

# Focus Development Association, Global Campaign for Equal Nationality Rights, and Institute on Statelessness and Inclusion

## Joint Submission to the Human Rights Council at the 34<sup>th</sup> Session of the Universal Periodic Review

### Madagascar

#### Introduction

1. Focus Development Association<sup>1</sup>, the Global Campaign for Equal Nationality Rights (GCENR)<sup>2</sup> and the Institute on Statelessness and Inclusion (the Institute)<sup>3</sup> make this joint submission to the Universal Periodic Review (UPR) on the human rights challenges pertaining to gender discrimination in the nationality law and denial of the right to a nationality in Madagascar.
2. This submission focuses on:
  - I. Gender discrimination in the nationality law of Madagascar that denies women the right to confer nationality on non-national spouses on an equal basis with men; and
  - II. The denial of the right to a nationality and resultant statelessness and human rights challenges faced by minority communities in Madagascar, such as those of Indo-Pakistani<sup>4</sup> and Comorian descent, and people of mainland African origin.
3. This submission draws on extensive national and international experience of the co-submitting organisations in research, advocacy, direct service provision and awareness raising on the above issues.
4. While recognizing the need for further reform of Madagascar's nationality law to remove remaining gender-discriminatory provisions, the co-submitting organisations applaud the important steps taken by the government, since its last Universal Periodic Review, to enact nationality law reforms to uphold the right of Malagasy women to confer nationality on their children on an equal basis with Malagasy men. The co-submitting organisations also register their appreciation for Madagascar's leadership in sharing lessons learned from its reform process and the benefits of these reforms in numerous international and regional forums, in partnership with the Global Campaign for Equal Nationality Rights.

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<sup>1</sup> Focus Development Association is an independent non-profit organization that works to advance gender equality, combat statelessness, and support sustainable development and human rights education in Madagascar. FDA is the UNHCR partner in Madagascar in charge of "Prevention and reduction of statelessness and refugee" projects since 2014. <https://focusdev2013.wordpress.com/>

<sup>2</sup> The Global Campaign for Equal Nationality Rights ([www.equalnationalityrights.org](http://www.equalnationalityrights.org)) 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>3</sup> The Institute ([www.institutesi.org](http://www.institutesi.org)) is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 38 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 review under the 23<sup>rd</sup> to the 33<sup>rd</sup> UPR Sessions. For more information on the Institute's UPR advocacy, see <http://www.statelessnessandhumanrights.org/upr-universal-periodic-review/resources-database>.

<sup>4</sup> Referred to as *Karana* by some, this population holds that the term is stigmatizing and undermines their dignity.

## Madagascar's Universal Periodic Review under the Second Cycle

5. Madagascar was previously reviewed at the 20<sup>th</sup> Session of the Universal Periodic Review, under the Second Cycle. Madagascar's State Report before the previous UPR made reference to the 2010 Constitution in Paragraphs 66 and 67, stating:

*"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. Women are entitled to the same protection at all levels of the procedure without restriction."*<sup>5</sup>

6. In this report, Madagascar also noted plans to amend Ordinance No. 60-064 of 22 July 1960 on the Nationality Code to reform gender-discriminatory provisions that denied Malagasy women the right to confer nationality on their children on an equal basis with Malagasy men. Paragraph 63 of the State Report set out as follows:

*"In order to end the discrimination affecting children born to a foreign father married to a Malagasy woman, a bill amending and supplementing certain provisions of Ordinance No. 60-064 of 22 July 1960 on the Nationality Code has been forwarded to the competent bodies for submission to the National Assembly for adoption."*<sup>6</sup>

7. The State Report did not address the denial of the right to a nationality of communities of Indo-Pakistani and Comorian descent, and other populations nor the prevalence of statelessness and related human rights challenges among these communities.
8. At the 20<sup>th</sup> Session, seven States made recommendations for Madagascar to advance gender equality and fight gender-based discrimination, including in relation to exercising the right to a nationality. These recommendations were all accepted by Madagascar.
9. The United States of America recommended that Madagascar

*"Reform its nationality law to ensure that all citizens have equal right to confer nationality to their children and the children born to citizen mothers are no longer at risk of statelessness".*<sup>7</sup>

10. Germany recommended that Madagascar

*"Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and take effective legal and practical steps to combat gender-based violence, stereotypes and promote gender equality".*<sup>8</sup>

11. Spain recommended that Madagascar

*"Step up its efforts to ensure that legislation combating gender-based discrimination is effectively implemented and that effective measures are adopted to strengthen gender equality".*<sup>9</sup>

12. Sudan recommended that Madagascar

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<sup>5</sup> A/HRC/WG.6/20/MDG/1, 2014.

<sup>6</sup> Ibid.

