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Re: General discussion on trafficking in women and girls in the context of global migration
(TWGCGM)

13 February 2019

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on the Elimination of Discrimination against Women's (CEDAW) General discussion on trafficking in women and girls in the context of global migration. The Global Campaign for Equal Nationality Rights and Institute on Statelessness and Inclusion make this submission regarding the significant links between gender-based discrimination in nationality laws, statelessness, and trafficking in women and girls in the context of global migration. We welcome the publication of this submission on the CEDAW website on this General recommendation.

The [Global Campaign for Equal Nationality Rights](#) mobilizes international action to end gender discrimination in nationality laws, through its coalition of national and international organizations and activists, including Steering Committee members Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, Women's Learning Partnership, and Women's Refugee Commission. The [Institute on Statelessness and Inclusion](#) is an independent non-profit organization dedicated to promoting inclusive societies by realising and protecting the right to a nationality for all.

Exacerbated risk of human trafficking amongst stateless women and girls

Stateless women and girls often face significant barriers to accessing education, formal employment, healthcare, social services and freedom of movement. These hardships combined with their lack of legal status result in stateless women and girls facing an increased risk of human trafficking, a fact recognized in several UN Human Rights Council Resolutions.¹ Stateless women and girls are also disenfranchised by their lack of a nationality and unable to access

¹Human Rights Council (HRC), "The right to a nationality: women and children," 16 July 2012 (A/HRC/RES/20/4); HRC, "The right to a nationality: women's equal nationality rights in law and in practice," 28 June 2016 (A/HRC/RES/32/7); HRC, "Human rights and arbitrary deprivation of nationality," 15 July 2016 (A/HRC/RES/32/5); See also, for instance, C. Rijken, L. van Waas, M Gramatikov and D. Brennan, "The nexus between statelessness and human trafficking in Thailand", 2015 (in particular pages 103-106).

justice, which presents a further challenge in the context of human trafficking. Women and girls who are at risk of statelessness due to lack of birth certificate or identity documentation may face similar difficulties. The Committee has previously called upon states to accelerate efforts “to regularise the situation of stateless women and girls and ensure that they have adequate access to education, health care and other basic services”.² Such measures can help to mitigate the risk that stateless women and girls are exposed to human trafficking. The UN Human Rights Council also calls on Member States, in Resolution 32/5, to ensure that children deprived of nationality are protected against all human rights violations, including exploitation and trafficking.³

As stated in the Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on TWGCGM (Concept Note), the impoverishment of stateless women and girls, and those at risk of statelessness due to their lack of legal identity:

...increases their risk of being trafficked and remaining in situations of exploitation due to, inter alia, moving through irregular migration channels, problems gaining access to diplomatic protection, fear of detention pending determination of proof of identity and nationality and of possible expulsion from their country of residence.

We welcome the inclusion of language in the Concept Note on the relationship between statelessness, those at risk of statelessness, and human trafficking, and encourage the Committee to highlight these linkages in its General Recommendation on TWGCGM.

Gender discrimination in nationality laws contributes to statelessness and human trafficking

Twenty-five countries presently have nationality laws that deny women the right to confer nationality on their children on an equal basis with men.⁴ Approximately fifty countries have nationality laws with some gender-discriminatory provisions, such as denying women the right to confer nationality on foreign spouses, or the right to acquire, change, or retain their own nationality on an equal basis with men. Gender discrimination in nationality laws is a primary cause of statelessness and undermines women’s equal status within society and the family. Even if not left stateless, those denied access to their mother’s nationality due to gender discrimination in the nationality law, including when that country is their country of birth and residence, also face an increased risk of trafficking, as a result of their vulnerable status in that country and their lack of access to a range of social services and rights.

² Committee on the Elimination of Discrimination Against Women, Concluding Observations: Kazakhstan, 9 March 2014 (CEDAW/C/KAZ/CO/3-4).

³ Human Rights Council Resolution, "Human rights and arbitrary deprivation of nationality," 15 July 2016, (A/HRC/RES/32/5).

