

# Gender Discrimination and the Denial of Nationality Rights to Minority Groups in Madagascar

UPR Info Pre-sessions 34th session Statement  
by the Global Campaign for Equal Nationality Rights  
on behalf of co-submitting partners Focus Development  
Association, Institute on Statelessness and Inclusion



## 2<sup>nd</sup> Cycle UPR & Progress on Nationality Rights

- Under the Second UPR Cycle, Madagascar's State Report stated:

*“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.”*

- Madagascar stated plans to enact reforms to uphold Malagasy women's right to confer nationality on their children on an equal basis with Malagasy men.
- **Madagascar accepted recommendations by seven State Parties to advance gender equality and fight gender-based discrimination, including in relation to nationality rights.**
- In January **2016 the government promulgated a new nationality law**, loi n°2016-038, which removed gender-discriminatory provisions regarding the conferral of nationality on the children of Malagasy citizens with retroactive application.

# Gender Discrimination in the Nationality Law

- The 2016 nationality law reform did not address **gender-discriminatory provisions related to the conferral of nationality on a non-national spouse.**
- **Malagasy men have the right to confer nationality on foreign spouses upon marriage**, if the foreign spouse declares their desire to acquire Malagasy nationality. **Malagasy women are denied this same right.**
- The **human rights instruments to which Madagascar has acceded** –CEDAW, CRC, ICCPR and CRPD – provide for the right to a nationality and **equal nationality rights between women and men.**
- **CEDAW** Committee recommendation, November 2015:  
*“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.”*

# Impact of Gender Discrimination in the Nationality Law

Gender discrimination in Madagascar's nationality law:

- Denies women equality under the law
- Exacerbates a sexist and discriminatory framework for women's role in the family and society
- Negatively impacts women's ability to freely choose a spouse, to form a family, to choose a place of residence, and to ensure family unity
- Perpetuates 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 persistence of gender discrimination in the Nationality Code results in violations of Madagascar's obligations under international law and its own Constitution.**

# Denial of Nationality to Minority Groups

- Madagascar has a **sizeable community of Muslims of Indo-Pakistani origin**, who migrated to the country during the 19<sup>th</sup> and 20<sup>th</sup> centuries.
- UNHCR has suggested that the Karana population number at least 20,000 and within that group, **“only a handful of individuals hold citizenship rights”**.
- **Racial discrimination also causes statelessness** among individuals of Comorian origin and others **who are not perceived as ethnically Malagasy**.
- *“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.**”*
  - US Department of State, *Country reports on human rights practices for 2018: Madagascar*.

# Impact of Statelessness

**Stateless persons face wide-ranging human rights violations and hardships, including obstacles to accessing:**

Education

Healthcare

Social services

Formal employment

Property rights

Inheritance

Freedom of movement

Identity documentation

**Stateless persons are also at a greater risk of:**

Human trafficking

Early and forced marriage

Arbitrary detention

Lack of access to justice

# Recommendations

1. Reform loi n°2016-038 du 25 février 2017 to **uphold the right of Malagasy women to confer nationality** on their foreign spouse on an **equal basis with Malagasy men**.
2. **Immediately end the discriminatory denial of nationality to Muslims of Indo-Pakistani origin and other minority groups** in Madagascar, and take all necessary steps to ensure their right to a nationality.
3. **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.

# Recommendations

- 4. 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.
- 5. Accede to the 1954 Convention** Relating to the Status of Stateless Persons and the **1961 Convention** on the Reduction of **Statelessness**.



Thank you.

