

# Stateless by Sex: An Evaluation of Sex Discrimination in Nationality Laws, and their Effects on Statelessness

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*Twenty-five nations across the world have nationality laws that prevent women from conferring their citizenship onto their children. This form of sex discrimination in nationality laws can lead to childhood statelessness, which prevents children from accessing education, health care, and other social protections. International legal frameworks, like CEDAW and the CRC, are successful in setting international standards preventing statelessness and promoting anti-discrimination. However, their non-enforceability makes them an ineffective tool to combat the twenty-five nationality laws that still discriminate on the basis of sex. Instead, the focus on international obligations should shift to national legal methods of change and grassroots advocacy. Existing changes to nationality laws, and failures to change in nations with high gender equality rankings, demonstrate the crucial role national legal frameworks play in the conversation. In this Note, I argue that targeting nationality laws discriminating on the basis of sex through national court systems and grassroots advocacy is the most effective method to prevent future statelessness by sex discrimination.*

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#### INTRODUCTION

Parents pass many things onto their biological children—hair color, height, traditions—traits that reflect the continuity of life. For most, citizenship is one of these inherited traits. Few even think about how they inherited their citizenship; it is simply passed-on.

However, certain nationality laws prevent women from transferring citizenship to their children simply because they are women. Currently, twenty-five nations have laws that specifically limit the rights of women to confer their nationality onto their children.<sup>1</sup> These laws create a situation whereby a child can become legally “stateless” if they are unable or unwilling to take their father’s nationality.<sup>2</sup> This stark gap in gender equality leads to a myriad of severe consequences. Statelessness is not simply a lack of the label “citizen.” It denies individuals access to basic necessities, such as medical aid, education, land ownership, the ability to travel, and more.<sup>3</sup> Children of stateless individuals cannot receive their parent’s nationality, continuing the cycle to the next

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1. Nationality in these twenty-five nations is decided through the parents’ birth-assigned sex. This author recognizes that these binary definitions are likely over- and under-inclusive and do not account for the experiences of many people who may identify as non-binary or transgender. However, for the sake of clarity, the paper will use the terminology used by the laws it is discussing.

2. Defined by UN General Assembly, Convention relating to the Status of Stateless Persons, adopted 28 July 1951, G.A. Res. 429 (V), 360 U.N.T.S. 117 (entered into force 6 June 1960).

3. *I am Here, I Belong: The Urgent Need to End Childhood Statelessness*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES 6 (Nov. 2015), <https://www.unhcr.org/ibelong/the-urgent-need-to-end-childhood-statelessness/>; see also *It’s tough to live in limbo*, THE ECONOMIST, Nov. 29, 2007, <https://www.economist.com/international/2007/11/29/its-tough-to-live-in-limbo>.

generation.<sup>4</sup> Even after life ends, statelessness is a problem. The death of a stateless individual often isn't formally recognized with a death certificate, creating additional burdens for the loved ones left behind.<sup>5</sup>

Sex discrimination<sup>6</sup> in nationality laws is a primary factor in the issue of statelessness.<sup>7</sup> This Note surveys the nationality laws of 195 nations,<sup>8</sup> detailing the unequal rights of mothers and fathers to confer their nationality onto their children. It then contrasts the nationality laws with international gender equality rankings to create a matrix, categorizing nations by the intersection of gender equality and nationality laws. Finally, it examines what successfully motivates change to these laws in order to recommend progressive solutions.

Section One details the methodology used for this Note. Section Two conceptualizes the current issue of sex discrimination and statelessness through an historical examination. This examination is developed into a three-tier ranking system, with existing laws analyzed for their severity and likelihood of increasing statelessness. Section Three outlines the existing legal frameworks that standardize national obligations. Section Four examines the intersection of gender-equality rankings and nationality laws. This section creates a four-category matrix of existing laws using an intersection of country data contrasted with 2019 equality rankings.<sup>9</sup> Each category is further examined for previous changes to nationality laws, with a focus on how these laws can most equitably be changed.

Using this data, this Note ultimately theorizes that national sex equality legislation is the most effective method to combating sex discrimination in nationality laws. However, institutional willingness to enforce sex equality, as

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4. *I am Here, I Belong*, *supra* note 3.

5. *See Prisoners of the Past: Kuwaiti Bidun and the Burden of Statelessness*, HUMAN RIGHTS WATCH (June 13, 2011), <https://www.refworld.org/docid/4df7191b2.html> (stateless individuals "interviewed by Human Rights Watch ... alleged that the government systematically denies them death certificates, which are necessary for families to claim their deceased relative's remains and to prove claims of inheritance, unless they obtain 'clearance' from the committee by renouncing their claims to citizenship. Iman H., a 25-year-old Bidun woman, told Human Rights Watch, 'My brother died, [but] we have no death certificate. There is no proof that he even existed.'").

6. Existing literature also refers to this as "gender discrimination." However, most countries discussed in this Note do not take into consideration a person's preferred gender when conferring nationality. Instead, most laws are written to allow children to inherit nationality either from their "mother and father," or, as is the focus here, only their "father." Nations that use gender-neutral terminology, such as "parents," are not the focus of this specific piece. Accordingly, I use the terminology "sex discrimination" in this Note in recognition that individuals may be denied citizenship rights based on their birth sex in the discussed nations, rather than their gender.

7. *I am Here, I Belong*, *supra* note 3, at 6.

8. The number of nations in the world is determined by adding the 193 U.N. Member states and two non-member observers. *See Member States*, U.N., <https://www.un.org/en/about-us/member-states> (last visited Aug. 30, 2021); *Non-Member States*, U.N., <https://www.un.org/en/about-us/non-member-states> (last visited Aug. 30, 2021).

9. *Women, Peace, and Security Index 2019/20 DATA*, GEORGETOWN INSTITUTE FOR WOMEN, PEACE AND SECURITY, <https://giwps.georgetown.edu/the-index/>.

well as anti-discrimination activism, has a powerful effect in combatting sex discrimination in nationality laws, even in nations with lower sex-equality rankings. While no one path can be prescribed for the remaining twenty-five nations with discriminatory nationality laws, advocates for ending statelessness could successfully change existing norms through national sex equality legislation, judicial redress, or grassroots advocacy.

## I. METHODOLOGY

This Note examines the intersection of nationality laws and gender equality, ultimately focusing on the varied reactions of national institutions in implementing change over the last twenty years.<sup>10</sup> The scope of this project is concentrated on the twenty-five nations that currently discriminate based on sex in their nationality laws.<sup>11</sup> Research on national laws was gathered using the online Global Nationality Laws Database to compile a list of nations with sex-specific language.<sup>12</sup> This research examines the laws of 195 nations and categorized them as non-sex specific, sex specific, or recently changed language within the previous twenty years. These laws are then juxtaposed against existing primary data on gender equality provided by the Georgetown Institute for Women, Peace and Security's yearly Women, Peace, and Security Index.<sup>13</sup> This data is produced yearly in partnership with the Peace Research Institution of Oslo, and is used to rank each nation's overall gender equality based on eleven indicators in three categories.<sup>14</sup> These break down into categories of "Justice," "Security," and "Inclusion," with indicators of legal discrimination, son bias, discriminatory norms, intimate partner violence, community safety, organized violence, education, financial inclusion, employment, cellphone use, and parliamentary representation falling into the larger categories.<sup>15</sup> This Note uses data from 2019/2020.<sup>16</sup> In order to validate claims and gain better insight into the featured countries, U.N. regional and global data is used, specifically focusing on data provided by the United Nations High Commission for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF). This Note begins with a

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10. This includes changes occurring between 1999 and 2019.

11. Data gathered using *Global Nationality Laws Database*, GLOBALCIT, <https://globalcit.eu/national-citizenship-laws/> (last visited March 29, 2021).

12. See *infra* tbl.1 for list of twenty-five nations; see also *2020 Background Note on Gender Equality, Nationality Laws, and Statelessness*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2020), <https://www.refworld.org/pdffid/5f0d7b934.pdf>.

13. *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

14. See *Women, Peace, and Security Index 2019/20 Report*, GEORGETOWN INSTITUTE FOR WOMEN, PEACE AND SECURITY, <https://giwps.georgetown.edu/wp-content/uploads/2019/12/WPS-Index-2019-20-Report.pdf>.

15. *Id.* at 11. Further information of indicator definitions can be found at *id.* at App. 1.

16. *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

conceptualization of the problem, a definition of statelessness, and a summary of changes to national discrimination laws over the previous twenty years. It then contrasts how nations approach these laws with national gender equality ratings, and ultimately develops principles for moving forward in light of current institutional realities.

