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GENDER DISCRIMINATION IN NATIONALITY LAW AS A COLONIAL LEGACY: A COMPARATIVE STUDY ON BOTSWANA AND SENEGAL

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Abstract. This comparative socio-legal study examines how gender-discriminatory nationality laws in Botswana and Senegal emerged from British and French colonial legal frameworks. The purpose of the study is to analyse how these colonial-era codes institutionalised patrilineal descent and restricted women's ability to transmit nationality to their children. Using a qualitative comparative methodology grounded in feminist legal theory and postcolonial legal theory, the study reviews constitutional cases, legislative reforms and international legal instruments. The findings show that both countries-maintained gender-biased nationality laws for decades after independence, treating women as secondary citizens and increasing the risk of statelessness for their children. The analysis demonstrates that reform occurred through different pathways: Botswana through the 1992 Unity Dow v. Attorney General constitutional case and Senegal through legislative amendment in 2013. The study finds that international human rights instruments, particularly CEDAW and the 1961 Statelessness Convention, along with domestic advocacy, played a critical role in catalysing these reforms. Overall, the research shows how postcolonial states can dismantle patriarchal colonial norms and achieve gender-equal citizenship through rights-based legal transformation.

Keywords: Gender discrimination; Nationality law; Colonial legacy; Botswana; Senegal.

Introduction

Gender-based discrimination in nationality laws has persisted in many countries well into the modern era, often rooted in legal frameworks established during colonial rule. This paper examines how colonial-era gender biases in legal codes have influenced discriminatory nationality laws, focusing on Botswana and Senegal as case studies. The analysis is socio-legal and theoretical, considering both the legal doctrines and the social context in which these laws evolved. The persistence of sex-discriminatory nationality laws has profound implications: such laws violate fundamental principles of equality and can lead to human rights issues like statelessness, limitations on women's rights and family hardships (Florczak-Wątor, 2024), While most countries worldwide reformed their nationality laws during the 20th century to recognise gender equality, a significant minority retained older patriarchal rules. These remaining discriminatory laws are concentrated in regions such as the Middle East, North Africa and parts of Sub-Saharan Africa. In all cases, discrimination reflects outdated notions of gender roles and parenthood that trace back to earlier legal models.

The central thesis of this paper is that many contemporary gender-discriminatory provisions in nationality laws are a direct colonial legacy. Colonial powers often imposed or influenced nationality codes that privileged patrilineal descent and the primacy of the husband's citizenship in determining a family's nationality. After independence, numerous new states inherited these biases in their own nationality legislation. In the following sections, the paper outlines the historical background of gender discrimination in nationality law, reviews international legal frameworks addressing this issue (such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1961 Convention on the Reduction of Statelessness) and then delves into detailed case studies of

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Botswana and Senegal. These case studies illustrate how British and French colonial legal legacies respectively shaped post-independence nationality laws and how each country eventually undertook reforms to align their laws with principles of gender equality. A comparative discussion and theoretical analysis will follow, drawing on feminist legal theory and postcolonial perspectives to explain why the colonial legacy has been so enduring and how legal change was achieved. The conclusion will summarise the findings and reflect on the broader significance of eliminating gender discrimination in nationality laws for achieving gender justice and preventing statelessness.

The purpose of this study is to examine how gender-discriminatory nationality laws in Botswana and Senegal, rooted in British and French colonial legal frameworks, persisted after independence and were eventually reformed. The objectives of the research are: (1) to analyse the historical and legal origins of gender bias in nationality laws; (2) to compare the socio-legal processes leading to reforms in both countries; (3) to assess the influence of international human rights instruments in promoting gender-equal citizenship. The study employs a qualitative comparative methodology, drawing on constitutional cases, legislative reforms and international legal instruments. It is guided by feminist legal theory and postcolonial legal theory in interpreting the findings.

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1. Colonial Legacies of Gender Bias in Nationality Law

Many of the gender-discriminatory nationality laws in post-colonial states can be traced directly to rules and principles established under colonial administrations. Historically, colonial powers such as Britain and France implemented nationality and citizenship policies that were deeply gender biased. These policies were informed by the patriarchal norms of the 19th and early 20th centuries, when women were often considered legally subordinate to men in matters of citizenship and civil status. One common doctrine was the principle of coverture under which a married woman's legal identity (including nationality) was subsumed under that of her husband. Under British nationality law, for example, until reforms in the mid-20th century, a female citizen who married a foreign man typically lost her British citizenship and a foreign woman who married a British man generally automatically acquired British status (Zaher, 2002).This was intended to ensure that a family had one nationality – that of the male head of household. Similarly, French colonial law historically treated the husband as the transmitter of nationality to the family; the French Code Civil and subsequent nationality laws of the early 20th century privileged paternal descent and often did not allow women to pass on nationality on equal terms (van Waas et al., 2019). These gendered rules were exported to or replicated in the colonies, creating a legacy where, by default, nationality was patrilineal and women's citizenship status was derivative of men's.
In many African and Asian colonies, there was initially no uniform "citizenship" for the native population; colonial subjects had a different status than citizens of the metropole (Melber et al., 2023). However, when independence approached and new states needed their own nationality laws, the laws were often drafted by referencing the former colonial power's legal concepts. Colonial officials or local elites educated in colonial law crafted new nationality codes that mirrored the gender biases of European laws (Manby, 2018). As a result, at the time of independence for numerous countries, nationality laws already contained discrimination: typically, children could acquire nationality through their father but not (or not equally) through their mother and women did not have the same rights as men to confer nationality to foreign spouses.

For instance, many newly independent Commonwealth countries in Africa initially based their citizenship provisions on the British model. In those models, jus sanguinis (citizenship by descent) was usually restricted to the paternal line. It was common that a legitimate child's nationality was determined by the father's citizenship, whereas the mother's citizenship mattered only for an unmarried mother's child (de Groot & Vonk, 2018). British colonial influence also meant that a married woman's nationality was linked to their husband's status. Upon gaining independence, some countries adopted constitutions or laws that automatically conferred citizenship on foreign wives of male citizens, but not foreign husbands of female citizens (Sainsbury, 2018). This asymmetry clearly echoed the colonial notion of women as appendages to their husbands in terms of legal identity.

French colonies, upon gaining independence, often adopted nationality codes based on the French Civil Code or the 1945 French Nationality Code as modified in the 1950s (Merle & Muckle, 2022). These codes had started to allow maternal transmission of nationality by the mid-20th century but still contained inequalities. Instead, nationality law enacted after independence in 1961 (Loi 61-10 du 7 mars 1961) provided that a child born to a Senegalese father and foreign mother automatically obtained Senegalese nationality (González-Ferrer et al., 2012), but a child born to a Senegalese mother and foreign father did not receive nationality at birth instead, that child could apply for nationality upon reaching adulthood. This was a direct carry-over of earlier French rules that privileged paternal descent. Additionally, under the 1961 Senegalese code, a foreign woman marrying a Senegalese man could acquire Senegalese nationality with relative ease, but a foreign man marrying a Senegalese woman faced much more difficulty or could not gain nationality at all by means of marriage (Vickstrom, 2019). These discriminatory provisions reflected the patriarchal assumptions of French law at the time of drafting, essentially treating men as the primary conduit of legal identity and national membership.

