



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

### General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women

#### I. Introduction

1. Through the present general recommendation, the Committee on the Elimination of Discrimination against Women aims to provide authoritative guidance to States parties on legislative, policy and other appropriate measures to ensure the implementation of their obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto regarding non-discrimination and gender equality relating to refugee status, asylum, nationality and statelessness of women.

2. The Convention is a dynamic instrument that contributes and adapts itself to the development of international law. The present general recommendation builds on the Committee's earlier general recommendations, including No. 19 on violence against women, No. 26 on women migrant workers, No. 28 on the core obligations of States parties under article 2 of the Convention and No. 30 on women in conflict prevention, conflict and post-conflict situations, as well as on reports of States parties under the Convention and the Committee's concluding observations thereon. It also builds on the Committee's consideration of individual communications and its conduct of inquiries under the Optional Protocol.

3. In section III, the Committee seeks to ensure that gender equality and non-discrimination obligations are upheld by States parties to the Convention in respect of women asylum seekers and refugees throughout the displacement cycle, with a focus on asylum processes. In section IV, the Committee seeks to ensure that gender equality and non-discrimination principles are upheld by States parties in relation to women's right to nationality, including the right to acquire, change or retain their nationality and to confer their nationality on their children and spouses.



## II. Scope of the general recommendation

4. The scope and purpose of the present general recommendation must be determined in the context of the overall scope and purpose of the Convention, which is to eliminate all forms of discrimination against women in the recognition, enjoyment or exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, irrespective of their marital status. Within this overall scope, the objective of the present general recommendation is to guide States parties on how to address all aspects of their obligations under the Convention and assume their obligations to respect, protect and fulfil the rights of refugee, asylum-seeking and stateless women to non-discrimination and substantive equality, in times of peace, in situations of international and non-international armed conflict and in situations of occupation.

5. The Convention, as a gender-specific human rights instrument, covers other rights that are not explicitly mentioned therein, but that have an impact on the achievement of equality of women and men.<sup>1</sup> As such, the Convention provides a gender-sensitive interpretation of human rights law and protects women from sex- and gender-based discrimination with regard to all the human rights contained in the Universal Declaration of Human Rights and other human rights instruments.<sup>2</sup> Such application of the Convention was elaborated by the Committee in relation to the prohibition of violence against women as a form of discrimination against women in its general recommendation No. 19, in which it enumerated some of those protected rights, including the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The present general recommendation specifically addresses the application of the Convention to the right to asylum contained in article 14 of the Universal Declaration of Human Rights, the principle of non-refoulement of refugees and asylum seekers in accordance with existing obligations under international refugee and human rights instruments and the right to nationality contained in article 9 of the Convention and the protection against statelessness.

6. The Committee has, in previous general recommendations, clarified that articles 1, 2 (f) and 5 (a) of the Convention read together indicate that the Convention covers sex- and gender-based discrimination against women. The Committee has explained that application of the Convention to gender-based discrimination falls under the definition of discrimination contained in article 1, which points out that any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms is discrimination. Discrimination against women based on sex and/or gender is often inextricably linked with and compounded by other factors that affect women, such as race, ethnicity, religion or belief, health, age, class, caste, being lesbian, bisexual or transgender and other status.<sup>3</sup> Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must

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<sup>1</sup> General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention, para. 7.

<sup>2</sup> General recommendation No. 28, para. 3, and general recommendation No. 25 on article 4, paragraph 1, of the Convention, on temporary special measures, para. 13.

<sup>3</sup> General recommendation No. 28, paras. 5 and 18.

legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.

7. The Committee notes that the experiences of women during displacement, from asylum to integration, return or settlement in a third country, in addition to those of stateless women, are shaped by the action or inaction of various actors. States parties bear the primary responsibility for ensuring that asylum-seeking women, refugee women, women nationality applicants and stateless women within their territory or under their effective control or jurisdiction, even if not situated within their territory, are not exposed to violations of their rights under the Convention, including when such violations are committed by private persons and non-State actors.<sup>4</sup>

8. In the context of asylum, refugee status, nationality and statelessness, the obligation to respect requires that States parties refrain from engaging in any act of discrimination against women that directly or indirectly results in the denial of the equal enjoyment of their rights with men and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with that obligation.<sup>5</sup> States parties also have a due-diligence obligation to take the legislative and other measures necessary to prevent and investigate acts of discrimination against women that are perpetrated by non-State actors, to prosecute and adequately punish perpetrators of such acts and to provide reparations to women who are victims of discrimination. The obligation to protect requires States parties to, among other things, take all appropriate measures to ensure that State and private actors do not unlawfully infringe on the rights of women. The obligation to fulfil encompasses the obligation of States parties to facilitate access to and provide for the full realization of women's rights. It also requires States parties to promote de facto or substantive equality with men through all appropriate means, including through specific and effective policies and programmes aimed at improving the position of women and achieving such equality, including, where appropriate, through the adoption of temporary special measures in accordance with article 4 (1) of the Convention and general recommendation No. 25.

### **III. Relationship between the Convention, international human rights law and international refugee law**

9. The Convention is part of a comprehensive international human rights legal framework that operates simultaneously with international refugee law and the laws relating to the status of stateless persons and the reduction of statelessness. There is an important overlapping interrelationship between international human rights law, including the Convention, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, and the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The shared objective of the two protection regimes should ensure the complementary and cumulative protection of refugees, asylum seekers and stateless persons.

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<sup>4</sup> General recommendation No. 28, and general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations.

<sup>5</sup> General recommendation No. 28, para. 9.

10. The provisions of the Convention reinforce and complement the international legal protection regime for refugees and stateless women and girls, especially because explicit gender equality provisions are absent from relevant international agreements, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.<sup>6</sup>

11. Given that the Convention applies at every stage of the displacement cycle, it serves to prohibit sex- and gender-based discrimination at every stage: during the refugee status determination procedure, throughout the return or resettlement process and throughout the integration process for women who have been granted asylum. It also applies to processes of statelessness determination and to processes relating to women acquiring, retaining or changing their nationality or conferring their nationality on their children and spouses.

