

Discrimination against women in nationality¹

*Working Group on the issue of discrimination against women in law and in practice
May 2017*

I. Legal Framework

Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”) reaffirms that laws and practices which treat women differently than men in terms of nationality constitute discrimination against women *ipso facto*. Reiterating provisions of the 1957 Convention on the Nationality of Married Women concerning the equal rights of women with regard to their own nationality,² CEDAW article 9 particularly aims to prevent women from losing their nationality through marriage to a foreign spouse. It states:

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.³

CEDAW further recognizes women’s equal right to bestow their nationality onto children, by indicating:

States parties shall grant women equal rights with men with respect to the nationality of their children.⁴

In addition to violating anti-discrimination obligations, the unequal treatment of women’s nationality in law and practice hinders the realization of other rights, including: the right to a nationality and freedom from statelessness, the right to equality in the family, the ability to participate equally in public and political life, freedom of movement, access to public services and the rights to housing, health and education, among other economic, social and cultural rights.

II. Engagement by the Working Group on the issue of discrimination against women in law and in practice

Recognizing the multiple harms caused by discrimination against women in terms of nationality, the Working Group has highlighted the negative impact of unequal nationality legislation in its thematic reports, raised concerns with respect to lack of progress on this issue during country visits and advocated for legal reform through the Special Procedures communications procedure.

Thematic Reports

¹ Delivered by Frances Raday at the Expert Workshop on the best practices to promote women’s equal nationality rights in law and in practice, Geneva, 17 May 2017.

² Article 1.

³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 9 (1).

⁴ CEDAW, art. 9 (2).

In a 2013 thematic report focused on women's equal participation in political and public life (hereinafter "Public and Political Life Report"),⁵ the Working Group emphasized that discriminatory nationality laws violate women's right to citizenship and, in so doing, restrict women's participation in public and political life. The report elaborates:

*Elimination of discrimination against women in political and public life necessitates reform of discriminatory nationality laws. Women's capacity to participate in political and public life is defined by their citizenship and nationality, but nationality laws [d]iscriminate against women, particularly when they require a single nationality in a family and the wife's nationality is treated as dependent on her husband's.*⁶

When countries of both spouses follow the principle of dependent nationality, women lose their own nationality upon marriage with a foreign husband and gain their husband's nationality. As the report explains:

*[I]f the country of the husband does not follow this principle [of dependent nationality], then the wife is at risk of becoming stateless, denying her the right to legitimately participate in the political and public life of any country.*⁷

The report also states:

*Laws which require women to seek permission from their husbands, or other family members traditionally defined as their guardians, in acquiring passports and other identity documents also potentially undermine women's capacity to equal participation in political and public life, including through limited freedom of movement.*⁸

There is also an intersectional element to the discrimination faced by women in the implementation of nationality laws. As highlighted by the Public and Political Life Report:

Women and girls belonging to minority communities, rural and indigenous women, migrant women, refugee women and those seeking asylum, and poor women face discriminatory practices in the implementation of laws on nationality and citizenship. They face prejudicial attitudes as well as structural obstacles which limit access to formal registration of births, marriage, residence and other citizenship documents as well as to relevant information on their rights as citizens. Women who are de facto heads of households, including those who have been abandoned by their husbands, whose divorce is not legally registered, or whose husbands have been forcibly disappeared and do not have death certificates for their husbands, are denied recognition of their status in official documents. Without such access,

⁵ Report of the Working Group on the issue of discrimination against women in law and practice (2013), A/HRC/23/50, available at : <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/ListReports.aspx> (last accessed 9 June 2017).

⁶ A/HRC/23/50, para. 84.

⁷ Ibid.

⁸ Ibid.

*women from these communities become disproportionately vulnerable in exercising their full and equal rights as citizens.*⁹

The Working Group's 2015 report on family and culture also clarifies that unequal nationality provisions affect women's right to equality in the family, as well as their right to mobility.¹⁰ Nationality laws which allow only men to transmit their nationality to their foreign spouses and their children are therefore discriminatory in a number of ways.

Country Visits

From 2011 to 2013, the Working Group was involved in a highly successful communications process and undertook a country visit to Tunisia at the time of the so-called Jasmine Revolution. During the visit, the Working Group encouraged the transitional Government to guarantee equality for women in its new Constitution and to eliminate discriminatory provisions in legislation—including those in the Tunisian nationality law.¹¹ Following the visit, on 27 January 2014, the Government of Tunisia promulgated its new Constitution, which contains ground-breaking provisions to guarantee, protect and strengthen women's human rights. On 17 April 2014, it also lifted all of its reservations to CEDAW, including its reservation to Article 9 on nationality.¹²

