



General Assembly

Distr.: General
19 December 2013

Original: English

Human Rights Council

Twenty-fifth session

Agenda items 2 and 3

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

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

Human rights and arbitrary deprivation of nationality

Report of the Secretary-General

Summary

The present report examines legislative and administrative measures that may lead to deprivation of nationality, paying particular attention to situations where persons affected may be left stateless. Taking into consideration information collected from States, United Nations agencies and other relevant stakeholders, the report discusses the regulation of loss or deprivation of nationality in domestic laws and recalls the international norms and standards that limit the discretion of States to withdraw a person's nationality. It emphasizes the importance of integrating safeguards to ensure that statelessness is prevented when loss or deprivation of nationality is provided for in legislation. It also addresses the fundamental right of every child to a nationality and the importance of measures for the acquisition of nationality by a child who would otherwise be stateless. The report recalls the key role that due process guarantees play in preventing arbitrary deprivation of nationality and reminds States of the necessity of providing an effective remedy in the context of decisions on nationality. Finally, it emphasizes the importance of ensuring access to documentation attesting nationality.



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I. Introduction

1. In its resolution 20/5, the Human Rights Council requested the Secretary-General to prepare a report on legislative and administrative measures that may lead to the deprivation of nationality of individuals or groups of individuals, paying particular attention to situations where persons affected may be left stateless. The Council requested that information in this regard be collected from States, United Nations agencies and other relevant stakeholders. Such information was received from 33 States,¹ as well as from 22 United Nations agencies and non-governmental organizations.²

2. The Human Right Council has addressed the enjoyment of the right to a nationality and the avoidance of statelessness in several resolutions on the arbitrary deprivation of nationality. The Council has considered situations in which a person's enjoyment of his or her nationality is interrupted through withdrawal, as well as situations in which a person is arbitrarily denied the right to obtain a nationality.³ In the context of the Council's approach to the question of arbitrary deprivation of nationality, the present report considers legislative and administrative measures that may lead to the automatic loss of nationality or that form the basis for an administrative or judicial decision to deprive a person of his or her nationality, as well as those measures that may arbitrarily preclude a person from obtaining a nationality. As requested by the Council, the report pays particular attention to situations where such measures may leave a person stateless. The report includes a brief analysis of legislative and administrative measures taken by States to prevent childhood statelessness. It also considers the question of due process in the context of deprivation of nationality, and comments on the importance of and procedures for acquiring documentation attesting nationality.

II. Loss or deprivation of nationality

3. While almost all States stipulate in their laws the conditions under which a person would cease to be a national thereof,⁴ the terminology used varies. A common approach, which is applied in the 1961 Convention on the Reduction of Statelessness, is to refer to "loss" with regard to the automatic lapse of nationality, *ex lege* and without State interference, and "deprivation" for administrative and judicial acts of competent national authorities invoking a stipulation of the nationality law to withdraw nationality. While "loss" and "deprivation" cover two distinct processes, they both lead to the same outcome: the person concerned is no longer considered a national by the State, and if he or she does not hold another nationality, this leads to statelessness. The distinction between loss and deprivation is not always clear, as where one State provides for the automatic loss of

¹ Argentina, Benin, Bosnia and Herzegovina, Burkina Faso, Colombia, Costa Rica, Denmark, Egypt, Gabon, Ghana, Grenada, Guatemala, Hungary, Indonesia, Islamic Republic of Iran, Kazakhstan, Lebanon, Mexico, Republic of Moldova, Morocco, Niger, Nigeria, Qatar, Romania, Russian Federation, Serbia, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, United States of America and Uruguay.

² All of these contributions are gratefully acknowledged and have been taken into consideration in the compilation of the present report. Reference to the practice of an individual State is provided as an illustrative example only and does not reflect an exhaustive analysis of State practice.

³ A/HRC/13/34, para. 23.

⁴ A person may also voluntarily initiate the loss of his or her nationality, by way of renunciation. However, this falls outside the scope of arbitrary deprivation of nationality (see A/HRC/13/34) and is not considered in the present report.

nationality on a particular ground, while another may adopt the same ground as a basis for attributing to the authorities the power to deprive an individual of his or her nationality. In some instances, the withdrawal of nationality — for example, on the ground of fraud — may be deemed under domestic law to be an act of nullification rather than loss or deprivation of nationality. Regardless of the terminology or legal construction in domestic law, measures that result in the loss or deprivation of nationality should be qualified as such and are subject to relevant international norms and standards.

A. General considerations regarding loss or deprivation of nationality

4. Any interference with the enjoyment of nationality has a significant impact on the enjoyment of rights.⁵ Therefore, loss or deprivation of nationality must meet certain conditions in order to comply with international law, in particular the prohibition of arbitrary deprivation of nationality. These conditions include serving a legitimate purpose, being the least intrusive instrument to achieve the desired result and being proportional to the interest to be protected.⁶ Where loss or deprivation of nationality leads to statelessness, the impact on the individual is particularly severe. International law therefore strictly limits the circumstances in which loss or deprivation of nationality leading to statelessness can be recognized as serving a legitimate purpose. The 1961 Convention on the Reduction of Statelessness (1961 Convention) and the 1997 European Convention on Nationality both accept that statelessness may, exceptionally, result from the loss or deprivation of nationality in response to its fraudulent acquisition.⁷ The 1961 Convention establishes a set of basic rules which prohibit loss or deprivation of nationality where the result is to leave an individual stateless. The 1961 Convention contains a limitative set of exceptions to these rules, recognizing a narrow set of circumstances in which loss or deprivation of nationality leading to statelessness may serve a legitimate purpose.⁸ Even in such cases, however, the loss or deprivation of nationality must satisfy the principle of proportionality. The consequences of any withdrawal of nationality must be carefully weighed against the gravity of the behaviour or offence for which the withdrawal of nationality is prescribed. Given the severity of the consequences where statelessness results, it may be difficult to justify loss or deprivation resulting in statelessness in terms of proportionality.⁹