## **IV. Application of non-discrimination and gender equality to international refugee law**

### **A. General comments**

12. While noting that the definition of a refugee under the 1951 Convention relating to the Status of Refugees provides criteria for the determination of refugee status in relation to persons who are explicitly covered under the Convention, the Committee notes that the present general recommendation covers all women in need of international protection under the Convention and seeks to apply the protection of the Convention to all women in the context of refugee status and asylum. However, the criteria provided by the definition of the word “refugee” in the 1951 Convention are important for the identification of women in need of international protection. At the same time, the Committee notes that regional refugee instruments and national laws have accepted and also expanded upon the definition given in the 1951 Convention to cover a range of persons in need of international protection for reasons of, variously, international or internal/non-international armed conflict and occupation, events seriously disturbing public order, serious human rights violations or generalized violence.<sup>7</sup>

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<sup>6</sup> See UNHCR, “Guidelines on statelessness No. 4: ensuring every child’s right to acquire a nationality through articles 1-4 of the 1961 Convention on the Reduction of Statelessness” (HCR/GS/12/04), paras. 13-15. Available from [www.refworld.org/docid/50d460c72.html](http://www.refworld.org/docid/50d460c72.html).

<sup>7</sup> See Organization of African Unity Convention governing the specific aspects of refugee problems in Africa of 1969, article I (2), which states: “The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”. The Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held in Cartagena de Indias, Colombia, from 19 to 22 November 1984, states in section III (3) that “the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have

13. The Committee notes that asylum seekers seek international protection on the basis that they cannot return to their country of origin because they have a well-founded fear of persecution or are at risk of being ill-treated or subjected to other serious harm. It also notes that under article 1A(2) of the 1951 Convention relating to the Status of Refugees the reasons for persecution must be linked to one of the five grounds listed therein: race, religion, nationality, membership of a particular social group or political opinion. Gender-related persecution is absent from the text. The present general recommendation is intended to ensure that States parties apply a gender perspective when interpreting all five grounds, use gender as a factor in recognizing membership of a particular social group for purposes of granting refugee status under the 1951 Convention and further introduce other grounds of persecution, namely sex and/or gender, into national legislation and policies relating to refugees and asylum seekers. It should be noted that, in other international, national and regional contexts, asylum is also provided to persons who cannot be returned to their countries of origin owing to, among other things, threats to their lives or torture or inhuman or degrading treatment. Those forms of complementary protection are also covered herein.

14. There are many reasons why women are compelled to leave their homes and seek asylum in other countries. In addition to aggravated or cumulative forms of discrimination against women amounting to persecution, women experience violations of their rights throughout the displacement cycle. The Committee recognizes that displacement arising from armed conflict, gender-related persecution and other serious human rights violations that affect women compounds existing challenges to the elimination of discrimination against women. It also recognizes the persistence of other forms of exploitation concomitant with displacement, such as trafficking for purposes of sexual or labour exploitation, slavery and servitude. The Committee therefore reiterates the obligation of States parties to treat women with dignity and to respect, protect and fulfil their rights under the Convention at each stage of the displacement<sup>8</sup> cycle, as well as in the enjoyment of durable solutions, including integration and/or resettlement in receiving States and/or voluntary repatriation to their State of origin.

15. Gender-related forms of persecution are forms of persecution that are directed against a woman because she is a woman or that affect women disproportionately.<sup>9</sup> The Committee observes that understanding the way in which women's rights are violated is critical to the identification of those forms of persecution. The Committee notes that violence against women that is a prohibited form of discrimination against women is one of the major forms of persecution experienced by women in the context of refugee status and asylum. Such violence, just as other

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seriously disturbed public order". In addition, directive 2011/95/EU of the European Parliament and of the Council of the European Union of 13 December 2011 pertains to standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

<sup>8</sup> The word "displacement" in the present general recommendation refers to those persons who have fled and crossed their country's borders.

<sup>9</sup> See the definition of gender-based violence in paragraph 6 of general recommendation No. 19 on violence against women. See also UNHCR, "Guidelines on international protection: gender-related persecution within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", guideline No. 1 (HCR/GIP/02/01), paras. 3, 9, 16 and 17.

gender-related forms of persecution, may breach specific provisions of the Convention. Such forms are recognized as legitimate grounds for international protection in law and in practice.<sup>10</sup> They may include the threat of female genital mutilation, forced/early marriage, threat of violence and/or so-called “honour crimes”, trafficking in women,<sup>11</sup> acid attacks, rape and other forms of sexual assault, serious forms of domestic violence, the imposition of the death penalty or other physical punishments existing in discriminatory justice systems, forced sterilization,<sup>12</sup> political or religious persecution for holding feminist or other views and the persecutory consequences of failing to conform to gender-prescribed social norms and mores or for claiming their rights under the Convention.

16. Gender-related claims to asylum may intersect with other proscribed grounds of discrimination, including age, race, ethnicity/nationality, religion, health, class, caste, being lesbian, bisexual or transgender and other status.<sup>13</sup> The Committee is concerned that many asylum systems continue to treat the claims of women through the lens of male experiences, which can result in their claims to refugee status not being properly assessed or being rejected. Even though gender is not specifically referenced in the definition of a refugee given in the 1951 Convention relating to the Status of Refugees, it can influence or dictate the type of persecution or harm suffered by women and the reasons for such treatment. The definition in the 1951 Convention, properly interpreted, covers gender-related claims to refugee status.<sup>14</sup> It must be emphasized that asylum procedures that do not take into account the special situation or needs of women can impede a comprehensive determination of their claims. For example, asylum authorities may interview only the male “head of household”, may not provide same-sex interviewers and interpreters to allow women to present their claims in a safe and gender-sensitive environment or may interview women asylum seekers in the presence of their husbands or male family members who may in fact be the source or sources of their complaints.

## B. Principle of non-refoulement

17. The principle of non-refoulement of refugees is the cornerstone of refugee protection and is a norm of customary international law. Since its formal codification in the 1951 Convention relating to the Status of Refugees, it has been developing and has been integrated into international human rights instruments, namely the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3) and the International Covenant on Civil and Political Rights (art. 7). In addition, the prohibition of refoulement to a risk of cruel,

<sup>10</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 2, and general recommendation No. 28, para. 9.

<sup>11</sup> On trafficking as a basis for refugee status, see UNHCR, “Guidelines on international protection: the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked”, guideline No. 7 (HCR/GIP/06/07).