It is important to note that these colonial-era biases were often justified under notions of family unity and societal norms (Plange & Alam, 2023). Colonial laws sought to avoid dual nationality in the family and presumed that a family should follow the status of the husband/father. According to (Albarazi, 2014), the historic purpose of systems under which the father's nationality is decisive was claimed to be bringing unity and stability to families. Yet in practice, denying women equal nationality rights led to countless hardships, especially when families did not fit the patriarchal norm, for example if the father was absent, stateless, or foreign. Indeed, where a child could not obtain the mother's nationality due to a discriminatory law, the child risked being left with no nationality if the father's nationality was unavailable or if the father was not able to confer his citizenship for any reason (de Groot, 2014). The colonial assumption that only fathers confer family identity thus planted the seeds for intergenerational statelessness and gender injustice.

In summary, colonial legal frameworks entrenched a gender hierarchy in nationality rights, men were the default citizens and transmitters of citizenship, while women's nationality was secondary (Tchoukou, 2024). After independence, these inherited laws persisted as a colonial legacy, unless and until reforms were made. Notably, this colonial legacy is not linked to local culture or religion as much as it is to imported Western legal norms (Tarusarira, 2020). Studies have shown that gender discrimination in nationality laws is generally a legacy of colonial rule, not religion (Mumtaz et al., 2017). Even in countries where cultural or religious arguments are used today to justify discriminatory laws, those laws often originated in colonial statutes rather than in pre-colonial customs (Harrington, 2017). Recognising this historical origin is crucial, as it challenges assertions that such discrimination is an immutable tradition and instead reveals that these are outdated policies with foreign roots. Pre-colonial customary systems in both countries exhibited diverse gender patterns. Among some Tswana groups, matrilineal kinship influenced inheritance and social affiliation, while in parts of Senegal's Wolof and Serer traditions, lineage and belonging could pass through either parent depending on local norms (Kingwill, 2016). These indigenous practices were largely displaced by European legal models that rigidly imposed patrilineal nationality, indicating that gender bias in citizenship was more a colonial legal import than a reflection of authentic local culture.

The next section will examine the current international legal standards that call for an end to these colonial-era discriminatory practices, before turning to specific evolutions in Botswana and Senegal.

2. International Legal Frameworks on Gender and Nationality

The persistence of gender-discriminatory nationality laws has been increasingly challenged by international legal norms over the past few decades. A range of international conventions and human rights instruments have established the principle of equality between men and women with regard to nationality rights. These frameworks are in stark contrast to colonial-era laws and have often served as catalysts or justifications for domestic reforms (Bellizzi & Nivoli, 2023). Here, we outline the key global and regional instruments: notably CEDAW, the 1961 Convention on the Reduction of Statelessness, the

Convention on the Nationality of Married Women, the Convention on the Rights of the Child and relevant African regional agreements.

2.1. 1979 Convention on the Elimination of All Forms of Discrimination Against Women

Botswana ratified CEDAW in 1996 (without reservation to Article 9) and Senegal in 1985. Both are also parties to the 1961 Convention on the Reduction of Statelessness (acceded 2014) and the Convention on the Rights of the Child (ratified 1990 and 1995 respectively). CEDAW (Cole, 2023) is the cornerstone international treaty on women's rights and explicitly addresses nationality. Article 9 of CEDAW obliges States Parties to ensure equal rights for men and women with respect to nationality. Under Article 9(1), women must have the same right as men to acquire, change, or retain their nationality. This means, for example, marriage to a foreigner should not automatically strip a woman of her citizenship or force her to take her husband's nationality. Article 9(2) requires States to grant women equal rights with men regarding the nationality of their children. This provision directly targets the common discriminatory practice of only allowing fathers to pass citizenship to offspring. Since CEDAW's entry into force in 1981, it has been a powerful tool for reformers. Governments that have ratified CEDAW (which includes the vast majority of countries) are under a legal obligation to amend any gender-discriminatory nationality laws. However, some States entered reservations to Article 9, citing cultural or religious reasons, which has slowed uniform implementation. Nonetheless, the "international consensus on the equal status of men and women" in nationality law has been firmly established by CEDAW (Nanni, 2023). The CEDAW Committee, which monitors implementation, has repeatedly called out countries for non-compliant nationality laws and have urged their reform. For example, in its concluding observations and General Recommendations (such as General Recommendation No. 21 on equality in marriage and family relations, 1994), the Committee emphasises that denying women equal nationality rights violates women's autonomy and has severe consequences for children.

2.2. 1961 Convention on the Reduction of Statelessness

This treaty addresses specific scenarios that cause statelessness and includes provisions promoting gender-neutral nationality transmission (Nanni, 2023). Article 1 of the convention obliges States to grant nationality to people born in their territory who would otherwise be stateless, which indirectly pressures states to fill gaps left by gender-biased laws (since many stateless children result from a mother being unable to pass on citizenship) (UN General Assembly, 1961). Article 9 of the 1961 Convention explicitly prohibits discrimination in nationality laws that would cause loss of nationality on grounds such as marriage or change of marital status – this was aimed at eliminating the practice of women losing nationality because of marriage or divorce (Long, 1992). In essence, it requires that women's nationality should not be arbitrarily impacted by their relationship to a spouse and by extension, it underlines that sex-based discrimination leading to statelessness is unacceptable. While not all countries have ratified the 1961 Convention, it sets an important standard. Notably, Senegal pledged to address gender inequality in nationality laws in the context of the campaign to end statelessness, acknowledging obligations under the 1961 Convention (Foster & Lambert, 2016). Many African countries (including Botswana and Senegal) have now acceded to the 1961 Convention as part of a broader commitment to eradicate statelessness, thereby undertaking to revise any laws that could produce statelessness through gender discrimination.

2.3. 1957 Convention on the Nationality of Married Women

This earlier convention (sponsored by the United Nations) was specifically designed to combat the issue of women losing their nationality or being forced to change it upon marriage. It provides that neither marriage to an alien, dissolution of marriage, nor a change of nationality by the husband during marriage shall automatically affect the wife's nationality (United Nations, 1989). It essentially decouples a woman's legal nationality from her husband's status. Both Botswana and Senegal, in their post-colonial legislation, showed some awareness of this principle. For instance, Botswana's 1982 Citizenship Act (as noted in a historical review) did not require a woman to acquire her husband's nationality upon

marriage, aligning with this convention's norm, this indicates that even before comprehensive gender equality was achieved, there were partial adjustments made under international influence (Campbell, 2003). The Married Women's nationality convention is less cited today (having been subsumed by CEDAW's broader protections), but it was an important stepping stone in establishing that a woman's nationality should be independent of her husband's – a radical idea in mid-20th-century law, reflecting an early break from the strictures of coverture.

2.4. 1948 Universal Declaration of Human Rights

While not directly mentioning gender in its nationality clause, Universal Declaration of Human Rights (UDHR) Article 15 declares that everyone has the right to a nationality and that no one shall be arbitrarily deprived of nationality. When read in conjunction with Article 2 (the non-discrimination principle), it implies that discrimination by sex in conferring or revoking nationality is a violation of basic human rights (Hallo de Wolf & Moerland, 2023). The UDHR set the tone for later binding treaties. Additionally, UDHR Article 16 on marriage asserts that men and women have equal rights during marriage and at its dissolution; by interpretation, this equality extends to matters of nationality in marriage (Atchabahian, 2023). Though the UDHR is not binding law, it offers moral and customary influence that has guided states towards ensuring women are not treated as second-class citizens in nationality matters.

