



Interconnectivity of Gender Inequality and Children Born Out of Wedlock with the Principle of Non-Discrimination and Statelessness

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<http://dx.doi.org/10.47814/ijssrr.v6i7.1348>

Abstract

To possess a nationality is essential to every human existence and should not be overlooked or disregarded but treated with the utmost seriousness. This study explores the disadvantages of not having a nationality and the perilous effect of gender inequality in nationality laws, which leads to statelessness for children born out of wedlock. Many academic researchers and policy-oriented studies have investigated the condition of statelessness since its emergence, including United Nations institutions. This study comments on the weaknesses and lapses of certain major international instruments and the interpretation and application of these international instruments on nationality and statelessness. In addition to evaluating what has been done to combat statelessness, it also reflects on what needs to be done and the strict adherence to the principle of non-discrimination by nations, organizations, and individuals.

Keywords: *Nationality; Non-Discrimination; Gender Equality; Statelessness; Children Born out of Wedlock; Human Rights*

Introduction

This study supports the view and standpoint that nationality is the right to have rights; it is a fundamental human right. It can be argued that you need life to enjoy other rights, including the right to a nationality. Nevertheless, what is life when there is no sense of identity? This is why the United Nations High Commissioner for Refugees (UNHCR) began a campaign to end statelessness called 'iBelong' (UNHCR iBelong Campaign, 2022). Evidently, the right to a nationality is just as important as the right to life in today's world and should be treated as such.

Gender Inequality, Children Born out of Wedlock, the Principle of Non-Discrimination, and Statelessness are just some 21st century problems battling the world at large, but are strongly linked to

human rights and human dignity. These global issues require global attention and cooperation in order to successfully tackle them, which is why this study focuses strategically on these subject matters; finding that gender inequality, is one of the major causes of statelessness in our world today.

Research Methods

Legal research is the process of understanding the law through the search for and discovery of legal answers to legal issues. Thus, legal research has also been characterised as carrying out research to identify the relevant principles and rules of law applicable to a specific problem and the legal solution in this study; statelessness (Uwakwe, 2021).

The statutory legal approach was applied in this study's problem approach. The statutory approach is used to examine all laws and regulations pertaining to the legal issues under consideration. The statutory technique is used to investigate the law of condominium agreements and ownership (Indomora, Darmawan & Hufon, 2023).

This research also used analytical legal research and applied legal research methods; where analytical legal research is a qualitative research method. It is a type of study that requires critical thinking skills as well as the examination of facts and information relevant to the research being undertaken. On the other hand, applied legal research is a means of locating a solution to a pressing practical situation. It is a basic and practical approach to the situation at hand. It entails conducting comprehensive study on a specific area of law, gathering information on all technical legal laws and principles used, and forming an opinion on the prospects for the client in the circumstance (Uwakwe, 2021).

I. Concepts of Nationality and Citizenship

Nationality and citizenship are used interchangeably as synonymous words. The bundling of these terms is primarily a result of the modern territorial nation-state and the viewpoint of nationalism, which asserts congruity between the state and the nation. It is also formed to rationalize itself in the name of the people and the sovereign nation that it claims to incorporate and represent (Egin & Turner, 2007).

The “nationalization of citizenship” concept, however, includes both the merging of nationality with citizenship and the interchangeable nature of nationality and citizenship. Fransman comprehensively distinguished between nationality and citizenship by opining that nationality portrays and categorizes the relationships between an individual and the state under international law (Fransman, 2011), while citizenship is the internal national relationship of an individual within the nation. While nationality is mainly used in the international realm and for international purposes, citizenship is used more domestically (Tiryakioğlu, 2006). Therefore, the concept of citizenship is strongly associated with belonging to a community, being a part of a community and culture of the community. This is why one may be a citizen of a nation and be subject to the jurisdiction of the relevant nation and not be a citizen of that nation (Tiryakioğlu, 2006). A perfect example is the Filipinos who are basically under and subject to the government of the United States of America (USA/US), as well as entitled to and enjoy protection from the US government abroad (Scott, 1930). Heywood opined that ‘citizenship therefore represents a relationship between the individual and the state, in which the two are bound together by reciprocal rights and obligations’ (Heywood, 2004).