## II.

## CONCEPTUALIZATION OF SEX DISCRIMINATION AND STATELESSNESS

Level 1	Level 2	Level 3
Mauritania	Bahamas Bahrain Barbados Burundi Iran Iraq Jordan Kiribati Liberia Libya Malaysia Nepal Oman Saudi Arabia Sudan Syria Togo United Arab Emirates	Brunei Darussalam Kuwait Lebanon Qatar Somalia eSwatini (formerly Swaziland)

Table #1; Created by Author

Nationality laws that discriminate on the basis of sex exist in different forms; some prohibit all women from passing on their nationality to their children, some prevent only specific categories of women from doing so, while others prohibit all women but make exceptions when such laws result in child statelessness. These twenty-five nations can be broken into three categories based on the strictness and effects of their laws.<sup>17</sup>

Level One, containing only Mauritania, has nationality laws limiting a woman's right to confer her nationality. However, Mauritania has implemented exceptions that successfully prevent all cases of statelessness.<sup>18</sup> Although Mauritania's law discriminates based on sex, it has less severe practical

17. Gathered through the *Global Nationality Laws Database*, *supra* note 11. Results were compared to similar United Nations Advocacy studies. See *2018 Background Note, Gender Equality, Nationality Laws and Statelessness*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2018), <https://www.refworld.org/pdfid/5aa10fd94.pdf>.

18. Association des femmes chefs de famille, et al., *Joint Submission to the Human Rights Council at the 37<sup>th</sup> Session of the Universal Periodic Review: Mauritania* 8 (Jul. 9, 2020), [https://files.institutesi.org/UPR37\\_Mauritania.pdf](https://files.institutesi.org/UPR37_Mauritania.pdf).

consequences, largely still allowing stateless individuals access to health, education, and documentation.<sup>19</sup> Level Two—a group populated by the majority of these twenty-five nations—has more complex, diluted sex-discriminating nationality laws. This group includes nations that discriminate against specific categories of women.<sup>20</sup> The Bahamas, for example, does not allow children born abroad to married Bahamian mothers to inherit their mothers' nationality.<sup>21</sup> However, automatic citizenship is granted to children “born outside of The Bahamas to a married Bahamian male who was not born outside The Bahamas.”<sup>22</sup> Iraqi nationality laws similarly prevent women from conferring citizenship on their children if born abroad, unless the father is unknown and such a law would make the children stateless.<sup>23</sup> Finally, Level Three nations have the strictest versions of sex-discriminatory nationality laws, with little or no exceptions made to avoid statelessness. In Qatar, for example, a Qatari woman married to a non-Qatari man can obtain permanent resident status for her children, but not citizenship.<sup>24</sup>

The harmful impact of these discriminatory laws is not avoided simply because a child has two parents, only one of whom can pass on their nationality. Instead, these laws can lead to child statelessness when it is not possible for a child to acquire their father's nationality.<sup>25</sup> There are multiple reasons this happens, including when 1) the father is unknown, 2) the father is unwilling to confer his nationality, 3) the father is stateless, 4) the father's country does not allow conferral of nationality in the specific circumstance, or 5) the father is unable to prove either paternity or his own nationality due to unforeseen circumstances, such as a misunderstanding of documentation, displacement, separation, statelessness, or death.<sup>26</sup>

19. By effectively preventing statelessness, the nation avoids the implications of statelessness on access to state programs, education, travel, etc. *See Mauritania: Loi N° 1961-112, Loi portant code de la nationalité mauritanienne* (June 13, 1961), <https://www.refworld.org/docid/3ae6b5304.html>.

20. These nationality laws will make exceptions to confer nationality in specific cases, such as when the father is stateless, unknown, or the mother is able to complete extensive application processes. The United Nations High Commissioner for Refugees uses a similar categorization. *See 2020 Background Note, supra* note 12, at 6.

21. *See Citizenship*, GOV. OF THE BAHAMAS DEPT. OF IMMIGRATION, <https://www.immigration.gov.bs/applying-to-stay/applying-for-citizenship/> (last visited Aug. 20, 2020).

22. *Id.*

23. *Iraqi Nationality Law*, Law 26 (Mar. 7, 2006), <https://www.refworld.org/docid/4b1e364c2.html> (last accessed Mar. 30, 2020) (“The Law entered into force on its publication in the Iraqi Official Gazette Issue 4019 on March 7, 2006. The Law repeals Iraqi Nationality Law No. 42 of 1924, the Iraqi Nationality Law No. 43 of 1963 and No. 5 of 1975 on granting Iraqi nationality to Arabs.”).

24. *Qatar: Residency Reform Doesn't End Gender Bias*, HUMAN RIGHTS WATCH (Aug. 2017) <https://www.hrw.org/news/2017/08/04/qatar-residency-reform-doesnt-end-gender-bias>.

25. *2018 Background Note, supra* note 17, at 2.

26. *Id.* at 3-4.

Level Two and Three discriminatory laws are likely to have dire effects on already vulnerable populations.<sup>27</sup> Single mothers who do not wish to share parental rights are vulnerable, since paternal recognition, and therefore paternal rights, is needed to gain citizenship.<sup>28</sup> Victims of sexual or domestic violence may be unwilling or unable to identify a child's biological father to the state because doing so could risk their own safety.<sup>29</sup> Displaced families face an additional burden, since family separation and document loss can make it almost impossible for mothers to prove a link between child and father.<sup>30</sup> Finally, members of the LGBTQ+ community, including same-sex female couples, face increased vulnerabilities.<sup>31</sup> Homosexuality is currently illegal in twenty-one out of twenty-five of these nations, with some penalties as high as death.<sup>32</sup> Sex discrimination in nationality laws may force mothers to choose between potentially dangerous "outing" situations or recognizing paternal rights of the sperm provider, who had never been a real party to their relationship.<sup>33</sup>

#### A. Defining Statelessness

Laws that deny women equal rights to confer their nationality on their children leave populations exposed to statelessness and further inequality. A stateless person is "a person who is not considered as a national by any State under the operation of its law."<sup>34</sup> Statelessness can occur *de jure*, where no government recognizes the citizenship of an individual, or *de facto*, where a person is effectively stateless even if they have a claim to citizenship under the laws of a nation.<sup>35</sup> As citizens of no country, stateless populations are often left in unprotected and dangerous situations.<sup>36</sup> While they may not necessarily face

27. See *Statelessness & minorities globally*, MINORITY RIGHTS GROUP INTERNATIONAL, <https://stories.minorityrights.org/statelessness/chapter/statelessness-and-minorities-around-the-world/> (last visited Mar. 10, 2021).

28. See, e.g., Emma Batha, *Nepalese mum tells how unfair citizenship laws squander children's futures*, REUTERS (June 27, 2019, 8:04 PM), <https://news.trust.org/item/20190627194611-ydi45/>.

29. *I am Here, I Belong*, *supra* note 3.

30. *Id.*; See *Advocacy Brief: Refuge and Migrant Response in Europe, Ending Childhood Statelessness in Europe*, UNITED NATIONS CHILDREN'S FUND & UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (Jan. 2019).

31. See Thomas McGee, 'Rainbow Statelessness' – Between Sexual Citizenship and Legal Theory: Exploring the Statelessness-LGBTIQ+ Nexus, Vol. 2 No. 1 *Statelessness & Citizenship Rev.* 86 (2020).

32. *Map of Countries that Criminalize LGBT People*, HUMAN DIGNITY TRUST, <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/> (last visited Mar. 20, 2020).

33. See Thomas McGee, *supra* note 31 at 81.

34. UN General Assembly, *Convention Relating to the Status of Stateless Persons*, United Nations, Treaty Series, vol. 360, p. 137, Art. 1 (Sept. 28, 1954), <https://www.refworld.org/docid/3ae6b3840.html> (entering into force June 6, 1960).

35. *Statelessness*, U.S. DEPARTMENT OF STATE BUREAU OF POPULATION, REFUGEES, AND MIGRATION, <https://www.state.gov/other-policy-issues/statelessness/> (last visited March 25, 2020).

36. *I am Here, I Belong*, *supra* note 3, at 12.

direct persecution for their identity, stateless individuals are excluded from state services.<sup>37</sup> Stateless status may limit access to services like healthcare and education, and may also expose individuals to higher risks of violence, trafficking, child marriage, and exploitation.<sup>38</sup> In at least thirty nations, individuals need proof of nationality to receive medical care, and in twenty nations, proof is needed to receive vaccinations.<sup>39</sup> Without documentation, many stateless individuals also face risk of arrest, detention, and expulsion from their country.<sup>40</sup> Additionally, they are prevented from receiving passports, which would allow them to legally cross borders.<sup>41</sup> As of the end of 2018, the UNHCR estimated there were approximately 10 million stateless persons worldwide, 3.9 million whose data had been successfully collected.<sup>42</sup> The UNHCR estimates that a child is born into statelessness every ten minutes.<sup>43</sup> Each year, at least 70,000 stateless children are brought into the world.<sup>44</sup>

The situation is growing increasingly urgent. As the U.N. notes, “[s]tateless children are born into a world in which they will face a lifetime of discrimination; their status profoundly affects their ability to learn and grow, and to fulfill their

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37. See generally, *Protecting the Rights of Stateless Persons*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES 2 (Jan. 2014), <https://www.refworld.org/pdfid/4cad88292.pdf> (stating, for example, that “[s]tateless people are often without a legal status and feel left out of society. The Galjeel, are a sub-clan of Somali descent and have lived in Kenya since the late 1930s. For decades, the Galjeel held Kenyan ID cards, participated in local and national elections, owned businesses and enjoyed full access to State services. But in 1989 the government introduced a screening system to identify irregular migrants from Somalia. During this process, the authorities confiscated most forms of identification that linked the Galjeel to Kenya. Many became stateless, losing the rights they had enjoyed for decades.”).

