

# Joint Submission

## to the Human Rights Council

at the 38<sup>th</sup> Session

of the Universal Periodic Review.

## SOMALIA

### Introduction

1. The Somali Women Development Centre (**SWDC**), the Somaliland Human Rights Centre (**SHRC**), the Global Campaign for Equal Nationality Rights (**GCENR**) and the Institute on Statelessness and Inclusion (**ISI**) make this joint submission to the Universal Periodic Review (**UPR**), on the right to a nationality and human rights challenges pertaining to statelessness in Somalia.
2. Somali Women Development Centre (SWDC) is a non-profit organization established mid-2000, with the vision to empower Somali women in the socio-economic, cultural and political spheres to live in an environment free from violence. SWDC advocates for human rights through enhancing protection, providing legal aid, and conducting lobbying and advocacy activities to promote gender equality, reconciliation and peace building.
3. Somaliland Human Rights Centre (SHRC) is a non-profit human rights organization established in January 2013 to contribute to the protection and promotion of human rights in Somaliland. SHRC was formed to protect, promote and realize human rights within Somaliland's nascent democracy. The central policy of SHRC is to create and foster a culture of voluntary human rights activism where committed human rights defenders advocate for human rights.
4. The Global Campaign for Equal Nationality Rights<sup>1</sup> is coalition of national and international organizations working to end gender discrimination in nationality laws so that women and men have the equal right to acquire, change and retain their nationality and the equal right to confer nationality on their spouse and their children. Housed at steering committee member Women's Refugee Commission, other steering committee members include Equal Rights Trust, Equality Now, Institute on Statelessness and Inclusion, and Women's Learning Partnership.
5. The Institute on Statelessness and Inclusion (ISI) 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 realising and protecting everyone's right to a nationality. The Institute has made

---

<sup>1</sup> For more information, see <https://equalnationalityrights.org/>.

over 70 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 36th UPR Sessions.<sup>2</sup>

6. This submission focuses on issues relating to the right to nationality, statelessness and birth registration in Somalia. This submission also looks at these issues in Somaliland.
7. Somaliland is located in the north of Somalia and is regarded internationally as a breakaway region that is part of the Somali state. Although it is not internationally recognised as a separate state, it has laws and policies which have a direct and immediate impact on the local people. As Somaliland is an unrecognised state, it does not come formally under review during the UPR process; however, there has been recognition during a previous UPR that cooperation is needed between Somalia and Somaliland for fulfilment of various recommendations (see para. 10 below), in order to protect the human rights of the those living on the territory.
8. This draft therefore considers the following issues:
  - I. Discrimination in the Nationality Law
  - II. Child's Right to Nationality and birth registration
  - III. (Risk of) Statelessness in Somaliland

## Previous UPR of Somalia under the First and Second Cycle

9. Somalia was previously reviewed during the first and second cycles of the UPR, in 2011 and 2016 respectively. Recommendations for Somalia during the first cycle can be summarised generally into the categories of human rights (general), gender discrimination and gender-based violence, rights of children and seeking international assistance. Most of the recommendations were general in nature.
10. Somaliland does not directly participate in the UPR review process. Somaliland has not received any direct recommendations during the first and second cycle; however, Somaliland has been referred to several times in recommendations during the first cycle, with recognition that close cooperation is needed between Somalia and Somaliland, in order to promote and protect human rights for all.<sup>3</sup> For example, Switzerland recommended Somalia to:

*“Create, in close cooperation with [...]“Somaliland”, institutions and mechanisms charged with promoting respect for human rights, recognizing the challenges this imposes”.*<sup>4</sup>

In 2015, a group of Somaliland civil society organisations submitted a separate report covering the situation of Somaliland to ensure the unique situation, conditions and human rights of the people living in the territory are also considered under the UPR.

### First Cycle

11. During the first cycle, Somalia received a number of recommendations on treaty ratifications.

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

<sup>3</sup> Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/18/6 (11 July 2011).

<sup>4</sup> Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/18/6 (11 July 2011), recommendation 98.44.

