OPEN SOCIETY
JUSTICE INITIATIVE

OPINION ON CLAUSE 60 OF UK IMMIGRATION BILL & ARTICLE 8 OF UNITED NATIONS CONVENTION ON REDUCING STATELESSNESS

SUMMARY

1. This opinion examines whether the United Kingdom's obligations under Article 8 of the 1961 Convention on the Reduction of Statelessness ("1961 Convention") precludes it from depriving persons of UK nationality on 'public good' grounds where this would make a person stateless, given the UK's 2003 repeal of the statutory power to do this.

2. This question arises because the UK Parliament is considering Clause 60 of the Immigration Bill. If enacted, this will provide a statutory basis for deprivation of UK nationality on 'public good' grounds where this would make a person stateless.

3. **We conclude that a court would have good grounds to determine that the right retained by the UK by its declaration under Article 8(3) of the 1961 Convention does not extend to a new law authorising deprivation where this would make a person stateless.**

4. This opinion does not examine the different power to deprive persons of UK nationality where that was obtained by misrepresentation or fraud.

5. The Open Society Justice Initiative uses law to protect and empower people around the world. We have particular expertise on statelessness and related law. We document statelessness in different countries across the world and support civil society to advocate and litigate to reduce statelessness and its effects, both nationally and internationally. We are founder members of the European Network on Statelessness of civil society organisations and academic experts. We file third-party interventions before national and international courts and tribunals on significant questions of law. In *Home Secretary v Al-Jedda,* the UK Supreme Court admitted our intervention on international law relating to statelessness. In *B2 v Home Secretary,* pending, the UK Supreme Court took into account our written submissions when granting permission to appeal, and our application to intervene in the appeal has the consent of both parties. We have also acted as counsel or intervenor in cases concerning statelessness or citizenship before the European Court of Human Rights, the Inter-American Court of Human Rights, the African

Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. For further information on our work in the field of statelessness, see Annex to this Opinion and http://www.opensocietyfoundations.org/projects/statelessness .

CONTEXT

6. The 1961 Convention on the Reduction of Statelessness is a United Nations ("UN") convention. It was ratified by the United Kingdom on 29 March 1966 and entered into force on 13 December 1975.

7. Article 8(1) of the 1961 Convention provides:

> *(1) A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.*

8. Article 8(3) and sub-paragraph (a) provide:

> *(3) Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:*
>
> *(a) that, inconsistently with his duty of loyalty to the Contracting State, the person*
>
> > *(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State,*
> >
> > *or*
> >
> > *(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;*

9. On ratification of the 1961 Convention, the UK made the following declaration under Article 8(3)(a) ("the 1966 declaration"):

> *The Government of the United Kingdom declares that, in accordance with paragraph 3 (a) of Article 8 of the Convention, notwithstanding the provisions of paragraph 1 of Article 8, the United Kingdom retains the right to deprive a naturalised person of his nationality on the following grounds, being grounds existing in United Kingdom law at the present time: that, inconsistently with his duty of loyalty to Her Britannic Majesty, the person*

(i) Has, in disregard of an express prohibition of Her Britannic Majesty, rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) Has conducted himself in a manner seriously prejudicial to the vital interests of Her Britannic Majesty.

10. At the date of ratification, UK law did provide for citizens of the UK and Colonies to be deprived of that nationality on the grounds stated in the declaration, even though such deprivation may make a person stateless. British Nationality Act 1948 ("1948 Act"), section 20 provided, as relevant:

(3) ... the Secretary of State may by order deprive any citizen of the United Kingdom and Colonies who is a naturalised person of that citizenship if he is satisfied that that citizen–

(a) has shown himself by act or speech to be disloyal or disaffected towards His Majesty; or

(b) has, during any war in which His Majesty was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war;

(5) The Secretary of State shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of the United Kingdom and Colonies.

11. The British Nationality Act 1981 ("1981 Act") repealed the 1948 Act, but section 40 substantially re-enacted the provision which section 20 of the 1948 Act had made.

12. Section 4 of the Nationality, Immigration and Asylum Act 2002 ("2002 Act") substituted a new section 40 of the 1981 Act and came into force on 1 April 2003.[1] This new form of section 40 provided:

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of—

(a) the United Kingdom, or (b) a British overseas territory.

(4) The Secretary of State may not make an order under subsection (2) if he is

[1] Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003

satisfied that the order would make a person stateless.

