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30 October 2017

**Re: Report on best practices on birth registration – Input**

Dear Office of the High Commissioner for Human Rights:

In response to the call for inputs by the Office of the High Commissioner for Human Rights (OHCHR) on the report being prepared pursuant to Human Rights Council Resolution 34/15 of 11 April 2017, *Birth registration and the right of everyone to recognition everywhere as a person before the law*[[1]](#footnote-1)(the Council’s Resolution), Equality Now submits this communication[[2]](#footnote-2) on information relevant to the preparation of the report, including “best practices and specific measures to ensure access to birth registration, particularly for those children most at risk”. Equality Now is an international human rights organization with ECOSOC status founded in 1992 working to promote the equality of women and girls worldwide.

In this submission, we wish to draw OHCHR’s attention to the impact of gender discrimination – specifically, sex discriminatory nationality laws and child, early and forced “marriage” (CEFM) – on access to birth registration. The submission also highlights how sex discriminatory nationality laws and minimum age of marriage laws below the age of 18 (that are also often lower for girls than for boys) undermine women and girls’ ability to enjoy their related human rights, including for example, the right not to be married off as a child and the right to education, even where access to birth registration is ensured by the government. In sum, we note that discriminatory nationality laws and CEFM have a two-fold impact, both exacerbating barriers to but also directly undermining the benefits of achieving improved access to birth registration.

*Sex discriminatory nationality laws and child, early and forced “marriage” (CEFM)*

Despite repeated commitments by governments around the world to promote women’s equality by repealing discriminatory laws, sex discrimination persists, including in citizenship and nationality laws.[[3]](#footnote-3) Over 50 countries around the world[[4]](#footnote-4) give a woman fewer rights than a man to pass on citizenship to children or a foreign spouse, or to acquire, change or keep her nationality. Gender-based stereotypes underscore these laws, including the notion that a woman, upon marriage, belongs to her husband, and the related notion that children belong to their fathers, even if they reside in their mother’s different home country.[[5]](#footnote-5) This latter view manifests itself in laws that prevent mothers from passing on their nationality to their children on an equal basis with fathers. Such laws can affect both married and unmarried women, as well and children born in and out of country. For example, many countries do not allow mothers to confer nationality to children except in very specific and often narrowly applied circumstances, such as where the father is unknown or stateless.[[6]](#footnote-6) Yet other countries impose procedural requirements for the conferral of citizenship on mothers that are not placed on fathers – for example, a Malaysian woman with a foreign spouse who gives birth abroad must apply to confer citizenship to her child, whereas conferral from a similarly situated father would be automatic.[[7]](#footnote-7)

Child, early and forced “marriage” is a human rights violation that follows from and leads to further human rights violations and occurs in both the developed and developing world.[[8]](#footnote-8) The “practice” excludes girls from decisions regarding timing of marriage and choice of spouse and precipitates an abrupt and violent initiation into sexual relations.

*The impact of discriminatory nationality law and CEFM on access to birth registration*

Both sex discriminatory nationality laws and CEFM exacerbate barriers to accessing birth registration. One of the consequences of discriminatory nationality laws is statelessness; as the United Nations High Commissioner for Refugees (UNHCR) has recognized, stateless persons “often face significant barriers with respect to registering the birth of their children”.[[9]](#footnote-9) Consequently, in addition to ensuring that birth registration is implemented without discrimination against stateless parents, States should also address the root causes of statelessness, including sex discriminatory nationality laws. CEFM – increased prevalence of which, incidentally, is also a consequence of sex discriminatory nationality laws[[10]](#footnote-10) – also exacerbates barriers to accessing birth registration.[[11]](#footnote-11) CEFM exposes girls to early pregnancy; any barriers that already exist in a community that impede access to birth registration (eg lack of education) become even greater hurdles for young mothers who are already marginalized by the violation of their marriage. Indeed, as the Council’s Resolution notes, persons in vulnerable situations face barriers to birth registration.[[12]](#footnote-12) Moreover, CEFMs are less likely to be registered, which can be highly problematic in contexts where marriage certificates are needed to register births.[[13]](#footnote-13) Consequently, both eliminating incidents of CEFM and instances of discrimination in nationality law must be addressed to best ensure access to birth registration.