Numerous states recommended for Somalia to sign and ratify the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), within which Article 9 obliges States parties to uphold women and men's with equal nationality rights.<sup>5</sup> Numerous states recommended for Somalia to ratify the Convention on the Rights of the Child (**CRC**), within which Articles 7 and 8 pertain to children's right to acquire and preserve their nationality. Spain recommended for Somalia to sign and ratify the Convention on the Rights of Persons with Disabilities (**CRPD**), within which Article 18 provides persons with disabilities the right to a nationality. Indonesia recommended for Somalia to consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (**CMW**), within which Article 29 provides each child of a migrant worker the right to a nationality.<sup>6</sup> Somalia accepted the recommendations to ratify the abovementioned treaties.<sup>7</sup>

12. Somalia received five recommendations relevant to issues of nationality and statelessness from Thailand, Italy, Hungary, Slovakia and Turkey. These recommendations were to take into account the specific needs of vulnerable groups, to provide for reintegration for children and women escaping from Al Shaabab-controlled areas, and to protect the human rights as well as improve the living conditions and safety of internally-displaced persons. All five of these recommendations were accepted by Somalia.<sup>8</sup>
13. Somalia also received three recommendations, from Uruguay, Spain and Hungary, on progressing gender equality. Spain and Uruguay's recommendations called for Somalia to have a plan on gender equality and criminalise female genital mutilation while Hungary recommended that Somalia provide gender equality which explicitly rejects historical discrimination.<sup>9</sup> All three of these recommendations were accepted by Somalia.<sup>10</sup>

## Second Cycle

14. During the second cycle, Somalia received further recommendations to sign and ratify the aforementioned treaties. In addition, Namibia and Sweden recommended for Somalia to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the **Maputo Protocol**), which calls on States parties to eliminate gender discrimination and, in Article 6, to uphold women's equal right to confer nationality on their children. Germany recommended for Somalia to deposit ratification instruments for the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the **Kampala Convention**).<sup>11</sup> Somalia accepted recommendations in relation to CEDAW, the Maputo Protocol and the Kampala Convention.<sup>12</sup>
15. Somalia received four recommendations relevant to issues of nationality and statelessness from Argentina, the Netherlands, Egypt and Turkey. These recommendations were to ensure respect and protection of the rights and fundamental freedoms of vulnerable groups, to prioritise implementation of a new Penal Code and Penal Procedural Code to prohibit

---

<sup>5</sup> The CEDAW Committee has clarified in General Recommendation 32 that Article 9 extends to States parties' obligation to uphold women's right to confer nationality on a spouse on an equal basis with men, in addition to women's equal right to acquire, change and retain their own nationality and confer nationality on children.

<sup>6</sup> Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/18/6 (11 July 2011).

<sup>7</sup> The consideration by the Government of Somalia of the 155 recommendations (long version) (21 September 2011).

<sup>8</sup> Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/18/6/Add.1 (16 December 2011).

<sup>9</sup> Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/18/6 (11 July 2011).

<sup>10</sup> The consideration by the Government of Somalia of the 155 recommendations (long version) (21 September 2011).

<sup>11</sup> Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/32/12 (13 April 2016).

<sup>12</sup> Report of the Working Group on the Universal Periodic Review: Somalia – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/32/12/Add.1 (7 June 2016).

discrimination against displaced persons (among others), to enact legislation on human rights including a Citizenship Act, and to develop a birth registration system. These recommendations were accepted except the recommendation on a new Penal Code and Penal Procedural Code, with the explanation that the Somalian people are not ready to accept the abolishment of the death penalty.

16. Somalia received six recommendations relevant to combatting discrimination and marginalisation on the basis of people's identity from Iraq, Lithuania, the Czech Republic, Algeria, Norway and Mexico. In summary, these recommendations were to allow and promote women's contribution to political participation, to include women, minorities and persons with disabilities in participation in the constitutional referendum and elections, and to promote equal participation of all citizens in political and public affairs. These recommendations were accepted except the first, but that is due to another part of the recommendation not being accepted.
17. During the 32nd session of the Human Rights Council, during which the review of Somalia took place on 22 January 2016, Egypt recommended Somalia to enact legislation on human rights, including a Citizenship Act, Persons with Disabilities Act, and the National Human Rights Commission Act. In respect to statelessness, the East and Horn of Africa Human Rights Defenders noted that the Somali nationality law resulted in statelessness for children of Somali women and urged necessary reform to its laws.

## Somalia's International obligations

18. Somalia is not a signatory to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. However, Somalia has 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 which Somalia acceded to on 24 January 1990 (see article 24.3), the International Covenant on Economic, Social and Cultural Rights which Somalia acceded to on 24 January 1990 (see articles 2.2 and article 3), the Convention of the Rights of the Child which Somalia signed on 9 May 2002 and ratified on 1 October 2015 (see articles 2, 3, 7 and 8), the International Convention on the Elimination of All Forms of Racial Discrimination which Somalia signed on 26 January 1967 and ratified on 26 August 1975 (see article 5(d)(iii)), and the Convention on the Rights of Persons with Disabilities which Somalia signed on 2 October 2018 and ratified in 6 August 2019 (see article 18). Somalia also signed the Cairo Declaration on Human Rights in Islam (see articles 5 and 19). Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.
19. Despite the recommendations during the first and second UPR cycles, Somalia has not yet signed or ratified CEDAW or the CMW<sup>13</sup>, and has not yet ratified the Maputo Protocol.<sup>14</sup> As noted above, Somalia ratified the CRC prior to the second cycle of the UPR, and signed and ratified CRPD after the second cycle of the UPR, although it is not enforced and implemented. Since the second cycle of the UPR, Somalia has acted upon Germany's recommendation to

<sup>13</sup> United Nations Human Rights Office of the High Commissioner: Status of Ratification Interactive Dashboard, <https://indicators.ohchr.org/> (accessed 03 September 2020).

