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GUIDELINES ON STATELESSNESS NO.5:
Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness

UNHCR issues these Guidelines pursuant to its mandate responsibilities to address statelessness. These responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6(A)(II) of the UNHCR Statute and Article 1(A)(2) of the 1951 Convention relating to the Status of Refugees. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, UNHCR's mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

These Guidelines draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October-1 November 2013 ("Tunis Conclusions") and the Expert Meeting on Developments related to Deprivation of Nationality held in Geneva, Switzerland on 5-6 December 2018. They are intended to provide interpretative guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff and other UN agencies involved in addressing statelessness.

I. INTRODUCTION

A. Overview

1. The object and purpose of the 1961 Convention on the Reduction of Statelessness ("1961 Convention") is to prevent and reduce statelessness, thereby helping to ensure every individual's fundamental right to a nationality.[1] In line with this objective, the 1961 Convention establishes rules on acquisition, renunciation, loss and deprivation of nationality that are intended to minimize statelessness.

2. These Guidelines are focused on Articles 5-9 of the 1961 Convention, which set standards on the permissibility of loss and deprivation of the nationality of a Contracting State. Articles 5-7 of the 1961 Convention pertain to loss of nationality and Article 8 pertains to deprivation of nationality. Article 9 categorically prohibits deprivation of nationality on certain discriminatory grounds. Contracting States are not permitted to make reservations to Articles 5-9 of the 1961 Convention.[2]

3. While not all States are party to the 1961 Convention, all States have obligations concerning loss and deprivation of nationality pursuant to the prohibition of arbitrary deprivation of nationality.[3] All States also have certain relevant international human rights law obligations as discussed in Part III of these Guidelines.

4. These Guidelines are primarily intended to assist States, UNHCR, and other actors to interpret and apply Articles 5-9 of the 1961 Convention.

B. General considerations pertaining to the interpretation of the 1961 Convention

5. Articles 5-9 of the 1961 Convention are to be interpreted in good faith and in accordance with the ordinary meaning of the terms used in their context and in light of the object and purpose of the 1961 Convention.[4] Where relevant to questions of interpretation and application, reference will be made to the *travaux preparatoires* or drafting history of the 1961 Convention, as well as other treaties which contain supplementary or corresponding obligations to those within the 1961 Convention. Developments in customary international law relevant to the interpretation of the 1961 Convention will also be set out in these Guidelines.

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[1] The fundamental right to a nationality is set out in numerous international human rights instruments, including the Universal Declaration of Human Rights, Article 15. See paragraphs 86-90 below.
[2] Convention on the Reduction of Statelessness, 989 UNTS 175, (1961 Convention), Article 17: "At the time of signature, ratification or accession any State may make a reservation in respect of Articles 11, 14 or 15. No other reservations to this Convention shall be admissible."
[3] As will be outlined in Part III of these Guidelines, deprivation of nationality is arbitrary if it is not prescribed by law; is not the least intrusive means proportionate to achieving a legitimate aim; and/or takes place without due process.
[4] Vienna Convention on the Law of Treaties, 1155 UNTS 331, Article 31.

6. With respect to interpreting the plain language of the text of the 1961 Convention, it is important to note that the 1961 Convention was drafted in five official United Nations languages (Chinese, English, French, Russian and Spanish) and that all five language versions are equally authentic. There are some minor discrepancies in meaning between the different language versions but these are resolved through application of the rules of treaty interpretation and, in particular, by recourse to the meaning which best reconciles the texts, having regard to the object and purpose of the treaty.[5]

7. The provisions of the 1961 Convention must be read and interpreted in light of additional obligations that Contracting States have under other treaties to which they are party,[6] as well as those they have as a matter of customary international law. These include developments on the fundamental right to a nationality and the prohibition of arbitrary deprivation of nationality, as well as subsequent developments in international human rights law generally. These issues will be discussed in Part III below.

8. Under Article 1(1) of the 1954 Convention, the term stateless person means "a person who is not considered a national by any State under the operation of its law." The International Law Commission has concluded that this definition is part of customary international law.[7] Accordingly, wherever the term "stateless" is used in the 1961 Convention and in these Guidelines, the definition according to Article 1(1) of the 1954 Convention is the relevant definition.

C. Defining loss and deprivation of nationality

9. The 1961 Convention generally uses the expression "loss of nationality" in Articles 5-7 to describe withdrawal of nationality that occurs automatically by operation of law ("*ex lege*"). The term "deprivation" is used in the 1961 Convention in Articles 8 and 9 to describe situations where the withdrawal is initiated by the authorities of the State. These Guidelines will generally use the terms "loss" and "deprivation" as they are used in the 1961 Convention, and the term "withdrawal of nationality" will be used to encompass both loss and deprivation of nationality. It is important to note that different actors may use these terms interchangeably and that the prohibition of arbitrary deprivation of nationality encompasses both loss and deprivation of nationality, including where a State arbitrarily precludes a person or group from obtaining or

[5] ibid.

[6] 1961 Convention, Article 13: "This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States."

[7] International Law Commission, *Draft Articles on Diplomatic Protection with commentaries*, Yearbook of the International Law Commission, 2006 Vol. II (Part Two), http://www.refworld.org/docid/525e7929d.html: The text of Article 1(1) of the 1954 Convention is used in the Draft Articles on Diplomatic Protection to provide a definition of stateless person. The International Law Commission stated in the commentary to Draft Article 8 that the definition in Article 1(1) of the 1954 Convention can "no doubt be considered as having acquired a customary nature".

retaining a nationality (e.g., on discriminatory grounds).[8] The prohibition of arbitrary deprivation of nationality also covers situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual (or group) as a national (or nationals), for example, where authorities persistently refuse to issue or renew documents without providing an explanation or justification. Confiscation of identity documents and/or expulsion from the territory coupled with a statement by authorities that a person is not considered a national would also be evidence of deprivation of nationality.

II. STANDARDS IN THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS

A. Overview of Articles 5-9 of the 1961 Convention on the Reduction of Statelessness

10. This Part of these Guidelines will focus on the standards contained in the 1961 Convention with respect to withdrawal of nationality. It will provide guidance on the minimum content of these standards and also provide guidance on good practice.

11. By the time of the drafting of the 1961 Convention, there was widespread recognition that statelessness had significantly adverse impacts upon individuals that should be avoided to the greatest extent possible.[9] The object and purpose of the 1961 Convention was to prevent and reduce statelessness.[10] In pursuing this objective, the drafters of the Convention sought to balance the legitimate interests of both States and individuals in nationality matters as these respective interests were understood at

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[8] See e.g., *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, paras. 238, 318 and 469; UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 14 December 2009, A/HRC/13/24, para. 23.

[9] Convention on the Status of Stateless Persons, 360 UNTS 117, (1954 Convention), Preamble: The need to avoid adverse impacts of statelessness upon individuals is reflected in the preamble of the 1954 Convention, in which it is clear that parties took account of the fact that "the United Nations ha[d], on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of…fundamental rights and freedoms." See also UN Ad Hoc Committee on Refugees and Stateless Persons, *A Study of Statelessness, United Nations*, 1 August 1949, E/1112; E/1112/Add.1, https://www.refworld.org/docid/3ae68c2d0.html: This study shows that statelessness was a matter of significant international concern even before the drafting of the 1954 Convention.

[10] UN General Assembly (UNGA) Res. 3274 (XXIX), 10 December 1974. UNGA Res. 31/36, 30 November 1976. UNGA Res. 50/152, 21 December 1995. UNGA Res. 61/137, 19 December 2006. UN Conference on the Elimination or Reduction of Future Statelessness, Summary Record of the Second Plenary Meeting, 24 April 1961, A/CONF.9/SR.2, pp. 2-3: "After the Second World War, statelessness had again become a pressing problem. In various parts of the world, large numbers of persons, because of their status as refugees or as stateless persons, or both, had not enjoyed the protection of any Government. To relieve the hardships of such persons, action taken under the auspices of the United Nations had resulted in the Convention Relating to the Status of Refugees of 1951 and the Convention Relating to the Status of Stateless Persons of 1954. In addition, efforts had been made to eliminate or at least to reduce as much as possible the occurrence of future statelessness. That was the specific purpose for which, pursuant to General Assembly Resolution 896 (IX), the Conference had been convened."

the time.[11] Accordingly, under Articles 7(3), 7(6) and 8(1) of the 1961 Convention, there is a general prohibition of loss or deprivation of nationality where it would result in statelessness. Narrow exceptions to this prohibition are provided for in Articles 7(4), 7(5), 8(2) and 8(3).

12. Under Articles 5-7 of the 1961 Convention, loss of nationality that will not result in statelessness is permitted on a number of grounds discussed in detail in Part II of these Guidelines, including change in the personal status of a person, voluntary renunciation of nationality, or naturalization in a foreign country. Loss of nationality that would result in statelessness is however only permitted in very limited circumstances relating, as a general matter, to residence abroad for substantial periods by naturalized persons or persons born abroad. Even in those cases, loss of nationality resulting in statelessness is permitted only where such persons do not conform to requirements that may be prescribed in law allowing retention of nationality in these special circumstances.

13. Under Article 8 of the 1961 Convention, deprivation of nationality that would result in statelessness is strictly circumscribed. Under Article 8(2), such deprivation of nationality is only permissible a) on the same limited grounds on which loss of nationality resulting in statelessness is permitted under Articles 7(4) and 7(5); or b) misrepresentation or fraud in the process of acquisition of nationality. In addition to these two grounds, a Contracting State may make a declaration pursuant to Article 8(3) of the 1961 Convention expressly retaining the right to deprive a person of their nationality on one or more of the bases set out in that Article, provided these grounds exist in its national law at the time. The bases for deprivation of nationality in Article 8(3) relate to certain types of behaviour inconsistent with the duty of loyalty to the Contracting State; formal declaration or oath of allegiance to another State; or definite evidence of repudiation of allegiance to the Contracting State. Deprivation of nationality on any of these grounds must meet the specific requirements set out in Article 8(3). Article 8(4) of the 1961 Convention imposes procedural safeguards with respect to deprivation of nationality and Article 9 categorically prohibits deprivation of

[11] UN Conference on the Elimination or Reduction of Future Statelessness, Summary Record of the Second Plenary Meeting, 24 April 1961, A/CONF.9/SR.2, p. 2: "Nothing would be gained if after a convention had been approved Governments decided merely to reject those provisions which were in conflict with their national laws. The position of human beings in need could be improved only if Governments were prepared to make some sacrifices.". International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries*, Yearbook of the International Law Commission, 1999 Vol. II (Part Two), preamble: "Recognizing that in matters of nationality, due account should be taken both of the legitimate interests of States and those of individuals."; commentary to the preamble, para. 5: "As a result of…evolution in the field of human rights, the traditional approach based on the preponderance of the interests of States over the interests of individuals has subsided." See also UNGA Res. 55/153, 12 December 2000; UNGA Res. 59/34, 2 December 2004; UNGA Res. 63/118, 11 December 2008; and UNGA Res. 66/92, 9 December 2011: These Resolutions invited governments to take into account the provisions in the above International Law Commission Draft Articles when dealing with the nationality of natural persons in relation to the succession of States. For further details, see International Law Commission, *Analytical Guide to the Work of the International Law Commission: Nationality in relation to the succession of States*, https://legal.un.org/ilc/guide/3_4.shtml.

nationality on racial, ethnic, religious or political grounds, regardless of whether or not it would result in statelessness.

B. Loss of nationality

14. This section focuses on circumstances in which an individual may lose nationality pursuant to the standards set out in Articles 5-7 of the 1961 Convention.