5. In spite of the broad recognition of the right to a nationality as a fundamental human right and the need to avoid legislative and administrative measures leading to statelessness, many domestic frameworks still provide incomplete safeguards against statelessness. In most cases, this is because the legislation itself does not differentiate the situation in which a person would be left stateless from any other situation of loss or deprivation of nationality. Where legislative safeguards are in place, they may be difficult to implement, in particular with regard to the understanding of the meaning of statelessness or the

⁵ A detailed report of the impact of deprivation of nationality on the enjoyment of human rights is contained in A/HRC/19/43.

⁶ A/HRC/13/34, para. 25; European Court of Human Rights, application No. 31414/96, *Karashev and Family v. Finland*, 12 January 1999; Court of Justice of the European Union, Case No. C-135/08, *Rottmann v. Freistaat Bayern*, 2 March 2010. On the notion of “arbitrary” under international law, for instance in the context of deprivation of liberty, see A/HRC/22/44, para. 61, including the jurisprudence of the Human Rights Committee and the Inter-American Court of Human Rights, cited in footnote 28 therein.

⁷ 1961 Convention on the Reduction of Statelessness, art. 8, para. 2(b); 1997 European Convention on Nationality, art. 7, para. 3.

⁸ 1961 Convention, arts. 7, paras. 4 and 5; 8, paras. 2 and 3.

⁹ Court of Justice of the European Union, Case No. C-135/08, *Rottmann v. Freistaat Bayern*, 2 March 2010.

identification of situations in which a person would be rendered stateless through loss or deprivation of nationality. In 2012, the Office of the United Nations High Commissioner for Refugees (UNHCR) issued guidelines on definition of a stateless person¹⁰ which may help to inform efforts by States to avoid statelessness resulting from loss or deprivation of nationality.¹¹ In October 2013, UNHCR initiated a process to further clarify specific questions surrounding the avoidance of statelessness in the context of loss and deprivation of nationality. For instance, international experts agreed that the burden of proof lies with the State to establish that an individual will not be rendered stateless and that loss or deprivation can therefore proceed.¹² When issued, this guidance will enable States to undertake a closer review of their nationality policies to ensure implementation of international standards for the avoidance of statelessness.

6. Where safeguards to prevent loss or deprivation of nationality leading to statelessness are present, individuals with dual or multiple nationalities are more vulnerable to loss or deprivation than those with a single nationality. This may be perceived as a form of inequality between nationals. However, such inequality must be assessed in light of the severe impact of statelessness in terms of enjoyment of human rights and the fact that the avoidance of statelessness is a fundamental principle of international law, whereas there is no evident international norm regarding a right to dual nationality.¹³ Another trend that can be observed in domestic laws is the differentiation between nationals by birth and nationals by naturalization. A nationality acquired by naturalization is often less secure than one acquired by birth or otherwise.¹⁴ For example, fraud, absence or ordinary crime are often only recognized as grounds for the loss or deprivation of nationality conferred by naturalization. This form of inequality between nationals may raise concerns under international law.¹⁵ However, the increased vulnerability of naturalized nationals to loss or deprivation of nationality is mitigated in many countries by the establishment of temporal limitations for the subjection of a nationality acquired by naturalization to loss or deprivation.

B. Grounds for loss or deprivation of nationality

7. Nationality has been defined by the International Court of Justice as a legal bond which has as its basis “a social fact of attachment, a genuine connection of existence,

¹⁰ UNHCR, *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, HCR/GS/12/01.

¹¹ For an illustration of how these UNHCR guidelines can help States to ensure that statelessness is avoided, see United Kingdom Supreme Court, Case No. [2013] UKSC 62, *Secretary of State for the Home Department (Appellant) v. Al-Jedda (Respondent)*, 9 October 2013.

¹² UNHCR Expert Meeting on Interpreting Articles 5-9 of the 1961 Statelessness Convention and Preventing Statelessness resulting from Loss and Deprivation of Nationality, Tunis, 31 October–1 November 2013, including unpublished background paper prepared by R. de Groot. This position is supported by jurisprudence, for instance, of the Supreme Courts in the Netherlands and the United Kingdom.

¹³ Permanent Court of Arbitration, Eritrea-Ethiopia Claims Commission, *Partial Award, Civilians Claims, Eritrea’s Claims 15, 16, 23 and 27-32, between the State of Eritrea and the Federal Democratic Republic of Ethiopia*, 17 December 2004.

¹⁴ See also A/HRC/10/34.

