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**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE
HIGH COMMISSIONER AND THE SECRETARY-GENERAL**

Arbitrary deprivation of nationality: report of the Secretary-General*

* The present report is submitted late in order to include the most recent information.

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Introduction

1. In its resolution 7/10 of 27 March 2008, on human rights and arbitrary deprivation of nationality, the Human Rights Council requested the Secretary-General “to collect information on this question from all relevant sources and to make it available to the Council at its tenth session”. The present report contains a summary of the replies received.

2. In response to a note verbale dated 26 May 2008, information was received from the Governments of Algeria, Angola, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Colombia, Congo, Costa Rica, Ecuador, Finland, Georgia, Greece, Guatemala, Iraq, the Islamic Republic of Iran, Jamaica, Kuwait, Mauritius, Monaco, Montenegro, Qatar, Russian Federation, Spain, the Syrian Arab Republic, Ukraine and Venezuela (Bolivarian Republic of). In response to letters sent to various intergovernmental and non-governmental organizations on 13 June, 24 September and 6 October 2008, the Office of the United Nations High Commissioner for Refugees (UNHCR) and Refugees International provided further information.

I. REPLIES RECEIVED FROM GOVERNMENTS

Algeria

3. The Government of Algeria stated that Algerian legislation contains most of the relevant provisions of international treaties concerning the right to a nationality. Article 30 of the Constitution of Algeria regulates issues related to Algerian citizenship. The Algerian Law on Nationality does not contain specific provisions on stateless persons, but it provides sufficient guarantees to combat statelessness according to international law and international human rights law. The Government indicated that Algerian citizenship is obtained at birth if the mother is an Algerian citizen. Children born in Algeria from unknown parents are also considered as Algerian citizens.

4. Article 18 of the Law on Nationality provides that dual nationality is not recognized by Algerian legislation. Algerian citizens who acquire a foreign nationality lose their Algerian citizenship. According to articles 20 and 21 of the Law on Nationality, children are not affected by the loss of Algerian citizenship of their parents. The Government reported that article 19 of the Law on Nationality, which established that persons lost their Algerian citizenship if they worked for a foreign country or for an international organization to which Algeria is not a member, was abrogated.

5. The Law on Nationality establishes the conditions for the loss of Algerian citizenship, including situations of persons who are accused of a crime affecting public order and persons who are accused in Algeria or abroad of a crime against Algerian interests and is imprisoned for more than five years. Naturalized Algerian citizens may be deprived of their Algerian citizenship if it was obtained through illegal means or fraud. Persons who have been deprived of their Algerian citizenship have the right to judicial remedy within 18 months of the decision to deprive them of their citizenship.

Angola

6. The Government of Angola stated that article 18 of the Constitution of Angola regulates the right to a nationality. Angolan nationality can be obtained at birth or by naturalization. Those persons whose father or mother is an Angolan national are born Angolans. Also, persons born on Angolan territory are presumed to be Angolan nationals. The conditions for the attribution, acquisition, loss and reacquisition of Angolan nationality are determined by the law. The Constitution also establishes that Angolan nationals may not be deprived of their Angolan citizenship if it was obtained at birth.

Azerbaijan

7. The Government of Azerbaijan stated that, according to its Constitution, persons born in Azerbaijan are considered citizens of Azerbaijan. Persons whose parents are citizens of Azerbaijan are also considered citizens of Azerbaijan. According to article 3 of the Law on Citizenship all citizens of Azerbaijan are equal, irrespective of how citizenship was obtained. Article 53 of the Constitution and article 2 of the Law on Citizenship provide that citizens of Azerbaijan shall not be deprived of their citizenship. According to article 5 of the Law on Citizenship, citizenship of Azerbaijan is awarded to persons who were not citizens of Azerbaijan or of any other State but registered their domicile in Azerbaijan before 1 January 1992. Citizenship of Azerbaijan may also be given to refugees who took refuge in Azerbaijan between 1 January 1988 and 1 January 1992.

