

Joint Submission to the
Human Rights Council

Universal Periodic Review

43rd Session

4th Cycle

01-12 May, 2023

The Bahamas

Hollaback Bahamas!

Global Campaign for Equal Nationality Rights

Institute on Statelessness and Inclusion

11 October 2022



Joint Submission

to the Human Rights Council

at the 43rd Session

of the Universal Periodic Review.

The Bahamas

Introduction

1. Hollaback Bahamas!, the Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on gender discrimination in the nationality laws of Bahamas, the child's right to nationality and related statelessness and human rights challenges.
2. Hollaback Bahamas! was started in 2014 as part of a global movement to end street harassment. It has since grown to focus on gender-based violence against women, providing feminist education and training to young people in The Bahamas. The organization is currently in the process of rebranding to express its expanded focus on human rights and the centering of young people in its work.
3. 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.¹
4. ISI² is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realizing and protecting everyone's right to a nationality. The Institute has made over 80 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 41st UPR Sessions.³
5. This submission focuses on:
 - I. The child's right to acquire a nationality
 - II. Gender discrimination in nationality laws

Previous UPR of the Commonwealth of The Bahamas under the First, Second and Third Cycle

6. The Commonwealth of The Bahamas ("The Bahamas") was previously reviewed during the third, fifteenth and twenty-ninth sessions of the UPR, in 2008, 2013 and 2018 respectively.

¹ For more information, see www.equalnationalityrights.org

² For more information, see <https://www.institutesi.org/>

³ <https://www.institutesi.org/pages/universal-periodic-review>

The First cycle

7. During the first cycle, The Bahamas received one relevant recommendation from Italy to ensure the registration of all children at birth, which it accepted. 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.

The Second cycle

8. During the second cycle, The Bahamas received five recommendations from Thailand, Peru, Slovakia, Guatemala and Paraguay which related to addressing gender discrimination in nationality laws, which it noted. Mexico urged The Bahamas to ensure universal birth registration, regardless of the immigration status of the parents. Ireland urged the State to establish and implement a statelessness determination procedure and afford stateless people adequate protection. The Bahamas accepted both these recommendations.

The Third cycle

9. During the third cycle, The Bahamas received thirteen recommendations by Australia, Sierra Leone, Haiti, Iceland, Argentina, Cote d'Ivoire, Uruguay, Trinidad and Tobago, Peru, Indonesia, Namibia, and Spain in relation to nationality and statelessness. Five recommendations focused specifically on recognising women's equal rights with men with regard to transmission of their nationality to their children, which the Bahamas noted.
10. The only recommendation accepted by The Bahamas was to intensify efforts aimed at addressing the discriminatory provisions in nationality laws, made by Namibia.
11. Peru, Cote d'Ivoire, Sierra Leone, and Haiti recommended The Bahamas to accede to the 1954 Convention relating to the Status of Stateless Persons and/or the 1961 Convention on the Reduction of Statelessness. Spain recommended The Bahamas to sign the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and withdraw the reservations to the Convention's articles 2 (a) and 9 (2) on nationality. The Bahamas noted all these recommendations.
12. Indonesia recommended the Bahamas to continue enhancing the protection of the rights of the child, in particular to ensure every child's right to nationality and citizenship. The Bahamas noted this recommendation.

The Bahamas' International Obligations

13. The Bahamas is party to a number of international and regional human rights instruments which guarantee the right to nationality, prohibit discrimination on the basis of sex, and protect the rights of stateless persons including:⁴
 - The Convention on 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 (ICERD), Article 5(d)(iii).
 - The Convention on the Rights of Persons with Disabilities (CRPD), Article 18.