<sup>14</sup> African Union list of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> (16 October 2019).

ratify and deposit the Kampala Convention.<sup>15</sup>

20. As a member of the Arab League, Somalia is called to:

*"enact legislations, and review and enforce their national laws on nationality; to ensure, without exception, that all children, including unaccompanied children are registered upon birth and are able to acquire a nationality, in particular by promoting laws enabling women to pass their nationalities to their children in compliance with the relevant international Conventions and Covenants;...[and] to put an end to all forms of discrimination in the area of nationality and to take concrete steps to amend laws and legislation relating to nationality in order to grant women and men equal rights in conferring nationality to children and spouses and to acquire, change or retain nationality"*

as stated in the Arab Declaration on Belonging and Legal Identity.<sup>16</sup>

21. Pursuant to Human Rights Council Resolution 39/23, the Independent Expert on the situation of human rights in Somalia submitted a report dated 16 September 2019.<sup>17</sup> The Independent Expert made the following recommendations to Somalia in relation to statelessness and nationality or participation in public and political life: hasten the adoption of the new constitution, strengthen the justice and security sectors to guarantee the security and safety of all citizens, expedite the establishment of the National Human Rights Commission, and implement the outstanding recommendations of the Human Rights Council including accession to international and regional instruments.<sup>18</sup>

22. The Independent Expert made the following recommendations to Somalia in relation to discrimination against women and the advancement of children's welfare and rights: implement the 2013 communiqué on the prevention of sexual violence in Somalia, including through the adoption of the sexual offences bill,<sup>19</sup> accede to CEDAW and the Maputo Protocol, and to strengthen the justice and security sectors to guarantee the security and safety of all citizens, including women, children and young persons. The Independent Expert also called on the international community to support the Somalia Joint Programme on Human Rights to help address human rights issues in Somalia and to enhance protection for the civilian population, in particular women, children, young persons, internally displaced persons, members of minority clans and persons with disabilities.<sup>20</sup>

23. The following recommendations were also made to the authorities in Somaliland: to protect the rights of the minority clans to security, dignity and property by ensuring their inclusion in the political, economic and social fabric of society; to adopt specific legislative measures prohibiting the discrimination of women, members of minority clans and internally displaced

---

<sup>15</sup> African Union list of countries which have signed, ratified/acceded to the Protocol to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), <https://au.int/sites/default/files/treaties/36846-sl-afrikan%20union%20convention%20for%20the%20protection%20and%20assistance%20of%20internally%20displaced%20persons%20in%20africa%20%28kampala%20convention%29.pdf> (18 June 2020).

<sup>16</sup> League of Arab States, Arab Declaration on Belonging and Legal Identity (28 February 2018), available at: <https://www.refworld.org/docid/5a9ffbd04.html> [accessed 8 October 2020].

<sup>17</sup> Situation of human rights in Somalia – Report of the Independent Expert on the situation of human rights in Somalia, A/HRC/42/62 (16 September 2019).

<sup>18</sup> Situation of human rights in Somalia – Report of the Independent Expert on the situation of human rights in Somalia, A/HRC/42/62 (16 September 2019).

<sup>19</sup> Joint Communiqué of the Federal Republic of Somalia and the United Nations on the Prevention of Sexual Violence, available at <https://www.un.org/ruleoflaw/blog/document/joint-communique-of-the-federal-republic-of-somalia-and-the-united-nations-on-the-prevention-of-sexual-violence/> (accessed 09 October 2020).

<sup>20</sup> Situation of human rights in Somalia – Report of the Independent Expert on the situation of human rights in Somalia, A/HRC/42/62 (16 September 2019).

persons; and to support the Somalia Joint Human Rights Programme to enhance protection for the civilian population, in particular women, children, young persons, internally displaced persons, persons from minority clans and persons with disabilities.