Belarus

8. The Government of Belarus stated that issues relating to citizenship are regulated by its Constitution and by the Law on Citizenship. The law prescribes that persons shall not be arbitrarily deprived of their nationality on any grounds. Citizenship may be terminated by voluntary renunciation of citizenship or as a result of acts foreseen in the law. Persons may apply to renounce their citizenship of Belarus, except in situations where renunciation of citizenship would place the person in a situation of statelessness. Persons may lose their citizenship, inter alia, as a result of being recruited to the military, the police, the security services, or judicial institutions of another State. Persons may in no case be deprived of their nationality if as a result they are placed in a situation of statelessness.

Bosnia and Herzegovina

9. The Government of Bosnia and Herzegovina stated that article 7.1 of its Constitution regulates nationality issues. No person may be deprived of Bosnia and Herzegovina or any of its constitutive Entities' citizenship on any ground. All persons who were citizens of the Republic of Bosnia and Herzegovina prior to the entry into force of the Constitution are considered citizens of Bosnia and Herzegovina.

10. According to the Government, citizenship may be withdrawn, inter alia, in the following cases: if the regulations in force in the territory of Bosnia and Herzegovina at the time of the naturalization had not been applied; if the citizenship was acquired by means of fraudulent conduct; in a case of a lack of a genuine link between Bosnia and Herzegovina and a citizen habitually not residing in Bosnia and Herzegovina; if a person concerned did not respond to the

general call for submission of information on status within the time frame determined in the call; when a Bosnian national is sentenced in or outside the territory of Bosnia and Herzegovina for a criminal offence including smuggling arms or explosives.

11. The Government indicated that article 5 of the Law on Citizenship regulates the acquisition of citizenship by descent, by birth on Bosnian territory, by adoption, by naturalization and by international agreement.

Bulgaria

12. The Government of Bulgaria stated that article 25.3 of the Constitution expressly prohibits the arbitrary deprivation of nationality of Bulgarian citizens. In article 25.1 the Constitution provides that any person, whereof at least one of the parents is a Bulgarian citizen, or who has been born in Bulgaria, shall be a Bulgarian citizen unless acquiring another citizenship by descent. Bulgarian citizenship may also be acquired by naturalization. The Bulgarian Citizenship Act stipulates that any Bulgarian citizens who are permanently residing abroad may request to be released from Bulgarian citizenship if they have acquired another nationality or if there is information showing that a procedure of acquisition of a foreign nationality has been initiated.

13. According to the Government, the Citizenship Act states that Bulgarian citizenship acquired through naturalization may be revoked if persons have supplied false information to obtain it. Revocation of the naturalization of one of the spouses shall not revoke the naturalization of the other spouse or children, unless citizenship was likewise obtained on the grounds of false information. The Government also indicated that the Law provides that any person who has acquired Bulgarian citizenship through naturalization may be deprived of it if the person has been sentenced for a grave crime committed against Bulgaria, subject to the condition that the person is abroad and does not become stateless.

Burkina Faso

14. The Government of Burkina Faso stated that article 135 of the Persons and Family Code indicates that provisions relating to nationality contained in international treaties ratified by Burkina Faso are applicable, even if they are contrary to provisions of internal law. The Government stated that, according to Title V of the Persons and Family Code, Burkinabe citizenship may be acquired by birth; by marriage, in which case a stateless person cannot decline Burkinabe citizenship; and in the case of persons born to foreign parents, who can obtain Burkinabe nationality at the legal majority age if they have resided in Burkina Faso for the last five years.

15. The Government reported that the situations leading to deprivation of nationality are limited. Article 170 of the Persons and Family Code states that persons shall not be naturalized if they do not have good morals; if they have been convicted to more than one year's imprisonment and are not subject to rehabilitation or amnesty for a common-law crime; if they are not mentally healthy; or in the case of entrepreneurs, if they do not submit proof of important investments. According to article 189, loss of nationality can be declared if persons have been convicted of a crime against the internal or external security of the State; have been convicted for an act qualified as a crime against the institutions of Burkina Faso; have carried out for the benefit of a foreign country acts which are incompatible or damaging to Burkina Faso's interests; have been

convicted in Burkina Faso or in a foreign country to imprisonment of at least five years for an act considered as a crime under Burkinabe law; have been convicted to imprisonment of more than three months for violations of price regulations or for fiscal fraud.

