



General Assembly

Distr.: General
16 December 2015

Original: English

Human Rights Council

Thirty-first session

Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless

Report of the Secretary-General

Summary

The present report highlights the fact that statelessness is contrary to the principle of the best interests of the child and that arbitrary deprivation of nationality places children in a situation of increased vulnerability to human rights violations, including of their right to an identity, education, the highest attainable standard of health, family life and an adequate standard of living. The right of every child to acquire a nationality is guaranteed in international human rights law with the aim of avoiding a situation whereby the child is afforded less protection because he or she is stateless. States must ensure that comprehensive safeguards to prevent statelessness are incorporated into domestic law and implemented effectively in practice, including provisions allowing for the acquisition of nationality by an otherwise stateless child as soon as possible after birth.



I. Introduction

1. In its resolution 26/14, the Human Rights Council requested the Secretary-General, in consultation with States, United Nations agencies and other relevant stakeholders, to prepare a report on the impact that the arbitrary deprivation of nationality has on the enjoyment of the rights of children concerned, as well as on the existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless, and to present it to the Council before its thirty-first session. The present report is submitted pursuant to that request. Contributions were received from 23 Member States, 10 national human rights institutions and five non-governmental organizations.

2. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that there are approximately 10 million stateless people, over a third of whom are children. Given that a stateless child is born at least every 10 minutes, statelessness among children is a growing problem.¹

II. The right of every child to acquire a nationality: international legal framework

3. The right of everyone to a nationality is enshrined in article 15 of the Universal Declaration of Human Rights and is recognized in many other international and regional human rights instruments (see A/HRC/13/34, paras. 3-18). The fundamental nature of the right to a nationality and the prohibition of arbitrary deprivation of nationality (see *ibid.*, para. 23) have been reaffirmed by the General Assembly in its resolution 50/152 and the Human Rights Council in its resolutions 7/10, 10/13, 13/2, 20/5 and 26/14. States must enact laws governing the acquisition, renunciation and loss of nationality in a manner that is consistent with their international obligations, including in the field of human rights. In particular, States have a responsibility to prevent and reduce statelessness, in appropriate cooperation with the international community, in accordance with Assembly resolution 61/137 and Council resolution 26/14.

4. According to article 7 of the Convention on the Rights of the Child, children should be registered immediately after birth and have the right from birth to acquire a nationality. Article 7 places emphasis on the avoidance of statelessness by specifying that States parties should ensure the implementation of these rights, in particular where the child would otherwise be stateless. Article 5(d) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination and article 9 of the Convention on the Elimination of All Forms of Discrimination against Women state that the right to nationality is to be enjoyed without any discrimination on the basis of race, colour, descent, national or ethnic origin, or sex. The International Covenant on Civil and Political Rights also states, in article 24(3), that every child has the right to acquire a nationality. The same right is enshrined for children of migrant workers in article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and for children with disabilities, in article 18(2) of the Convention on the Rights of Persons with Disabilities. In accordance with the prohibition of arbitrary deprivation of nationality, article 8 of the Convention on the Rights of the Child and article 25(4) of the International Convention for

¹ UNHCR, *I am here, I belong: the urgent need to end childhood statelessness*, November 2015, p. 1.

the Protection of All Persons from Enforced Disappearance further guarantee the right of every child to preserve and to re-establish his or her identity, including nationality.

5. The above-mentioned norms are complemented by the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons. The Convention on the Reduction of Statelessness is of particular importance with regard to the right of every child to acquire a nationality, given that it sets out concrete and detailed obligations for States parties to the Convention in its articles 1 to 4 on ensuring the avoidance of childhood statelessness. These include safeguards for children born on the territory of a State party or to a parent who is a national of a State party where the child would otherwise be stateless, as well as a specific provision to ensure the right to a nationality for foundlings and children born on a ship or aircraft.

6. Regional instruments also guarantee the right of every child to acquire a nationality. These include the European Convention on Nationality, the African Charter on the Rights and Welfare of the Child (art. 6), the American Convention on Human Rights (art. 20) and the Covenant on the Rights of the Child in Islam (art. 7). Other regional instruments, including the Arab Charter on Human Rights, the Human Rights Declaration of the Association of Southeast Asian Nations and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, reaffirm the right of every person to a nationality in more general terms. The right of every child to a nationality has also been reaffirmed through decisions of regional human rights courts and mechanisms, including the Inter-American Court of Human Rights (in the case of *Yean and Bosic v. Dominican Republic*), the African Committee of Experts on the Rights and Welfare of the Child (in the case of *Nubian minors v. Kenya*) and the European Court of Human Rights (in the cases of *Genovese v. Malta* and *Mennesson v. France*). A number of States recognize the right of every child to a nationality in their constitutions or specific legislation.²

A. Non-discrimination and best interests of the child

7. The provisions that protect the right of every child to acquire a nationality should be read in the light of general principles of international human rights law, including the guiding principles that inform the implementation of all rights under the Convention on the Rights of the Child.³ Critical among these are the principles of non-discrimination and the best interests of the child.