Another striking difference between nationality and citizenship is in the aspect of companies, ships, and aircraft. They all have nationality and not citizenship for legal purposes (Tiryakioğlu, 2006). Also, while nationality is simply just being a national to a nation, citizenship is attached to being involved and being part of a community, the culture of the people of the community, and is more than just the legal

status of a person relative to a particular nation or nations. Citizenship is an advantage of nationality. Nationality is a link between a person and a state; it can also be said to be a human right. Citizenship on the other hand is granted to an individual having fully complied with legal formalities by the government of a country.

II. The Right to a Nationality as a Fundamental Human Right

According to Article 15 of the United Nations Universal Declaration of Human Rights (UDHR) 'Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality' (UN General Assembly 'Universal Declaration of Human Rights', 1948). By this, the UDHR has conferred upon every individual the right to have a legal link with a State. Thus, nationality is not only responsible for providing a person with a sense of identity; it also provides the individual with the protection of a Nation, as well as many civil and political rights. The political theorist Hannah Arendt, writing on the aftermath of the Second World War, argued that the dilemma of stateless people in the inter-war period resulted in the authenticity of a 'right to have rights'. This right to have rights is associated closely with the right to membership of a political community and the right to an identity (Alison, 2012). The right to a nationality has been intricately linked with the 'right to have rights' in multiple cases such as *Perez v. Brownell* (Macchesney, 1958) and *Trop v. Dulles* (Trop v. Dulles, 1958). In *Perez v. Brownell*, Warren, C.J held "Citizenship is man's basic right, for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen" (Macchesney, 1958). Also in *Trop v. Dulles*, it was stated that the punishment of denationalization violates the Eighth Amendment because it deprives the expatriate of the right to have rights (Trop v. Dulles, 1958).

Historically, states and not individuals were subjects of international law. Thus, today, with the numerous international human rights treaties, the ability of sovereign states to restrict individual rights is limited. Nonetheless, making individuals subjects of international law. Nationality therefore creates provisions for individuals to have a legal relationship to a state and therefore provides a connection to international law. Now, with the development of international human rights law, there has been a total eradication of the traditional view that nationality laws are within the exclusive domestic jurisdiction of sovereign states (Stratton, 1992).

The right to a nationality is a fundamental human right and should be treated with utmost attention (Güngör, 2020) (Weissbrodt, 2008) (Batchelor, 1998). This right simply implies the right of an individual to acquire, retain, or change a nationality (OHCHR, 2020). However, the right to a nationality is very essential because it provides the individual with a sense of identity. If an individual does not have a nationality/is stateless, it is impossible to fully enjoy other basic rights, such as: the right to education, right to good healthcare, the protection of the state, and many other civil and political rights (Achiron, 2005; Alibaba, 2021). As stated earlier, Article 15 of the UDHR bestows upon every individual, everywhere in the world the right to have a nationality.

The right to a nationality sprung up in the 16th century in a Spanish school of international law where Francisco de Vitoria opined that certain person 'cannot be excluded' from citizenship. Thus, the origination of the right to a nationality as a human right only took place in the mid-20th century. The right was however first mentioned in the American Declaration on the Rights and Duties of Man adopted 2nd of May, 1948. And afterwards, it was regulated under the UDHR (Ganczer, 2014).

In discussing the right to a nationality, it is pertinent to note that matters of nationality fall within the exclusive domestic jurisdiction of States (Alibaba, 2021). International law provides that the right of States to decide who their nationals are is not an absolute right, therefore states must comply with the human rights obligations on matters pertaining to nationality. That is why their laws must be consistent with international conventions, international custom, and the principles of law generally recognized with

regard to nationality (League of Nations ‘Convention on Certain Questions Relating to the Conflict of Nationality Law’, 1930).

III. International Protection of Women’s and Children’s Right to a Nationality against Statelessness

According to Article 1 of the UN General Assembly Convention relating to the Status of Stateless Persons of 1954, a stateless person is simply ‘a person who is not considered as a national by any State under the operation of its law’. They are therefore barred from enjoying the protection, rights and benefits offered by a nationality.