¹⁵ European Convention on Nationality, art. 5, para. 2. See also a notable change in the formulation of the prohibition of arbitrary deprivation of nationality in the Arab Charter on Human Rights, between 1994 (art. 24) and 2004 (art. 29): the 1994 version protects citizens from arbitrary denial of their *original* nationality, while the 2004 version prohibits any arbitrary deprivation of nationality.

interests and sentiments”.¹⁶ Thus nationality is deemed to reflect a genuine connection, but it also formalizes the bond of allegiance.¹⁷ Where such a genuine connection or tie of allegiance is absent, diminished or broken, this can result in the termination of nationality. The number and range of grounds for such termination vary significantly from one State to another.

Voluntary acquisition of another nationality

8. Article 15 of the Universal Declaration of Human Rights protects not only the right to a nationality, but also the right to change nationality. Circumstances such as long-term residence outside the country of nationality, or marriage to a foreign national, may lead to a desire to change nationality and create the opportunity to do so, often through voluntary naturalization. With a view to avoid dual nationality, nationality laws may provide for the automatic loss or the possibility of deprivation of nationality in response to the voluntary acquisition of another nationality.¹⁸ This does not, in principle, raise concerns under international law.¹⁹ Such a practice should not lead to statelessness, if adequate safeguards are in place in the nationality law and due diligence is exercised on the part of the State withdrawing nationality to ascertain that the individual concerned has indeed acquired a new nationality. Nor does it impose on the person concerned an unforeseeable change to their legal status,²⁰ given that it is a response to that individual’s voluntary acquisition of a new nationality.

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.²¹ Nevertheless, this ground for loss or deprivation of nationality remains commonplace. Where States have formulated this ground for loss or deprivation as a response to any acquisition of another nationality by one of their nationals, this may raise issues of legal certainty and continuity of rights. In some cases, the person concerned may have been conferred a new nationality without his or her consent or even knowledge,²² and may become an alien in his or her country of original nationality, with significant impact on the continued enjoyment of his or her civil and political, as well as economic, social and cultural rights.

Fraud

10. Where nationality has been acquired on the basis of fraudulent or falsified information, or misrepresentation of fact, States may provide for its loss or deprivation as a punishment for misconduct in the acquisition process or an administrative response to the mistaken attribution of nationality following the discovery that the conditions had never, in fact, been met. International law accepts this as a legitimate ground for loss or deprivation of nationality, recognizing that States may even, exceptionally, exercise this power where

¹⁶ International Court of Justice, *Nottebohm Case (Liechtenstein v. Guatemala)*, 6 April 1955.

¹⁷ Inter-American Court of Human Rights, *Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, OC-4/84, 19 January 1984.

¹⁸ Submissions from Kazakhstan, Mexico and Qatar.

¹⁹ See, for instance, European Convention on Nationality, art. 7, para. 1(a); also international jurisprudence in footnote 13 above.

²⁰ Consider, for example, the contribution from UNHCR noting that “arbitrariness” includes elements of “inappropriateness, injustice and lack of predictability” (A/HRC/10/34, para. 49).

²¹ A/CN.4/594.

²² For instance, following State succession or where marriage or adoption leads to automatic conferral of nationality.

the person concerned is left stateless.²³ However, loss or deprivation of nationality can only be justified where the fraud or misrepresentation was perpetrated for the purpose of acquiring nationality and was material to its acquisition.²⁴ As with any decision to deprive a person of a nationality, States have a duty to carefully consider the proportionality of this act, especially where statelessness results. The nature or gravity of the fraud or misrepresentation must be weighed against the consequences of denationalization.²⁵ In this context, considerations such as the person's links with the State, including the length of time that has elapsed between acquisition of nationality and discovery of fraud also need to be taken into account.

11. Fraud appears to be the most common ground for loss or deprivation of nationality in the domestic legislation of States. Most nationality laws which provide for the deprivation of nationality on the ground of fraud allow for this even if it leads to statelessness. Legislative safeguards against statelessness which can often be found in respect of other grounds for loss or deprivation of nationality are notably absent in this context.²⁶ However, in what should be considered as good practice, many States have explicitly limited the period following acquisition of nationality within which it may be withdrawn if fraud or misrepresentation is established.

Acts seriously prejudicial to the vital interests of the State

12. Where a person has committed acts seriously prejudicial to the vital interests of the State, he or she may be deemed to have breached the duty of loyalty which stems from nationality. In consequence, States may provide for the deprivation of nationality, be it as a form of punishment or as a response to the apparently broken bond of allegiance. The European Convention on Nationality prohibits deprivation of nationality on this ground if it leads to statelessness. The 1961 Convention accepts that contracting States may retain the power to deprive people of nationality on this ground even if it leads to statelessness, but only if their law already provided for this at the moment of accession and a declaration was made to that effect. A clear majority of States parties to the 1961 Convention have not invoked this option and do not deprive a person of nationality on this ground if this leads to statelessness. As an exception to the general rule that statelessness is to be avoided, the terms should also be construed narrowly.²⁷

13. Many States provide for deprivation of nationality in response to acts seriously prejudicial to the vital interests of the State and often a safeguard against statelessness is absent. The phrasing of this ground for deprivation of nationality actually varies significantly in domestic laws. Some, for instance, require that a person be convicted of a crime or offence which endangers the security of the State, while others allow nationality to be withdrawn if this is deemed to be in the public interest, conducive to the public good or justified by national security considerations.²⁸ In response to growing concern around terrorism, a number of States have expanded the powers of deprivation of nationality for

²³ 1961 Convention, art. 8, para. 2(b); European Convention on Nationality, art. 7, para. 1(b).

