



BACKGROUND NOTE ON
Discrimination
in Nationality
Laws and
Statelessness

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Discrimination on the basis of ethnicity; race; religion; age; sex; gender; disability; language; or sexual orientation, gender identity and gender expression, and sex characteristics (SOGIESC) is a cause of statelessness.¹ Direct or indirect discrimination on these grounds is currently found in the nationality laws of more than 80 countries. The risks of statelessness associated with discriminatory nationality laws are underscored by the fact that more than 75% of the world's known stateless populations belong to ethnic, religious or linguistic minority groups.²

This background note provides an overview of discrimination in nationality laws, and complements the UNHCR background note on gender discrimination in nationality laws.³ The note does not purport to be a comprehensive overview of all discrimination issues related to nationality law and practice, but simply aims to provide relevant examples.

¹ As well as compounded and intersectional forms of discrimination on the basis of multiple grounds.

² This percentage is based on statistics for stateless populations included in UNHCR's 2016 Global Trends Report that are known to belong to an ethnic, religious or linguistic minority. It does not account for minority groups that compose a proportion of a known stateless population in a country but do not form the majority of that population. The percentage also does not include stateless minority groups for which UNHCR does not have adequate statistical data.

³ UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2020*, 14 July 2020, available at: <https://www.refworld.org/docid/5f0d7b934.html>.

Introduction

The use of citizenship laws to reinforce certain social hierarchies and distinctions was once common and widespread. For example, European colonial powers instituted racially discriminatory citizenship systems in parts of Africa, Latin America, South Asia, and the Pacific. These approaches had a lasting impact on the national legal systems that emerged after independence.⁴ In many countries, sex discrimination that was common in European nationality laws found its way into the laws of newly independent nations, while in some countries new nationality laws were drafted specifically to try to exclude former colonizers from eligibility for citizenship in the newly independent States.

Discrimination in citizenship laws may be direct or indirect. Direct discrimination occurs when a person is treated less favorably than another person is, has been, or would be treated in a comparable situation on the basis of one or more protected grounds; or when a person is subjected to a detriment on the basis of one or more grounds of discrimination. Indirect discrimination occurs when a provision, criterion or practice has or would have a disproportionate, negative impact on persons having a status or a characteristic associated with one or more grounds of discrimination. While this background note focuses primarily on direct discrimination, reference is made to indirect discrimination in the context of disability and SOGIESC discrimination.

The note covers discrimination in the acquisition of citizenship and discrimination in naturalization. It does not however cover discrimination in the context of deprivation of nationality. While discrimination in the acquisition of citizenship at birth is generally a more significant cause of statelessness, discrimination in naturalization procedures can also lead to new instances of statelessness and prevent governments from resolving existing situations of statelessness.⁵ The acquisition of citizenship at birth is generally based on the principles of *jus soli* (nationality by birth on the territory) and *jus sanguinis* (nationality by descent). Most countries' nationality laws involve a combination of these two principles.

Acquisition of citizenship later in life is often realized through naturalization or similar procedures. Though grounds for eligibility vary, marriage to a citizen and length of residence in the country are typical factors that governments consider in the review of naturalization applications. Although most discriminatory provisions found in nationality laws apply to naturalization rather than citizenship by birth, these areas are often interconnected. For some populations, discriminatory provisions and practices cause statelessness at birth and then preclude them from resolving their situation through naturalization later in life. As with laws regarding the acquisition of citizenship at birth, conditions surrounding

4 Fitzgerald, "The History of Racialized Citizenship" in Ayelet Shachar et al. (eds.), *The Oxford Handbook of Citizenship*, 2017, Oxford University Press, p. 134.

5 Facilitated naturalization is part of Action 6 of the UNHCR Global Action Plan to End Statelessness by 2024. See UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, at 16, available at: <https://www.refworld.org/docid/545b47d64.html>. For a list of countries that have pledged to take action in this regard, see UN High Commissioner for Refugees (UNHCR), *High-Level Segment on Statelessness: Results and Highlights*, May 2020, available at: <https://www.refworld.org/docid/5ec3e91b4.html>.

naturalization may be overtly discriminatory, or procedural requirements may pose discriminatory barriers. As naturalization procedures are generally discretionary in nature, there is a greater risk that discrimination can play a role.

Nationality alone is not a cure for the stigmatization and discrimination faced by minority groups⁶ rendered stateless on the basis of race, ethnic origin, religion, disability, or other grounds. Statelessness intersects with and exacerbates barriers already faced by minority populations and other disadvantaged groups. The cycle of exclusion and marginalization that statelessness reinforces, impedes access to services and prevents the enjoyment of human rights, sometimes afflicting entire communities for generations. However, nationality is generally crucial to the full and equal exercise of human rights and freedoms. Under international law, a State's nationality law must be consistent with international human rights law,⁷ which as discussed below, generally prohibits direct and indirect discrimination on the grounds covered in this background note.