8. The principle of non-discrimination is a governing principle in international human rights law and applies to the interpretation and realization of the right to a nationality.⁴ It implies that children have the right to acquire a nationality, irrespective of the child's or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁵ Where a child is precluded from obtaining a nationality on discriminatory grounds, this amounts to arbitrary deprivation of nationality.⁶ Article 9(2) of the Convention on the Elimination of All Forms of Discrimination against Women requires States to grant women equal rights with men with respect to the nationality of their children, echoing the obligation contained in articles 2 and 7 of the Convention on the Rights of the Child.⁷ Furthermore, there can be

² Submissions from Colombia, Ecuador, Egypt, Guatemala and the Ombudsman of Croatia.

³ See Committee on the Rights of the Child, general comment No. 5 (2003).

⁴ See A/HRC/13/34, para. 18, and A/HRC/19/43, para. 2.

⁵ Convention on the Rights of the Child, art. 2(1).

⁶ For other examples of arbitrary deprivation of nationality, see A/HRC/13/34, para. 23.

⁷ See CRC/C/JOR/CO/4-5. See also A/HRC/23/23.

no discrimination with regard to the acquisition of nationality between legitimate children and children born out of wedlock.⁸ According to article 2(2) of the Convention on the Rights of the Child, States must also protect children against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of their parents, legal guardians or family members. The right of a child to acquire a nationality should therefore not be affected by the past opinions or activities of the child's parents.⁹

9. The principle of the best interests of the child, enshrined in article 3 of the Convention on the Rights of the Child and recognized in many other international and regional human rights instruments, gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, in both the public and the private spheres.¹⁰ This principle must be respected by States in legislative and administrative acts in the area of nationality, including in the implementation of safeguards for the avoidance of statelessness among children. As recalled by the African Committee of Experts on the Rights and Welfare of the Child in its general comment on article 6 of the African Charter on the Rights and Welfare of the Child, "being stateless as a child is generally an antithesis to the best interests of children". Application of this principle implies, among other things, that a child must acquire a nationality at birth or as soon as possible after birth.¹¹ Children must not be left stateless for an extended period of time,¹² nor with their nationality status undetermined.¹³

B. Right to nationality for children who would otherwise be stateless

10. The primary purpose of protecting the right of every child to acquire a nationality is to prevent a child from being afforded less protection because he or she is stateless.¹⁴ While States are not obliged, under international human rights law, to grant their nationality to every child born in their territory, they are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born.¹⁵ One such measure is the conferral of nationality to a child born on the territory of the State if the child would otherwise be stateless. Such a safeguard is central to the framework established in the Convention on the Reduction of Statelessness. Regional instruments also recognize the special responsibility of States with regard to the realization of the right to acquire a nationality for children born on their territory.¹⁶

11. The Committee on the Rights of the Child has recommended that States parties to the Convention on the Rights of the Child grant nationality to all children born in their

⁸ See Human Rights Committee, general comment No. 17 (1989) and European Court of Human Rights, *Genovese v. Malta*, 11 October 2011.

⁹ See CRC/C/15/Add.196, para. 29(d).

¹⁰ Committee on the Rights of the Child, general comment No. 14 (2013).

¹¹ See Human Rights Committee general comment No. 17; CRC/C/CZE/CO/3-4; and UNHCR, Guidelines on Statelessness No. 4, para. 11.

¹² See African Committee of Experts on the Rights and Welfare of the Child, *Nubian Minors v. Kenya*, 22 March 2011; and UNHCR, Guidelines on Statelessness No. 4.

¹³ European Court of Human Rights, *Menesson v. France*, 26 June 2014.

¹⁴ Human Rights Committee, general comment No. 17, para. 8.

¹⁵ *Ibid.* See also Convention on the Rights of the Child, art. 7(2).

¹⁶ See the American Convention on Human Rights, the African Charter on the Rights and Welfare of the Child, the Covenant on the Rights of the Child in Islam, the European Convention on Nationality and the Council of Europe Convention on the Avoidance of statelessness in relation to state succession.

territory who would otherwise be stateless.¹⁷ No discrimination with regard to the acquisition of nationality should be admissible on the basis of the nationality status or the statelessness of one or both parents.¹⁸ Children who would otherwise be stateless should not be precluded from acquiring nationality of the country of birth by virtue of their or their parents' residence status (see CRC/C/NL/CO/4, CRC/C/CHE/CO/2-4, CRC/C/TKM/CO/2-4 and CRC/C/CZE/CO/3-4),¹⁹ nor on the basis of their status as former refugees (see CRC/C/CHN/CO/2) or as members of an indigenous or minority group (see CRC/C/THA/CO/2). In order to avoid gaps in access to nationality, article 3 of the Convention on the Reduction of Statelessness requires States to treat children born on a ship flying the flag of the State or in an aircraft registered in the State as being born on their territory.²⁰