²⁴ UNHCR Expert Meeting, see footnote 12 above; submission from Denmark.

²⁵ See footnote 9 above.

²⁶ Compare EUDO Citizenship analysis of safeguards against statelessness in 36 European countries in the context of fraudulent acquisition of nationality (mode "S13") with those in respect of other grounds for loss or deprivation, available from <http://eudo-citizenship.eu/databases/protection-against-statelessness>.

²⁷ See, for instance, objections lodged by other States against the Declaration entered by Tunisia, which was considered to go beyond the terms of the permitted exception.

²⁸ Submissions from, inter alia, Moldova, Qatar and Asylum Aid, regarding the United Kingdom legislative framework.

crimes against national security or in the public interest, or have made more active use of existing powers.²⁹ The margin of discretion enjoyed by State authorities in the interpretation of the law and readiness to deprive individuals of their nationality varies. In some instances, national authorities enjoy broad discretion in determining when to deprive a person of nationality. In these cases, there is a risk that international standards prohibiting arbitrary deprivation of nationality may not be respected. For instance, some nationality laws explicitly allow for the deprivation of nationality for a show of disloyalty “by act or *speech*”.³⁰ States must avoid applying such provisions in a manner which would infringe other human rights norms and standards, such as freedom of expression.³¹

Services to a foreign government or military

14. The rendering of services to a foreign government or military force is also generally acknowledged to be a legitimate ground for the deprivation of nationality, although there are restrictions to its use where statelessness results. The European Convention on Nationality does not allow deprivation on this ground if it would lead to statelessness. The 1961 Convention provides that States may, upon accession, declare that they will maintain the following narrowly construed ground for deprivation of nationality in their laws, even if it results in statelessness, where a person “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.”³² As with the other exceptions where the 1961 Convention permits a person to be left stateless, this provision must be interpreted narrowly. The “express prohibition” must be an individual notice, directed towards the person concerned, and it is not sufficient for the law to generally prohibit the rendering of such services.

15. The phrasing of this ground for deprivation in national law varies. Some States formulate it narrowly, for example, as the rendering of support to an “enemy” State. Many allow for deprivation of nationality even if statelessness results. A number of countries provide for a “warning” to first be issued to the individual concerned, and deprivation of nationality is pursued only if the person ignores an explicit request to cease rendering services to a foreign State. This is a welcome safeguard, for it ensures that the State’s action is predictable, gives the individual the opportunity to amend his or her behaviour in order to avoid this severe legal consequence and is also in keeping with the 1961 Convention.³³

²⁹ For instance, the submission from Asylum Aid describes the expansion of denationalization powers in the United Kingdom (although it also notes that the safeguard against statelessness remains intact). Morocco has amended its legislation to explicitly include conviction for an act of terrorism as a separate ground for deprivation of nationality, see EUDO Citizenship Observatory (D. Perrin), *Country Report: Morocco*, October 2011.

³⁰ Emphasis added. See, for instance, submissions from Grenada and Nigeria.

³¹ In the context of the Arab Spring, a number of concrete cases arose in which States invoked their authority to deprive nationality in response to a purported security threat. This was criticized by human rights organizations as an illegitimate use of this power. See, for example, the response from Human Rights Watch and Amnesty International to cases of deprivation of nationality in the United Arab Emirates and Bahrain in 2012, available from <http://www.amnesty.org/en/region/uae/report-2012>; <http://www.hrw.org/news/2012/11/08/bahrain-don-t-arbitrarily-revoke-citizenship>; <http://www.amnesty.org/en/news/bahraini-opposition-figures-stripped-nationality-frightening-development-2012-11-07>.

³² 1961 Convention, art. 8, para. 3(a)(i).

³³ *Ibid.*

Change in civil status

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. The 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.³⁴

17. The nationality of the male head of the family was, historically, often decisive for other family members: children acquired the nationality of their father at birth, women, the nationality of their husband upon marriage and, in some cases, a change in civil status could lead to an automatic change in nationality.³⁵ Today, however, in accordance with developments in international law, as outlined in the previous paragraph, laws providing for the loss or deprivation of nationality purely on the ground of a change in civil status are increasingly rare. Very few States reported such provisions in their laws in their submissions for this report.³⁶

Absence

18. Where a national has been absent from his or her country of nationality for an extended period of time, this may be viewed as causing the genuine link with the State to weaken and may be a ground for the loss or deprivation of nationality. Although the 1961 Convention accepts that the loss or deprivation of nationality in the context of absence can, exceptionally, lead to statelessness, it sets out strict criteria: in respect of nationality acquired by naturalization following more than seven years of residence abroad, if they have neglected to register with the authorities of the State during this period or, in respect of nationality acquired by descent, for people born abroad, if they neither return to reside in the State, nor make a declaration to the authorities to retain their nationality upon reaching majority. The European Convention on Nationality does not accept absence as a legitimate ground for loss or deprivation of nationality where statelessness would result. Human rights norms and standards regarding the right to freedom of movement and the protection of family life also preclude loss or deprivation of nationality in response to absence from the State.

19. This ground for loss or deprivation of nationality is, in practice, in significant decline and is retained by only a minority of States. The application of this ground is usually restricted to nationals who acquired nationality by naturalization or by descent while born abroad.³⁷ While the assumption may be that the person has, in the interim, acquired the nationality of the country of residence, many States that provide for the loss or

³⁴ 1961 Convention, art. 5.

