

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

## Joint Submission to the Human Rights Council at the 29<sup>th</sup> Session of the Universal Periodic Review

### The Bahamas

#### 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 The Bahamas 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.<sup>1</sup>
3. The Institute<sup>2</sup> 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 23<sup>rd</sup> to the 28<sup>th</sup> UPR Sessions.<sup>3</sup>
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 unmarried men to confer nationality on children, without discrimination on the basis of sex;
  - III. Human rights violations resulting from statelessness and gender discrimination in the nationality law of The Bahamas.
5. This Submission draws on experience with research, advocacy, and awareness raising of the co-submitting organisations and their partners, both internationally and in the Bahamas.

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<sup>1</sup> For more information see [www.equalnationalityrights.org](http://www.equalnationalityrights.org)

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

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

## The Universal Periodic Review of The Bahamas under the First and Second Cycles

6. The Bahamas was first subjected to the Universal Periodic Review on 1 December 2008, at Session 10 of the First Cycle, and subsequently on 23 January 2013, at Session 23 of the Second Cycle of the UPR. During the first review's interactive dialogue, Mexico expressed concern regarding women's inability to transmit their nationality to their children and foreign spouses on an equal basis with men. There were no recommendations specifically mentioning the right to a nationality, though several States encouraged The Bahamas to take steps to address discrimination against women and to withdraw reservations to the Convention on the Elimination of All Forms of Discrimination against Women. Five recommendations during the Second Cycle directly addressed the issue of gender discrimination in the nationality law of The Bahamas:

Recommendation	Response by The Bahamas
92.39. Strengthen the resources given to the Office of Women's Affairs and consider the possibility of complying with the recommendations of UNHCR and CEDAW, concerning the abolition of the legal provisions that prevent the transmission of nationality to Bahamian women (Paraguay);	'Consider - Presently before the Constitutional Reform Commission'
92.40. Consider amending the legislation regarding the transmission of nationality to children of Bahamian mothers born abroad and foreign spouses in order to ensure full and effective equality of rights between men and women in this area (Peru);	
92.41. Ensure that Bahamian women are able to pass their nationality to their children on equal footing with men, including by withdrawing the reservation to Article 9 (2) of CEDAW (Slovakia);	
92.42. Consider revising relevant legislation on the matter of transfer of nationality from parents to children to ensure equal rights between men and women (Thailand);	
92.43. Raise public awareness about the equality of rights of women with regard to nationality, consider amending the national legal system to ensure the equal rights for women and men in this area, and continue working and promoting national initiatives aimed at gender equality in the country (Guatemala);	

7. The Bahamas agreed to consider the recommendations, noting that the issue was presently before the Constitutional Reform Commission.
8. Some of the other most relevant recommendations under the 2013 UPR include:<sup>4</sup>

Recommendation	Response by The Bahamas
92.7. Accede to the OP-CEDAW, to further strengthen its commitment to the equality and protection of women (Australia);	'Accepted'
92.29. Strengthen the rule of law and the current legal reform process for better ensuring equality, freedom and enjoyment of all human rights for its people, especially vulnerable groups like women and children (Viet Nam);	

<sup>4</sup> See the Report of the Working Group on the Universal Periodic Review: Bahamas, 23 January 2013, at Session 23, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/125/11/PDF/G1312511.pdf?OpenElement>

92.30. Continue in its dialogue within the Constitutional Reform process with a view to adequately defining “discrimination” and guaranteeing the equal rights of all women within Bahamian society (Trinidad and Tobago);	
92.31. Strengthen efforts to eliminate discrimination against women (Bangladesh);	
92.32. Continue with its active efforts to improve its legislation to further promote gender equality and the rights of women (China);	
92.33. Put in place a comprehensive strategy with a result-oriented approach to eliminate stereotypes that discriminate against women in the family, the workplace, in politics and in collaboration with civil society (Norway);	
92.34. Adopt further measures aiming at addressing the situation of discrimination between men and women and to eradicate negative stereotypes (Italy);	