38. *Id.*

39. *I am Here, I Belong*, *supra* note 3, at I. This has become a particular area of concern with the spread of the COVID-19 virus and the subsequent development of vaccines. *Inside the Mammoth Undertaking of Global Vaccine Distribution*, WORLD HEALTH ORGANIZATION (Feb. 26, 2021), <https://www.who.int/news-room/feature-stories/detail/inside-the-mammoth-undertaking-of-global-vaccine-distribution> (“Even within countries, there have been reports that not everyone has been incorporated into national vaccination plans, with refugees, stateless people, and asylum seekers at risk of being left behind.”).

40. See *Stateless Persons in Detention*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES 10-12 (June 2017), <https://www.refworld.org/pdfid/598adac4.pdf> (stating, “[s]tatelessness typically severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons often do not have legal residence in any country. Because they generally do not possess identity documents or valid residence permits, stateless persons can be at high risk of arrest and prolonged detention. In situations where they are detained outside their country of origin, they may also face prolonged detention because they are unable to return to their country of origin.”).

41. NATIONALITY AND STATELESSNESS: A HANDBOOK FOR PARLIAMENTARIANS, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES & INTER-PARLIAMENTARY UNION 21 (2005), <https://www.un.org/ruleoflaw/files/Nationality%20and%20Statelessness.pdf>.

42. *Global Trends: Forced Displacement in 2017*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES 51 (Jun. 25, 2018), <https://www.unhcr.org/5b27be547.pdf>.

43. *I am Here, I Belong*, *supra* note 3, at I.

44. *Id.*

ambitions and dreams for the future.”<sup>45</sup> While nationality laws that discriminate on the basis of sex are not the only factor leading to statelessness, they are considered a large contributor.<sup>46</sup>

### *B. Moving Away from Sex Discrimination in Nationality Laws*

Over the last twenty years, approximately twenty nations have reformed their nationality laws in favor of sex equality and preventing statelessness.<sup>47</sup> In 1998, Gabon passed Law No. 37-1998 regarding Nationality of Gabon, allowing children to inherit citizenship from “a parent of Gabonese nationality.”<sup>48</sup> This changed the law from language that had previously excluded women.<sup>49</sup> In 2010, Kenya’s constitutional reform incorporated the goals of the United Nations Convention to End All Forms of Discrimination Against Women, granting women the right to pass nationality to both their children and their spouses.<sup>50</sup> This past decade alone, several Middle East-North Africa countries, including Egypt, Morocco, Tunisia, and Yemen, have reformed their nationality laws.<sup>51</sup> While not all nations are moving towards ending sex-discriminatory nationality laws, they are trending towards equality. These numbers show that over the last two decades, the number of nations with discriminatory nationality laws has almost halved.

Delving into when and how these laws came into effect is beyond the scope of this Note. It is, however, important to note the colonial influences that shaped these discriminatory nationality laws in non-Western nations.<sup>52</sup> While the majority of these laws currently exist in North African, Middle Eastern, and Southeast Asian nations, they likely did not originate there.<sup>53</sup> According to the nonprofit Global Campaign for Equal Rights, “[m]any of these laws are rooted in

45. *Id.*

46. *Id.* at 6.

47. These include Gabon in 1998, Sri Lanka in 2003, Egypt in 2004, Algeria in 2005, Indonesia in 2006, Iraq in part in 2006, Sierra Leone 2006 and 2017, Morocco in 2007, Bangladesh in 2009, Zimbabwe in 2009, Kenya in 2010, Tunisia in 2010, Yemen in 2010, Monaco in 2005 and 2011, Senegal in 2013, Suriname in 2014, Madagascar in 2017, United States in 2017, United Arab Emirates partially in 2011 and 2017, and Iran partially in 2019. Loi N°37-1998, Code de la Nationalité Gabon, Art. 11 (1998), <https://www.refworld.org/pdfile/4c5847492.pdf> (last visited May 10, 2020); see also 2020 Background Note, *supra* note 12, at 3; For information on the United States, see *infra* section IV. B. (1); for information on Iran see *infra* section IV. F.

48. Loi N°37-1998, Code de la Nationalité Gabon, Art. 11 (1998), <https://www.refworld.org/pdfile/4c5847492.pdf> (last visited May 10, 2020).

49. *Id.*

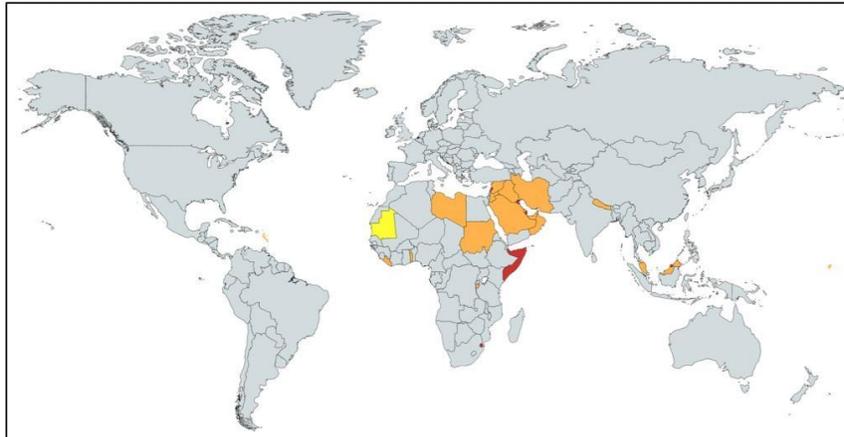
50. Bettina Ng’weno, *Irony of Citizenship: Descent, National Belonging, and Constitutions in the Postcolonial African State*, 53 LAW & SOC’Y R. 141, 141 (2019).

51. *Middle East and North Africa*, GLOBAL CAMPAIGN FOR EQUAL NATIONALITY RIGHTS, <https://equalnationalityrights.org/index.php/countries/middle-east-north-africa>.

52. *Global Overview*, GLOBAL CAMPAIGN FOR EQUAL NATIONALITY RIGHTS, <https://equalnationalityrights.org/index.php/countries/global-overview>.

53. *Id.*

colonial legacies, reflecting the discrimination against women embedded in colonial powers' legal systems, which included other forms of discrimination."<sup>54</sup> The UNHCR recognizes the effect of colonialism in its annual Background Note on Gender Equality, Nationality Laws and Statelessness: "discriminatory elements of previous nationality laws were 'inherited' by new States shortly after gaining independence from former colonial powers."<sup>55</sup> Any conversation about changing these laws is incomplete without first acknowledging that Western powers implemented them in the first place. The twenty-five nations that have discriminatory nationality laws in place vary widely in location, religion, ethnicity, and Gross Domestic Product. Most of these were former British colonies.<sup>56</sup> However, all twenty-five nations subscribe to some form of international legal framework prohibiting such laws, yet all have failed to implement change. These international frameworks are outlined in the following section.



Map #1; the 25 nations colored by level from Table 1; Created by author

### III. INTERNATIONAL LEGAL FRAMEWORK

Many international frameworks promote sex equality in nationality laws, mostly in the form of international human rights treaties.<sup>57</sup> Guarantees of the right to nationality free from gender discrimination are found in the Universal

54. *Id.*

55. 2019 Background Note on Gender Equality, Nationality Laws, and Statelessness, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES 3 (Mar. 2019), <https://www.refworld.org/pdfid/5c8120847.pdf>.

56. See generally Former British Colonies, World Atlas, <https://www.worldatlas.com/articles/former-british-colonies.html> (last visited Dec. 10, 2020).

57. See generally NATIONALITY AND STATELESSNESS, *supra* note 41, at 8–16 for a guide to broad principles of international law and statelessness.

Declaration of Human Rights,<sup>58</sup> the International Covenant on Civil and Political Rights,<sup>59</sup> the Convention on the Elimination of All Forms of Racial Discrimination,<sup>60</sup> the Convention on the Rights of Persons with Disabilities,<sup>61</sup> and the Convention on the Reduction of Statelessness.<sup>62</sup> The mandate to end gender discrimination in the United Nations Convention on the Elimination of All Forms of Discrimination against Women<sup>63</sup> and the Convention on the Rights of the Child<sup>64</sup> also applies to all twenty-five nations examined in this paper.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international treaty adopted in 1979 that aims to promote equality of the sexes and to end discriminatory practices.<sup>65</sup> Article 9(2) of the Convention declares that all “States Parties shall grant women equal rights with men with respect to the nationality of their children.”<sup>66</sup> There are no exceptions.<sup>67</sup>

Additionally, a child’s right to a nationality is protected under the United Nations Convention on the Rights of the Child (CRC).<sup>68</sup> Article 7 of the CRC guarantees every child the right to acquire a nationality.<sup>69</sup> Article 2 of the CRC protects a child’s right to be free of discrimination of any kind, including the denial of the child’s nationality on the basis of sex, race, language, religion, or

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58. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 15, 217 A (III) (Dec. 10, 1948). <https://www.refworld.org/docid/3ae6b3712c.html> (“(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”).

