Submission by the Office of the United Nations High Commissioner for Refugees in the case of *Kurić and Others v. Slovenia* (No. 26828/06)

1. Introduction[*]

1.1. By letter of 26 May 2011, the European Court of Human Rights ("the Court") granted the Office of the United Nations High Commissioner for Refugees ("UNHCR") leave to make written submissions as a third party in the case of *Kurić and Others v. Slovenia* (Application no. 26828/06). UNHCR welcomes this opportunity, as the case raises a number of legal issues relating to statelessness, in particular, the link between residency status and citizenship[1] in the context of statelessness resulting from State succession.

1.2. UNHCR has been mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In 1994, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.[2] This mandate has continued to evolve as conclusions of UNHCR's Executive Committee[3] have been endorsed by the UN General Assembly. Over time, UNHCR has developed a recognized expertise on statelessness issues.[4]

1.3. Part 2 of this submission examines the concept of statelessness, as a worldwide phenomenon, as well as the international and regional legal frameworks established to address statelessness, both globally and in the context of the wide-scale loss of citizenship as a consequence of the wave of State succession in Europe in the late twentieth century. Part 3 provides information on statelessness in the successor States of the former Socialist Federal Republic of Yugoslavia ("SFRY"), with a particular focus on the deprivation of permanent residency status resulting from the erasure process in Slovenia, precluding those affected from accessing

[*] This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law.

[1] In this submission, the terms nationality and citizenship are used interchangeably to describe the legal bond between an individual (the national or citizen) and a State. While both terms are frequently used interchangeably in international public law, on the national level these terms are often given distinct meanings.

[2] UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, at: http://www.unhcr.org/refworld/docid/3ae68c443f.html.

[3] UN High Commissioner for Refugees, *Conclusion on International Protection*, 05 October 2001, No. 90 (LII) - 2001, para. (q), at: http://www.unhcr.org/refworld/docid/3bd3e3024.html; *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (y), at: http://www.unhcr.org/refworld/docid/3f93aede7.html; *General Conclusion on International Protection*, 08 October 2004, No. 99 (LV) - 2004, para. (aa), at: http://www.unhcr.org/refworld/docid/41750ef74.html; *General Conclusion on International Protection*, 07 October 2005, No. 102 (LVI) - 2005, para. (y), at: http://www.unhcr.org/refworld/docid/43575ce3e.html; *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 06 October 2006, No. 106 (LVII) - 2006, paras. (f), (h), (i), (j) and (t), at: http://www.unhcr.org/refworld/docid/453497302.html.

[4] Some recent documents of UNHCR on the topic include UNHCR, *Discussion paper for the Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*, 28-29 October 2010, at: http://www.unhcr.org/4d7de5ec9.html; UNHCR, *A Guide to Teaching on Statelessness*, September 2010, at: http://www.unhcr.org/4d40207a9.html; UNHCR, *UNHCR Action to Address Statelessness – A Strategy Note*, March 2010, at: http://www.unhcr.org/4b960ae99.html; UNHCR, *Civil Registration and the Prevention of Statelessness: a Survey of Roma, Ashkaelia and Egyptians in Montenegro*, May 2009, at: http://www.unhcr.org/4b71228e9.html; UNHCR, *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*, February 2009, at: http://www.unhcr.org/49a271752.html.

effective procedures for the acquisition of citizenship. Part 4 describes the current situation of erased persons in Slovenia, emphasising the legal and material difficulties that confronts such persons. Part 5 outlines the significance of the international and European legal standards pertaining to the right to nationality in the context of assessing the situation of those erased persons in Slovenia who were left stateless.

2. General observations about statelessness

2.1. Statelessness as defined under international law

2.1.1. A "stateless person" is defined in international law as a person who is "not considered as a national by any State under the operation of its law,"[5] and is thus someone without *any* nationality or citizenship anywhere. This definition, sometimes referred to as *de jure* statelessness,[6] is set out in article 1(1) of the 1954 Convention relating to the Status of Stateless Persons ("1954 Convention") and is considered to have achieved the status of customary international law.[7]

2.1.2. As described further below, in the context of the successor States of the SFRY, including Slovenia, serious issues of statelessness occurred as a result of the process of State succession, rendering individuals stateless as per the international definition set out in article 1(1) of the 1954 Convention.

2.2. The global statelessness phenomenon

2.2.1. UNHCR estimates that there are up to 12 million stateless persons worldwide. Statelessness, however, is a phenomenon that often goes unrecorded. As such, UNHCR considers that there may actually be many more stateless persons worldwide. UNHCR estimates that there were approximately 640,000 stateless persons in Europe at the end of 2009.

