



Equality Bahamas, Equality Now, Family Frontiers, Global Campaign for Equal Nationality Rights, Institute on Statelessness and Inclusion, and Nationality For All
Submission to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance regarding the 2021 report on the 20th anniversary of the Durban Declaration and Programme of Action

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The persistence and application of gender-discriminatory nationality laws is significantly linked with racial discrimination, xenophobia and discrimination on other protected grounds and contravenes the goals set forth in the Durban Declaration and Programme of Action (DDPA). This fact, outlined by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur) in her 2018 report “Racial discrimination in the context of nationality, citizenship and immigration,”¹ has also been widely documented by the Global Campaign for Equal Nationality Rights (GCENR) and its coalition members. As the Special Rapporteur rightfully stated in her report: “States continue to enforce patriarchal laws that use gender-based discrimination to achieve racial, ethnic and religious exclusion.”²

The DDPA, echoing all core human rights instruments, affirms that “all human beings are born free and equal.” It states further that “everyone is entitled to a social and international order in which all human rights can be fully realized for all, without discrimination.” Despite this, as of this submission, twenty-five countries³ have nationality laws that deny women the right to pass citizenship to their children on an equal basis with men. Approximately fifty countries⁴ have laws that deny women the right to confer nationality on their spouse on an equal basis with men. While inhibiting women’s right to freely choose the spouse, such laws penalize women for marrying noncitizens, with wide-ranging, harmful impacts to them and their families. The right to nationality without discrimination is protected in numerous international and regional conventions, including the Universal Declaration of Human Rights (Art. 15), the International Covenant on Civil and Political Rights (Art. 24), the Convention on the Elimination of All Forms of Discrimination against Women (Art. 9), the Convention on the Rights of the Child (Arts. 7-8), the International Convention on the Elimination of Racial Discrimination (Art. 5), the Convention on the Rights of Persons with Disabilities (Art. 18), the United Nations Declaration on the Rights of Indigenous Peoples (Art. 6), and the International Convention on the Protection of the Rights of All Migrant Workers

¹ Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/38/52 “Racial discrimination in the context of nationality, citizenship and immigration,” 18 April 2018, available at: <https://undocs.org/A/HRC/38/52>

² Ibid.

³ The Bahamas, Bahrain, Barbados, Brunei, Burundi, Eswatini, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Togo, United Arab Emirates

⁴ Bahamas, Bahrain, Bangladesh, Barbados, Benin, Brunei Darussalam, Burundi, Cameroon, Central African Republic, Comoros, Congo, Egypt, Eswatini, Guatemala, Guinea, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Libya, Madagascar, Malawi, Malaysia, Mauritania, Morocco, Nepal, Nigeria, Oman, Pakistan, Qatar, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Singapore, Solomon Islands, Somalia, Sudan, Syrian Arab Republic, Thailand, Togo, Tunisia, United Arab Emirates, Tanzania and Yemen.



and Members of Their Families, (Art. 29). As noted in DDPA paragraph 47, while States have the sovereign right to determine their frameworks and policies for migration, such policies should be consistent with human rights instruments.

Today, in an increasingly globalized world, opposition to women’s equal nationality rights in affected countries continues to be deeply rooted in xenophobia and sexism. Reforms to uphold gender-equal nationality rights are often framed by the opposition as exposing the country to the threat of foreign men who: may “trick” women into marriage in order to acquire that country’s nationality; take jobs from natural born citizens; and threaten the country’s national identity through the production of children assumed to hold allegiance to their father’s foreign land. For example, prominent political leaders in Nepal frequently state that women’s unequal nationality rights are necessary to prevent an influx of persons from neighboring India and China taking control of the country.⁵ Nepali political leaders have specifically cited the Madheshi communities’ cross border marriage system with Indian nationals as the reason for the current discriminatory citizenship law. One Nepali political leader reflected this frequently cited sentiment to a journalist, stating “We don’t want foreigners coming in and leading the country, do we?”⁶ Responding to a question in parliament on Malaysia’s gender-discriminatory citizenship laws in December 2020, the Deputy Home Minister Datuk Seri Ismail Mohamed Said stated that the Government cannot allow Malaysian mothers to confer citizenship on their children born abroad of foreign spouses because the children would be a “national security threat.”⁷ Activists in The Bahamas emphasized that gender discrimination in nationality law is undergirded by racism, xenophobia, and more specifically, anti-Haitian sentiment, with black migrants from Haiti and other Caribbean countries often viewed as liabilities while non-black migrants are assumed to bring necessary skills and make valuable contributions to the country.