2.5. 1966 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) in Article 24(3) states that every child has the right to acquire a nationality. This is not explicitly about gender, but it creates an obligation for states to ensure that children are able to obtain a nationality. When a child is denied the mother's nationality due to sex discrimination, the State risks violating Article 24 if that child is left stateless. Also, Article 26 of the ICCPR guarantees equality before the law and equal protection without discrimination, including on the basis of sex. The Human Rights Committee (which oversees the ICCPR) has on occasion commented that nationality laws should comply with the principle of equality (e.g., in country reviews). Therefore, the ICCPR provides a general non-discrimination framework under which gender discrimination in nationality law can be challenged (Joseph & Castan, 2013).

2.6. 1989 Convention on the Rights of the Child

According to The Convention's on the Rights of the Child (CRC) Article 7 (Annex, 1989) it requires that children be registered immediately after birth and have the right from birth to a name, the right to acquire nationality and, as far as possible, the right to be cared for by their parents. Article 7 explicitly ties into the 1961 Convention by urging states to fulfil the child's right to a nationality where the child would otherwise be stateless. Article 2 of the CRC prohibits discrimination based on the parent's status, including the parent's sex. Read together, these provisions mean that a child should not be denied nationality because his or her mother is not allowed to pass it on – such denial is effectively discrimination against the child based on the mother's sex. Both Botswana and Senegal are parties to the CRC (Tobin & Cashmore, 2020). In Senegal, for example, the disparity before 2013 where children of Senegalese mothers had inferior rights was inconsistent with CRC commitments. UN committees, such as the Committee on the Rights of the Child, have specifically recommended that states including Senegal correct gender discriminatory provisions to ensure every child's right to a nationality (Mezmur, 2006). This international pressure adds to the legal impetus for reform.

2.7. 1981 African Charter on Human and Peoples' Rights and 2003 the Maputo Protocol

On a regional level, Africa has its own human rights instruments that address these issues. The African Charter (also known as the Banjul Charter) guarantees equality (Articles 2 and 3) and human dignity, and Article 18(3) specifically obliges states to eliminate discrimination against women. Although it does not explicitly mention nationality, the Charter has been invoked to argue for equal nationality rights (Viljoen, 2009). The Protocol to the African Charter on the Rights of Women in Africa (the Maputo

Protocol) explicitly mentions nationality. Article 6(h) of the Maputo Protocol states that a woman and a man shall have equal rights with respect to the nationality of their children, except where this is contrary to national security interests (Viljoen, 2009). This clause was a direct acknowledgement of the issue of gender discrimination in nationality and it commits African Union states that ratify the Protocol to reform their laws accordingly. South Africa, for instance, placed a reservation on Article 6(h) – revealing that some states anticipated conflicts with their nationality laws (Minow, 2021; Somé et al., 2016). Botswana has not ratified the Maputo Protocol as of the time of writing, but Senegal has. The Maputo Protocol came into force in 2005 and provides an important regional mandate for change.

2.8. 2015 African Commission Draft Protocol on the Right to Nationality

In 2015, the African Commission on Human and Peoples' Rights adopted a draft Protocol on the right to nationality in Africa (Killander, 2016). Although not yet in force, this draft protocol calls for gender-equal nationality laws among other provisions. It reflects a growing consensus in Africa that equal nationality rights are part of the fundamental right to nationality. Both case study countries have been involved in these continental discussions on nationality, with Senegal often cited as a positive example after its 2013 reform and Botswana being noted as one of the earlier reformers (1995) on gender equality in nationality (Manby, 2016).

3. Socio-Legal Perspectives and Theoretical Framework

Before turning to Botswana and Senegal specifically, it is useful to contextualise the issue in socio-legal and theoretical terms. This involves examining how legal rules about nationality both reflect and reinforce social norms about gender, and how postcolonial theory can explain the endurance of colonial legal structures. Two key perspectives inform this analysis: feminist legal theory (particularly as applied to citizenship) and postcolonial legal theory. Together, they help explain why gender-discriminatory nationality laws persisted for decades after independence and how change eventually came about.

3.1. Feminist Legal Theory on Nationality

Feminist scholars have long critiqued nationality laws as a site of gender subordination. Nationality (or citizenship) is not just a legal status; it is tied to membership in a political community, access to rights and one's identity. When women are denied the ability to transmit nationality or retain it independently of their husbands, it effectively signals that women are second-class citizens (Levit & Verchick, 2016). This falls under what some feminist theorists call the public/private divide in law: historically, men were seen as actors in the public sphere (politics, citizenship, the state) and women were confined to the private sphere (home, family) (Chinkin, 1999). This aligns with Carole Pateman's concept of the sexual contract (Pateman, 2016), where the state's social contract had an implicit male bias.

The consequences of these laws, as feminist analyses highlight, are deeply personal and social. Women in countries with discriminatory laws have faced practical harms: inability to secure identity documents for their children, fear of family separation (if children or spouses cannot reside in the mother's country) and disempowerment in marital relations (since husbands' status dictates the family's security). Catherine Harrington, a socio-legal advocate, notes that women's equal citizenship is undermined and their equal status in the family is implicitly rejected by states that uphold these discriminatory laws (Harrington, 2023; Yuval-Davis, 1991). In other words, these laws send a message that the state views mothers as less important than fathers in forming the national community. This notion perpetuates patriarchal family structures and can exacerbate gender-based power imbalances and even violence. Indeed, researchers have linked gender-discriminatory nationality laws to increased vulnerability for women – for instance, women who cannot pass citizenship to children may be less able to leave abusive relationships for fear their children will have no status or will lose access to the mother's country.

Feminist legal scholars also underscore that nationality laws often intersect with other forms of discrimination, such as race and ethnicity (Thames, Irwin, Breen, & Cole, 2019). A notable pattern is that some countries with gendered nationality laws apply them selectively to certain groups; for

example, in the past, some Middle Eastern states made exceptions for women of certain ethnic backgrounds. In Africa (Harrington, 2023), it observes that gender discrimination in nationality laws is often linked with other forms of discrimination — religious, ethnic, and/or racial — with xenophobia playing a role. For example, Madagascar (prior to reform) allowed single mothers to confer nationality, but officials sometimes denied documents if the mother's name "didn't sound native," effectively using the discretionary nature of maternal transmission to discriminate against ethnic minorities (Southall, 1971). This shows how gender discrimination can be a tool to enforce broader social hierarchies, something feminist and intersectional theory pays attention to. Women from minority or marginalised communities suffer twice over: they face the general discrimination of the nationality law and often stricter enforcement or less help due to prejudices.