2.2.2. Statelessness can occur as a result of the complex, technical operation of citizenship laws and because of failures in the observance of the human right to nationality.[8] It can also arise as a result of discrimination against particular ethnic groups or against women and/or their children when women marry foreigners or have children out of wedlock. While some regions have larger stateless populations than others, every state and continent is (or potentially is) affected by statelessness.

2.2.3. Statelessness results in the denial of human rights generally only accorded to citizens, such as certain political rights. In practice, it also often limits enjoyment of other rights including, most commonly, those to birth registration, identity documentation, education, health care, legal employment, property ownership, political participation and freedom of movement.

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[5] International Law Commission, *Draft Articles on Diplomatic Protection with Commentaries*, 2006, p. 49, at: http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf.

[6] Although the term *de facto* statelessness has been used to describe a lack of effective nationality in a number of different contexts, consensus has emerged in relation to an operational definition for *de facto* statelessness, which provides that: "[*D*]*e facto* stateless persons are persons outside their country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality." UNHCR, *Expert Meeting - The Concept of Stateless Persons under International Law (Summary Conclusions)*, May 2010, available at: http://www.unhcr.org/refworld/docid/4ca1ae002.html.

[7] The International Law Commission's 2006 *Commentary on the Draft Articles on Diplomatic Protection* states that the 1954 Convention definition of a "stateless person" in article 1(1) can "no doubt be considered as having acquired a customary nature," under international law. The Council of Europe has endorsed this definition of a stateless person in article 1(c) of the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession, which establishes the following: "Statelessness' means the situation where a person is not considered as a national by any State under the operation of its internal law." UNHCR is in the process of developing authoritative guidelines on the scope and content of the definition contained in article 1(1) of the 1954 Convention.

[8] The right to nationality is enshrined, *inter alia*, in Article 15(1) of the Universal Declaration of Human Rights. See para. 2.3.3 below.

2.3. The international and regional legal framework relating to statelessness

2.3.1. Two international treaties have been established to address the global problem of statelessness. The 1954 Convention[9] sets out the international legal definition of a stateless person. The object and purpose of the 1954 Convention is to secure for stateless people the widest possible enjoyment of their human rights and regulate their status, thereby ensuring that they are not left in legal limbo. The 1954 Convention acknowledges that stateless persons are more vulnerable than other foreigners. It therefore contains provisions which, *inter alia*, oblige States Parties to extend administrative assistance to stateless persons and to issue them with identity papers (regardless of legal status)[10] and travel documents[11], as well as to facilitate their naturalisation.[12]

2.3.2. The 1961 Convention on the Reduction of Statelessness ("1961 Convention")[13] requires that States Parties establish safeguards in domestic legislation to address statelessness occurring at birth or later in life. There are four main areas in which the 1961 Convention provides measures to prevent and reduce statelessness: to avoid statelessness due to loss or renunciation of nationality;[14] to reduce statelessness due to deprivation of nationality;[15] to avoid statelessness at birth and among children;[16] and to avoid statelessness in the context of State succession.[17]

2.3.3. Whereas it is the prerogative of States to determine the rules for acquisition, change and loss of nationality, in so doing they must comply with international law, in particular human rights law. Article 15 of the Universal Declaration of Human Rights ("UDHR") provides that "everyone has the right to a nationality."[18] This right, albeit with varying formulations, is included in a number of international legal instruments, such as the International Covenant on Civil and Political Rights,[19] the International Convention on the Elimination of All Forms of Racial Discrimination,[20] the Convention on the Elimination of All Forms of Discrimination against Women,[21] and the Convention on the Rights of the Child.[22]

2.3.4. Following the crisis of statelessness that arose from the process of State succession in Europe in the 1990s, notably as a result of the breakup of Czechoslovakia and the dissolution of SFRY and the Soviet Union, a series of international and regional instruments were adopted to prevent statelessness from occurring in situations of State succession. In 1999, the International Law Commission adopted comprehensive "Draft Articles on Nationality of Natural Persons in Relation to the Succession of States" ("ILC Draft Articles"). The ILC Draft Articles reflect general principles of law, existing treaty law and State practice as well as containing provisions that constitute the progressive development of international law.[23] Of particular relevance in the present case, are: draft articles 5 and 14 which deal with the rights to nationality of those habitually resident in