There are two kinds of statelessness: *de jure* and *de facto* statelessness. The above definition of statelessness according to the Convention relating to the Status of Stateless Persons refers to *de jure* statelessness; reasons being that it arises from the absence of the formal bond of nationality, where nationality is determined according to a nation’s domestic laws, giving nations the absolute competence to confer or withdraw their nationality. Thus, the operation of a nation’s domestic laws may leave a person without any nationality. *De facto* stateless persons are individuals outside the country of their nationality who, for legal reasons, are unable to avail themselves of the protection of that country.

In this section, several international instruments relating with the protection of women’s and children’s right to a nationality against statelessness will be analyzed. According to Article 1 of the 1930 Hague Protocol Relating to a Certain Case of Statelessness (League of Nations, ‘Protocol Relating to a Certain Case of Statelessness’, 1930). “In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State.” Although the aim of the rule is to prevent statelessness, it regulates situations when a mother can transmit her nationality to her children. Obviously as it would only be possible for a mother to transmit her nationality to her children in cases where children would otherwise become stateless is against gender equality (Alibaba, 2021).

When the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality law is considered, article 8 and 9 require special attention. According to article 8 if a woman acquires the nationality of her foreign husband, she will lose her original nationality. On the other hand, if a woman’s nationality law provides loss of nationality in case of marriage with a foreign man, this could only be possible if foreign man’s nationality law grants nationality to the married woman. Although gender equality is not taken into consideration regarding acquisition and loss of nationality, statelessness is tried to be prevented and right to a nationality is respected (Alibaba, 2021). It should be added that there is a rule regarding children born out of wedlock in the Convention but it doesn’t say anything about how to prevent statelessness in such cases. It only provides that when a legal bond is established between the child and the father, the child's loss of the existing nationality depends on the acquisition of another nationality.

The Declaration on the Rights of the Child of 1959 also adopted the right to a nationality as a resolution of the UN General Assembly (UN General Assembly, ‘Declaration of the Rights of the Child, 1959). However, it is a soft law and has never gained a binding force. Principle 3 of this Declaration only offers the ‘child’ the right to a nationality from his or her birth.

The Convention on the Reduction of Statelessness of 1961 is another international instrument that has helped in the reduction of statelessness. Although it does not contain the ‘right to a nationality’, Article 8 Paragraph 1 interdicts the deprivation of nationality (UN General Assembly, ‘Convention on the Reduction of Statelessness’, 1961). Therefore, states are obliged not to deprive anyone of their respective nationality if such deprivation would render them stateless, except for a few exceptions like fraud. Article

4 of the Convention requires special attention as it is related to children. It provides that: “A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person’s birth was that of that State.” As can be understood, the aim of the rule is to prevent statelessness at the time of birth by applying the principle of *jus soli* and by respecting gender equality.

The International Covenant on Civil and Political Rights (ICCPR) of 1966 in general, does not contain the right to a nationality. However, Article 24 Paragraph 3 only provides the right to acquire a nationality to children (UN General Assembly, ‘International Covenant on Civil and Political Rights’, 1966). According to UN Human Rights Committee States should take necessary measures both in their national legal systems and in their relations to make sure that every child will have a nationality at time of his/her birth (Human Rights Committee, 1989).

A convention was adopted in 1973 titled “Convention No. 13 to Reduce the Number of Cases of Statelessness” (International Commission on Civil Status, 1973) in Bern. According to article 1 of the Convention “A child whose mother holds the nationality of a Contracting State shall acquire that nationality at birth if he or she would otherwise have been stateless”. This provision also prevents statelessness of children born out of wedlock.

Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, ‘Convention on the Elimination of All Forms of Discrimination against Women’, 1979) (CEDAW) played a very important role regarding prevention of gender inequality. Within this framework, the Convention provides a rule which requires equal rights for men and women regarding acquisition, change and possession of nationality (article 9). Additionally, Article 9/2 obliges contracting states to provide equal rights to men and women on transmission of their nationality to children. Consequently, single or married all women will be able to transmit their nationalities to their children.