3.2. Postcolonial Theory and Legal Change

Postcolonial legal theory examines how laws imposed or inherited from colonial regimes continue to shape independent states, sometimes to the detriment of those states' own citizens (Dann & Hanschmann, 2012). A postcolonial perspective on Botswana and Senegal's nationality laws reveals a tension between imported legal frameworks and indigenous values or post-independence identity formation. Many postcolonial scholars argue that newly independent elites often maintained colonial laws to ensure continuity and stability, even if those laws were ill-suited to the local context or inequitable (Ng'weno & Aloo, 2019). In the case of nationality, leaders may have been reluctant to immediately upend patrilineal rules, possibly due to their own patriarchal outlook or concerns about upsetting what they saw as social order. There is also the factor of legislative inertia: in the tumultuous period of gaining independence, issues like women's equal nationality rights were not prioritised by (mostly male) political leaders, who were more focused on nation-building, consolidation of power and sometimes, as in Botswana, managing ethnic and tribal citizenship issues. Thus, the colonial gender bias was not confronted early on (Zeleza, 2005).

However, postcolonial theory also sheds light on resistance and change, People in colonised societies did not uniformly accept all colonial impositions; rather, they negotiated and sometimes resisted aspects of it (Efferess, 2008). In Botswana's case, we see a domestic legal challenge in Unity Dow's case that can be viewed as a form of postcolonial resistance to a colonial-era norm. Unity Dow herself argued that the law's discrimination was not compatible with the modern values of Botswana's constitution, implicitly rejecting the colonial logic that had been carried into the law (Dow, 1995). Indeed, the Botswana High Court in 1991 used language about the bygone notion of women as chattels being long past, essentially asserting a new postcolonial identity where women are equal citizens. This reflects what postcolonial feminists advocate: reclaiming legal subjectivity for those (women, in this case) marginalised by colonial structures.

3.3. Decolonial Constitutionalism Perspective

Complementing the postcolonial approach, the theory of decolonial constitutionalism advanced by Richard Albert (2025) provides a contemporary framework for understanding how constitutional reform, interpretation and subconstitutional practices are deployed to dismantle colonial hierarchies embedded in law (Albert, 2025). Albert identifies modalities such as supraconstitutionalism and interpretive innovation through which postcolonial states expand rights protections beyond colonial limitations. This perspective reinforces the paper's argument that reforms in Botswana and Senegal represent not only legislative corrections but constitutional acts of decolonisation—transforming the inherited patriarchal order into one that affirms gender equality and inclusive citizenship.

Senegal's path to reform in 2013 can be partially attributed to postcolonial re-evaluation as well. After decades of independence, a new generation of lawmakers and activists (many influenced by global human rights discourse and local women's movements) pushed to update the nationality code (Kampman et al., 2017). Ibrahima Kane, a Senegalese legal expert, noted that Senegal's law evolved to recognise changes in social reality and civil status (Kane, 2024).

3.4. Statelessness and Social Impact

A socio-legal analysis must also consider the real-world impact of these laws on society (Belton, 2013. Gender-discriminatory nationality laws have produced stateless populations and social inequalities. For example, before reforms, children in Botswana and Senegal who could not inherit nationality from their mothers might become stateless if the fathers were foreign or stateless (Belton, 2013). The African Human Rights Commission case (Adekanmbi & Modise, 2000) is instructive – although not about gender, it involved a person effectively rendered stateless by citizenship rules and showed how personal suffering results from rigid nationality laws.

In theoretical terms, one can also apply human rights theory and the concept of universalism vs cultural relativism. Often, defenders of discriminatory laws invoke culture or sovereignty – implying that international norms of gender equality are Western impositions. This has been seen in many countries' rhetoric. However, as noted earlier, these specific nationality laws are themselves arguably Western impositions from the colonial period. Thus, the appeal to "our culture is patriarchal" to justify the laws is somewhat ironic (Donnelly, 1984). From a human rights universalism perspective, the right to equality is not bound by cultural exceptions, especially when the culture of law in question is actually a colonial artifact (Donnelly, 1984). The interplay between respecting local norms and enforcing universal rights has largely been resolved in favour of the latter when it comes to nationality laws, as evidenced by the near-universal acceptance of CEDAW's principles (with only a few holdouts).

Finally, the socio-legal movement for reform itself is a critical part of the theoretical landscape. The changes in Botswana and Senegal did not occur in a vacuum; they were the result of activism, litigation, public debate and international encouragement. We can view these movements through the lens of legal mobilisation theory (Handmaker, 2019) that how activists use legal tools and norms to effect change . In Botswana, an individual (Dow) used the courts. In Senegal, women's rights groups and international NGOs (like Equality Now) collaborated to lobby Parliament and Senegal's reform coincided with broader African and global campaigns (Manby, 2016). These strategies reflect an understanding that law is both an instrument of power and a site of contestation. Changing a nationality law is a political act that redefines national belonging and family structure; it requires building coalitions and sometimes overcoming significant conservative resistance.

In summary, the socio-legal and theoretical context reveals that colonial-era nationality laws were not only legal rules but also mechanisms that enforced a gender hierarchy aligned with colonial and patriarchal ideology. Over time, internal contradictions (with constitutional equality or lived reality), external pressures (international law) and human rights-based advocacy combined to push states towards reform. Recognising women as equal citizens and agents in conferring nationality is both a legal correction and a social transformation. With this context in mind, we now turn to the concrete case studies of Botswana and Senegal, which will illustrate these dynamics in detail.

4. Case Study: Botswana

Botswana (formerly the Bechuanaland Protectorate under British rule) gained independence in 1966. At independence, Botswana adopted a written constitution (the 1966 Constitution of Botswana) that included provisions on citizenship. Initially, Botswana's approach to citizenship was relatively progressive in one aspect – it followed a form of jus soli (citizenship by birth on the territory) as well as jus sanguinis (Scott, 1930). According to Botswana's Independence Constitution, any person born in Botswana would be a citizen if at least one parent was a citizen or if the person would otherwise be stateless. Also, transitional provisions granted citizenship to those with familial ties to the territory (Dow, 2001).

In 1966, citizenship questions were not at the political forefront in Botswana. The country was sparsely populated and issues of ethnic integration (Tswana tribes vs others) and economic development loomed larger (Nyamnjoh, 2002). The colonial legacy, though, was present in how the law treated men and women differently. Under the Independence Constitution's citizenship chapter and the Citizenship Act of 1966, a child born in wedlock could claim Botswana citizenship by descent only through a citizen father (if born abroad) or by birth if born in Botswana but not acquiring another citizenship from the

father. A child born out of wedlock to a citizen mother, however, could be a citizen (since the father was not legally acknowledged) (Mokobi, 2000). This meant legitimacy and the father's status were key. These provisions clearly mirrored British norms.

4.1. Legal Developments

The nationality law underwent changes post-independence. A major change came with the enactment of the Citizenship Act of 1982 (which replaced the 1966 Act). The 1982 Act removed Botswana's broad jus soli; it stated that a child born in Botswana would receive citizenship only if at the time of birth, the child did not automatically get another nationality from his father (Scott, 1930). This was essentially to prevent children of foreign fathers (who could pass their own nationality) from claiming Botswana citizenship simply by birth. It was a restrictive move, arguably to control immigration and align with practices in other African countries that were abandoning unconditional jus soli. Importantly, the 1982 Act also reaffirmed the gender discrimination: it explicitly allowed only illegitimate children to derive nationality from their mother and only if the mother was a citizen and born in Botswana (Izzard, 1985). If the child was born in wedlock, only the father's nationality counted. Thus, a Botswana woman married to a foreign man could not pass her Botswana citizenship to her child; the child's nationality would be that of the father (if any), or the child could be stateless if the father was stateless.

