

Global Campaign for Equal Nationality Rights and Institute on Statelessness and Inclusion

Joint Submission to the Human Rights Council at the 29th Session of the Universal Periodic Review

Barbados

Introduction

1. The Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion make this joint submission to the Universal Periodic Review (UPR) in relation to gender discrimination in the nationality law of Barbados and related statelessness and human rights challenges.
2. The Global Campaign for Equal Nationality Rights mobilises international action for the removal of gender discriminatory provisions from all nationality laws through its coalition of national and international organisations and activists.¹
3. The Institute² is an independent non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 15 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under the 23rd to the 28th UPR Sessions.³
4. This submission focuses on:
 - I. The right of married women to confer nationality on children and spouses, without discrimination on the basis of sex;
 - II. The right of single men to confer nationality on children, without discrimination on the basis of sex;
 - III. Human rights violations resulting from gender discrimination in the nationality law of Barbados.
5. This Submission draws on experience with research, advocacy, and awareness raising of the co-submitting organisations and their partners. This includes the recent joint submission by the co-submitters to the Committee on the Rights of the Child, which reviewed Barbados on 17 and 18 January 2017 during the 74th Session of the Committee⁴ and the Committee on the Elimination of

¹ For more information see www.equalnationalityrights.org

² For more information see <http://institutesi.org/>

³ For more on the Institute's UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>.

⁴ The Global Campaign, ISI joint submission to the CRC can be accessed here:

All Forms of Discrimination Against Women,⁵ which reviewed Barbados on 12 July 2017 during the 67th Session of the Committee.

The Universal Periodic Review of Barbados under the First and Second Cycles

6. Barbados was first subjected to the Universal Periodic Review on 3 December 2008, at Session 10 of the First Cycle, and subsequently on 25 January 2013, at Session 23 of the Second Cycle of the UPR. At the first review, there were no recommendations specifically mentioning the right to nationality, though several States encouraged Barbados to take steps to address discrimination against women, including to enact legislation to enshrine a specific right of non-discrimination on the basis of gender. Two recommendations during the second cycle directly addressed the issue of gender discrimination in the nationality law of Barbados:

Recommendation	Response by Barbados
102.50. Reform national legislation to enable mothers with Barbadian nationality to confer their nationality to their children born abroad (Ecuador);	'Accepted'
102.51. Resolve gender inequality with regards to conferring Barbadian nationality from parents to their children (Slovakia);	'Accepted'

7. While Barbados accepted the above recommendations, the delegation stated that the Constitution was amended in 2000 to allow both men and women to confer Barbadian nationality on their children. However, the Constitution treats children born outside Barbados to a married Barbadian mother differently to those of a married Barbadian father, and denies single fathers the ability to confer nationality on children on an equal basis with single mothers. Furthermore, the Barbados Citizenship Act, Cap 186 (last amended 1982) denies Barbadian women the equal right to confer their nationality on children in the case of joint adoption, as will be further elaborated in this submission.
8. Some of the other most relevant recommendations under the 2013 UPR include:⁶

Recommendation	Response by Barbados
102.46. Consider formulating and implementing national policies on gender to help define and coordinate efforts to tackle discrimination, marginalization and violence against women (Australia);	'Accepted'
102.48. Continue efforts to combat gender stereotyping and gender inequality across the board and work towards	'Accepted'

<http://equalnationalityrights.org/reports/document/1225-barbados-submission-to-the-committee-on-the-rights-of-the-child?highlight=WyjYXJiYWRvcylslmJhcmJhZG9zJyJd>

⁵ The Global Campaign, ISI joint submission to the CEDAW can be accessed here:

<http://equalnationalityrights.org/reports/document/1231-barbados-submission-to-the-cedaw-committee?highlight=WyjYXJiYWRvcylslmJhcmJhZG9zJyJd>

⁶ See the Report of the Working Group on the Universal Periodic Review: Barbados, 25 January 2013, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/35/PDF/G1311835.pdf?OpenElement>

empowerment of women in all spheres of society, including addressing sexual harassment in the work place (Sri Lanka);	
102.72. Continue to enhance its domestic framework to eliminate violence against women and to promote gender equality (Singapore);	'Accepted'
102.107. Continue its efforts to promote sustainable economic and social development and further strengthen the protection of rights of women and children (China);	'Accepted'

9. As this submission elaborates, the implementation by Barbados of recommendations accepted by it, which relate to nationality rights and gender equality require further scrutiny.