59. International Covenant on Civil and Political Rights, art. 24(3) Dec. 19, 1966, 999 U.N.T.S. 171 <https://www.refworld.org/docid/3ae6b3aa0.html> (“Every child has the right to acquire a nationality”).

60. International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(iii), Dec. 21, 1965, 660 U.N.T.S. 195 <https://www.refworld.org/docid/3ae6b3940.html> (“Other civil rights, in particular... the right to nationality”).

61. U.N. GAOR, 61st Sess., 76th plen. mtg., U.N. Res. A/RES/61/106, Convention on the Rights of Persons with Disabilities (Dec. 13, 2006) <https://www.refworld.org/docid/45f973632.html> (guaranteeing people with disabilities “[h]ave the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability”).

62. *See Convention on the Reduction of Statelessness*, Aug. 30, 1961, 989 U.N.T.S. 175, <https://www.refworld.org/docid/3ae6b39620.html>.

63. Convention on the Elimination of All Forms of Discrimination Against Women, art. 9(2), Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.refworld.org/docid/3ae6b3970.html> [hereinafter *CEDAW*].

64. G.A. Res. 44/25, United Nations Convention on the Rights of the Child (Nov. 20, 1989) <https://www.refworld.org/docid/3b00f03d30.html> [hereinafter *CRC*].

65. *See CEDAW*, *supra* note 63.

66. *Id.* at art. 9 (2).

67. *See id.*

68. *See CRC*, *supra* note 64.

69. *Id.* at art. 7.

other status.<sup>70</sup> This means that nationality laws that prevent a child from acquiring nationality because of their parents' sex are not compliant with the CRC.<sup>71</sup>

Of the twenty-five nations with sex discrimination in their nationality laws, twenty-two are signatories to CEDAW,<sup>72</sup> with Iran, Somalia, and Sudan as the exceptions.<sup>73</sup> However, five of these twenty-two nations currently hold reservations to the nationality provision of CEDAW. Mauritania, for instance, holds a reservation to CEDAW for instances where the convention conflicts with Sharia law.<sup>74</sup> Nevertheless, all twenty-five nations are signatories to the CRC.<sup>75</sup> Only The Bahamas holds a reservation to non-discrimination under CRC Article 2.<sup>76</sup> Accordingly, all twenty-five nations have an international legal obligation to end discrimination in nationality laws.

United Nations conventions, though not enforceable like national laws, are politically binding obligations.<sup>77</sup> Countries are subject to periodic review by the convention body, and they can face claims brought by other signatory States if they have signed onto an optional protocol.<sup>78</sup> Currently, the international legal framework is built to inspire national level action.<sup>79</sup> However, twenty-five nations still have nationality laws discriminating on the basis of sex, forty-one years after CEDAW originated.<sup>80</sup> The next section examines national institutions and sex equality rankings to theorize why these laws still exist and what principles can be adopted to move forward towards greater equality.

70. *Id.* at art. 2.

71. *Id.*

72. *Status of Ratification Interactive Dashboard*, OHCHR, <https://indicators.ohchr.org/>.

73. Amnesty International, *Reservations to the Convention on the Elimination of Discrimination Towards Women 3* (2004), <https://www.refworld.org/pdfid/42ae98b80.pdf>.

74. *Id.* at 12.

75. *Status of Ratification Interactive Dashboard*, *supra* note 72.

76. *See Id.*

77. For more on general enforceability of conventions, see F. Blaine Sloan, *The Binding Force of a Recommendation of the General Assembly of the United Nations*, 25 BRIT. Y.N. INT'L L. 1 (1948); see also Karen A. McSweeney, *The Potential for Enforcement of the United Nations Convention on the Rights of the Child: The Need to Improve the Information Base*, 16 B. C. INT'L & COMP. L. REV. 467 (1993).

78. See United Nations General Assembly, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 2131, U.N.T.S., at 83 (Oct. 6, 1999), <https://www.refworld.org/docid/3ae6b3a7c.html>.

79. The process of adopting a U.N. Convention or treaty varies from nation to nation, with some nations having a monist—immediate—approach to adopting international law once a treaty is ratified, or a dualist—separate—approval approach. For more, see generally David Sloss, *Domestic Application of Treaties*, SANTA CLARA L. DIGITAL COMMONS, (Apr. 29, 2011), <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1620&context=facpubs>; see generally United Nations Department of Economic and Social Affairs, National Legislation and the Convention – Incorporating the Convention into Domestic Law, in HANDBOOK FOR PARLIAMENTARIANS ON THE CONVENTION THE RIGHTS OF PERSONS WITH DISABILITIES, (2007) (describing the general goals of conventions to inspire national legislative change in dualist states).

80. See *supra* Section II; CEDAW, *supra* note 63.

IV.  
SEX EQUALITY AND NATIONAL INSTITUTIONS

While international legal frameworks outline goals for, but do not enforce, non-discrimination, the global shift towards international women's rights may help prevent discriminatory nationality laws.<sup>81</sup> Sex discrimination is defined by CEDAW as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>82</sup> Current national women's rights ratings are a strong indicator of past actions, current laws, and potential for future change. This Section uses a four-by-four matrix that categorizes nations by using data provided by the Women, Peace, and Security Index with nationality laws. This is done to address both the impact of these laws and potential changes through 1) defining the matrix, 2) examining two conflicting categories, and 3) examining what factors overlap between the categories and the most recent changes to nationality laws. This matrix illustrates that while a nation's sex equality score is a good indicator of current policy, an improved gender score does not guarantee change to existing sex discriminatory nationality laws. Instead, institutional willingness to enforce sex equality and anti-discrimination laws, as well as grassroots activism, are better indicators of change.

*A. Defining the Matrix*

In this matrix, a country's ranking on women's rights and equality is contrasted with the use of sex discrimination in nationality laws. National gender equality rankings are drawn from the 2019/2020 Georgetown Women, Peace, and Security Index (WPS), with quintiles one to three representing the top 101 nations, and quintiles four and five representing the bottom sixty-six.<sup>83</sup> The WPS Index uses eleven indicators in three dimensions: 1) inclusion, 2) justice, and 3) security.<sup>84</sup> Additionally, nations are divided into simple yes/no dummy variables based on existing sex discrimination in their nationality laws. The twenty-five nations with these sex-specific laws are isolated in the two "yes" categories, whereas the remaining 170 nations are distributed into "no."

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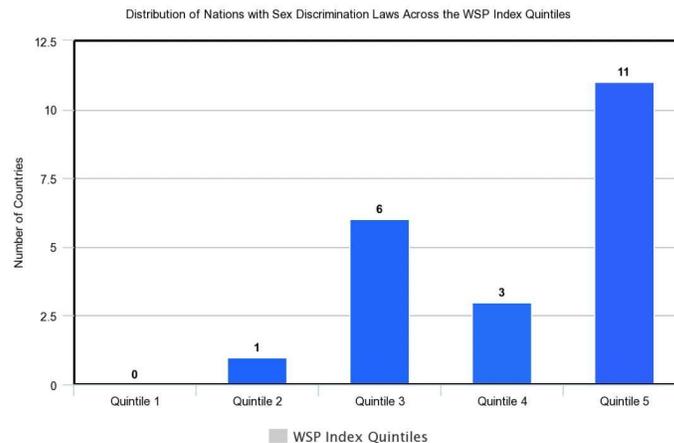
81. 2020 *Background Note on Gender Equality*, *supra* note 12, at 7.

82. CEDAW, *supra* note 63, at art. 1.

83. This Index does not include data on 22 UN nations, or the two non-member observers— notably including the Bahamas, Brunei Darussalam, Oman, Kiribati, and Vanuatu. See *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9. The WPS Index generates a country value out of 1.0, with the top nation's (Norway) WPS value of 0.904, and the lowest nation (Yemen) 0.351. *Id.*

84. See *Women, Peace, and Security Index 2019/20 report*, *supra* note 14.

Category One nations display both high indicators of women's equality and a lack of sex discrimination in their nationality laws. These include ninety-four nations, thirty-six of which are European. Category Two nations have a high-ranking equality indicator, but still have sex discriminatory nationality laws in place. These include the United Arab Emirates, ranked in the second quintile, as well as Qatar, Malaysia, Bahrain, Nepal, Barbados, and Kuwait, in the third quintile.<sup>85</sup> Category Three nations rank lower on the WPS Index, with the bottom two quintiles made up of the sixty-six nations with the lowest total scores,<sup>86</sup> but do not currently have sex discriminatory nationality laws in place. Like Category One nations, Category Three nations have a history of sex discriminatory nationality laws, but such laws are no longer in force. Category Three includes fifty-two nations, five of which changed their laws in the past twenty years.<sup>87</sup> Finally, Category Four nations rank both low on the WPS Index and have discriminatory nationality laws in place. These nations include Togo, Saudi Arabia, Jordan, Burundi, Eswatini, Liberia, Lebanon, Mauritania, Somalia, Sudan, Libya, Iraq, and Syria.<sup>88</sup>



Graph #1; Created by Author

Overall, the data suggests a correlation between gender equality rank and the likelihood that a nation currently has discriminatory nationality laws in place. Rank, interestingly, does not correlate with severity of laws: of the strictest (red) nations in Table 1, roughly half fall into quintile three, and half into quintile five.<sup>89</sup> However, gender equality rank alone does not indicate a likelihood these laws will change in the future.