Additionally, the 1982 law initially still had a provision that a foreign wife of a Botswana man could apply for Botswana nationality with a relatively short residency 2.5 years. There was no equivalent provision for foreign husbands of Botswana women. This asymmetry meant, for example, that a British woman marrying a Botswana man could become Botswana citizen in a few years, but a British man marrying a Botswana woman had no such right and would have to go through normal naturalisation (which was much more onerous, typically 10 years of residence) (Stratton, 1992). The underlying assumption was, again, the man is the head of household whose status the woman follows.

In 1984, just two years later, an amendment further tightened the law: Botswana abolished the remaining jus soli provision entirely in 1984 amendments. The law now provided that a child born in Botswana would be a citizen at birth only if the father was a Botswana citizen (or if out of wedlock, the mother, but essentially it became full jus sanguinis), Birth in Botswana no longer conferred any citizenship rights unless the paternal link existed (Manby, 2018). This 1984 change entrenched the patrilineal approach completely. It also, as part of amendments, removed the preferential treatment for foreign wives – after 1984, women marrying Botswana citizens had to go through the same naturalisation process as others (Manby, 2016). That levelled down rather than levelling up – instead of giving foreign husbands the privilege, they revoked the foreign wives' privilege. The result by mid-1980s was a strictly gender-biased regime: a Botswana man could automatically pass citizenship to children born anywhere and his foreign wife had an expedited path earlier (though post-1984 that path was removed, presumably to ensure equality formally by treating both genders' spouses equally badly). A Botswana woman could not pass citizenship to a legitimate child born in or outside Botswana and her foreign husband had no right to citizenship (Dow, 1995).

Botswana was not unique in this setup; many African nations had similar rules at the time. But Botswana became a lightning rod for change due to one case, which is presented in the next section.

4.2. Attorney General v. Unity Dow (1992).

Unity Dow was a Botswana citizen married to an American man. They had three children; two were born after their marriage (hence "legitimate" under the law) and one before (considered "illegitimate" in legal terms). The two younger children, born in wedlock, were denied Botswana citizenship because their father was a foreigner; they held only the father's nationality (the United States). The eldest child, born before the marriage, was a citizen of Botswana through the mother (since at that time the child was deemed born out of wedlock). This peculiar situation – where within one family some children were citizens and others not – highlighted the arbitrary and unfair nature of the law (Dow, 1995). Dow

challenged the Citizenship Act as unconstitutional, arguing it discriminated based on sex and violated her and her children's rights under the Constitution's guarantees of fundamental rights.

The case went to the High Court in 1991 and then the Court of Appeal in 1992. Dow's legal team made a creative constitutional argument: even though Section 15 of the Constitution did not list sex as a forbidden ground of discrimination, the Preamble and Section 3 of the Constitution asserted principles of equality and the entitlement of all individuals to fundamental rights "whatever his race, place of origin, political opinions, colour, creed or sex (Manby, 2016). The government's lawyers argued that the omission of "sex" in the operative anti-discrimination clause meant that the law was allowed to discriminate on that basis and indeed they disturbingly argued that in a patrilineal society such discrimination was expected. The High Court, in a groundbreaking decision, found for Unity Dow in 1991. Justice Unity Doyle (the judge coincidentally shared a first name with the plaintiff) wrote: "The time that women were treated as chattels or were there to obey the whims and wishes of males is long past… it would be offensive to modern thinking and the spirit of the Constitution to find that the Constitution was deliberately framed to permit discrimination on the ground of sex (Manby, 2016). This statement captured the socio-legal shift – acknowledging that the old order (treating women as second-class) is outdated. The Court of Appeal in 1992 upheld this decision, reading the Constitution's general principles to effectively prohibit sex discrimination despite the textual gap. The Court of Appeal emphasised that constitutional interpretation should be broad and in line with evolving values and that Botswana's ratification of international instruments like CEDAW (which was impending at that time; Botswana ratified CEDAW in 1996) could inform understanding of rights (Manby, 2016). This was a monumental victory for women's rights in Botswana and had a ripple effect across Africa.

Following the court's decision, Botswana's parliament acted. In 1995, it passed a new Citizenship Act (Act No. 8 of 1995) that removed gender discrimination. Under the 1995 Act, Botswana women were finally allowed to transmit citizenship to their children on the same basis as men (Cailleba & Kumar, 2010). A child born to either a Botswana mother or father (within marriage) would be a citizen by descent. Also, provisions were introduced to treat foreign husbands of Botswana women on equal terms with foreign wives of Botswana men regarding naturalisation opportunities (effectively, neither got special treatment, or later both could have equal residency requirements as per further amendments). The 1995 Act was a direct result of the Dow case – illustrating how litigation and constitutional principles translated into legislative reform (Fombad, 2011). Botswana thus became one of the early African countries to end formal gender discrimination in nationality law, setting an example that would later be followed elsewhere (Manby, 2016).

4.3. Impacts and Current Status in Botswana

The elimination of gender discrimination in 1995 meant that Botswana complied with CEDAW Article 9 when it ratified the treaty (with reservation to Article 2, but not to Article 9). It also meant fewer children were at risk of statelessness or family separation due to these laws. However, Botswana maintained other restrictive provisions, like a ban on dual citizenship (the 1998 Act still required citizens with dual nationality to renounce one at age 21). Interestingly, in recent years (2021) a case was brought by a Botswana woman challenging the dual nationality prohibition as discriminatory because it forced her children (with a foreign father) to choose nationalities (Dow, 1995). This shows that while the main gender issue was resolved, there are continuing discussions about how citizenship laws can disadvantage women in practice (since women are perhaps more likely to marry foreigners in certain contexts, given Botswana's small population and significant diaspora).

Botswana's step was also significant regionally. The Unity Dow case was cited across Africa in debates and even in court decisions in other countries. It sparked a wave of changes eliminating gender disparity in nationality laws across Africa. For example, judges and lawmakers in Kenya, Lesotho and Sierra Leone referred to Botswana's example when reforming their own laws in the 2000s and 2010s (Sierra Leone's 2006 citizenship amendment, Kenya's 2010 Constitution enshrining no discrimination in citizenship, etc.). Unity Dow herself became an international figure – she later served as a High Court judge in Botswana (the first woman to do so) and wrote and spoke extensively on human rights.

In Botswana, the social reception of the change was generally positive, though there were initial pockets of resistance. Some traditionalists argued that allowing dual citizenship or children of foreign fathers to be citizens might lead to an "influx" or dilution of national identity; similar arguments were heard in Nepal and other countries (Harrington, 2017). But Botswana's stable governance and respect for rule of law meant the court ruling was implemented without major backlash. Today, Botswana's nationality law (as of 2025) upholds gender equality for citizenship transmission to children. The country demonstrates how a colonial legacy can be successfully overcome through domestic legal processes buttressed by international human rights principles. Botswana's continuing compliance with CEDAW (ratified 1996) and the 1961 Statelessness Convention (acceded 2014) has been reaffirmed through periodic reports to the CEDAW Committee in 2019 and 2023, where the government detailed efforts to ensure equal nationality rights for children of mixed-nationality parents. In 2021, the Court of Appeal in Attorney-General v. Kowa upheld the restriction on dual nationality but acknowledged its disproportionate impact on women married to foreigners and urged a legislative review illustrating how judicial oversight continues to reinforce the equality framework established by Unity Dow v. Attorney-General (Dow, 1995).