[9] UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, at: http://www.unhcr.org/refworld/docid/3ae6b3840.html. As of 6 June 2011, sixty-six States were party to the 1954 Convention. Slovenia became party to this Convention on 6 July 1992.
[10] 1954 Convention, Articles 25 and 27.
[11] 1954 Convention, Article 28.
[12] Some of these guarantees apply to all stateless persons whereas others are reserved to stateless persons 'lawfully present' or 'lawfully staying' in the territory.
[13] UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, at: http://www.unhcr.org/refworld/docid/3ae6b39620.html. As of 6 June 2011, thirty eight States were party to the 1961 Convention. Slovenia is not party to this convention.
[14] 1961 Convention, Articles 5 – 7.
[15] *Ibid*, Articles 8 and 9.
[16] *Ibid*, Articles 1 – 4.
[17] *Ibid*, Article 10.
[18] Universal Declaration of Human Rights, Article 15(1).
[19] International Covenant on Civil and Political Rights, Article 24.
[20] International Convention on the Elimination of All Forms of Racial Discrimination, Article 5.
[21] Convention on the Elimination of All Forms of Discrimination against Women, Article 9.
[22] Convention on the Rights of the Child, Articles 7 and 8.
[23] The UN General Assembly is yet to consider whether it will elaborate a convention or declaration based on the ILC Draft Articles.

the territory of a successor State;[24] draft articles 6 and 7 concerning the enactment and implementation of legislation concerning the acquisition of nationality in a successor State; draft article 12 reflecting the importance of maintaining family unity in relation to acquisition or loss of nationality in a successor State; and draft articles 15 and 16, which respectively underline the importance of avoiding discrimination[25] or arbitrariness[26] in decisions concerning nationality issues. Draft article 22, which is concerned with the attribution of the nationality of successor States in the context of State dissolution, confirms the importance of habitual residence as the principal criterion for the grant of nationality upon State succession.[27]

2.3.5. In the regional context, the 1997 European Convention on Nationality[28] ("European Convention") is the principal Council of Europe treaty concerning citizenship. It requires, *inter alia*, successor States to take into account a concerned person's habitual residence in, and links with, the State when granting nationality. Subsequently, the Council of Europe adopted more detailed standards on these issues in the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession ("2006 State Succession Convention") which, like the ILC Draft Articles, contains provisions to protect the right to nationality of those habitually resident on the territory of, or with another appropriate connection to, a successor State, who would otherwise be stateless.[29] Article 11 of the 2006 State Succession Convention also aims to ensure the adequate dissemination of information about rules and procedures for the acquisition of nationality by the successor State to persons concerned. While Slovenia is not a party to either the 2006 State Succession Convention or the European Convention, these instruments further demonstrate the importance of the standards pertaining to the avoidance of statelessness in the context of State succession, particularly in the Council of Europe.[30]

2.3.6. Although the European Convention on Human Rights ("ECHR") does not provide for a right to nationality, it applies to stateless persons under the jurisdiction of the Contracting parties, within the meaning of its Article 1. Furthermore, statelessness may itself constitute, or lead to a violation of, one of the rights enshrined in the ECHR.[31]

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[24] "Habitual residence is the test that has most often been used in practice by States for defining the basic body of nationals of the successor State, even if it was not the only one." See commentary to draft article 5 of the ILC Draft Articles.

[25] Non-discrimination is a principle enshrined in both customary and treaty-based international law. See commentary to draft article 15 of the ILC Draft Articles.

[26] The prohibition of arbitrary deprivation of nationality has been reaffirmed in a number of international legal instruments, including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the 1961 Convention and the European Convention on Nationality. See commentary to draft article 16 of the ILC Draft Articles.

[27] The commentary to article 22 of the ILC Draft Articles provides that: "Having examined State Practice, including most recent developments, the Commission reaffirmed the importance of the criterion of habitual residence and decided to resort to "citizenship" of a constituent unit of a State only with respect to persons residing outside the territory of a particular successor State. In the same vein, provision 8.a of the Venice Declaration confirmed the rule that "[i]n all cases of State succession, the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on [its] territory."

[28] Council of Europe, *European Convention on Nationality*, European Treaty Series (ETS) No. 166, 06 November 1997, at: http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm. Article 4 provides that everyone has the right to a nationality, statelessness shall be avoided, no one shall be deprived of his or her nationality and neither marriage nor 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.

[29] Council of Europe, *Convention on the avoidance of statelessness in relation to State succession*, Council of Europe Treaty Series (CETS) No. 200, 19 May 2006 , Article 5, at: http://conventions.coe.int/Treaty/EN/Treaties/Html/200.htm.

