

UNHCR intervention at the Committee on Legal Affairs and Human Rights

Parliamentary Assembly of the Council of Europe, Paris, 12 November 2012

I Introduction

1. The Office of the High Commissioner for Refugees (UNHCR) welcomes this opportunity to share its concerns regarding obstacles to acquiring nationality in Europe which lead to or perpetuate statelessness in the region.
2. The United Nations General Assembly (UNGA) has entrusted UNHCR with a global mandate to identify and protect stateless persons and to prevent and reduce statelessness worldwide.¹ UNHCR has a specific role with regard to implementation of the 1961 Convention on the Reduction of Statelessness ('1961 Convention') as the body to which persons claiming the benefit of the 1961 Convention may apply. Furthermore, UNGA has specifically requested UNHCR to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation.² Similarly, UNHCR's Executive Committee has requested UNHCR to provide technical advice with respect to nationality legislation and other relevant legislation with a view to ensuring adoption and implementation of safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality. UNHCR has thus a direct interest in national legislation and legal instruments of regional bodies such as the Council of Europe that impact on the prevention and reduction of statelessness, including through implementing the provisions of the two international statelessness conventions as well as Council of Europe (CoE) Conventions and Recommendations.
3. UNHCR has also worked closely with the CoE over the years to develop important standards for the avoidance and reduction of statelessness in Europe. These standards are contained in two highly relevant treaties, the 1997 European Convention on Nationality (ECN) and the 2006 Convention on the Avoidance of Statelessness in relation to State Succession. In addition Recommendation CM/Rec (2009)13 and explanatory memorandum of the Committee of Ministers on the Nationality of Children and Recommendation R (1999) 18 of

¹ Please see UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995.

² Article 11, 1961 Convention: 'The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.' Please also see UNGA Resolution A/RES/3274(XXIX) of 10 December 1974 on the provisional mandate of UNHCR as the body to which persons claiming the benefit of the 1961 Convention may apply and Resolution A/RES/31/36 of 30 November 1976 which requested UNHCR to continue to perform these functions.

the Committee of Ministers on the Avoidance and Reduction of Statelessness of 1999 provide further guidance on the avoidance and reduction of statelessness amongst Member States of the CoE.

4. Based on its statelessness mandate, UNHCR will use this opportunity to share some concerns and recommendations relating to the statelessness conventions, the identification and protection of stateless persons, the safeguards against statelessness at birth, naturalization practices and multiple nationality in Europe.

II Accession to the statelessness conventions

5. UNHCR welcomes the increased number of accessions to the 1954 Convention relating to the Status of Stateless Persons ('the 1954 Convention') and the 1961 Convention since the launch of UNHCR's accession campaign in October 2010. This campaign was initiated in the context of the commemoration of the 50th anniversary of the 1961 Convention in 2011 and culminated in a Ministerial Intergovernmental Event on Refugees and Stateless Persons ('Ministerial Intergovernmental Event') in December 2011 in Geneva. At this event, numerous States pledged to take action on statelessness, including 9 CoE Member States which pledged to take steps to accede to one or both of the statelessness conventions. Since then, Bulgaria, Georgia, Moldova and Portugal have all completed their pledges to accede. Belgium, Luxembourg, Spain, Turkey and Ukraine are yet to complete their pledges to accede. The total number of States party to the 1954 Convention and the 1961 Convention increased to 76 and 48, respectively.
6. These conventions complement the provisions of the ECN and are important to ensure that standards for the prevention of statelessness and the protection of stateless persons are harmonized not just at the regional level but also globally. The 1961 Convention is important for ensuring the application of common global standards which prevent conflicts of nationality laws between CoE Member States and States in other regions. The value of the 1954 Convention lies primarily in the definition of a stateless person and the international protection regime it establishes for stateless persons. There is no equivalent to the 1954 Convention at the regional level.
7. UNHCR also welcomes the pledge by the EU made at the recent High-level Meeting of the 67th Session of the General Assembly on the Rule of Law at the National and International Levels in New York on 24 September 2012, which stated that "Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 Convention and by considering ratification of the 1961 Convention." This represents a major step towards universal accession to the 1954 Convention in the EU and indications for further accessions to the 1961 Convention in the region.
8. Accession to the two statelessness conventions demonstrates a State's commitment to address statelessness, it promotes recognition of the international principles aimed at the

prevention and reduction of statelessness and of the legal status of a 'stateless person' and the related framework for the protection of stateless persons.