In many countries with gender-discriminatory nationality laws, while men hold the right to automatically confer nationality on their children and spouse, women may in certain instances only confer nationality at the discretion of the government. Where this discretion exists, it is widely applied in a discriminatory

⁵ Tsering D. Gurung, “Debate over Nepali Women’s Right to Pass on Citizenship to Children Reignites as House Committee Holds Discussions on Controversial Provisions,” *The Kathmandu Post*, March 7, 2019, available at: <https://kathmandupost.com/national/2019/03/07/debate-over-nepali-womens-right-to-pass-on-citizenship-to-children-reignites-as-house-committee-holds-discussions-on-controversial-provisions>; see also Rewati Sapkota, “Nepal Citizenship Bill faces hurdles to passage in HoR,” *The Himalayan Time*, January 31, 2019, available at: <https://thehimalayan.com/kathmandu/nepal-citizenship-bill-faces-hurdles-to-passage-in-hor/>; Anjita Parajuli, “Ghar Bhanduwa Nariwad,” *Kantipur*, Bhadra 30, 2075, available at: https://ekantipur.com/koseli/2018/09/15/153698116_167546571.html?fbclid=IwAR3Kjbg_s9LoJci5KiT5IAZuRdXoMt5GJFZC6MFzhOY60wURnH-3-sOAO

⁶ Ibid.

⁷ T. Nazari, “National Security Is Why Women Can’t Confer M’sian Citizenship To Children,” *The Rakyat Post*, 3 Dec 2020, available at: <https://www.therakyatpost.com/2020/12/03/national-security-is-why-women-cant-confer-msian-citizenship-to-children/>



manner towards certain races, religious and ethnic minorities, and binational marriages with persons from countries deemed undesirable. The DDPA in fact warns that one of the effects of globalization could be increased “social exclusion...which may occur along racial lines.”⁸ Gender discrimination in nationality laws contributes to such social exclusion and affects a larger number of families with increased globalization. For example, prior to Madagascar’s 2016 reforms upholding women’s equal right to confer on children, women married to foreigners could only confer nationality on children by application at the discretion of the government. Research undertaken prior to reforms found “as a result of systemic discrimination against minority groups and a high level of discretionary power being held by authorities, in practice a person’s ability to confer nationality on their children is also directly related to their race, religion and socio-economic status.”⁹ During a 2015 discussion with local government authorities in Nepal, the chief local development officer in Sindhupalchok district suggested a simple “solution” to Nepali activist Subin Mulmi on the question of whether some children could acquire citizenship through mothers. The officer told Mulmi, “The local officials simply needed to have a close look at the facial structure of the applicants. If the person reflected the traditional facial outlook of the Chhetri/Brahmin/Newar ethnicity, citizenship could be conferred through mothers, but if the person’s facial configuration was similar to that of Madheshi people who are dark skinned or the people from Tibet who have distinctly smaller eyes, these cases must be investigated thoroughly.” In Kuwait, like in countries with similar nationality laws, there is a perverse incentive for women to divorce foreign spouses to potentially secure citizenship and social benefits for their children, as the nationality law states that children of Kuwaiti women residing in Kuwait may be granted naturalized citizenship at the discretion of the Minister of Interior if the foreign father has “has irrevocably divorced his mother.”¹⁰

Even in some countries where the law upholds women’s right to confer nationality on their children, this right is often denied in practice by local authorities due to racism and xenophobia towards certain groups. Research by GCENR member Equal Rights Trust found in Kenya and Indonesia that “discrimination on grounds of ethnicity and national origin also continue to affect the possibility for some individuals to benefit from the reform [upholding women’s equal nationality rights].”¹¹ For example, despite 2010 reforms upholding Kenyan women’s equal right to confer nationality, families in a border region of Kenya faced greater difficulty in securing citizenship documents for children with foreign fathers.¹²

The DDPA recognized that “xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic

⁸ DDPA paragraph 9

⁹ Equal Rights Trust, *Our Children’s Future: Ending Gender Discrimination in Nationality Laws*, September 2015, page II, available at: <https://www.equalrightstrust.org/ertdocumentbank/My%20Children%27s%20Future%20Ending%20Gender%20Discrimination%20in%20Nationality%20Laws.pdf>

¹⁰ Kuwait Nationality Law 1959, available at: <https://www.refworld.org/docid/3ae6b4ef1c.html>

¹¹ Ibid. N.9. page 19.