Colombia

16. The Government of Colombia stated that article 96 of the Constitution prohibits the deprivation of Colombian nationality. The 1991 Constitution introduced the possibility of holding two or more nationalities. In order to avoid situations of statelessness, article 96 of the Constitution provides that children of Colombian nationals born abroad acquire Colombian nationality at birth provided they are registered with the Colombian consulate, without being required to give proof of domicile in Colombian territory. Renunciation of Colombian nationality is considered a voluntary act. It is generally requested when persons have or are to acquire another nationality and the domestic legislation of that country does not allow for multiple nationalities. The Government indicated the law provides for the possibility to recover Colombian nationality.

Congo

17. The Government of the Congo stated that article 13 of the Constitution indicates that Congolese nationality is guaranteed by the law and that Congolese citizens have the right to change their nationality or to adopt a second nationality. The Nationality Code provides the conditions to acquire Congolese nationality. The law establishes the right of persons born to foreign parents in Congolese territory to acquire Congolese nationality. Congolese nationality may also be acquired through naturalization and long residence in the country.

Costa Rica

18. The Government of Costa Rica stated that the Constitution guarantees the right to a nationality, also recognized in international instruments to which Costa Rica is party. Article 13 of the Constitution indicates that persons born on Costa Rican territory or to Costa Rican parents have Costa Rican citizenship. Article 14 lists the persons who are entitled to naturalization. Article 16 further indicates that Costa Rican citizenship cannot be lost or renounced. The Government stated that the Constitutional Court has further clarified that this clause on non-renunciation should be interpreted in conformity with international human rights as an absolute prohibition on statelessness.

19. The Government reported that in 2007 the Foreign Ministry declared a person to be stateless in order to issue proper identification documents, in accordance with the provisions of the Convention Relating to the Status of Stateless Persons.

Ecuador

20. The Government of Ecuador stated that Ecuador respects the right of every person to a nationality and that it has not carried out acts depriving persons of such a right.

Finland

21. The Government of Finland stated that, under section 5 (1) of its Constitution, children born in Finland acquire citizenship at birth and through the citizenship of their parents. Section 5 (2) indicates that persons cannot be divested or released from their Finnish citizenship except on grounds determined by the law and only if they are in possession of or will be granted the citizenship of another State. Chapter 5 of the Nationality Act details the conditions under which persons may lose their Finnish citizenship, inter alia, as an effect of annulment of paternity or if they provided false information.

22. The Government stated that the purpose of the Finnish Nationality Act is to regulate the acquisition and loss of Finnish citizenship taking into account the interests of individuals and the State alike, to prevent and reduce statelessness and to observe and promote the principles of good governance and legal protection when processing and making decisions on matters of citizenship. According to the Finnish Nationality Act, the provisions on the loss of and release from citizenship must not be applied if, as a consequence, a person becomes stateless.

Georgia

23. The Government of Georgia stated that, according to article 13 of the Constitution of Georgia, persons shall not be arbitrarily deprived of their citizenship. Article 2 of the Organic Law of Georgia on Citizenship of Georgia contains a similar provision. Article 32 of the Law regulates the loss of Georgian citizenship. According to this provision, persons shall lose their Georgian citizenship if they enter into the military service, the police, judicial bodies, or government institutions of a foreign State without permission of the competent bodies of Georgia; permanently reside on the territory of another State and have not been registered with the Georgian consulate without adequate justification during two years; acquire Georgian citizenship on the basis of false documents; and accept citizenship of another State. According to article 29 (a) of the Organic Law of Georgia on Citizenship of Georgia, Georgian citizenship is to be restored for persons whose citizenship has been terminated as a result of an illegal deprivation of citizenship.