9. Outside of the 2015 Strategic Plan to Address Gender-Based Violence, and the previous Progressive Liberal Party’s (PLP) “YES” campaign to encourage Bahamian voters in the failed 2016 Constitutional Referendum to vote yes to removing gender discriminatory provisions from Bahamian nationality law, the Bahamian government has largely failed to follow through with the majority of recommendations that it “accepted” during the previous cycle of the UPR. For example, it has not ratified the Optional Protocol to CEDAW and it has not implemented a comprehensive strategy (or National Action Plan) to eliminate gender-based stereotypes. The previous administration converted the existing Bureau of Women’s Affairs into the Department of Gender and Family Affairs, a positive though insufficient step. The current administration has not demonstrated a commitment to strengthening gender equality and eradicating gender discriminatory practices, but is rather seeking to promote urban renewal initiatives within the Department’s purview.<sup>5</sup>
  
10. As this submission elaborates, despite The Bahamas’ stated commitment to advance gender equal nationality rights through a Constitutional Referendum, which failed to pass in June 2016, the State is obliged to continue to take further action to ensure the equal nationality rights of women and men, in accordance with its international obligations.

## The Bahamas’ international obligations

11. The Bahamas 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).
  
12. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states in Article 9 that: **(2) States Parties shall grant women equal rights with men with respect to the nationality of their children.** Furthermore, Article 2 of the Convention states as follows:

<sup>5</sup> <http://magneticmediatv.com/2017/06/social-services-minister-gives-summary-of-ministry/>

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*

13. It is significant that while the Bahamas has been a State party to CEDAW since 1993, it maintains reservations to both Article 2(a) and Article 9 of the Convention.<sup>6</sup>

14. As stated by the CEDAW, Article 9 among others is “central to the object and purpose of the Convention and that the reservations impact negatively on the enjoyment by women of their rights.”<sup>7</sup> Therefore, the maintenance of nationality laws which discriminate on the basis of gender are themselves in conflict with the object and purpose of the CEDAW and with the general obligation of all state parties to “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”<sup>8</sup>

15. The Bahamas has also entered the following reservation to CRC Article 2:

*The Government of the Commonwealth of The Bahamas upon signing the Convention reserves the right not to apply the provisions of article 2 of the said Convention insofar as those provisions relate to the conferment of citizenship upon a child having regard to the Provisions of the Constitution of the Commonwealth of The Bahamas.*<sup>9</sup>

16. Article 2 is the general anti-discrimination clause of the CRC, which obligates states to ensure every child’s enjoyment of all rights set forth in the Convention, without discrimination of any kind, including on grounds of sex, both of the child and of the child’s parents or guardians. Hence, this reservation is clearly aimed at preserving gender discrimination in the Bahamas’ nationality laws. It must be noted though, that the Bahamas has not entered a reservation to CRC Article 7 or ICCPR Article 24(3), which guarantee every child’s right to a nationality.

17. The Bahamas is not party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

## **The Bahamas’ national legal framework**

18. According to the Constitution of The Bahamas, a married Bahamian father who was born after independence (in 1973) can confer nationality on his children regardless of the child’s or father’s place of birth.

19. However, clause 3(2) of the Bahamian Constitution stipulates that a Bahamian male, born abroad prior to Independence acquires Bahamian citizenship through his father but cannot readily pass on his citizenship to his offspring.

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<sup>6</sup> See [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en#EndDec)

<sup>7</sup> The CEDAW Committee has noted this on a number of occasions and in Concluding Recommendations for State Parties under review, including in CEDAW/C/ARE/CO/1, para 16.

<sup>8</sup> Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and nineteenth sessions), A/53/38/Rev.1, page 47.

<sup>9</sup> See [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en)

20. Furthermore, according to Articles 9 and 14(1) of the Constitution, an unmarried Bahamian father is denied the right to confer his nationality on his children, a right reserved for unmarried mothers:

*Article 9 “(1) ... a person born legitimately outside The Bahamas ...whose mother is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years and before he attains the age of twenty-one years, in such manner as may be prescribed, to be registered as a citizen of The Bahamas provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas ... unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed....”*

*Article 14(1) “Any reference...to the father of a person shall, in relation to any person born out of wedlock..., be construed as a reference to the mother of that person.”*