The Convention on the Rights of the Child (CRC) of 1989 was adopted to protect children’s rights in general against any form of discrimination. The principle of non-discrimination is well established and well spelt out amongst other guaranteed rights of the child in Article 2 of this Convention. The main question of concern is what makes child discrimination special and different from other forms of discrimination? Children often require special measures in determining discrimination and protection. It is, however, very important to take into account their distinct vulnerability with regards to the nation, as well as vis-à-vis their families and others. Children can also be discriminated against as a result of the actions of their parents; for example, getting pregnant outside wedlock, which results in a child born out of wedlock faced with a number of discriminatory practices especially with nationality issues (Samantha, 2005) (Alibaba, 2021). The UN Committee on Rights of the Child supports the idea that if children born out of wedlock are not recognized by their father, States must provide rules regarding transmission of mother’s nationality to children in their national legal systems (Doek, 2006). According to article 7 the child shall have the right from birth to acquire a nationality. Additionally, “States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.” (Article 7/2).

IV. Conceptualization of Non-Discrimination and Equality

The aim of this section is to outline the relation between non-discrimination and equality, their definitions, and how they are understood by various national legal systems. Due to the constant misuse and confusion of both concepts, this study however sees the importance of distinctively discussing them. Before proceeding with the discussion on non-discrimination and the right to equality, it is particularly important to review the concept of discrimination and its relationship with the concept of equality.

Therefore, the discussion of non-discrimination and equality is categorized by a significant conceptual and methodological misperception. Non-discrimination and equality are complicated ideas, with an extensive level of deliberations, arguments, and discussions on their meanings, use and justification. Notwithstanding, understanding how these concepts are interpreted and applied will be significantly useful in the contribution to the appropriate enforcement mechanism of equality law in the countries concerned across the globe. An in-depth understanding of these concepts requires an understanding of each and how they both relate to the other (McCrudden & Prechal, 2009).

It is extensively acknowledged that non-discrimination and equality are positive and negative statements of the same principle (Bayefsky, 1990). Equality can be defined as the individual having equal value with others in terms of being human (Bozkurt, 2006). Quite simply, equality is the absence of discrimination, and conversely perpetuating the principle of non-discrimination between groups will produce equality. Equality has two facets, the positive and negative side, the negative side of equality is what is often referred to as discrimination (Kalabalik, 2017; Karan, 2013). In most of the international and regional documents like UDHR article 2 and ICCPR article 2/1 equality is guaranteed with the provision of non-discrimination. Whereas, to define discrimination, the following elements must be in place; it must stipulate a difference in treatment, has a certain negative effect; and is based on a certain prohibited ground (Weiwei, 2004). According to UN Human Rights Committee discrimination means: "...any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." (UN Human Rights Committee 'CCPR General Comment No. 18: Non-discrimination', 1989).

Non-discrimination and equality both constitute the principal theme of a typical modern international law of human rights. Both principles are the foundation of every human rights law that has developed since the Second World War (Vijapur, 1993).

Shestack opined that non-discrimination and equality are central to the human rights movement (Shestack, 1984). Non-discrimination offers a solid foundation for human rights to be fully enjoyed, therefore it is important to investigate the sources of non-discrimination.

The principle of non-discrimination in nationality laws is a principle in which states are obligated to ensure that nationality is granted to everyone on equal footing. The mandate that everybody should be treated equal before the law seems to be one of the vital requirements of the rule of law. At the heart of international law today are two principles: first, states must guarantee that the right to a nationality is enjoyed on equal footing by everyone, in accordance with the principle of non-discrimination. Secondly, states have the obligation to prevent, and reduce statelessness (Van Waas, 2012). The assignment on the Prevention of Discrimination and Protection of Human Rights was fashioned by the UN to specifically deal with queries of discrimination. However, over the years, several grounds have been founded upon which discrimination is prohibited. It should be added that equality and non-discrimination are principles of international that form *jus cogens* (Juridical Condition and Rights of the Undocumented Migrants, Inter-American Court of Human Rights, 2003) and they are terms that can sometimes be used side by side and sometimes to mean the same thing (Karan, 2013).