24. At the UNHCR High Level Segment on Statelessness, the government of Somalia made the following pledges:

- *“By 31 December 2020, the Government of the Federal Republic of Somalia commits to accede to the 1954 Convention Relating to the Status of Stateless Persons and to the 1961 Convention Relating to the Reduction of Statelessness.*
- *By 31 December 2020, the Government of the Federal Republic of Somalia commits to conduct and publish a qualitative study to better understand the situation of stateless groups and individuals and groups at risk of statelessness living in its territory with a view to finding a solution to their situation.”<sup>21</sup>*

## Snapshot of Statelessness in Somalia and Somaliland

25. The causes of statelessness in Somalia are mainly a result of discrimination, discriminatory nationality laws, weak governance resulting in lack of legal and administrative protection for children, women and men at risk of statelessness, and the risks of statelessness created by forced migration and displacement. There is no accurate data on the estimated number of stateless persons in Somalia, and UNHCR has no statistical data on statelessness in the country.<sup>22</sup>

26. Violent conflict has overwhelmed much of Somalia for the past three decades, and southern states in Somalia, including Puntland, Hirshabelle, Galmudug, South West, Jubba land and Banadir regions, remain in state of civil strife amounting to a humanitarian disaster. The resultant instability has led many to flee their homes, and in 2019 there were over 2 million internally displaced persons in Somalia, according to UNHCR.<sup>23</sup> IDPs from Somalia, as well as Ethiopian migrants, do not have a pathway to citizenship in Somaliland despite their long-term residence.<sup>24</sup> (Risk of) statelessness is therefore high among displaced populations, especially minorities whose belonging may already be under question by the state.

27. Somalia has lacked a functioning central government for a number of years. State instability has resulted in a total breakdown of all basic service delivery and systems of governance, including rule-of law institutions, partly due to financial and administrative constraints on the state.<sup>25</sup> This means that there are no sustainable or effective systems of identification and documentation in place. The inhabitants of South and Central Somalia have only recently had the opportunity to receive, for example, ID cards and passports. However, there are still no

---

<sup>21</sup> UNHCR, Results of the High level segment on Statelessness, available at: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

<sup>22</sup> UNHCR data records a “-” as representing Somalia’s stateless population. This either denotes statistics whose value is zero, or that statistics are unavailable or not applicable. UNHCR, Global Trends: Forced Displacement in 2019, available at <https://www.unhcr.org/5ee200e37.pdf>, p.73.

<sup>23</sup> 2,648,000 IDPS were recorded by UNHCR in 2019. UNHCR, Global Trends: Forced Displacement in 2019, available at <https://www.unhcr.org/5ee200e37.pdf>, p.73.

<sup>24</sup> Anna Rader, The Politics of Recognition and Authenticity: Constructing Somaliland through voter Cards, (2016), p.11.

<sup>25</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/18/6 (11 July 2011), p. 3.

national or local registers that provide an overview of the inhabitants, meaning that issuing documentation is often based on the information provided by the person – possibly with witnesses or relatives present.<sup>26</sup> Lack of documentation does not equate to statelessness, although it significantly increases the risk of statelessness. Moreover, in practice, many Somalis may be considered stateless as a result of the lack of capacity of the Somali state to offer protection.<sup>27</sup>

28. Risk of statelessness is also increased by the culture of discrimination that exists in Somalia, which particularly impacts minorities and women. Citizenship is based on the Somali tradition of lineage through the father and is grounded on traditional (and Islamic) practices. This discrimination on the basis of gender is a primary cause of statelessness (see issue 1 below). The law also discriminates on the basis of ethnicity, which also increases the risk of statelessness, especially among minority communities perceived as not belonging.
29. There is also a new risk of statelessness emerging, as in 2018 the government rolled out a biometric National Identity Program, which sought to address the lack of a centralized ID system. However, new national identity systems can often create, or uncover, stateless populations. Without first addressing the legal framework for nationality, biometric identity systems risk worsening, rather than improving, lack of legal identity, and can create stateless persons where previously there were only undocumented ones. Rushing digital solutions without appropriate scrutiny of the underlying identification mechanisms can (un)intentionally render vulnerable groups invisible to the government and can leave them further behind.<sup>28</sup>

## Issue I: Discriminatory nationality law

30. Somali citizenship is governed by Law No. 28 of December 1962 on Somali Citizenship (**Citizenship Law**). Article 2 of the Citizenship Law stipulates that any person whose "*father is a Somali citizen [...] shall be a Somali citizen by operation of law*". The law also states that a person can acquire citizenship only if they are willing to renounce citizenship of any other country or if the government specifically grants citizenship. There is explicit discrimination on the basis of gender, as the citizenship of the mother does not entitle their child to Somali citizenship.
31. This is contrary to Article II of the 1962 Constitution (**Constitution**) which stipulates that:

*"All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth, or dialect shall have equal rights and duties before the law"*.