85. *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

86. *Id.*

87. *Id.*

88. *Id.*

89. Table created by author, contrasting data from *id.* with the twenty-five nations with sex discrimination in nationality laws.

If there is a correlation between ranking and existence of law, that correlation alone is not predictive. As is the case with the international legal framework, a commitment to sex equality as a whole is not the same as specific national action to end anti-discrimination in nationality laws. Instead, by looking at each category of nations, we can see three main historical components to change that could act as future predictors: 1) the existence of anti-discrimination nationality laws, 2) institutional flexibility to change, and 3) the presence of grassroots social activism. Next, this Note focuses on Category One nations to examine how gender equality interacts with institutional realities.

### *B. Category One Nations*

Category One nations institutionalize sex equality. These nations rank high on the WPS Index and do not currently have nationality laws that discriminate on the basis of sex. Notably, the most recent addition to this category is the United States, which had male-discrimination in their nationality laws until 2017.<sup>90</sup> While the change in US law now prevents disproportionate statelessness of children born to single fathers, it is important to examine the history of this law and the factors motivating its change.

#### *1. Case Study: The United States of America*

The United States ranks number nineteen out of 167 worldwide on the WPS Index.<sup>91</sup> The country projects a strong dedication to gender equality,<sup>92</sup> and legal protections against sex and gender-based discrimination are built into its system under judicial interpretations of the Fifth and Fourteenth Amendments of the US Constitution.<sup>93</sup> The exact number of stateless individuals in the United States is unknown,<sup>94</sup> although unreliable estimates from various organizations range in the

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90. See *infra* section IV. B. 1.

91. See *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

92. This number has increased in the past few years, with the US previously not making the top 20 for its high rate of domestic violence. See *Women, Peace, and Security Index 2019/20 report*, *supra* note 14, at 55.

93. These are known as the Due Process and Equal Protection Clauses of the US constitution. U.S. Const. amend. V & XIV; Ruth B. Ginsburg, *Sexual Equality Under the Fourteenth and Equal Rights Amendments*, 1979 WASH. U. L. Q. 161, 165-67 (1979).

94. The UNHCR labels the US as a nation without reliable data on statelessness. See *Persons under UNHCR's Statelessness Mandate*, Table 7, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2018), <https://www.unhcr.org/statistics/18-WRD-table-7.xls>.

low thousands.<sup>95</sup> The United States has signed the CRC but has not ratified it, making it the only U.N. Member State not a party to the CRC.<sup>96</sup> The same is true of CEDAW.<sup>97</sup>

Yet, until the 2017 Supreme Court ruling in *Sessions v. Morales-Santana*, the United States still had sex-discriminatory nationality laws in place.<sup>98</sup> Unlike the twenty-five nations surveyed for this paper, sex discrimination in the United States targeted males and the notion of fatherhood, effectively increasing childhood statelessness.<sup>99</sup> United States Code section 1401 required US-citizen parents to be physically present in the United States or an outlying possession for five years prior to the birth of their child to pass on their citizenship.<sup>100</sup> However, while this rule applied to married US-citizen parents<sup>101</sup> and unmarried US-citizen fathers,<sup>102</sup> a Congressional exception allowed US-citizen mothers to pass on their nationality if they met a shorter physical presence requirement of one year.<sup>103</sup> In this case, the plaintiff, Luis Ramón Morales-Santana, claimed that US nationality laws discriminated against single fathers by requiring a longer physical presence in the United States than single mothers faced.<sup>104</sup> Morales-Santana was denied US citizenship on the grounds that his unwed-US-citizen father was twenty days short of meeting the physical presence requirement when Luis was born.<sup>105</sup> If he were

95. The Center for Migration Studies bases their numbers on the deportation data, stating for support that “Representative Lamar Smith (R-TX), for example, claimed that between 2009 and 2011 the United States government released almost 10,000 deportees after their purported countries of origin refused to take them back. With no legal status in the United States and no country willing to grant them legal status, such people could be considered *de facto* stateless.” See John Corgan, *The Statelessness in the United States*, CENTER FOR MIGRATION STUDIES, <https://cmsny.org/the-stateless-in-the-united-states/>. However, this organization has been criticized by the Southern Poverty Law Center as an anti-immigrant hate group, which could affect numbers given. See *Center for Immigration Studies*, SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/group/centerimmigration-studies>. Articles widely shared online place this number around 4,000, but no source for their data is given. See Lorena Rios, *Stateless people in the US have begun to unite for the first time*, TRT WORLD, <https://www.trtworld.com/magazine/stateless-people-in-the-us-have-begun-to-unite-for-the-first-time-18541>.

96. Sarah Mehta, *There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US*, ACLU BLOG (Nov. 20, 2015), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens>.

97. *A Fact Sheet on CEDAW: Treaty for the Rights of Women*, AMNESTY INTERNATIONAL (Aug. 25, 2005) [https://www.amnestyusa.org/files/pdfs/cedaw\\_fact\\_sheet.pdf](https://www.amnestyusa.org/files/pdfs/cedaw_fact_sheet.pdf).

98. *Sessions v. Morales-Santana*, 137 S.Ct. 1678, 1686 (2017).

99. *Id.*; 8 U.S.C. § 1401.

100. At least two of these years must occur after the citizen-parent turns 14 years of age. 8 U.S.C. § 1401(g) (2012 ed.). Previously, US Citizen-Parents required a physical presence of 10 years prior to birth, at least 5 of which were past the age of 14. This older rule is what applied in *Morales-Santana*. See 8 U.S.C. § 1401(a)(7) (1958 ed.).

101. 8 U.S.C. § 1401.

102. 8 U.S.C. § 1409(a).

103. 8 U.S.C. § 1409(c).

104. *Morales-Santana*, 137 S.Ct. at 1686; *Nguyen v. Immigr. & Naturalization Serv.*, 533 U.S. 53 (2001).

105. *Morales-Santana*, 137 S. Ct. at 1687.

born to an unwed-US-citizen mother instead, he would have been granted citizenship.<sup>106</sup>

*Sessions v. Morales* wasn't the first time the Supreme Court addressed the issue of sex discrimination in nationality laws.<sup>107</sup> In 2001, the Court declined to overturn similar sections of the United States Code in *Nguyen v. INS*, in a case offering almost the exact same fact pattern.<sup>108</sup> In that case, the child of an unwed US-citizen father challenged the disparate rules between mothers and fathers in proving parentage for the purpose of citizenship.<sup>109</sup> The court held that a relationship between parent and child is distinctly tied to parental sex, stating "a relationship. . . that consists of the real, everyday ties that provide a connection [is] inherent in the case of an American mother and her child, but not inevitable in the case of a single father."<sup>110</sup> This reasoning built off of the 1998 plurality opinion by the Court in *Miller v. Albright*, which suggested that this form of sex discrimination was lawful if it served a justifiable purpose of government interests and national security.<sup>111</sup>

Ultimately, the Court in *Morales-Santana* distinguished the case from this precedent by holding that physical presence requirements failed to serve a valid government interest because time spent in the United States is not a determining factor of parenthood for either gender.<sup>112</sup> Therefore, the court reasoned that existing sex discrimination in US nationality laws should no longer be allowed under the Fifth Amendment's Due Process Clause, stating that "the gender line Congress drew is incompatible with the requirement that the Government accord to all persons 'the equal protection of the laws.'"<sup>113</sup> The Court could not grant citizenship to *Morales-Santana*, but it raised the physical presence requirement of unwed US-citizen mothers to that of unwed US-citizen fathers, which forcefully required gender neutrality in future domestic nationality laws.<sup>114</sup>

While the plaintiff in *Morales-Santana* did not risk statelessness from his denial of citizenship, this recent movement of the United States to Category One highlights how widespread and entrenched sex discrimination in nationality laws can be.<sup>115</sup> Ultimately, it was the legal system's use of existing sex-equality protections that changed these laws. The Supreme Court's decision abrogated US nationality laws, "leveling down" the extra protections granted to single mothers

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106. *See id.*

107. *Nguyen*, 533 U.S. at 56.

108. *Id.* at 72, 57.

109. *Id.* at 58.

110. *Id.* at 65.

111. This standard, referred to as intermediate scrutiny, is seen in most gender/ sex discrimination cases. *See Miller v. Albright*, 523 U.S. 420, 423 (1998).

112. *Morales-Santana*, 137 S.Ct. at 1694; *Nguyen*, 533 U.S. at 53.

113. *Morales-Santana*, 137 S. Ct. at 1686.

114. *Id.*

115. *Id.* at 1678, 1687.

to match that of single fathers.<sup>116</sup> While statelessness can still occur with a US-citizen parent,<sup>117</sup> sex discrimination as a cause of statelessness was combatted through existing sex protections in the law. The legal avenue used was the Fifth Amendment's protection against discrimination, not international obligations or considerations about statelessness.<sup>118</sup>

### C. *Category Two Nations*

Category Two nations are nations that rank in the first three quintiles on the WPS Index but still have gender discriminatory laws in place. This is a small category, containing only the United Arab Emirates, Qatar, Malaysia, Bahrain, Nepal, Barbados, and Kuwait. These nations run counter to the theory that there is a link between gender equality ranking and the use of sex discriminatory laws. This next Section examines Nepal and theorizes that slow institutional adaptation to increased gender equality is a major factor preventing legal change.

