

Committee on the Elimination of Discrimination Against Women
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Re: Malawi – 62nd Pre-sessional Working Group of the Committee (9-13 March 2015)

23 January 2015

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on the Elimination of Discrimination Against Women (the Committee's) discussion of Malawi at its 62nd Pre-sessional Working Group of the Committee (9-13 March 2015). This letter will focus on continued violations of women's nationality rights in Malawi in violation of Article 2 (policy measures), and Article 9 (nationality) of the Convention on the Elimination of All Forms of Discrimination Against Women.

Equality Now, Equal Rights Trust, Women's Refugee Commission, and the Institute on Statelessness and Inclusion submit this letter on behalf of the Global Campaign for Equal Nationality Rights, a coalition of international and national organizations that promotes gender equality in nationality laws, so that women and men can confer, acquire, change and retain their nationality on an equal basis.

As a party to the Convention, Malawi has obligations to ensure that women enjoy equality in the area of nationality. Article 9 states that:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

In its recent General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee confirmed that Article 9

extends an obligation to ensure equality between men and women in the ability to confer their nationality to their spouse.

The Citizenship Act of 1966, presently in effect, discriminates against women in respect of their ability to retain their nationality and their ability to confer nationality to a foreign spouse.

Such distinctions in the retention and transmission of citizenship violate the right to equality, and constitute discrimination on the basis of sex. As illustrated above, under Article 9(1) of the Convention, Malawi is required to ensure that women enjoy equal rights with men to acquire, change and retain their nationality, while the Committee has confirmed that Article 9 also creates an obligation to ensure equality between men and women in the ability to confer nationality to spouses.

Section 24 of the Constitution of Malawi mandates equal rights for women, and explicitly highlights equality as it applies to citizenship and nationality. “Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status which includes the right...to acquire, retain citizenship and nationality.”

The government itself has recognized in national reports and to the CEDAW Committee that the Citizenship Act is in contradiction to women’s equal rights as enshrined in the country’s Constitution and in accordance with Malawi’s commitments under international conventions including CEDAW. In a 1996 report, the Government stated its intention to ensure women’s equal citizenship rights. In Malawi’s 2010 CEDAW review, the government reported that a new immigration and citizenship policy was drafted, and that a policy review was in process with the support of IOM. The government reported that this process was anticipated to address the disparities in treatment between women and men in terms of the citizenship and immigration laws. According to the government in 2010, “The discussions are at an advanced stage and it is hoped that the policy will be finalized soon.”

We very much welcome the recognition by the government of Malawi of these disparities and its stated intention to address them. We hope the Committee will emphasize the need for the Malawian government now to remove any remaining discrimination in nationality provisions in the law without further delay.

We would respectfully urge the Committee to raise with the Malawian government in its List of Issues the following questions with regard to gender discrimination in the country’s nationality law:

- What is the current status of plans to remove all remaining discrimination from nationality provisions in the law?
- Are there presently major obstacles to ensuring equal citizenship rights for women and, if so, how does the government plan to address these obstacles?
- What steps is the government planning to publicize any new laws and policies on nationality and train officials on their proper implementation?
- What support is needed, if any, to further this process?

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

Global Campaign for Equal Nationality Rights
Equality Now
Equal Rights Trust
Institute on Statelessness and Inclusion
Women's Refugee Commission