12. International law has long guaranteed the acquisition of nationality by foundlings (namely, children found abandoned on the territory and whose parents are unknown).²¹ According to the Committee on the Rights of the Child, safeguarding the right to a nationality for foundlings is also a requirement that stems directly from article 7 of the Convention on the Rights of the Child (see CRC/C/FJI/CO/2-4). This safeguard should not only protect newborn children who are found abandoned, but should include, at a minimum, any child who is unable to communicate information pertaining to the identity of his or her parents.²² Specific obligations to this effect can also be found in the Convention on the Reduction of Statelessness, the Covenant on the Rights of the Child in Islam and the European Convention on Nationality. According to the Committee on the Rights of the Child, States must ensure that, if the parents of an abandoned child are subsequently identified and found to be foreign nationals, this will not lead to loss of nationality if statelessness could ensue (see CRC/C/HRV/CO/3-4).

13. The obligations of States extend beyond children born or found on their territory. They also encompass children who have other relevant links to the State (see A/HRC/13/34). Under international law, the conferral of nationality on a child born to a national abroad who would otherwise be stateless is also recognized. It is not only prescribed by article 4 of the Convention on the Reduction of Statelessness but is also an obligation that stems directly from the right of every child to acquire a nationality (see A/HRC/25/28).²³ States must also ensure the avoidance of statelessness among children following the succession of States²⁴ as well as in the context of international adoption or surrogacy arrangements (CRC/C/15/Add.182, paras. 36-37).

14. According to the Committee on the Rights of the Child, States may not deprive a child of his or her nationality on any ground, regardless of the status of his or her parents (see CRC/C/UKR/CO/3-4, para. 38). The Human Rights Council, in its resolution 26/14,

¹⁷ As at September 2015, the Committee had made 27 such recommendations. See Factsheet published by the Institute on Statelessness and Inclusion, September 2015.

¹⁸ See Human Rights Committee, general comment No. 17 (1989), para. 8; and UNHCR, Guidelines on Statelessness No. 4.

¹⁹ See also the Convention on the Rights of All Migrant Workers and Members of Their Families, art. 29 and UNHCR, Guidelines on Statelessness No. 4.

²⁰ See also UNHCR, Guidelines on Statelessness No. 4.

²¹ See the Convention on Certain Questions relating to the Conflict of Nationality Laws, the Convention on the Reduction of Statelessness and the Covenant on the Rights of the Child in Islam.

²² See African Committee of Experts on the Rights and Welfare of the Child, general comment No. 2, and UNHCR, Guidelines on Statelessness No. 4.

²³ See also CRC/C/CUB/CO/2 and CRC/C/CAN/CO/3-4.

²⁴ Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, art. See also A/HRC/13/34.

urged States to refrain from automatically extending the loss or deprivation of nationality to a person's dependents (see also A/HRC/25/28, para. 24).²⁵ States must provide a child who has been illegally deprived of some or all of the elements of his or her identity with appropriate assistance and protection, with a view to re-establishing speedily his or her identity. An effective remedy must also be available in the context of arbitrary deprivation of nationality (see A/HRC/13/34, A/HRC/25/28 and CRC/C/DOM/CO/3-5).²⁶

15. Universal birth registration is important to promote the realization of children's right to a nationality. The right of every child to be registered at birth is recognized as a fundamental human right, to be fulfilled irrespective of the question of acquisition of a nationality. By documenting the parental affiliation and place and time of birth of a child, birth registration also provides an important function in helping children to assert their right to nationality. In some cases, the lack of access to birth registration directly hampers recognition by a State of a child as a national.²⁷ The groups found to be most vulnerable to non-registration of birth due to structural discrimination – including undocumented migrants, indigenous, minority and nomadic groups, refugees, internally displaced persons, and stateless persons – also face a greater risk of having their nationality disputed where birth registration cannot be completed. States should pay particular attention to both, removing any barriers to access to registration procedures and to the fulfilment of the right to nationality for children in these circumstances. States should ensure that birth registration is free and accessible for all children, and issue birth certificates to all children born in their territory, without discrimination and irrespective of the parents' nationality or statelessness, residence or other legal status.

III. Access of children to nationality, inter alia, of the country in which they are born if they otherwise would be stateless: existing laws and practices

16. The extent to which children have, in practice, access to the nationality of the country in which they are born if they would otherwise be stateless remains an understudied question (see A/HRC/25/28, para. 28).²⁸ There is a lack of reliable data on the implementation of relevant safeguards, a gap that is also apparent in the reporting of States parties to relevant human rights treaty bodies, including the Committee on the Rights of the Child (see CRC/C/BLR/CO/3-4 and CRC/C/GHA/CO/3-4).

A. Overall status of safeguards for children who would otherwise be stateless

17. One of the goals of the UNHCR Global Action Plan to End Statelessness, to be achieved by 2024, is that all States have a provision in their nationality laws to grant nationality to stateless children born in their territory.²⁹ According to an analysis by

²⁵ Submissions from France and the Ombudsman of Bulgaria.

