



In collaboration with

minority rights group international

# ICERD

## INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

### Quick Reference Guide

#### STATELESSNESS AND HUMAN RIGHTS TREATIES

Imrana, 22 years old, and her baby are both undocumented. They are part of the minority Roma community in Skopje, former Yugoslav Republic of Macedonia, and, like many others in the community, are unable to establish their Macedonian nationality. © UNHCR/Roger Arnold

This reference guide highlights key international human rights provisions found in the [ICERD](#) that are directly relevant to preventing and reducing statelessness and protecting stateless persons. It is addressed to all stakeholders who may wish to use this international human rights instrument to improve the enjoyment of human rights by stateless persons and to resolve the problem, thereby helping to meet the goals of the [#IBelong Campaign to End Statelessness](#).

A **stateless person** is someone “who is not considered as a national by any State under the operation of its law,” according to the [1954 Convention Relating to the Status of Stateless Persons](#) (1954 Convention). The ICERD addresses statelessness primarily through its provision prohibiting “distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin” (Article 1). A number of **General Recommendations (GR)** of the **Committee on the Elimination of Racial Discrimination (Committee)** further inform the meaning of these provisions when using them to address statelessness. The Committee has regularly used its Concluding Observations to call on States parties to the ICERD to also become party to the 1954 Convention and the [1961 Convention on the Reduction of Statelessness](#).

## Prevention and Reduction of Statelessness

### Article 1(1):

“In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference **based on race, colour, descent, or national or ethnic origin** which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Discrimination on the basis of race, colour, descent, or national or ethnic origin is often the root cause of statelessness. Moreover, stateless populations are particularly vulnerable to further discrimination. It is necessary that States legislate both to prevent such discrimination from happening, and to protect vulnerable people when they are subject to discrimination.

- [GR No. 27 on discrimination against Roma](#): The Committee drafted a recommendation specifically relating to members of Roma communities, many of whom are stateless and who experience discrimination as a result. The Committee urges States to “take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin.” (para. 5)

## Protection of Stateless Persons

### Article 5:

“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 **equal treatment before the tribunals** and all other organs administering justice... (and) other civil rights, in particular... **the right to nationality**...”

Everyone is entitled to civil rights, including stateless people. Fundamental rights such as equality before courts and tribunals must be enjoyed by everyone without exception.

- [GR No. 30 on discrimination against non-citizens](#): The Committee urges States to “*reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children,*” (para. 16) and to “*regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State party.*” (para. 17)
- [GR No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system](#): “*In order to facilitate access to justice for the victims of racism, States parties should strive to supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights.*” (para. 7)

### Article 5:

“[States parties undertake to guarantee the right of everyone to equality before law, notably in the enjoyment of] ... (and) economic, social and cultural rights, in particular the **rights to work**, to free choice of employment... (and) the **right to education and training**...”

As with civil rights, everyone is entitled to economic, social, and cultural rights, including stateless people.

- [GR No. 30 on discrimination against non-citizens](#) & [GR No. 34 on racial discrimination against people of African descent](#): “*In some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits (...)*” (para. 15 & para. 49 respectively). In conformity with the ICERD, States are urged to “*ensure that public education institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a State party.*” (para. 30)

- [GR No. 30 on discrimination against non-citizens](#): “*Differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation (...) are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.*” (para. 4) It thus follows that, “*deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.*” (para. 14)

### Article 1(3):

“Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning **nationality, citizenship or naturalization**, provided that such provisions do not discriminate against any particular nationality.”

Granting nationality, citizenship and naturalization is a State’s sovereign right. However, nationality laws must not discriminate on the basis of race or ethnicity.

- [GR No. 27 on discrimination against Roma](#): The Committee urges States to “*ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities.*” (para. 4)
- [GR No. 30 on discrimination against non-citizens](#): “*Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents.*” (para. 13)
- [GR No. 34 on racial discrimination against people of African descent](#): “*Deprivation of citizenship on the basis of race or descent is a breach of States parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.*” (para. 48) See above, under Article 1(1).

## Note

It is noted that Article 1(3) of the ICERD could be understood as implying that matters of nationality and statelessness lie outside the purview of the convention. Article 1(3) states: “*Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.*” However, as noted by Prof. Patrick Thornberry, former member and Rapporteur of the Committee, in his Commentary on the ICERD: “*With regard to [Article] 1(3) and the repeated use of ‘nationality,’ the [T]ravaux [Préparatoires] and subsequent practice support the view that ‘nationality’ in the second sense of a forbidden ground of discrimination means ‘national origin’ on a par with ‘ethnic origin.’... In light of [this],*

*the right to nationality protected by Article 5, and attendant questions around citizenship and naturalization, are not treated as appreciably diminished by Article 1(3).*” Therefore, if individuals or groups are deprived of or denied nationality on the basis of race or ethnicity, it is still in violation of the ICERD. For further information, please consult Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*. (Oxford University Press, 2016). The Committee further clarified this point in General Recommendation No. 30 on Discrimination against Non-Citizens (2005), when it affirmed that “*deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.*”