⁴ See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

- The Universal Declaration of Human Rights (UDHR), Article 15.
 - The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 24(3).
14. The Bahamas is not party to the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.
 15. Concerning the Convention on the Rights of the Child (CRC), The Bahamas entered a reservation to Article 2 of the Convention which is a guiding principle upon which the Convention is founded and prohibits any form of discrimination in the enjoyment of the rights set down in the CRC. The Bahamas reserved the right not to apply the provisions of Article 2 CRC insofar as those provisions relate to the conferment of citizenship upon a child having regard to the provisions of the State's Constitution.⁵ 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.
 16. Concerning the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) The Bahamas has also made reservations to this instrument and does not consider itself bound by the provisions of Article 2(a) on gender equality, article 9(2) on equal transmission of nationality to children and Article 29(1) on account of those provisions being incompatible with the Constitution of The Bahamas. These reservations go against the core principles of equality and non-discrimination enshrined in the Convention and fundamentally contravene general obligations to eliminate all forms of discrimination against women which arises under CEDAW Article 2.⁶
 17. On 25 February 2011, the Government of the Commonwealth of The Bahamas notified the Secretary-General of its decision to withdraw the reservation in respect to article 16 (1) h) made upon accession to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which requires gender equality in family relations.⁷
 18. The Bahamas is also a member of the Organization of American States (OAS), and therefore subject to respect the rights and undertake the duties therein and the Declaration of the Rights and Duties of Man. At the regional level, The Bahamas has ratified at the Inter American Convention on the Punishment and Eradication of Violence Against Women or Convention of Bélem do Pará.

Concerns raised by UN Human Rights Treaty Bodies

19. The CEDAW Committee, in its concluding observations on 14 November 2018,⁸ expressed its concern that The Bahamas maintains reservations to article 2 (a), on the general legal obligations of States parties under the Convention, and to article 9 (2), on nationality. It also expressed concern over stateless children and orphans of parents who are stateless or of unknown nationality, who cannot apply the principle of *ius sanguinis* or that of *ius soli* to obtain nationality.
20. The CEDAW Committee further expressed concern regarding the lack of information about stateless women and girls and recommended The Bahamas (a) undertake specific measures aimed at raising awareness among politicians and the general public of the need to amend the Constitution in order to repeal provisions that discriminate against women in matters of

⁵ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en

⁶ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

⁸ See: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBHS%2fCO%2f6&Lang=en

nationality; (b) amend The Bahamas Nationality Act 1973 to include provisions allowing Bahamian men and women to transmit citizenship to their children on an equal basis and take further legislative steps to ensure that Bahamian women can transmit their nationality to non-Bahamian spouses, in line with article 9 of the Convention; (c) introduce a statelessness determination procedure to identify stateless women and children, including orphans of parents who are themselves stateless or of unknown nationality, and afford them protection in the State party, including access to a simplified naturalization process before they reach the age of 18 years.

The Bahamas' National Legal Framework

21. Bahamian nationality is regulated by the 1973 Constitution of The Bahamas ("the Constitution"), provisions of which are incorporated into the 1973 Bahamas Nationality Act ("the Nationality Act").
22. Relevant Constitutional provisions on the right to nationality are found in:
 - [Article 6] – Right to nationality for children born on the territory to Bahamian nationals
 - [Article 7] – Right to nationality for children born on the territory to foreign nationals
 - [Article 9] – Right to nationality for children born abroad to Bahamian nationals
23. The above-referenced Articles represent "entrenched provisions", and amendments require a Constitutional Referendum to effect change.
24. Other relevant aspects related to conferral of nationality are regulated by the Nationality Act; Part II, Section 4 which governs acquisition of nationality in adoption cases.

