

**Association Des Femmes Juristes du Burundi,
Global Campaign for Equal Nationality Rights and
Institute on Statelessness and Inclusion**

**Joint Submission to the Human Rights Council at the 29th Session of
the Universal Periodic Review**

The Republic of Burundi

Introduction

1. Association Des Femmes Juristes du Burundi (AFJB), The Global Campaign for Equal Nationality Rights (GCENR) and the Institute on Statelessness and Inclusion (the Institute) make this joint submission to the Universal Periodic Review (UPR) in relation to women's equal nationality rights and statelessness in the Republic of Burundi.
2. The Association Des Femmes Juristes du Burundi (AFJB) was created in 1995 on the initiative of a group of female lawyers. These women were strongly motivated to reverse a chaotic context marked by the weakening status of women and children, and the decline of their rights during and after the civil war. AFJB brings together 100 members from a variety of backgrounds (parliamentarians, corporate lawyers, state councilors, notaries, magistrates, lawyers, ministers, diplomats) who contribute effectively to the development of the law in general and to the promotion of Burundian women in particular. AFJB takes part in all major social debates and plays an active role in the transformations they imply, in particular with a view of combating any form of discrimination, any violation of the fundamental rights of women and children, and in the promotion of gender equality.
3. The Global Campaign for Equal Nationality Rights (the Global Campaign) is a coalition of international and national organizations that promotes gender equality in nationality laws, so that women and men can confer, acquire, change and retain their nationality on an equal basis. The Campaign includes a Steering Committee of Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, UNHCR and Women's Refugee Commission. The Campaign was launched in June 2014 at a Side Event at the 26th Session of the Human Rights Council in Geneva, and has conducted several international advocacy activities to encourage states which still maintain gender discriminatory nationality laws, to reform their laws and bring them into compliance with international human rights standards.¹
4. The Institute on Statelessness and Inclusion 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

¹ For more information see www.equalnationalityrights.org

rights challenges related to statelessness in all countries under the 23rd to the 28th UPR Sessions.²

5. This joint submission focuses on continued violations of Burundian women’s rights with respect to nationality and subsequent violations of the rights of their children and foreign spouses in The Republic of Burundi.

The Universal Period Review of the Republic of Burundi under the Second Cycle (2013)

6. The Republic of Burundi was first subjected to the Universal Periodic Review on 2 December 2008, at Session 10 of the First Cycle, and subsequently on 24 January 2013, at Session 23 of the Second Cycle of the UPR. Following are a selection of the most relevant recommendations (to this submission) received and accepted by Burundi at its second UPR, in relation to gender discrimination in nationality laws and birth registration:³

Recommendation	Recommending State
Put in line with the non-discrimination principle provided by CEDAW, the Persons and Family Code and the law governing inheritance, marriages regime and gifts	Switzerland
Intensify efforts in order to eradicate from its legislation and practice all discriminatory laws and adopt a comprehensive strategy on awareness-raising campaigns to eliminate discrimination based on any grounds and against all vulnerable groups, particularly girls with respect to their inheritance and education rights, children born out of wedlock, albinos and those pertaining to the Batwa minority and taken into families under the kafala regime	Uruguay
Promote gender equality and adopt legislation to protect vulnerable groups	Madagascar
Take the necessary measures to ensure that all the persons born in Burundi obtain a birth certificate regardless the status of their parents	Mexico
Strengthen efforts to ensure increased free birth registration for children, both in urban and rural areas	Namibia
Ensure access of all children to free birth registration	Turkey

² For more on the Institute’s UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>.

³ For a full list of recommendations, see A/HRC/23/9 available at: https://www.upr-info.org/sites/default/files/document/burundi/session_15_-_january_2013/ahrc239e.pdf

Burundi's International Obligations

7. Burundi has ratified most 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) and the Convention on the Rights of the Child (CRC, Article 2, 7).
8. Article 9 of the CEDAW specifies equal nationality rights for women to acquire, change or retain their nationality and to confer nationality on their children:

“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.”

9. 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.
10. Articles 7 and 8 of the Convention on the Rights of the Child (CRC), when read in accordance with the principle of non-discrimination based on the sex of the child or his or her parents (Article 2) and the principle of the best interests of the child (Article 3) are also relevant. Articles 7 and 8 set out the following:

“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.”

11. Burundi is neither a party to the 1954 Convention relating to the Status of Stateless Persons, nor to the 1961 Convention on the Reduction of Statelessness.

Burundi's National Legal Framework

12. Article 12 of Burundi's 2005 Constitution enshrines equality in nationality to children born of Burundi men or women and also enshrines the entitlement of all citizen to equal rights and legal protection, without discrimination on the basis of gender.

