



Joint Statement for the Universal Periodic Review Pre-Session on Madagascar for 34th Session of the Human Rights Council

I make this statement on behalf of the Global Campaign for Equal Nationality Rights, and its coalition members including the Institute on Statelessness and Inclusion and Focus Development Association. My comments will focus on:

- I. Gender discrimination in the nationality law of Madagascar; and
- II. The denial of the right to a nationality and resultant human rights challenges faced by minority communities in Madagascar.

While recognizing the need for reform of Madagascar's nationality law to remove remaining gender-discriminatory provisions, we applaud the important steps taken by the government, since its last Universal Periodic Review, to enact reforms to uphold the right of Malagasy women to confer nationality on their children on an equal basis with Malagasy men. We also wish to express our appreciation for Madagascar's leadership in sharing the benefits of these reforms in numerous international and regional forums, in partnership with the Global Campaign for Equal Nationality Rights.

Madagascar was previously reviewed at the 20th Session of the Universal Periodic Review, under the Second Cycle. Under the Second UPR Cycle, Madagascar's State Report stated:

"The new Constitution proclaims equality before the law for all, without distinction as to sex... Women are entitled, on the same terms as men, to choose the marital home and to receive equal treatment from the courts."¹

In its Second Cycle report, Madagascar also noted plans to amend its Nationality Code to uphold Malagasy women's right to confer nationality on their children on an equal basis with Malagasy men.

At the 20th Session, seven State Parties made recommendations to advance gender equality and fight gender-based discrimination, including in relation to nationality rights.

The government of Madagascar accepted these recommendations and then took important steps to achieve these commitments. In January 2016 the government promulgated a new nationality law, loi n°2016-038, which removed gender-discriminatory provisions regarding the conferral of nationality on the children of Malagasy citizens with retroactive application.

Unfortunately, the 2016 nationality law reform did not address gender-discriminatory provisions that deny Malagasy women the ability to confer nationality on a non-national spouse on an equal basis with Malagasy men. Malagasy men have the right to confer nationality on foreign spouses upon marriage, if the foreign spouse declares their desire to acquire Madagascar nationality. Malagasy women are denied this same right.

The human rights instruments to which Madagascar has acceded – including CEDAW, CRC, ICCPR and CRPD – provide for the right to a nationality and equal nationality rights between women and men.

¹ A/HRC/WG.6/20/MDG/1, 2014.

The Constitution of Madagascar, which enshrines equal protection and non-discrimination on the basis of sex, also enshrines the precedence of international treaties over domestic legislation.

In its last CEDAW review in November 2015, the CEDAW Committee reiterated its recommendation that the nationality law be amended to grant women equal rights with men to confer nationality on foreign or stateless spouses and children.

Gender discrimination in Madagascar's nationality law denies women equality under the law and exacerbates a sexist and discriminatory framework for women's role in the family and society. Women's unequal ability to confer nationality on spouses also negatively impacts women's ability to freely choose a spouse, to form a family, and to ensure family unity. This discrimination can also perpetuate statelessness, when the spouse of a Malagasy woman is stateless or may lose his nationality due to prolonged absence from his country of origin.

The persistence of gender discrimination in the Nationality Code results in violations of Madagascar's obligations under international law and its own Constitution.

Madagascar has a sizeable community of Muslims of Indo-Pakistani origin, often referred to as the Karana, who have migrated to the country during the 19th and 20th centuries. Many among this community failed to acquire any citizenship at the time of Madagascar's independence from France and have not been able to resolve this since.

Racial discrimination also causes statelessness among individuals of Comorian origin and others who are not perceived as ethnically Malagasy. These groups are also unable to access naturalisation,² even those who are theoretically eligible for nationality due to discriminatory administrative practices.

UNHCR has suggested that the Karana population number at least 20,000³ and within that group, "only a handful of individuals hold citizenship rights". A US Department of State report emphasised:

Members of the wider Muslim community suggested a Muslim sounding name alone could delay one's citizenship application indefinitely.⁴

Stateless persons face wide-ranging human rights violations and hardships, including obstacles to accessing education, healthcare, social services, formal employment, property rights, inheritance, freedom of movement, and identity documentation. Stateless persons are also at a greater risk of human trafficking, early and forced marriage, arbitrary detention, and lack of access to justice.

Based on the above information, we urge reviewing States to make the following recommendations to Madagascar:

- I. Enact reform to uphold the right of Malagasy women to confer nationality on their foreign spouse on an equal basis with Malagasy men.
- II. End the discriminatory denial of nationality to Muslims of Indo-Pakistani origin and other minority groups in Madagascar and take all necessary steps to ensure their right to a nationality.

² *ibid*, 12-13, 48; Caroline McLnerney, 'Accessing Malagasy Citizenship: The Nationality Code and Its Impact on the Karana' (2014) *Tilburg Law Review* 19.

³ See <https://www.unhcr.org/news/latest/2017/11/5a018ff44/madagascars-karana-people-still-awaiting-nationality.html>

⁴ US Department of State, *Country reports on human rights practices for 2018: Madagascar*. Available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

- III. Ensure that all international obligations related to the right to nationality, non- discrimination, and birth registration are fully incorporated into domestic law and implemented in practice.
- IV. Conduct a comprehensive mapping on statelessness.
- V. Accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.