²⁶ Examples of efforts to resolve existing situations of statelessness were given in the submissions from Azerbaijan, Bahrain, Côte d'Ivoire and Kyrgyzstan.

²⁷ Submissions from Lebanon and the European Network on Statelessness.

²⁸ None of the submissions from States for the present report included data on access to nationality for stateless children born in their territory.

²⁹ This goal is elaborated under "Action 2: Ensure that no child is born stateless". Other goals under Action 2 include ensuring that all States have a provision in their nationality law to grant nationality

UNHCR, at least 29 per cent of all States globally currently have no such provision in their nationality laws, while at least a further 28 per cent of all States have inadequate provisions.³⁰ This demonstrates a stark gap between the international human rights obligations of States and their national laws.

18. Further effort is needed to ensure the full compliance of legislation in all States with their human rights and other treaty obligations with regard to protecting children born on their territory from statelessness. According to a study on the nationality laws of 45 European countries, fewer than half – 21 States – had full safeguards in place to confer nationality to all stateless children born on the territory.³¹ In Africa, 12 of 55 States provided safeguards to confer nationality to all children born in the territory who would otherwise be stateless.³² In the Middle East and North Africa, 2 of 17 States were found to have such safeguards in place in their laws.³³ In the Americas, most States have an unconditional *jus soli* regime, granting nationality to all children born on the territory irrespective of whether they would otherwise be stateless (although exceptions exist for the children of diplomats). Some countries in the Americas, however, have been found to have legislation that may be regarded as not fully in line with applicable international standards.³⁴

19. Many other States have safeguards that protect some children born on their territory from statelessness. The above-mentioned studies reveal that 22 of 55 African States whose legislation was analysed,³⁵ and 4 of 45 European States,³⁶ have minimal measures in place to guarantee nationality to stateless children born in the country.

20. There are also gaps in legislation with regard to access to nationality for children born to nationals abroad and who are unable to acquire another nationality: at least 3 per cent of all States have no safeguard, and at least 44 per cent have inadequate safeguards.³⁷ Children born in exile to refugee parents³⁸ and children of undocumented migrants³⁹ can be especially vulnerable to statelessness owing to practical and procedural obstacles in their access to their parents' nationality. The fact that 27 countries worldwide restrict the right of women to pass their nationality on to their children on equal terms with men poses specific problems.⁴⁰ In many cases, these restrictive laws, besides discriminating on the basis of sex, fail to account for the possibility that statelessness may ensue for the child. Given that

to foundlings, and to grant nationality to children born abroad who are unable to acquire another nationality.

³⁰ UNHCR, *Global Action Plan to End Statelessness 2014-2024*, November 2014, p. 9.

³¹ Submissions from Australia (with an example of such a safeguard outside Europe), Bosnia and Herzegovina, Malta, Portugal, Serbia and Slovakia. See European Network on Statelessness, *No child should be stateless*, London, September 2015.

³² Bronwen Manby, "Citizenship and Statelessness in Africa: The law and politics of belonging", 2015.

³³ Laura van Waas and Zahra Albarazi, "A comparative analysis of nationality laws in the MENA region", Tilburg University, September 2014.

³⁴ European Union Democracy Observatory on Citizenship, Global Database on Protection against Statelessness, mode S01 (Born stateless).

³⁵ B. Manby, "Citizenship and Statelessness in Africa" (see footnote 32).

³⁶ European Network on Statelessness, *No child should be stateless* (see footnote 31).

³⁷ UNHCR, *Global Action Plan to End Statelessness 2014-2024*. Submission from the Office of the Ombudsman of Paraguay.

³⁸ See Zahra Albarazi and Laura van Waas, *Statelessness and Displacement*, scoping paper (Norwegian Refugee Council and Tilburg University, 2015); and Amit Sen and Charlie Dunmore, "Born in exile, Syrian children face threat of statelessness", UNHCR 4 November 2014.

³⁹ Submission from the Platform for International Cooperation on Undocumented Migrants (PICUM).

⁴⁰ UNHCR, *Global Action Plan to End Statelessness 2014-2024*. Submission from the Global Campaign for Equal Nationality Rights.

among those countries that restrict women's ability to pass nationality on to their children are a number of refugee-producing States and countries with high rates of labour emigration, these laws also serve to increase the vulnerability of children born to women refugees and migrants to statelessness.⁴¹

B. Common problems in national laws and practice

21. Different legal obstacles can prevent children who would otherwise be stateless from acquiring nationality. One of the most common limitations placed by States on access to nationality for children who would otherwise be stateless is to make access contingent on the nationality status or the statelessness of the child's parents. In half of the countries in West Africa, for instance, a child is able to acquire nationality if his or her parents are stateless and/or of unknown citizenship.⁴² The same is true for 11 countries in Europe⁴³ and some States in other regions.⁴⁴ This approach to the formulation of safeguards to avoid childhood statelessness is problematic, given that it does not account for the possibility that the child's parent (or parents) holds a nationality but is unable to transmit it. This approach could also be regarded as being in contravention of relevant international human rights instruments that clearly enunciate the right of every child to acquire a nationality.