General prohibition of loss of nationality where it would render a person stateless (1961 Convention, Articles 7(6) and 7(3))

15. Contracting States generally may not permit loss of nationality where it would render a person stateless. Article 7(6) of the 1961 Convention provides that "[e]xcept in the circumstances mentioned in this Article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention." A further safeguard against statelessness in the context of loss of nationality is found under Article 7(3) of the 1961 Convention, which provides that "[s]ubject to the provisions of paragraphs 4 and 5 of this Article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground." Articles 5 and 6 of the 1961 Convention permit loss of nationality which does not result in statelessness under specific circumstances. These are set out in paragraphs 16-32 below. Articles 7(4) and 7(5) of the 1961 Convention establish narrow exceptions to the general prohibition on loss of nationality which results in statelessness, and these are outlined in paragraphs 33-44 below.

Change in personal status (1961 Convention, Article 5(1))

16. Under Article 5(1) of the 1961 Convention, a person may lose the nationality of a Contracting State as a result of a change in civil status, namely "marriage, termination of marriage, legitimation, recognition or adoption". This is conditional upon such a loss being provided for within the law of a Contracting State[12] and upon the person possessing or acquiring another nationality.[13] A person may not therefore lose nationality under this ground so as to become stateless.

17. International human rights treaty provisions particularly relevant to the interpretation and application of Article 5(1) of the 1961 Convention include Article 9(1) of the Convention on the Elimination of Discrimination against Women ("CEDAW"), under which State Parties "shall ensure … that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically

[12] See paragraphs 92-93 below.
[13] See paragraphs 80-83 below.

change the nationality of the wife, render her stateless or force upon her the nationality of the husband." With respect to adoption, Articles 3, 7 and 8 of the Convention on the Rights of the Child ("CRC"), read together, may reasonably be understood to preclude the loss of nationality by a child due to adoption, recognition or another such act.[14] Contracting States that provide for loss of nationality in cases of adoption of a child by a foreigner should restrict the application of Article 5(1) of the 1961 Convention to cases where a child acquires the nationality of the adopting parent(s) by mere fact of the adoption. Loss of nationality in the context of adoption is always dependent on possession or acquisition of another nationality.[15]

18. As a matter of good practice, the domestic legislation of Contracting States should provide that legally adopted children automatically acquire the nationality of their adoptive parent(s).[16] This would provide a robust safeguard against statelessness.[17]

Recognition of affiliation of children born out of wedlock (1961 Convention, Article 5(2))

19. Article 5(2) of the 1961 Convention provides that "[i]f, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such an application must not be more rigorous than those laid down in paragraph 2 of Article 1 of this Convention."

20. This provision encompasses children born out of wedlock who possess the nationality of a Contracting State and acquire a second nationality following the formal acknowledgment of parenthood by a parent of a different nationality. In the context where a State does not permit its nationals to be dual nationals, a child may lose their nationality as a result of acquisition of another nationality. Contracting States are further reminded of their obligations with respect to the prevention of statelessness among children.[18] At the time of writing, all Contracting States to the 1961 Convention

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[14] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 16: "International law states that a woman's nationality should not be automatically affected by marriage or divorce, as set out in the 1957 Convention on the Nationality of Married Women and reaffirmed in article 9, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women. Similarly, article 8 of the Convention on the Rights of the Child protects the identity of the child, including nationality, from unlawful interference — a provision which, when read in conformity with articles 3 (best interests of the child) and article 7 (right to a nationality) of the Convention, may preclude the loss of nationality by a child in the context of adoption, recognition, legitimation or another such act. [Article 5 of] [t]he 1961 Convention explicitly reaffirms that if States regulate the loss of nationality in the context of any change in civil status, this must never lead to statelessness."

[15] See paragraphs 80-83 below.

[16] This excludes informal forms of adoption where the legal link to a child's non-adoptive parents is not dissolved.

[17] Council of Europe Committee of Ministers, *Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children*, 9 May 2009, CM/Rec(2009)13, https://www.refworld.org/docid/4dc7bf1c2.html, para. 36.

[18] 1961 Convention, Articles 1-4. Convention on the Rights of the Child, 1577 UNTS 3, (CRC), Articles 7-8. UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to*

are also party to the CRC.[19] Under the CRC, Contracting States are obliged to ensure that all actions taken with respect to a child's nationality are in the child's best interests.[20] The CRC also provides for protection against discrimination on the basis of the status of the child's parents or guardians.[21] As such, loss of nationality on recognition of affiliation to a foreign parent should only be permitted if the child automatically acquires the nationality of the parent who has recognised affiliation.

21. The 1961 Convention states that where a child who loses the nationality of a Contracting State makes an application to recover nationality under Article 5(2) of the 1961 Convention, the Contracting State must not impose requirements more stringent than the conditions found in Article 1(2) of the 1961 Convention. Those conditions are:

- "that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so" (Article 1(2)(a));
- "that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all" (Article 1(2)(b)); and
- "that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge." (Article 1(2)(c)).

Imposition of any additional or more onerous conditions would violate the terms of the 1961 Convention.[22] Accordingly, no fee should be imposed for acquisition of nationality under Article 5(2) of the 1961 Convention. As a matter of good practice, Contracting States are encouraged not to apply the permitted conditions and simply allow recovery of nationality upon submission of an application.[23]

Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, https://www.refworld.org/docid/50d460c72.html, (UNHCR Guidelines on Statelessness No. 4).

[19] Article 31 of the Vienna Convention on the Law of Treaties sets out the general rule for interpretation of treaties. Article 31(3)(c) provides that "There shall be taken into account … [a]ny relevant rules of international law applicable in the relations between the parties."

[20] CRC, Articles 1, 3, 7, 8.

[21] ibid, Article 2.

[22] The condition stipulated in Article 1(2)(d) of the 1961 Convention has intentionally not been cited in these Guidelines as it does not apply to circumstances encompassed by Article 5(2). See also UNHCR Guidelines on Statelessness No. 4, para. 36.

[23] Further interpretive guidance on the four conditions laid out in Article 1(2) may be found in UNHCR Guidelines on Statelessness No. 4, paras. 37-48.

Renunciation of nationality (1961 Convention, Article 7(1))

22. Pursuant to Article 7(1)(a) of the 1961 Convention, loss of nationality is permitted where a person voluntarily renounces nationality in accordance with the law of a Contracting State only where "the person concerned possesses or acquires another nationality."[24] Under Article 7(1)(b) of the 1961 Convention, Article 7(1)(a) does not apply in situations where it would be "inconsistent with the principles stated in Articles 13 and 14 of the Universal Declaration on Human Rights." These provisions of the UDHR set out the rights to freedom of movement and residence within the borders of each State; to leave any country; to return to one's own country; and to seek and enjoy asylum from persecution in other countries.[25] States may not in any event make the enjoyment of the rights set out in Articles 13 and 14 of the UDHR conditional upon renunciation of nationality.[26] Article 7(1)(b) is therefore of very limited relevance to Contracting States.[27]

23. Paragraphs 25-27 below provide guidance with respect to renunciation of nationality in the context of acquisition of another nationality by naturalization.

Naturalization in a foreign country (1961 Convention, Article 7(2))

24. Article 7(2) of the 1961 Convention provides 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."[28] According to Resolution II of the Final Act of the 1961 Convention, a "naturalized person" refers to a person who has acquired nationality upon an application which the State concerned has the discretion to refuse. This is to be distinguished from situations of persons who automatically acquire more than one nationality at birth.

25. Naturalization procedures often require the renunciation of existing nationality before a new citizenship may be acquired through naturalization. If the national of a Contracting State needs to renounce the nationality of that Contracting State in order

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[24] See paragraphs 80-83 below. See also Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 9: "States are increasingly accepting the legitimacy of dual nationality, such that nationality laws are becoming more tolerant of their nationals voluntarily acquiring a new nationality. Nevertheless, this ground for loss or deprivation of nationality remains commonplace."

[25] UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 10th Plenary Meeting, 24 April 1961, A/CONF.9/SR.10, pp. 8-12. The *travaux preparatoires* for the 1961 Convention show that reference was made to the Universal Declaration on Human Rights in the context of a situation where a person loses their nationality voluntarily. Such a person ought to still be able to avail themselves of protection in another State.

[26] See paragraphs 119-121 below.

[27] International Covenant on Civil and Political Rights 999 UNTS 171 (ICCPR), Article 12(2). Article 7(1)(b) of the 1961 Convention is exceedingly unlikely to be relevant to Contracting States which are party to the ICCPR, which post-dates the 1961 Convention and provides in Article 12(2) that "[e]veryone shall be free to leave any country, including his own."

[28] Universal Declaration of Human Rights, UNGA Res. 217 A(III) (UDHR), Article 15(2): "No one shall be … denied the right to change his nationality."

to be naturalized as a citizen of another State, the Contracting State should ensure that statelessness does not result from this renunciation. It is therefore advisable that the assurance of acquisition of a second nationality referred to in Article 7(2) should consist of a written statement from the State in which nationality is being sought that acquisition of nationality is imminent.[29] Contracting States should ensure that an individual will not be left without a nationality for a prolonged period, and that nationality is automatically re-acquired, or deemed never to have been lost, in the event that the assurance proves false or where there are significant delays in the naturalization process.[30]

26. Where a Contracting State does not permit its naturalized citizens to hold another nationality, it is strongly encouraged to allow for a grace period of not less than one year immediately after naturalization during which an individual may renounce their first nationality. Requiring an individual to renounce his or her first nationality before they are naturalized as a citizen of a Contracting State may cause a situation where the person seeking naturalization is temporarily stateless while the naturalization procedure is ongoing. If a Contracting State nevertheless chooses to require that a person renounce their original nationality as part of the naturalization process, and that person faces impediments during the process which results in their ultimately not being naturalized, the Contracting State should take all possible steps to assist the person in re-acquiring their former nationality.

27. States not party to the 1961 Convention that require naturalized citizens to renounce any other nationality and States whose nationals renounce nationality as part of a naturalization process in another State are strongly encouraged to apply the guidance in paragraphs 80-83 below as a method of safeguarding the fundamental right to a nationality.

Loss of nationality of the child or spouse of a person whose nationality has been withdrawn (1961 Convention, Article 6)

28. Under Article 6 of the 1961 Convention, "[i]f the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of nationality, such loss shall be conditional upon their possession or acquisition of another nationality." A Contracting State may therefore not permit automatic loss of nationality of spouses or children of individuals whose nationality it has withdrawn where it would render that child or spouse stateless.

29. As stated in paragraph 20 above, Contracting States must adhere to their specific obligations under the CRC. States party to the Convention on the Elimination of Discrimination against Women ("CEDAW") are obliged under Article 9(1) of that

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[29] See paragraphs 80-83 below.
[30] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 8.

Convention to “ensure … that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.” Any provision for loss of nationality under the grounds in Article 6 of the 1961 Convention should not contravene States’ specific obligations under CEDAW.

30. Given that loss of nationality under Article 6 of the 1961 Convention is conditional upon possession or acquisition of another nationality, the guidance in paragraphs 80-83 below is particularly relevant to the application of Article 6.

Exceptions to the general prohibition of loss of nationality resulting in statelessness

31. Under Article 7(3) of the 1961 Convention, a person cannot lose their nationality “on the ground of departure, residence abroad, failure to register or on any similar ground” where it would result in their becoming stateless, except in circumstances exhaustively set out in Articles 7(4) and 7(5). This is underscored by Article 7(6) of the 1961 Convention, set out in paragraph 15 above.

32. Both Articles 7(4) and 7(5) respectively make reference to declaration and registration with an “appropriate authority.” The appropriate authority depends on the internal organization of the Contracting State in question and in some cases there will be more than one appropriate authority involved.