5. Case Study: Senegal

Senegal became independent in 1960, after being a French colony and an integral part of French West Africa. At the time of becoming independent, Senegal initially federated with Mali (the Mali Federation) briefly, then became a separate republic. Senegal's legal system, including its nationality law, was heavily influenced by French law. Upon independence, Senegal adopted a nationality code – Loi No. 61-10 du 7 mars 1961 – which in large part mirrored the French Code de la Nationalité of that era. The 1961 code established criteria for being Senegalese at independence (essentially, those who were French citizens with connections to Senegal or who were indigenous to Senegal's territory became Senegalese nationals). It also sets forth rules for acquisition of nationality after independence by birth or descent (Hesseling & Kraemer, 2002).

From the outset, the Senegalese nationality law contained gender-discriminatory provisions. Specifically, under the 1961 law: - A child born in wedlock to a Senegalese father and a foreign mother was automatically Senegalese (nationalité d'origine). - A child born in wedlock to a Senegalese mother and a foreign father was not automatically Senegalese; however, the child could opt for Senegalese nationality upon reaching the age of majority (essentially an application process to be granted nationality, sometimes called "à la majorité) (Camara, 2007; Kane, 2021). This meant there was a clear inequality: paternal transmission was assured and immediate; maternal transmission was delayed and conditional. - For children born out of wedlock, if the mother was Senegalese and the father not established, the child could be Senegalese (similar to many civil law countries' approach). - Regarding spouses: a foreign woman married to a Senegalese man could acquire Senegalese nationality by declaration (simplified path) after a certain period of marriage, whereas a foreign man married to a Senegalese woman had no equivalent right (Kane, 2021). In fact, prior to 2013, Senegalese women could not pass on nationality to their husbands at all, reflecting a one-sided view of gender roles in marriage.

In addition, Senegal's law historically had some provisions that could cause loss of nationality, such as if a Senegalese woman married a foreigner and chose to take his nationality, she might lose Senegalese nationality (though Senegal, following French practice, may not have enforced that strictly). Dual nationality was technically prohibited in the code, although in practice it was often tolerated (C. R. i. A. Initiative, 2025). It's worth noting that Senegal's first post-independence president, Léopold Sédar Senghor, was himself married to a French woman who was reportedly given Senegalese nationality by a special act. The anecdote underscores the era's norm: women changed nationality upon marriage more readily than men.

5.1. Legal Developments

Senegal did not undergo major constitutional changes affecting nationality for a long time (Stepan, 2013). Its national citizenship code of 1961 remained largely the same for decades, with a few amendments (in 1967, 1970, 1979, 1984, 1989 as listed in the code's history. None of those amendments, until 2013, addressed gender discrimination in transmission to children or spouses (Crowder, 2023). They dealt with other issues: e.g., a 1979 amendment added provisions for exceptional naturalisation and service to the nation the 1984 amendment explicitly forbade dual nationality for naturalised citizens and clarified that an illegitimate child could gain nationality from the mother unless acknowledged by the father first. That 1984 change gave a slight route for maternal transmission: if a child was born out of wedlock, the mother could pass on nationality unless the father later acknowledged the child and the father was foreign – then the father's status could override (Camara, 2007). The 1989 amendment in Senegal allowed authorities to strip naturalised persons acting like foreigners of their nationality and clarified that just obtaining another nationality doesn't automatically lose Senegalese nationality unless the state takes action. Through all these technical changes, the core gender bias remained entrenched (Bandiaky-Badji, 2011).

Senegal ratified CEDAW in 1985 (with no reservation to Article 9) and the CRC in 1990. Thus, throughout the 1990s and 2000s, Senegal was actually bound by international law to change its nationality law, but it did not do so for some time (Crowder, 2023). One reason might be that the issue did not gain political urgency. Compared to some Middle Eastern countries, for instance, Senegal did not have as many high-profile cases of suffering due to this law (perhaps because cross-national marriages or women marrying non-citizens were somewhat less common, or extended family networks ameliorated some issues). Nonetheless, women's rights groups in Senegal, such as the Association of Senegalese Women Lawyers (AJS), were aware of the problem. They provided free legal advice and lobbied for legal reforms to combat discrimination (Suh, 2014). The AJS and others repeatedly pointed out the inconsistency of the nationality law with Senegal's 2001 Constitution – which in Article 7 guaranteed equality before the law for all citizens – and with Article 18, which obliges the state to eliminate discrimination against women (mirroring international commitments).

By the early 2010s, momentum for change was built. Regionally, other countries like Algeria in 2005, Morocco in 2007 and Cameroon in 2010 had revised their laws to allow maternal transmission of nationality. Internationally, UNHCR's Belong campaign (to end statelessness) and groups like Equality Now were focusing on West Africa. Senegal's government took notice and importantly, saw itself as a regional leader in human rights Senegal often prides on a stable democracy and adherence to the rule of law. In November 2011, at a ministerial meeting on statelessness, Senegal made a pledge to address gender inequality in nationality laws (UNHCR, 2018). This was followed by concrete legislative action. Although no constitutional challenge to the nationality code was filed before 2013, debates within Senegal's legal community increasingly referenced the 2001 Constitution, whose Article 7 guarantees equality before the law and whose Article 18 obliges the State to eliminate discrimination against women. These constitutional guarantees, combined with advocacy by the Association des Juristes Sénégalaises, provided the normative foundation for legislative reform even without judicial intervention.

The 2013 Reform: On 25 June 2013, the Parliament of Senegal unanimously passed Loi No. 2013-05 amending the nationality code, this landmark reform did two major things: 1. It granted Senegalese women the same rights as men to transmit nationality to their children. Children born to a Senegalese mother and foreign father are now Senegalese by operation of law, just as children born to a Senegalese father and foreign mother have always been, this eliminated the previous requirement for children of Senegalese mothers to apply at majority; henceforth, there is no distinction – maternal and paternal descent are equal. 2. It allowed Senegalese women to pass their nationality to their foreign spouse under the same conditions as Senegalese men. This meant a foreign husband can apply for Senegalese nationality after a certain period of marriage presumably the same five-year duration that had applied to wives (C.R.i.A. Initiative, 2025).

The law also addressed dual nationality: as part of the 2013 overhaul, Senegal relaxed its stance on dual nationality, effectively permitting dual citizenship (except for certain high office restrictions (Crowder, 2023). This was significant because one argument often made against gender equality was fear of dual nationality or loyalty issues (Albarazi, 2024). By accepting dual nationality generally in 2013, Senegal removed a perceived obstacle to allowing children to have dual identities (say Senegalese and their father's). It also aligns with global trends acknowledging that dual nationality is common in a globalised world.