[30] See also 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, at: http://www.unhcr.org/refworld/docid/4dc7bf1c2.html; and Council of Europe: Committee of Ministers, *Recommendation R(1999)18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness*, 15 September 1999, (1999) 18, at: http://www.unhcr.org/refworld/docid/3ae6b3964.html.

[31] For instance, the Chamber underlined in its judgment that the European Court of Human Rights did not exclude the possibility that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 because of the impact of such denial on the private life of the individual: see, European Court of Human Rights, *Kurić and others v. Slovenia*, Application No. 26828/06, judgment of 13 July 2010, para. 353, at: http://www.unhcr.org/refworld/docid/4c3f01312.html; quoting the relevant case law: *Slivenko v. Latvia*, Application No. 48321/99, decision of 23 January 2002, para. 77, at: http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Slivenko&sessionid=71988777&skin=hudoc-en.

3. Statelessness in successor States of the former Socialist Federal Republic of Yugoslavia

3.1. Statelessness in the former SFRY region

3.1.1. Citizenship under the former SFRY comprised two levels – the federal and republican level. This meant that a person was both a SFRY citizen (federal citizenship) and was also a citizen of one of the member – republics (republican citizenship).[32] SFRY citizenship was crucial for the purposes of State identity and for accessing State rights. Republican citizenship was important for a few specific issues, including the right to vote. Due to the primacy of federal citizenship, relatively few people changed their republican citizenship (or that of their new-born children), when they moved within the SFRY from one republic to another.

3.1.2. While there was no succession treaty regulating issues of citizenship following the disintegration of the SFRY, all successor States used the principle of continuity of internal (republican) citizenship in the creation of their new internal citizenship laws.[33] As a result, republican citizenship took on a sudden new importance, as it became the central mechanism for the emerging States to avoid large-scale statelessness within the region. The fact that the SFRY successor States chose to grant nationality based upon the list of names in their republican nationality registers, had a number of consequences.

3.1.3. In principle, statelessness should have been prevented for all former SFRY citizens because they were presumed to be in possession of citizenship of at least one of the former republics of the SFRY. However, this approach had serious repercussions for thousands of people. First of all, it was incorrect to presume that all former SFRY citizens possessed and could prove their former republican citizenship. In fact, some individuals could not provide proof of republican citizenship due to loss of personal documentation and destruction of registers in the context of armed conflict, in particular in Croatia and Bosnia and Herzegovina. Moreover, UNHCR's experience in the region shows that due to variations in the registration of republican citizenship across the six republics since 1945, it was not always possible to obtain confirmation of one's republican citizenship at the place of birth. Indeed, because of such problems, UNHCR has had large information and legal aid programmes in place for a number of years in five of the successor States. Those people who were unable to prove their original republican citizenship, and who were not registered as citizens in the successor State in which they (or their parents) had migrated and lived, were left stateless because they could not prove republican citizenship of any of the former republics of the SFRY.

3.1.4. Although in some cases, procedures were introduced to mitigate these severe effects, for example through a right of option, these procedures were either limited in time, or of practical assistance to particular ethnic groups only.[34] In other cases, lack of adequate public information and advice about administrative procedures required to regularise residence and citizenship status by successor State governments meant that many lost the opportunity to do so. This situation has disproportionately affected vulnerable groups, particularly minority groups from other republics as well as Roma people,[35] due to their social marginalisation, acute impoverishment, relatively low levels of civil registration and documentation, informal living arrangements and widespread prejudice among the majority population. Particularly unable to meet onerous administrative burdens (such as documentary requirements relating to proof of past residence and high application fees), many of these minority and Roma people were not able to take advantage of procedures to regularise their legal status. As such, they were thereby excluded from the body of citizens, with no other nationality or effective procedures to acquire citizenship open to them.

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[32] UNHCR, Regional Bureau for Europe (1997), *Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia*, European Series 3(1): June 1997, at: http://www.unhcr.org/46e660582.html.
[33] *Ibid*.
[34] *Ibid*.
[35] European Commission against Racism and Intolerance, *Third Report on Slovenia*, adopted 30 June 2006, pages 31 – 37, at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/SVN-CbC-III-2007-5-ENG.pdf.