<sup>12</sup> General recommendation No. 19, para. 22; general recommendation No. 21 on equality in marriage and family relations, para. 22; and communication No. 4/2004, *A.S. v. Hungary*, views adopted by the Committee on 14 August 2006.

<sup>13</sup> See footnote 3 above; communication No. 19/2008, *Cecilia Kell v. Canada*, views adopted by the Committee on 28 February 2012, para. 10.2.

<sup>14</sup> UNHCR, “Guidelines on international protection: gender-related persecution”, para. 6 (see footnote 9 above).

inhuman or degrading treatment or punishment is codified in a number of regional human rights treaties and international non-binding documents.<sup>15</sup>

18. Bearing in mind that the vast majority of States have become parties to international instruments prohibiting the refoulement of asylum seekers and refugees, in addition to State practice and, among others, the practice whereby non-signatory States to the 1951 Convention relating to the Status of Refugees host large numbers of refugees, often in mass-influx situations, the prohibition of refoulement of refugees, as enshrined in article 33 of the Convention and complemented by non-refoulement obligations under international human rights law,<sup>16</sup> constitutes a rule of customary international law.<sup>17</sup>

19. Article 3 of the Convention against Torture prohibits removal of a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee against Torture, in its general comment No. 2, has explicitly situated gender-based violence and abuse within the scope of the Convention against Torture.<sup>18</sup> Articles 6 and 7 of the International Covenant on Civil and Political Rights also encompass the obligation on States not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm in the country to which the person will, or may subsequently, be removed. The Human Rights Committee has further noted that the absolute prohibition of torture that is part of customary international law includes, as an essential corollary component, the prohibition of refoulement to a risk of torture, which entails the prohibition of any return of an individual where he or she would be exposed to a risk of torture, ill-treatment or arbitrary deprivation of life.

20. According to those human rights provisions, no asylum seeker or refugee is to be expelled or returned (refoulé) in any manner whatsoever to the frontiers of territories where his or her life or freedom or the right to be free from torture or other cruel, inhuman or degrading treatment or punishment would be threatened.

21. The Committee notes that the Convention, as an instrument to prevent discrimination against women, contains no explicit provision on non-refoulement. In the framework of its work on individual communications under the Optional Protocol, the Committee has had to address States parties' objections to the effect that the Committee has no competence to deal with cases submitted on behalf of

<sup>15</sup> See, for example, the 2000 Charter of Fundamental Rights of the European Union, art. 19 (2); the 1966 Principles concerning Treatment of Refugees, adopted by the Asian-African Legal Consultative Committee (art. III (3)); the Declaration on Territorial Asylum, adopted by the General Assembly by its resolution 2132 (XXII) (art. 3); the 1969 Organization of African Unity Convention governing the specific aspects of refugee problems in Africa (art. II (3)); the 1969 American Convention on Human Rights (art. 22 (8)); and the 1984 Cartagena Declaration on Refugees (para. 5). In addition, non-refoulement provisions modelled on article 33 (1) of the 1951 Convention relating to the Status of Refugees have also been incorporated into extradition treaties and a number of anti-terrorism conventions at the universal and regional levels.

<sup>16</sup> UNHCR, Declaration of States parties to the 1951 Convention and or its 1967 Protocol relating to the Status of Refugees, adopted on 13 December 2001 (HCR/MMSP/2001/09).

<sup>17</sup> UNHCR, "Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol" (2007), para. 15.

<sup>18</sup> See also communication No. 35/2011, *M.E.N. v. Denmark*, inadmissibility decision adopted by the Committee on 26 July 2013, para. 8.8.

asylum seekers whose applications have been rejected at the national level but who claim that they would be exposed to the risk of sexual and/or gender-based violence and persecution if forcibly returned to their country of origin. In reply, the Committee has noted,<sup>19</sup> among other things, that, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. In addition, the Committee recalls that civil and political rights and freedoms, including the right to life and the right not to be subjected to torture or ill-treatment, are implicitly covered by the Convention, and thus States parties are under the obligation not to extradite, deport, expel or otherwise remove a person from their territory to the territory of another State where there are substantial grounds for believing that there is a real risk of irreparable harm.

22. The Committee further considers that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. That duty encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of discrimination against women, including gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party: if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that the person's basic rights under the Convention will be seriously at risk in another jurisdiction, the State party itself may be in violation of the Convention. The foreseeability of the consequence would mean that there was a present violation by the State party, even though the consequence would not occur until later.

23. The Committee is therefore of the view that States parties have an obligation to ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence. What amounts to serious forms of discrimination against women, including gender-based violence, will depend on the circumstances of each case.<sup>20</sup>

### **C. Comments on specific articles of the Convention**

24. Articles 1-3, 5 (a) and 15 establish an obligation on States parties to ensure that women are not discriminated against during the entire asylum process, beginning from the moment of arrival at the borders. Women asylum seekers are entitled to have their rights under the Convention respected; they are entitled to be treated in a non-discriminatory manner and with respect and dignity at all times during the asylum procedure and thereafter, including through the process of finding durable solutions once asylum status has been recognized by the receiving State.

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<sup>19</sup> See, for example, communication No. 33/2011, *M.N.N. v. Denmark*, inadmissibility decision adopted by the Committee on 15 July 2013, paras. 8.5 ff.

<sup>20</sup> See *ibid.*, para. 8.9.



The receiving State has a responsibility towards women granted asylum status when it comes to helping them to, among other things, find proper accommodation, training and/or job opportunities, providing legal, medical, psychosocial support for victims of trauma and offering language classes and other measures facilitating their integration. In addition, women asylum seekers whose asylum applications are denied should be granted dignified and non-discriminatory return processes.

25. Article 2 (c) of the Convention requires that State asylum procedures allow women's claims to asylum to be presented and assessed on the basis of equality in a fair, impartial and timely manner. A gender-sensitive approach should be applied at every stage of the asylum process. This means that women's claims to asylum should be determined by an asylum system that is informed, in all aspects of its policy and operations, by a thorough understanding of the particular forms of discrimination or persecution and human rights abuses that women experience on grounds of gender or sex. Owing to shame, stigma or trauma, some women may be reluctant to disclose or identify the true extent of the persecution that they have suffered or fear. Account needs to be taken of the fact that they may continue to fear persons in authority or rejection and/or reprisals from their family and/or community. In any event, they should be entitled to appeal against first-instance asylum decisions.