Today, Senegal's nationality law stands as one of the more egalitarian in Africa. All discrimination in transmission of nationality to children and spouses has been removed (Manby, 2016). There remain some quirks – for example, the code still technically requires a person who acquires Senegalese nationality by marriage to renounce other nationalities, but as noted, dual citizenship is allowed in practice (and the Constitution only bars dual nationals from becoming President (Civil Rights in Africa Initiative, 2025). One could argue that the 2013 reform was comprehensive in terms of gender, fulfilling both CEDAW 9(2) (children) and 9(1) (spouse rights and retention of nationality). Senegal's example is frequently cited in international forums as a success story of legal reform improving gender equality and reducing risk of statelessness (UNHCR, 2018).

To sum up Senegal's case, a clear colonial legacy (French law-based discrimination) lasted from 1961 to 2013 – over fifty years of independence. The change came due to internal advocacy aligning with international human rights law and a political will to modernise. It is a prime illustration of how post-colonial states can reform outdated laws to uphold gender equality and how doing so fulfils international obligations such as those under CEDAW and the Statelessness Conventions. Senegal's subsequent periodic reports to the CEDAW Committee (2015 and 2022) praised the 2013 reform as exemplary and encouraged continued administrative harmonisation to remove residual barriers. The government has since collaborated with the UNHCR and the African Commission to promote gender-equal nationality laws across Francophone Africa, underscoring the enduring influence of international norms on national practice.

6. Comparative Discussion: Botswana and Senegal

Examining Botswana and Senegal side by side offers insights into both the common colonial roots of gender-discriminatory nationality laws and the different pathways through which reforms can occur. Despite different colonial masters (Britain and France, respectively) and different post-independence trajectories, both countries' nationality laws exhibited the hallmark of colonial gender bias: privileging paternal lineage and restricting women's capacity to transmit nationality.

6.1. Colonial Influence and Legal System

Botswana's initial citizenship law was influenced by British concepts, though interestingly Botswana first had jus soli which it then removed in favour of patrilineal jus sanguinis in 1982-84. This shift could be seen as Botswana moving closer to other Commonwealth countries' practices many of which had patrilineal citizenship at the time and possibly responding to concerns about migration. Senegal inherited a civil law code from France that already was patrilineal with limited maternal transmission opt-in at adulthood (C. R. i. A. Initiative. 2025). The immediate post-colonial laws in both countries thus bore the stamp of the colonizer's policies circa mid-20th century. It is notable, however, that by the 1970s and 1980s both Britain and France had amended their nationality codes to remove explicit gender discrimination, while many of their former colonies, including Botswana and Senegal, retained older formulations. This divergence reflected institutional inertia and differing post-independence priorities rather than continued endorsement of discriminatory norms. In both, women's nationality rights were curtailed: Botswana women couldn't pass citizenship to legitimate children from 1966 onward explicitly, worse by 1984 (Manby, 2016), Senegalese women couldn't pass citizenship to children or husbands from 1961 until 2013.

6.2. Impacts on Women and Families

In Botswana, the impact became a public issue when Unity Dow highlighted how her family could be forced to leave or break up because her children were not citizens in their mother's country. In Senegal, anecdotal evidence suggests many women simply endured the inconvenience or found workarounds (e.g., ensuring birth registration of their children with the father's consulate, etc.), but numerous others likely faced difficulties enrolling children in schools or fearing for their children's future. Both countries likely had some stateless children born to citizen mothers and stateless or foreign fathers – Botswana possibly fewer because Botswana has not historically hosted large stateless populations, whereas Senegal has hosted refugees (e.g., from Mauritania) where this could matter.

One difference is in the realm of marital nationality: Botswana from independence gave foreign wives immediate residence rights and eventually citizenship after a short period (which was removed in 1984), whereas Senegal allowed wives to naturalise but not husbands. After reforms, Botswana treats spouses equally (neither gets special treatment now, essentially) and Senegal treats them equally (both can get citizenship after 5 years).

6.3. Path to Reform

Botswana's reform came via the judiciary forcing legislative change; Senegal's came via legislative initiative (likely executive-driven) without a court case. Botswana's constitution, although not explicit on sex equality, provided an opening that a bold judiciary utilised (Manby, 2016). This was helped by the fact that Botswana is a common law country where courts can make such interpretations. In Senegal (civil law tradition), there was no court case challenging the nationality code – possibly because until recently, it may not have been justiciable or anyone who could challenge may not have tried. Instead, Senegal's change was propelled by advocacy and policy change from above. This underscores different strategies in different legal systems: strategic litigation was key in Botswana (a smaller country with a very independent judiciary at that time), whereas coalition lobbying and aligning with international commitments was key in Senegal (where the executive and legislature took the lead).

6.4. Timeline

Botswana addressed the issue earlier (1990s) at a time when many African nations still had discriminatory laws. It was one of the pioneers in Sub-Saharan Africa in eliminating gender discrimination in nationality, doing so in 1995. Senegal was part of a later wave in the 2010s when a concerted international effort was underway, changing the law in 2013. By 2013, the idea of gender-equal nationality law was more globally accepted and numerous countries had done it, which perhaps made it easier for Senegal. When Botswana did it, it was more exceptional; indeed, Unity Dow's case is often considered a trailblazer, cited alongside reforms in other early changers like Zimbabwe (1984) and Kenya (1985 – although Kenya had a partial reform then and a full reform in 2010). The differing dates reflect different socio-political contexts and pressures (Belton, 2013).

6.5. Public Reception and Cultural Factors

Neither Botswana nor Senegal experienced major public resistance to the reforms in terms of mass protests or backlash; the changes were ultimately seen as logical progressions. However, the arguments made against reform in general (like patriarchal reasoning, fear of foreigners obtaining nationality, etc.) were present. In Unity Dow's case, the government explicitly argued that Botswana was a patrilineal society and that justified the discrimination. The Court firmly rejected that stance as antiquated (Manby, 2016). In Senegal, during parliamentary debates in 2013, some questions may have been raised about dual nationality or whether this would allow many foreign men to claim Senegalese citizenship. The response was that it was required in the name of equality and that practical safeguards exist (like the five-year marriage duration and disallowance of fraudulent marriages) (Sarr, 2013, Parliamentary Debates, Senegal National Assembly). Essentially, both countries had to confront the "we are patriarchal" notion: Botswana did it via judicial enlightenment, Senegal via legislative consensus. As

Catherine Harrington noted from a global perspective, a common refrain in resisting reform is "we are a patriarchal society" (Belton, 2013), but both cases show that leadership can overcome that refrain with an appeal to constitutional and human rights principles.

6.6. Legal Technicalities Post-Reform

After Botswana's 1995 Act, any child born to a Botswana mother or father is a citizen by descent (if born in Botswana or if born abroad and one parent is citizen, with registration). That resolved most issues. After Senegal's 2013 law, any child with a Senegalese parent (mother or father) is Senegalese and any spouse (husband or wife) can naturalise. Both countries thus now comply with the letter of CEDAW Article 9. Each still has certain reservations or quirks: Botswana's constitution to date still does not list "sex" in the non-discrimination clause (though practically moot regarding nationality since the law changed; but generally, an outstanding constitutional issue) and Senegal's law still mentions that the President cannot hold dual nationality (2016 constitutional change) and minor administrative issues. But these do not reintroduce gender discrimination – they apply to all genders equally.