3.2. Statelessness in Slovenia

3.2.1. The eleven applicants in the present case belong to the group of 25,671 people in Slovenia, known as the erased, who were deprived of their permanent residency status in 1992 (the "erased"). According to recent figures, 13,426 of this original group remain without regulated status in Slovenia. While some of the erased from Slovenia have obtained citizenship from the successor States to the former republics where they were registered, a significant number of the erased persons remain stateless.[36]

3.2.2. These people were citizens of the former SFRY and resided in, but were not registered citizens of, Slovenia. Following the declaration of independence, and pursuant to Slovenia's Aliens Act of 1991, on 26 February 1992, the Slovenian authorities erased the names from the Slovenian registry of those permanent residents who failed to meet the six month deadline or citizenship application conditions stipulated by the 1991 Citizenship Act (this decision is hereafter referred to as "the erasure"). As outlined above, many of those who were not nationals of any other successor State, and who were unable to obtain permanent residency status due to practical impediments, could not acquire Slovenian nationality and therefore remained stateless.

3.2.3. In 2009 and 2010, in an attempt to implement the two decisions by the Slovenian Constitutional Court,[37] which found the erasure to be an unlawful and unconstitutional act,[38] and to provide a "systematic remedy of injustices imposed on erased people,"[39] the Slovenian authorities undertook to reform the legal provisions. The reform was effected in two main stages. Firstly, retroactive permanent residence permits, effective from the time of their erasure, were granted to erased persons who had already been able to regularise their status. This process was completed in 2010. Secondly, the authorities adopted the Act amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia ("the Act"). Its provisions are intended to allow those who were erased, and not yet having permanent residence permits or permanent residence registered, an opportunity to apply for such a permit within three years from the date of entry into force of the Act.

3.2.4. The Slovenian Government's efforts to regularise the legal status of people who were erased are welcomed. However, UNHCR remains concerned that the Government's reform will not allow all those affected by the erasure to receive a permanent residency permit and citizenship because of the requirements imposed as part of the permanent residence application process. These may prove particularly onerous[40] for vulnerable and marginalised individuals and groups. Furthermore, for those who have been, and who are in the future, able to regularise their legal status through the grant of a retroactive permanent residence permit, consideration must also be given to past and continuing harm and injustices suffered by such people as a result of having been erased. In certain instances, the granting of a permanent residence permit (or citizenship), may therefore only constitute partial redress, given the seriousness of the situation that some of the erased, in particular those who remained stateless, have endured.

[36] In the present case, four of the eleven applicants remain stateless at the time of Chamber judgment.
[37] Constitutional Court decisions No U-I-284/94 of 4 February 1999 and No U-I-246/02-28 of 3 April 2003.
[38] The Slovenian authorities themselves acknowledge the illegality of the erasure as an "irrefutable fact" in the context of the present case. *Position of the Government of the Republic of Slovenia concerning the request for re-examination of the case before the Grand Chamber and concerning the judgement of the Chamber of 13 July 2010*, 15 April 2010, page 3, para 4.
[39] Katarina Kresal, Minister of Interior, Forward of the Information pack issued by the Ministry of Interior, *Erased People Information on Arrangement of Status for People Erased from the Permanent Population Register of the Republic of Slovenia*, July 2010, p. 6. Unofficial translation by UNHCR.
[40] See below para. 4.1.

4. The current situation of erased persons

4.1. The legislative and administrative measures to resolve the situation of the erased persons

4.1.1. While the implementation of the Act is still at a relatively early stage, a number of problems have arisen and may hinder attempts at regularisation of legal status, notably for those erased who are currently residing outside Slovenia. The very low number of erased persons who have applied for a retroactive permanent residence permit since the entry into force of the Act suggests that these difficulties are real.[41]

4.1.2. Firstly, in general, the procedure is excessively complex[42] and may discourage a number of potential applicants despite the publication of a brochure by the Ministry of Interior and dissemination of information by a number of local NGOs, which is intended to provide detailed information about the whole process.

4.1.3. Secondly, erased persons have to prove that they effectively meet the conditions to be entitled to a retroactive permanent residence permit. This requirement of proof should not be required, as a matter of principle, since these people were *illegally* deprived of their legal status which, but for the erasure, would have entitled them to permanent residency. Furthermore, it raises a number of difficulties, not least as erased persons bear the entire burden of proof. In particular, they are expected to demonstrate that they have been *de facto* living in the Republic of Slovenia since their erasure. The application procedures provide that this can be done by providing documentary evidence and/or the testimony of witnesses. UNHCR submits that documents such as work contracts or health insurance certificates, referred to in the brochure, might be difficult to produce, since many of the erased were denied legal access to employment or health services precisely due to their erasure.