³⁵ See A/HRC/23/23.

³⁶ Some isolated examples can still be found in nationality laws, for instance in Togo and Niger, where divorce from a national may lead to the revocation of nationality acquired by marriage.

³⁷ See, for example, Bronwen Manby, *Citizenship Law in Africa: A comparative study*, Open Society Institute, 2010, table 6: Criteria for loss of citizenship; EUDO Citizenship, *Protection Against Statelessness Database* (Mode S08: residence abroad), available from <http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S08>.

deprivation of nationality in response to absence from the territory do not have a safeguard in place to ensure this is the case and thus to prevent statelessness.³⁸

Serious criminal offence

20. Neither the European Convention on Nationality nor the 1961 Convention allow States to deprive a person of nationality in response to ordinary crime.³⁹ Moreover, the imposition of loss or deprivation of nationality as a penalty, subsequently and in addition to a regular criminal sentence, may breach the general legal principle of *ne bis in idem*.

21. A number of States, however, provide in their domestic law for the possibility of loss or deprivation of nationality in response to a *serious* criminal offence, although it is far less common than the other grounds described above. Usually the relevant article stipulates the severity of crime which can lead to loss or deprivation of nationality with reference to the type of crime⁴⁰ or the length of imprisonment⁴¹ that has or can be imposed against this crime. This ground for loss or deprivation tends to be imposed on naturalized nationals exclusively and often the law prescribes a time limit following the acquisition of nationality after which the commission of a serious crime can no longer result in loss or deprivation of nationality.

Discrimination

22. In line with relevant international standards prohibiting the arbitrary deprivation of nationality and prohibiting discrimination on any ground, very few domestic laws provide for deprivation of nationality on grounds such as race, religion, political opinion or disability. Where such regulations exist, it is not evident whether they continue to be invoked in practice in individual cases.⁴² Today, numerous States explicitly prohibit arbitrary or discriminatory deprivation of nationality in their domestic law.⁴³ Nevertheless, incidences of discriminatory deprivation of nationality, without a clear legislative basis or for which a legislative basis was exceptionally created, have been a source of widespread suffering and even large-scale statelessness in the past.⁴⁴ Some of these situations remain unresolved to this day and have led to inter-generational statelessness, affecting the children and grandchildren of those originally deprived of their nationality.⁴⁵ Also, new cases of large-scale and discriminatory deprivation of nationality continue to be reported.⁴⁶

³⁸ The study (MENA Project) conducted by Tilburg University on nationality and statelessness in the Middle East and North Africa (forthcoming 2014), found that six states in this region have “absence” as a ground for loss or deprivation of nationality in their laws, and none makes this conditional upon the person concerned not being rendered stateless. On the other hand, Indonesia reformed its law in 2006 to introduce just such a safeguard, see submission from Indonesia.

³⁹ Both treaties refer to “conduct seriously prejudicial to the vital interests of the State Party” as a ground for deprivation.

⁴⁰ Submissions from Granada and Burkina Faso.

⁴¹ Submissions from United Arab Emirates and Bosnia and Herzegovina.

⁴² A small number of examples of problematic regulations are highlighted in Bronwen Manby, *Citizenship Law in Africa: A comparative study*, 2010, as well as in the study conducted by Tilburg University on nationality and statelessness in the Middle East and North Africa (forthcoming 2014).

⁴³ Submission from the Russian Federation.

⁴⁴ Including individual and mass denationalization by Nazi Germany in the 1930s and 1940s, which prompted the inclusion of the right to a nationality in the Universal Declaration of Human Rights.

⁴⁵ See, for instance, submission from the Equal Rights Trust regarding statelessness in Myanmar.

⁴⁶ UNHCR, “UNHCR concerned by potential impact of Dominican court decision on persons of Haitian descent”, press release, 1 October 2013; UNICEF, “Statement attributable to UNICEF on the

C. Effect of loss or deprivation of nationality

23. Loss or deprivation of nationality renders the person concerned an alien with respect to their former State of nationality, causing them to forfeit the rights they held as nationals. This may cause cumulative human rights violations, which can be especially severe if the effect of loss or deprivation of nationality is statelessness.⁴⁷ This section provides an overview of a number of other issues relating to the effect and consequences of denationalization.

Extension to dependents

24. International law recognizes the independent nationality rights of women⁴⁸ and protects the child's right "to preserve his or her identity, including nationality".⁴⁹ Providing for the extension of the loss or deprivation of nationality to a person's dependents — spouse or children — is therefore problematic. Although already covered in the general rule elaborated in both instruments that no loss or deprivation of nationality should lead to statelessness, the 1961 Convention (art. 6) and the European Convention on Nationality (art. 7, para. 2) also explicitly prohibit the loss or deprivation of the nationality to dependents if statelessness would result. The extension of loss or deprivation of nationality to dependents is increasingly rare, especially as regards the extension of deprivation of nationality to a person's spouse.⁵⁰ In the majority of States, loss or deprivation of nationality is a strictly individualized measure, in accordance with contemporary international standards.