<sup>7</sup> A/HRC/28/13

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

*“Continue its efforts to adopt legislations to combat trafficking and protect women’s rights in particular nationality and gender equality”.*<sup>10</sup>

13. Brazil recommended that Madagascar

*“Step up efforts directed at fighting discrimination based on gender, particularly in order to end discriminatory treatment affecting children born to a foreign father married to a Malagasy woman”.*<sup>11</sup>

14. Russian Federation recommended that Madagascar

*“Adopt additional measures to eliminate violence against women and children and ensure gender equality in society”.*<sup>12</sup>

15. Rwanda recommended that Madagascar

*“Intensify efforts to ensure gender equality and eliminate sexual and gender-based violence, including through considering development of a National Action Plan and implementation of Security Council Resolution 1325”.*<sup>13</sup>

16. Following the state’s acceptance of these recommendations, the government of Madagascar took important steps to achieve these commitments. In January 2016 the government promulgated a new nationality law, loi n°2016-038, that removed gender-discriminatory provisions regarding the conferral of nationality on the children of Malagasy citizens. Today Malagasy women and men have the equal right to confer nationality on their children. Importantly, the reform has retroactive application, meaning that families that suffered under the previous law can now benefit from the reform. By April 2018 —just a little over a year after the reform—1,361 families had already benefitted from the new law, which facilitates these citizens’ full participation in society and in the country’s development.

17. 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.

## **Madagascar’s International Obligations**

18. Madagascar is a party to core human rights instruments, including: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and Convention on the Rights of Persons with Disabilities (CRPD), International Covenant on Civil and Political Rights (CCPR), International Covenant on Economic, Social and Cultural Rights (CESCR), and International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

19. Madagascar has not yet acceded to key international instruments which protect refugees, stateless persons and indigenous persons. For example, Madagascar is not a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its Protocol, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the ILO Convention No. 169 on Indigenous and Tribal Peoples, among others.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

20. The Constitution of Madagascar enshrines the precedence of international treaties over domestic legislation: *“Duly ratified treaties or agreements shall, as soon as they have been published, take precedence over laws (...)”* In its 2014 UPR State Report, the government further clarified: *“in case of conflict between domestic law and the provisions of an international instrument, the latter take precedence.”* Accordingly, Madagascar’s treaty obligations have the effect of national law, with no enabling legislation being required to be passed.
21. The human rights instruments to which Madagascar has acceded – CEDAW, CRC, ICCPR, CRPD and CERD – provide for the right to a nationality and equal nationality rights between women and men.
22. In its last CEDAW review in November 2015, the CEDAW Committee reiterated its concern that the nationality law continued to deny women equal rights with men and issued the following recommendation:
- “Amend its nationality law to enable Malagasy women to transmit their nationality to their foreign or stateless spouse and to their children on an equal basis with men, in accordance with article 9 of the Convention (see also CEDAW/C/MDG/CO/5, para. 25)”<sup>14</sup>*
23. Furthermore, as a member State of the African Union, Madagascar is a signatory to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which calls on State Parties to *“combat all forms of discrimination against women through appropriate legislative, institutional and other measures”*, including through enactment of *“corrective and positive action in those areas where discrimination against women in law and in fact continues to exist.”<sup>15</sup>*
24. While the government’s effort to enact reforms to uphold women’s right to confer nationality on children on equal basis with men is an important step in eliminating discrimination against women, the persistence of gender discrimination in loi n°2016-038 results in violations of Madagascar’s obligations under international law and its own Constitution to uphold equality before the law and non-discrimination on the basis of sex.

## **Gender Discrimination in Madagascar’s Nationality Law**

25. According to loi n°2016-038, Malagasy men have the right to confer nationality on a non-national spouse (foreign or stateless) upon marriage, if the spouse declares their desire to acquire Madagascar nationality. Malagasy women are denied this same right to confer nationality on a foreign or stateless spouse.
26. While Madagascar’s obligations under international law, including CEDAW and the ICCPR, and its Constitutional mandate to uphold non-discrimination on the basis of sex and the primacy of international treaties, should take precedence, in practice, Malagasy women are denied the right to confer nationality on spouses on an equal basis with Malagasy men.
27. In light of recent efforts to reform the law to eradicate gender discrimination with regard to conferral of nationality to children, it is timely for Madagascar to review and amend its nationality law to make it fully compliant with international, regional, and national standards.

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<sup>14</sup> CEDAW/C/MDG/CO/6-7

<sup>15</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, available at <http://www.achpr.org/instruments/women-protocol/>