26. In addition, articles 2, 15 (1) and 16 require States parties to recognize that women may present independent claims to asylum. In this respect, their claims may also be based on fears relating to their children. For example, claims to refugee status may arise from a fear that their daughters will suffer female genital mutilation, be forced into marriage or be subjected to severe community ostracism and exclusion for being girls.<sup>21</sup> The child's protection claim should also be considered on its own merits in a child-sensitive manner in the best interests of the child.<sup>22</sup> Once the principal claimant is recognized as a refugee, other members of the family should normally also be recognized as refugees ("derivative status").

27. Harm perpetrated against women and girls is often at the hands of non-State actors, including family members, neighbours or society more generally. In such cases, article 2 (e) of the Convention requires that States parties assume their due diligence obligation and ensure that women are effectively protected from harm that may be inflicted by non-State actors.<sup>23</sup> It does not suffice to strive for vertical gender equality of the individual woman vis-à-vis public authorities; States must also work to secure non-discrimination at the horizontal level, even within the family. Harm perpetrated by non-State actors is persecution where the State is unable or unwilling to prevent such harm or protect the claimant because of discriminatory governmental policies or practices.<sup>24</sup>

<sup>21</sup> UNHCR, "Guidance note on refugee claims relating to female genital mutilation" (Geneva, 2009), para. 12.

<sup>22</sup> For more on child asylum claims, see UNHCR, "Guidelines on international protection: child asylum claims under articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", guideline No. 8 (2009) (HCR/GIP/09/08); Committee on the Rights of the Child, general comment No. 6 on treatment of unaccompanied and separated children outside their country of origin; and general comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

<sup>23</sup> General recommendation No. 19, paras. 9 and 10.

<sup>24</sup> UNHCR, "Guidelines on international protection: gender-related persecution", para. 19 (see footnote 9 above).

28. The Committee is aware that, in cases in which persecution is perpetrated by non-State actors, receiving States have advanced the option of internal flight alternative, according to which a person is not at risk of persecution by non-State actors if he or she is relocated to a safe place within the State of origin. The Committee recalls that articles 2 (d) and (e) of the Convention require that States parties ensure that women are protected against discrimination generated by non-State actors and, in the context of a refugee woman, it observes that the essence of refugee status is to provide effective protection to the refugee woman. It also notes that, should the internal flight alternative be considered by receiving States, the option should be subject to strict requirements, such as the woman's ability to travel to the area concerned and gain admittance and settle there.<sup>25</sup> States should also take into account gender-related aspects and risks in the assessment as to whether internal relocation is permissible.<sup>26</sup> Difficulties faced by women in relocating to other parts of their countries of origin can include legal, cultural and/or social restrictions or prohibitions on women travelling or living alone, practical realities such as problems of securing accommodation, childcare and economic survival without family or community support, and risk of harassment and exploitation, including sexual exploitation and violence.

29. The Committee acknowledges that, as a matter of international law, the authorities of the country of origin are primarily responsible for providing protection to the citizens, including ensuring that women enjoy their rights under the Convention, and that it is only when such protection is not available that international protection is invoked to protect the basic human rights that are seriously at risk. However, the Committee notes that the fact that a woman asylum seeker has not sought the protection of the State or made a complaint to the authorities before her departure from her country of origin should not prejudice her asylum claim, especially where violence against women is tolerated or there is a pattern of failure in responding to women's complaints of abuse. It would not be realistic to require her to have sought protection in advance of her flight. She may also lack confidence in the justice system and access to justice or fear abuse, harassment or retaliation for making such complaints.<sup>27</sup>

30. In line with the Convention, States parties are required to take proactive measures to ensure that the legally recognized grounds of persecution, including those enumerated in the 1951 Convention relating to the Status of Refugees (race, religion, nationality, membership of a particular social group and political opinion), are given a gender-sensitive interpretation. In addition, gender may be used as a factor in recognizing membership of a particular social group or indeed as an identifying characteristic of such a group for purposes of granting refugee status

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<sup>25</sup> *Salah Sheekh v. the Netherlands*, application No. 1948/04, judgement of 11 January 2007 of the European Court of Human Rights, cited in *Case of Sufi and Elmi v. the United Kingdom*, applications Nos. 8319/07 and 11449/07, judgement of 28 June 2011 of the European Court of Human Rights, para. 266.

<sup>26</sup> UNHCR, "Guidelines on international protection: 'internal flight or relocation alternative' within the context of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", guideline No. 4 (HCR/GIP/03/04); UNHCR, "Guidance note on refugee claims relating to female genital mutilation", paras. 28-32 (see footnote 21 above).

<sup>27</sup> Communication No. 5/2005, *Şahide Goekce (deceased) v. Austria*, views adopted by the Committee on 6 August 2007; communication No. 6/2005, *Fatma Yildirim (deceased) v. Austria*, views adopted by the Committee on 6 August 2007.

under the 1951 Convention. States parties are also encouraged to add sex and or gender as an additional ground for refugee status in their national legislation.

31. The Committee notes that women's claims to asylum are regularly classified under the "social group" ground in the definition of a refugee, which may reinforce the stereotyped notions of women as dependent victims. Article 5 of the Convention requires States parties to assess women's claims to asylum without prejudices and stereotyped notions of women that are based on the inferiority or superiority of either sex. Gender stereotyping affects the right of women to a fair and just asylum process and the asylum authorities must take precautions not to create standards that are based on preconceived notions of gender-based violence and persecution.<sup>28</sup> In addition, women are active agents who play important roles as political leaders, members of Governments or opposition groups, journalists, human rights defenders and activists, lawyers and judges, among others. They are targeted on account of their political opinions and/or activities, including the expression of women's rights. Accordingly, article 7 of the Convention requires States parties to take action to realize equality for women in political and public life. It may therefore be appropriate that women bring claims to asylum on gender-related persecution grounds or political, religious, racial and ethnic grounds, including in situations in which they were compelled to flee their country of origin owing to external aggression, occupation, foreign domination or serious civil strife.<sup>29</sup>

32. Consistent with articles 2 (c) and 15 (1) of the Convention, States parties must take steps to eliminate discrimination against women in the public and private spheres and should confirm women's equality with men before the law. To this end, States should take positive measures to ensure that women are not discriminated against and that they are provided with effective legal protection throughout the asylum process, including by providing legal aid, legal representation and assistance, as necessary.<sup>30</sup>

33. Articles 3 and 10 to 13 of the Convention entail that women seeking asylum and women refugees be granted, without discrimination, the right to accommodation, education, health care and other support, including food, clothing and necessary social services, appropriate to their particular needs as women. In addition, women refugees should be offered sources of livelihood and employment opportunities.<sup>31</sup> Obligations include providing information on their rights and practical information on how to gain access to such services in a language that they understand. Given the high levels of illiteracy among women in some societies, special assistance may be required.