Greece

24. The Government of Greece stated that article 17 of the Hellenic Nationality Code enumerates the conditions under which the Greek authorities may deprive persons of their nationality. The commitment of serious offenses constitutes the main reason for deprivation of Greek citizenship. Deprivation of nationality is permissible, inter alia, if Greek citizens undertake public duties in a foreign country, which violates the principle of loyalty to their native country; and if persons have committed acts for the benefit of a foreign country which contravene the national interests of Greece. Prior to the issuance of the revocation decision by the Minister of Home Affairs, the Nationality Council should give its consent. The revocation of nationality applies individually and does not affect the nationality of the person's spouse and children.

Guatemala

25. The Government of Guatemala stated it has ratified the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. The Government has also withdrawn all reservations and declarations to the Convention relating to the Status of Refugees and its Protocol. Article 144 of the Guatemala Constitution indicates that Guatemalan citizens may not be deprived of their nationality. Guatemalan citizens who obtained their Guatemalan citizenship at birth may not be deprived of their nationality even when a second nationality has been acquired, except when renunciation of Guatemalan nationality is compulsory in order to obtain the nationality of the other State. In those cases, persons with a legal domicile in Guatemala may request that their Guatemalan nationality be subsequently reinstated.

26. The Government indicated that during the internal armed conflict certain municipalities' archives were burnt, thus leading to the loss of relevant identification documents. Due to the lack of adequate access to certain parts of the country, a number of persons have never registered their children, leaving them without any valid identification. The Government stated that more than 1 million citizens do not have personal identification documents, a situation that affects the exercise of citizens' rights, particularly the right to a nationality. Efforts have been made to include persons on electoral lists, particularly women, to guarantee the exercise of their political rights. In 2005, the Government of Guatemala created the National Registry of Persons, which began to function in 2007. Its objective is to organize and keep a unified registry of identification of all persons. The Government also indicated that another challenge is to convince all persons to register, particularly in light of the cost of obtaining personal documentation, including transportation to registration offices.

Iraq

27. The Government of Iraq stated that, according to its Constitution, every Iraqi citizen has the right to a nationality. Article 15 of Law No. 26 of 2006 indicates that persons may be deprived of Iraqi citizenship if they carry out acts that are dangerous to the safety and security of the State and if, when submitting an application for naturalization, they provide false information about themselves or members of their families.

Islamic Republic of Iran

28. The Government of the Islamic Republic of Iran stated that article 41 of the Constitution indicates that all Iranians have the right to Iranian citizenship. The Government may not deprive Iranians from their citizenship unless persons request it or if they acquire the citizenship of another country. Article 42 of the Constitution establishes that foreign nationals may apply to acquire Iranian citizenship. These persons may be deprived of their citizenship only if another State agrees to accord them its citizenship, or if they voluntarily renounce Iranian citizenship. The Government stated that the latest amendment to the State Civil Code of September 2006 indicates that children born in Iran of a marriage between Iranian women and foreign men may apply for Iranian citizenship after reaching 18 years of age. Applicants will be granted Iranian citizenship provided that they have no criminal or security record and that they renounce their non-Iranian citizenship. From the date of the adoption of the law, those persons who are born in Iran of a marriage between an Iranian woman and a foreign man, and when the marriage has

been registered in accordance with the Civil Code, after reaching 18 years of age shall be accorded Iranian citizenship within one year, irrespective of residence conditions required in the Civil Code.

Jamaica

29. The Government of Jamaica has not taken any discriminatory measures or enacted any discriminatory laws that would arbitrarily deprive persons of their nationality, particularly when such laws could render persons stateless. The Government also indicated that the Constitution of Jamaica makes express provision for entitlement to citizenship before and after the date of independence. Additionally, the Constitution of Jamaica prohibits the deprivation of citizenship acquired by birth, descent or marriage to a Jamaican citizen. Persons who acquire citizenship by other means may be deprived of such citizenship but in the circumstances prescribed by law and not in an arbitrary manner.