The Child's Right to Acquire a Nationality

Children born in the territory

25. According to the Bahamian Constitution, Bahamian men and women do not have an equal right to confer nationality on their children, in accordance with principles and standards set out in multiple international human rights instruments as outlined above.
26. Furthermore, lack of safeguards in Bahamian law to ensure access to acquire nationality for children born in the territory who are otherwise stateless, means that children who do not acquire nationality from their parents at birth will remain stateless until such time as they might acquire nationality, most likely at adulthood, which is incompatible with principle of the best interests of the child stipulated in Article 3 of the CRC.
27. Thus, discriminatory nationality provisions in the law, and a lack of legal safeguards to ensure access to nationality for otherwise stateless children are a direct violation of the child's right to acquire a nationality as stipulated in Article 7 of CRC which provides:

"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.***

28. Article 6 of the Constitution which governs the acquisition of nationality for children born in the territory provides:

*“Every person born in The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date **either of his parents** is a citizen of The Bahamas.”*

29. According to this Article, it appears that any child born in The Bahamas to a Bahamian parent automatically acquires nationality at birth. However, this provision must be read in conjunction with the interpretation clause of the Constitution, Article 14(1) which provides:

“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.”

30. While Article 6 of the Constitution does not explicitly refer to “mother” or “father”, this provision has been narrowly interpreted by the Judiciary and implemented in the same manner. Therefore, in practice, children born in The Bahamas to Bahamian fathers out of wedlock, do not automatically acquire Bahamian nationality at birth. In the case where these children cannot acquire nationality from their mothers, their right to acquire a nationality is not realised, resulting in statelessness.

31. Article 7(1) of the Constitution governs acquisition of Bahamian nationality for children born in the territory to foreign parents. It provides:

“A person born in The Bahamas after 9th July 1973 neither of whose parents is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years or within twelve months thereafter in such manner as may be prescribed, to be registered as a citizen of The Bahamas.”

32. With no other legal safeguards in place to ensure access to nationality for children born in the territory who are otherwise stateless, and with a large *in situ* population of persons of Haitian descent - who themselves face significant nationality and documentation issues - there is a clear risk of statelessness amongst children of Haitian descent and the current legal framework is incompatible with obligations arising under Article 7(2) of the CRC which requires States to ensure children who are otherwise stateless have access to acquire a nationality.

Children born abroad

33. Article 8 of the Bahamian Constitution governs the acquisition of nationality for children born abroad to Bahamian citizens. It provides that:

*“A person born outside The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date his **father** is a citizen of The Bahamas otherwise than by virtue of this Article or Article 3(2) of this Constitution.”*

34. Article 9(1) of the Constitution sets out the pathway to Bahamian nationality for children of Bahamian women born abroad:

“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”.

35. This clear distinction in the automatic acquisition of Bahamian nationality for children born abroad, which is dependent on the sex and marital status of the parent, is in clear contradiction to the principle of non-discrimination enshrined in the Article 2 of the CRC. Moreover, in cases where the child cannot acquire nationality from his/her father either because he may be stateless, unable to confer his nationality, missing, or unwilling to establish paternity, the child’s right to acquire a nationality may be violated, again resulting in their statelessness.

Gender Discrimination in Nationality Laws

36. The previous section outlined clear instances where current nationality laws of the Bahamas do not guarantee the child’s right to acquire a nationality, mostly due gender discrimination, but also due to a lack of legal safeguards to ensure access to nationality for children otherwise stateless and foundlings. These provisions are not only inconsistent with The Bahamas’ obligations under the CRC, but also its obligations under CEDAW.
37. The current laws and policies of The Bahamas on nationality prevent men and women from conferring nationality on their children on an equal basis, and instead depend on one’s marital status and gender.
38. In addition to the discriminatory provisions outlined above, women are also discriminated against in the transmission of their nationality to their spouse. Article 10 of the Constitution provides:

*“Any **woman** who, after 9th July 1973, marries a person who is or becomes a citizen of The Bahamas shall be entitled, provided she is still so married, upon making application in such manner as may be prescribed and upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas”*