V. Gender Inequality and Children Born out of Wedlock

Gender discrimination in civil registration law hinders women's ability to register their children at birth and for the purpose of this study, particularly for children born outside of wedlock. Birth registration is considered to be a 'first right' for every child by the UN (Ustek-Spilda & Oguz, 2016) Discrimination against women and children born out of wedlock also limits avenues to verify the paternity of non-marital children (Betsy, 2015).

Gender inequality is also called gender discrimination or discrimination based on sex and according to Article 1 of the CEDAW (UN General Assembly, ‘Convention on the Elimination of All Forms of Discrimination against, 1979), the term “discrimination against women” shall mean thus; ‘Any distinction, exclusion or restriction made based on 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.’ Regarding nationality gender equality refers to wife’s and husband’s acquisition of each other’s nationality under same conditions and transmission of their nationalities to their children under same circumstances.

However, UNHCR’s survey on nationality legislation found that equality between men and women regarding the transfer of nationality to children has not yet been attained in 25 countries, and these countries are located in almost all parts of the world (UNHCR, ‘Background Note on Gender Equality, Nationality Laws and Statelessness 2022’, 2022). Most nationality laws in Africa discriminated on the basis of gender at the time of independence and up until recently. If the father was not also a citizen, female citizens could not pass on their nationality to their foreign spouses or to their children (Manby, 2016; Abdulbari, 2011). Many provisions found in nationality laws regarding birth registration may clearly dismiss women from registering their children at birth; some nations may only allow women register births in very exceptional conditions, while some nationality laws only allow women to register births when they can prove a valid legal marriage certificate indirectly proving the child was born in wedlock and not out of wedlock (UNHCR & UNICEF, ‘Background Note on Sex Discrimination in Birth Registration’, 2021).

As a result of gender discrimination in nationality laws, a woman may then become stateless if she does not automatically receive the nationality of her husband or if her husband has no nationality. Also, a woman can equally become stateless if, after she receives her husband’s nationality, the marriage is dissolved and she loses the nationality acquired through marriage, but her original nationality is not automatically restored (Achiron, 2005) which the Convention on the Nationality of Married Women is against (UN General Assembly, ‘Convention on the Nationality of Married Women’, 1958).

There are different forms of gender discrimination in ways whereby women can be discriminated against in nationality laws. They are:

- A woman is likely to encounter deprivation of her nationality upon marriage to a foreigner or change in her husband’s nationality. Before 1910, a wife automatically possessed her husband’s nationality under almost all state nationality laws except for some South American countries, which often resulted in statelessness by marriage (Stratton, 1992; 199) .
- States often make special provisions for the naturalization of foreign spouses of nationals to only spouses of men and not foreign spouses of women. A good example of this is Sudan, where a foreign woman can acquire Sudanese citizenship by marriage but foreign man cannot (The Sudanese Nationality Act 1994 and Sudanese Nationality Act (Amendment) 2011 and 2018, 2018). Also, states are fond of having very stringent requirements for foreign male spouses as it is in the cases of Nigeria (Constitution of the Federal Republic of Nigeria, 1999).
- Finally, it has been observed that some states also discriminate against women’s capability to pass their nationality to their children, even though the birth was done in the mother’s country of origin. This is usually quite common with states using the *jus sanguinis* approach because some states applying this approach only grant nationality through the father like Kuwait (Kuwait Nationality Law, 1959). Again, in Sudan children of Sudanese man automatically acquire Sudanese citizenship while children of Sudanese woman should apply to competent authority for acquisition. (The Sudanese Nationality Act 1994 and Sudanese Nationality Act (Amendment) 2011 and 2018, 2018).

These discriminatory provisions deny citizenship to the children of a woman who is married to a foreigner, while on the other hand, granting citizenship to the children of a man who is married to a foreigner (Stratton, 1992; 199).

In many nations, women cannot confer their nationality onto their children, and for children born out of wedlock, the case is different and treated differently which brings about discrimination on the acquisition of nationality leading to statelessness.

A recent survey on nationality laws carried out by the UNHCR found that about 25 countries do not permit mothers to confer their nationality to their children on equal basis to their fathers, which eventually leads to statelessness (UNHCR, 'Background Note on Gender Equality, Nationality Laws and Statelessness 2022', 2022).