Status of "stateless person"

25. Loss or deprivation of nationality continues to cause cases of statelessness. In some cases, such an act will be contrary to international law. A person who was rendered stateless in violation of a norm of international law must nevertheless be recognized as a stateless person in accordance with the definition in article 1, paragraph 1, of the 1954 Convention relating to the Status of Stateless Persons. He or she is entitled to protection as a stateless person accordingly. This is consistent with the object and purpose of the 1954 Convention.⁵¹

Expulsion

26. One of the core functions of nationality under international law is that it provides the holder with the right to enter and reside in his or her State. Without this legal bond, the person concerned — as an alien — becomes subject to immigration law.⁵² In rendering a national an alien, loss or deprivation of nationality "make[s] him or her subject to expulsion

Constitutional Court decision of Dominican-born persons of Haitian descent", press release, 9 October 2013.

⁴⁷ See A/HRC/19/43.

⁴⁸ 1957 Convention on the Nationality of Married Women, art. 1; Convention on the Elimination of All Forms of Discrimination against Women, art. 9.

⁴⁹ Convention on the Rights of the Child, art. 8; 2005 Covenant on the Rights of the Child in Islam, art. 7, para. 2.

⁵⁰ Some States expressly prohibit the extension of loss or deprivation of nationality to spouses or children; this should be considered good practice. See, for instance, the submission from Indonesia.

⁵¹ UNHCR, *Guidelines on Statelessness No. 1*, HCR/GS/12/01, para. 49.

⁵² Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant.

from the State whose nationality he or she possessed until that time”.⁵³ Nevertheless, the International Law Commission has suggested that “a State shall not make its national an alien by deprivation of nationality for the *sole* purpose of expelling him or her”.⁵⁴ According to the Human Rights Committee in its general comment on article 12 of the International Covenant on Civil and Political Rights, reference to a person’s right to enter “his own country” in article 12 is broader than the concept of “country of nationality”.⁵⁵ Where “nationals of a country [...] have been stripped of their nationality in violation of international law”,⁵⁶ a person whose nationality has been withdrawn will continue to hold the right to enter and reside in that country, as his or her “own country” under international law. Equally, the person may continue to enjoy their private or family life in that country, which can also form a barrier to expulsion.⁵⁷ Furthermore, where a person has been left stateless through loss or deprivation of nationality, the State may be required to provide a right of residence in order to ensure the enjoyment of the rights guaranteed to stateless persons under the 1954 Convention relating to the Status of Stateless Persons and human rights law.⁵⁸

III. Acquisition of nationality by a child who would otherwise be stateless

27. States must not only comply with international norms and standards when depriving a person of his or her nationality, but the conditions and procedures under which States confer nationality are also subject to the scrutiny of international law.⁵⁹ In accordance with the human right of every child to acquire a nationality,⁶⁰ of particular interest are the legislative and administrative measures concerning the acquisition of nationality by a child who would otherwise be stateless.

A. Child born in a country, who would otherwise be stateless

28. Central to the fulfilment of the child’s right to a nationality, as provided for in article 7 of the Convention on the Rights of the Child, is the safeguard that allows otherwise stateless children born in the territory of a State to acquire a nationality.⁶¹ This is also contained as an explicit obligation in the 1961 Convention on the Reduction of Statelessness and several regional treaties. Granting access to nationality *jus soli* (by birthplace) as a safeguard against statelessness — even where *jus sanguinis* (by descent) is the preferred method of conferral of nationality — is now recognized in the law of many

⁵³ A/CN.4/594, para. 29.

⁵⁴ Emphasis added. See A/CN.4/L.797, draft article 9.

⁵⁵ Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 20.

⁵⁶ *Ibid.*

⁵⁷ As protected, for instance, under article 17 of the International Covenant on Civil and Political Rights, article 8 of the European Convention on Human Rights. See also European Court of Human Rights jurisprudence on the expulsion of aliens, and African Commission on Human and Peoples’ Rights, comm. 97/93, *Modise v. Botswana*, 2000.

⁵⁸ See UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 17 July 2012, HCR/GS/12/03, para. 28.

⁵⁹ See, for instance, A/HRC/13/34, para. 23; Human Rights Committee, comm. 1136/2002, *Borzov v. Estonia*, 26 July 2004, para. 7.3.

⁶⁰ See Convention on the Rights of the Child, art. 7; International Covenant on Civil and Political Rights, art. 24.

⁶¹ Submission from Plan International. See also UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality*, 21 December 2012, HCR/GS/12/04.

States. Nevertheless, this safeguard often stops short of guaranteeing a nationality to all children born on the territory who would otherwise be stateless. For instance, some laws only provide for the acquisition of nationality for children born on the territory to stateless parents, failing to recognize that a child may also be left stateless by a conflict of nationality laws even when his or her parents possess a nationality. Some States prescribe supplemental conditions that must be met for the otherwise stateless child to acquire nationality.⁶² The specific circumstances of the child's birth may also present a challenge to the implementation of relevant national regulations — such as where the child is born to a foreign national woman prisoner or detainee, who may not have knowledge of or access to relevant procedures to secure a nationality for her child.⁶³ To what extent are children able, in practice, to access the nationality of the country in which they are born, if they would otherwise be stateless remains an understudied question.⁶⁴ Only three States submitted statistical information with regard to the implementation of this safeguard for otherwise stateless children born in their territory,⁶⁵ most indicating in their submissions that such data was unavailable.