Kuwait

30. The Government of Kuwait stated that, according to the Constitution of Kuwait, all citizens are equal before the law. According to the Government, following the application of the Law on Entry of Foreigners, there have been certain groups of persons claiming to be Kuwaiti citizens. These persons have not been granted Kuwaiti citizenship because they could not prove to be Kuwaiti nationals. According to the Government, many of these persons may have had foreign passports and entered Kuwait legally or illegally and subsequently hid their passports and claimed to be Kuwaiti nationals. According to the law, they are considered as illegal residents. The Government stated that an Executive Committee on Illegal Residents has been created to tackle this situation. The Committee has registered 92,667 cases of illegal residents. In any case, the Government indicated that health and education services are provided to all residents irrespective of their nationality. All persons enjoy the right to work and right to register their marriage and to obtain birth certificates, travel documents and driving licences.

31. The Government of Kuwait stated that there are no restrictions on the exercise of the right to a nationality. The Law on Nationality is based on international law principles. According to the Law on Nationality, Kuwaiti citizenship is obtained at birth if the father is a Kuwaiti national. Children born to female Kuwaitis married to foreigners are not considered Kuwaiti citizens. Nevertheless, permanent residents may consider applying for Kuwaiti citizenship with the Ministry of Interior. According to Kuwaiti law, dual nationality is not recognized. Kuwaiti citizens that adopt a foreign nationality lose their Kuwaiti citizenship. According to the Law on Nationality, Kuwait has adopted the necessary measures to reduce the number of stateless persons in Kuwait. In this respect, a number of legal residents are naturalized every year, in accordance with an annual quota. The Government informed that on the day of its submission, a total of 928 persons had been given Kuwaiti citizenship in 2008.

Mauritius

32. The Government of Mauritius stated that, according to articles 20 (3) and 23 of the Constitution, people may obtain Mauritian citizenship by birth or by descent. They obtain Mauritian citizenship if they were born in Mauritius before 1 September 2005 of either Mauritian or foreign parents, or if they are were born in Mauritius after September 2005 if either of the

parents holds Mauritian citizenship by birth. Section 3 of the Mauritius Citizen Act stipulates that minors who are not citizens of Mauritius may become citizens if they have been adopted by a citizen of Mauritius. Under section 5 of the Mauritius Citizenship Act, a Commonwealth citizen may be registered as a citizen of Mauritius. Application for registration shall be accompanied by a declaration of renunciation of any other citizenship the applicant may possess. Non-Commonwealth citizens may be naturalized as citizens if they fulfil the necessary criteria of residency. Application for naturalization shall be accompanied by a declaration of renunciation of any citizenship the applicant may possess.

33. The Government further stated that, according to section 11 (2) of the Mauritius Citizenship Act, the Minister in charge of internal affairs may deprive persons of their citizenship acquired by registration or naturalization in cases where such registration or naturalization was obtained through fraud. The same situation applies to persons who have been disloyal or disaffected towards the State or have been declared suspected international terrorists under the Prevention of Terrorism Act of 2002, or have carried out during any war in which Mauritius was engaged acts to assist the enemy in that war or have been sentenced to imprisonment for a term not less than 12 months. However, the Minister may not deprive persons of their citizenship if in doing so the persons become stateless.

Monaco

34. The Government of Monaco stated that articles 15 and 18 of the Constitution, as amended by Law No. 1.249 of 2 April 2002 provide the modalities of acquisition and loss of nationality. According to article 15, the Prince exercises the right to naturalize and to restore Monegasque nationality, with no need to motivate his decision to refuse to naturalize or to restore it. Article 18 indicates that the law regulates the modes of loss of nationality for naturalized persons. The loss of Monegasque nationality in any other case is only possible if the person has voluntarily acquired another nationality or has illegitimately served in the armed forces of another country.