However, some countries have had national law reform, like that in Iran in 2019 that permits Iranian mothers to confer their nationality to their children less than 18 years. Before then, Iranian mothers were not allowed to confer their nationality to their children regardless of statelessness; First ID Cards issued for children of Iranian mothers, foreign fathers abroad (Tehran Times Straight Truth, 2021). According to Iranian nationality law, nationality is granted based on the *jus sanguinis* and *jus soli* concepts, both of which disadvantage women. Regardless of where they are born, all children of Iranian fathers are automatically given the nationality of Iran; but, for many years, Iranian women were not allowed to pass on their nationality to their offspring due to the country's nationality law (Constitution of the Islamic Republic of Iran, 1979). But with the UNHCR iBelong campaign and awareness, Iran has amended its nationality law, now permitting mothers to transfer their nationality to their children if the child would otherwise become stateless wherever they are born. However, the Government of Iran still has the discretion in granting or rejecting the conferral nationality request which is still slightly discriminatory as it is not the same situation with fathers (UNHCR, 'Background Note on Gender Equality, Nationality Laws and Statelessness 2022', 2022).

In 2017, Madagascar (UN High Commissioner for Refugees (UNHCR) 'Madagascar: UNHCR welcomes new law giving men and women equal rights to transfer nationality to children', 2017), Sierra Leone (Sierra Leone Citizenship Act, 1973) and the United Arab Emirates (UAE) accepted the iBelong campaign and reformed their nationality laws to allow women confer their nationality to their children (UNHCR, 'Background Note on Gender Equality, Nationality Laws and Statelessness 2022', 2022).

Nevertheless, Qatar is a perfect example of a country that does not permit a Qatari mother to confer her nationality to her child without any exception, regardless of if it will result in statelessness (Law No. 38 of 2005 on the acquisition of Qatari nationality, 2005). This is a clear example for this study that explores how gender discriminatory nationality laws can lead to statelessness. Similarly in Kuwait, if a child is born out of wedlock or born to an unknown father or a father without a nationality, the Kuwaiti mother cannot transfer her nationality to her child. Leaving the child stateless until the child is of a majority age (UNHCR, 'Background Note on Gender Equality, Nationality Laws and Statelessness 2022', 2022; Kuwait Nationality Law, 1959).

The precise number of stateless people in the world today is unknown, but the UNHCR makes a proper approximation that there are many millions of stateless persons globally; of which an estimation of the current stateless people, one third are children (UNHCR, 'Statelessness around the World 2022' 2022). The beginning of a stateless child is a faulty birth registration system discriminating against women registering their children by themselves and children born out of wedlock.

Throughout the period of the second half of the twentieth century, the discrimination between children born in wedlock and out of wedlock fizzled out gradually in almost all the European nations as a

result of the impact and effectiveness of the European Convention on Human Rights (ECHR) and its applications by the ECtHR (European Court of Human Rights) (Alessia, 2016).

A landmark case reviewed by the ECtHR is *Marckx v. Belgium*. According to the judgment of this case, in conjunction with Article 8 and Article 1 respectively of the ECHR, it was said that the Belgian law infringed on the right to private and family life (ECtHR; *Marckx v. Belgium*, 1979). In another striking case in France about a child discriminated against in accessing his mother's inheritance because he was born out of wedlock- *Mazurek v. France*. The French national court assessed and rejected Mazurek's appeal for his mother's inheritance. Mazurek, having been rejected, further appealed to the ECtHR. The ECtHR, relying on Article 8 and Article 14 (principle of non-discrimination) found a violation of the ECHR by the French national court based on 'principle of discrimination' because the French national court had treated people in similar circumstances differently, without any justifiable reasons (ECtHR; *Mazurek v. France*, 2000). Also, in Germany, before the German reform in 1997, there were several cases of discrimination against children born out of wedlock. Usually they were referred to as 'illegitimate' children, and these children, even though recognized by legitimate parents, could not inherit from their parents. Striking cases to this effect are *Brauer v. Germany* (ECtHR; *Brauer v. Germany*, 2009) and *Anayo v. Germany* (ECtHR; *Anayo v. Germany*, 2010).