The Provisional Constitution of 2012 also protects the child's right to nationality in Article 29, while Article 8 mandates the Parliament to enact a special law on citizenship, and Article 11 prohibits discrimination on the basis of gender.<sup>29</sup> However, although it was adopted in 2012, a change of government means that it is yet to be fully implemented. Moreover, national laws have not been updated to reflect the Provisional Constitution.

---

<sup>26</sup> Land Info, Report Somalia: Marriage and divorce (14 June 2018), available at: <https://landinfo.no/wp-content/uploads/2018/09/Report-Somalia-Marriage-and-divorce-14062018-2.pdf>.

<sup>27</sup> Citizenship Rights in Africa Initiative: Somali, available <https://citizenshiprightsafrika.org/region/somalia/>.

<sup>28</sup> Institute on Statelessness and Inclusion, Making SDG16.9 work for the wider Sustainable Development Agenda Lessons from the citizenship, statelessness and legal identity community, available at: [https://files.institutesi.org/legal\\_identity\\_policy\\_brief.pdf](https://files.institutesi.org/legal_identity_policy_brief.pdf).

<sup>29</sup> The Federal Republic of Somalia, Provisional Constitution, adopted 1 August 2012, available at: <https://www.wipo.int/edocs/lexdocs/laws/en/so/so004en.pdf>.



32. The Citizenship Law also states that a person who has acquired Somali citizenship by way of grant may be deprived of their citizenship by reason of unworthiness where: (i) the decree granting citizenship has been obtained with fraud, false representation or the concealment of any material fact; or (ii) the person concerned has been sentenced to imprisonment for a term not less than five years for a crime against the Somali State. However, the Citizenship Law does state that the deprivation of citizenship acquired by grant shall not extend to the wife and children of the person. The Provisional Constitution contradicts this, stating “*A person who is a Somali citizen cannot be deprived of Somali citizenship, even if they become a citizen of another country*”.
33. A Citizenship (Amendment) Bill (**Bill**) was drafted in 2016, which includes important revisions to address gender discrimination and the risk of statelessness. However, this bill has yet to be passed into law. The bill upholds gender equality, granting women and men equal citizenship rights through: i) Allowing all Somalis to retain their citizenship when they marry a non-Somali; ii) Allowing non-Somali women to retain their citizenship if they marry a Somali man, while also giving them the option of obtaining Somali citizenship after a prescribed period of time; iii) Allowing non-Somali men to apply for citizenship after being married to a Somali citizen for a period of time; iv) Allowing Somali mothers to pass citizenship to their children.
34. The bill also addresses the (risk of) statelessness, through changing the requirements for acquisition of citizenship. Under the bill, citizenship can be acquired if: (i) a person's mother or father is a Somali; (ii) a person's mother or father was born in Somalia and said person was also born in Somalia; (iii) said person was born in Somalia and would otherwise be stateless; and (iv) the government specifically grants it.<sup>30</sup> This protects against statelessness by allowing a child to obtain Somali citizenship if they would otherwise be stateless. Moreover, the bill has stronger provision to protect the child's right to nationality, and Article 7 specifically protects the rights of children, including children who have been found abandoned, adopted children and children of people who have acquired citizenship by grant, who will have a right to Somali citizenship in certain circumstances. The bill also allows for dual citizenship in Article 6, updating the 1962 Citizenship Law which provides that any person who voluntarily accepts the citizenship of another country will lose their Somali citizenship.

## Gender discriminatory nationality law

35. As highlighted above, Somalia has not yet signed or ratified CEDAW in spite of numerous recommendations calling for Somalia to do so. Under CEDAW Article 9, signatories are required to: (i) grant women equal rights with men to acquire, change or retain their nationality (in particular ensuring 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 husband's nationality); and (ii) grant women equal rights with men with respect to the nationality of their children. The CEDAW Committee has further clarified in General Recommendation 32 that the Convention equally obliges States parties to uphold women and men's equal right to confer nationality on a noncitizen spouse.<sup>31</sup>

<sup>30</sup> Legal Action Worldwide, Somali Citizenship Bill, available at <http://www.legalactionworldwide.org/somali-citizenship-bill/#:~:text=Somali%20women%20are%20not%20be,citizenship%20on%20to%20their%20husbands%3B&text=Somali%20mothers%20cannot%20pass%20on,and%20women%20equal%20citizenship%20rights>.

<sup>31</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, (5 November 2014), CEDAW/C/GC/32, available at: <https://www.refworld.org/docid/54620fb54.html> [accessed 14 October 2020].