22. Another common limitation found in legislation is to make the acquisition of nationality by a child born on the territory of the State and who would otherwise be stateless contingent on certain residence requirements: the child and/or the parents may need to be lawful or, in some cases, permanent residents of the territory for the safeguard to apply.⁴⁵ This requirement excludes some stateless children from the application of the relevant safeguard and is not in line with the international human rights principles of non-discrimination and the best interests of the child.

23. Many States grant nationality automatically to a child born on the territory who would otherwise be stateless. This ensures that, in accordance with the best interests of the child, the right to nationality is realized immediately at birth. In other States, the child (or the parents on the child's behalf) must apply to secure a nationality, in which case there may be procedural conditions attached. These can create a barrier for access to nationality for the child, especially where the child must produce certain documents that he or she may not be in a position to obtain owing to his or her legal status. A birth certificate may be needed; lawful residence might, however, be in turn required to have access to birth registration, and thus prevent a child who lacks – or whose parents lack – regular migration status in the country from gaining access to nationality.⁴⁶

24. In the absence of special measures for the identification of cases of statelessness among children, the child or his or her parents may be expected to provide documentation that, by virtue of the very circumstance and nature of statelessness, is difficult or impossible to obtain, such as a declaration from a diplomatic mission or consular office that the child has not acquired a nationality from his or her parents.⁴⁷ A related problem is the absence, in

⁴¹ UNHCR, Gender Equality, Nationality Laws and Statelessness, Background Note, 2015.

⁴² Bronwen Manby, "Nationality, Migration and Statelessness in West Africa. A study for UNHCR and IOM", June 2015.

⁴³ European Network on Statelessness, *No child should be stateless* (see footnote 31), p. 15.

⁴⁴ Submissions from Kazakhstan and the Republic of Korea.

⁴⁵ This is the case for 14 States in Europe. See also European Network on Statelessness, *No child should be stateless* (see footnote 31), p. 16.

⁴⁶ Submission from the Legal Resources Centre, South Africa.

⁴⁷ Submission from Costa Rica.

many countries, of a statelessness determination procedure that would allow stateless persons present in the country to be recognized as such and could avoid an undue burden being placed on them to secure a nationality for their children born in the country.⁴⁸ Moreover, production of the required evidence can be problematic for children of refugees, for whom contact with the consular authorities of their State of origin may carry serious risks. States must ensure that particular requirements do not have the effect of undermining access to nationality for otherwise stateless children, particularly with regard to the situation of such vulnerable groups as children of refugees or undocumented migrants.

25. Even where the law does not explicitly require the child or his or her parents to provide specific forms of evidence establishing the child's statelessness, the lack of proper identification of cases of statelessness can be a major impediment to the effective fulfilment of every child's right to acquire a nationality. A child's nationality may either be deemed "unknown" or "pending clarification" by the State concerned, or they are attributed a nationality that they do not in fact enjoy, so that the safeguard guaranteeing a nationality to stateless children cannot be invoked.⁴⁹ This can place a child in a state of legal limbo, which may last for years, even into adulthood. This is liable to have negative repercussions on the definition of the child's personal identity,⁵⁰ and is not in accordance with the best interests of the child.

26. Other issues that prevent children from acquiring a nationality have emerged. They include the inability of children of undocumented migrants and of members of indigenous peoples to obtain nationality in *jus soli* regimes. There are also problems in the interaction between citizenship regulations and other fields of national law and policy, such as civil registration or marriage law,⁵¹ in the context of international commercial surrogacy, and for children of same-sex couples.⁵² States and human rights mechanisms should pay continued attention to all relevant laws and practices that interact with and have an impact on the fulfilment of every child's right to acquire a nationality, not only those that relate specifically to the regulation of nationality.

IV. Impact of arbitrary deprivation of nationality on the enjoyment of human rights by children

27. The arbitrary deprivation of nationality of children is in itself a human rights violation, with statelessness its possible and most extreme consequence. International human rights law is not premised on the nationality of the person but rather on the dignity that is equally inherent to all human beings. In practice, however, those who enjoy the right to a nationality have greater access to the enjoyment of various other human rights. Key political rights, such as the right to vote or stand for election, or to perform certain public functions, which may be restricted to a country's citizens,⁵³ stand in exception to the above statement, as they are examples of human rights to which persons with no nationality

⁴⁸ A growing number of States have dedicated statelessness determination procedures in place, while others are in the process of establishing them.

⁴⁹ European Network on Statelessness, *No child should be stateless* (see footnote 31), p. 17.

⁵⁰ See *Menesson v. France*.

⁵¹ Submission from the Islamic Republic of Iran.

⁵² See *Menesson v. France*. Submission from the European Network on Statelessness.