Montenegro

35. The Government of Montenegro stated that, according to article 24 of its Citizenship Law, Montenegrin citizens who acquired citizenship of another State shall lose Montenegrin citizenship. They shall also lose Montenegrin citizenship if it is established that Montenegrin citizenship was acquired on the basis of false statements, except in the case where persons would become stateless. Persons shall also lose Montenegrin citizenship if they acquired Montenegrin citizenship on the grounds of guarantees given by another State, stating that they shall cease present citizenship if Montenegrin citizenship is obtained; if they have been convicted for criminal offenses against humanity and other values protected by international law; if they have been convicted of planning, organizing, financing or in any way assisting terrorist acts; if they are members of an organization whose activities are directed against public order and security; if they enter voluntarily in the military forces of another State; and if their behaviour seriously damages the vital interests of Montenegro.

36. The Government also stated that article 41 of the Citizenship Law indicates that a citizen of the former Socialist Federal Republic of Yugoslavia with registered residence in Montenegro before 3 June 2006 can acquire Montenegrin citizenship through naturalization if they are not citizens of a foreign country and if they fulfil the conditions prescribed by the law.

Qatar

37. The Government of Qatar stated that, according to the Law on Nationality, Qatari citizenship is obtained by descent, by naturalization and by settlement. Article 1 of the Law on Nationality indicates that persons who settled in Qatar prior to 1930 and that continue to reside in Qatar and their descendants are considered Qatari citizens. The Prince may declare that persons who demonstrate that they are of Qatari origin, even if they settled in Qatar after 1930, are Qatari citizens. A person whose father is a Qatari citizen is considered Qatari by birth. Article 2 of the Law on Nationality provides that foreigners may apply for naturalization if they have lived in Qatar for at least 25 continuous years and have not spent more than 2 months every year outside Qatar. In order to be naturalized, persons shall demonstrate that they have legal employment; that they have a good reputation; that they have not been charged by a court for a crime; and that they speak very good Arabic. Priority is given to persons born to a Qatari mother. Persons born in Qatar from unknown parents acquire Qatari citizenship.

38. Articles 11 and 12 provide the conditions for the loss of Qatari citizenship. The Prince may deprive persons of their Qatari citizenship if they have joined armed forces of a foreign country; if they have worked in the service of a foreign country that is in a state of war against Qatar; if they are members of any association or organization which aims at changing the political regime of Qatar; if they have been sentenced by a court of law for crimes affecting their loyalty to Qatar; and if they have acquired a foreign nationality. Naturalized Qatari citizens may be deprived of their Qatari citizenship if they acquired it by providing false information; if they have been sentenced for a crime that affects their honour; and if they have been living abroad for more than one year without providing a proper justification. The Ministry of Interior can recommend, under certain conditions, depriving nationality from a naturalized citizen for reasons of public interest.

Russian Federation

39. The Government of the Russian Federation stated that, in its view, article 1, paragraph 2, of the Convention on the Elimination of All Forms of Racial Discrimination provides that distinctions made by States between citizens and non-citizens do not constitute discrimination, thus leaving a protection gap for stateless persons. This situation could lead to situations in which States can be selective in their approach to the protection of certain minorities and interpret the existing international legal concepts in an arbitrary way. The Government indicated that some countries, with the assistance of declarations and reservations to international instruments, observe international norms only with regard to their citizens, while stateless persons are subjected to substantial discrimination. In some cases, national laws have established the status of non-citizens to distinguish their treatment from ordinary citizens. This situation creates a situation of inequality for persons who belong to national minorities, even when these national groups represent the majority of the population in a given area.

40. Persons arbitrarily deprived of their citizenship are in practice considered as migrants, even though these persons lived on the territories of the relevant States for several years. Their rights

are subjected to limitations in all spheres and subject to discriminatory practices. Stateless persons do not have the possibility of using their native language when addressing the State in writing, even in the areas where they constitute a majority of the population. These persons are confronted with a situation in which all types of information are provided only in the official language. According to the Government, there is also discrimination in the social sphere, affecting the provision of pensions, social benefits and medical services. Stateless persons also see their right to freedom of movement seriously affected. For example, in many cases they are not entitled to travel abroad.