B. Child born to a national abroad, who would otherwise be stateless

29. A second and complementary safeguard recognized under international law is the conferral of nationality to a child born to a national abroad, who would otherwise be stateless.⁶⁶ This is relevant in those countries that place restrictions on the *jus sanguinis* conferral of nationality for particular categories of children born abroad. Today, however, many States allow nationality to be passed from parent to child, regardless of the place or other circumstances of the birth of that child. Nevertheless, over 25 countries restrict the right of women to pass their nationality to their children on equal terms with men, thereby limiting the *jus sanguinis* conferral of nationality to the paternal bloodline only.⁶⁷ In this context, the aforementioned safeguard remains highly relevant, although in many of the countries in question, such a safeguard is not in place or does not encompass all children who would otherwise be stateless.⁶⁸ It also remains an important safeguard in those countries which continue to favour *jus soli* conferral of nationality.⁶⁹ No statistics were provided in the submissions with regard to the implementation of rules allowing for acquisition of nationality by a child born to a national abroad, who would otherwise be stateless.

C. Foundlings

30. International law has long guaranteed the acquisition of nationality by foundlings.⁷⁰ This safeguard for the avoidance of childhood statelessness is extremely prevalent in

⁶² Submission from Latvian Human Rights Committee.

⁶³ Submission from Quaker United Nations Office.

⁶⁴ Submission from Statelessness Programme (Tilburg University).

⁶⁵ Submissions from Serbia, Denmark and Hungary.

⁶⁶ Under the 1961 Convention and as a principle stemming from human rights standards relating to the child's right to a nationality.

⁶⁷ This issue is covered in detail in A/HRC/23/23. See also UNHCR, *Revised Background Note on Gender Equality, Nationality Laws and Statelessness*, 8 March 2013.

⁶⁸ Submission from Statelessness Programme (Tilburg University).

⁶⁹ Principally in several countries in the Americas where *jus sanguinis* conferral of nationality to children born abroad is contingent on the child taking up residence in the country concerned.

⁷⁰ See 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws; 1961 Convention on the Reduction of Statelessness; 2005 Covenant on the Rights of the Child in Islam.

domestic law. An important consideration with regard to the avoidance of statelessness among foundlings relates to how States should respond if the child's parents are identified at a later date. Some domestic laws provide for the withdrawal of nationality previously acquired under domestic law by a foundling where this situation arises.⁷¹ However, in accordance with the child's right to a nationality and the object and purpose of relevant international standards, nationality acquired by foundlings may only be lost if it is proven that the child possesses the nationality of another State.⁷² It should be seen as good practice where States make this protection against subsequent loss of nationality that would lead to statelessness explicit in their nationality laws.⁷³

IV. Due process considerations

31. To ensure that nationality regulations are not applied arbitrarily and relevant safeguards against statelessness are implemented effectively, States should ensure that adequate procedural standards are in place. In particular, decisions relating to nationality should be "issued in writing and open to effective administrative or judicial review".⁷⁴ International law thus obliges States to provide for an opportunity for the meaningful review of nationality decisions, including on substantive issues.⁷⁵

32. The practice of States varies on this point. Some explicitly safeguard the right to appeal any decision on nationality.⁷⁶ Other States provide for an appeal only with regard to certain nationality decisions.⁷⁷ Others deem all nationality decisions to be the exclusive competence of the executive and not subject to review.⁷⁸ The latter approach raises due process concerns as this leaves people more vulnerable to an abusive application of the law.

33. Where a person is subject to loss or deprivation of nationality and a review process is available, lodging an appeal should suspend the effects of the decision, such that the individual continues to enjoy nationality — and related rights — until such time as the appeal has been settled. 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.

34. In addition to providing for the possibility to appeal and related due process guarantees, States should ensure that there is an effective remedy available where a decision on nationality is found to be unlawful or arbitrary. This must include, but is not

⁷¹ Submission from Romania.

⁷² UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012 HCR/GS/12/04, para. 60.

⁷³ Submission from Niger.

⁷⁴ A/HRC/13/34, para. 43.

⁷⁵ *Ibid.*, para. 44.

⁷⁶ Submissions from Lebanon, Morocco and the United States of America.

⁷⁷ Submission from Hebrew Immigrant Aid Society.

⁷⁸ A 2010 comparative study of citizenship laws in Africa demonstrates, for example, that only just over half the countries (30 out of 54 states) assessed provided for the right to challenge the denial or deprivation of nationality in court: see Bronwen Manby, *Citizenship Law in Africa: A comparative study*, 2010, table 6: Criteria for loss of citizenship.

necessarily limited to, the possibility of restoration of nationality.⁷⁹ In some States, the review body or court has the authority to directly confer, reinstate or confirm nationality.⁸⁰ In others, the ruling in appeal does not have direct effect and is, rather, an instruction to the competent authority in nationality matters to reconsider its position. In such situations, action by the competent authority is critical to the fulfilment of the effective remedy.⁸¹ Furthermore, States should provide reparations, as appropriate, for any related rights violations suffered.⁸²

V. Documentation attesting nationality

35. Holding documentation attesting nationality is not imperative to enjoying a nationality, but may have great practical significance. Most people acquire a nationality automatically at birth, either *jus soli* or *jus sanguinis*, regardless of whether the facts of their birth have been officially recorded through the act of birth registration.⁸³ Similarly, where a person once held a document attesting to his or her nationality, but this document has been lost or destroyed, this should not be conflated with loss of nationality. In the majority of cases, someone who has become undocumented will still be considered as a national by his or her State and will often be reissued the requisite documentation upon request.