"Children born of Burundi men or women have the same rights of nationality according to the law."⁴

"All Burundi people are equal in merit and dignity. All citizens enjoy the same rights and have the right to the same legal protection. No Burundi citizen may be excluded from the social, economic, or political life of the nation due to his or her race, language, religion, gender or ethnic origin."⁵

13. Despite the Constitutional protection of equality and prohibition of discrimination, the Burundian Nationality Code of 2000 (which predates the Constitution but has not been amended to bring it in line with the Constitution) remains gender discriminatory. Accordingly, Burundian women cannot pass nationality to children born inside or outside the country on an equal basis with Burundian men. Article 2 of the 2000 Nationality Code does not allow mothers to transfer nationality to children except when maternal filiation is established when they are born out of wedlock to unknown fathers or if disowned by their fathers:

"A person is Burundian by birth if he or she is:

(a) the legitimate child, even if born abroad, of a father who is on the day of the birth, or, in the case of the death of the father before the birth of the child, who was on the day of his death, Burundian;

(b) the illegitimate child of a mother of any filiation that is the object of a voluntary procedure of recognition, legitimation or judicial recognition establishing filiation with a Burundian father;

(c) an illegitimate child whose paternal filiation is not known and that is the object of a voluntary procedure of judicial recognition establishing his or her filiation with a Burundian mother;

(d) a child that has been repudiated by his or her father but whose mother is a Burundian national on the date of the repudiation."⁶

14. Article 10 of the 2000 Nationality Code allows the foreign spouse of a male Burundian citizen to automatically acquire Burundian citizenship. Burundian women are not granted the same right as Burundian men to confer nationality on a foreign spouse:

"A foreign woman acquires, by marriage, the nationality of her Burundian spouse by simple declaration"⁷

⁴ The Constitute Project, *Burundi's Constitution of 2005*, available at: https://www.constituteproject.org/constitution/Burundi_2005.pdf [accessed 23/6/2017]

⁵ Ibid.

⁶ Canada: Immigration and Refugee Board of Canada, *Burundi: Citizenship legislation; procedures for obtaining citizenship; whether dual citizenship is possible and, if so, how to obtain it; procedures for renouncing citizenship and the necessary documents; grounds for revoking citizenship*, 22 January 2007, BDI102295.FE, available at: <http://www.refworld.org/docid/485ba8577.html> [accessed 28 June 2017]

⁷ Ibid.

15. Burundi's Nationality Code is thus in violation of the 2005 Constitution as well as Burundi's obligations under the CEDAW, CRC and ICCPR.

Gender Discrimination in Nationality Laws

16. This law, which denies women equality with men in terms of nationality, in principle makes women unequal citizens and in practise can make the children of women who cannot pass on their nationality stateless. These children will face hardships throughout their life, as without nationality it is more difficult to access primary education, grants for higher education, healthcare, the formal labour market, voting rights, travel documents, justice, and their mental and physical health is often severely impacted. As such, being denied the right to acquire a nationality at birth due to discrimination, is a flagrant violation of human rights law.
17. Because Burundi's Nationality Law does not enshrine Burundian women's right to confer nationality on children on an equal basis with men, children born of a Burundian woman and a non-national man are at a heightened risk of statelessness. In addition, Burundian women's inability to confer nationality on their foreign spouses threatens a child's right to preserve family relations, including the right to know and be cared for by his or her parents. For example, when foreign men are denied access to their spouses' nationality, they may be forced to live away from their children 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 Burundi is insecure because of his nationality status.
18. Burundi is one of 26 countries around the world that continues to discriminate against women in their ability to confer their nationality to their children on an equal basis with men. Given that gender discrimination in nationality laws contravenes international human rights law; is easily remedied through law reform; and continues to have significant detrimental human rights impacts including statelessness, the international community has come together to advocate for an end to this discrimination under the banner of the Global Campaign for Equal Nationality Rights. Furthermore, the United Nations Office of the High Commissioner for Refugees' Global Campaign to end statelessness prioritises the removal of gender discrimination from nationality laws through its Action Point 3.⁸
19. Reviewing Burundi's situation, On the 8th of April 2008, The CEDAW Committee made an explicit recommendation to Burundi to amend the law:

*"The Committee urges the State party to amend the Nationality Code so as to bring it into line with article 9 of the Convention."*⁹

Recommendations

⁸ UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>

⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding comments of the Committee on the Elimination of Discrimination against Women: Burundi*, 8 April 2008, CEDAW/C/BDI/CO/4, available at: <http://www.refworld.org/docid/48e346b60.html> [accessed 21 June 2017]

20. Drawing on the information provided in this submission, we urge member states to make the following recommendations to the Republic of Burundi:

- I. Amend the 2000 Nationality Code to bring it into full compliance with Burundi's 2005 Constitution and relevant provisions of CEDAW and the CRC, by ensuring that all female citizens can pass their nationality to their children and spouses on an equal basis with male citizens.
- II. Take steps to ensure that all children and adults who have been denied access to Burundian 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.
- III. Accede to the Convention relating to the Status of Stateless Persons and the Convention on the 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.