4.1.4. Those who do not furnish the evidence required to satisfy the condition of actually living in Slovenia at the time of applying for a retroactive permanent residence permit, may nonetheless apply as long as they fall within one of the limited number of exceptions to the rule. Eligiblity for these exceptions however, is difficult to prove. Erased persons who were away for less than five years must prove that their absence was due to one or more of the reasons enumerated in the Act, including, *inter alia*, the consequences of the erasure or deportation. No guidance is given as to what may constitute a proof of such reasons. In addition, those who were absent for more than five years also have to demonstrate that they tried to return and continue their residence in the Republic of Slovenia during that time, which is challenging in practice.

4.1.5. Thirdly, without additional resources afforded to the authorities in charge of processing the applications, examination of applications is likely to last beyond a reasonable time.

4.1.6. Fourthly, applicants are expected to pay a fee of around 75 euros.[43] While vulnerable persons or those unable to pay may be exempted, they must apply for such an exemption through a procedure which is relatively complex. In addition, the applicants bear the costs for official translation of all the documents that they are expected to provide to the competent body.

4.1.7. Finally, erased persons who are outside Slovenia at the time of their application may face particular constraints. Notably, given the absence of any simplified procedure for them to obtain entry visas, they may have difficulties in going back to Slovenia to follow up on their applications.

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[41] Letter from Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights, to Mr Borut Pahor, Prime Minister of the Republic of Slovenia, CommDH(2011)23, dated 10 May 2011, at: https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1856509&SecMode=1&DocId=1748238&Usage=2.

[42] The Slovenian authorities themselves acknowledged the complexity of the procedure. The Head of the Directorate of Migration and Integration at the Slovenian Ministry of Interior, Mme Nina Gregori, recognized that it was "very complicated". Quote taken from the article of Damilana Zist, *Z izbrisom je bilo storjenih veliko Krivic Od danes v veljavi novella zakona o izbrisanih*, Vecer, 24 July 2010.

[43] At the date of the entry into force of the Act, i.e. 24 July 2010, the fee amounted to 74.45 euros. See p. 16 of the English translation of the Brochure.

4.2. The legal and material difficulties faced by erased persons

4.2.1. UNHCR underlines that erased persons faced a series of disproportionate and continuing consequences as a result of the erasure. Notwithstanding that such consequences vary greatly in scope and in gravity according to individual circumstances, many of these persons were subsequently left in legal limbo and material destitution for a number of years, sometimes for almost two decades. This is all the more dramatic as many of them had been long-term residents in Slovenia and had established strong connections with the country.

4.2.2. The erasure resulted in the deprivation of legal status for those who failed to apply for Slovenian citizenship within the prescribed time-limit or whose applications were rejected. Failure to meet stipulated time-limits and rejection of applications must, however, be seen in the context of the difficulties faced by erased persons in producing evidence to demonstrate that they did meet onerous application requirements.

4.2.3. In the absence of any legal status, erased persons were prevented from exercising several fundamental rights and lost various benefits, with dire consequences for their lives. Most seriously, those who did not have another citizenship at the time of erasure faced significant difficulties acquiring nationality, and thus many remained stateless. A significant number of erased persons were expelled or detained due to their irregular stay in Slovenia. Furthermore, they were subject to frequent police checks, which contributed to their state of fear and uncertainty. Many were not authorized to work legally or to benefit from social security or state assistance or health insurance and care, all due to the absence of legal status. They were also denied access to secondary education and university.

4.2.4. UNHCR observes that deprivation of their permanent residency status and the absence of prospects to regularise their legal status resulted in a situation of precariousness, which was all the more acute for those who were left stateless for a protracted period as a result of the erasure. This was further accentuated by the fact that many of the erased were entitled to a legal status pursuant to international standards and even domestic law, following the Slovenian Constitutional Court's decisions, but were unable to exercise that entitlement in practice. The Court has previously ruled that the situation endured by an applicant, who was entitled to a long-term residence permit under EU law – but who instead received successive numerous renewable short term residence permits - was contrary to Article 8 ECHR.[44]

4.2.5. UNHCR further recalls that the material destitution into which many of the erased persons were forced, as a result of the deprivation of their rights to work and to housing, has further amplified the severity of their plight. In this regard, a parallel may be drawn with the Court's assessment that a Respondent State's failure to provide humane living conditions to asylum-seekers can violate Article 3 ECHR.[45]

4.2.6. UNHCR is also concerned that the erased persons were subjected to discrimination in two respects. Firstly, the decision to erase them clearly targeted a specific group, namely the citizens of the SFRY, while other foreigners were not affected.[46] The discriminatory nature of that decision was confirmed by the Constitutional Court in its 1999 ruling.[47] Secondly, many of the erased persons endured discrimination on the grounds that they were lacking legal status.