13. The enactment of the new section 40(4) repealed the national law power of deprivation to which the 1966 declaration referred. The UK did not withdraw its 1966 declaration.

14. The change in the law made by the 2002 Act was considered in the Al-Jedda litigation:

    a) In the Court of Appeal, Stanley Burnton LJ noted that the 2002 Act 'did not legislate to retain that right' (i.e. the right retained by the 1966 declaration)[2] and that "if the Secretary of State had retained the right . . . she could have deprived the appellant of his citizenship notwithstanding that he would thereby have become stateless. As it is, she had no power to do so."[3] Gross LJ agreed, stating "when Parliament came to enact the amendments to the 1981 Act, for whatever reason, the opportunity of qualifying s.40(4) was lost. On the materials available to this Court, such qualification would not have entailed any tension with this country's international obligations."

    b) In the Supreme Court, Lord Wilson (giving the unanimous judgment of the Court) said that "in enacting [the new subsection 40(4) of the 1981 Act, by the 2002 Act], Parliament went further than was necessary in order to honour the UK's existing international obligations."[4]

15. Clause 60 of the Immigration Bill provides:

> ***Deprivation if conduct seriously prejudicial to vital interests of the UK***
>
> *(1) In section 40 of the British Nationality Act 1981 (deprivation of citizenship), after subsection (4) insert—*
>
> > *"(4A) But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if—*
> >
> > *(a) the citizenship status results from the person's naturalisation,*
> >
> > *and*
> >
> > *(b) the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British*

[2] *Al-Jedda v Home Secretary* [2012] EWCA Civ 358, para. 127.
[3] Para. 128.
[4] *Al-Jedda v Home Secretary* [2013] UKSC 62, para 22.

overseas territory."

(2) In deciding whether to make an order under subsection (2) of section 40 of the British Nationality Act 1981 in a case which falls within subsection (4A) of that Act, the Secretary of State may take account of the manner in which a person conducted him or herself before this section came into force."

16. The UK Government has expressed the view that Clause 60 would not breach the UK's obligations under the 1961 Convention. When proposing the measure on 30 January 2014, the Home Secretary said:

> "We are not suggesting that we put the United Kingdom into a situation that it has not been in before. We are suggesting that we put the United Kingdom into the situation that is required by the UN convention to which it has signed up. A decision was taken a few years ago to go beyond that UN convention. We think it is right to go back to the UN convention."[5]
>
> "I wish to reiterate—this is an important point—that that is the position the United Kingdom had prior to 2003, when the law was changed. It is the position that we are required to have under the United Nations convention. All that we are doing is returning our position to the scope of our declaration under that convention. It goes no further."[6]

17. The UK Parliamentary Joint Committee on Human Rights ("JCHR") has expressed the view that Clause 60 would not breach the UK's obligations under the 1961 Convention.[7] The Committee disagreed with concerns that the any measure leading to an increase in statelessness would violate Article 13 of the Convention or international law.[8]

ISSUE

18. The proposal to enact Clause 60 raises the issue:

> Where a state declares that it retains the right to deprive a person of his nationality under Article 8(3) of the 1961 Convention, does the right so retained apply to the exercise of a new national law enacted after abolition of the national laws upon which the declaration was based?

19. This issue is one of interpretation of Article 8(3), in particular whether the 'right

[5] HC Hansard, 30 January 2014, col 1040.
www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140130/debtext/140130-0002.htm
[6] HC Hansard, 30 January 2014, col 1044.
[7] Human Rights Joint Committee - Twelfth Report Legislative Scrutiny: Immigration Bill (Second Report), para 29.
http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/142/14202.htm
[8] Paragraphs 26-28.

retained' applies to new laws adopted after the national laws in force at the time of the declaration have been repealed without re-enactment.

20. The UK Government has not published any material demonstrating a consideration of this issue. It has asserted that the judgments in the Al-Jedda litigation "noted that domestic legislation goes further than is necessary in international law."[9] That is incorrect. The Courts' observations affirmed that, by repealing the national laws in question in 2003, the UK went further than the 1961 Convention required. The observations did not suggest that the 1961 Convention permits this to be reversed: indeed the tenor of Gross LJ's comments, in particular, is to the contrary.

21. The JCHR does not appear to have addressed its mind to the issue here considered. The JCHR has raised other important questions about Clause 60, as have British NGOs, including Immigration Law Practitioners' Association, Justice and Liberty: those questions are not addressed here.