International Legal Framework

The right to a nationality and the principle of non-discrimination in nationality matters are well established in international human rights law.⁸ The 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and 1961 Convention on the Reduction of Statelessness (1961 Convention) establish States parties' obligations to work on a non-discriminatory basis toward the prevention and reduction of statelessness within their territories. The 1961 Convention contains an explicit prohibition on deprivation of nationality on racial, religious or political grounds.⁹ Statelessness negatively impacts on rights that are protected in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Individuals and communities affected by statelessness are often unable to exercise the fundamental rights protected by these treaties, such as liberty of movement and the right to marry in the ICCPR, or the right to employment and medical care in the ICESCR.

In addition to the protections set out in the ICCPR and ICESCR which apply to everyone, the international community has recognized that certain groups require specific protection due to persistent inequality or

6 See United Nations General Assembly (UNGA), *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 3 February 1992, A/RES/47/135, available at: <https://www.refworld.org/docid/3ae6b38d0.html>.

7 United Nations Human Rights Office of the High Commissioner (OHCHR), *OHCHR and the right to a nationality*, available at: <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

8 For example, article 15 of the Universal Declaration of Human Rights states that everyone has the right to a nationality, and articles 2 and 24 of the International Covenant on Civil and Political Rights provide for non-discrimination and every child's right to acquire a nationality, respectively. See Universal Declaration of Human Rights, UNGA Res. 217 A(III) (UDHR), art. 15 and International Covenant on Civil and Political Rights, 999 UNTS 171, (ICCPR), arts. 2 and 24.

9 Convention on the Reduction of Statelessness, 989 UNTS 175, (1961 Convention), art. 9.

abuse. Treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) offer additional protection. States parties to these treaties are obliged to protect the right to nationality of the groups in question through the enactment or reform of relevant laws.

ICERD prohibits racial and ethnic discrimination, requiring States parties to enact or reform legislation and policies to ensure that such discrimination does not impede the right to nationality.¹⁰ Although the treaty contemplates differential treatment for citizens and non-citizens, the CERD Committee has affirmed that deprivation of citizenship due to race or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality and advised States to examine and remove discriminatory barriers to citizenship or naturalization.¹¹

CEDAW obliges States parties to ensure women's equal rights with regard to acquisition, transfer, change and retention of nationality.¹² For women with multiple marginalized identities, discrimination compounds discrimination based on race, disability, and other factors, leading to an increased risk of rights violations. The CEDAW Committee addressed aspects of these intersectional concerns and their threat to the right to nationality in General Recommendation No. 32, urging States parties to implement CEDAW to protect women who are refugees, asylum-seekers, or stateless—categories that may themselves overlap.¹³

CRC, which is the most acceded-to international human rights instrument, with 196 States parties, provides that every child has the right to acquire a nationality from birth "without distinction of any kind, such as race, colour, sex, language, religion . . . or other status."¹⁴ The CRC Committee has emphasized that States must grant nationality to otherwise stateless children born on their territory regardless of parents' legal status, race, ethnicity, or religion, among other factors, and non-discrimination has been a principal theme in dozens of the Committee's country recommendations related to the right to a nationality.¹⁵

¹⁰ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, (ICERD), arts. 2(1), 5(d)(iii).

¹¹ UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXX on Discrimination Against Non Citizens*, 1 October 2002, available at: <https://www.refworld.org/docid/45139e084.html>.

¹² Convention on the Elimination of all Forms of Discrimination Against Women, 1249 UNTS 13, (CEDAW), art. 9.

¹³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <https://www.refworld.org/docid/54620fb54.html>. See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 27 on older women and protection of their human rights*, 16 December 2010, CEDAW/C/GC/27, available at: <https://www.refworld.org/docid/4ed3528b2.html>, which discusses the combination of gender and age discrimination faced by older women.

¹⁴ Convention on the Rights of the Child, 1577 UNTS 3, (CRC), arts. 2, 7 and 8.

¹⁵ William Thomas Worster, "The Obligation to Grant Nationality to Stateless Children Under Treaty Law", 2019, *Tilburg Law Review* 204. See also Institute on Statelessness and Inclusion, "Every Child Has the Right to a Nationality", September 2015, p. 2.