34. Gender sensitivity should be reflected in reception arrangements, taking into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture or ill-treatment and of other particularly vulnerable groups of women

<sup>28</sup> Communication No. 18/2008, *Karen Tayag Vertido v. Philippines*, views adopted by the Committee on 16 July 2010, paras. 8.4 and 8.9 (iv); communication No. 20/2008, *V.K. v. Bulgaria*, views adopted by the Committee on 25 July 2011.

<sup>29</sup> General recommendation No. 28, paras. 10 and 11.

<sup>30</sup> *Ibid.*, para. 34; see also 1951 Convention relating to the Status of Refugees, arts. 16 and 25.

<sup>31</sup> Universal Declaration of Human Rights, art. 25; see also the 1951 Convention relating to the Status of Refugees, arts. 13 and 17-23.

and girls.<sup>32</sup> Reception arrangements should also allow for the unity of the family as present within the territory, in particular in the context of reception centres.<sup>33</sup> As a general rule, pregnant women and nursing mothers, who both have special needs, should not be detained.<sup>34</sup> Where detention of women asylum seekers is unavoidable, separate facilities and materials are required to meet the specific hygiene needs of women. The use of female guards and warders should be promoted. All staff assigned to work with women detainees should receive training relating to the gender-specific needs and human rights of women.<sup>35</sup> Pursuant to articles 1, 2, 5 (a) and 12 of the Convention, failure to address the specific needs of women in immigration detention and ensure the respectful treatment of detained women asylum seekers could constitute discrimination within the meaning of the Convention.<sup>36</sup> Not least for the purposes of avoiding violence against women, separate facilities for male and female detainees are required, unless in family units, and alternatives to detention are to be made available.<sup>37</sup>

#### D. Specific recommendations of the Committee<sup>38</sup>

35. States parties should review and remove any reservations to the Convention; consider ratifying the Optional Protocol to the Convention; and consider acceding to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, as well as to other relevant international and regional instruments. They should remove any reservations to those instruments, adopt an asylum law in line with those instruments and apply those instruments in a complementary manner.

<sup>32</sup> Executive Committee of the Programme of the United Nations High Commissioner for Refugees, conclusion No. 93 (LIII) on reception of asylum seekers in the context of individual asylum systems, para. (b) (iii).

<sup>33</sup> *Ibid.*, para. (b) (iv); Convention on the Elimination of All Forms of Discrimination against Women, art. 16.

<sup>34</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (General Assembly resolution 65/229, annex), rule 42; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (Geneva, 2012).

<sup>35</sup> The Bangkok Rules, rules 5, 19 and 33 (1); UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, para. 9.3.

<sup>36</sup> Communication No. 23/2009, *Inga Abramova v. Belarus*, views adopted by the Committee on 25 July 2011, paras. 7.5 and 7.7; see also the Bangkok Rules and general recommendation No. 24 on women and health, para. 6.

<sup>37</sup> International Covenant on Civil and Political Rights, art. 9. The Human Rights Committee has affirmed an obligation to consider less invasive means of achieving the same objective (see communication No. 900/1999, *C. v. Australia*, views adopted by the Human Rights Committee on 28 October 2002, para. 8.2. See also UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, para. 9.3.

<sup>38</sup> The Committee acknowledges that the vast majority of refugees are hosted by developing countries that are overwhelmed and unable to meet the challenges faced by significant refugee influxes. The Committee recalls that refugee protection is a collective responsibility. Therefore, and without compromising or undermining States parties' obligations, it calls upon the international community, in particular non-receiving States, to express their solidarity through burden-sharing by assisting receiving countries in meeting their international obligations. They should, among other things, take proactive measures such as granting adequate technical and financial assistance to receiving States to alleviate the challenges faced by massive influxes of refugees and financially supporting United Nations and other international or regional agencies entrusted with providing refugee protection and services.

36. States that are parties to regional refugee or asylum instruments should ensure that they respect the rights of women in need of international protection and apply those instruments in a gender-sensitive manner. They should also ensure that women enjoy the benefits of those instruments without discrimination and on the basis of substantive equality.<sup>39</sup>

37. States parties should adopt legislation and other measures to respect the principle of non-refoulement, in accordance with existing obligations under international law, and take all measures necessary to ensure that victims of serious forms of discrimination, including gender-related forms of persecution, who are in need of protection, regardless of their status or residence, are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to serious forms of discrimination, including gender-based violence, or to torture or inhuman or degrading treatment or punishment.<sup>40</sup>

38. States parties should interpret the definition of a refugee in the 1951 Convention relating to the Status of Refugees in line with obligations of non-discrimination and equality;<sup>41</sup> fully integrate a gender-sensitive approach while interpreting all legally recognized grounds; classify gender-related claims under the ground of membership of a particular social group, where necessary; and consider adding sex and/or gender, as well as the reason of being lesbian, bisexual or transgender, and other status to the list of grounds for refugee status in their national asylum legislation.

39. States parties should report to the Committee on their national policy and legislation with regard to asylum seekers and refugees and gather, analyse and make available sex-disaggregated statistical data and trends over time on asylum claims, countries of origin, reasons for seeking asylum and recognition rates.

40. States parties should ensure that adequate human and financial resources are made available for the implementation of the Convention in respect of asylum seekers and refugees, including gender-related aspects of that implementation, and seek technical advice and assistance as required.