General approach to interpretation of treaties

22. The interpretation of and procedure for international treaties is addressed by the 1969 Vienna Convention on the Law of Treaties ("Vienna Convention"). [10] This does not have retroactive effect and so does not, strictly, apply to the 1961 Convention.[11] Nevertheless, many of the provisions of the Vienna Convention codify customary international law and its provisions are a useful guide to the likely approach to interpretation of earlier Conventions.[12] The 1961 Convention is a 'treaty' of the kind to which the Vienna Convention applies.[13]

23. Article 31 of the Vienna Convention provides:

> *"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
>
> *2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*
>
> *(a) any agreement relating to the treaty which was made between all the*

[9] Immigration Bill – European Convention on Human Rights – Supplementary Memorandum by the Home Office, January 2014, para. 3.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/276660/Deprivation_ECHR_memo.pdf
[10] Vienna Convention on the Law of Treaties, 1969, Art 2.1(d).
http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
[11] Art. 4.
[12] *Fothergill v Monarch Airlines Ltd* [1981] AC 251, HL, per Lord Diplock "what it says in arts 31 and 32 about interpretation of treaties, in my view, does no more than codify already existing public international law".
[13] Art. 2(1)(a).

parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties."

Article 8(3) of the 1961 Convention

24. The starting point for interpretation of Article 8(3) is the 'ordinary meaning' of its text:

> *". . . a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time: . . ."*

25. This text has two elements:

a) that, by meeting conditions

b) the state may 'retain the right'.

26. As to the conditions, there are two, both of which must be met 'at the time of signature, ratification or accession':

a) the state must specify its retention of the right to deprive a person of his nationality;

b) the state must have the right to make such a deprivation in its national law at that time.

27. It is not disputed that the UK's 1966 declaration met these two conditions.

28. The remaining question is the nature of the right which the state retains by virtue of its declaration under Article 8(3).

29. The text refers to 'retain[ing] the right to deprive a person of his nationality'. The limits of the right retained must be interpreted in light of the text of the entire

provision and in the light of the object and purpose of the 1961 Convention. The putative limits are:

a) *The right retained is only to deprive persons of nationality where it would render them stateless*. This limit appears from the opening words of Article 8(3) ("Notwithstanding the provisions of paragraph 1 of this Article"), which make the only role of Article 8(3) to disapply Article 8(1).

b) *The right retained is only to deprive persons of nationality on the grounds specified in the declaration*. This is apparent from the requirement to 'specify retention of the right on one or more of the following grounds'.

c) *The right retained is only to deprive persons of nationality on grounds which existed in national law at the time of signature, ratification or accession*. This is apparent from the limitation that the declaration may only specify 'grounds existing in national law at that time'.

Arguments on whether a right retained under Article 8(3) applies to a new law

30. The crucial further question is whether a right retained by declaration under Article 8(3) extends to deprivation on grounds which ceased to exist in national law after ratification.

31. Three arguments can be made for holding that the right does so extend.

- Article 8(3) does not expressly state any temporal limitation on the right retained. The right is, in principle, retained indefinitely. International treaties should not be interpreted to require more of the contracting parties than that which is apparent from the text.
- The scope of an international treaty is not, as a rule, affected by changes in national law.
- The withdrawal of a reservation made under Article 8(3) would end the effect of that reservation at international law. As a general rule such a withdrawal must be made in writing.[14] The UK has not withdrawn the 1966 reservation.

32. The contrary arguments are, in outline:

- The text of Article 8(3) uses the term 'retain' and that term must be interpreted according to the 1961 Convention's text, purpose and objects.
- The text of Article 8(3) expressly makes the scope of the retained right dependent on the extent of national law at the time the Convention was ratified.

[14] Vienna Convention, Art. 23(4)

The issue therefore is not 'whether' its scope is national law dependent, but 'to what extent' is it so.

- The existence of the right to withdraw the reservation does not determine the extent of the right which is retained by the reservation.

CONSIDERATIONS FOR THE ISSUE

Object and purpose of the 1961 Convention

33. "The object and purpose of the 1961 Convention is to prevent and reduce statelessness, thereby guaranteeing every individual's right to a nationality." (UNHCR, Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children (Summary Conclusions), September 2011, para. 1.)