## Stateless Minorities in Madagascar, including Communities of Indo-Pakistani and Comorian Descent

28. Madagascar has a sizeable community of Muslims of Indo-Pakistani origin, often referred to as the 'Karana',<sup>16</sup> who have migrated to the country during the 19<sup>th</sup> and 20<sup>th</sup> centuries. Many among this community failed to acquire any citizenship (be it Malagasy, French, Indian, Pakistani, or English) at the time of Madagascar's independence from France (1960), and have not been able to resolve this since.
29. In addition to those of Indo-Pakistani descent, racial discrimination causes statelessness among individuals of Comorian origin and others who are not perceived as ethnically Malagasy. These groups are also unable to access naturalisation<sup>17</sup> and even those who are theoretically eligible for nationality face difficulties in acquiring documentation and proof of citizenship as a result of discriminatory administrative practices.
30. Madagascar's 1993 national census reported 0.2% of Madagascar's 12.3 million population (at the time) as foreign and 9.3% of these - or 2,200 persons - as stateless.<sup>18</sup> This is likely to be an underrepresentation of the number currently affected. Firstly, it is important to keep in mind the limitations inherent in reporting the size of a stateless population based on self-identification in a census alone, for people may not know or be reluctant to indicate their nationality status as stateless. Secondly, Madagascar's total population has since grown significantly –to over 26.6 million by the end of 2018. The lack of safeguards in the nationality law to prevent statelessness being passed to the next generation means that problem of statelessness is likely to have grown with it.
31. There has yet to be a comprehensive mapping of statelessness in Madagascar to confirm the current number of persons affected, and reliable data remains unavailable. UNHCR has suggested that the population of those of Indo-Pakistani descent is estimated to be at least 20,000<sup>19</sup> and within that group, "only a handful of individuals hold citizenship rights". Addressing the discriminatory nature of the law, the US Department of State, in its annual human rights reporting, emphasised that:

*Muslim leaders estimated the laws affected as much as 5 percent of the approximately two million Muslims in the country. Members of the wider Muslim community suggested a Muslim sounding name alone could delay one's citizenship application indefinitely.*<sup>20</sup>

## Consequences of Gender Discrimination in the Nationality Law and Statelessness in Madagascar

32. Gender discrimination in Madagascar's nationality law denies women equality under the law, as enshrined in the Constitution of Madagascar, and implicitly establishes women to be second-class citizens, further exacerbating 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.
33. 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 existence

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<sup>16</sup> As previously noted, this group finds the term Karana to be derogatory.

<sup>17</sup> *ibid*, 12-13, 48; Caroline McInerney, 'Accessing Malagasy Citizenship: The Nationality Code and Its Impact on the Karana' (2014) *Tilburg Law Review* 19.

<sup>18</sup> The national census report is available here:

[http://www.gripweb.org/gripweb/sites/default/files/databases\\_info\\_systems/Madagascar\\_RGPH%20Vol2%20Tome1.pdf](http://www.gripweb.org/gripweb/sites/default/files/databases_info_systems/Madagascar_RGPH%20Vol2%20Tome1.pdf) .

<sup>19</sup> See <https://www.unhcr.org/news/latest/2017/11/5a018ff44/madagascars-karana-people-still-awaiting-nationality.html>

<sup>20</sup> 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>

of both gender discrimination and race discrimination, which causes statelessness among the Karana and other minority communities can also intersect, further exacerbating the scale and impact of the problem. Given the size of the stateless population in Madagascar, the persistence of gender discrimination in the nationality law may perpetuate the statelessness status of a notable population in the country.

34. Stateless persons face wide-ranging human rights violations and hardships, including obstacles to accessing education, healthcare – including access to sexual and reproductive healthcare in a country with one of the highest maternal mortality rates in the world (468 deaths for every 100,000 births as of 2012) – 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.
35. Among the many testimonies of stateless persons in the country, the case of Mr. Ibrahim Ickbal, a stateless person of Indian origin residing in Mahajanga, illustrates the impact of gender-discrimination in the Malagasy Nationality Code and its impact on men. Aged 52, Ibrahim is the father of two children. Until today, he remains the only stateless person in his small family. His wife is Malagasy and so are his children. But she cannot pass her nationality to her spouse. Naturalization is Mr. Ickbal's only route to citizenship. Unfortunately for him and many others in his circumstances, he has been unable to acquire citizenship through this process. As a father, his stateless status fills him with constant shame. He refuses to legally recognize his children because, according to him, he cannot offer them what they need. Mr. Ickbal works for a local jeweller, and recently took out a loan of five million Ariary from his employer to acquire his new biometric resident card. "With my modest salary, it will take me two years to repay the loan," he said, adding, "It's a huge financial investment, but I still cannot vote or travel."

## Recommendations

36. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Madagascar:
  - I. Reform ordinance n°60-064 of the Nationality Code to uphold the right of Malagasy women to confer nationality on their foreign or stateless spouse on an equal basis with Malagasy men.
  - II. Immediately end the discriminatory denial of nationality to populations of Indo-Pakistani and Comorian descent and other minority groups in Madagascar, and take all necessary steps to ensure their right to a nationality.
  - III. Ensure that all international and regional obligations related to the right to nationality, prevention and reduction of statelessness, protection of stateless persons, non-discrimination, and birth registration are fully incorporated into domestic law and implemented in practice.
  - IV. Strengthen the collection and monitoring of disaggregated data (including by ethnicity, age, and gender) and conduct a comprehensive mapping on statelessness, the risk of statelessness, and Karana and other affected minority populations in Madagascar, with appropriate safeguards in place to ensure anonymity.
  - V. Accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.