21. Importantly, the term ‘legitimately’ in Article 9 is interpreted to mean ‘married’. Accordingly, while unmarried Bahamian women and married men born after 1973 can automatically pass on their nationality to their children born abroad, married women, unmarried men and men born before 1973 cannot. This situation amounts to discrimination on the basis of the parents’ gender and marital status.
22. Regarding the conferral of nationality of adopted children, Section 4 of The Bahamas Nationality Act, denies Bahamian women the right to confer their nationality on children in the case of joint adoption, while Bahamian men are permitted to confer their nationality on adopted children in all circumstances:

*“Where, under a law in force in The Bahamas relating to the adoption of children, an adoption order is made by a competent court in respect of a minor who is not a citizen of The Bahamas, then if the adopter, or in the case of a joint adoption, the male adopter, is a citizen of The Bahamas, the minor shall become a citizen of The Bahamas from the date of the order.”*

23. Bahamian women are also denied the right to confer their nationality on foreign spouses, a right that is reserved for men in Article 10 of the Constitution of The Bahamas:

*“Any woman who, after 9th July 1973, marries a person who is or becomes a citizen of The Bahamas shall be entitled...upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas: Provided that the right to be registered as a citizen of The Bahamas under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.”*

24. On 7 June 2016 a Constitutional referendum, which put to public vote the question of eliminating discrimination on the basis of sex in terms of nationality rights and enshrining the principle of equality between women and men in the Bahamian Constitution, failed to secure a majority of votes. Three of the four bills included in the referendum sought to ensure that Bahamian women and men are treated equally in their ability to confer nationality to children and spouses, while the fourth would have made it unconstitutional to discriminate based upon sex. Due to the referendum’s failure, The Bahamas remains one of only twenty-six countries worldwide – one of two in the Western Hemisphere – that still denies mothers the right to confer nationality to their children on an equal basis with men. The Bahamas remains one of two countries in the Western Hemisphere to deny unmarried fathers the right to confer nationality on children.
25. While the co-submitting organisations recognise efforts undertaken to facilitate the amendment of the Bahamian Constitution and its nationality laws, the failed 2016 referendum does not preclude the

Bahamian government from fulfilling its obligations, as a State party to several international human rights Conventions including CEDAW, CRC, and the ICCPR, to uphold equal nationality rights for women and men.

## Women's nationality rights

26. By denying married women the equal rights to confer nationality on children born outside the country, adopted children, and spouses, The Bahamas's Constitution and Nationality 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.*

27. 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.

28. In its Concluding Observations during The Bahamas' 6 August 2012 review, the CEDAW Committee recommended that the State party:

*"(a) Raise awareness among the population on the equal rights of women and men with regard to transmission of nationality; (b) Amend its Constitution and relevant domestic laws to grant Bahamian women equal rights with men regarding the transmission of their nationality to their children or to their spouses of foreign nationality; (c) Withdraw its reservation to article 9 (2) of the Convention..."<sup>10</sup>*

29. While women's inability to equally confer citizenship on children and spouses is particularly relevant to CEDAW, 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.<sup>11</sup>

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<sup>10</sup> (CEDAW/C/BHS/CO/1-5) available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBHS%2fCO%2f1-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBHS%2fCO%2f1-5&Lang=en)

<sup>11</sup> Global Campaign for Equal Nationality Rights, United Nations Office of the High Commissioner for Refugees "CEDAW Quick Reference Guide," available at <http://equalnationalityrights.org/images/zdocs/CEDAW-Quick-Reference-Guide.pdf>

## The right of every child to acquire and retain a nationality

30. Gender discrimination in the Constitution and nationality law of The Bahamas results in violations of every child's right to acquire and retain a nationality.
31. The Bahamas' law does not comply with CRC Articles 7 and 8, when read in accordance with the principle not to discriminate (Article 2) and the principle of the best interests of the child (Article 3). It is important to note however, the Bahamas' reservation to CRC Article 2. Articles 7 and 8 set out as follows:

### **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.*
32. Bahamian law is contrary to these provisions, as children's ability to acquire the nationality of their Bahamian 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 the basis of sex, marital status, or other grounds, is a violation of the CRC. In addition, Bahamian 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 a foreign man is denied access to his spouse's nationality, he may be forced to live away from his child(ren) due to challenges in acquiring residency permits and obstacles to employment. Alternatively, a father may have to 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. Both instances clearly infringe upon a child's right to family unity, which is recognised in the preamble of the CRC and Article 8 of this Convention, which asks States Parties to respect a child's right to family relations.

