



Committee on the Elimination of Discrimination against Women  
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Re: The Bahamas – 71<sup>st</sup> Pre-Sessional Working Group (12 Mar 2018 - 16 Mar 2018)

20 February 2018

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on the Elimination of Discrimination against Women's (CEDAW) discussion on The Bahamas at its 71<sup>st</sup> pre-sessional working group from 12 Mar 2018 - 16 Mar 2018. The co-submitting organizations are greatly concerned about prevailing gender discrimination in the Constitution of The Bahamas and in its Nationality Act (Chapter 190). This letter will focus on continued violations of women's nationality rights in The Bahamas in direct violation of Articles 2 (non-discrimination including in policy measures) and 9 (nationality), resulting in further violations of articles 3 (Guarantee of Basic Human Rights and Fundamental Freedoms), 13-a and b (Economic and Social Benefits), and 16-1 b and d (Marriage and Family Life) of CEDAW.

The [Global Campaign for Equal Nationality Rights](#)<sup>1</sup> mobilizes international action for the removal of gender discriminatory provisions from all nationality laws through its coalition of national and international organizations and activists. The [Institute on Statelessness and Inclusion](#) (the Institute) is an independent non-profit organization dedicated to promoting an

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<sup>1</sup> Steering Committee members include Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, Women's Learning Partnership, and Women's Refugee Commission, which houses the Global Campaign.



integrated, human rights-based response to the injustice of statelessness and exclusion. [Equality Now](#) is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries.

### ***Gender Discrimination in the Nationality Law of The Bahamas***

The Bahamas is one of 25 countries globally that deny women the right to confer nationality on their children on an equal basis with men, and one of roughly fifty countries to deny women the right to acquire, change, or retain their nationality or confer nationality on spouses on an equal basis with men. 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. However, Article 3(2) of the Bahamian Constitution stipulates that a Bahamian male born abroad prior to independence acquired Bahamian citizenship through his father. However, he cannot readily pass on his citizenship to his offspring. 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.<sup>2</sup> While unmarried Bahamian women and married men born after 1973 can automatically pass on their nationality to children born abroad, married women, unmarried men and men born before 1973 cannot.

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.<sup>3</sup> This situation amounts to discrimination on the basis of the parents' gender and

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<sup>2</sup> Constitution of The Bahamas, Article 9: "(1) Notwithstanding anything contained in Article 8 of this Constitution, a person born legitimately outside The Bahamas after 9th July 1973 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 under this Article 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 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 10th July 1973, be construed as a reference to the mother of that person." Importantly, the term 'legitimately' in Article 9 is interpreted to mean 'married.'

<sup>3</sup> Section 4 of The Bahamas Nationality Act: "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

marital status. Bahamian women are also denied the right to confer their nationality on their foreign spouse, a right that is reserved for men in Article 10 of the Constitution of The Bahamas.<sup>4</sup>

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.

While the co-submitting organizations recognize 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 to CEDAW and to uphold equal nationality rights for women and men.

### ***The Impact of Gender Discriminatory Nationality Laws***

Gender discrimination in the nationality law of The Bahamas may result in wide-ranging human rights violations. Gender discrimination in the nationality laws jeopardizes family unity, and undermines affected persons' access to education, healthcare, formal employment, financial services, inheritance, property rights, and freedom of movement. Furthermore, discrimination in the nationality law inhibits women's ability, in practice, to freely choose a spouse, in violation of Article 16; further entrenches traditional stereotypes regarding the primacy of male legal identity; and contributes to women's inequality within the family and society at large.<sup>5</sup>

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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."

<sup>4</sup> 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."

<sup>5</sup> Global Campaign for Equal Nationality Rights – UNHCR, "CEDAW Quick Reference Guide: Statelessness and Human Rights Treaties," 2017, available at: <http://equalnationalityrights.org/images/zdocs/CEDAW-Quick-Reference-Guide.pdf>

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.