Loss of nationality on account of residence abroad for not less than seven consecutive years (Article 7(4))

33. Under Article 7(4) of the 1961 Convention, a person may in certain limited circumstances lose nationality such that they would become stateless. Article 7(4) provides that “[a] naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.” As an exception to the general prohibition of loss of nationally resulting in statelessness, this provision should be applied restrictively.

34. The first condition of Article 7(4) of the 1961 Convention is that the person concerned must be a naturalized person.[31] This makes naturalized citizens more vulnerable to loss of nationality resulting in statelessness than citizens by birth. The increased vulnerability is mitigated by limitations contained in international human rights law, including with respect to non-discrimination as explained in paragraphs 110-112 below. Given that many naturalized citizens are likely to be from minority groups (for example, ethnic or religious minorities), Contracting States should exercise

[31] Final Act of the 1961 Convention, 1975 UNTS 279, https://www.refworld.org/pdfid/3ae6b39620.pdf, Resolution III: “the term ‘naturalized person’ shall be interpreted as referring only to a person who has acquired nationality upon an application which the Contracting State concerned may in its discretion refuse.”

caution in the application of Article 7(4) with respect to potential indirect discrimination against minority groups.[32]

35. The second condition of Article 7(4) of the 1961 Convention is that the naturalized person must have resided abroad for a period of "not less than seven consecutive years."[33] As a matter of good practice, and in accordance with the object and purpose of the 1961 Convention,[34] the individual concerned should not lose nationality so as to become stateless if they do not have permanent residence in the State abroad and enjoy all the rights attached to permanent residence, including the right to seek naturalization, as appropriate.

36. The third and fourth conditions of Article 7(4) of the 1961 Convention are that the person must have "fail[ed] to declare to the appropriate authority his intention to retain his nationality";[35] and that the Contracting State has specified in its domestic laws that loss of nationality may occur on the grounds laid out in Article 7(4), even if it would result in statelessness. Resolution III of the Final Act of the 1961 Convention "[r]ecommends that Contracting States making retention of nationality by their nationals abroad subject to a declaration or registration … take all possible steps to ensure that such persons are informed in time of the formalities and time-limits to be observed if they are to retain their nationality."[36] A Contracting State should also, as a matter of good practice, seek the written acknowledgement of receipt of such information from the individual concerned before it considers that individual to have lost nationality under Article 7(4) of the 1961 Convention.

37. Particular attention must be paid to loss of nationality resulting in statelessness being proportionate to the pursuit of the aim of Article 7(4) of the 1961 Convention. The aim of Article 7(4) is to preserve a Contracting State's ability to ensure that its

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[32] *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, para. 263: "The Court also reiterates 'that international human rights law prohibits not only policies and practices that are deliberately discriminatory, but also those whose impact discriminates against certain categories of persons, even when it is not possible to prove the discriminatory intention.' In this regard: 'A violation of the right to equality and non-discrimination occurs also in situations and cases of indirect discrimination reflected in the disproportionate impact of laws, actions, policies or other measures that, even though their wording is or appears to be neutral, or has a general and undifferentiated scope, have negative effects on certain vulnerable groups.' Thus, the Court has also stipulated: 'States must abstain from implementing measures that, in any way, are addressed, directly or indirectly, at creating situations of discrimination de jure or de facto,' and are obliged 'to adopt positive measures to reverse or change discriminatory situations that exist in their societies that prejudice a specific group of persons.'" See also UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art 2, para 2)*, 10 June 2009, E/C.12/GC/20, para. 10; UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 25 April 2018, A/HRC/38/52, paras. 24 and 27; Open Society Justice Initiative, *Citizenship and Equality in Practice: Guaranteeing Non-Discriminatory Access to Nationality, Protecting the Right to be Free from Arbitrary Deprivation of Nationality and Combatting Statelessness (Submission to the OHCHR)*, November 2005, https://www.justiceinitiative.org/uploads/0d3774dc-821e-4f09-849e-a21e984378a6/citizenship_20051101.pdf.
[33] 1961 Convention, Article 7(4).
[34] See paragraph 1 above.
[35] 1961 Convention, Article 7(4).
[36] Final Act of the 1961 Convention, Resolution III.

nationals maintain an effective connection to it.[37] The notion of what constitutes an effective connection to a State has changed since the drafting of the 1961 Convention. Society has evolved such that people are much more mobile, and it is no longer unusual for a person to habitually reside in a country other than their country of citizenship. Contracting States are encouraged to take these developments into account when applying Article 8(2).

38. The obligation all States have to balance their interests with those of the individual[38] significantly narrows the circumstances in which loss of nationality resulting in statelessness is permissible under Article 7(4). This is because the consequences of statelessness for the individual are extremely severe compared with the consequences to a State if its nationals abroad do not declare or register their intention to preserve their connection to the State.

Birth outside the territory of a Contracting State and failure to register less than one year after reaching the age of majority (Article 7(5))

39. Article 7(5) of the 1961 Convention is the second narrowly defined exception to the general prohibition of loss of nationality where it would render the person concerned stateless (under Articles 7(3) and 7(6)). It provides that "[i]n the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority."

40. The fact that Article 7(5) applies to nationals of a Contracting State who are born outside that Contracting State necessarily implies that it applies to persons who acquired the nationality of the Contracting State through their parent(s).[39]

41. It must be prescribed by the domestic law of the Contracting State that the retention of the person's nationality "after the expiry of one year from his attaining his majority is conditional upon residence at that time in the territory of the State or registration with the appropriate authority."[40] Registration with the appropriate authority should include any administrative action pertaining to the renewal or

[37] UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 11th meeting of the Committee of the Whole, 24 April 1961, A/CONF.9/C.1/SR.11, pp. 2-4. UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 16th meeting of the Committee of the Whole, 24 April 1961, A/CONF.9/C.1/SR.16, pp. 2-3.
[38] See paragraph 11 above.
[39] UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, https://www.refworld.org/docid/53b676aa4.html (UNHCR Handbook on Protection of Stateless Persons 2014), para. 35: "Where nationality is acquired automatically, documents are typically not issued by the State as part of the mechanism. In such cases, it is generally birth registration that provides proof of place of birth and parentage and thereby provides evidence of acquisition of nationality, either by *jus soli* or *jus sanguinis*, rather than being the formal basis for the acquisition of nationality."; footnote 24: "*Jus soli* and *jus sanguinis* refer to the two main principles governing acquisition of nationality in the legal systems of States, on the basis of place of birth and descent from a national, respectively."
[40] 1961 Convention, Article 7(5).

issuance of identity documents (such as passports and birth certificates) or the seeking of confirmation of recognition as a national.[41]

42. Resolution III of the Final Act of the 1961 Convention recommends that Contracting States "take all possible steps" to inform nationals abroad who stand to lose their nationality on account of failure to register of relevant time-limits and formalities.[42] Contracting States should as a matter of good practice also make provision for an extension of the time limit by application in circumstances where an individual is unable to register their intention to retain nationality within one year of reaching the age of majority.

C. Deprivation of nationality

43. As stated in paragraph 9 above, "deprivation" of nationality is used within the 1961 Convention (Articles 8-9) to describe situations where withdrawal of nationality is initiated by the authorities of the State.

General prohibition of deprivation of nationality where it would render a person stateless (1961 Convention, Article 8(1))

44. Article 8(1) of the 1961 Convention provides that "[a] Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless."[43] This is the general rule. In order to apply this rule, a Contracting State must first determine and understand whether each of its potential acts of deprivation of nationality would result in statelessness. If an act of deprivation would result in statelessness, then the Contracting State may only proceed if one of the exceptions to the general rule set out in Articles 8(2) or 8(3) applies.

45. A Contracting State's fulfilment of its obligations under the 1961 Convention thus necessarily requires an assessment by the Contracting State on the issue of statelessness before a person is deprived of nationality. Deprivation of nationality procedures that place the onus on the individual concerned to raise potential statelessness in order for it to be considered leave Contracting States and individuals vulnerable to decisions that are inconsistent with Article 8. Likewise, procedures that place the burden of proof solely on the individual to prove statelessness would not be consistent with the Contracting State's obligation to determine whether statelessness would result from the act of deprivation. The process of determining whether a person would be rendered stateless following deprivation of nationality is a collaborative one aimed at clarifying whether an individual would come within the scope of the definition of statelessness if deprived of nationality. Thus, the individual has a duty to provide as

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[41] UNHCR Handbook on Protection of Stateless Persons 2014, paras. 39-40 and 42-44.

[42] Final Act of the 1961 Convention, Resolution III.

[43] See paragraphs 80-83 below on determination of possession or acquisition of another nationality, which is relevant to the question of whether deprivation would cause statelessness.

full an account of his or her position as possible and to submit all evidence reasonably available to him or her. A Contracting State should also obtain and present all evidence reasonably available to it to relevant decisionmakers to facilitate an objective determination of whether the person would be rendered stateless.[44]

Exceptions to the general prohibition of deprivation of nationality where it would render a person stateless

46. Articles 8(2) and 8(3) of the 1961 Convention provide for exceptions to the general prohibition of deprivation of nationality where it would result in statelessness under Article 8(1) of the 1961 Convention. Under Article 8(2) of the 1961 Convention, "[n]otwithstanding the provisions of paragraph 1 of this Article, a person may be deprived of the nationality of a Contracting State: (a) in the circumstances in which, under paragraphs 4 and 5 of Article 7, it is permissible that a person should lose his nationality; (b) where the nationality has been obtained by misrepresentation or fraud." These provisions employ restrictive language and, as exceptions to a general rule, they are to be interpreted narrowly. They should also be read in line with States' international human rights obligations as set out in Part III of these Guidelines.

47. Article 8(3) provides as follows.

> "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;
>
> (b) that the person has taken an oath, or made a formal declaration of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State."

48. Developments in international law and, more specifically, in international human rights law, have further narrowed the scope of application of Articles 8(2) and 8(3) of the 1961 Convention, as discussed in Part III of these Guidelines.

[44] UNHCR Handbook on Protection of Stateless Persons 2014, paras. 89-90.

Residence abroad and/or birth outside the territory of a Contracting State and failure to register (Articles 8(2)(a))

49. Under Article 8(2)(a), a person may be deprived of nationality, even where it would render them stateless, under the circumstances in Articles 7(4) and 7(5), which are discussed in paragraphs 33-42 above. The aim of Article 8(2)(a) is the same as that of Articles 7(4) and 7(5), namely to ensure that citizens have an effective connection to the country of citizenship.[45]

Misrepresentation and fraud (1961 Convention, Article 8(2)(b))

50. Under Article 8(2)(b) of the 1961 Convention, a State may deprive a person of nationality "where the nationality has been obtained by misrepresentation or fraud" notwithstanding the general prohibition of deprivation of nationality where it would render a person stateless in Article 8(1). The aim of Article 8(2) is to create a punitive consequence for serious misconduct in the acquisition process. Misrepresentation under Article 8(2)(b) should be dishonest misrepresentation on the part of the person concerned.

51. Given that Article 8(2)(b) prescribes that nationality must be *obtained* by misrepresentation or fraud, there is a clear implication that the misrepresentation or fraud must have been a key causal factor in the person concerned acquiring nationality in the first place. Deprivation of nationality is not permissible if the nationality would have been acquired even if the misrepresentations or concealment had not occurred.[46] In addition, fraud or misrepresentation in the acquisition of nationality should be distinguished from fraudulent acquisition of documents that may be submitted as part of the process to acquire nationality. Fraudulent documents are not in themselves evidence of fraudulent acquisition of nationality, as persons may in certain situations be forced to obtain documents by irregular means even if they have a legal entitlement to nationality.