41. The Government of the Russian Federation stated that the question of arbitrary deprivation of nationality should be considered by the General Assembly, the Human Rights Council and United Nations agencies, including the Office of the High Commissioner for Human Rights and the High Commissioner for Refugees.

Spain

42. The Government of Spain stated that article 34.1 of the Law 4/2000 and the Regulations on the Recognition of the Status of Stateless Persons No. 865/2001 of 20 July 2001 deal with issues relating to stateless persons.

Syrian Arab Republic

43. The Government of the Syrian Arab Republic stated that the Syrian Constitution provides all guarantees to protect all Syrian citizens without discrimination. The Constitution and the law provide all guarantees for individuals to enjoy their rights according to international human rights law, including providing the necessary means to avoid cases of arbitrary deprivation of nationality according to international human rights law, including providing the necessary means to avoid cases of arbitrary deprivation of nationality.

44. The Syrian Law on Nationality provides that Syrian citizens may be deprived of their nationality if they acquire a foreign nationality; if they engage in military service in a foreign country without the approval of the Syrian Ministry of Defence; if they work for a foreign country, whether inside or outside the Syrian Arab Republic, without authorization by the Government; if they support any activity of a foreign country that is in a state of war against Syria; if they leave the territory illegally in order to enter the territory of enemy States; and if they left Syria to live in a non-Arab country and stayed for more than three years and did not return, without providing adequate justification, at the request of the Government. The Syrian Minister of the Interior has the authority to award Syrian citizenship to persons who had been deprived of it.

Ukraine

45. The Government of Ukraine stated that article 25 of the Constitution stipulates that citizens of Ukraine cannot be deprived of their citizenship and cannot be deprived of their right to change citizenship. The legal framework that regulates questions of citizenship is found in the Constitution and the Law on Citizenship. The Law on Citizenship is based on the principle of preventing situations of statelessness. Based on this principle, the provisions in articles 18 and 19, for example, provide that citizenship may be lost if persons renounce their Ukrainian

citizenship as a requirement for adopting the nationality of another State. However, no person shall be deprived of their citizenship if, as a result, they become stateless. The exception to this general principle refers to cases in which some people received Ukrainian citizenship through fraud.

Venezuela (Bolivarian Republic of)

46. The Government of the Bolivarian Republic of Venezuela stated that articles 32 and 42 of the Constitution regulated issues of nationality in Venezuela. The Law on Nationality and Citizenship established a legal regime that renders statelessness in Venezuela unlikely. The Government indicated that Venezuelan nationals do not lose their citizenship when they acquire the nationality of another State, except in cases of voluntary renunciation of Venezuelan citizenship. It is established that, in order to avoid situations of statelessness, renunciation of nationality by Venezuelan nationals by birth is valid only when the persons concerned have opted for or wish to adopt a foreign nationality. Persons who have renounced their Venezuelan nationality may recover it if they establish legal residency in Venezuela for a period of at least two years. Venezuelan nationals by birth may not be deprived of their nationality, nor may their nationality be suspended or limited by State authorities.

47. The Government stated that naturalized Venezuelans may not be deprived of their nationality except on the basis of a judicial decision, in conformity with article 35 of the Constitution and article 48 of the Law on Nationality and Citizenship. Such a declaration may occur in cases where the relationship of loyalty and fidelity to the State has been broken. The Law also provides that naturalized Venezuelans may retain their original nationality.