It is also important to note here that the benefits achieved by securing access to birth registration for all are threatened so long as discriminatory nationality laws remain on the books and CEFM persists. As the Council’s Resolution recognizes, birth registration and recognition as a person before the law is “closely linked to the realization of all other human rights”, having “direct and indirect impact on the achievement of other targets and goals, inter alia social protection, protection in emergencies, access to financial and economic resources, the elimination of all forms of discrimination and violence against women and children everywhere, and access to quality education”.[[14]](#footnote-14) Discriminatory nationality laws result in enormous hardship to women and their spouses and children and can result in consequences including statelessness, fear of deportation, additional vulnerability of girls to CEFM, lack of access to social services including publicly-funded education or medical services, inability to register personal property, limited freedom of movement and limited access to jobs and other economic opportunities. All of these consequences are exacerbated during times of conflict, emergency and other contexts of vulnerability.[[15]](#footnote-15)

Likewise, CEFM, a human rights violation in itself, can lead to other human rights violations such as female genital mutilation (FGM), domestic violence, trafficking, exploitation and curtailed education. All of the above-referenced consequences echo those noted by the Council’s Resolution as human rights abuses frequently faced by unregistered individuals.[[16]](#footnote-16) So long as discriminatory nationality laws remain on the books and CEFM persists, the societal benefits from ensuring access to birth registration will be undermined.

Finally, we wish to note that while our present submission focuses on the impact of discriminatory nationality laws on access to birth registration, we recognize that there are many sex discriminatory laws and practices that prevent children from being registered. In addition to laws which explicitly disallow mothers from registering their children without male involvement, sex discrimination in other areas of law and society present barriers to birth registration – for example, birth registration officials being unaware of or not enforcing equality provisions in the law or unmarried mothers fearing stigma upon registration.[[17]](#footnote-17) We respectively encourage OHCHR to continue to ensure that it takes a comprehensive gendered approach in its analysis of best practices to ensure access to birth registration.

In conclusion, in order to ensure both access to birth registration as well as the realization of the human rights birth registration can help to promote, it is important for all States to ensure they have adopted and enforce non-discriminatory laws on nationality and marriage that align with international and regional human rights standards.

Accordingly,

States with sex discriminatory legal provisions on nationality should revise them:

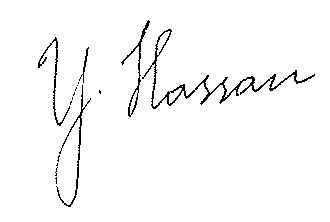
* so that women and men can equally confer citizenship on their children and spouses
* so that foreign spouses do not automatically lose their new nationality on termination of the marriage
* so that women do not automatically lose or gain nationality on marriage to a spouse of another nationality without their active consent
* so a change in the father’s nationality does not automatically mean loss of nationality for his wife and children
* to ensure that there is consistency between all laws and regulations laws are clear to both those wishing to take advantage of them and those implementing them

In order to decrease the risk of child, early and forced “marriage”, States should:

* enact, enforce and raise public awareness of legislation that sets 18 as the minimum legal age for marriage, including by asserting the primacy of civil law over other forms of law such as religious or customary laws. In addition, repeal provisions in family laws that grant judges the right to marry girls before the age of 18.
* include safeguards in the law and its implementation to ensure that ‘parental consent’ is not used to justify customary or religious practices that permit CEFMs
* develop, support and implement comprehensive and integrated strategies to prevent CEFM
* strengthen civil registration systems including birth and marriage registration systems as well as by removing obstacles to gaining citizenship and raise awareness of the importance of birth and marriage registration at the national, regional and local levels
* mainstream CEFM prevention into emergency and humanitarian responses given the increased vulnerability of girls to CEFM, trafficking and abduction in situations of crisis and instability

Equality Now submits the forgoing information to provide OHCHR and the Human Rights Council with information that highlights the impact of sex discriminatory nationality laws and CEFM on access to birth registration. We also request that the Council continue to call upon member states to adopt and enforce non-discriminatory laws on nationality and stronger minimum age of marriage and related laws to bring them in line with international and regional human rights standards so as to better protect children during humanitarian situations.

Thank you for your attention and please feel free to contact us with any questions or clarifications on these issues.