4.2.7. Importantly, some of the persons concerned sought a remedy for their situation before the Slovenian authorities. Given the large number of cases in which legal remedies have been pursued and the fact that some of the Courts' proceedings are still pending, it is difficult to provide an overall assessment of the extent to which the domestic legal system as a whole has provided the erased with an effective remedy against the various

[44] European Court of Human Rights, *Mendizabal v. France*, Application No. 51431/99, judgment of 17 January 2006, paras. 72-79, at: http://www.unhcr.org/refworld/docid/45cc8aff2.html.
[45] European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Grand Chamber judgment of 21 January 2011, paras. 263-264, at: http://www.unhcr.org/refworld/docid/4d39bc7f2.html.
[46] Tomaž Deželan, *Citizenship in Slovenia: the regime of a nationalising or a Europeanising state?*, Working Paper 2011/16, p. 16 and footnote 42, at:
http://www.law.ed.ac.uk/file_download/series/326_citizenshipinsloveniatheregimeofanationalisingoraeuropeanisingstate.pdf.
[47] Constitutional Court decision No U-I-284/94 of 4 February 1999.

measures affecting their human rights. However, UNHCR is concerned that the Slovenian authorities failed to implement a significant number decisions of the Constitutional Court in favour of the erased throughout the 1990s and at the beginning of 2000.[48] This raises serious questions about the effectiveness of available remedies in practice.

4.2.8. It flows from the issues outlined above, that the capacity of many of the erased to establish and develop relationships with other human beings and the outside world, as well as certain aspects of their social identity, have been disproportionately and negatively affected since their erasure.

5. An assessment of the situation of those erased persons who where left stateless in light of the relevant international and European standards

5.1. UNHCR shares this Court's assessment "that the principles underlying the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be interpreted and applied in a vacuum,"[49] and that this instrument "should be interpreted as far as possible in harmony with other principles of international law of which it forms part."[50]

5.2. The UN and Council of Europe instruments relating to the right to nationality and the avoidance and reduction of statelessness, outlined in section 2.3 above, are of particular interest for the Court's assessment. [51]

5.3. Firstly, these instruments demonstrate the existence of a broad consensus about the importance of the right to nationality, and its corollary: the principle that statelessness is to be avoided. This is set out in article 4 of the European Convention, the Explanatory Report of which indicates that "[t]he obligation to avoid statelessness has become part of customary international law…"[52] In addition, preambular paragraph 2 of the 2006 State Succession Convention provides that "the avoidance of statelessness is one of the main concerns of the international community in the field of nationality" and follows with article 2 which states that "[e]veryone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned…" A recent UNHCR meeting of experts in relation to Stateless Determination Procedures and the Status of Stateless Persons under the 1954 Convention ("Expert Meeting"), concluded that for stateless individuals residing in "their own" country, the appropriate legal status should be one which reflects the level of attachment with that country, that is, nationality.[53]

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[48] See, for example, the ruling of the Constitutional Court No. Up-211/04-21, dated 2 March 2006; ruling No. U-I- 295/99-13, dated 18 May 2000; ruling No. Up-60/97, dated 19 July 1999; ruling No. U-I-89/99, dated 10 June 1999; ruling No. U-I- 266/95, dated 20 November 1995.

[49] European Court of Human Rights, *Bankovic and others v. Belgium and 16 other Contracting States*, Application No. 52207/99, Grand Chamber decision of 12 December 2001, para. 57, at: http://www.iilj.org/courses/documents/Bankovicv.Belgiumetal.pdf; *Rantsev v. Cyprus and Russia*, Application No. 25965/04, judgment of 7 January 2010, para. 273, at: http://www.unhcr.org/refworld/docid/4b4f0b5a2.html.

[50] European Court of Human Rights, *Al-Adsani v. the United Kingdom*, Application No. 35763/97, judgment of 21 November 2001, para. 60, at: http://www.unhcr.org/refworld/docid/3fe6c7b54.html.