⁵³ International Covenant on Civil and Political Rights, art. 25.

generally have no claim. All other human rights are to be enjoyed by all persons, including children who have been arbitrarily deprived of their nationality.⁵⁴

28. There is no legal basis upon which States that have arbitrarily deprived a child of his or her nationality can justify the denial of other human rights to the child on grounds of his or her resulting statelessness. Repeatedly, however, the invisibility of stateless children to the eyes of society causes the violation of their rights to go unnoticed.⁵⁵

29. The African Committee of Experts on the Rights and Welfare of the Child, in its general comment on article 6 of the African Charter on the Rights and Welfare of the Child, stated that the overall negative impact of statelessness on children cannot be overemphasized. “While it is always no fault of their own, stateless children often inherit an uncertain future [...] difficulty to travel freely, difficulty in accessing justice procedures when necessary, as well as the challenge of finding oneself in a legal limbo vulnerable to expulsion from their home country. Statelessness is particularly devastating to children in the realization of their socio-economic rights such as access to health care, and access to education.” Other challenges to the enjoyment of human rights that stateless children face include obtaining a birth certificate and other forms of legal and identity documentation and benefiting from social security. Stateless children may furthermore be vulnerable to arbitrary and lengthy detention and, in extreme cases, vulnerable to exploitation and abuse.⁵⁶

30. The principles of non-discrimination, enshrined in all core international human rights instruments, and of the best interests of the child, contained in article 3 of the Convention on the Rights of the Child, are, as noted above, guiding principles in the realization of the rights of the child. The most pervasive and negative human rights consequence of the arbitrary deprivation of nationality of children is the continuous violation of their right to be free from discrimination and the ongoing disregard for their best interests. Such a situation has, in turn, a negative impact on their enjoyment of all other human rights.

A. Right to an identity

31. The right to an identity is intimately linked to the right to a nationality.⁵⁷ Article 8 of the Convention on the Rights of the Child requires States to respect the right of the child to preserve his or her identity, including nationality, name and family relations. The arbitrary deprivation of nationality strips the child of a key element of his or her identity and undermines the enjoyment of other elements of the child’s identity. The nexus between the arbitrary deprivation of nationality of children and the denial of other aspects of a child’s identity, and the impact this has on the enjoyment of other human rights, was addressed by the Inter-American Court of Human Rights when it stated that, by not granting children nationality, the State concerned placed them “in a situation of extreme vulnerability” and that it “violated their right to nationality as well as other rights, namely: the right to

⁵⁴ International law allows for certain restrictions on the rights of non-nationals, for example, in relation to freedom of movement or the right to work. This is a disadvantage to stateless persons, who have no nationality. Such restrictions must nevertheless be construed so as to avoid undermining the basic prohibition of discrimination (see Committee on the Elimination of Racial Discrimination, general recommendation No. 30, CERD/C/64/Misc.11/Rev.3, para. 2)

⁵⁵ Submission from the Human Rights Procurator’s Office of Nicaragua.

⁵⁶ UNCHR, *I am here, I belong* (see footnote 1), p. 18.

⁵⁷ Submission of Ecuador.

juridical personality and to a name and the right to equal protection, all in relation to the rights of the child”.⁵⁸

32. The registration of births, protected in article 7 of the Convention on the Rights of the Child, is one of the means through which the right of a child to an identity is preserved and recognized. Stateless children, and in particular the children of stateless parents, are more likely to face legal and practical barriers in their access to birth registration. They also face barriers to obtaining various other legal documents.⁵⁹

33. Target 16.9 of the Sustainable Development Goals is to provide, by 2030, legal identity for all, including birth registration. The arbitrary deprivation of nationality of children is a significant barrier to the realization of this target, which will not be fully met unless articles 7 and 8 of the Convention on the Rights of the Child are universally respected and fulfilled and childhood statelessness has been eradicated.

B. Right to education

34. Article 28 of the Convention on the Rights of the Child and article 13 of the International Covenant on Economic, Social and Cultural Rights protect every child’s right to education. They guarantee free and compulsory primary education for all, and set various standards in relation to higher education. Both the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have recognized that neither non-citizenship nor statelessness should have a bearing on the enjoyment of the right to education.⁶⁰ One of the most commonly reported effects of statelessness on children is, however, the barrier that this imposes on their access to education.⁶¹ As noted by the Secretary-General in a previous report on the arbitrary deprivation of nationality, the difficulties faced by non-citizen children in their access to education are indirectly yet closely linked to their non-citizenship (A/HRC/19/43, para. 37). Barriers to education also play a major role in limiting job opportunities for stateless children as they grow into adulthood.

C. Right to the highest attainable standard of health

35. Article 12 of the International Covenant on Economic, Social and Cultural Rights stipulates the right to health. Similarly, article 24 of the Convention on the Rights of the Child includes an obligation for States to recognize the right of the child to the enjoyment of the highest attainable standard of health. According to the Committee on Economic, Social and Cultural Rights, States are under an obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including

⁵⁸ *Case of the Yean and Bosico Children v. The Dominican Republic*, Inter-American Court of Human Rights, judgement of 8 September 2005.

⁵⁹ Submission from the Independent Human Rights Commission of Afghanistan.