41. States parties should cooperate with all United Nations agencies, in particular the Office of the United Nations High Commissioner for Refugees (UNHCR), in relation to asylum systems and procedures to give effect to the provisions of the

<sup>39</sup> Organization of African Unity Convention governing the specific aspects of refugee problems in Africa of 1969; Cartagena Declaration on Refugees, 1984; and directive 2011/95/EU of the European Parliament and of the Council of the European Union of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

<sup>40</sup> See Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, art. 61, and 1951 Convention relating to the Status of Refugees, art. 33.

<sup>41</sup> See the UNHCR guidelines on international protection, including “Guidelines on international protection: gender-related persecution within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”, guideline No. 1 (HRC/GIP/02/01); “Guidelines on international protection: ‘Membership of a particular social group’ within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”, guideline No. 2 (HRC/GIP/02/02); and “Guidelines on international protection No. 9: claims to refugee status based on sexual orientation and/or gender identity within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees” (HRC/GIP/12/09).

Convention and other instruments for refugees with a view to promoting the rights of women asylum seekers and refugees.<sup>42</sup> They should collaborate with civil society and grass-roots non-governmental organizations supporting women asylum seekers and refugees.

42. Asylum procedures of States parties should ensure that women are able to lodge independent asylum applications and be heard separately, even if they are part of a family seeking asylum. States parties should accept that, when the principal claimant is recognized as a refugee, other members of the family should normally also be recognized as refugees (“derivative status”). Just as a child can derive refugee status from the recognition of a parent as a refugee, a parent should be granted derivative status based on the child’s refugee status.<sup>43</sup> It is essential that women who are recognized as refugees, whether in their own right or as derivative status holders, be issued with individual documentation in order to prove their status, be protected from refoulement and secure associated rights.

43. States parties should not deem that a woman asylum seeker lacks credibility for the mere reason of lack of documentation to support her asylum claim. Instead, they should take into account that women in many countries do not possess documentation in their respective countries of origin and seek to establish credibility by other means.

44. States parties should ensure that their border police and immigration officials are adequately trained, supervised and monitored for gender-sensitivity and non-discriminatory practices when dealing with women asylum seekers and refugees. They should ensure that they adopt and implement a gender-sensitive approach of a proper identification system for women asylum seekers and refugees that is not based on prejudices and stereotyped notions of women, including for victims of trafficking and/or sexual exploitation.<sup>44</sup>

45. States parties should recognize that trafficking is part and parcel of gender-related persecution, with the result that women and girls who are victims of trafficking or who fear becoming victims should be informed of and effectively enjoy the right of access to asylum procedures without discrimination or any preconditions. States parties are encouraged to classify victims of trafficking under the “social group” ground in the refugee definition in line with the UNHCR “Guidelines on international protection: the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked” and are recommended to take measures so that women and girls are not returned to places where they risk being re-trafficked.

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<sup>42</sup> 1951 Convention relating to the Status of Refugees, art. 35; 1967 Protocol to the 1951 Convention relating to the Status of Refugees, art. II; Statute of the Office of the United Nations High Commissioner for Refugees (General Assembly resolution 428 (V), annex), para. 8.

<sup>43</sup> Executive Committee of the Programme of the United Nations High Commissioner for Refugees, conclusion No. 88 (L) on the protection of the refugee’s family, para. (b) (iii); UNHCR, “Guidelines on international protection: child asylum claims”, para. 9 (see footnote 22 above).

<sup>44</sup> Communication No. 15/2007, *Zhen Zhen Zheng v. the Netherlands*, views adopted by the Committee on 27 October 2008, para. 9.1 (a); see also Convention on the Elimination of All Forms of Discrimination against Women, art. 5; and general recommendation No. 25, para. 7.

46. States parties should establish adequate screening mechanisms for the early identification of women asylum seekers with specific protection and assistance needs, including women with disabilities, unaccompanied girls,<sup>45</sup> victims of trauma, victims of trafficking and/or forced prostitution, victims of sexual violence and victims of torture and/or ill-treatment.<sup>46</sup>

47. States parties should ensure that interviewers and decision makers at all levels have the necessary training, tools and guidance on the adjudication of gender-related asylum claims. In recognition of the relevant provisions of the Convention, States parties should develop policies in line with the present general recommendation and with the UNHCR “Guidelines on international protection: gender-related persecution within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”.

48. States parties should ensure, throughout the asylum procedure and during the integration process for women granted refugee status, an adequate standard of living, including safe accommodation, sanitary and health facilities, food, clothing and necessary social services, in addition to sources of livelihood and employment opportunities for women asylum seekers and refugees, and provide for appropriate monitoring and complaints mechanisms at reception facilities.<sup>47</sup>

49. States parties should recognize in their legislation that seeking asylum is not an unlawful act and that women asylum seekers should not be penalized (including by means of detention) for their illegal entry or stay if they present themselves to the authorities without delay and show good cause for their illegal entry or stay.<sup>48</sup> As a general rule, detention of pregnant women and nursing mothers, who both have special needs, should be avoided, while children should not be detained with their mothers unless doing so is the only means of maintaining family unity and is determined to be in the best interest of the child. Alternatives to detention, including release with or without conditions, should be considered in each individual case and especially when separate facilities for women and/or families are not available.

50. States parties should institute gender-sensitive procedural safeguards in asylum procedures to ensure that women asylum seekers are able to present their cases on the basis of equality and non-discrimination. States parties should ensure:

(a) That women asylum seekers have the right to an independent claim to asylum and, in this respect, to be interviewed separately, without the presence of male family members, so that they have the opportunity to present their case;

(b) That women asylum seekers are provided with information about the status of the determination process and how to gain access to it, in addition to legal advice, in a manner and language that they understand. They should be informed of the right to and, upon request, be provided with, a female interviewer and interpreter;

<sup>45</sup> Committee on the Rights of the Child, general comment No. 6 on treatment of unaccompanied and separated children outside their country of origin, para. 31 (i).

<sup>46</sup> Executive Committee of the Programme of the United Nations High Commissioner for Refugees, conclusion No. 93 (LIII) on reception of asylum seekers in the context of individual asylum systems, para. (b) (iii).

<sup>47</sup> Convention on the Elimination of All Forms of Discrimination against Women, arts. 2 (c) and (f) and 3.