34. The correctness of this statement is apparent from the 1961 Convention's title, preamble and context.

35. As the UK Supreme Court said in *Al-Jedda*:

> "12. The evil of statelessness became better understood following the re-drawing of national boundaries at the end of the two world wars of the twentieth century and following, for example, the Reich Citizenship Law dated 15 September 1935 which provided that all Jewish people should be stripped of their citizenship of the German Reich. The Universal Declaration of Human Rights, adopted by the United Nations on 10 December 1948, provides in Article 15:
>
> > (1) Everyone has the right to a nationality.
> >
> > (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

36. In order to implement Article 15, the UN Economic and Social Council adopted in August 1950 a resolution instructing the International Law Commission to begin work on a draft convention or conventions for the elimination of statelessness.[15] On 4 December 1954, the UN General Assembly adopted Resolution 896 (IX) expressing the desirability of adopting such a convention.

37. The UN Secretary General convened the UN Conference on the Elimination or Reduction of Future Statelessness and, on 30 August 1961, that Conference adopted the 1961 Convention, of which:

[15] Resolution 319(IV), B III. http://daccess-ods.un.org/TMP/5345745.08666992.html

a) the preamble provides the context that "it is desirable to reduce statelessness by international agreement";

b) Article 13 states that the Convention does not affect any current or future, national or international provisions which are more conducive to the reduction of statelessness.

38. Thus, the purpose and object of the 1961 Convention is not to maintain a state of affairs or to achieve a particular static position: it is to continually reduce statelessness. This aim of the Convention does not mean that it has no limits on the obligations of states to reduce statelessness: the aim informs the interpretation of those limits.

39. The Convention aims to benefit individuals who would otherwise be affected by statelessness. Inspired as it is by Article 15 of the Universal Declaration on Human Rights, it thus forms part of international human rights law. The Convention also benefits the exercise of state power, because when people are citizens of a state, other states can look to that state for responsibility for those persons, whereas the needs of stateless persons raise difficult issues between states[16] and impose upon them obligations of protection under the 1954 Convention relating to the status of stateless persons.

Other international law rules

40. Applying the principle recapitulated in Vienna Convention, Article 31(3)(c), interpretation of the 1961 Convention is informed by 'any relevant rules of international law applicable in the relations between the parties'.

41. These rules strongly support the argument that the 1961 Convention, as a human rights instrument, should be interpreted to minimise the creation of statelessness.

42. International rules restricting denial of citizenship have taken on increasing significance in the years since the adoption of the 1961 Convention.[17] These are now enshrined in a number of important international and regional instruments, such as Article 24 of the International Covenant on Civil and Political Rights, Article 5(d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, Article 7 of the UN Convention on the Rights of the Child, all of which the UK has ratified. It is also expressed in Article 20 of the

[16] *See* Guy Goodwin-Gill, *Mr Al-Jedda, Deprivation of Citizenship, and International Law*, revised draft presented to JCHR, at section 5.
[17] *See* Laura van Waas, Nationality Matters: Statelessness under International Law (2008), pp. 85-87; Johannes M. M. Chan, The Right to a Nationality as a Human Right, 12 Human Rights L. J. 1 (1991), pp. 8-9.

American Convention on Human Rights and Article 6 of the African Charter on the Rights and Welfare of the Child.

43. The jurisprudence and opinions of other bodies supervising these international treaties has consistently recognized increasingly narrow restrictions on the discretion of states. For example, the UN Human Rights Council has consistently urged states to avoid statelessness in adopting and implementing nationality legislation.[18] The Inter-American Court has held that "at the current stage of the development of international human rights law, th[e] authority of the States [in making nationality determinations] is limited, on the one hand, by their obligation to provide individuals with the equal and effective protection of the law and, on the other hand, by their obligation to prevent, avoid and reduce statelessness."[19]

Interpretation of reservations to treaties

44. The interpretation of reservations is also relevant. Article 17 of the 1961 Convention expressly permits reservations in respect of Articles 11, 14 and 14 only. A declaration under Article 8(3) is therefore not a 'reservation' in the strict sense of that term in the 1961 Convention.