52. In the process of balancing the legitimate interests of the Contracting State and the individual,[47] the nature or gravity of the fraud or misrepresentation should be weighed against the consequences of withdrawal of nationality (including statelessness). The length of time elapsed between the acquisition of nationality and the discovery of fraud should also be taken into account.[48]

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[45] See paragraph 37 above.
[46] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 10.
[47] See paragraph 11 above.
[48] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 10. See also paragraphs 94-96 below.

53. Where a person has to prove that they have renounced a former nationality in order to obtain the nationality of a Contracting State, contracting States may require a person to prove with documentation that such renunciation has occurred.

Overarching requirements for deprivation of nationality under Article 8(3) of the 1961 Convention

54. Article 8(3) of the 1961 Convention contains exhaustive exceptions to the general prohibition in Article 8(1). These are available only to States that have deposited an appropriate declaration as required by this Article.[49]

55. A Contracting State's declaration under Article 8(3) needs to specify which of the grounds within Article 8(3) the Contracting State will rely on to deprive a person of their nationality, even where it would render that person stateless. The relevant ground must also be "existing in its national law at that time", i.e., the time of signature, ratification or accession.[50] The aim of this provision is to "freeze" the existing legislative situation of the relevant Contracting State at that time.[51] Subsequent changes to such legislation by States that have made declarations may accordingly not expand the grounds for deprivation under Article 8(3).

Behaviour inconsistent with the duty of loyalty to the State (1961 Convention, Article 8(3)(a))

56. Depending on the content of their declarations,[52] Contracting States may deprive a person of nationality and render that individual stateless under Article 8(3)(a) if the person in question has, "inconsistently with his duty of loyalty to the Contracting State", either (i) "in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received emoluments from, another State" or (ii) "conducted himself in a manner seriously prejudicial to the vital interests of the State."

57. Any individual meeting the thresholds in Articles 8(3)(a)(i) or (ii) must have conducted themselves with the intention of acting inconsistently with their duty of loyalty to the Contracting State. The duty of loyalty to the State may be characterized as the firm and constant support to the State as a whole (as opposed to a specific part of the State or a specific Government in power at a given time). Without clear evidence that an individual intended to act inconsistently with their duty of loyalty to the Contracting State, the State must not deprive an individual of nationality under Article 8(3)(a)(i) or (ii).

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[49] As of January 2020, thirteen Contracting States (out of a total of 75) have made declarations to Article 8(3).
[50] 1961 Convention, Article 8(3).
[51] UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 12th meeting of the Committee of the Whole, 24 April 1961, A/CONF.9/C.1/SR.12, p. 9.
[52] As of January 2020, three of the thirteen States who have made declarations under Article 8(3) have limited their declarations to the grounds under Article 8(3)(a), and the remaining ten have made declarations under Article 8(3) as a whole.

Rendering services to or receiving emoluments from another State (1961 Convention, Article 8(3)(a)(i))

58. With respect to services rendered to or emoluments received from another State, "services" include civil and military services, and "emoluments" refer to any kind of reward, including monetary rewards and other types of benefits.[53] Receipt of such emoluments is only relevant where emoluments are received by an individual in contravention of his/her duty of loyalty to the Contracting State.

59. In addition, an individual being deprived of nationality on this ground would have had to have acted "in disregard of an express prohibition by the Contracting State."[54] As a matter of good practice, an express prohibition made under Article 8(3)(a)(i) should be an individual notice, directed towards the person concerned.[55] In addition, Contracting States seeking to deprive an individual of nationality under Article 8(3)(a)(i) should issue a warning to this effect which enables the individual to cease or amend their behaviour in order to avoid facing the consequence of deprivation of nationality. The individual should then be given a fair and reasonable time to respond to such a warning.

60. Services rendered to or emoluments received from an entity which does not constitute a State, such as a non-State armed actor (whether in a person's country of nationality or another country), an intergovernmental organization, a non-governmental organization or a business entity would not fall under the scope of Article 8(3)(a)(i). This is in line with how a State is defined under international law.[56]

Conduct seriously prejudicial to the vital interests of the Contracting State (1961 Convention, Article 8(3(a)(ii))

61. Article 8(3)(a)(ii) establishes a very high threshold for deprivation of nationality resulting in statelessness. The ordinary meaning of the terms "seriously prejudicial" and "vital interests" indicate that the conduct covered by this exception must threaten the foundations and organization of the State whose nationality is at issue. The term "seriously prejudicial" requires that the individual in question has the capacity to negatively impact the State. The conduct triggering deprivation of nationality under Article 8(3)(a)(ii) must not be incidental to the harm to be caused but rather fundamentally related to it. Conduct that involves remote support that does not materially affect whether or not the harm in question would occur is not "seriously prejudicial."

[53] UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 20th meeting of the Committee of the Whole, 24 April 1961, A/C0NF.9/SR.20, p. 7.
[54] 1961 Convention, Article 8(3).
[55] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 14.
[56] Convention on Rights and Duties of States adopted by the Seventh International Conference of American States, 165 LNTS 19, (Montevideo Convention), Article 1.

62. The term “vital interests” is to be interpreted as imposing a higher threshold than offences against “national interests”.[57] The essential function of the State is to safeguard its integrity and external security and protect its constitutional foundations. Only acts which are seriously prejudicial to that function and other vital interests warrant deprivation of nationality under Article 8(3)(a)(ii).[58] Deprivation of nationality of an individual who commits such acts should only be used where protecting a Contracting State’s vital interests cannot be achieved through other less intrusive means.

63. For an individual to be deprived of the nationality of a Contracting State under Article 8(3)(a)(ii), they must already have committed the relevant acts at the time a decision to deprive them of their nationality is taken.[59] Conduct giving rise to deprivation of nationality under this provision cannot consist of acts potentially occurring in the future.

64. Depending on the domestic context, certain “terrorist acts” may fall within the scope of Article 8(3)(a)(ii). According to UN General Assembly Resolution 60/288 of 2006, terrorist activities are aimed, inter alia, at “the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments.”[60]

65. Laws that permit deprivation of nationality on the grounds of terrorism should be publicly available and be precise enough to enable individuals to understand the scope of impermissible conduct. States should regularly review domestic legislation on counter-terrorism to ensure compliance with developments in international law.[61] Legislation on membership or affiliation with terrorist groups or armed non-State actors amounting to conduct which could result in deprivation of nationality should clearly define “membership” and the thresholds for conduct which would trigger legal proceedings on deprivation of nationality.[62]

66. Contracting States may further be guided by the international conventions and protocols relating to terrorism, which set out specific acts considered to be of a terrorist

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[57] The term “national security” is used in the wording of Articles 1(2)(c) and 4(2)(c) of the 1961 Convention.
[58] United Nations Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 21st Plenary Meeting, 11 October 1961, A/CONF.9/SR.21, p. 13: The *travaux preparatoires* indicate that the wording of Article 8(3)(a)(ii) is intended to exclude criminal offences of a general nature.
[59] This interpretation is based on the plain meaning of Article 8(3) of the 1961 Convention, which is drafted in the past tense, i.e., “has conducted himself”.
[60] UNGA Res. 60/288, 20 September 2006, preambular para. 7.
[61] See e.g., Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, 19 December 2014, A/HRC/28/28, para. 26: “National legislation that fails to define ‘membership’ or to require a link between the membership and the prohibited status or activity would be contrary to the principle of legality, in particular where such membership leads to targeted sanctions or criminal penalties, such as imprisonment. Any sanctions imposed by proscription should be a result of a clear indication, based on reasonable grounds, that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act.”
[62] See e.g., Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, 19 December 2014 A/HRC/28/28, para. 26.

nature, including the 1997 Suppression of Terrorist Bombings Convention,[63] the 1999 Convention on Terrorist Financing,[64] and the 2005 Convention for the Suppression of Acts of Nuclear Terrorism.[65] These instruments encompass contribution to specific acts, such as aircraft hijacking, hostage-taking, bombings and nuclear terrorism. Mere membership in a terrorist group or the fact of receiving training from a terrorist group generally does not constitute a terrorist act. These instruments also generally require States to prosecute or extradite individuals involved in criminal activity.

67. States have important duties "to ensure that action is taken so that violations and abuses are prevented and/or not repeated, to promptly, thoroughly, independently and impartially investigate allegations of such violations and abuses, to punish perpetrators and to ensure an adequate remedy and redress are provided to victims."[66] This is reflected in UN Security Council Resolution 2322 of 2016, which emphasises the need for cooperation among States in order to address and counter terrorism,[67] including in the context of investigation and prosecution of terrorist acts.[68] Under the Resolution, "States shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or supporting of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings".[69] In addition, the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States (UN General Assembly Resolution 2625) sets out the duties of States to "co-operate with other States in the maintenance of international peace and security". In line with these duties and the general principle that States' nationality decisions are to be given deference insofar as they are consistent with international law,[70] a State should carefully consider the impact of its decision to deprive individuals of nationality on its obligations concerning the maintenance of international peace and security. Attention to a State's own national security interests alone may not be sufficient in circumstances where it is reasonable to believe that the deprivation of nationality may negatively impact the peace and security of other States. These considerations are particularly relevant where a State seeks to undertake deprivation of nationality *in*

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[63] International Convention for the Suppression of Terrorist Bombings, 2149 UNTS 256, Article 2.
[64] International Convention for the Suppression of the Financing of Terrorism, 2178 UNTS 197, Article 2.
[65] International Convention for the Suppression of Acts of Nuclear Terrorism, 2445 UNTS 89, Article 2.
[66] See e.g., Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, 19 December 2014, A/HRC/28/28, para. 40.
[67] UNSC Res. 2322, 12 December 2016, preambular para. 10: "… terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States … to impede, impair, isolate and incapacitate the terrorist threat".
[68] UNSC Res. 2322, 12 December 2016. UNSC Res. 2178, 24 September 2014. UN Counter-Terrorism Implementation Task Force*,* Guidance to States on human rights-compliant responses to the threat posed by foreign fighters, 2018, https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf, para. 72.
[69] UNSC Res. 2322, 12 December 2016, para. 8.
[70] *Nottebohm Case (Liechtenstein v. Guatemala): Second Phase*, [1955] ICJ Reports 4, https://www.refworld.org/cases,ICJ,3ae6b7248.html, p. 23: While "international law leaves it to each State to lay down the rules governing the grant of its own nationality", such rules "shall be recognized by other States in so far as it is consistent with international law.".

absentia, thereby causing an individual not to be able to return to his/her State of (former) nationality. Such deprivation may increase security risks in another State and hinder efforts at enhancing cooperation between States to counter terrorism in line with UN Security Council Resolution 2322 of 2016[71] and to "co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all" under UN General Assembly Resolution 2625 (XXV).[72]

68. Wherever possible, the countries of nationality of individuals who become members of armed non-State groups abroad (for example, foreign terrorist fighters) should effectively investigate and prosecute those individuals.[73] Failing to hold perpetrators of violations to account may foster a sense of impunity.[74]

Allegiance to another State or repudiation of allegiance to a Contracting State (Article 8(3)(b))

69. Where a relevant declaration has been made,[75] Article 8(3)(b) allows for an exception to the basic rule that deprivation of nationality may not cause statelessness where either a person "has taken an oath, or made a formal declaration, of allegiance to another State" or they have "given definite evidence of his determination to repudiate his allegiance to the Contracting State".[76] "Allegiance" to a State is

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[71] UNSC Res. 2322, 12 December 2016, preambular para. 12: "*Underlining* the importance of strengthening international cooperation … in order to prevent, investigate and prosecute terrorist acts, and *recognizing* the persisting challenges associated with strengthening international cooperation in combating terrorism including the stemming the flow of [foreign terrorist fighters] to and returning from conflict zones, in particular due to the cross border nature of the activity."