<sup>48</sup> 1951 Convention relating to the Status of Refugees, art. 31.

(c) That women asylum seekers have access to competent legal representation in advance of the initial asylum interview. Where necessary, they should be afforded legal assistance free of charge. Unaccompanied and separated girls must in all cases be assigned a qualified legal representative and a guardian to assist them through the asylum procedure and ensure respect for their best interests;<sup>49</sup>

(d) That interviewers use techniques and procedures that are sensitive to gender, age and other intersectional grounds of discrimination and disadvantage that compound the human rights violations that women refugees and asylum seekers experience;

(e) That a supportive interview environment is established so that the claimant can provide her account, including disclosure of sensitive and personal information, especially for survivors of trauma, torture and/or ill-treatment and sexual violence, and that sufficient time is allocated for interviews;

(f) That childcare is made available during the interviews so that the claimant does not have to present her claim, involving sensitive information, in front of her children;

(g) That, while the woman asylum claimant normally bears the burden of proving her asylum case, the duty to ascertain and evaluate all the relevant facts is shared between the claimant and the examiner. The threshold for accepting asylum applications should be measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return;

(h) That, in some cases, it may be for the examiner to use all the means at his or her disposal to produce the necessary evidence in support of the application, including by seeking and gathering gender-relevant information from reliable governmental and non-governmental sources on human rights in the country of origin;

(i) That late disclosure by the claimant during the asylum procedure of sexual violence and other traumatic events does not automatically lead to an adverse judgement on her credibility. Reluctance to identify the true extent of the persecution suffered or feared may stem from feelings of shame, stigma or trauma. Statements regarding the confidential nature of interviews, including that information provided by the woman will not be shared with members of her family without her consent, should be standard practice;

(j) That mechanisms for referral to psychosocial counselling and other support services, where necessary, both before and after the asylum interview, are made available;

(k) That, should the application be rejected, the decision must be reasoned and the claimant should be able to appeal against it to a competent body;

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<sup>49</sup> See Committee on the Rights of the Child, general comment No. 6 on treatment of unaccompanied and separated children outside their country of origin, paras. 21, 33, 36 and 39; Executive Committee of the Programme of the United Nations High Commissioner for Refugees, conclusion No. 107 (LVIII) on children at risk, para. (g) (viii).



(l) That, in the context of durable solutions, the voluntary return home from exile of refugees and their sustainable reintegration in safety are carried out with dignity and the social and economic security of refugees are secured.<sup>50</sup> States who recognized the refugee status of women claimants should ensure that local integration is performed on the basis of equality and non-discrimination and that women are treated with dignity.

## V. Application of non-discrimination and gender equality to nationality determination processes and statelessness

### A. General comments

51. The Convention is a significant tool in international efforts to prevent and reduce statelessness because it particularly affects women and girls with regard to nationality rights.<sup>51</sup> The Convention requires full protection of women's equality in nationality matters. Nationality is the legal bond between a person and a State and is critical to ensuring full participation in society. Nationality is also essential to guaranteeing the exercise and enjoyment of other rights, including the right to enter and reside permanently in the territory of a State and to return to that State from abroad. Article 9 of the Convention is therefore essential to the enjoyment of the full range of human rights by women. While human rights are to be enjoyed by everyone, regardless of nationality status, in practice nationality is frequently a prerequisite for the enjoyment of basic human rights. Without nationality, girls and women are subject to compounded discrimination as women and as non-nationals or stateless persons.

52. Article 9 (2) of the Convention provides that women are to have the same rights as men to acquire, retain or change their nationality, regardless of marriage and divorce and of what their husbands do with their own nationality. Women are also, according to the Convention, to transmit their nationality to their children under the same conditions as their husbands, whether they are in their own country or abroad.

53. Without status as nationals or citizens,<sup>52</sup> stateless women and girls are often marginalized, deprived of the right to vote or stand for public office and may be denied access to public benefits, a choice of residence and free movement, in addition to access to various rights and benefits flowing from status as a national, including rights to education, health care, property or employment.

54. Nationality laws may discriminate directly or indirectly against women. Legislative provisions that appear gender neutral may in practice have a

<sup>50</sup> Executive Committee of the Programme of the United Nations High Commissioner for Refugees, conclusion No. 109 (LXI) on protracted refugee situations.

<sup>51</sup> A stateless person is defined under customary international law and in article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons as someone who is "not considered as a national by any State under the operation of its law". The International Law Commission has considered the definition in article 1 (1) of the 1954 Convention to form part of customary international law (A/61/10, chap. IV, para. 49). See also UNHCR, *Handbook on Protection of Stateless Persons: Under the 1954 Convention relating to the Status of Stateless Persons* (Geneva, 2014).

<sup>52</sup> The terms "nationality" and "citizenship" are used interchangeably.

disproportionate and negative impact on the enjoyment of the right to nationality by women. Women continue to be more likely than men to seek to change their nationality to that of their foreign spouse upon marriage to a foreigner and are therefore at greater risk of statelessness if there is a gap in nationality legislation that allows or requires them to renounce their nationality without having acquired or received assurances that they will acquire the nationality of the spouse. The prohibition of dual nationality in many nationality laws increases the likelihood of statelessness. In many instances, women are not allowed to transmit their nationality to their foreign husbands. Sex- and gender-based discrimination in nationality laws continues to have a significant and detrimental impact on the enjoyment by women and their children of their human rights. Gender inequality persists in the nationality laws and practices of a significant number of countries and can lead to women becoming stateless. Gender inequality can also render children stateless when their mothers are prevented, on an equal basis with fathers, from transmitting their nationality to their children. In this way, discrimination against women can lead to a cycle of statelessness that can be perpetuated from generation to generation.<sup>53</sup>

55. Naturalization requirements may also indirectly discriminate against women because they may require the fulfilment of conditions or criteria that may be more difficult to meet for women than for men, such as acquiring proficiency in a host State's language, which may be more difficult for women, including stateless women, who have suffered prior or current impediment of their right of access to formal education. Other requirements such as economic self-sufficiency or property ownership may also be more difficult for women to meet as individuals. Situations of statelessness following marriage to a foreigner and naturalization requirements, as mentioned in paragraph 54 above, can lead to women being dependent on men economically, socially, culturally and linguistically and, in turn, expose women to an increased risk of exploitation.