¹² Ibid.



and racist practices.”¹³ Xenophobia targeting migrant and refugee populations is also linked with opposition to women’s equal nationality rights in a number of countries. In the wake of conflicts in Iraq and Syria, the presence of large refugee populations in countries including Lebanon and Jordan is used as justification by some for denying women’s right to confer citizenship. Opponents often claim the country cannot absorb the number of refugees who may acquire citizenship through marriage with female citizens and also maintain its “nationality identity.” There have even been suggestions by some political leaders to allow women to confer nationality, with the exception of when the father of the women’s children is from particular countries. For example, in 2018 Lebanon’s then Minister of Foreign Affairs Gebran Bassil proposed reforms to enable women to confer nationality on children on an equal basis with men, except when the father was Palestinian or Syrian.¹⁴ Feminist organizations rejected this proposal as inherently racist, demanding women’s equal nationality rights without exception. In Kuwait, stateless Bidoons are often labelled by the government as illegally resident foreigners and opposition to women’s nationality rights is in part framed as attempts to keep the Bidoon from acquiring citizenship through Kuwaiti women.

Gender discrimination in nationality laws has far-reaching consequences on all aspects of family life and is a leading cause of statelessness. Without citizenship, children and foreign spouses are often subject to a range of restrictions in their job and education opportunities; their ability to travel, open bank accounts, own or inherit property; and their full participation in society generally. Women’s inability to equally confer citizenship can put huge financial, psychological and physical strains on families, which can result in intergenerational poverty. The Sustainable Development Goals (SDGs) are significantly inhibited wherever this form of legal discrimination persists. Discriminatory nationality laws can threaten family unity, and in some cases, increase the potential for family violence.¹⁵ The DDPA calls on States to facilitate family reunion, a mandate undermined by gender-discriminatory nationality laws.¹⁶ Lacking access to citizenship due to discriminatory nationality laws, women’s spouses have been subject to arbitrary and extended detention for minor offences with the threat of deportation. Non-citizen spouses of Malaysians have been detained, after initially being charged for non-immigration related offences, with cases recently involving a Vietnamese non-citizen spouse¹⁷ and the prolonged detention of a Nigerian spouse, Simon Adavize Momoh.¹⁸ Currently, an Iranian spouse of a Malaysian citizen,

¹³ DDPA paragraph 16

¹⁴ Sewall, A., April 3, 2018, “Lebanon nationality law set to change, but critics say doesn't go far enough,” *Middle East Eye*, available at: <https://www.middleeye.net/news/lebanon-nationality-law-set-change-critics-say-doesnt-go-far-enough>

¹⁵ Global Campaign for Equal Nationality Rights, *The Impact of Gender Discrimination in Nationality Laws on Gender-Based Violence*, available at: <https://equalnationalityrights.org/images/zdocs/Impact-of-Gender-Discrimination-in-Nationality-Laws-on-Gender-Based-Violence.pdf>

¹⁶ DDPA paragraph 49

¹⁷ FMT Reporters, “UN warns police raids will push migrants into hiding,” *FMT News*, 2 May 2020, available at: <https://www.freemalaysiatoday.com/category/nation/2020/05/02/un-malaysia-warns-police-raids-will-push-migrants-into-hiding/>

¹⁸ I. Lim, “Nigerian Simon Momoh files court challenge against Immigration Dept’s deportation order, Malaysian wife appealing to home minister,” *Malay Mail*, 21 April 2021, available at:



Mohammadhossein Samadi, has been detained for four months due to a traffic violation and is at risk of deportation after his valid visa was cancelled by the government.¹⁹ Mr. Samadi’s lawyers noted the harmful impact on his family: “This forceful and willful tearing apart of the familial structure will cause his wife and children to suffer long-lasting devastating psychological consequences, with a detrimental impact on their wellbeing and is a huge setback for Malaysian binational families.”²⁰ Additionally, stateless women and girls are at a higher risk of being trafficked, while girls are also at a greater risk of child, early and forced marriage. Gender discrimination in nationality laws therefore also contravenes the DDPA’s call to prevent trafficking in persons.²¹ Those who lack nationality due to gender-discriminatory nationality laws while also being a racial, religious, or ethnic minorities, and/or child of a foreign father face compounded discrimination throughout their lives, both due to their lack of citizenship and their identity.