[72] UNGA Res. 2625 (XXV), 24 October 1970.

[73] See e.g., Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, 19 December 2014, A/HRC/28/28, para. 44; and, for the UN Security Council's definition of the term "foreign terrorist fighter", UNSC Res. 2178, 24 September 2014, para. 6(a).

[74] UN Counter-Terrorism Implementation Task Force*, Guidance to States on human rights-compliant responses to the threat posed by foreign fighters*, 2018, https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf, para. 20. See also UN Economic and Social Council, Commission on Human Rights, *Updated Set of principles for the protection of human rights through action to combat impunity*, 8 February 2005, E/CN.4/2005/102/Add.1, p. 6: Impunity may be interpreted as being "the impossibility … of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims"; and Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, 19 December 2014, A/HRC/28/28, para. 44: "Accountability for all gross violations of international human rights law and violations of international humanitarian law through effective investigation and prosecution of those responsible is essential to ensure justice, to provide redress to victims and prevent further violations. The responsibility for accountability falls primarily on States, which are obliged to ensure investigations and, where the evidence warrants, prosecutions of such violations, meeting minimum international standards of justice."

[75] As of January 2020, three of the thirteen Contracting States which lodged declarations under Article 8(3) have limited their declarations to the grounds in Article 8(3)(a). These States may not therefore deprive individuals of nationality under Article 8(3)(b). The ten Contracting States whose declarations encompass Article 8(3)(b) may rely on that Article where the requirements therein, set out in paragraphs 69-71 of these Guidelines, are fulfilled.

[76] This should be interpreted in line with the definition of a State in international law. See paragraph 60 above.

equivalent to loyalty to a State.[77] For example, a person's decision to join a rebel group would not constitute allegiance to another State.

70. Deprivation of nationality may thus occur if the individual in question has taken a formal step in declaring their allegiance to another State (i.e., an oath or formal declaration). For example, an individual may take such an oath of allegiance during a naturalization procedure. As a matter of good practice, Contracting States should ensure that the elements constituting the relevant oath or declaration of allegiance to another State are clearly stipulated in domestic legislation. In addition, the Contracting State should give the individual in question appropriate warning that as long as their oath or declaration remains valid, they are at risk of being deprived of the nationality of the Contracting State. The individual should also be given a fair and reasonable time to respond to the warning.

71. In the case of repudiation of allegiance to a Contracting State, the act constituting the repudiation should be of comparable gravity to taking an oath or making a formal declaration of allegiance to another State. For example, an individual may fall within the scope of Article 8(3)(b) if they defect from the military during an armed conflict and join the military of an opposing State party to the conflict. Alternatively, there must be "definite evidence" of a person's "determination to repudiate their allegiance" to the Contracting State in order for deprivation of nationality to occur.[78] This necessitates a thorough assessment of all evidence on which the Contracting State is relying before it can be determined that the individual concerned has met the relevant threshold for deprivation of nationality on this ground.[79]

Deprivation of nationality must be in accordance with law which provides for a fair hearing (1961 Convention, Article 8(4))

72. Article 8(4) of the 1961 Convention provides that "[a] Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide the person concerned the right to a fair hearing by a court or other independent body." There are therefore two requirements for deprivation of nationality to be permissible under Article 8(2) or 8(3): that the power of the State to deprive a person of nationality be set out in a Contracting State's law and that this law ensures that any person who is deprived of nationality under Article 8(2) or 8(3) be entitled to a fair hearing before a court or independent body.[80]

73. It is notable that while the 1961 Convention permits Contracting States a limited ability to deprive individuals of nationality even where it would lead to statelessness, all such individuals are entitled to an unqualified right to a fair hearing under Article

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[77] See paragraph 57 above.
[78] 1961 Convention, Article 8(3)(b).
[79] ibid., Article 8(4). See also paragraphs 72-75 and 97-108 below.
[80] See paragraphs 97-108 below.

8(4).[81] While the text of Article 8(4) does not specify the timing of the fair hearing and thus leaves room for interpretation on this point, as a matter of good practice, the hearing should take place before the deprivation of nationality occurs and the individual should retain the nationality in question until all relevant legal proceedings have concluded. Where alleged criminal conduct is the basis for the deprivation of nationality, such deprivation should occur following a two-step process, beginning with a final finding of guilt by a criminal court. A fair hearing by a court or other independent body on deprivation of nationality would follow.

74. If the law of a Contracting State provides that deprivation of nationality may precede a fair hearing on the permissibility of such deprivation, it must also provide persons concerned with information concerning their right to a hearing at which they may challenge the merits of a decision to deprive them of nationality and such hearings should be afforded without delay. The effects of deprivation of nationality should be suspended while legal proceedings are ongoing, such that a person continues to enjoy nationality – and related rights – until such time as the legal proceedings have concluded. In order for hearings to be fair, persons concerned should be given sufficient information concerning the basis for the Contracting State's position to be able to challenge it. Persons should also receive decisions concerning deprivation of nationality issued in writing, including the reasons for the deprivation. In the absence of sufficient information to be able to meaningfully contest the facts and arguments adduced by the State in front of a court or other independent body, a person cannot be said to enjoy the rights provided for under Article 8(4). This is the case whether the fair hearing takes place before the deprivation of nationality or promptly following it.

75. Decisions of a court or other independent body on loss or deprivation of nationality should be binding on the Executive Branch of a Contracting State.

No deprivation on racial, ethnic, religious or political grounds[82]

76. Article 9 of the 1961 Convention provides that Contracting States "may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."

77. Article 9 applies irrespective of whether or not statelessness would result from the deprivation. Under Article 9, a Contracting State may not deprive a group of persons (e.g., a minority ethnic or religious group) of nationality with an administrative, legal or other act. Individual assessments in accordance with Article 8 of the 1961 Convention

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[81] UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 20th meeting of the Committee of the Whole, 24 April 1961, A/CONF.9/SR.20, p. 3: According to the *travaux preparatoires,* "[t]here had been no dissent from the view expressed … that anyone deprived of his nationality should have an opportunity to submit his case to an independent and impartial body, although details of procedure would naturally vary from State to State."

[82] The provisions listed in Parts III (a) and (b) of these Guidelines, which codify the right to a nationality, are relevant to the application of Article 9 of the 1961 Convention as many of them refer to non-discrimination as a key aspect of the prohibition of arbitrary deprivation of nationality.

must take place before a Contracting State deprives an individual of nationality and the basis for the deprivation of nationality may never be one of the grounds prohibited under Article 9.

78. Deprivation of nationality must not be based on conduct which is consistent with an individual's freedom of expression, freedom of assembly or other rights associated with a person's political views consistent with Article 9's prohibition on "political grounds." This is particularly relevant to situations in which a Contracting State may seek to rely on an individual's political beliefs as a basis for deprivation of nationality under Article 8(3) of the 1961 Convention. In no circumstances should deprivation of nationality be used as a means to delegitimize political points of view that are different from those of the government in power, or to delegitimate groups holding certain political views.

79. Article 9 of the 1961 Convention is complemented by developments in international human rights law. The relevant law is set out in paragraphs 110-112 below.

D. Determination of possession or acquisition of another nationality

80. Subject to the narrow exceptions to the general prohibition of statelessness as a result of loss or deprivation of nationality outlined in the 1961 Convention, Contracting States must ensure that safeguards against statelessness exist in national legislation wherever they provide for withdrawal of nationality. A Contracting State's assessment of whether a person has a second nationality is to be assessed at the time of the Contracting State's decision to deprive that person of its nationality.[83] As such, and subject to the narrow exceptions in Articles 8(2) and 8(3) of the 1961 Convention, Contracting States may not deprive an individual of nationality on the basis that they have previously held, are eligible for, or may (re-)acquire another nationality. As a matter of good practice, Contracting States should provide in domestic legislation that withdrawal of nationality may only occur where the individual is already in possession of another nationality.

81. The question relevant to whether an individual will be rendered stateless through withdrawal of nationality is whether the individual *currently possesses* and has proof of another nationality. This assessment should not be made on the basis of one State's interpretation of another State's nationality law but rather should be informed by consultations with and written confirmation from the State in question.

82. If a Contracting State seeks to deprive an individual of nationality in line with Article 8 of the 1961 Convention, it must conduct an assessment of whether it would render that individual stateless at the moment that the deprivation of nationality would occur. It is statelessness upon withdrawal of nationality and not the question of an individual's potential *eligibility* for another nationality that is salient for the purposes of the 1961

[83] UNCHR Handbook on Protection of Stateless Persons 2014, para. 50.

Convention.[84] Laws which permit an individual to be deprived of a nationality if they are considered to be eligible for or entitled to another nationality are highly problematic as there is a high risk that individuals may be left stateless upon being deprived of their nationality.

83. Where a Contracting State makes loss of nationality under Articles 5-7 of the 1961 Convention conditional upon acquisition of another nationality, such acquisition of nationality should be certain and imminent. Moreover, the Contracting State should restore an individual's nationality in the event that acquisition of a second nationality does not occur swiftly after the nationality of the Contracting State is lost, for example, within one year. In any event, where withdrawal of nationality is conditional upon acquisition of another nationality, a State should only withdraw nationality where individuals are able to avail themselves of a nationality acquisition procedure that is easily accessible, both physically and financially, as well as one that is simple in terms of procedural steps and evidentiary requirements. Moreover, the acquisition/reacquisition procedure must be swift and the re-acquisition of nationality guaranteed because it is non-discretionary where prescribed requirements are met.[85]

III. THE RIGHT TO NATIONALITY AND THE PROHIBITION OF ARBITRARY DEPRIVATION OF NATIONALITY IN INTERNATIONAL LAW

84. Contracting States should note the relevance of the fundamental nature of the right to a nationality and prohibition of arbitrary deprivation of nationality to the exercise of their powers to withdraw nationality under the 1961 Convention. The guidance in this Part of these Guidelines is also relevant to States not party to the 1961 Convention insofar as it concerns international law and good practices generally.

85. The UDHR sets out in Article 15 that "[e]veryone has the right to a nationality." There is a strong international consensus that the right to a nationality and, relatedly, the prohibition of arbitrary deprivation of nationality are fundamental principles of international law. [86] The two principles are closely linked and mutually reinforcing. They are found side by side in the UDHR as paragraphs 1 and 2 of Article 15.[87] The prohibition of arbitrary deprivation of nationality extends to all situations in which an

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[84] ibid., para. 23.

[85] ibid., para.155.

[86] A number of domestic and international courts have confirmed the fundamental nature of the right to a nationality. See e.g., *KV v Secretary of State for Home Department*, Court of Appeal of England and Wales, [2019] EWCA Civ 1796, para. 18; *Anudo Ochieng Anudo v Republic of Tanzania*, African Court on Human and Peoples' Rights, Application No. 012/2015, 22 March 2018, para. 76; and *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, paras. 253 and 255. See also *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States v Iran)* [1980] ICJ Reports 3, para. 91: In this judgment, the ICJ affirmed that the principles of the Universal Declaration of Human Rights are of a fundamental character.