#### 1. *Case Study: Nepal*

Located in the southern Himalayan mountain ranges in Asia, The Kingdom of Nepal is a country of about thirty million people.<sup>119</sup> Nepal was declared a democratic republic in 2007, after decades of conflict and the creation of the 2006 Comprehensive Peace Agreement.<sup>120</sup> As a result, an interim constitution was passed<sup>121</sup> and a constitutional assembly created the Constitution of Nepal in 2015.<sup>122</sup> This new constitution resulted in "months of protest and violence (on the part of both state actors and protestors), in which over fifty people lost their

116. Sandy De Sousa, *An Analysis of Sessions v. Morales-Santana's Implications on the Plenary Power Doctrine and the Supreme Court's Approach to Equal Protection Challenges*, 49 SETON HALL L. R. 1123, 1126 (June 17, 2019).

117. Statelessness in the US can still occur through other means; including but not limited to improper documentation and residency requirements for applicants. See generally *Stateless in the United States*,

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, UNITED STATES, <https://www.unhcr.org/stateless-in-the-united-states.html>.

118. *Morales-Santana*, 137 S. Ct. at 1678.

119. Nepal, ENCYCLOPEDIA BRITANNICA (last updated May 2020), <https://www.britannica.com/place/Nepal>; *Nepal*, CIA World Factbook (Mar. 23, 2021), <https://www.cia.gov/the-world-factbook/countries/nepal/>.

120. *Citizenship, Gender and Statelessness in Nepal: Before and After the 2015 Constitution*, DISCOVER SOCIETY (Sep. 5, 2017), <https://discoversociety.org/2017/09/05/citizenship-gender-and-statelessness-in-nepal-before-and-after-the-2015-constitution/#>.

121. The Interim Constitution of Nepal 2063 (2007), <https://www.wipo.int/edocs/lexdocs/laws/en/np/np006en.pdf>.

122. Constitution of Nepal (Sep. 20, 2015), <https://www.wipo.int/edocs/lexdocs/laws/en/np/np029en.pdf>.

lives.”<sup>123</sup> The protests were largely attributed to continued constitutional prohibitions on mothers from conferring their nationality on their children.<sup>124</sup> According to a 2018 report by the US State Department, Nepal had an estimated population of 5.4 million stateless individuals.<sup>125</sup> These 5.4 million individuals are denied equal access to education, health services, relief programs, and more.<sup>126</sup>

The Constitution of Nepal grants citizenship to children of one Nepali parent, but stipulates that children born to a Nepali mother and non-Nepali father can only pass citizenship to their children through a process of naturalization.<sup>127</sup> In 2011, a decision by the Supreme Court of Nepal granted naturalization rights to mothers in cases where fathers are unknown or absent.<sup>128</sup> In theory, this decision helped combat statelessness, but, according to researchers, the process of naturalization remains inaccessible in the country.<sup>129</sup> Legal provisions that require extensive documentation, access to State services, and an understanding of how to navigate the system’s complex rules disproportionately burden rural or displaced peoples.<sup>130</sup> The Nepal government justified this approach by citing concerns about national security, resources, previously changing borders, and lack of geographic access to rural communities.<sup>131</sup> Nonetheless, few changes have been made to accommodate government limitations and instances of the government granting citizenship through naturalization are incredibly rare; as the US State Department reported, “[a]lthough they lack specific data, human rights lawyers reported that the government has processed few applications for naturalization of children in

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123. Subin Mulmi and Sara Shneiderman, *Citizenship, gender and statelessness in Nepal*, in UNDERSTANDING STATELESSNESS 135 (Tendayi Bloom, Katherine Tonkiss & Phillip Cole eds., Routledge, 2017).

124. *Id.* (“Central to the constitutional debate were the constraints placed on the conferral of citizenship by women and by naturalised citizens of all genders to their offspring. These constitutional ambiguities, along with difficulties often experienced in obtaining citizenship certificates even in cases where the legal framework should grant such a certificate, have the potential to render significant numbers of people stateless”).

125. The U.S. State Department reports this number as individuals lacking citizenship documentation, under the heading of stateless persons. Effectively, these are the same thing. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., 2018 Country Reports on Human Rights Practices: Nepal (2018), <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/nepal/>.

126. *Id.*

127. *Id.* at Stateless Persons.

128. *Id.*

129. Susann Nowack, *Gender Discrimination in Nepal and How Statelessness Hampers Identity Formation* 4, Statelessness Working Paper Series No. 2015/02, INSTITUTE ON STATELESSNESS AND INCLUSION (Dec. 2015), [https://files.institutesi.org/WP2015\\_02\\_Rothe.pdf](https://files.institutesi.org/WP2015_02_Rothe.pdf) (“In the last 6 years, Nepali officials have refused every citizenship application of children born to foreign fathers”).

130. Understanding Statelessness, *supra* note 123, at 137.

131. Diane Richardson et al., *Women and Citizenship Post-Trafficking: The Case of Nepal*, 64 THE SOCIO. R. 329, 339-341 (2016).

recent years.”<sup>132</sup> According to on-the-ground researchers, “only 13 persons had obtained such naturalized citizenship certificates as of January 2017.”<sup>133</sup>

Notably, Nepal is seen worldwide as a middle-of-the-road nation when it comes to gender equality and progressive rights.<sup>134</sup> The nation ranks eighty-four out of 167 on the WPS Index, placing it in the third quintile.<sup>135</sup> On LGBTQ+ issues, Nepal is one of the leading progressive nations in Asia.<sup>136</sup> In 2007, the Supreme Court of Nepal ordered the government to legally recognize the existence of a third gender category and change existing laws that discriminate against the LGBTQ+ community.<sup>137</sup> In 2011, Nepal became the first country in the world to list a third gender option on the national census.<sup>138</sup> Additionally, in 2015, the new Constitution of Nepal became the world’s tenth constitution to specifically include language protecting LGBTQ+ rights.<sup>139</sup> While gay marriage is not legal in Nepal, there are no laws prohibiting homosexuality, and a committee has been formed to develop future legislation recognizing same-sex couples.<sup>140</sup>

Nepal’s progressive stance on LGBTQ+ issues makes the nation an interesting example of institutional delay. While same-sex couples are not criminalized, female-female couples are unable to pass on their citizenship without a difficult naturalization process, and extensive paperwork showing the lack of a father.<sup>141</sup> Additionally, while third genders are recognized on passports and legal documents, Nepal has yet to include gender-neutral language in its laws that govern the process of conferring citizenship.<sup>142</sup> Institutional failures to adjust to these norms to provide easier paths to naturalization leave LGBTQ+ individuals, those residing in rural areas, displaced communities, and single mothers particularly vulnerable to statelessness.

This Nepal case study demonstrates not only the importance of gender equality, but also the importance of pushing for institutional change. Most positive

132. U.S. Dep’t of State, *supra* note 125.

133. *Citizenship, Gender and Statelessness in Nepal*, *supra* note 120.

134. *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

135. *Id.*

136. *LBGT Rights in Nepal*, EQUALDEX, <https://www.equaldex.com/region/nepal> (last visited Dec. 10, 2020); Kyle Knight, *How Did Nepal Become a Global LGBT Rights Beacon?*, HUMAN RIGHTS WATCH (Aug. 11, 2017), <https://www.hrw.org/news/2017/08/11/how-did-nepal-become-global-lgbt-rights-beacon>; *but see* Sanju Gurung, *Nepal, the Beacon of LGBTQ+ Rights in Asia? Not Quite*, THE DIPLOMAT (Feb. 10, 2021), <https://thediplomat.com/2021/02/nepal-the-beacon-of-lgbtq-rights-in-asia-not-quite/>.

137. *Pant v. Nepal*, NJA L. J. 262 (Sup. Ct. Div. Bench, Writ No. 917 2007).

138. Knight, *supra* note 136.

139. *Id.*; Constitution of Nepal, art. 18(3) (Sep. 20, 2015).

140. *Pant*, Writ No. 917.

141. *LBGT Rights in Nepal*, *supra* note 136; Constitution of Nepal, (Sep. 20, 2015).