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. Inequality in the law, including 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 Strategic Plan to Address Gender-Based Violence supports this claim and provides evidence of other rates of gender-based violence.<sup>6</sup>

Following a mission to The Bahamas by the United Nations Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonovic, from December 11-15, 2017, Ms. Šimonovic drew particular attention to the negative impact of gender discrimination in the country’s nationality law on women’s role in the family, in addition to violations of women’s nationality rights. The Special Rapporteur also highlighted the links between legal discrimination

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<sup>6</sup> United Nations Office of the High Commissioner for Human Rights, “The Bahamas: UN Special Rapporteur calls for fresh steps to tackle violence against women,” available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22554&LangID=E>

against Bahamian women<sup>7</sup> and high levels of gender-based violence, while emphasizing the importance of a Constitutional amendment to enshrine non-discrimination on the basis of sex as a critical step to fight gender-based discrimination and violence.

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<sup>8</sup>:

*“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 the 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.*”

### ***The Committee’s previous review of The Bahamas***

Gender discrimination with respect to nationality in the Constitution of The Bahamas has been an issue of concern to the Committee for many years. 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. In its previous Concluding Observations following its review of The Bahamas in July 20, 2012 the Committee expressed its concern that the State party does not see itself as bound by CEDAW Article 9 on the basis that Bahamian citizens rejected, in a constitutional

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<sup>7</sup> Another example is Section 3 of Bahamas’ Sexual Offences and Domestic Violence Act of 1991 which allows for a man to rape his wife if she is over 14 years of age. Available at

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf)

<sup>8</sup> See Equality Now, “The State We’re In: Ending Sexism in Nationality Laws,” (2016) available in English at

[https://www.equalitynow.org/sites/default/files/NationalityReport\\_EN.pdf](https://www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf) and in French at

[https://www.equalitynow.org/sites/default/files/Equality%20Now%20Nationality%20Report%20-%20Final%20January%2022%202016\\_FRsmall.pdf](https://www.equalitynow.org/sites/default/files/Equality%20Now%20Nationality%20Report%20-%20Final%20January%2022%202016_FRsmall.pdf) and in Arabic at

[https://www.equalitynow.org/sites/default/files/NationalityReport\\_AR.pdf](https://www.equalitynow.org/sites/default/files/NationalityReport_AR.pdf)



referendum, the withdrawal of the constitutional provision preventing women from passing their nationality to their children or to their spouses of foreign nationality on an equal basis with men. The 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;** (CEDAW/C/BHS/CO/1-5).

As stated by the CEDAW Committee, 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 the rights.” Therefore, the maintenance of nationality laws that discriminate on the basis of gender are themselves in conflict with the object and the purpose of 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.”

The Committee has underscored the deleterious impact of discriminatory laws, particularly those related to nationality rights, on women’s status in society and ability to contribute to economic, political, and social life. In addition to directly prohibiting the realization of Goal 5 of the Sustainable Development Goals (SDGs), gender discrimination in the nationality law of The Bahamas also inhibits the realizations of eight other SDGs.

### ***Suggested Questions for the State Party’s List of Issues***

In the context of the issues raised in this submission, and drawing the Committee’s attention in particular to the failure of The Bahamas to implement the previous recommendations of the Committee, the co-submitting organizations respectfully urge the Committee to raise with the Bahamian government in its State Party’s List of Issues the following questions with regard to violations of CEDAW addressed in this letter:

- Can the government provide a detailed assessment of the impact of its sex discriminatory nationality law on *inter alia* statelessness and the right to nationality, access to services and enjoyment of other human rights of affected persons, impact on women's safety and security and gender-based violence, impact on inheritance and property rights of women and the equal protection of Bahamian women under the law?
- What steps is the government taking and within what timeframe to amend the nationality law to remove all gender-discriminatory provisions and to ensure the equal right of all citizens to confer nationality on their children and non-national spouses, regardless of gender and marital status?
- What further proposals are being considered by the government to alleviate the effects of gender-discriminatory nationality law, including violations of economic and social rights, until the law can be fully amended?
- What support might be needed, if any, to further this process?

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.



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For and on behalf of all co-submitting organizations