[87] See e.g., Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, [1996] 25 Georgia Journal of International and Comparative Law 287, https://digitalcommons.law.uga.edu/gjicl/vol25/iss1/13/; and Gerard-René de Groot and Olivier Willem Vonk, *International Standards on Nationality Law: Texts, Cases and Materials* (Wolf 2015), pp. 45-46.

individual who was once considered to be a citizen of a particular State is arbitrarily no longer considered as such (thereby encompassing both loss and deprivation of nationality as defined in Part II (c) above).[88]

A. The right to a nationality

86. As the right to a nationality and the prohibition of arbitrary deprivation of nationality are reflected in numerous widely ratified international treaties, all States have obligations to protect this right and uphold this prohibition. The International Covenant on Civil and Political Rights ("ICCPR") provides in Article 24(3) that "[e]very child has the right to acquire a nationality." The almost universally ratified CRC specifies in Article 7(1) that "[t]he child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his parents." The CEDAW provides in Article 9(1) that States party to it "shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband." Article 9(2) of CEDAW provides that "States Parties shall grant women equal rights with men with respect to the nationality of their children."

87. Article 5 of the Convention on the Elimination of Racial Discrimination ("CERD") obligates Parties to guarantee the right of everyone to enjoy certain rights, explicitly including the right to a nationality, without distinction as to race, colour, or national or ethnic origin. The Convention on the Rights of Persons with Disabilities ("CRPD") in Article 18 specifies that States Parties shall ensure that persons with disabilities have the right to acquire and change a nationality and are not deprived of nationality on the basis of disability. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("ICRMW") provides in Article 29 that "[e]ach child of a migrant worker shall have the right to a name, to registration of birth and to a nationality."[89]

88. The fundamental nature of the right to a nationality and the prohibition of arbitrary deprivation of nationality was recalled by the General Assembly in Resolution 50/152 of 1996, in which the General Assembly called upon States to "adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of

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[88] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 14 December 2009, A/HRC/13/34, para. 23: "While the question of arbitrary deprivation of nationality does not comprise the loss of nationality voluntarily requested by the individual, it covers all other forms of loss of nationality, including those that arbitrarily preclude a person from obtaining or retaining a nationality, particularly on discriminatory grounds, as well as those that automatically deprive a person of nationality by operation of the law, and those acts taken by administrative authorities that result in a being arbitrarily deprived of a nationality."
[89] International Convention for the Protection of All Persons from Enforced Disappearance 2716 UNTS 3, Article 25(4).

nationality”.[90] Human Rights Council Resolutions 2005/45 of 2005, 7/10 of 2008, 10/13 of 2009, 13/2 of 2010, 20/5 of 2012, 26/14 of 2014 and 32/5 of 2016 also reaffirm that the right to nationality is a fundamental human right. The UN Secretary General has accordingly observed that “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.”[91] The International Law Commission has emphasised that “[t]he obligation of the States involved in [State] succession to take all appropriate measures in order to prevent the occurrence of statelessness is a corollary of the right of the persons concerned to a nationality” and the “growing awareness among States of the compelling need to fight the plight of statelessness”.[92]

89. The strong international consensus on the right to a nationality is further evidenced by regional treaties and instruments containing references to it. These include the African Charter on the Rights and Welfare of the Child (Article 6), the American Convention on Human Rights (Article 20), the American Declaration of the Rights and Duties of Man (Article 19), the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Article 24), the Covenant on the Rights of the Child in Islam (Article 7), the Arab Charter on Human Rights (Article 29) and the ASEAN Human Rights Declaration (Article 18). The European Convention on Nationality does not use the language of “rights” but does set out rules for States Parties to follow concerning acquisition of nationality that are intended to prevent statelessness (Article 6).[93]

90. In addition, there are a number of regional declarations that highlight the importance of the right to a nationality and ending statelessness, including the Brazil Declaration and Plan of Action: A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean,[94] the Abidjan Declaration of Ministers of ECOWAS Member States on the Eradication of Statelessness,[95] the Arab Declaration

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[90] UNGA Res. 50/152, 9 February 1996, para. 16.
[91] See e.g., *Advisory Opinion No. 4, Nationality Decrees Issued in Tunis and Morocco* [1923] PCIJ Series B, No. 4, p. 24. See also Human Rights Council, *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 would otherwise be stateless: Report of the Secretary General*, 16 December 2015, A/HRC/31/29, para. 3.
[92] International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries*, Yearbook of the International Law Commission, 1999, Vol. II (Part Two), https://www.refworld.org/docid/4512b6dd4.html, p. 27.
[93] European Convention on Nationality, 1997 ETS 166, Article 4: “The rules on nationality shall be based on the following principles: (a) everyone has the right to a nationality; (b) statelessness shall be avoided; (c) no one shall be arbitrarily deprived of his or her nationality; (d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.”
[94] Brazil Declaration and Plan of Action, 3 December 2014, https://www.refworld.org/docid/5487065b4.html.
[95] Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness, 25 February 2015, https://www.refworld.org/docid/54f588df4.html.

on Belonging and Legal Identity,[96] the Declaration of the International Conference on the Great Lakes Region on the Eradication of Statelessness[97] and the N'Djamena Initiative on the Eradication of Statelessness in Central Africa.[98] The UN General Assembly has also "welcome[d] the global campaign to end statelessness within a decade" launched by the UN High Commissioner for Refugees in 2014 and "encourage[d] all States to consider actions they may take to further the prevention and reduction of statelessness".[99]

B. The prohibition of arbitrary deprivation of nationality

91. As reflected in the 2009 Report of the Secretary General on human rights and arbitrary deprivation of nationality, the minimum content of the prohibition of arbitrary deprivation of nationality is that withdrawal of nationality conforms to what is prescribed by law; be the least intrusive means of achieving a legitimate purpose; and follow a due process. Each of these elements will be discussed in paragraphs 92-108 below.[100] Examples of arbitrary deprivation of nationality include the automatic withdrawal of nationality for an entire ethnic group through a judicial, legal or administrative action; the withdrawal of a person's nationality without a fair trial before a court or independent body; and the denial of acquisition of nationality on discriminatory grounds.

Withdrawal of nationality must take place in accordance with the law

92. The prohibition of arbitrary deprivation of nationality requires that any withdrawal of nationality by a State must have a clear basis in law. This element of the prohibition of arbitrary deprivation of nationality is reflected in Article 8 of the 1961 Convention.[101] The legislation in question must sanction the State's ability to withdraw nationality and be sufficiently precise so as to enable citizens to reasonably foresee the consequences of actions which trigger a withdrawal of nationality. As a matter of good practice, domestic legislation on withdrawal of nationality should, at a minimum, have safeguards equivalent to those found in the 1961 Convention.[102]

93. States may apply legislation pertaining to withdrawal of nationality that is in force at the time that the individual commits the act or omission giving rise to the withdrawal

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[96] Arab Declaration on Belonging and Legal Identity, 28 February 2018, https://www.refworld.org/docid/5a9ffbd04.html.
[97] Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness, 16 October 2017, CIRGL/CIMR/DEC/15/10/2017, https://www.refworld.org/docid/59e9cb8c4.html.
[98] N'Djamena Initiative on the Eradication of Statelessness in Central Africa, 12 December 2018, https://www.refworld.org/docid/5c2f3f8b4.html.
[99] UNGA Res. 70/135, 23 February 2016, para. 12.
[100] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General, 14 December 2009*, A/HRC/13/34, 14 December 2009, para. 25.
[101] See paragraph 72 above.
[102] See Part II above for a detailed outline of the standards in the 1961 Convention.

in line with the general principle that a person may not be tried for conduct that was not an offence at the time the conduct occurred.[103] As a safeguard against statelessness or other adverse consequences of withdrawal of nationality, where a new ground for loss or deprivation of nationality is introduced in national law, the State should include a transitional provision to prevent an individual from losing their nationally due to acts or facts which would not have resulted in loss or deprivation of nationality before the introduction of a new ground.

Withdrawal of nationality must always be proportionate to a legitimate aim

94. The principle of proportionality is reflected in numerous international human rights instruments, including international and regional human rights treaties.[104] For withdrawal of nationality to be proportionate, measures leading to the withdrawal of nationality should "serve a legitimate purpose that is consistent with … the objectives of international human rights law" and be the least intrusive means necessary to achieve the aim pursued by the State.[105] Therefore, the consequences of loss or deprivation of nationality must be weighed against the aim pursued.[106] The impact of withdrawal of nationality on the individual's ability to access and enjoy other human rights (in particular those discussed in these Guidelines) should be taken into consideration. In addition, the aim pursued must be legitimate in that it must not be to punish a person for asserting rights such as the right to freedom of expression or association by withdrawing nationality.

95. The question of whether a person is in possession of another nationality is relevant to the assessment of whether loss or deprivation of nationality is proportionate to the aim pursued by the State because it is a key factor in determining the consequences for the individual concerned. If the person is not in possession of another nationality, the withdrawal of nationality will result in statelessness.[107] Even where a person is in possession of another nationality or may be able to (re-) acquire another nationality, any loss of the right to reside in the State in question will result in the loss of all the rights which attach to residence. States should therefore ensure that there are no less intrusive alternatives to achieve the relevant aim before withdrawal of nationality occurs. Given the severe consequences of statelessness, withdrawal of nationality

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[103] See e.g., *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, para. 298.

[104] See e.g., Yutaka Arai-Takahashi, 'Proportionality' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013), DOI: 10.1093/law/9780199640133.003.0020.

[105] See e.g., *Rottmann v Freistaat Bayern,* Case C-135/08, [2010] ECR I-01449, https://www.refworld.org/cases,ECJ,4be130552.html, para. 56; Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/13/34, para. 25; and Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 4.

[106] International Law Commission, *Draft Articles on the Expulsion of Aliens with commentaries*, Yearbook of the International Law Commission, 2011 Vol. II (Part Two), https://www.refworld.org/docid/5539ef8e4.html, Article 8.

[107] See e.g., *Rottmann v Freistaat Bayern*, Case C-135/08, [2010] ECR I-01449, https://www.refworld.org/cases,ECJ,4be130552.html, para. 57.

that results in statelessness would only conceivably be possible to justify as proportionate in limited and narrow circumstances.[108] This is reflected by the very narrow circumstances under which a Contracting State may withdraw nationality under the 1961 Convention.

96. Considerations of timing are also relevant to the proportionality test. States are therefore encouraged to ensure that there is a defined and limited period with respect to the time elapsed between commission of an act and its discovery by the authorities, and between the discovery and the withdrawal of nationality.

Withdrawal of nationality is arbitrary where there is no due process

97. In order to avoid arbitrary deprivation of nationality, it is necessary for States to implement procedural safeguards in all cases of withdrawal of nationality regardless of whether or not they result in statelessness.[109] Accordingly, due process requirements must be met in all cases of withdrawal of nationality.

98. Under Article 14(1) of the ICCPR, "[i]n the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." [110] Decisions by States which infringe upon a person's right to a nationality are subject to due process protections as a matter of international law. The minimum content of the requirement of due process in this context is that an individual is able to understand the reasons why their nationality has been withdrawn and has access to legal and/or administrative avenues through which they may challenge the withdrawal of nationality.[111]

99. State decisions involving the acquisition, retention or renunciation of nationality should be issued in writing and open to effective administrative and judicial review.[112]

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[108] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 4.

[109] This element of the prohibition of arbitrary deprivation of nationality is reflected in Article 8(4) of the 1961 Convention. See Part II (c) above.

[110] See e.g., UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 6 August 2008, A/63/223, para. 12; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (ECHR), Article 6; American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, 22 November 1969), Article 8; African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58, Article 8; International Convention for the Suppression of the Financing of Terrorism, 2178 UNTS 197, Articles 17 and 21; and UN Human Rights Committee, *General comment no. 32: Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, http://www.refworld.org/docid/478b2b2f2.html.

[111] See e.g. Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 31.