Barbados' international obligations

10. Barbados has ratified nearly all core international and regional human rights treaties. The right to a nationality and non-discrimination on the basis of sex is reinforced by a variety of these instruments, including the International Covenant on Civil and Political Rights (ICCPR) (Article 2, 24), the Convention on the Elimination of all forms of Discrimination Against Women (Article 2, 9); the Convention on the Elimination of all Forms of Racial Discrimination (Article 5), the Convention on the Rights of the Child (CRC, Article 2, 7) and the American Convention on Human Rights (Article 1, 20).
11. Barbados is also party to the 1954 Convention Relating to the Status of Stateless Persons. However, it is not party to the 1961 Convention on the Reduction of Statelessness.

Barbados' national legal framework

12. According to the Constitution of Barbados, a married Barbadian father can confer nationality on his children regardless of the child's or father's place of birth. However, under section 10(2) of the Constitution, an unmarried Barbadian father is denied the right to confer his nationality on his children, a right reserved for single mothers. Below are the relevant Constitutional provisions:

Section 2(2)

"Every person who, having been born outside Barbados, is on 29th November, 1966 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of Barbados in accordance with the provisions of subsections (1), become a citizen of Barbados on 30th November, 1966."

Section 5(1)

"A person born outside Barbados after 29th November, 1966 shall become a citizen of Barbados at the date of his birth if at that date his father is a citizen of Barbados otherwise than by virtue of this section or section 2(2) (see above)."

Section 5(2)

“Subject to subsection (1) and without derogating from, or in any way affecting, that subsection, a person born outside Barbados after 29th November 1966 shall become a citizen of Barbados at the date of his birth if at the date of the birth at least one of his parents is a citizen of Barbados who was born in Barbados.”

Section 10(2)

“Any reference in this Chapter to the father of a person shall, in relation to any person born out of wedlock other than a person legitimated before 30th November 1966, be construed as a reference to the mother of that person.”

This situation amounts to discrimination on the basis of the parents’ gender and marital status.

13. As the above provisions make clear, the Constitution also treats children born outside Barbados to a Barbadian mother differently to those of a Barbadian father, with respect to accessing citizenship. Section 5(1) of the Constitution explicitly recognises the right of married Barbadian fathers to pass on their nationality, regardless of the father or child’s place of birth, provided the child is born within wedlock. The position of a child born outside Barbados to a married Barbadian mother is unclear as the Constitution is ambiguous on this point. Section 5(2) appears to provide an avenue through which the child born outside Barbados of a married Barbadian mother can acquire nationality, subject to the Barbadian mother having herself been born in Barbados. Section 10(2) appears to provide an avenue through which an unmarried Barbadian woman is permitted to confer nationality on children born outside Barbados in all circumstances. Information as to how these provisions are applied in practice is lacking and, regardless of the interpretation followed by the State, it is evident that the Constitution fails to provide for equality of nationality rights for Barbadian men and women in all circumstances.
14. Regarding the conferral of nationality of adopted children, the Barbados Citizenship Act, Cap 186 (last amended 1982) denies Barbadian women the right to confer their nationality on children in the case of joint adoption, while Barbadian men are permitted to confer their nationality on adopted children in all circumstances. Barbadian women are also denied the right to confer their nationality on foreign spouses, a right that is reserved for men in the Constitution of Barbados. Below is Section 5(3) of the Act which sets this out:

“Where under any enactment in force in Barbados relating to the adoption of children an adoption order is made in respect of a minor not a citizen of Barbados, then if the adopter or in the case of a joint adoption the male adopter is a citizen of Barbados, the minor shall become a citizen of Barbados as from the date of the order.”

Women’s nationality rights

15. The Global Campaign and the Institute’s joint submission to the Committee on the Elimination of Discrimination Against Women, for consideration at its 67th Session in July 2017, highlighted

violations of women's nationality rights, right to non-discrimination on the basis of sex, and human rights violations that result from Barbados's discriminatory nationality laws.⁷

16. The submission set out that by denying married women the equal rights to confer nationality on children born outside country, adopted children, and spouses, Barbados's Constitution and Citizenship Act violate women's nationality rights and international human rights standards, including Article 9 of the CEDAW. According to Article 9:

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.

In its recent General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee confirmed that Article 9 extends an obligation to ensure equality between men and women in the ability to confer their nationality to their spouses.