Sincerely,

Yasmeen Hassan

Global Executive Director

Equality Now

1. A/HRC/RES/34/15. [↑](#footnote-ref-1)
2. Equality Now hereby waives any claim of confidentiality to which we may be entitled in the communication process. [↑](#footnote-ref-2)
3. This submission uses the terms “nationality” and “citizenship” interchangeably. [↑](#footnote-ref-3)
4. For a review of sex discriminatory nationality laws around the globe, see Equality Now’s report *The State We’re In: Ending Sexism in Nationality Laws*, (2016 ed), available at https://www.equalitynow.org/sites/default/files/NationalityReport\_EN.pdf [↑](#footnote-ref-4)
5. In some countries, an exception to this view is taken with regard to unmarried mothers; in those countries, encapsulating the view that unmarried mothers will raise their children while the father may remain irresponsible, the law presumes “ownership” of the children by the unmarried mother and grants her greater ability to confer citizenship over the father. For example, the Supreme Court of the United States of America recently struck down differing residency requirements for unmarried American fathers and mothers seeking to pass on citizenship to their children born abroad, finding that requiring fathers to satisfy a longer residency time period than mothers was unconstitutional and reflected the “once habitual, but now untenable” assumptions that “in marriage, husband is dominant, wife subordinate,” while an “unwed mother is the natural and sole guardian of a nonmarital child.” *Session v. Morales-Santana*, 582 US \_\_ (2017). [↑](#footnote-ref-5)
6. *See supra*, note 4. [↑](#footnote-ref-6)
7. *See supra*, note 4, pp. 20-22, 71. [↑](#footnote-ref-7)
8. *See* Equality Now, *Protecting The Girl Child: Using the law to end child, early and forced marriage and related human rights violations,* January 2014, available at https://www.equalitynow.org/sites/default/files/Protecting\_the\_Girl\_Child.pdf [↑](#footnote-ref-8)
9. *See* UN High Commissioner for Refugees (UNHCR), *Child protection Issue Brief: Birth Registration*, August 2013, p. 1, available at http://www.refworld.org/docid/523fe9214.html [↑](#footnote-ref-9)
10. *See* *generally* Sheila Menz, *Statelessness and Child Marriage as Intersectional Phenomena: Instability, Inequality, and the Role of the International Community*, California Law Review Vol. 104:497 (206). [↑](#footnote-ref-10)
11. This is, of course, a symbiotic relationship. Just as eliminating CEFM is an important component to ensuring access to birth registration, birth registration is key to ending CEFM. *See* Human Rights Council, *Birth registration and the right of everyone to recognition everywhere as a person before the law: Report of the Office of the United Nations High Commissioner for Human Rights*, 17 June 2014, A/HRC/27/22, p. 29 (noting that birth registration can “contribute to the elimination and prevent of [CEFM]” and recognizing that CEDAW and “other treaty bodies require States to register births and marriages as a means to facilitate monitoring of the age of marriage and to support the effective implementation and enforcement of laws on the minimum age of marriage.”). [↑](#footnote-ref-11)
12. A/HRC/RES/34/15, at No. 12. [↑](#footnote-ref-12)
13. For example, a 2013 UNICEF study, *Every Child’s Birth Right: Inequities and trends in birth registration*, reports that a marriage certificate is usually needed in Indonesia to register a child’s birth. Report available at https://www.unicef.org/publications/index\_71514.html [↑](#footnote-ref-13)
14. A/HRC/RES/34/15. [↑](#footnote-ref-14)
15. Equality Now documented the human rights violations children face during humanitarian in situations as a result of sex discriminatory nationality laws in our communication to OHCHR on 7 September 2017, submitted in response to the call for inputs for the OHCHR Report being prepared pursuant to Human Rights Council resolution 34/16, *Rights of the child: protection of the rights of the child in the implementation of the 2030 Agenda for Sustainable Development*. *See also* UN Security Council, *Security Council resolution 2122 (2013) [on women and peach and security],* 18 October 2013, S/RES/2122 (“*Expressing concern* at women’s exacerbated vulnerability in armed conflict and post-conflict situations, particularly in relation to forced displacement” as a result of, *inter* *alia*, “unequal citizenship rights”) (emphasis in original). [↑](#footnote-ref-15)
16. A/HRC/RES/34/15 (“*Expressing concern* that unregistered individuals may have limited or no access to services and the enjoyment of all the rights to which they are entitled, including the rights to a name and to acquire a nationality, and rights related to health, education, social welfare, work and political participation, and taking into consideration that registering a person’s birth is a vital step towards the promotion and protection of all his or her human rights, and that persons without birth registration are more vulnerable to marginalization, exclusion, discrimination, violence, statelessness, abduction, sale, exploitation and abuse, including when they take the form of child labour, human trafficking, child, early and forced marriage, and unlawful child recruitment”). [↑](#footnote-ref-16)
17. *See* Human Rights Council, *Birth registration and the right of everyone to recognition everywhere as a person before the law: Report of the Office of the United Nations High Commissioner for Human Rights*, 17 June 2014, A/HRC/27/22 at No. 69 (examining how gender discrimination can prevent birth registration). Plan International’s 2015 study “Mother to Child: How Discrimination Prevents Women from Registering the Birth of their Child” (cited by the immediately above-referenced report) found several reasons why societal sex discrimination created barriers for women in registering their children, even when there was no national laws preventing them from doing so. These include: laws that appear gender neutral but are biased, including for example, laws referencing “head of household”; the stigma faced by unmarried mothers, including requirements that children born out of wedlock can only be registered if acknowledged by their father; officials being unaware that laws, especially those relatively recently amended, grant equal rights to mothers and father registering children; refusing to register children without the presence of the father or a marriage certificate; traditional customs that limit women’s freedom of movement after birth causing them to miss registration windows; and complications posed by polygamy. Report available at https://plan-international.org/publications/mother-child-discrimination-and-child-registration [↑](#footnote-ref-17)