9. **UNHCR encourages all remaining Member States of the Council of Europe to accede to both statelessness conventions.**

III Identification and protection of stateless persons

10. UNHCR research in several European countries has shown that in the absence of proper statelessness determination procedures and protection regimes, many stateless persons remain in a legal limbo where they may be subject to arbitrary and prolonged detention and face difficulties enjoying their basic human rights such as access to health care and education.³ Recognition of an individual as a stateless person and grant of a secure residence status at the national level provides an avenue for stateless persons to enjoy the rights set out in the 1954 Convention and international human rights law, and acquire a nationality through eventual naturalization.
11. In addition to their recent accessions to the statelessness conventions, Moldova and Georgia joined Spain, Hungary, France, Latvia and Italy as countries in Europe that have established formal statelessness determination procedures which allow for the recognition of stateless persons in their respective territories. Belgium also pledged at the Ministerial Intergovernmental Event to establish a statelessness determination procedure and the UK is currently working to establish such a mechanism.
12. **UNHCR encourages Member States of the Council of Europe to establish formal statelessness determination procedures, in line with UNHCR's recently published guidelines⁴ to ensure the full protection of stateless persons in each Member State's territory.**

IV Safeguards against statelessness at birth

13. Articles 1 - 4 of the 1961 Convention set out safeguards, which if implemented in the nationality legislation of States, help to avoid situations of statelessness arising at birth.

³ Among the studies are: UN High Commissioner for Refugees, *Mapping Statelessness in The United Kingdom*, 22 November 2011, available at: <http://www.unhcr.org/refworld/docid/4ecb6a192.html>, and UN High Commissioner for Refugees, *Mapping Statelessness in the Netherlands*, November 2011, available at: <http://www.unhcr.org/refworld/docid/4eef65da2.html>

⁴ UN High Commissioner for Refugees, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html>, and UN High Commissioner for Refugees, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 17 July 2012, HCR/GS/12/03, available at: <http://www.unhcr.org/refworld/docid/5005520f2.html>

UNHCR is concerned that children continue to be born stateless in Europe because of insufficient safeguards to prevent statelessness in the nationality legislation of some States.

Otherwise stateless children

14. If a child born on the territory of a State Party to the 1961 Convention otherwise would be stateless, he or she is to acquire the nationality of the State of birth either automatically at birth or through a non-discretionary application procedure.^{5 6}
15. In Europe, some nationality laws have no safeguards against statelessness at birth on the territory (Malta and Norway for example). Though many countries have included provisions for the automatic acquisition of nationality by children born on the territory to parents who are stateless or of unknown nationality, they do not provide safeguards against statelessness for all children born on the territory who would otherwise be stateless (Armenia, Croatia, Lithuania, Slovenia for example).

Lawful residence requirement

16. The ECN provides for a similar safeguard against statelessness and requires grant of nationality either at birth *ex lege* or through an application procedure for otherwise stateless children under which a condition of lawful and habitual residence in the country of birth may be required.⁷ This requirement of lawful residence is not found in the 1961 Convention. Under the 1961 Convention, only habitual residence is a permissible condition for the acquisition of nationality by children born stateless in the territory.

⁵ Article 1, paragraph 1, 1961 Convention: ‘A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law, or (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law.(...);’ Please also refer to paragraph 19 of UNHCR, *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: (“Dakar Conclusions”)*, September 2011, available at: <http://www.unhcr.org/refworld/docid/4e8423a72.html>. In particular that the meeting concluded that “The right of every child to acquire a nationality, as set out in CRC Article 7 and the principle of the best interests of the child contained in CRC Article 3, create a strong presumption that Contracting States should provide for automatic acquisition of their nationality at birth to an otherwise stateless child born abroad to one of its nationals. In cases where Contracting States require an application procedure, international human rights law, in particular the CRC, obliges States to accept such applications as soon as possible after birth” [paragraph 37].