17. While women's inability to equally confer citizenship on children and spouses is particularly relevant to CEDAW,⁸ the nationality law's discrimination against single fathers is also pertinent to the perpetuation of discrimination against women, in particular its impact on traditional stereotypes that negatively impact women. By denying single fathers the right to confer nationality on children on an equal basis with single mothers, the State is implicitly endorsing and reinforcing the notion that the responsibilities of parenting 'naturally' belong exclusively to the mother. This is contrary to the idea of equality between the sexes, and undermines women's equality in professional, public and cultural life.

The right of every child to acquire and retain a nationality

18. The Institute and Global Campaign's joint submission to the Committee on the Rights of the Child, for consideration at the Committee's 74th Session in January 2017, highlighted significant concerns directly related to the child's right to acquire and retain a nationality.⁹

19. As set out in the Submission, Barbados' law does not comply with CRC Articles 7 and 8, when read in accordance with the principle to not discriminate (Article 2) and the principle of the best interests of the child (Article 3). Articles 7 and 8 set out as follows:

⁷ See above, note 5.

⁸ The CEDAW Committee requested in its List of Issues (CEDAW/C/BRB/Q/5-8) for the State party to clarify how Article 5 of the Constitution and national legislation are applied to ensure women and men's equal ability to confer nationality on children.

⁹ See above, note 4.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

20. Under Barbadian law, contrary to these provisions, children's ability to acquire the nationality of their Barbadian mother or father is dependent upon the parent's gender and marital status. The denial of the child's right to a nationality due to discrimination against their parents on grounds of sex, marital status, or other grounds, is a violation of the CRC. In addition, Barbadian women's inability to confer nationality on their foreign spouses threatens a child's right to know and be cared for by his or her parents. For example, when foreign men are denied access to their spouses' nationality, they may be forced to live away from their children due to challenges in acquiring residency permits and obstacles to employment. Alternatively, the father may take any children away from the mother and back to his home country for a number of reasons, including if his employment and social status in his wife's country is insecure because of his nationality status. Either way, the child will be denied access to one of his or her parents.

21. Commenting on the child's right to nationality in Barbados at its 74th Session, the Committee on the Rights of the Child recommended as follows:

[T]he Committee is concerned that the Constitution and Citizenship Act contain provisions that discriminate on the basis of the parents' gender and marital status and do not fully safeguard against statelessness of children.

Taking into account target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, the Committee recommends that the State party amend its Citizenship Act and establish safeguards to prevent children from being stateless. It also recommends that the State party consider withdrawing its reservation to the 1954 Convention

*relating to the Status of Stateless Persons and consider ratifying the 1961 Convention on the Reduction of Statelessness*¹⁰

22. Children denied Barbadian nationality due to gender discrimination in the nationality laws may also suffer from violations of their right to healthcare and to education, enshrined in CRC Articles 24 and 28. Barbados' national healthcare system provides care to citizens and residents is free of cost, while healthcare for foreigners and non-citizens must be paid for.¹¹ Non-citizen children must obtain a student visa from the Immigration Department and pay school fees for secondary school.¹² Children who cannot access Barbadian nationality due to gender discrimination in the nationality law are also at a heightened risk of statelessness, unemployment, poverty, social alienation and psychological damage.

Recommendations

23. Drawing on the information provided in this submission, we urge member states to make the following recommendations to Barbados:

- I. As recommended by the Committee on the Rights of the Child, amend the Constitution and Citizenship Act to remove provisions that discriminate based on the parent's gender and marital status and establish safeguards to prevent children from being stateless.
- II. Amend the Constitution and Citizenship Act in order to enshrine women and men's equal ability to confer nationality on non-national spouses.
- III. Take steps to ensure that all children and adults who have been denied access to Barbadian citizenship due to gender discriminatory nationality laws, are granted nationality and in the interim, that they fully enjoy their other human rights on a non-discriminatory and equal basis.
- IV. Accede to the 1961 Convention on to Reduction of Statelessness to ensure the development of legislation and regulations which ensure every child's right to a nationality and that no child is born stateless in Barbados.

¹⁰ CRC/C/BRB/CO/2, 3 February 2017, available at:

http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/BRB/CRC_C_BRB_CO_2_26590_E.pdf

¹¹ Health Systems Profile, Barbados, Pan American Health Organization, page 18, available at:

<http://new.paho.org/hq/dmdocuments/2010/Health-System-Profile-Barbados-2008.pdf>; See also:

<https://www.globalsurance.com/health-insurance/barbados/>

¹² See Barbados Ministry of Education, available at: <http://www.barbadoseducation.info/K12/Barbados-K-12-Education-System.html>