However, there is also a striking case in Malta of a child born out of wedlock to a British woman and a Maltese man: *Genovese v. Malta*. His mother applied for Maltese citizenship for her son but was rejected in view of Sections 5(2)(b) and 17(1)(a) of the Maltese Citizenship Act, which stated that children born out of wedlock were only eligible for Maltese citizenship if their mother was Maltese and, in this case, the mother is British. The Maltese court gave a decision that the child cannot acquire the Maltese citizenship because there has to be legitimation, in this case marriage between father and mother. The ECtHR however declared the application admissible unanimously and held by six votes to one that there has been a violation of Article 14 in conjunction with Article 8 of the Convention. The court also underlined that 'nationality' is part of a person's identity which is linked to the right to respect for private life (ECtHR; *Genovese v. Malta*, 2011).

VI. The Fight against Statelessness and Discrimination

There are numerous causes of statelessness as it can result from a variety of circumstances, such as: conflict of national laws on renunciation, state succession, wars, automatic loss of nationality etc. However, this paper narrows the numerous causes of statelessness to gender-discriminatory nationality laws. That is, national law and practices that affect particularly women (gender inequality) and children born out of wedlock.

This section of the study seeks to answer the very prominent question of what discrimination and inequality have to do with statelessness and why it is necessary to not just fight statelessness alone, but to fight both statelessness and discrimination. The unique fact about statelessness is that it cannot be addressed in isolation; it has to be addressed alongside its causes and propagation, which is why discrimination and inequality are strongly discussed as being the major causes of statelessness in the world today.

The problem of discrimination, inequality and statelessness has posed new challenges to the international community, hindered by the inactions and a game of shifting responsibility. Currently, there are about 10 million stateless persons worldwide under the UNHCR's protection mandate. In addition to this, there are also around 3.5 million Palestinian stateless persons in need of international protection (Van Waas, De Amal & Albarazi, 2014; 7).

The fight against statelessness is a global issue that requires global attention and cooperation to fight against it. The issue of reduction of statelessness was first deliberated by the General Assembly and

a conference was convened to conclude the 1961 Convention. Apart from the 1954 and 1961 Conventions, the European Convention on Nationality (ECN) of 1997 provides further confirmation that the regional standards now in place put Europe at the forefront of the fight against statelessness and discriminatory national law. The ECN however, is a consequence of European countries not including the right to a nationality in the ECHR. But it should be noted that there is no effective mechanism for enforcement of ECN, unlike the ECHR. However, when compared with the ECHR, the ECN is weak. With its adoption, the ECHR began to indirectly consider the things regulated in the ECN. In the preamble of the ECN, paragraph 7 which deals with the '*respect for family life*', gives the ECtHR a clue about the respect for family life for nationality cases; a perfect example of this is the *Kafkasli v. Turkey*. In this case, the then European Commission on Human Rights ruled that the regulations resulting from the status of a stateless person should not constitute an invasion of the applicant's (Kafkasli) private and family life (ECtHR; *Kafkasli v. Turkey*, 1995). After the *Kafkasli* case, the ECtHR started to review nationality issues like the *Genovese* case. This means the ECtHR is helping European countries fight against statelessness and discrimination. While nationality is not within the jurisdiction of the European Court of Justice (ECJ), each member state determines who its nationals are, in the *Rottman* case, (ECJ; *Rottmann v. Freistaat Bayern*' 2010) the ECJ reviewed an issue regarding nationality, where it was understood that the ECJ plays a vital role in fighting against statelessness.

Also, in both America and Africa, the right to a nationality has explicitly been included in Article 20 of the American Convention on Human Rights and Article 6 of the African Charter on the Rights and Welfare of the Child, respectively with the Inter-American Court of Human Rights and African Court on Human and Peoples' Rights as an enforcement mechanism to ensure obligation and cooperation (Van Waas, 2012; 245).