In the context of the COVID-19 pandemic, the intersection of gender discrimination in nationality laws and xenophobia exacerbated the vulnerability of mixed families.²² Women’s noncitizen spouses and children were denied equal access to COVID-19 relief and vaccinations in numerous countries. Travel bans on noncitizens resulted in the separation of women from their noncitizen children and spouses, who would have access to citizenship if not for gender discrimination in the nationality law. In Malaysia, where women lack the right to confer nationality on children born abroad – a right reserved for men, pregnant women who were out of the country during pandemic travel bans on noncitizens had to choose between returning to give birth in Malaysia without their spouse and securing citizenship for their child or staying with their partner and giving birth abroad while risking being unable to ever secure Malaysian nationality for their child. One Malaysian mother shared, “I was planning to give birth in Malaysia, but because of the coronavirus, travels are restricted. I might not have the choice to give birth in Malaysia, which is a pity for my baby, as Malaysian women are not able to obtain automatic Malaysian citizenship (upon registration) for their own children. This is just getting more and more impossible.”²³ Further, increased cases of gender-based violence have been reported during the pandemic, including in Eswatini and Nepal, where gender-discriminatory nationality laws result in greater barriers for women seeking to extract themselves from unsafe situations.²⁴

<https://www.malaymail.com/news/malaysia/2021/04/21/nigerian-simon-momoh-files-court-challenge-against-immigration-depts-deport/1968195>.

¹⁹ S. Subramaniam, “4 months’ detention for traffic violation: Iranian married to M’sian now fears deportation,” *The Vibes*, 5 Aug 2021, available at: <https://www.thevibes.com/articles/news/37204/4-months-detention-for-traffic-violation-iranian-married-to-msian-now-fears-deportation>

²⁰ Ibid.

²¹ DDPA paragraph 30

²² Institute on Statelessness and Inclusion (ISI), “Together we can. The COVID-19 impact on stateless people & a roadmap for change”, June 2021, available at: https://files.institutesi.org/together_we_can_report_2021.pdf.

²³ *The Malaysian Insight*, “Pandemic worsens impact of biased citizenship laws on women,” 20 April 2020, available at: <https://www.themalaysianinsight.com/s/239146>

²⁴ Ibid. N.22.



We heartily concur with the DDPA that “globalization constitutes a powerful and dynamic force which should be harnessed for the benefit, development and prosperity of all countries.”²⁵ It is clear that gender-equal nationality laws are vital to the realization of this goal and to upholding all women and men’s equal citizenship and nationality rights.

Rather than combat xenophobia and racism, far too many governments exploit and stoke xenophobic and racist sentiments to justify nationality laws that discriminate on the basis of gender. The DDPA calls for the development of a more systematic and consistent approach to evaluating and monitoring “the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights because of racism, racial discrimination, xenophobia and related intolerance.”²⁶ With this in mind, we recommend that the DDPA 20th anniversary report emphasize the ways in which gender discrimination in nationality laws continue to undermine the DDPA, while reflecting and perpetuating racial discrimination and xenophobia.

Recalling that the DDPA affirms the key role of political leaders and parties in combating racism and xenophobia²⁷ and urges States to “place special focus on gender issues, including gender discrimination,”²⁸ we urge the Special Rapporteur to again highlight in her report the need for governments to refrain from using xenophobic and racist excuses for perpetuating gender-discriminatory nationality laws and to ensure gender-equal nationality rights without discrimination on the basis of race, ethnicity, religion or other protected characteristic of the citizen, their spouse, or their child’s other parent, in line with their obligations under international law.

²⁵ DDPA paragraph 11

²⁶ DDPA paragraph 70

²⁷ DDPA paragraph 82

²⁸ DDPA paragraph 31