

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	103
Land:	Diverse emner
Kilde:	UNHCR.
Titel:	Background Note on Gender Equality, Nationality Laws and Statelessness.
Udgivet:	8. marts 2012
Optaget på baggrundsmaterialet:	27. juni 2012

Background Note on Gender Equality, Nationality Laws and Statelessness

In pursuit of its mandate to prevent statelessness, UNHCR is particularly attentive to laws in which women do not enjoy equal rights as men in conferring nationality on their children. Such laws can give rise to circumstances that leave children stateless.¹

Sixty years ago, the nationality laws of the majority of States did not provide equal rights to women in this regard. 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 gender equality has not yet been attained in 26 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 (eleven countries) and Sub-Saharan Africa (nine countries). Four States in Asia also do not grant mothers equal rights as fathers to confer their nationality on their children, as well as 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.

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 toward promoting gender equality in nationality laws.

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. Reform has already been undertaken in recent years in countries as diverse as Sri Lanka (2003), Egypt (2004), Algeria (2005), Indonesia (2006), Iraq (2006), Sierra Leone (partial reform in 2006), Morocco (2007), Bangladesh (2009), Zimbabwe (2009), Kenya (2010), Tunisia (remaining gaps addressed in 2010), Monaco (2005, 2011) and Yemen (2010). In

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 (1) with respect to acquisition, change, or retention of their nationality and (2) 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.

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, reform to incorporate gender equality can often be achieved through relatively simple changes to the formulation of relevant legislative 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 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. UNHCR welcomes the important steps taken by these States. The Office is also working with a range of other governments to reform their 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 these 26 States into three categories. The laws of the first group of countries (dark orange) have no, or very limited, exceptions to their rules that do not provide mothers with the right to confer their nationality to their children – 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 limited circumstances.

Bahamas	Mauritania
Bahrain	Nepal
Barbados	Oman
Brunei Darussalam	Qatar
Burundi	Saudi Arabia
Iran	Senegal (has pledged to reform law)
Jordan	Sierra Leone
Kuwait	Somalia
Lebanon	Sudan
Liberia (has pledged to reform law which is inconsistent with constitutional provision)	Swaziland
Libya	Syria
Madagascar	Togo
Malaysia	United Arab Emirates

Overview of nationality laws

Middle East and North Africa

A great deal of progress has been achieved in recent years, with reforms in six States since 2004. However, eleven 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 maintain any exception that would allow mothers to confer nationality to their children, even if this would result in statelessness. The law of **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 stateless, such a child might be eligible for Kuwaiti citizenship at majority by Decree based on the recommendation of the Ministry 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. According to the letter of the Lebanese nationality law, children born in Greater Lebanon who do not acquire another nationality are entitled to Lebanese citizenship by affiliation. Although this safeguard should prevent statelessness, because the law does not allow Lebanese mothers to confer their citizenship to their children, it is not clear that it is implemented in practice.

Although the nationality laws of **Jordan**, **Libya**, **Saudi Arabia**, and the **United Arab Emirates** do not allow women nationals married to foreigners to pass their nationality to their children, they make varying exceptions for children born within their territories if the fathers are unknown, stateless, of unknown nationality or do not establish filiation. In **Syria**, mothers can only confer nationality on their children when fathers either do not establish filiation or their children are not entitled to acquire another nationality at birth. 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 fathers are 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; 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.

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 Malagasy mothers and foreign fathers can apply to acquire Malagasy 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 Malagasy and the other parent a foreigner.

In **Senegal**, mothers can only confer their nationality on their children born in wedlock when their fathers are stateless or of unknown nationality. Children born in wedlock to Senegalese mothers and foreign fathers can only become Senegalese citizens by opting to acquire Senegalese citizenship between the ages of 18 and 25. A child born out of wedlock acquires Senegalese nationality if the person who establishes filiation to the child is Senegalese. During the December 2011 ministerial meeting Senegal pledged to amend these provisions.

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. Children born abroad, however, only acquire Sierra Leonean citizenship by descent if their father is a Sierra Leonean citizen. Nevertheless, the Sierra Leone nationality law contains a safeguard granting Sierra Leonean citizenship to any child born to a Sierra Leonean mother who has not acquired another nationality.

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 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 by birth 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

Four countries in Asia 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 **Malaysia**, children born in the country to either Malaysian mothers or Malaysian fathers acquire Malaysian nationality. But children born to Malaysian mothers outside of Malaysia may only acquire Malaysian citizenship if the father is also Malaysian. 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 Barbadian mothers and fathers acquire Barbadian nationality, but Barbadian mothers cannot confer nationality on their children born abroad, whereas Barbadian fathers can.

8 March 2012