



GENDER DISCRIMINATION IN NATIONALITY LAWS AND THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

There are a number of provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) that are relevant to gender discrimination in nationality laws. This includes Article 9, which explicitly obliges States parties to guarantee equal nationality rights, as well as provisions related to other rights guaranteed in CEDAW.

Gender discriminatory nationality laws results in wide-ranging human rights violations for women, girls, men, and boys, and is a leading cause of statelessness, whereby an individual is not considered as a national by any State under the operation of its law.

Gender Discrimination and Nationality Rights

Nationality laws determine the ability of individuals to acquire, change, retain and confer citizenship to children and spouses. Despite reforms enacted by most countries to ensure gender equal nationality rights, [27 countries](#) deny women the right to confer nationality on their children on an equal basis with men. Roughly [50 countries](#) discriminate on the basis of sex in terms of women's ability to acquire, change, and retain their nationality and to confer nationality on non-national spouses. This discrimination results in significant and wide-ranging [human rights violations](#). While nationality laws vary from country to country and may be designed according to each state's preference, CEDAW, as well as other international conventions, oblige States to refrain from discriminating on the basis of sex. Discriminatory nationality laws are explicitly prohibited in Article 9 of CEDAW:



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- 1. 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.*
 - 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.*
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The CEDAW Committee further clarified that Article 9 extends an obligation to ensure equality between men and women in the ability to confer their nationality on spouses in *General Comment No. 32: on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*.

While a number of states maintain reservations to CEDAW Article 9, the CEDAW Committee has asserted that Article 9 among other articles is "central to the object and purpose of the Convention and that the reservations impact negatively on the enjoyment by women of their rights." Furthermore, the maintenance of **nationality laws which discriminate on the basis of gender are themselves in conflict with the general obligation (Article 2) of all state parties to "agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women."** In *General Recommendation No. 21: Equality in marriage and family relations*, the CEDAW Committee further states, "nationality is critical to full participation in society."

As emphasized by the CEDAW Committee, many other CEDAW articles are negatively impacted by gender discrimination in nationality laws in addition to Articles 2 and 9. These include Articles obliging state parties to:

- **Ensure the full development and advancement of women in order to guarantee them the enjoyment of human rights (Article 3).** Discriminatory nationality laws result in obstacles to women's enjoyment of a number of fundamental human rights, including political, economic, and social rights, as described below, as well as the right to a nationality itself.

- **Eliminate prejudices and practices based on the idea of women's inferiority, and recognize women and men's equal responsibility as parents. (Article 5).** Gender discrimination in nationality laws has its root in an understanding of women's status as inferior and women's legal identity as derivative, based on the nationality of her father or spouse, rather than an expression of her independent identity as a citizen. Furthermore, women's inability to equally confer nationality on children is an expression of the state's position that the father plays a more significant role in the legal identity of his children. Similarly, provisions in some countries that only permit women to confer nationality when children are born out of wedlock implicitly endorse an understanding of child rearing as the primary responsibility of mothers, rather than both mothers and fathers, regardless of marital status, having an equal role and responsibility in parenthood.
- **Suppress all forms of trafficking in women (Article 6).** Those rendered stateless or lacking nationality in their country of residence are at a higher risk of being trafficked.
- **Eliminate discrimination against women in political and public life, especially in regards to the ability to vote and hold public office (Article 7).** Women denied citizenship due to gender discriminatory citizenship laws are unable to vote or hold public office.
- **Uphold the equal right to education (Article 10).** Discriminatory nationality laws result in obstacles to women and girls' education. In many countries, non-citizens are often have limited access to primary, secondary, and tertiary education. If they are allowed to attend school, those lacking citizenship may be forced to pay higher fees. Because of persisting gender stereotypes, families with limited resources often prioritize boys' education over girls', compounding the discrimination faced by girls without citizenship due to discriminatory nationality laws.
- **Eliminate discrimination against women in the field of employment (Article 11).** Women lacking citizenship due to discriminatory nationality laws are often denied access to formal employment and forced to work for lower wages in the informal sector.
- **Eliminate discrimination against women in the field of healthcare (Article 12).** In many countries, women and girls denied nationality because of discrimination in the law face obstacles in accessing healthcare, including access to sexual and reproductive healthcare.
- **Eliminate discrimination against women in economic and social life, in order to ensure equal access to family benefits, bank loans, mortgages and other forms of financial credit (Article 13).** Women denied citizenship due to discriminatory nationality laws often lack access to bank accounts, bank loans, and the ability to establish legal contracts. When women cannot equally confer nationality on their children, they may be prevented from accessing family benefits for those children.
- **Ensure equality before the law, identical legal capacity with men, and the same rights as men regarding freedom of movement and the freedom to choose a residence (Article 15).** As described above, discriminatory nationality laws may result in women's inability to establish legal contracts and exercise their legal rights. Women and girls lacking nationality due to discriminatory laws may also be denied freedom of movement, including the ability to leave or enter the state territory. Furthermore, women's inability to equally confer nationality to foreign spouses or to equally acquire, change, or retain their nationality also limits their freedom to choose a residence. In some countries where the law upholds women's equal nationality rights, there is widespread denial of these rights due to gender-discriminatory beliefs held by state authorities, thereby denying women equality before the law.

- **Eliminate discrimination against women in all matters relating to marriage and family relations (Article 16).** In particular, women must have the:
 - **Same right to freely choose a spouse:** Women’s inability to equally confer citizenship on spouses limits their ability to freely choose a spouse.
 - **Same rights and responsibilities during marriage and after its dissolution:** In some countries, citizenship acquired by women through marriage may be revoked upon divorce. Similarly, upon marriage to a foreigner, women may be stripped of their nationality.
 - **Same rights and responsibilities as parents:** As previously stated, in those states where only single mothers are permitted to confer nationality on children, the state is implicitly endorsing the notion that child rearing is primarily the responsibility of mothers. When a child’s legal identity is assumed to be derived solely from the father in instances where the parents are married, the state is also implicitly endorsing the notion of the father as the ‘head of the household.’
 - **Same rights and responsibilities with regard to guardianship:** When women are denied the equal right to confer nationality on their children, they may be prevented from accessing their right to guardianship, especially if the marriage dissolves.
 - **Same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property:** When women are denied the equal right to confer nationality on their children, they may also be prevented from giving their children an inheritance of family property. Further, when women are unable to acquire, change, and retain their nationality on an equal basis with men, they may be prevented from inheriting family property.



In *General Recommendation No. 21 Equality in marriage and family relations*, the CEDAW Committee states that where de jure equality does not exist, women are “prevented from having equal access to resources and from enjoying equality of status in the family and society.” The Committee further states, “in this way, principles of justice and equality contained in particular in article 16 and also in articles 2, 5 and 24 of the Convention are being violated.”

Regardless of women’s nationality or stateless status, the CEDAW Committee has affirmed that states’ bear primary responsibility for ensuring that women nationality applicants and stateless women within their territory or under their effective control or jurisdiction, even if not situated within their territory, are not exposed to violations of their rights under the Convention, per General Comments 28, 30 and 32.

Nationality is critical to full participation in society.

*- CEDAW Committee General Recommendation No. 21
 Equality in marriage and family relations*