⁶ The 1961 Convention allows the acquisition of nationality by application to be subject to a limited number of conditions which States may opt to include in their nationality laws for example the requirement that an applicant be habitually resident in the State for a maximum of ten years: Please see Article 1, paragraph 2. 1961 Convention.

⁷ Article 6, 2(b) European Convention on Nationality, Strasbourg, 06 November 1997; <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>.

17. In countries in Europe that impose a lawful or permanent residence requirement, children in situations of irregular migration remain stateless without the possibility of a solution, even if they have resided habitually in the country where they were born for an extended period and have no relevant link to any other country (Sweden and the Netherlands for example).
18. Some nationality laws impose the condition of a residence requirement on the parent(s) of the stateless child in order for the child to acquire nationality (Germany and the Czech Republic for example). This is not in line with the 1961 Convention or the ECN. Neither treaty allows for imposition of any conditions whatsoever on the parents of the child for the safeguard against statelessness to apply.

Surrogacy

19. In recent years, several situations of children born to surrogate mothers who are at risk of statelessness have come to the attention of UNHCR and the public. When the child does not acquire the nationality of the surrogate mother, or the nationality of the commissioning parents, she or he is stateless at birth.⁸ Principle 12 of Recommendation CM/Rec(2009)13 of the Committee of Ministers on the nationality of children sets out guidance to States which partially remedies this gap. The Recommendation provides that in order to avoid cases of statelessness in surrogacy arrangements, if the child-parent relationship is recognized in the State of the parents who commission a surrogacy, then that State must allow the child born from the surrogacy arrangement to acquire the nationality of the commissioning parents on the basis of the *jus sanguinis* principle, as is the case in situations of adoption.⁹ However, the Recommendation does not resolve situations in which the legislation or policy of the State of the commissioning parents does not recognize the relationship between the commissioning parents and the child.
20. **UNHCR urges States to adopt legislation which takes into account the best interests of the child and under which all children born in their territory who would otherwise be stateless automatically acquire the nationality of the State at or as soon as possible after birth.**¹⁰

⁸ The Times of India: *German couple's surrogate kids may end up stateless*, 16 December 2009, http://articles.timesofindia.indiatimes.com/2009-12-16/india/28087928_1_surrogate-children-surrogate-mother-german-couple and Mail online, *Couple wins fight for custody of 'stateless' surrogate twins*, 12 December 2008, <http://www.dailymail.co.uk/news/article-1093922/Couple-win-fight-custody-stateless-surrogate-twins.html>

⁹ Please refer to Principle 12 of Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children.

¹⁰ Please refer to paras 4 and 22 – 24 of UNHCR, *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*, September 2011, available at: <http://www.unhcr.org/refworld/docid/4e8423a72.html>

21. **In States that introduce an application procedure for the acquisition of nationality for children born in the country who otherwise would be stateless, and which choose to include a condition relating to a period of residence, it is only *habitual* residence which is to be required, rather than *lawful* residence.**

V Naturalization procedures

22. The Introductory Memorandum shared with UNHCR before this hearing raises the difficulties faced by migrants in Europe to meet naturalization requirements in various countries. Best practices in European countries to facilitate naturalization of immigrants, refugees and stateless persons include waiving language proficiency requirements and reducing the number of years of lawful residence required before applying for naturalization. It is worth noting that the ECN limits the residence requirement for the naturalization of persons lawfully and habitually residing on the territory of the State Party to ten years.¹¹
23. **UNHCR encourages countries to adopt legislation that facilitates the naturalization of recognized refugees and stateless persons on their territory, as stipulated in the 1951 Convention relating to the Status of Refugees and the 1954 Convention respectively.**¹²

VI Multiple nationality

24. The 1961 Convention is silent on the issue of multiple nationality. UNHCR notes however that when States prohibit dual nationality there is increased likelihood of occurrence of conflict of laws between States which result in statelessness. Article 7(2) of the 1961 Convention therefore sets out that “a national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country”. Similarly, individuals may not voluntarily renounce their nationality unless they possess or acquire another nationality.
25. The CoE through its various bodies and texts has shown an evolving position on multiple nationality.¹³ In 1997, the Explanatory Note to the ECN¹⁴ describes how in a changing world

¹¹ Article 6 European Convention on Nationality states: ‘Each State Party shall provide in its internal law for the possibility of naturalization of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalization, it shall not provide for a period of residence exceeding ten years before the lodging of an application.’

