sons and daughters of Saudi women married to foreigners may be granted Saudi nationality in limited circumstances, and only upon submission of an application for nationality within one year of reaching the age of majority.

The nationality law of the **UAE** provides that Emirati women can only confer nationality to their children if they are born in the UAE and paternity has not been established, or where the father is unknown or stateless. In addition, children born to Emirati women married to foreigners can acquire Emirati nationality from their mothers from the age of six by application as long as certain conditions are fulfilled.

In **Iraq**, although the Iraqi Constitution of 2005 establishes gender equality by providing that nationality is acquired by descent from either national 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**, the nationality law provides that national mothers can only confer nationality if the child was born in Syria and the father does not establish filiation in relation to the child.

The nationality law of **Bahrain** only allows Bahraini mothers to confer their nationality on their children born either in Bahrain or abroad if the fathers are unknown or lack documents to establish filiation. Under the nationality law of **Oman**, Omani mothers may confer nationality on their children born either in Oman or abroad if the fathers are unknown or are former Omani nationals. In addition, in very limited circumstances, a minor child born from an Omani mother and a foreign father may be granted Omani citizenship. In **Mauritania**, national mothers can confer nationality on children when the father is unknown or stateless. Children born in Mauritania to Mauritanian mothers and foreign fathers can also acquire Mauritanian nationality; however, 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

Nationality laws in 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.

Under the 1962 Citizenship Law of **Somalia**, Somali mothers have no ability to confer their nationality to their children. **Eswatini**'s Constitution stipulates that children born after 2005 can only acquire nationality from their Swazi fathers, unless the child was born out of wedlock and has not been claimed by the father in accordance with customary law, in which case the Swazi mother can pass on her nationality. In addition, Eswatini's 1992 Citizenship Act contains the same provisions, applicable to children born after 1992.

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 Burundian mothers to confer nationality to their children except when maternal filiation is established in situations where they are born out of wedlock to unknown fathers or 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. In 2019, during the High-Level Segment on Statelessness, Liberia pledged to work to ensure the passage of an amendment to the Aliens and Nationality Law to address issues of gender discrimination.

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 Togolese mothers to confer their nationality on their children if the father is stateless or of unknown nationality. This is 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 children born outside the country before the coming into force of the Act whose fathers were born in Sudan are Sudanese. The Act furthermore provides that all children residing in Sudan at the coming into force of the Act whose ancestors from the father's side 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 and subsequently in 2018, but has yet to amend the relevant sections of the 1994 Act to ensure equal rights between Sudanese women and men to confer their nationality to their children. The Interim Sudanese Constitution remains in force until Sudan adopts a permanent constitution.

Asia

The nationality laws in five countries in Asia and the Pacific do not provide mothers equal rights as fathers to confer their nationality on their children. In **Brunei Darussalam** the nationality law does not permit national women to confer their nationality to their children at all. In **Iran**, with the 2019 reform to the nationality law, Iranian women married to non-Iranian men can in principle apply to confer their nationality to their children regardless of where they are born, with retroactive effect.

Under **Kiribati's** nationality law, children born in the country to a Kiribati father or mother can acquire the nationality of Kiribati; however, only children born abroad to 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. However, children born to Malaysian mothers outside 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**, the Nepalese nationality law provides for a Nepalese woman to confer her nationality to her child only where the father is unknown and the child was born in and has resided in Nepal. Children born to Nepalese mothers and foreign 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.

Americas

The nationality laws of two States in the Caribbean do not allow women to confer nationality on their children on the same terms as fathers.

In **The Bahamas**, the nationality law provides that children born in the country to either a Bahamian father or mother acquire Bahamian nationality; however, children born abroad acquire nationality only through Bahamian fathers, not mothers.

Under the nationality law of **Barbados**, all children born in the country acquire Barbadian nationality at the date of their birth but Barbadian mothers cannot confer nationality on their children born abroad, whereas Barbadian fathers can.

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Cover photo: Georgia is a Liberian citizen. Her children were born in Nigeria to a Nigerian father who passed away. Their births were never registered in Nigeria and thus, they were never able to establish their entitlement to Nigerian citizenship. Now, living in Liberia, Georgia's children are stateless and unable to obtain nationality documents since local laws prohibit her from passing on her citizenship to them. Liberia is one of 25 countries that maintain such provisions, and is currently revising its nationality law, which may eventually allow Georgia to attain citizenship for her children. © Diana Diaz



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