



Institute on Statelessness and Inclusion

&

Global Campaign for Equal Nationality Rights

Joint Submission to the Human Rights Council at the
36th Session of the Universal Periodic Review

(Third Cycle, April-May 2020)

Libya

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

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Introduction

1. The Institute on Statelessness and Inclusion (ISI) and Global Campaign for Equal Nationality Rights make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Libya.
2. This submission focuses on gender discrimination in nationality laws, specifically the inability of Libyan women to confer nationality on their children and non-national spouses on an equal basis with Libyan men. The submission also looks at the risk of statelessness and related human rights challenges faced by minority communities in Libya.
3. The co-submitting organisations note their significant concern related to the current migrant and refugee crisis, with countless people being held in arbitrary detention in inhumane conditions, subject to torture, rape and extortion and other degrading treatment; and emphasise the likelihood of a serious risk of statelessness among those arbitrarily detained and deprived of their basic human rights. However, this submission does not address these grave human rights concerns, due to a lack of on the ground information and research on the likely statelessness impact of the crisis.
4. ISI¹ 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. The Institute has made over 50 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 23rd to the 35th UPR Sessions.
5. The Global Campaign for Equal Nationality Rights mobilizes international action for the removal of gender-discriminatory provisions from all nationality laws, through its coalition of national, regional and international organizations and activists, including steering committee members Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, UNHCR, Women's Learning Partnership and Women's Refugee Commission.

1 For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

Previous UPR of Libya under the First and Second Cycle

6. Libya was previously reviewed during the 9th and 22nd sessions of the UPR, in 2010 and 2015 respectively. During the first cycle, Libya received one recommendation from Mexico to “*adopt a national plan to eliminate stereotypes regarding the role of women in society, and speed up the reform process to guarantee equality between men and women, including with regard to the transfer of nationality, the custody of children, divorce and inheritance*”, which it noted.² During the second cycle, Libya received four recommendations from Argentina, Kenya, Poland and Portugal, to ensure that Libyan mothers are able to pass their nationality to their children, regardless of the nationality of the child’s father, all of which it accepted. Libya also received and accepted three recommendations on improving birth registration.³

Libya’s International obligations

7. Libya acceded to the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* in 1989. Libya has further international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others the International Covenant on Civil and Political Rights (ICCPR - article 24.3), the International Covenant on Economic, Social and Cultural Rights (ICESCR - articles 2.2 and article 3), the Convention of the Rights of the Child (CRC - articles 7 and 8) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW - article 9), the International Convention on the Elimination of All Forms of Racial Discrimination [CERD - article 5(d)(iii)], the Convention on the Rights of Persons with Disabilities (CRPD - article 18), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW - article 29). Libya also ratified the African Charter on the Rights and Welfare of the Child in 1999, which provides for the right to a name and nationality for every child in its Article 6. Furthermore, the right to a nationality is protected under Article 15 of the Universal Declaration on Human Rights and Articles 5 and 19 of the Cairo Declaration on Human Rights in Islam.
8. During the reporting period, Libya has been reviewed only by one UN Treaty Body. In addition and on the basis of the articles mentioned under the CMW, the Committee on the Rights of Migrant Workers recommended that Libya ensure that children are separated from adults to whom they are not related and, if born in detention, are provided with a valid birth certificate.⁴ In 2017, the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya noted that “*Libyan women face discrimination, [...] and do not have the right to pass on their nationality to their children or spouse*”.⁵ In its submission for the Second UPR Cycle of Libya in 2014, UNHCR recommended Libya to Implement Article 11 of “*Law Number 24 of 2010*” to ensure that mothers are able to pass their nationality to their children, regardless of the status or nationality of the child’s father.⁶

² Report of the Working Group on the Universal Periodic Review: Libyan Arab Jamahiriya, A/HRC/16/15.

³ Report of the Working Group on the Universal Periodic Review: Libya, A/HRC/30/16.

⁴ CMW, Concluding observations on the initial report of Libya, CMW/C/LBY/CO/1.

⁵ Report of the United Nations High Commissioner for Human Rights, A/HRC/34/42

⁶ <https://www.refworld.org/publisher,UNHCR,,LBY,553a052e4,0.html>.

National Law

9. Libya's nationality law is governed by the *Law Number (24) for 2010/1378 On The Libyan Nationality*, adopted in 2010.⁷
10. Article 2 of the Nationality Law stipulates that:
 - i. Every person with regular residency in Libya since 7 October 1951, without any other foreign nationality, is considered Libyan if one of the following conditions is applicable to him/her:
 - a. He/she is born in Libya;
 - b. He/she is born outside Libya but one of his/her parents is born in Libya;
 - c. He/she is born outside Libya but resided regularly in Libya for a period not less than 10 years before 07/10/1951.
11. Article 3 adds that a person is also considered Libyan if:
 - i. He/she is born in Libya to a Libyan father
 - ii. He/she is born outside Libya to a Libyan father
 - iii. He/she is born in Libya to a Libyan mother and a father that either has an unknown nationality or who's stateless. Or his/her parents are unknown.

Gender Discrimination

12. A mother may confer her nationality to her children only if the father is unknown, stateless, or does not establish filiation. Women married to foreign nationals cannot pass their nationality to their children. Women cannot confer nationality to spouses on an equal basis with men.⁸
13. This distinction discriminates against women. This not only denies equality to women and men, but can also result in severe consequences for children such as statelessness, risk of deportation, and lack of access to social services and economic opportunities. This discrimination also serve to compromise Liberian women's equal right to freely choose a spouse and a place of residence.
14. Such distinctions in the transmission of citizenship violate the right to equality before the law and equal protection of the law and constitute discrimination on the basis of sex. In accordance with the principles of equality and non-discrimination set forth in treaties ratified by Libya, Libya should guarantee its citizens the equal right to confer citizenship on their children born abroad

⁷ Law Number (24) for 2010/1378 On The Libyan Nationality.

⁸ <https://equalnationalityrights.org/countries/middle-east-north-africa>.

Stateless Minorities

15. Minority non-Arab ethnic groups in the southern border regions of Libya, such as the Tebu (also affected by a boundary change with Chad), have long been at risk of statelessness, struggling to obtain papers recognising them as Libyan.
16. Statelessness has been identified as a problem that affects certain minority populations in Libya, as a result of policies of 'Arabisation' implemented under the former regime of Moammar Gadhafi. Berber (Amazigh), Tuareg and Tebu are three communities for whom access to citizenship has been reported as problematic. The Carter Center reported in 2012 that the district court in Kufra ordered the removal of 1,085 voters (members of minority groups) from the electoral register because they were deemed inhabitants of Aouzou and lost their citizenship under a 1998 law.⁹ The magnitude of the problem is however not known. While no published information is available on statelessness among the Berber and Tuareg populations, there has been some limited reporting on the Tebu minority. In late 2012, a representative of the Tebu community in Libya was quoted as estimating the size of the Tebu minority to be 50,000, an unknown number of whom are affected by statelessness due to the aforementioned 1998 law.¹⁰

Recommendations

17. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Libya:
 - I. Address discrimination against women in Law No. 24 from 2010 on the Libyan Nationality so that women can transfer their nationality to their children and foreign spouses, and acquire, change or retain their nationality, on an equal basis with men, in line with article 9 of the Convention on the Elimination of All Forms of Discrimination against Women;
 - II. Ensure that all members of minority communities have equal access to citizenship and do not face any discrimination in realising their right to a nationality.

⁹ The Carter Center, Carter Center Congratulates Libyans for Holding Historic Elections, 9 July 2012.

¹⁰ <https://files.institutesi.org/worldsstateless.pdf>