[112] International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries*, Yearbook of the International Law Commission, 1999 Vol. II (Part Two), https://www.refworld.org/docid/4512b6dd4.html, Article 17: "Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option in relation to the succession of States shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.". See also European Convention on Nationality, 1997 ETS 166, Article 11; and

The individual whose nationality is withdrawn should also be provided with written reasons for the withdrawal in a language they understand.

100. Whereas Article 8(4) of the 1961 Convention requires that individuals be afforded a fair hearing in situations where deprivation of nationality would result in statelessness, the due process element of the prohibition of arbitrary deprivation of nationality includes the provision of a fair hearing in all cases of withdrawal of nationality. This right to a fair hearing includes the ability to appeal decisions made at the first instance.[113]

101. The determination of whether a person is stateless is neither a historic nor a predictive exercise. The question of whether a person is stateless according to the definition of a stateless person in Article 1 of the 1954 Convention is to be assessed at the time that a withdrawal of that person's nationality occurs.[114] Therefore, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or completed, the individual must still be considered a national. A decision to withdraw nationality should be suspended while legal proceedings are ongoing, such that the individual continues to enjoy nationality – and related rights – until such time as the legal proceedings have concluded.[115]

102. Where States impose immigration sanctions (including detention, travel bans and other restrictions on freedom of movement and confiscation of identity documents) as a result of withdrawal of nationality, there should be a periodic review of whether these measures are proportionate to the aim being pursued by the State in withdrawing nationality. At a minimum, individuals should never be arbitrarily detained, for example, without periodic review of whether detention is a proportionate measure in all the circumstances of the case. This is the case both while legal and/or administrative proceedings are ongoing and after a final decision is taken.

103. Wherever the question of permissibility of withdrawal of nationality involves determination of an individual's possession or acquisition of another nationality,[116] a State wishing to rely on the fact that an individual is a national of another State should

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Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 32.

[113] See e.g., *Anudo Ochieng Anudo v Republic of Tanzania*, African Court on Human and Peoples' Rights, Application No. 012/2015, 22 March 2018, https://www.refworld.org/cases,AfCHPR,5d7bb4784.html, para. 116; and Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 32.

[114] UNHCR Handbook on Protection of Stateless Persons 2014, para. 50.

[115] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 33: "Access to the appeals process may become problematic and related due process guarantees nullified if the loss or deprivation of nationality is not suspended and the former national, now alien, is expelled. Similarly, if withdrawal of nationality results in the loss of property rights, the individual may have to forfeit his home or business, as well as other acquired rights – an interference which may be difficult to repair if it is subsequently established that the loss or deprivation of nationality was unlawful or arbitrary and must be reversed."

[116] See paragraphs 80-83 above.

as a matter of good practice obtain written confirmation of that citizenship status from that other State.[117]

104. Where a State seeks to deprive a person of nationality *in absentia*, the person affected by such deprivation is unlikely to have practical or effective access to a fair hearing, and deprivation of nationality *in absentia* should be avoided for that reason. If a State nevertheless seeks to deprive a person's nationality *in absentia*, it should seek a court's endorsement that deprivation of nationality *in absentia* is strictly necessary to avoid risks to national security posed specifically by the presence of the person concerned within the State, and that such risks cannot be mitigated through alternate means in accordance with the requirement that deprivation of nationality be a measure proportionate to a State's legitimate aims.

105. Where a State deprives an individual of nationality *in absentia* and that individual comes forward subsequently to challenge the deprivation, the State should as a matter of good practice declare the deprivation void and undertake the relevant legal and administrative proceedings afresh. Failing this, the State should ensure that the person has practical and effective access to an appeal procedure and suspend the deprivation of nationality while the appeal procedure is ongoing.

Effective remedy

106. States must ensure that an individual whose nationality has been withdrawn in contravention of the prohibition of arbitrary deprivation of nationality has access to an effective remedy. The right to an effective remedy is codified within several widely ratified international human rights treaties including Article 2(3) of the ICCPR .[118] It supplements Article 8(4) of the 1961 Convention in that the right to a fair hearing by a court or any other independent body should include an effective remedy where the person concerned has lost or been deprived of their nationality in a manner inconsistent with the 1961 Convention and applicable international human rights law.

107. States can ensure the right to an effective remedy for wrongful withdrawal of nationality through ensuring that any person claiming such a remedy has the right thereto determined by appropriate authorities and "that the … authorities shall enforce such remedies when granted."[119] States should also ensure that persons arbitrarily

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[117] See paragraphs 80-83 above.

[118] Article 2(3) of the ICCPR states that where rights set out in the treaty are violated, individuals shall have access to an effective remedy. This applies to the right to a nationality as Article 24(3) of the ICCPR concerns the right to a nationality. See also *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, para. 444: "In the context of adjudicating upon the State's obligation to protect the right to a nationality, the Inter-American Court on Human Rights asserted that "any violation of international obligation that has caused harm entails the duty to make adequate reparation, and … this … reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility."

[119] International Covenant on Civil and Political Rights, 999 UNTS 171, (ICCPR), Article 2(3). Convention on the Rights of the Child 1577 UNTS 3, Article 8(2): "Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

deprived of nationality have practical access to an effective remedy,[120] and that the remedy consists of restoration of nationality and compensation.[121] States are encouraged to ensure that restoration of nationality as a remedy for arbitrary deprivation of nationality is automatic, and preferably with retroactive effect to the moment of deprivation.[122] Where proof of identification is necessary to procure an effective remedy, States should adopt flexible rules of evidence as withdrawal of nationality may hamper an individual's ability to produce such documentation. For example, witness testimony or reliance on other sources of documentary evidence could be permitted in place of identity documents.[123]

108. Where withdrawal of nationality is linked to past persecution against a particular group within the society of a State, the State is encouraged to implement a simple, non-discretionary application procedure for individuals from this group to re-acquire nationality.

C. Other relevant provisions in international human rights law

109. International human rights law on non-discrimination, non-refoulement, the prohibition of torture, the right to leave one's own country, the right to enter one's own country and the right to private and family life are relevant to the permissibility of withdrawal of nationality. In all cases of withdrawal of nationality, States must adhere to their obligations under customary international law as well as relevant treaty provisions to which they are bound that pertain to these principles.

110. The principle of non-discrimination appears in numerous widely ratified international human rights treaties, including Article 26 of the ICCPR, Article 2 of the CRC, Article 9 of the CEDAW and Article 5 of the CERD.[124] These provisions complement Article 9 of the 1961 Convention.

111. States should take steps to ensure that the practical effect of withdrawal of nationality is not that certain groups (e.g., ethnic or religious minorities) are

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[120] Administrative of financial hurdles which cause significant delay or practical difficulties with respect to the restoration of nationality are likely to curtail the right to an effective remedy. Such hurdles might include lack of information on application procedures and prohibitively high administrative fees.

[121] See e.g., *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, paras. 479-482; Human Rights Council Resolution 7/10, 27 March 2008; Human Rights Council Resolution 10/13, 26 March 2009; and UN Counter-Terrorism Implementation Task Force*, Guidance to States on human rights-compliant responses to the threat posed by foreign fighters*, 2018, https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf, p. 23.

[122] See e.g., *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, para. 469.

[123] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General,* 14 December 2009, A/HRC/13/34, para. 12; and Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General,* 26 January 2009, A/HRC/10/34, para. 59.

[124] International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries*, Yearbook of the International Law Commission, 1999 Vol. II (Part Two), https://www.refworld.org/docid/4512b6dd4.html, Article 15. European Convention on Nationality, 1997 ETS 166, Article 5(1).

disproportionately affected by laws and policies on and practices of withdrawal of nationality.[125] Such a discriminatory effect on a particular group may be present even when legislation in the State contains strong safeguards against statelessness.

112. Articles 5–8 of the 1961 Convention distinguish between mono- and dual-nationals such that different standards apply depending on whether a person is in possession of or can acquire another nationality. This is relevant to determining whether loss or deprivation of the nationality of a Contracting State would result in a person becoming stateless. There is also a variance in standards applicable to nationals by birth and nationals by naturalization. Any inequality of treatment between nationals by birth and naturalized citizens should, as a matter of good practice, be minimized through ensuring that there is a defined and limited period during which naturalized citizens may be subjected to loss or deprivation of nationality on an unequal basis with nationals by birth.[126] For example, a naturalized citizen should not be subject to a different set of rules on withdrawal of nationality to a national who acquired nationality by birth after a limited and defined period (e.g., one year) from the date of their acquisition of nationality by naturalization. In addition, given that many naturalized citizens are likely to be from ethnic minority groups, Contracting States should exercise caution with respect to laws and practices which make naturalized citizens more vulnerable to withdrawal of nationality than citizens by birth.

113. Withdrawal of nationality resulting in the removal of the individual concerned to another State may contravene the principle of non-refoulement. The principle of non-refoulement is most prominently expressed in Article 33 of the 1951 Convention, and it has been recognized as a norm of customary international law.[127] The principle of non-refoulement prohibits States from expelling or returning a refugee in any manner whatsoever to a territory where she or he would be at risk of threats to life or freedom. Non-refoulement obligations are also enshrined in international and regional human rights law instruments.[128] Article 3 of the Convention against Torture and Other Cruel,

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[125] See e.g., *Hoti v Croatia*, European Court of Human Rights, App. no. 63311/14, 26 April 2018, para. 106; *Case of Expelled Dominicans and Haitians v Dominican Republic,* 28 August 2014, Inter-American Court of Human Rights, Series C No. 282, paras. 263-264. See also International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, Article 5(d)(iii): “In compliance with [their] fundamental obligations laid down in … [the] Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the … right to nationality”.

[126] See e.g., Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para. 6.

[127] Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 16 January 2002, HCR/MMSP/2001/09, www.unhcr.org/refworld/docid/3d60f5557.html, para.4.

[128] UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, www.refworld.org/docid/45f17a1a4.html: In this Advisory Opinion, reference is made to various human rights law instruments, including the International Covenant on Civil and Political Rights, 999 UNTS 171, Articles 6 and 7, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, Article 3, American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, 22 November 1969), Article 22(8), African Charter on Human and People’s Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58, Article 5, European Convention on Human Rights, Articles 2 and 3 and the Charter of Fundamental Rights of the European Union, 2000/C 364/01, Article 19(2).

Inhuman or Degrading Treatment or Punishment ("CAT") prohibits the expulsion, return or extradition of a person to another State where there are substantial grounds for believing that s/he would be in danger of being subjected to torture. Article 16 of the Convention for the Protection of All Persons from Enforced Disappearance prohibits in similar wording return to the danger of being subjected to enforced disappearance.[129] Further, it is generally accepted that States shall also not transfer any person to another country if this would result in exposing him or her to serious human rights violations, notably arbitrary deprivation of life, or torture or other cruel, inhuman or degrading treatment or punishment.[130]

114. Where a State withdraws a person's nationality and forces the person to leave the country (including by way of extradition or expulsion) and return to a territory where they may be subjected to life-threatening risks or to treatment amounting to torture or cruel, inhuman or degrading treatment or punishment, such State conduct is very likely to be inconsistent with non-refoulement obligations.[131] States should also not transfer a person to a country where they may be at risk of further or onward removal to a country where they are subject to serious harm as outlined in the preceding sentence.[132]

115. Where an individual is detained (including for enforcement of immigration laws and in the context of military detention) as a result of withdrawal of nationality, such detention must not be arbitrary. Arbitrary detention includes situations in which there is no oversight or review as to the length of detention, which may in some

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[129] Numerous provisions in regional human rights treaties also codify the principle of non-refoulement. See e.g., American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, 22 November 1969), Article 22(8); Inter-American Convention to Prevent and Punish Torture, OAS Treaty Series No. 67, Article 13(4); Charter of Fundamental Rights of the European Union, 2000/C 364/01, Article 19(2); Arab Charter on Human Rights (15 September 1994), Article 28; and European Convention on Action against Trafficking in Human Beings, CETS 197, Article 40(4).