¹² Article 34 of the 1951 Convention relating to the Status of Refugees states that: ‘The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings’. Article 32 of the 1954 Convention relating to the Status of Stateless Persons adopted the same wording in relation to the naturalization of stateless persons.

¹³ The 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality of the Council of Europe aims to reduce as far as possible the number of cases of

with growing migratory flows and mixed marriages, multiple nationality occurs increasingly frequently and should be allowed in an increasing number of circumstances. Indeed, article 14 of the ECN requires State Parties to allow multiple nationality for children when the nationalities were acquired automatically at birth and for spouses when acquisition is automatic upon marriage.

26. Research has shown a global and European trend of allowing for multiple nationality in nationality legislation.¹⁵ The broad trend towards allowing dual and multiple nationality in the CoE and globally has the positive effect of limiting statelessness due to lack of universal application of the safeguards mentioned above.
27. **UNHCR recommends that States, especially those that prohibit multiple nationality, include safeguards against statelessness in their nationality legislation in situations where a change of nationality occurs, ensuring that a person cannot lose, renounce or be deprived of a nationality if statelessness ensues. Such safeguards would be in line with the provisions of the 1961 Convention and the ECN.**¹⁶

VI Conclusion

28. UNHCR is encouraged by the various initiatives in Member States of the CoE to address statelessness. The work of the various bodies of the CoE, such as that of your Committee and that of the Commissioner for Human Rights, who has made the prevention of statelessness among children one of his priorities, contributes to an environment where statelessness in Europe is acknowledged as a problem and where solutions can be found. UNHCR also welcomes the developments in the European Court of Human Rights¹⁷, in

multiple nationality. (Strasbourg, 06 May 1963; <http://conventions.coe.int/Treaty/en/Treaties/Html/043.htm>) However, the second protocol to this Convention recognizes there are situations in which multiple nationality is warranted, such as for first and second generation migrants, or when it derives from the equal rights of spouses to transfer nationality to each other and their children. (Strasbourg, 2 February 1993; <http://conventions.coe.int/Treaty/en/Treaties/Html/149.htm>).

¹⁴ European Convention on Nationality, Explanatory Report, <http://conventions.coe.int/Treaty/EN/Reports/Html/166.htm>

¹⁵ Please see *Variation in dual citizenship policies in the countries of the EU*, Marc Morjé Howard, International Migration Review Volume 39 Number 3 (Fall 2005); *Dual citizenship: Policy trends and political participation in EU member states*, European Parliament, Directorate General Internal Policies of the Union, April 2008; Joachim K. Blatter, Stefanie Erdmann and Katja Schwanke, *Acceptance of Dual Citizenship: Empirical Data and Political Contexts*, University of Lucerne, February 2009.

¹⁶ Articles 6, 7 and 8 of the 1961 Convention and article 8 of the European Convention on Nationality, Strasbourg, 06 November 1997; <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>

¹⁷ The European Convention on Human Rights (ECHR) is silent on the right to a nationality. However, in the ruling *Genovese v. Malta* of the European Court of Human Rights, the Court found that a provision under the

particular those cases in which the Court has addressed provisions of nationality legislation of some Member States that are discriminatory or may lead to statelessness.

29. UNHCR is convinced the report on access to nationality in Europe of your Committee and the resolution of the Parliamentary Assembly on access to nationality will bring to light problems and will serve as an incentive to the Member States to take additional steps to address statelessness on their territory, including through reform of their nationality legislation. UNHCR stands ready to continue to work with the Council of Europe and provide technical assistance to Member States in these endeavors.