## The human rights impact of gender discrimination in the nationality law

33. Gender discrimination in nationality laws can result in significant violations of the rights of women,<sup>12</sup> men, and children, including: statelessness; lack of access to public education, healthcare and other services; increased risk of gender-based violence; unemployment and poverty; social alienation; and

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<sup>12</sup> See Global Campaign for Equal Nationality Rights-UNHCR "CEDAW Quick Reference Guide," available at: <http://equalnationalityrights.org/reports/document/1229-cedaw-nationality-laws-guide>

psychological damage. Gender discrimination in nationality laws also contributes to women's unequal status in society and within the family, and may result in the separation of family members.<sup>13</sup>

34. Children denied Bahamian 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. We maintain that the human rights of equal protection under the law and non-discrimination on the basis of sex are not legitimately subject to majority opinion, but must be upheld by the State.
35. The Bahamian electorate's rejection of the insertion of "sex" into the Constitution as a prohibited ground for discrimination at the failed Constitutional Referendum poses a significant threat to equality. The fact that the highest law in the land does not prohibit discrimination based upon sex is likely to be a contributing factor in fomenting a culture where women are not considered equal to their male counterparts. The inequality bred by the lack of this provision is likely related to the high incidence of violence against women that is found in Bahamian society. According to a recent UN Women report, for example, The Bahamas is one of the top 10 countries in the world for per capita rape of women and the country's own Strategic Plan to Address Gender-Based Violence supports this claim and provides evidence of other rates of gender-based violence.
36. In this context, a Constitutional provision that prohibits discrimination based upon sex, sufficient to eradicate this culture of violence against women in and of itself, would demonstrate that before the law, women are not second-class citizens, but are equals to their male counterparts. To further support the latter point on the relationship between gender discrimination and gender-based violence, the Committee on the Elimination of All Forms of Discrimination Against Women states that "Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention."<sup>14</sup>
37. The impact of gender discrimination in the nationality law on one family was documented by Global Campaign for Equal Nationality Rights steering committee Member Equality Now:

*"Maxime is originally from Haiti but has lived in the Bahamas for fourteen years. A few years ago he married Annie-Lavel, a Bahamian woman, and they have two Bahamian-born children and were expecting a third. Maxime was working legally in the Bahamas under a work permit, which he had to renew regularly. All was fine until he had a disagreement with his employer and lost his sponsorship. He applied for a resident spouse permit, but the authorities refused to start the process until he received his birth certificate from Haiti, which took almost a year, with the Haitian authorities reporting it initially lost. The family then lost their home through fire and Maxime took up odd jobs to support them all, even though working without a permit was illegal. Some of his employers exploited this and didn't pay him. In addition, he was picked up several times by immigration control and held in detention until pregnant Annie-Lavel trekked by foot to where he was detained to beg for his release. The family has also had to find further funds to pay the permit application fees as well as fees for translation of the birth certificate. A non-national woman marrying a Bahamian man has automatic entitlement to citizenship on marriage."<sup>15</sup>*

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<sup>13</sup> Ibid.

<sup>14</sup> <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>15</sup> Equality Now, "The State We're In: Ending Sexism in Nationality Laws," January 2016, pages 22-23, available at: [https://www.equalitynow.org/sites/default/files/NationalityReport\\_EN.pdf](https://www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf)

## Recommendations

38. Drawing on the information provided in this submission, the co-submitting organisations urge Member States to make the following recommendations to The Bahamas:
- I. Remove all remaining gender discriminatory provisions in the Constitution and Nationality Act in order to enshrine: married and unmarried women's ability to confer nationality on children and spouses on an equal basis with married and unmarried men; and the ability of men and women to confer nationality on children on an equal basis regardless of their sex, marital status, or pre-Independence birth outside of the country.
  - II. Remove all reservations to the Convention on the Elimination of All Forms of Discrimination Against Women and sign the Optional Protocol to the Convention. Remove its reservation to Article 2 of the Convention on the Rights of the Child.
  - III. Take steps to ensure that all children and adults who have been denied access to Bahamian 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 1954 Convention relating to the Status of Stateless Persons and 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 The Bahamas.