142. Kyle Knight, *Nepal’s Third Gender Passport Blazes Trails*, HUMAN RIGHTS WATCH (Oct. 26, 2015, 4:06 PM), <https://www.hrw.org/news/2015/10/26/nepals-third-gender-passport-blazes-trails>.

change in Nepal, whether it is gender equality or LGBTQ+ rights, stems from political and legal activism. The Supreme Court of Nepal has been instrumental in implementing change on a national level and has primarily acted in response to cases brought by legal activists.<sup>143</sup> As many local activists argue, institutional change towards non-discriminatory nationality laws is delayed by political and institutional gridlock.<sup>144</sup> However, this does not mean the laws will never change. For nations with higher gender equality that still have discriminatory laws, legal change seems to be a matter of institutional delay. This, along with the role of social and legal activism, can be applied with country-specific adjustments to the remaining Category Two nations of the United Arab Emirates, Qatar, Malaysia, Bahrain, Barbados, and Kuwait. While not all alike in government resources or populations, these nations display a higher tendency towards non-discriminatory sex laws, but the incorporation of non-discrimination into nationality laws suffers from institutional delay.<sup>145</sup>

#### D. Category Three Nations

Category Three nations are nations that rank in the bottom quintile of the WPS Index but do not have sex-discriminatory nationality laws in place. This category includes fifty-three nations across the world, including a substantial number of nations that have changed their nationality laws in the previous twenty years, such as Lesotho, Sierra Leone, Madagascar, Niger, and Senegal.<sup>146</sup> As nations with lower ranking gender equality scores, a strict correlation between nationality laws and gender equality would suggest these progressive changes should not have taken place. However, as is the case with Category Two nations, while gender equality contributes to change, it alone is not enough. This Section examines Madagascar, analyzing how lessons learned from this nation can be applied to improve the situation in nations with similarly low gender equality scores.

##### 1. Case Study: Madagascar

Madagascar is a semi-presidential republic located off the coast of east Africa.<sup>147</sup> The nation ranks in the fifth quintile of the WPS Index, ranking it 136

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143. *Pant*, Writ No. 917.

144. *Citizenship, Gender and Statelessness in Nepal*, *supra* note 120.

145. *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

146. *See 2020 Background Note*, *supra* note 12, at 6.

147. 2020 Country Reports on Human Rights Practices: Madagascar, U.S. Dept. of State, Bureau of Democracy, Human Rights, and Labor (March. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/madagascar/>.

out of 167.<sup>148</sup> Women represent only 19.2 percent of the country's parliament.<sup>149</sup> Madagascar has adopted only an estimated 33.3 percent of UN-recommended legal frameworks preventing violence against women and gender equality.<sup>150</sup> An estimated 41.8 percent of women are married before eighteen years old, and women in rural communities struggle to access education and medical aid.<sup>151</sup> Notably, however, Madagascar is a signatory to CEDAW and does not outlaw homosexuality.<sup>152</sup> This demonstrates the progressive qualities of the nation and suggests that sex discrimination in nationality laws likely is not being used to target and prevent LGBTQ+ motherhood.

Before 2017, Madagascar was not a positive example for non-discrimination in nationality laws. Established during the country's independence in 1960, Madagascar's previous nationality laws only granted citizenship conferral rights to Malagasy women with children "born in wedlock" to a father of "stateless or of unknown nationality."<sup>153</sup> Malagasy women with foreign husbands were excluded, as were vulnerable communities like single mothers, victims of sex and gender-based violence, or LGBTQ+ parents.<sup>154</sup> On January 25, 2017, however, Madagascar made a significant change to its Nationality Code, granting equal rights to all citizens, regardless of gender, to confer their nationality onto their children.<sup>155</sup>

Since Madagascar is a low-ranking nation on the WPS Index,<sup>156</sup> it is important to examine the motivation behind this change. Unlike Nepal, where government institutions failed to keep pace with social and political demands for equality, Madagascar implemented sex-neutral policies despite the institutional challenges in place. Contributing to this shift, Madagascar faced international political pressure for change as a signatory to CEDAW, heightening around 2015 when the UNHCR partnered with non-profit organizations to promote reform.<sup>157</sup> Importantly, this institutional change resulted from decades of local activism. Change was not easy in a nation where authorities "routinely decline requests for

148. *Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

149. *Id.*

150. *Madagascar: United Nations Women Data*, UNITED NATIONS WOMEN <https://data.unwomen.org/country/madagascar>.

151. *Id.*

152. *Map of Countries that Criminalize LGBT People*, *supra* note 32; *CEDAW*, *supra* note 63, at 18.

153. *2014 Background Note on Gender Equality, Nationality Laws, and Statelessness*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (MAR. 7, 2014), <https://www.unhcr.org/4f5886306.pdf>.

154. *Id.*; Loi n°2016-038, [http://data.globalcit.eu/NationalDB/docs/Madagascar-Loi-n2016-038%20\[ORIGINAL%20LANGUAGE\].pdf](http://data.globalcit.eu/NationalDB/docs/Madagascar-Loi-n2016-038%20[ORIGINAL%20LANGUAGE].pdf).

155. Loi n°2016-038, *supra* note 154.

156. *See Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

157. *Madagascar Moves Closer to Reforming Discriminatory Laws*, Equal Rights Trust, (Nov. 3, 2015), <https://www.equalrightstrust.org/news/madagascar-moves-closer-reforming-gender-discriminatory-nationality-law>.

protests and rallies in the name of public security” and subject protestors to violence.<sup>158</sup> As the Global Campaign for Equal National Rights explains, “[t]he fight to reform the nationality law has been a long effort led by women’s rights activists.”<sup>159</sup> As observed with Nepal, while gender equality is one indicator of the existence of sex-discriminatory laws, it is not dispositive. Ultimately, Madagascar’s institutional flexibility and social activism created an opportunity to change these laws even though broader gender equality remains lacking.

### E. Category Four Nations

#### 1. Case Study: Iran

Finally, this Note examines a Category Four nation that has recently moved toward gender equality in its nationality laws. After the Iranian Revolution of 1979, Iran’s government became a unitary Islamic republic, ruled by a combination of a president, one legislative house, the office of the Supreme Leader, and a Guardian Council which approves legislative decisions.<sup>160</sup> Iran ranks 118 out of 167 on the WPS Index, and most observers would conclude that it does not project a strong commitment to gender equality.<sup>161</sup> Notably, Iran is one of only six UN member nations that is not a signatory to CEDAW.<sup>162</sup> Several laws implemented during the 1979 Revolution that restrict female clothing and movement remain in place, thereby violating human rights standards.<sup>163</sup> Gender equality in government is also lacking, with women making up only 6 percent of the parliamentary body.<sup>164</sup> Furthermore, rights for the LGBTQ+ community are practically nonexistent outside of limited transgender protections.<sup>165</sup>

158. *Freedom in the World 2018 – Madagascar*, FREEDOM HOUSE (Sep. 5, 2018), <https://www.refworld.org/docid/5b964c964.html>.

159. *Madagascar Reforms its Nationality Law*, GLOBAL CAMPAIGN FOR EQUAL NATIONALITY RIGHTS (Jan. 2017), <https://equalnationalityrights.org/news/78-madagascar-reforms-its-nationality-law-guaranteeing-mothers-independent-right-to-confer-nationality-on-children>.

160. *See generally* Constitution of the Islamic Republic of Iran (Oct. 24, 1979), <https://www.refworld.org/docid/3ae6b56710.html>.

161. *See Women, Peace, and Security Index 2019/20 DATA*, *supra* note 9.

162. *Beyond the Veil: Discrimination against Women in Iran*, CEASEFIRE CENTER FOR CIVILIAN RIGHTS, 4 (Sept. 16, 2019), [https://minorityrights.org/wp-content/uploads/2019/09/MRG\\_CFR\\_Iran\\_EN\\_Sept191.pdf](https://minorityrights.org/wp-content/uploads/2019/09/MRG_CFR_Iran_EN_Sept191.pdf).

163. *See id.* at 4, 35.

164. Shima Esmailian, *As Women Make up Only 6% of Parliament, Gender Equality is Still a Long Way off in Iran*, RUSSIAN INTERNATIONAL AFFAIRS COUNCIL (Apr. 15, 2020), <https://russiancouncil.ru/en/analytics-and-comments/columns/middle-eastpolicy/as-women-make-up-only-6-of-parliament-gender-equality-is-still-a-long-way-off-in-iran/>.

165. *Map of Countries that Criminalize LGBT People*, *supra* note 32. The topic of trans rights and representations in Iran is sadly beyond the limited scope of this Note, but is worth reading about. For more, see S.T., *How Iran Persecutes Some LGBTQ+ Members while Subsidizing Others*, LSE BLOG (Apr. 12, 2021), <https://blogs.lse.ac.uk/humanrights/2021/04/12/how-iran-persecutes-some-lgbtq-members-while-subsidizing-others/>; Human Rights Report: Being Transgender in Iran,

Homosexuality remains illegal throughout the nation and is punishable by death, with individuals executed as recently as last year.<sup>166</sup>

Despite these significant gender equality issues, Iran has become the most recent nation to address sex discrimination in its nationality laws. Prior to this change, the Iranian Civil Code granted the right to confer nationality only to Iranian fathers, regardless of whether the child was born abroad or at home.<sup>167</sup> Children with absent, missing, or non-Iranian fathers could become stateless since nationality could not be conferred through mothers.<sup>168</sup> While no formal United Nations data exists on stateless populations in Iran, various Iranian news agencies have estimated that between forty-nine thousand and five-hundred thousand children remain stateless.<sup>169</sup> A 2017 survey by the Iranian Government put this number closer to fifty thousand.<sup>170</sup>

In October 2019, the Guardian Council of Iran approved parliamentary legislation allowing women to confer citizenship to their children, but only after significant pressure from internal social movements.<sup>171</sup> This same council had rejected a similar bill in June 2019, citing a concern for security.<sup>172</sup> The new bill grants women the right to confer their nationality.<sup>173</sup> However, to address the Council's security concerns, the bill requires mothers to formally apply for nationality for their children under eighteen years old, which will be granted as

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OutRight International, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf> (last visited Nov. 1, 2021).