45. However, a declaration under art 8(3) does appear to fall within the general use of the term 'reservation' in international law. The International Law Commission, *Guide to Practice on Reservations to Treaties*, 2011 states:

> "A unilateral statement made by a State or an international organization when that State or organization expresses its consent to be bound by a treaty, in accordance with a clause expressly authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty with regard to the party that has made the statement, constitutes a reservation expressly authorized by the treaty." [20]

46. "The function of the rules applicable to reservations is to strike a balance between … two opposing requirements: on the one hand, the search for the broadest possible participation; on the other hand, the preservation of the *ratio contrahendi* (ground of covenant), which is the treaty's reason for being."[21]

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[18] See, most recently, Resolution 20/5, Human rights and arbitrary deprivation of nationality, A/HRC/RES/20/5, 16 July 2012, at preamble 3 (reciting past resolutions on the same topic) and para. 5 (urging states to implement nationality legislation with a view to avoiding statelessness).
[19] *Yean and Bosico v. the Dominican Republic*, judgment of 8 September 2005, para. 140.
[20] International Law Commission, *Guide to Practice on Reservations to Treaties*, 2011, para. 1.1.6. http://legal.un.org/ilc/texts/instruments/english/draft%20Articles/1_8_2011.pdf
[21] Prof. Alain Pellet, *Second Report of the Special Rapporteur on Reservations to Treaties*, International Law Commission, para. 90. http://legal.un.org/ilc/documentation/english/a_cn4_477.pdf

47. In General Comment No. 24, the UN Human Rights Committee addressed the question of reservations to the International Covenant on Civil and Political Rights:

> "The possibility of entering reservations may encourage States which consider that they have difficulties in guaranteeing all the rights in the Covenant none the less to accept the generality of obligations in that instrument. Reservations may serve a useful function to enable States to adapt specific elements in their laws to the inherent rights of each person as articulated in the Covenant. However, it is desirable in principle that States accept the full range of obligations, because the human rights norms are the legal expression of the essential rights that every person is entitled to as a human being."[22]

48. Article 57 (formerly Article 64) of the European Convention of Human Rights ("ECHR") provides:

> *Reservations*
>
> *1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.*
>
> *2. Any reservation made under this Article shall contain a brief statement of the law concerned.*

49. This text has similarities to that of Article 8(3) of the 1961 Convention, in particular that the reservation may only be made in relation to a law in force at the time of ratification.

50. In *Schädler-Eberle v Liechtenstein*,[23] the European Court of Human Rights affirmed its established jurisprudence on Article 57, including that the reservation "must relate to specific laws in force at the moment of ratification".[24] The Court noted that it had "considered that that condition was not complied with where a new legislative provision was not essentially identical to the provision in force at the time of ratification, but extended the measures covered by the reservation, such as the domestic courts' power to refuse to hold a public hearing."[25]

51. The Strasbourg court has not ruled on a case where the national legislation covered

[22] UN Human Rights Committee, *General Comment No 24*, 3 October 1995, A/50/40, para. 4. http://www.unhchr.ch/tbs/doc.nsf/0/69c55b086f72957ec12563ed004ecf7a?Opendocument
[23] Judgment of 18 July 2013
[24] Paragraph 60.
[25] Paragraph 61, citations omitted.

by the reservation was repealed without immediate re-enactment, and the state subsequently adopted new legislation.

The *travaux préparatoires* of the 1961 Convention

52. The preparatory work of a treaty may be referred to as a supplementary means of interpretation of a treaty, though under Vienna Convention, Article 32, this is only where the meaning would otherwise be ambiguous or obscure, or the result of it would be manifestly absurd and unreasonable.

53. At the UN Conference on the Elimination or Reduction of Future Statelessness, the Rapporteur of the Working Group appointed by the Conference to prepare the text which became Article 8(3) said that the effect of the provision "was to "freeze" the grounds of deprivation at the date on which the State acceded to the Convention."[26]

CONCLUSION

54. The correct interpretation of the 'retained right' under Article 8(3) is debatable. It seems clear that the declaration continues to apply where a state repeals laws to which the declaration related, but immediately re-enacts laws to no greater effect. The contrary interpretation would elevate form over substance.

55. In our opinion, there are good reasons for considering that a court would rule that the retained right does not apply to new laws adopted after a state has repealed (without immediately re-enacting) the national laws upon which the declaration under Article 8(3) was based.