⁶⁰ See Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999), para. 6 (b); and Committee on the Rights of the Child, general comment No. 6 (2005), para. 41. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 30, para. 30; A/HRC/14/25 and A/HRC/17/29 and Corr.1); and Convention relating to the Status of Stateless Persons, art. 22.

⁶¹ See A/HRC/19/43, para. 36. See also E/C.12/1/Add.24, para. 8; E/C.12/1/Add.103, paras. 24 and 45; CRC/C/15/Add.99, para. 16; CRC/C/15/Add.131, paras. 47 and 49; CRC/C/15/Add.185, para. 27; CRC/C/15/Add.203, para. 36; CRC/C/15/Add.244, para. 53; and CRC/C/15/Add.254), para. 37.

prisoners or detainees, minorities, asylum seekers and irregular migrants,⁶² and that any discrimination in access to health care is proscribed by the International Covenant on Economic, Social and Cultural Rights (E/C.12/2000/4, para. 18). Despite these provisions, stateless children often face discrimination in their enjoyment of this right. More than 30 States require documentation to treat a child at a health facility. In at least 20 States, stateless children cannot be legally vaccinated.⁶³ Stateless Roma children in Europe have been denied access to public paediatric services or to child health education. Additional factors, such as travel restrictions, higher medical costs for non-nationals and discrimination, impede stateless children's right to health.⁶⁴

D. Right to family life

36. Article 17 of the International Covenant on Civil and Political Rights provides for the right of every person to be protected against arbitrary or unlawful interference with his private and family life. Article 23 recognizes that the family is entitled to protection by society and the State. Articles 7, 9, 10, 16 and 18 of the Convention on the Rights of the Child stipulate that States should ensure that the child's right to a family life is preserved and protected. The arbitrary deprivation of nationality of children can have a negative impact on the enjoyment of these rights, compounded also by limitations to the right to enter or reside in the territory of a State (A/HRC/19/43, para. 21). The Human Rights Committee has ruled that a deportation order issued against two stateless parents of a child was a violation of rights relating to the protection of the family and of the child (CCPR/C/72/D/930/2000, annex). Similarly, the European Court of Human Rights has held that the failure to recognize the legal link between parents and their surrogate children and the deprivation of nationality of the children amounts to a violation of the children's right to a family life.⁶⁵

E. Freedom of movement

37. Article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights guarantee the freedom of movement of all persons, including children. The lack of documentation – in particular, the inability to obtain passports – and, in some circumstances, the imposition of restrictions on movement of stateless minorities, undermines stateless children's enjoyment of the freedom of movement. As noted by the Secretary-General, persons who have been arbitrarily deprived of their nationality may face severe limitations on their ability to travel and to choose a place of residence if, by depriving them of their nationality, the State has put them in a situation of irregularity concerning their country of residence (A/HRC/19/43, para. 8).

F. Right to an adequate standard of living

38. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to an adequate standard of living for himself and his

⁶² Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) (E/C.12/2000/4), para. 34; Committee on the Rights of the Child, general comment No. 15 (2013) (CRC/C/GC/15), para. 8.

⁶³ UNHCR, *I Am Here, I Belong* (see footnote 1), p. 12.

⁶⁴ *Ibid.*

⁶⁵ See *Menesson v. France*.

family. Article 27 of the Convention on the Rights of the Child provides for the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The negative impact of the arbitrary deprivation of nationality on the livelihood prospects of parents and consequently the standard of living of the whole family, including children, can be significant. Most stateless children live in poverty,⁶⁶ which is further exacerbated in situations of intergenerational statelessness, where, owing to discriminatory treatment, the arbitrary deprivation of nationality has carried on from one generation to the next.

G. Protection from economic exploitation

39. According to article 32 of the Convention on the Rights of the Child, States should protect all children from economic exploitation and from performing work that is hazardous or interferes with the child's education. Stateless children who have been denied access to education, have no documentation and live in poverty often have no choice but to undertake hazardous and exploitative work.⁶⁷ Significantly, upon attaining majority, stateless persons often have no access to the workforce for these very same reasons.⁶⁸

H. Child trafficking

40. Article 35 of the Convention on the Rights of the Child requires States to take measures to prevent the abduction, sale or trafficking of children for any purpose or in any form. The arbitrary deprivation of nationality of children may, however, heighten their vulnerability to being trafficked.⁶⁹ The African Committee of Experts on the Rights and Welfare of the Child, in its general comment on article 6 of the African Charter on the Rights and Welfare of the Child, found that children without birth certificates or a nationality were more vulnerable to abuses such as sexual exploitation, human trafficking and recruitment into armed forces. Children who have been both arbitrarily deprived of their nationality and forced to flee persecution are particularly vulnerable.⁷⁰

I. Freedom from torture or other cruel, inhuman or degrading treatment or punishment and freedom from arbitrary deprivation of liberty

41. Article 37 (a) of the Convention on the Rights of the Child states that no child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁷¹ Article 37 (b) stipulates that no child should be deprived of his or her liberty unlawfully or arbitrarily.⁷² Despite these legal norms, stateless children in context of migration or forced displacement are more vulnerable to arbitrary and lengthy immigration detention because their lack of a nationality makes it impossible to remove them from the country within a reasonable period of time. Such detention may be considered in violation

⁶⁶ See UNHCR, *Under the Radar and Under-protected*, Geneva, 2012, p. 9. Submission from Lebanon.