36. Gender discrimination in nationality laws has far-reaching consequences for women and their families, ultimately harming society as a whole. Nationality in Somalia is transferred through the patriarchal line, undermining women's equal citizenship and equality in the family, as well as that of their children, as outlined in the following section. Gender discrimination in nationality laws is a primary cause of statelessness and there are notable links between gender-discriminatory nationality laws and gender-based violence, including obstacles inhibiting women's ability to leave an abusive marriage when her children's nationality is dependent upon her spouse, and increased risks of child marriage and human trafficking.
37. Gender discrimination in nationality laws also inhibits the ability of Somali women refugees who have formed families abroad to return to their homeland, due to their spouses and children lacking access to citizenship and its attendant rights and responsibilities, on an equal basis with the children and spouses of Somali men.
38. Somali women's inability to confer nationality on their noncitizen spouse on an equal basis with Somali men impedes women's ability to freely choose a spouse and a place of residence, with women's noncitizen spouse's lacking access to nationality on an equal basis with the noncitizen spouses of Somali men. This discrimination also results in threats to family unity and the children's right to know and be cared for by both parents.
39. This is compounded by the fact that a Somali woman is not an independent legal person, but is always under the jurisdiction of others. Before marriage, the woman is the responsibility of the father. If the father of the unmarried woman dies, another relative, usually the paternal uncle, may substitute for the father until she is married. Once married, she falls under the jurisdiction of her husband.

## Discrimination on the basis of ethnicity

40. Somalia's citizenship law also discriminates on the basis of ethnicity, providing that acquisition of citizenship is conditional upon, *inter alia*, the father being of Somali origin. "Somali" is defined as "any person who by origin, language or tradition belongs to the Somali Nation";<sup>32</sup> therefore, citizenship is conditional upon belonging to a certain ethnic group, which can create risks of statelessness for populations who are regarded as 'other'.

## ISSUE II: Child's right to a nationality and birth registration

41. The CRC, which Somalia ratified in 2015, provides for the protection of a child's rights within their jurisdiction without discrimination (including birth) in Article 2 provides that all actions concerning children shall put the child's best interests as a primary concern in Article 3. Article 7 provides that a child shall have the right to acquire nationality. Article 8 provides that signatories to the CRC shall respect "the right of the child to preserve his or her identity" which includes nationality.
42. However, gender discrimination in the nationality law of Somalia violates the child's right to

---

<sup>32</sup> 1962 Somali Citizenship Law, available at: <http://citizenshiprightsafrika.org/wp-content/uploads/1962/12/Somalia-Citizenship-Law-1962-full.pdf>.

nationality without discrimination on the basis of their parent's sex and goes against Somalia's obligations under the CRC. Somalia's nationality law also lacks adequate safeguards to ensure conferral of citizenship to children who would otherwise be stateless. This is in contradiction with the Constitution, which stipulates equality of all citizens, including on the basis of gender, as per para. 31. This discrimination increases the risk of statelessness among children of Somali women and highlights that more work is to be done in order to ensure compliance with the CRC.

43. Prior to 1991, birth certificates were only issued in urban areas in Somalia, but after the conflict no legal or policy framework and civil registration system was in place to ensure the registration of all vital events including births, marriages and deaths and issuance of documentation. According to the Somali Health and Demographic Survey, out of the children surveyed, almost all lacked a birth certificate. Four percent of children under two years were registered, of which less than 1 percent had a birth certificate. These figures are significantly low due to the lack of civil registration and the lack of a vital statistics system.<sup>33</sup> While the lack of birth registration and statelessness are not synonymous, birth registration is often the first step in determining which nationality a person obtains. Not being registered at birth and not having a birth certificate creates risks of statelessness and lack protection of children from the very start of life.
44. Lack of a marriage certificate can also create risks of statelessness, for instance in the naturalisation process for spouses.

### **ISSUE III: (Risk of) Statelessness in Somaliland**

45. As noted above, Somaliland is an internationally unrecognised state that was formed in 1991. As a *de facto* state, it has its own laws, policies and authorities that govern the territory, including nationality laws. Persons born and residing in Somaliland may be considered citizens of the *de facto* state pursuant to its national legislation and enjoy rights that are granted by the relevant authority. However, the status of citizenship is not internationally recognised by any recognised state and may not grant the individual international protection. This makes the citizens of *de facto* states at risk of statelessness, especially if they (willingly or unwillingly) do not have another nationality (e.g. the nationality of the parent state, in this case Somalia).
46. In contexts of contested statehood and state succession, risks of statelessness exist as transfers of legal sovereignty can result in persons being caught between different, conflicting, laws and bureaucratic practices. Nationality laws of successor states or states which are not internationally recognised, may not provide the person with an internationally recognised status, or may conflict and leave people without any nationality, while the redefinition of who is a national of the original state may also render people stateless. Most often in such contexts, it is vulnerable minorities who are associated with either the successor or parent state who are deprived of nationality, exposing the discriminatory motivations and arbitrary nature for such exclusion.<sup>34</sup>