6.7. Statistical Outcomes

It is hard to quantify how many people were affected before and after. However, it is known that dozens of families in Botswana benefited from the precedent set by the Dow case even before the law changed (the government started processing citizenship for children of citizen mothers following the judgment). In Senegal, after 2013, reports indicate that hundreds of families took advantage of the new provisions in the first couple of years – women who had foreign husbands, or women who had lived abroad and had children there came forward to secure Senegalese nationality documents for their children (Kampman, Zongrone, Rawat, & Becquey, 2017). These are significant human impacts: children who may have felt alien in their mother's country were now fully recognised and husbands who might have hold temporary status now became citizens of their family's country.

6.8. Regional Influence

Botswana's early reform influenced Southern Africa – countries like Lesotho and Swaziland cited it when considering changes (Lesotho updated its constitution in 1993 but only fully fixed nationality equality in 2005; Swaziland is still pending as of 2025). Senegal's reform influenced West Africa with Niger following suit in 2014 in respect of spouses (Manby, 2016) and others progressing. Both serve as positive precedents in African Union discussions on nationality protocols, often being praised in meetings on statelessness.

In conclusion, both case studies confirm the paper's thesis: gender discrimination in nationality law was indeed a colonial legacy and dismantling it required conscious legal change aligned with modern human rights norms. The fact that Botswana and Senegal, despite different backgrounds, ended up with strikingly similar discriminatory rules shows how pervasive the colonial templates were. Their eventual convergence toward equality by the 2010s also shows the power of global norms and local agency. It is a testament to how post-colonial societies can rectify colonial-era injustices, enhancing citizenship for all and preventing the harm (like statelessness and family separation) that these old laws caused.

6.9. Post-2013 Developments and Continuing Progress (2013–2025)

Since the 2013 reform in Senegal and the earlier 1995 amendment in Botswana, both nations have continued to consolidate gender-equal nationality regimes through judicial interpretation, administrative practice and international engagement. In Botswana, subsequent constitutional litigation such as Mmusi and Others v. Ramantele (2013) on inheritance equality and the 2021 dual-citizenship case have reinforced the constitutional norm that discrimination on the basis of sex is inconsistent with the spirit of equality established in Unity Dow. The government has also reported to the CEDAW Committee (2019 and 2023 cycles) on maintaining parity in nationality transmission and preventing statelessness among children of mixed-nationality marriages. In Senegal, the Ministry of Justice and the Association

des Juristes Sénégalaises have implemented legal-aid and awareness programmes to ensure women can exercise their reformed rights. The CEDAW Committee's 2022 concluding observations welcomed Senegal's progress while urging further harmonisation between civil-status and nationality procedures to remove residual administrative barriers. Regionally, both countries have supported the African Union's Draft Protocol on the Right to Nationality (2015) and the Abidjan Declaration on the Eradication of Statelessness (2015), demonstrating leadership in continental norm-setting. These post-reform actions confirm that gender equality in nationality law has become an embedded constitutional and human-rights principle rather than a temporary legislative adjustment, marking a decisive break from colonial-era discrimination and affirming the enduring legacy of equality achieved through domestic reform and international accountability.

Conclusions

Colonial legacies in law have long shadows and the persistence of gender discrimination in nationality laws well after independence exemplifies this phenomenon. This paper has explored how two African nations – Botswana and Senegal – inherited and eventually overcame colonial-era gender biases in their nationality legislation. In both cases, the initial post-independence laws reflected the patriarchal frameworks of the former colonial powers, treating men as the primary conveyors of nationality and women as secondary citizens. The results were clear violations of gender equality, with significant human costs: women were denied an equal say in the legal identity of their children and spouses, families faced insecurity and even statelessness, and women's status as full citizens was symbolically and practically undermined. Through a socio-legal lens, we have seen that these laws were not products of indigenous customs or religious mandates, but rather imported norms that became locally entrenched. Feminist legal theory helped us understand the deep injustice and practical harm of such discrimination, while postcolonial theory illuminated why such laws lingered and how important it is for independent states to assert new values in place of colonial ones. The case studies demonstrated two pathways to change: one via constitutional litigation (Botswana) and one via legislative reform driven by international norms and advocacy (Senegal). Both paths converged on the same outcome: recognition that women and men must be equal in conferring nationality, as a matter of fundamental rights and social justice.

Crucially, international legal frameworks – especially CEDAW and the 1961 Statelessness Convention – provided both the impetus and the guidance for these reforms. Botswana's judiciary and Senegal's legislature each invoked the language of international human rights when moving away from the old law (Manby, 2016; Belton, 2013). This underscores the role of global governance in addressing colonial-era discrimination; international law has become a tool for local actors to challenge the status quo. Regional instruments like the Maputo Protocol further affirmed that gender equality in nationality is not a western imposition but an African commitment as well.

As of the time of writing, both Botswana and Senegal serve as success stories. Their current nationality laws uphold the principle that a citizen is a citizen, regardless of gender – a child can derive nationality from either mother or father and a marriage can confer potential citizenship to either spouse on equal terms. The positive impacts are evident: reduced risk of statelessness (particularly for children who otherwise had no claim to any nationality), enhanced rights and stability for families and the removal of a key barrier to women's full equality in society. It also means these countries are in full compliance with their obligations under international law on this matter, reflecting a decolonisation of the legal code that aligns with human rights. However, the broader fight against gender discrimination in nationality laws is ongoing. As noted, dozens of countries worldwide (albeit with a shrinking number) still maintain such discriminatory laws (Belton, 2013). The experiences of Botswana and Senegal yield some lessons for those contexts. Firstly, legal reform often requires both top-down and bottom-up pressures: enlightened leadership or judicial courage combined with grassroots activism and personal narratives that highlight injustice. Unity Dow's personal story and the coalition of Senegalese women's groups both played critical roles in shifting perceptions and convincing policymakers. Secondly, addressing technical legal issues like dual nationality concerns and framing solutions that assuage unfounded fears (for example, showing that granting mothers equal rights does not actually undermine national security

or identity), is important in the reform process. Botswana addressed potential dual-loyalty issues by continuing to restrict dual citizenship (though this is itself debated), whereas Senegal tackled it by actually embracing dual nationality formally, thus removing that as an argument against gender equality. Another insight is the importance of constitutional guarantees. Botswana lacked an explicit constitutional clause on sex equality in 1966, which delayed progress until judges interpreted other clauses broadly (Manby, 2016). Many countries since have updated constitutions to explicitly ban gender discrimination in citizenship (e.g., Kenya 2010). Senegal's constitution enshrined equality, which provided a strong moral basis for the 2013 change, even if not directly enforceable without legislation. Going forward, constitutional reforms in countries that still have discriminatory laws could pave the way for statutory changes.

In conclusion, gender discrimination in nationality laws is an outdated injustice rooted in colonial legacies, as seen in Botswana and Senegal, which can be addressed through legal reforms based on equality principles. Eliminating such discrimination ensures equal citizenship, prevents statelessness and upholds the fundamental truth that women's rights are human rights.

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