56. Birth registration is also closely linked to the enjoyment by women and their children of the right to a nationality. Birth registration provides proof of a person's identity and acquisition of nationality based either on descent (*jus sanguinis*) or place of birth (*jus soli*). In practice, indirect discrimination, cultural practices and poverty often make it impossible for mothers, especially unmarried mothers, to register their children on an equal basis as fathers. Failure to register a child's birth may impair or nullify the child's effective enjoyment of a range of rights, including the right to nationality, to a name and identity, to equality before the law and to recognition of legal capacity.

57. Discriminatory laws or practices may lead to women and their children being unable to gain access to documentation that proves their identity and nationality. In the absence of proof of identity and nationality, a woman and her children may be faced with restrictions on freedom of movement, problems gaining access to diplomatic protection, prolonged detention pending determination of proof of identity and nationality and, ultimately, to a situation in which no State considers them to be nationals and they are rendered stateless.

58. Given the critical importance of nationality to the full participation of women in society,<sup>54</sup> the significant number and nature of reservations made by some States

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<sup>53</sup> UNHCR, "Guidelines on statelessness No. 4: ensuring every child's right to acquire a nationality", paras. 13-15 (see footnote 6 above).

<sup>54</sup> See general recommendation No. 21, para. 6.

parties to article 9 of the Convention undermine the object and purpose of the Convention. The rights to nationality and non-discrimination contained in many other international human rights instruments,<sup>55</sup> which reinforce the equal right of women to nationality, also raise the question of the validity and legal effect of such reservations. The Committee notes with interest the trend towards the withdrawal or, at least, the narrowing of reservations to article 9 and the related tendency of States parties to introduce formal equality of men and women in nationality laws, thereby reducing the risk of discrimination against women and in particular of statelessness among women and their children.

## **B. Comments on specific articles of the Convention**

59. Article 9 of the Convention establishes that women enjoy the rights to acquire, change or retain their nationality and to confer their nationality on their children on an equal basis with men. The Committee has interpreted that this right also applies to spouses.<sup>56</sup>

60. Article 9 (1) requires States parties to ensure that neither marriage to a foreigner nor change of nationality by the husband during marriage automatically changes the nationality of the wife, renders her stateless or forces upon her the nationality of the husband. Women can become stateless as a result of discriminatory laws and practices in which, for example, a woman's nationality is automatically lost upon marriage to a foreigner and she cannot acquire her husband's nationality on the basis of marriage; if her husband changes his nationality, becomes stateless or dies; or where her marriage ends in divorce.

61. Article 9 (2) of the Convention requires States parties to ensure that women and men have equal rights to confer their nationality to their children. The non-fulfilment by States parties of their obligations under article 9 (2) places children at risk of statelessness. Nationality laws that grant nationality through paternal descent alone infringe article 9 (2) and may render children stateless if:

- (a) The father is stateless;
- (b) The laws of the father's country do not permit him to confer nationality in certain circumstances, such as when the child is born abroad;
- (c) The father is unknown or not married to the mother at the time of the child's birth;
- (d) The father has been unable to fulfil administrative steps to confer his nationality or acquire proof of nationality for his children because, for example, he has died, has been forcibly separated from his family or cannot fulfil onerous documentation or other requirements;

<sup>55</sup> Universal Declaration of Human Rights, art. 15; International Covenant on Civil and Political Rights, arts. 2, 3, 24 and 26; Convention on the Rights of the Child, art. 7; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; Convention on the Rights of Persons with Disabilities, art. 18; and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 29.

<sup>56</sup> CEDAW/C/KWT/CO/3-4, para. 37.

(e) The father has been unwilling to fulfil administrative steps to confer his nationality or acquire proof of nationality for his children, for example if he has abandoned the family.

62. Articles 1 to 3 of the Convention also support the right of women to benefit, on an equal basis with men, from naturalization for themselves and their spouses. Discrimination against women in this respect impedes the reduction of statelessness. The same holds true when women are unable to confer their nationality on their stateless spouses. It may also create further risks of statelessness in the case of children born out of such unions.

### **C. Specific recommendations**

63. In the light of the foregoing, the Committee recommends that States parties that have not already done so:

(a) Review and withdraw their reservations to article 9 of the Convention because they are incompatible with the object and purpose of the Convention and thus impermissible under article 28 (2);<sup>57</sup>

(b) Review and reform their nationality laws to ensure equality of women and men with regard to the acquisition, changing and retention of nationality and to enable women to transmit their nationality to their children and to their foreign spouses and to ensure that any obstacles to practical implementation of such laws are removed, in full compliance with articles 1 to 3 and 9 of the Convention;

(c) Repeal laws stipulating the automatic acquisition of nationality upon marriage or automatic loss of a woman's nationality as a result of changes in the marital status or nationality of her husband;

(d) Consider permitting dual nationality where women have married foreign men, and for the children born of such unions, especially in situations in which legal regimes providing for dual nationality may lead to statelessness;

(e) Prevent statelessness through legislative provisions making the loss or renunciation of nationality contingent on possession or acquisition of another nationality, and allow reacquisition of nationality for women left stateless owing to the absence of such safeguards;

(f) Promote awareness of recent legal and policy development granting women equal rights with men to acquire, change or retain their nationality or that enable women to confer their nationality to their children and their foreign spouses;

(g) Address indirect discrimination in nationality laws that arise, for example, through naturalization requirements that may be more onerous for women to meet in practice than for men;

(h) Ratify or accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;

(i) Refrain from adopting and implementing any measures that deprive women of their nationality and render them stateless;

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<sup>57</sup> General recommendations Nos. 4, 20 and 28.

(j) Collaborate with UNHCR in relation to its work on the identification, reduction and prevention of statelessness and protection of stateless persons, in particular stateless women;

(k) Collect, analyse and make available sex-disaggregated statistics on stateless persons within their respective territories;

(l) Implement effective measures to ensure that women and girls have equal access to identity documentation, including proof of nationality;

(m) Take measures to achieve the timely registration of all births and, in this regard, take measures to raise awareness, especially in rural and remote areas of their respective territories, of the importance of registering births to ensure that all children are registered and that girls benefit from the same rights as boys.

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