---

<sup>33</sup> The Somali Health and Demographic Survey (2020), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/Som%20Gvt%20UNFPA%20Press%20Release\\_SHDS%20Rpt%20Launch\\_29-04-20\\_Final.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Som%20Gvt%20UNFPA%20Press%20Release_SHDS%20Rpt%20Launch_29-04-20_Final.pdf).

<sup>34</sup> The Institute on Statelessness and Inclusion, *The World's Stateless*, 2014, <https://files.institutesi.org/worldsstateless.pdf>.

47. Although Somaliland is not a typical case of state succession,<sup>35</sup> the laws and policies of Somaliland are still important when considering (risk of) statelessness in Somaliland. Citizenship is essentially governed by national legislation, the competence of states may be exercised only within the limits set by international law.<sup>36</sup> Article 1 of The Hague Convention of 1930 on Certain Questions relating to the Conflict of Nationality Laws provides that while each can State determine under its own law who are its nationals, such law shall be recognized by other States only *"insofar as it is consistent with international conventions, international custom and the principles of law generally recognized with regard to nationality"*. However, the extent to which this Article applies depends on the extent to which Somaliland is recognized as a state, or not.<sup>37</sup>
48. There are conflicting views as to the citizenship rights of Somalilanders. A government official has previously stated that "[t]he Somali government does not consider Somaliland as a separate state" and that "persons born in Somaliland are Somali citizens".<sup>38</sup> However, Somaliland regards citizenship in Somaliland as governed by the Citizenship Law (2002) and article 4 of the Somaliland Constitution (2001). According to article 2(1) of the Citizenship Act, *"a Somaliland citizen by birth is anyone whose father is a descendent of persons who resided in the territory of Somaliland on 26 June 1960 and before."* The article restricts citizenship passing to patrilineal line, discriminating on the basis of gender. This is in contrary to article 4 of the 2001 Somaliland Constitution which says *"any person who is a patril of Somaliland being a descendant of a person residing in Somaliland on 26th June 1960 or earlier."*
49. The law also discriminates on the basis of gender in terms of the acquisition of nationality by adults residing abroad. According to article 2(3):
- "unless he has not voluntarily renounced the right to Somaliland citizenship, any adult progeny of a male Somaliland citizen, who resides in a foreign country or is a citizen of another country or is a refugee in another country may acquire Somaliland citizenship on his first return to the territory of Somaliland."*
50. Although the law protects some individuals who have dual citizenship, it strips women of their citizenship if they acquire the nationality of their non-Somalilander spouse. Article 9(2) says *"any female [Somaliland] citizen who marries a male alien shall lose her [Somaliland] citizenship if she accepts her husband's citizenship."* However, men will retain their Somaliland citizenship even if they marry a female alien. Moreover, a female alien who marries a Somaliland male citizen has a right to obtain Somaliland citizenship.

<sup>35</sup> The Republic of Somaliland was the British Somaliland Protectorate from the mid 1880s to 1960, when it became the independent "State of Somaliland", until 1960 when it joined (Italian) Somalia to form the Republic of Somalia. In 1991, Somaliland was formed. The fact that Somaliland was an independent state with a defined territory and population, that voluntarily joined another state and then withdrew from the union and re-asserted its sovereignty is unusual. Somaliland citizenship law, available at [http://somalilandlaw.net/citizenship\\_law.htm](http://somalilandlaw.net/citizenship_law.htm).

<sup>36</sup> Somaliland citizenship law, available at [http://somalilandlaw.net/citizenship\\_law.htm](http://somalilandlaw.net/citizenship_law.htm).

<sup>37</sup> The Draft International Law Commission (ILC) Articles on Nationality of Natural Person in Relation to Succession of States consider two situations. The first is where a state is dissolved and ceases to exist and various parts of the territory form two or more successor states, and the other is when part or parts of a territory of a state separate and form one or more successor states while the predecessor state continues to exist. Whilst, many may see the situation of Somaliland as being akin to the latter, it is submitted (as set out above) that neither of these situations apply "on all fours" to Somaliland. As emphasised earlier the case of Somaliland is one of dissolution of a union of two states, with Somaliland re-acquiring its former statehood.