[130] See e.g., ICCPR, Articles 6 and 7; UN Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 October 2018, CCPR/C/GC/36, para. 31; and UN Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para. 9; and UN Committee Against Torture, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 4 September 2018, CAT/C/GC/4, para. 26.

[131] See e.g., Human Rights Council, *Report of the Working Group on Arbitrary Detention*, 24 December 2012, A/HRC/22/44, para. 38: The Working Group on Arbitrary Detention, which has a specific mandate to receive and examine cases of arbitrary deprivation of liberty, "regards cases of deprivation of liberty as arbitrary under customary international law in cases where", *inter alia*, " it is clearly impossible to invoke any legal basis justifying the deprivation of liberty" and "[w]hen the total or partial on-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.".

[132] *T.I. v United Kingdom,* European Court of Human Rights, App. no. 43844/98, 7 March 2000, p. 14: "Normally a person whose asylum claim has already been rejected in the 'safe third country' will be unable to obtain an effective legal remedy when returned there. Indirect removal in those circumstances could violate the non-refoulement principle. No asylum-seeker should therefore be sent to a third country without a reliable assessment in his case of the available guarantees, e.g. that the person will be re-admitted, that he will enjoy effective protection against refoulement, that he will have the possibility to seek and enjoy asylum, and that he will be treated in accordance with accepted international standards." See also *Abdolkhani and Karimnia v Turkey,* European Court of Human Rights, App. no. 30471/08, 22 September 2009, para. 88: "The Court reiterates in this connection that the indirect removal of an alien to an intermediary country does not affect the responsibility of the expelling Contracting State to ensure that he or she is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the [European Convention on Human Rights]".

circumstances amount to torture or cruel, inhuman or degrading treatment or punishment.[133]

116. If there are substantial grounds[134] for believing that a person whose nationality has been withdrawn would suffer human rights violations as a consequence of such withdrawal, this consideration must also be part of the assessment of whether withdrawal of nationality would be proportionate to the aim pursued. Consideration as to whether expulsion, return or extradition would be disproportionate should include taking into account "the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."[135]

117. States must also consider whether a person may be subject to arbitrary detention upon removal to another country. Where an individual is detained (including for enforcement of immigration laws and in the context of military detention) as a result of withdrawal of nationality, such detention must not be arbitrary. Arbitrary detention includes situations in which there is no oversight or review as to the length of detention, which may in some circumstances amount to torture or cruel, inhuman or degrading treatment or punishment.[136] This is particularly relevant where an individual no longer has the right to reside in a State as a result of withdrawal of nationality but has no other nationality or place of (legal) residence, and as a result, is detained for an indefinite period.[137]

118. A State should ensure that in all cases where it withdraws nationality from an individual and withdraws its permission for that person to reside in its territory, another State has formally agreed to admit that person and provide them with protection consistent with international human rights law.[138] Absence of such formal agreement

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[133] This is particularly relevant where an individual no longer has the right to reside in a State as a result of withdrawal of nationality but has no other nationality or place of (legal) residence, and as a result, is detained for an indefinite period. See *Anudo Ochieng Anudo v Republic of Tanzania*, African Court on Human and Peoples' Rights, Application No. 012/2015, 22 March 2018, https://www.refworld.org/cases,AfCHPR,5d7bb4784.html, paras. 118, 120-121: The African Court on Human and People's Rights opined that a breach of an individual's right to liberty and security of person and protecting against arbitrary arrest and detention under Article 9(1) of the International Covenant on Economic and Social Rights was a consequence of his being arbitrarily deprived of nationality. The individual in question had been detained following arbitrary deprivation of nationality and inability to legally reside in the country to which he was expelled. See also Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,* 26 February 2018, A/HRC/37/50, para. 27: "The Human Rights Committee has repeatedly considered that "the combination of the arbitrary character of the [...] detention, its protracted and/or indefinite duration, the refusal to provide information and procedural rights to the [detainees] and the difficult conditions of detention are cumulatively inflicting serious psychological harm upon them, and constitute treatment contrary to article 7 of the Covenant."

[134] See e.g., *Agiza v Sweden*, Communication no. 233/2003, UN Committee against Torture, 20 May 2005, CAT/C/34/D/233/2003, paras. 13.2-13.5.

[135] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1465 UNTS 85, Article 3(2). International Convention for the Protection of All Persons from Enforced Disappearance 2716 UNTS 3, Article 16(2).

[136] See e.g., Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 26 February 2018, A/HRC/37/50, paras. 26-29.

[137] See e.g., Human Rights Council, *Report of the Working Group on Arbitrary Detention*, 24 December 2012, A/HRC/22/44.

[138] UNHCR, *UNHCR intervention before the Supreme Court of Canada in the case of Manickavasagam Suresh (Appellant) and the Minister of Citizenship and Immigration, the Attorney General of Canada (Respondents)*, 8 March 2001, https://www.refworld.org/docid/3e71bbe24.html, paras. 52 and 78.

creates a great risk that States will cause further human rights violations such as prolonged arbitrary detention pending the transfer or removal of the individual concerned to another State.[139]

119. The right to enter one's own country is set out in Article 13 of the UDHR, Article 12(4) of the ICCPR[140] and in various other international and regional treaties, including the CERD (Article 5(d)(ii)), the CRC (Article 10(2)), the ICRMW (Article 8) and the CRPD (Article 18(c-d)).[141] The right to leave one's own country (set out in Article 13 UDHR) goes beyond the country of nationality in the formal sense, and the right to return after having left one's own country "may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality)."[142] It also guarantees the right of entry, and thus the right to remain, to individuals who, due to their special ties to a State, cannot be considered mere aliens.[143] This includes, for instance, stateless persons long-established in a State as well as persons who have been stripped of their nationality in violation of international law.[144]

120. If a person who is a national of a State is abroad, that State should not prevent the individual from returning to the territory of the State by arbitrarily depriving that person of nationality.[145] Where withdrawal of nationality manifests in the withdrawal of an individual's passport or other identity document, States must nevertheless consider whether denial of entry into one's own country is arbitrary,[146] including whether it is prescribed by law and proportionate to a legitimate aim.[147] In cases where travel bans are imposed, affected persons should be given all necessary information to be able to effectively challenge the ban if they consider it to be a disproportionate measure. This includes information on the facts leading to the imposition of the travel ban.[148]

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[139] See e.g., *Agiza v Sweden*, Communication no. 233/2003, UN Committee against Torture, 20 May 2005, CAT/C/34/D/233/2003, para. 13.4.
[140] The provisions under Article 12 of the ICCPR, including the right to leave one's country, can be subject to restrictions under Article 12(3) if provided for by law, including on the basis of national security and public order. However, this does not apply to Article 12(4), under which "[n]o one should be arbitrarily deprived of the right to re-enter his own country."
[141] American Declaration on the Rights and Duties of Man, AG/RES. 1591 (XXVIII-O/98) adopted by the Ninth International Conference of American States (1948) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992), Article 8. African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58, Article 12. European Convention on Human Rights, Protocol No. 4, Article 6.
[142] See e.g., Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, paras. 19-20.
[143] ibid.
[144] UNHCR Handbook on Protection of Stateless Persons 2014, para. 142.
[145] See e.g., Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 21.
[146] ICCPR, Article 12(4): "No one shall be arbitrarily deprived of the right to enter his own country."
[147] UNSC Res. 2178, 24 September 2014, para. 2. UNSC Res. 2396, 21 December 2017, para. 2. These two Resolutions call on States to prevent inter-State travel of foreign terrorist fighters, including through effective border controls and controls on issuance of identity papers and travel documents.
[148] UN Counter-Terrorism Implementation Task Force*, Guidance to States on human rights-compliant responses to the threat posed by foreign fighters*, 2018, https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf , p. 17.

121. A State may impose measures aimed at restricting travel abroad (e.g., restrictions on travel abroad for terrorist purposes) and thereby limit the right to leave one's own country, provided they meet the proportionality test, and are furthermore in line with decisions of the Security Council on this matter.[149]

122. The UDHR sets out in Article 12 that "[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence" and under Article 16(3) that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Notably, States have specific obligations with respect to protecting private and family life under several widely ratified treaties, including Articles 17(1) and 23 of the ICCPR, Article 10 of the International Covenant on Economic, Social and Cultural Rights, Article 16 of the CRC, Article 23 of the CRPD and Article 44 of the ICRMW. Regional instruments such as the European Convention on Human Rights (Article 8) also provide for the right to private and family life.

123. Interference with the right to private and family life should be taken into consideration within a State's assessment of whether withdrawal is a proportionate measure to achieve the legitimate aim of the State.[150] This includes cases where nationality is not granted to an individual in the first place owing to the marital status of that individual's parent(s).[151] The right to private and family life is also potentially infringed when a person or family has to leave or is unable to return to their country of residence as a result of withdrawal of nationality as this can have severe consequences on the individual, including as a result of family separation.[152]

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[149] See e.g., Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 14.

[150] *Hoti v Croatia*, European Court of Human Rights, App. no. 63311/14, 26 April 2018, para. 122: "… the Court reiterates that measures restricting the right to reside in a country may, in certain cases, entail a violation of Article 8 of the Convention if they create disproportionate repercussions on the private or family life, or both, of the individuals concerned. … Moreover, the Court has held that in some cases, such as in the case at issue, Article 8 [of the European Convention on Human Rights] may involve a positive obligation to ensure an effective enjoyment of the applicant's private and/or family life." See also *Slivenko v Latvia*, European Court of Human Rights, App. no. 4832/199, 9 October 2003, para. 122: "The Court considers that schemes such as the present one for the withdrawal of foreign troops and their families, based on a general finding that their removal is necessary for national security, cannot as such be deemed to be contrary to Article 8 of the [European Convention on Human Rights]. However, application of such a scheme without any possibility of taking into account the individual circumstances of persons not exempted by the domestic law from removal is in the Court's view not compatible with the requirements of that Article. In order to strike a fair balance between the competing interests of the individual and the community, the removal of a person should not be enforced where such measure is disproportionate to the legitimate aim pursued. In the present case the question is whether the applicants' specific situation was such as to outweigh any danger to national security based on their family ties with former foreign military officers."

[151] See e.g., *Genovese v Malta*, European Court of Human Rights, App. no. 53124/09,11 October 2011, paras. 29-30.

[152] *Slivenko v Latvia*, European Court of Human Rights, App. no. 4832/199, 9 October 2003, para. 96: "As regards the facts of the present case, the first applicant arrived in Latvia in 1959, when she was only one month old. Until 1999, by which time she was 40 years of age, she continued to live in Latvia. She attended school there, found employment and married. Her daughter, the second applicant, was born in Latvia in 1981 and lived there until the age of 18, when she was compelled to leave the country together with her mother, having just completed her secondary education. … It is undisputed that the applicants left Latvia against their own will, as a result of the unsuccessful outcome of the proceedings concerning the legality of their stay in Latvia. They were thus removed from the country where they had developed, uninterruptedly since birth, the network of personal, social and economic relations that make up the private life of every human being. Furthermore, as a result of the

removal, the applicants lost the flat in which they had lived in Riga. … In these circumstances, the Court cannot but find that the applicants' removal from Latvia constituted an interference with their ‘private life’ and their ‘home’ within the meaning of Article 8 § 1 of the [European Convention on Human Rights].”