[51] In this regard, UNHCR shares the assessment of the Chamber in its judgment, who took into account the relevant international law standards to supports its finding on the violation of Article 8 ECHR: see, European Court of Human Rights, *Kurić and Others v. Slovenia*, Chamber judgment, cited above, para. 376. Further, the Court has previously taken into account principles or obligations enshrined in international and EU law for the purpose of examining a given case and drawing its own conclusions under the specific provisions of the ECHR. For example, the Court has emphasised the fact that the principle of primary consideration for the best interests of the child was contained, *inter alia*, in the UN Convention on the Rights of the Child in order to demonstrate the existence of a wide consensus on that matter and to assess the failure of the respondent State to act in good faith under Article 5 ECHR: see, European Court of Human Rights, *Rahimi v. Greece*, Application No. 8687/08, judgment of 5 April 2011, para. 108, at: http://www.unhcr.org/refworld/docid/4d9c3e482.html. Equally significant is the Court's consideration of the EU Directive on the reception conditions of asylum-seekers as relevant to determine the existence of a positive obligation to provide asylum-seekers with decent living conditions and to find a violation of Article 3 ECHR in this regard: see, European Court of Human Rights, *M.S.S. v. Belgium and Greece*, cited above, para. 263.

[52] Council of Europe, *Explanatory Report of the European Convention on Nationality (ETS No. 166)*, para. 33, at: http://conventions.coe.int/Treaty/EN/Reports/Html/166.htm.

[53] *Summary Conclusions of the Expert Meeting – Statelessness Determination Procedures and the Status of Stateless Persons*, December 2010, Para. 24, at: http://www.unhcr.org/refworld/docid/4d9022762.html.

5.4. Secondly, these instruments, notably the 1954 Convention[54] and the 2006 State Succession Convention, highlight the specific vulnerability of stateless persons and the need to afford them special protection.[55] The participants of the Expert Meeting, in recognising the special vulnerability of stateless persons, also concluded that the granting of a lawful legal status was necessary in order for standards of treatment contained in the 1954 Convention to take effect, and would significantly contribute to the full enjoyment of human rights by such persons. The granting of a right of residence to stateless persons was also found to be in-line with State practice, and the most effective means of enabling stateless persons to live with dignity and in security.[56] In addition, preambular paragraph 7 of the European Convention notes the right to respect family life as contained in article 8 of the ECHR. The Explanatory Report explicitly acknowledges that:

> *"[p]ersons who have their family life in a particular country, for example having lived there for many years with their family, even if they have not been able to become a national of this country, may have the right to remain in the country if they can show that they are entitled to respect for family life under Article 8 of the ECHR. This right will be particularly important in cases in which, following State succession, a large number of persons have not acquired the nationality of the State where they reside."*

5.5. Consideration of international and European standards could assist in determining the severity of the consequences of the deprivation of the right to nationality that confronted many of the erased. Slovenia's failure to comply with relevant international and European standards should be considered in assessing its compliance with regard to the ECHR.

5.6. UNHCR further emphasises that, having succeeded to the 1954 Convention on 6 July 1992, Slovenia had a series of specific obligations flowing from that treaty relating to the protection of those erased persons who were stateless, including regulation of their status so that they would not be left in a legal vacuum and ensuring standards of treatment consistent with the 1954 Convention. Slovenia's prolonged failure to comply with those international obligations clearly exacerbated the plight of those erased who had become stateless. UNHCR therefore welcomes the Chamber's acknowledgment that cases of statelessness in Slovenia were particularly affected by the Slovenian Government's refusal to remedy their situation.[57]

6. Conclusion

6.1. In the light of the above, UNHCR reiterates that the deprivation of permanent residence status resulting from the erasure process in Slovenia had dramatic and prolonged consequences for the persons concerned, who were left in legal limbo and material destitution, sometimes for almost two decades, without any prospect of regularising and improving their situation.

6.2. UNHCR further emphasizes that the consequences of the erasure were particularly severe for those erased persons, who became stateless, given their specific vulnerability. The assessment of the situation of those erased should be informed by the international and European legal standards pertaining to the right to nationality.

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[54] Preambular paragraph 3 of the 1954 Convention notes that: "the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms."

[55] In the same vein as the asylum-seekers are considered to be vulnerable, due to their forced exile, the stateless persons also constitute a particularly vulnerable category due to the acute consequences of the deprivation of any nationality. The Court has already acknowledged and taken into account the specific vulnerability of asylum-seekers: see, European Court of Human Rights, *M.S.S. v. Belgium and Greece*, cited above, para. 232.

[56] *Summary Conclusions of the Expert Meeting – Statelessness Determination Procedures and the Status of Stateless Persons*, cited above, paras. 25 and 27.

[57] European Court of Human Rights, *Kurić and Others v. Slovenia*, Chamber judgment, cited above, para. 361.