⁴ The Bahamas, Bahrain, Barbados, Brunei, Burundi, eSwatini, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Togo, United Arab Emirates

Furthermore, by exacerbating women's unequal status in society, such discriminatory laws contribute to an environment where women's economic and other opportunities are constrained because of their gender, thereby contributing to the root causes and vulnerabilities linked with gender-based violence, including human trafficking and child marriage. In addition to CEDAW Article 9, such laws result in violations of many CEDAW Articles.⁵ As global migration continues to increase, larger populations will be directly impacted by gender discrimination in nationality laws due to increased numbers of international marriages and children born to parents of different nationalities. Ensuring that nationality laws and practices are compliant with CEDAW Article 9 is therefore of direct concern to efforts to prevent and combat trafficking in women and girls.

Increased risk of statelessness due to human trafficking

There is a two-way interaction between statelessness and human trafficking. In addition to statelessness increasing the risk of trafficking in women and girls, trafficking can also lead to new cases of statelessness by interfering with women's enjoyment of the right to a nationality and exacerbating difficulties in conferring nationality to children. According to the nationality laws of some countries, nationality can be lost or withdrawn on the basis of long-term absence from the country and/or the failure to report regularly to the consular authorities of the country of nationality during a prolonged period of residence abroad. In the context of international migration, the risk that nationality problems, including statelessness, will arise from such regimes may be heightened in cases of trafficking in women and girls, where the opportunity to be informed of or meet requirements for retention of nationality may be constrained. Therefore, as the Committee on the Elimination of Discrimination Against Women has noted, in addition to ensuring that nationality laws comply with the principle of equal and independent nationality rights for women as set out in CEDAW Article 9, states must also "consider the impact of its citizenship and nationality laws on women who migrate or are trafficked abroad" and amend laws to mitigate any "potentially disadvantageous impact".⁶

Migrant women and girls may also be put at risk of statelessness as a result of human trafficking due to the loss or destruction of documentation establishing their legal identity, including nationality. This can have adverse effects on the continued enjoyment of their nationality because it may lead to the non-recognition by the state concerned of that legal bond. In such cases, there is a distinct risk of statelessness for children born in the receiving country to women who have been trafficked.⁷ As part of a comprehensive response to the needs of victims or survivors of trafficking, states should also consider the risk of exposure to violations of the right to a nationality and make provision to ensure the right of every child to acquire a nationality, without discrimination.

⁵ "CEDAW Quick Reference Guide; Statelessness and Human Rights Treaties," Global Campaign for Equal Nationality Rights and UNHCR, available at: <https://equalnationalityrights.org/images/zdocs/CEDAW-Quick-Reference-Guide.pdf>

⁶ Committee on the Elimination of Discrimination Against Women, Concluding Observations: Indonesia, 15 August 2007 (CEDAW/C/IDN/CO/5).

⁷ See the pending Communication *Denny Zhao v the Netherlands* before the UN Human Rights Committee (Communication No. 2001/2010).

Children of women who have been trafficked face an even greater risk of statelessness when their mother's country denies women the right to confer nationality on children on an equal basis with men. This risk is especially pronounced when children are born out of wedlock to women who have been trafficked, given the frequent lack of legal links to the father.

Suggestions to the Committee regarding language on gender discrimination in nationality laws, statelessness, and human trafficking

We would respectfully urge the Committee to therefore include in its General Recommendation on TWGCGM, as addressed in this letter:

- 1) The increased risk of human trafficking faced by stateless women and girls, and those at risk of statelessness due to their lack of birth certificate or identity documentation;
- 2) The increased risk of statelessness as a result of trafficking amongst women and girls;
- 3) The role of gender discrimination in nationality laws in increasing the risk of:
 - a. Statelessness, including amongst the children of trafficking victims;
 - b. Human trafficking, including by contributing to women's unequal status in society; and
- 4) In a context of increasing global migration, there is an urgent need for the reform of nationality laws that discriminate on the basis of gender so that women have the right to acquire, change, and retain, and confer their nationality on children and spouses on an equal basis with men. State Parties are urged to enact reforms to uphold gender-equal nationality rights without delay, as well as to identify and address any other potentially disadvantageous impact of nationality laws on women and girls who migrate or are trafficked abroad, and their children.

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,



Catherine Harrington
Campaign Manager
Global Campaign for Equal Nationality Rights



Laura van Waas
Co-Director
Institute on Statelessness and Inclusion