166. See U.K. Home Office, *Country Policy and Information Note Iran: Sexual Orientation and Gender Identity or Expression* 4.1.6, 4.1.4 (June 2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/810845/CPIN\\_-\\_Iran\\_-\\_SOGI\\_-\\_v3.0\\_June\\_2019\\_EXT.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810845/CPIN_-_Iran_-_SOGI_-_v3.0_June_2019_EXT.PDF).

167. *Beyond the Veil: Discrimination against Women in Iran*, supra note 162 at 26.

168. *Id.*

169. *Id.* at 26.

170. *UNHCR Welcomes Iran's New Nationality Law Addressing Statelessness*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (Oct. 2019), <https://www.unhcr.org/ir/2019/10/08/unhcr-welcomes-irans-new-nationality-law-addressing-statelessness/>.

171. *Iran Women Married to Foreigners can Pass Citizenship to Children*, ALJAZEERA (Oct. 2, 2019), <https://www.aljazeera.com/news/2019/10/iran-women-married-foreigners-pass-citizenship-children-191002145229455.html>.

172. Tara Far, *Iran's Nationality Law Bill Highlights Challenges for Legislative Reform*, HUMAN RIGHTS WATCH (Aug. 9, 2019), <https://www.hrw.org/news/2019/08/09/irans-nationality-law-bill-highlights-challenges-legislative-reform>.

173. Administrative Action No. 24957/ T 57624 AH 1399/3/13, Regulation for granting Iranian citizenship to children born of Iranian women married to foreign men, Council of Ministers (June 2, 2020) <http://www.rk.ir/Laws/ShowLaw.aspx?Code=22043>; *Guardian Council Ratifies Bill Granting Citizenship to Children of Iranian Mothers, Foreign Fathers*, ISLAMIC REPUBLIC NEWS AGENCY (Oct. 2, 2019), <https://en.irna.ir/news/83500806/Guardian-Council-ratifies-bill-granting-citizenship-to-children>; *UNHCR Welcomes Iran's New Nationality Law Addressing Statelessness*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (Oct. 8, 2019) <http://unhcr.org/en/news/50796/UNHCR-welcomesIran's-new-nationality-law-addressing-statelessness>.

long as they do not pose a national security risk.<sup>174</sup> Individuals over eighteen years old who were previously denied citizenship because of their parentage may also apply.<sup>175</sup> However, as the Center for Human Rights in Iran points out, “the amendment leaves children and their loved ones subject to increased scrutiny by Iran’s intelligence establishment for seeking a basic right. It also discriminates against Iranian women, since there’s no legal provision for security checks on Iranian men married to foreign women.”<sup>176</sup> Since treatment is still gendered, Iran falls into a Category Four nation, but one that has recently made significant improvements.

What is interesting in Iran’s case is that its change is not attributed to its international legal obligations as signatories under the Convention for the Rights of the Child, International Covenant on Economic, Social and Cultural Rights, or the Convention on the Rights of Persons with Disabilities.<sup>177</sup> What brought about this change in Iran, rather, was a public domestic push for equality, spanning over a decade, and ultimately the voice of a specific woman: Maryam Mirzakhani.<sup>178</sup> Mirzakhani, a world-renowned mathematician and Stanford professor, was unable to get Iranian citizenship for her daughter due to the sex-discriminatory nationality laws.<sup>179</sup> In 2013, Mirzakhani publicly asked for Iranian citizenship conferral rights after being diagnosed with breast cancer.<sup>180</sup> As her cancer spread to her bones and liver in 2016, these calls for her daughter to hold Iranian nationality in her memory increased, with global support continuing even after her death.<sup>181</sup> Her story, and her dying wish for her daughter to have Iranian citizenship, inspired social pressure on the Iranian legislature to make the change.<sup>182</sup> Mirzakhani’s ability to effect change, where large governmental organizations could not, presents an opportunity to reconsider the effective catalysts for changing discriminatory nationality laws.

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174. See Administrative Action No. 24957, *supra* note 173.

175. *Id.*

176. *Children Born to Non-Iranian Fathers Win Right to File for Citizenship – With a Catch*, CENTER FOR HUMAN RIGHTS IN IRAN (Oct. 7, 2019), <https://iranhumanrights.org/2019/10/children-born-to-non-iranian-fathers-win-right-to-file-for-citizenship-with-a-catch/>.

177. Iran is not a member of CEDAW or the Convention relating to the Status of Stateless Persons. See *Status of Ratification Interactive Dashboard*, *supra* note 72, at “Iran.”

178. Rothna Begum, *Reforms Will Grant Nationality to Children of Iranian Women*, HUMAN RIGHTS WATCH (Oct. 3, 2019), <https://www.hrw.org/news/2019/10/03/reforms-will-grant-nationality-children-iranian-women>.

179. *Id.*

180. Frud Bezhan, *Iranian Lawmakers Aim to Scrap Discriminatory Citizenship Law*, Radio Free Europe, (July 19, 2017), <https://www.rferl.org/a/iranian-lawmakers-aim-to-scrap-discriminatory-citizenship-law/28625934.html>

181. Roshanak Asteraky, *The Extraordinary Life of Maryam Mirzakhani, ‘Queen of Mathematics,’* KAYHAN LIFE, (July 30, 2017), <https://kayhanlife.com/people/extraordinary-life-maryam-mirzakhani-queen-mathematics/>.

182. *Id.*

## V.

## PRINCIPLES FOR MOVING FORWARD

Several unifying factors can be drawn from the intersection of data presented. Change in the last twenty years has come from the use of existing non-discrimination protections, the willingness of courts to enforce those protections, and grassroots social activism. Looking forward, these three tools will likely motivate future changes. The twenty-five nations that still discriminate in nationality laws based on gender are already party to international frameworks which can support activists and offer policy feedback.<sup>183</sup> However, these countries have yet to change their laws to match their international obligations, which signals that more action is needed. While existing nondiscrimination laws would be an ideal method of challenging sex discrimination in nationality laws, this is not always an option. In countries where nondiscrimination laws exist, like Nepal, activists will likely continue to use the court system as a tool to pressure compliance with non-discrimination.<sup>184</sup> This can be a lengthy process if the court or the legislature has not adapted to cultural and legal norms at the same rate as the public. In the United States, it took three Supreme Court cases challenging the disparate treatment in nationality laws before a change was made.<sup>185</sup> This will likely be the case in Nepal as well, where the legislature's reluctance to match the country's demand for equality is resulting in more and more litigation.<sup>186</sup>

In countries without such protections, social activism targeting gender discrimination in nationality laws as a source of statelessness appears to be the key to change. While pressuring institutions to promote broad gender equality may have farther-reaching benefits, using statelessness as a narrative instead of issuing larger demands for equality has motivated change. Accordingly, activists in more restrictive countries, like Madagascar and Iran, should approach future changes through political and social activism.<sup>187</sup> In some cases, this may need to be done through non-profits to protect activist's anonymity in countries with high rates of violent government retribution.

As the number of stateless individuals increases, and the conversation about their rights grows, pressure on nations with sex discrimination in their nationality laws will increase. As history shows, sex-discriminatory nationality laws are a dying form of nationality criteria. Trends suggest that these laws will become obsolete through national action rather than international obligations, helping prevent a major cause of statelessness through the promotion of sex equality.

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183. *See supra* Section IV. A.

184. *See supra* Section IV. C. 1.

185. *See supra* Section IV. B. 1.

186. *See supra* Section IV. C. 1.

187. *See supra* Section IV. D. 1. & E.

VI.  
CONCLUSION

Nations are moving away from the use of sex discriminatory nationality laws. Not only do many international legal frameworks now discourage the use of these laws, but nations are also responding. The number of nations with such laws has decreased by 50 percent from twenty years ago. The reality is that there is no one variable that explains *why* nations have these laws. While gender equality is a strong indicator of which nations maintain these laws, this factor alone does not cause immediate change. Gender equality must be paired with institutional readiness and social activism. For nations that still have these laws, it is largely the result of slow institutional change. Nepal, which is ahead of its peers in addressing issues of gender equality and LGBTQ+ rights, has a legislature that does not represent the views of the nation due to political gridlock. Existing anti-discrimination laws help combat such gridlock by giving activists an avenue to challenge the discriminatory practices, as is seen in the United States.

In contrast, nations that have not yet achieved greater gender equality have managed to remove sex discrimination in nationality laws when public interest and activism advocate for institutional change, as seen in Madagascar. Activism, both by international institutions and local actors, is a consistent force for change within the gender equality framework. As seen in Iran, it is the overlap of institutional willingness, support for gender equality, and social activism that moves national laws toward change. While international frameworks have succeeded in promoting the conversation and offering aid, national action is the crucial element. The use of existing anti-discrimination laws, institutional flexibility, and activism have, and likely will remain, the catalysts of future change. Thus, these three factors can be used as principles to promote gender-neutral nationality laws in the future.