CRPD likewise obliges States parties to guarantee the right of persons with disabilities to acquire and change their nationality and to access nationality documentation on an equal basis with others.¹⁶

Regional human rights instruments further reinforce States' obligations to ensure non-discriminatory access to nationality. The African Charter on the Rights and Welfare of the Child provides for the right of every child to acquire a nationality without discrimination.¹⁷ The American Convention on Human Rights similarly prohibits discrimination and guarantees the right of every person to a nationality.¹⁸ The European Convention on Human Rights (ECHR) does not contain an explicit right to nationality, but the European Court of Human Rights (ECtHR) has left open the possibility that the right to respect for the private life of an individual could preclude States from arbitrarily denying citizenship,¹⁹ and ruled that indirect racial discrimination in nationality matters constitutes a violation of the prohibition of discrimination when read in conjunction with the right to family life.²⁰ The Council of Europe has produced the European Convention on Nationality which contains a clear formulation of the principle of non-discrimination in nationality matters,²¹ as well as the Convention on the Avoidance of Statelessness in Relation to State Succession. The League of Arab States has adopted the Arab Charter on Human Rights, which stipulates that all persons shall have the right to a legal identity and a life of dignity. It further enshrines the equality of all human beings.²²

Indirect discrimination can lead to violations of the right to a nationality and the principle of non-discrimination in international human rights law.²³ Even when nationality laws contain no explicitly discriminatory provisions, practice should be monitored to ensure consistent and equitable application, especially in the case of discretionary procedures. In countries with multi-step processes for the acquisition of citizenship, such as a required period of holding a residence permit or other preliminary status, discrimination may not be explicit in its citizenship laws but present in an earlier part of the process, such as admission to the country.²⁴ Discrimination in law or practice at any stage can prevent a stateless person from achieving naturalization.

¹⁶ Convention on the Rights of Persons with Disabilities, 2515 UNTS 3, (CRPD), arts. 5, 12 and 18. See also UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 1 (2014). Article 12: Equal recognition before the law*, 19 May 2014, CRPD/C/GC/1 and UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 6 (2018) on equality and non-discrimination*, 26 April 2018, CRPD/C/GC/6.

¹⁷ Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), art. 3 and 6(3).

¹⁸ Organization of American States (OAS), *American Convention on Human Rights*, "Pact of San Jose", Costa Rica, 22 November 1969, art. 20.

¹⁹ See e.g., *Karassev and Family v. Finland*, European Court of Human Rights, App. No. 31414/96, 12 January 1999 and *Genovese v. Malta*, European Court of Human Rights, App. No. 53124/09, 11 October 2011.

²⁰ *Biao v. Denmark*, European Court of Human Rights, App. No. 38590/10, 24 May 2016.

²¹ Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, art. 5.

²² League of Arab States, *Arab Charter on Human Rights*, 2004. See also League of Arab States, Arab Declaration on Belonging and Legal Identity, 28 February 2018.

²³ Chrisa Tobler, "Limits and potential of the concept of indirect discrimination", 2008, *European Commission*, pp. 12-13.

²⁴ Fitzgerald, n. 4, p. 29.

Grounds of Discrimination

Race and ethnicity

Explicit racial discrimination exists in the nationality laws of a relatively small number of States, usually linked to the State's particular history. Several African States limit nationality, whether by birth or naturalization, to persons of African descent.²⁵ This practice reflects their founders' intention of prioritizing the rights of those previously restricted under colonial rule, or of creating a haven for formerly enslaved persons and their descendants to return to Africa. For example, Liberia's nationality laws limit citizenship to persons who are "Negro, or of Negro descent,"²⁶ a policy connected to the idea of Liberia as "a home for the dispersed and oppressed children of Africa."²⁷ Within Liberia, this provision has been the subject of debate in recent years. A similar provision can be found in Sierra Leone's nationality laws, which has also been subject to debate in recent years.²⁸

Citizenship laws that categorically exclude minority ethnic groups highlight how statelessness is both a consequence of prejudice and a source of marginalization in its own right.²⁹ Exclusion of an ethnic minority sometimes takes the form of a list of ethnic groups who qualify for citizenship at birth, barring all others by default. Often, such lists invoke indigenous origins, designating for inclusion the groups who were present in the country at a certain date, such as the date of independence. As this approach could be considered objective, it can contribute to veiled discrimination passing unquestioned. It could mean that a group is not granted citizenship in a State at the time of its establishment despite presence on its territory or,³⁰ if enacted later in the State's history, that an entire ethnic group loses the nationality they previously held. Strict *jus sanguinis* nationality laws perpetuate these initial exclusions; when citizenship is conferred only by descent, the descendants of the original excluded group remain ineligible despite generations of continued residence on the territory.

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