The ILC Articles (see 22 to 26) state that citizenship of successor states in both situations covered by the Articles shall be attributed to persons having habitual residence and persons having an appropriate legal connection with it, as well as persons who are not entitled to nationality of any state, but born in or have habitual residence in the territory.

<sup>38</sup> Canada: Immigration and Refugee Board of Canada, Somalia: Whether persons born in Somaliland and in the Ogaden region of Ethiopia are entitled to Somali citizenship; citizenship status of women married to foreign nationals; requirements and procedures to obtain and reacquire Somali citizenship (2015-November 2017), (3 April 2018), SOM106079.E, available at: <https://www.refworld.org/docid/5ac386b74.html> [accessed 9 October 2020]. Some other sources also state that Somalilanders have access to Somali citizenship.

51. Married women may also be stripped of their citizenship on the basis of their husband renouncing his Somaliland citizenship. According to article 9(3):

*“a female citizen, who is married to a husband who has renounced his Somaliland citizenship and acquired another citizenship, shall lose her [Somaliland] citizenship unless the husband was a refugee.”*

52. Moreover, in order to obtain citizenship, an individual must belong to a clan. According to article 3(1)(a):

*“the confirmation of proof of Somaliland citizenship may be obtained by an individual on the production of a declaration relating to the individual made at a court by the Ministry of Internal Affairs registered Akil (clan chief) of the individual’s clan.”*

Again, it puts at risk of statelessness many people who do not belong to the clans registered with the Ministry of Internal Affairs.

53. As noted above, the effectiveness of this law depends in part on the extent to which Somaliland is recognized as a state, or not. However, the confusion in laws and sovereignty can also result in risks of statelessness. In some cases, Somaliland has prevented Somalia from opening offices in Somaliland that would provide identity documents and birth registration services. Although it is stated that Somalilanders can apply for Somali citizenship, in practice, there are barriers to accessing documentation. Individuals are required to go to Mogadishu to apply for a passport, but there are no direct commercial flights and the roads are very dangerous. Moreover, there is no administrative apparatus in Somalia which can lawfully issue citizenship certificates.<sup>39</sup>
54. Furthermore, there are documentation problems within Somaliland. Systems of civil registration and documentation are under-developed, meaning many are lacking documentation. In order to verify the identity of its citizens, the Somaliland state therefore utilises practices of testimony and guarantee, in particular authentication by clan elders.<sup>40</sup> In recent years, as mentioned above, this has been increasingly supplemented by biometric verification, which can significantly increase the risk statelessness of certain groups.

## Recommendations

55. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Somalia:
- I. Reform the Citizenship Law without delay to remove provisions that discriminate on the basis of gender and uphold women and men’s equal right to acquire, change, retain and confer nationality on children and spouses, including by immediately passing the Citizenship Bill

<sup>39</sup> Canada: Immigration and Refugee Board of Canada, Somalia: Whether persons born in Somaliland and in the Ogaden region of Ethiopia are entitled to Somali citizenship; citizenship status of women married to foreign nationals; requirements and procedures to obtain and reacquire Somali citizenship (2015-November 2017), (3 April 2018), SOM106079.E, available at: <https://www.refworld.org/docid/5ac386b74.html> [accessed 9 October 2020].

<sup>40</sup> Anna Rader, Verification and legibility in Somaliland’s identity architecture (2016), SOAS, University of London [https://eprints.soas.ac.uk/23653/1/Rader\\_4292.pdf](https://eprints.soas.ac.uk/23653/1/Rader_4292.pdf), p.iii.

- II. Ensure that the children and spouses of Somali women enjoy economic and social rights on an equal basis as the children and spouses of Somali men, pending legal reform to uphold gender equality in the nationality law
- III. Develop an efficient civil registry system to ensure that all births are registered, including by ensuring coordination between Somalia and Somaliland authorities
- IV. Ensure that the biometric National Identity Program is not rolled out without adequate scrutiny of the underlying identification mechanisms, which can result in leaving vulnerable groups lacking legal identity further behind and leaving them at increased risks of statelessness
- V. Accede to and adopt the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on Reduction of Statelessness
- VI. Accede to CEDAW which guarantees equal rights to women in acquiring and conferring nationality
- VII. Enforce the Kampala Convention to protect and assist IDPs and stateless persons who often face heightened risks of human rights violations, including SBGV, because of their displacement

56. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations which require cooperation between both Somalia and Somaliland:

- I. Collaborate and where needed amend Citizenship legislation to avoid (risks of) statelessness and resolve statelessness both in Somalia and Somaliland
- II. Somaliland authorities should reform Citizenship Law (2002) without delay to remove provisions that discriminate on the basis of gender and uphold women and men's equal right to acquire, change, retain and confer nationality on children and spouses