56. In particular:

a) The object and purpose of the 1961 Convention is the reduction of statelessness. That aim is a strong and important one: it gives effect to Article 15 of the Universal Declaration on Human Rights and is shared by numerous international instruments ratified by the United Kingdom and other states parties to the 1961 Convention;

b) The nature of Article 8(3), as an exception to that object and purpose, justifies it being given a restricted interpretation.

c) The text of Article 8(3) limits the scope of the retained right to that of the national law of the state concerned existing at the time the 1961 Convention was

[26] Summary Records, 20th Plenary Meeting, p. 3, Mr Harvey (United Kingdom). A/CONF.9/SR.20. http://legal.un.org/diplomaticconferences/statelessness-1959/docs/english/Vol_2/41_a_conf-9_sr-20.pdf

ratified.

d) These considerations support an interpretation of ‘retain’ to mean ‘retain the right to continue to operate the national laws in force’. The right so retained does not survive the repeal of the substance of the national laws.

e) Such an interpretation of Article 8(3) does not interfere with the rights and autonomy of states. The retained right is only lost when the state in question voluntarily repeals the national laws in question.

f) The contrary interpretation would produce the anomalous result that a state can ‘retain’ a right which the state could not retain if it were to ratify the Convention at the present time. (If the UK ratified the Convention today, it could not make a declaration under Article 8(3), because the grounds do not exist in national law.)

Open Society Justice Initiative
5 March 2014

ANNEX - INFORMATION ON THE OPEN SOCIETY JUSTICE INITIATIVE

Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. We foster accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources. Our staff are based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo and Washington, D.C. Our interventions have been admitted in cases before the European Court of Human Rights (ECHR), the Inter-American Court of Human Rights (IACHR), the International Criminal Tribunal for Rwanda, the Constitutional Court of Chile, the Supreme Court of Paraguay, the Constitutional Court of Peru, the Constitutional Court of Poland, the High Court of Nigeria, the United Kingdom Supreme Court and various lower national courts. We have represented applicants before many of those courts, including numerous cases before the ECHR and IACHR, and also before the U.N. Human Rights Committee, the U.N. Committee against Torture, the Inter-American Commission of Human Rights, the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and the Community Court of Justice of the Economic Community of West Africa (ECOWAS). We have acted in significant cases concerning statelessness and citizenship, including:

- *B2 v. Home Secretary*, United Kingdom Supreme Court, (deprivation of nationality causing statelessness), intervened in application for permission to appeal, pending application to intervene in full appeal made with consent of both parties.
- *Home Secretary v. Al-Jedda* [2013] UKSC 62, United Kingdom Supreme Court, judgment of 9 October 2013 (deprivation of nationality causing statelessness), acting as intervenor.
- *Sejdić and Finci v. Bosnia and Herzegovina*, ECHR, Grand Chamber judgment of 22 December 2009 (denial of voting rights to ethnic minorities), acting as intervenor.
- *Kurić and Others v. Slovenia,* ECHR, Grand Chamber judgment of 26 July 2012 (discriminatory denial of legal status), acting as intervenor.
- *H.P. v. Denmark*, ECHR, application no. 55607/09, pending (discriminatory denial of citizenship by naturalization), acting as co-counsel for applicants.
- *Nubian Minors v. Kenya*, ACERWC, decision of 22 March 2011 (discriminatory denial of citizenship), acting as co-counsel for applicant.

- *Nubian Community v. Kenya*, African Commission on Human and Peoples' Rights, pending, (discriminatory denial of citizenship), acting as co-counsel for applicants.
- *People v. Cote d'Ivoire*, African Commission on Human and Peoples' Rights, pending, (discriminatory denial of citizenship), acting as co-counsel for applicants.
- *Yean and Bosico v. Dominican Republic*, IACHR, judgment of 8 September 2005 (discriminatory denial of citizenship), acting as intervenor.
- *Bueno v. Dominican Republic*, Inter-American Commission of Human Rights, pending, (discriminatory denial of citizenship), acting as co-counsel for applicants.

The Justice Initiative has made written submissions on the international and comparative legal standards on the right to a nationality and the avoidance of statelessness before international and regional bodies including the U.N. Committee on the Elimination of Racial Discrimination, the Offices of the U.N. High Commissioners for Refugees and for Human Rights, IACHR, the African Commission on Human and Peoples' Rights and the ACERWC. The Open Society Institute has consultative status with the Council of Europe and with the U.N. Economic and Social Council (ECOSOC). Further details of our litigation work can be found here: www.opensocietyfoundations.org/reports/global-human-rights-litigation-report