⁶⁷ Ibid. See also UNHCR, *I am here, I belong*.

⁶⁸ UNHCR, *I am here, I belong* (see footnote 1)

⁶⁹ Human Rights Council resolution 26/14, para. 9. See also submission from the Human Rights Procurator's Office of Nicaragua.

⁷⁰ Submission from Christian Solidarity Worldwide.

⁷¹ See also Universal Declaration of Human Rights, art. 5 and International Covenant on Civil and Political Rights, art. 7.

⁷² See also Universal Declaration of Human Rights, art. 3 and International Covenant on Civil and Political Rights, art. 9.

of both the freedom from cruel, inhuman or degrading treatment⁷³ and the freedom from arbitrary deprivation of liberty.⁷⁴ According to the Special Rapporteur on the human rights of migrants, children in immigration detention will often be traumatized and have difficulty understanding why they are being “punished” despite having committed no crime (A/HRC/20/24, para. 38). Similarly, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment found that even very short periods of detention could undermine a child’s psychological and physical well-being and compromise cognitive development. Children deprived of liberty were at a heightened risk of suffering depression and anxiety, and frequently exhibited symptoms consistent with post-traumatic stress disorder (A/HRC/28/68, para. 16).

V. Conclusions and recommendations

42. **International human rights law guarantees the right of every child to acquire a nationality and the prohibition of arbitrary deprivation of nationality. States should ensure that their domestic laws provide safeguards in relation to the right of all children to acquire a nationality. This includes safeguards to ensure that children born on the territory who would otherwise be stateless and children born abroad to a national who would otherwise be stateless are able to acquire nationality. States should also make provisions for foundlings and children born on ships and planes to acquire nationality in accordance with international standards. States should furthermore ensure that these safeguards allow for the acquisition of nationality by an otherwise stateless child as soon as possible after birth.**

43. **Gaps in nationality laws, substantive or procedural conditions required to benefit from safeguards, and discrimination are some of the main obstacles to children who would otherwise be stateless to have access to nationality. States should ensure that comprehensive safeguards to prevent statelessness are incorporated in their domestic law and implemented effectively in practice, without being subject to unreasonable conditions.**

44. **While States may exercise discretion in determining the rules of access to nationality, such rules must comply with the principles of international law, in particular the best interests of the child and non-discrimination. Existing law and practice demonstrate that systemic and entrenched discrimination on such grounds as gender, race, religion, ethnicity, national origin, migration status, disability and political opinion continues to result in the arbitrary deprivation of nationality to children, undermining their legal identity and enjoyment of other human rights. In this regard, States should eliminate laws and practices that deprive children of nationality on discriminatory grounds. States should also consider the effects that migration and refugee movements may have on access to nationality for refugee, asylum-seeking or migrant children, and provide appropriate safeguards.**

45. **Lack of birth registration can also create a risk of statelessness. States should honour their international human rights obligation to register every child’s birth, regardless of the child’s or child’s parents’ nationality or statelessness, or legal status.**

⁷³ The European Court of Human Rights has repeatedly held that even the short-term detention of migrant children is a violation of the prohibition of torture and other ill-treatment; see *Popov v. France*, judgement of 19 January 2012; *Rahimi v. Greece*, judgement of 5 April 2011; and *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, judgement of 12 October 2006.

⁷⁴ See CCPR/C/59/D/560/1993 and CCPR/C/76/D/900/1999.

States should ensure that proof of identity, including nationality, is available to all children where this is a requirement.

46. Arbitrary deprivation of nationality places children in a situation of increased vulnerability to human rights violations. States should ensure that such children are not denied the enjoyment of other human rights. They must not be discriminated against on the basis of their statelessness or any other grounds. In particular, they should be allowed to enjoy fully their right to an identity, education, health, an adequate standard of living, family life and freedom of movement. They must be protected at all times against gross violations, including exploitation, trafficking, torture or other cruel, inhuman or degrading treatment and the arbitrary deprivation of liberty.

47. Where children have, in contravention of international law, been arbitrarily deprived of their nationality and rendered stateless, States must ensure that effective and appropriate remedies are available, including reinstatement of nationality.

48. The Secretary-General encourages States to cooperate fully with such international initiatives as the UNHCR Global Campaign to End Statelessness and to abide by their commitments under the 2030 Agenda for Sustainable Development, in particular goal 16, target 9, which requires States to provide legal identity for all, including birth registration, and goal 5 on gender equality.

49. The Secretary-General calls upon States to accede to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, if they have not already done so, and to implement their provisions.