36. Nevertheless, the ability to produce or procure evidence of nationality can be critical, in practice, to ensuring that a particular individual is — and continues to be — considered as a national by the State concerned. Furthermore, in certain domestic contexts, the inability to access forms of documentation which the State in question issues exclusively to its nationals can mean that a person is not considered as a national.⁸⁴ Finally, documentary evidence of the possession of (a second) nationality plays a critical role in the effective avoidance of statelessness following loss or deprivation of nationality because it helps the State which seeks denationalization to ascertain whether the consequence would be statelessness.⁸⁵

37. A national passport is the core form of documentary proof of nationality.⁸⁶ Most States also provide for the possibility of issuing a nationality certificate or identity card attesting to nationality.⁸⁷ In their submissions, many States confirmed the central part that

⁷⁹ See A/HRC/13/34, para. 46 and Convention on the Rights of the Child, art. 8. Note that where a person's dependents are also affected by the loss or deprivation of nationality, the restoration of nationality must similarly be extended to them.

⁸⁰ Submission from the United States of America.

⁸¹ This may not always be a smooth process; see submission from Statelessness Programme (Tilburg University).

⁸² African Commission on Human and Peoples' Rights, comm. Nos. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98, *Malawi African Association and Others v. Mauritania*, 11 May 2000, recommendation 2 regarding national identity documents; Inter-American Court of Human Rights, Series C, Case No. 130, *Yean and Bosico Children v. Dominican Republic*, 8 September 2005; also the compensation scheme for the "erased" of Slovenia following the ruling of the European Court of Human Rights, application No. 26828/06, *Kurić and Others v. Slovenia*; and Council of Europe, Committee on Legal Affairs and Human Rights, "Access to nationality and the effective implementation of the European Convention on Nationality", 1 October 2013.

⁸³ See, for instance, UNHCR, "Birth Registration: A Topic Proposed for an Executive Committee Conclusion on International Protection, 9 February 2010, EC/61/SC/CRP.5.

⁸⁴ Submission from Frontiers Ruwad, with respect to the situation in Lebanon.

⁸⁵ See UNHCR Expert Meeting, footnote 12 above.

⁸⁶ Submission from the United States of America.

⁸⁷ Submissions from Guatemala and Serbia.

birth registration plays in the nationality context, indicating that a birth certificate or extract from the birth registry is the primary form of proof of nationality. Yet, producing a birth certificate may be a prerequisite for acquiring a nationality certificate or identity card, reaffirming the centrality of birth registration in documentation of nationality.⁸⁸ States are therefore reminded of their international human rights obligation to register every child's birth,⁸⁹ as well as their separate obligation to protecting and ensuring the right to a nationality, independent of the question of documentation attesting nationality.

VI. Conclusions and recommendations

38. The right of every individual to a nationality is clearly regulated in international human rights law, which provides for the explicit recognition of that right. International human rights law also explicitly provides for the prohibition of arbitrary deprivation of nationality.

39. In regulating the loss and deprivation of nationality, States must ensure that safeguards to prevent statelessness are incorporated in their domestic law. States should carry the burden of proving that loss or deprivation of nationality will not result in statelessness. Where international law recognizes, as a matter of exception, that loss or deprivation of nationality may lead to statelessness, these exceptions must be narrowly construed. States must also demonstrate that the loss or deprivation of nationality is proportionate, including in light of the severe impact of statelessness.

40. Even where loss or deprivation of nationality does not lead to statelessness, States must weigh the consequences of loss or deprivation of nationality against the interest that it is seeking to protect, and consider alternative measures that could be imposed. Under international law, loss or deprivation of nationality that does not serve a legitimate aim, or is not proportionate, is arbitrary and therefore prohibited.

41. States should review the grounds under which individuals may lose or be deprived of their nationality with a view to removing any such grounds that are not in compliance with international law. States should remove legislative or administrative measures for loss or deprivation of nationality on the basis of a change in civil status or in response to a serious criminal offence and reconsider the appropriateness of providing for the loss or deprivation of nationality in response to long-term absence. In all cases, States must refrain from automatically extending the loss or deprivation of nationality to a person's dependents.

42. To ensure the protection of stateless persons, States should be guided by the definition of "stateless person" as set out in the 1954 Convention relating to the Status of Stateless Persons and related international guidance. Where a person has been left stateless due to loss or deprivation of nationality in violation of international law, this does not stand in the way of recognition and protection as a stateless person. States that have not yet ratified the 1954 and 1961 Conventions are invited to do so.

43. States must ensure that their domestic law provides safeguards to fulfil the right of the child to acquire a nationality. This includes providing access to nationality for all children born on their territory who would otherwise be stateless and for all children born abroad to one of their nationals who would otherwise be stateless. States must ensure that these safeguards allow for acquisition of nationality by an otherwise stateless child as soon as possible after birth.

⁸⁸ Submission from Benin.

⁸⁹ Convention on the Rights of the Child, art. 7; see also submission from Plan International.

44. **Decisions on nationality must be open to an effective judicial review. In the context of loss or deprivation of nationality, a person should continue to be considered as a national during the appeals procedure.**

45. **States must ensure that proof of nationality is available to all nationals. States are reminded of their international human rights obligation to register every child's birth, regardless of the child's or his or her parents' nationality or statelessness.**