39. The above referenced Constitutional entitlement extends only to the foreign spouses of **Bahamian men**, and with no equal provision for the foreign spouses of Bahamian women, this clearly discriminatory provision not only undermines women’s right to freely choose a spouse, but it may also further impact the right to family life, including the child’s right to know and be cared for by their parents, and in the case of spouses who might be stateless, impacts the ability to find a remedy for their lack of nationality.
40. Similarly, in the case of adoption of a child who is not a Bahamian national, the Nationality Act discriminates against women in cases of joint adoption, with Bahamian nationality acquired through the paternal line only.
41. Gender discrimination in the laws and policies of The Bahamas pertaining to nationality undermine women and men’s equal citizenship and their equality in the family – reinforcing and contributing to gender-discriminatory social norms – while also contributing to gender-based

violence⁹, which is rooted in women's unequal status in society. Women's unequal ability to confer nationality on their children has been linked with heightened obstacles to women extracting themselves from abusive relationships, while women and girls who lack nationality in their country of residence are at increased risk of child marriage and human trafficking.¹⁰

Recent Developments on Nationality Rights in The Bahamas

42. The Bahamas has sought to address deficiencies in its Constitution by bringing two Constitutional Referenda in 2002 and 2016 respectively, both of which were rejected by the electorate. Those attempts were not supported by sufficient awareness raising among the public, resulting in the proliferation of misinformation and uncharacteristically low voter turnouts. Despite these efforts, the Bahamian government is not precluded 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.
43. The incumbent administration recently signaled its intention to remedy the discriminatory provisions through the introduction of ordinary legislation, as did the administration before it. The Government argues it is empowered to do under Article 13 of the Constitution which makes provision for the Government to introduce legislation for the acquisition of citizenship by persons who do not become citizens of The Bahamas by virtue of the provisions the Constitution.
44. However, there are legitimate concerns that ordinary legislation or amendments to the Nationality Act may be susceptible to Constitutional challenges. The sincerity and priority accorded of the Government in addressing gender discrimination in nationality laws also remains opaque. In March 2021, the Bahamian Court of Appeal re-affirmed a Supreme Court ruling on the interpretation of Article 6 of the Constitution confirming the Article should be interpreted as meaning that all children born in The Bahamas to a Bahamian parent should automatically acquire nationality at birth – regardless of marital status of the parents. In response to the ruling, as opposed to welcoming clarity on the interpretation of this provision, which advanced one dimension of gender inequality and access to nationality for the children of Bahamian fathers, the Government instead indicated its intention to appeal the ruling to the Privy Council.¹¹
45. In addition, there are legitimate concerns that ordinary legislation or amendments to the Nationality Act may be susceptible to Constitutional challenges, and it also remains unclear how committed the incumbent administration is on this issue with no real timeline on introducing legislative changes and no public education on the issue.

Recommendations

As illustrated by the information provided in this submission, we urge member states to make the following recommendations to The Bahamas:

- I. Undertake the necessary steps to raise public awareness and support needed to amend the Constitution and make necessary amendments to the Nationality Act.

⁹ Global Campaign for Equal Nationality Rights, *The Impact of Gender Discrimination in Nationality Laws on Gender-Based Violence*, available at: <https://equalnationalityrights.org/images/zdocs/Impact-of-Gender-Discrimination-in-Nationality-Laws-on-Gender-Based-Violence.pdf>

¹⁰ Ibid.

¹¹ [Pinder: Govt will proceed with appeal of citizenship ruling - The Nassau Guardian](#)

- II. Amend the Constitution and Nationality Act within the shortest timeframe possible and before the next UPR review to remove provisions that discriminate in the conferral of nationality based on the parent's gender and marital status.
- III. Establish safeguards in the Constitution and/or Nationality Act to prevent statelessness and ensure children who are otherwise stateless have a pathway to nationality.
- IV. Amend the Constitution and Nationality Act in order to enshrine women and men's equal ability to confer nationality on non-national spouses.
- V. 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, fully enjoy their other human rights on a non-discriminatory and equal basis.
- VI. Accede to the 1954 Convention on 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.
- VII. Immediately remove reservations on CEDAW Article 2(a) and 9(2).
- VIII. Immediately remove the reservation on CRC Article 2.