Conclusion and Recommendations

It is safe to certify that gender inequality is one of the major causes of statelessness especially for children born out of wedlock which is rarely emphasized on. For this reason, the UNHCR is steadily promoting gender equality in nationality laws as part of its mandate to prevent, fight and reduce statelessness in the world as a whole. Also, as specified by both the ICCPR and the CRC, all children, irrespective of where they were born and how they were born, should be registered immediately at birth and must acquire a nationality. But these international instruments are not effective without the cooperation of national laws, because the nationality of a child will be determined according to the laws of the nation involved.

This study proffers possible solutions and ways out of the said problem discussed. Thus, this study concludes by recommending possible solutions for achieving a drastic reduction to statelessness in the world. These recommendations are in five-fold:

Firstly, the problem of discrimination is at the root of statelessness. Precluding women from having the opportunity to transfer their nationality where there is a great probability of the child being stateless should be highly discouraged. The rationale behind women not being able to transfer their nationality to their own children is one that is very absurd considering the paternity of the child could be argued but not the maternity. It is undoubtedly clear due to natural circumstances that this is the mother of the child. The solution to this is for states to fully adopt the principle of non-discrimination in all ramifications pertaining to nationality. If a child being born out of wedlock will lead to that child becoming stateless due to the absence of the father, then the mother of the child should be allowed to transfer her nationality to the child without any discretion.

Secondly, it is impossible to address the issue of statelessness without paying attention to human rights. So far, this study has been able to prove beyond a reasonable doubt that statelessness is a violation

of a fundamental right. The right to have rights is the basis upon which every other right can be maximally enjoyed. Therefore, states should respect and hold in great esteem their obligations to promote and protect human rights within their territory and act as agents for the protection of human rights in cooperation with other states outside their territory.

Thirdly, states should adopt a system this study calls ‘on the point citizenship’ as part of the birth registration process. This should be adopted in states that do not operate the *jus soli* approach. It is understood from the Roman law era where citizenship was initially practiced, it was *jus sanguinis*. This study reasoned that this could mean that citizenship is not just merely a privilege but a strong link between the individual and the state. Therefore, this ‘on the point citizenship’ is a temporary citizenship given by the state to a child who will become stateless due to circumstances. This method of citizenship is given with strict conditions, which are:

1. The child loses the temporary citizenship if they fully acquire another nationality.
2. The child loses this citizenship if the child leaves the state for a period of 5-10 years. This is because there is no genuine link between the child and the nation of birth of the child.
3. If the parents of the child have successfully transferred their nationality to the child.
4. The child can also retain citizenship by becoming permanent, if the parents of the child are not citizens and they decide to reside within the said state for a long period. Thereby establishing a genuine link between the state and the child.

It is important to note that this concept is not an avenue for dual nationality. It is only a softer substitute of *jus soli* for nations who do not adopt the *jus soli* approach and it will be totally illogical to tell states to now begin to adopt an approach that has never been in their system. For example, Nigeria adopts the *jus sanguinis* approach. Now, in order for Nigeria to help contribute in the fight against statelessness, Nigeria can choose to adopt this on the point citizenship that comes with conditions. This is very relevant in the fight against statelessness as it is temporary, does not create an avenue for dual nationality, the state has full control over determining its conditions, and most importantly it prevents statelessness from birth. By this also, states are indirectly ratifying both the 1954 and 1961 Convention and fulfilling their obligations. The UNHCR should also encourage and incorporate the ‘on the point’ citizenship in the iBelong Campaign.

Fourthly, even though this study focuses on children born out of wedlock, it also focuses on the problem of statelessness more generally as it also affects adults. This fourth point is directed to stateless adults. States should cooperate amongst themselves by ensuring that no one state fully allows an individual to renounce their citizenship until another is acquired successfully. States should however try to facilitate naturalization processes, as well as create easy access for the acquisition and the confirmation of documents process. For individuals who are already stateless, like the United Kingdom that has different categories of citizenship, states should provide an adequate mechanism or create another category of citizenship that will protect them from any form of abuse associated with being stateless and allow them enjoy certain basic rights if not all the rights as a regular citizen.

Fifthly, states and international organizations like the UNHCR should support and adopt relevant research works by academicians on statelessness. This is because rigorous research has been carried out on the subject matter which leads to great recommendations. Even Non-Governmental Organizations are required to show support in the fight against statelessness.

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