In 2012, the Working Group undertook a visit to Morocco, where it raised the fact that Moroccan legislation did not entitle women to confer their nationality onto foreign spouses in the same manner as Moroccan men.¹³ In addition, the Working Group highlighted that, despite Morocco's 2011 withdrawal of reservations to CEDAW Article 9 and despite some reforms to Moroccan nationality legislation, discrimination against women still persisted, given that, unlike men, women could not transmit their nationality to their children except in cases where the father was Moroccan or Muslim.¹⁴

Subsequently, the Working Group sent a follow-up letter to Morocco in July 2014, which inquired about the State's progress in withdrawing its reservation to CEDAW Articles 2 and 5.¹⁵ The Government in its reply reiterated its position that those Convention provisions apply only if not

⁹ A/HRC/23/50, para. 86

¹⁰ See Report of the Working Group on the issue of discrimination against women in law and practice, A/HRC/29/40 (2015), para. 70, *available at* : <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx> (last accessed 9 June 2017).

¹¹ See Report of the Working Group on the issue of discrimination against women in law and in practice, Addendum: Mission to Tunisia (2013), A/HRC/23/50/Add.2, paras. 37, 72, *available at* : <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/ListReports.aspx> (last accessed 9 June 2017).

¹² See Status of CEDAW *at* https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en#80 (last accessed 2 June 2017).

¹³ Report of the Working Group on the issue of discrimination against women in law and in practice, Addendum: Mission to Morocco (2012), A/HRC/20/28/Add.1, para. 23, *available at* : http://ap.ohchr.org/documents/alldocs.aspx?doc_id=20240 (last accessed 9 June 2017).

¹⁴ A/HRC/20/28/Add.1, paras. 14, 16, 23.

¹⁵ Letter from the Working Group on the issue of discrimination against women in law and in practice to the Permanent Mission of the Kingdom of Morocco to the United Nations Office and other international organizations in Geneva, 21 July 2014 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22533>) .

going against Islamic Sharia and only if not contrary to Articles 34 and 36 of the Family Code of Morocco (*Moudawana*).¹⁶

Finally, during a 2016 visit to Kuwait, the Working Group found that, under the 1959 Nationality Law, women were not entitled to confer their nationality onto their children except in cases of divorce, death or statelessness of the father or husband. In addition, Kuwaiti women were also not able to confer their nationality onto foreign spouses. In response to this, the Working Group recommended that the State amend its Nationality Law in order to recognize women's right to confer their nationality onto spouses and children on a par with the right of Kuwaiti men to do so.¹⁷

Communications

As noted in the Working Group's 2013 Public and Political Life Report, there has been progress on this issue: several countries have repealed or amended legislation which prevented or created obstacles to the transmission of nationality from women to their children and foreign husbands, though to a lesser degree for the latter. As noted above, some countries have lifted their reservations to CEDAW. In addition, discriminatory nationality laws have been challenged, including through judicial systems and in international human rights mechanisms, which has resulted in some positive court decisions.¹⁸

With this in mind, and following a 2013 OHCHR report on the issue,¹⁹ the Working Group launched a communications campaign in 2014 that sought to encourage all countries still maintaining discriminatory nationality laws to reform their legislation. Communications were therefore sent to 26 States identified through UNHCR's annual note on gender equality, nationality laws and statelessness.²⁰ Nine states responded, five of which identified plans to reform their nationality laws.²¹

In addition to those five, and following the presentations made today, the Working Group welcomes news of Madagascar's recent legal reform in this area. However, further follow up is

¹⁶ Letter from the Permanent Mission of the Kingdom of Morocco to the United Nations Office and other international organizations in Geneva to the Working Group on the issue of discrimination against women in law and in practice, 12 November 2014 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=39481>).

¹⁷ Report of the Working Group on the issue of discrimination against women in law and in practice, Mission to Kuwait, A/HRC/35/29/Add.2, para. 31, *available at* : <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Pages/ListReports.aspx> (last accessed 9 June 2017).

¹⁸ A/HRC/23/50, para. 85.

¹⁹ Report of the Office of the United Nations High Commissioner for Human Rights on discrimination against women on nationality-related matters, including the impact on children (2013), A/HRC/23/23, *available at* : <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/ListReports.aspx> (last accessed 9 June 2017).

²⁰ UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness (2014), *available at* : <http://www.unhcr.org/protection/statelessness/4f5886306/background-note-gender-equality-nationality-laws-statelessness-2014.html> (last accessed 2 June 2017).

The states were: the Bahamas, Bahrain, Barbados, Brunei Darussalam, Burundi, Iran, Iraq, Jordan, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mauritania, Nepal, Oman, Qatar, Sierra Leone, Somalia, Sudan, Suriname, Swaziland, Syria, Togo and the United Arab Emirates.

²¹ States envisaging reform included: Bahrain, Lebanon, Qatar, Sierra Leone and Togo.



clearly necessary on this issue, including in providing support to States facing legislative reform challenges due to resource limitations.