II. REPLIES RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

Office of the United Nations High Commissioner for Refugees

48. The Office of the United Nations High Commissioner for Refugees (UNHCR) stated that it is a general principle of international law that State discretion on nationality matters is limited by international law and in particular obligations under international human rights law. The General Assembly, in its resolution 50/152, specifically recognizes the fundamental nature of the prohibition of arbitrary deprivation of nationality. An explicit and general prohibition of arbitrary deprivation of nationality can be found in numerous international instruments.¹ Specific

¹ Art. 8, para. 1, Convention on the Rights of the Child; art. 4 (c) of the 1997 European Convention of Nationality, art. 20 (3) of the 1969 American Convention on Human Rights; art. 29 of the 2004 Revised Arab Charter on Human Rights; and art. 24 (2) of the 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms; art. 16 of the Draft Articles on Nationality of Natural Persons in relation to the Succession of States.

instances of arbitrary deprivation of nationality are dealt with by other international treaties, specifically those which proscribe the deprivation of nationality on discriminatory grounds² or if it results in statelessness.³

49. While deprivation of nationality does not comprise loss of nationality voluntarily requested by the individual (renunciation), it comprises all other forms of loss of nationality, including those which occur automatically by operation of law and those which result from acts taken by administrative authorities. International law allows for deprivation of nationality in some circumstances. However, in order not to be arbitrary, deprivation of nationality must be in conformity with domestic law and in addition comply with specific procedural and substantive standards, in particular the principle of proportionality. Measures leading to deprivation of nationality must serve a legitimate purpose that is consistent with international law and in particular the objectives of international human rights law. Such measures must be the least intrusive instrument amongst those which might achieve the desired result and they must be proportional to the interest to be protected. The notion of arbitrariness applies to all State action, legislative, administrative and judicial. An interpretation of the ordinary meaning of the term shows that “arbitrariness” is not to be equated merely with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability.

50. The Human Rights Committee has further developed what “arbitrary” means with regard to specific rights recognized under the International Covenant on Civil and Political Rights.⁴

51. The avoidance of statelessness is a general principle of international law. Deprivation of nationality resulting in statelessness will generally be arbitrary unless it serves a legitimate purpose and complies with the principle of proportionality. Thus, article 8 of the Convention on the Reduction of Statelessness allows for a limited set of circumstances under which deprivation of nationality resulting in statelessness is permissible, but as exceptions to a general principle they must be narrowly construed. Deprivation of nationality leads to statelessness where the person concerned does not possess or immediately acquire another nationality. Article 8 (1) of the Convention therefore states the general rule. The General Assembly in its resolution 50/152 called upon States “to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality”. Similarly, conclusion No. 106 (LVII) of 2006 UNHCR’s

² Art. 5 (d) (iii), Convention on the Elimination of All Forms of Racial Discrimination (CERD); art. 9, para. 1, Convention on the Elimination of Discrimination Against Women (CEDAW).

³ Art. 8 of the 1961 Convention on the Reduction of Statelessness (CRS); art. 7 (3), European Convention on Nationality.

⁴ Human Rights Committee, general comment No. 27, para. 21. Human Rights Committee, general comment No. 16, para. 4.

Executive Committee “encourages States to consider examining their nationality laws ... to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality”.⁵

52. The exceptions allowed for in the Convention on the Reduction of Statelessness are set out exhaustively in its article 8, paragraphs 2 and 3. Paragraph 2 (a) provides that naturalized persons may be rendered stateless by loss of nationality if they have resided abroad for at least seven years and failed to declare their intention to retain their nationality. States may also deprive persons born abroad of their nationality if, one year after attaining majority, they do not reside in the State or register with the appropriate authority. Paragraph 2 (b) provides that deprivation of nationality resulting in statelessness is also permissible if the nationality has been obtained by misrepresentation or fraud. Certain additional exceptions are provided for in paragraph 3, but they may only be applied if the State expressly indicates its intention to retain them in its national law at the time of signature, ratification or accession.

53. Article 7 (3) of the 1997 European Convention on Nationality allows for deprivation of nationality resulting in statelessness only in cases of misrepresentation and fraud. Emphasizing the importance of narrowly construing an exception of this nature and also of the principle of proportionality, the Council of Ministers of the Council of Europe has issued a recommendation that “a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the State concerned, should be taken into account”.⁶

54. Under article 9 of the Convention “a Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds”. Deprivation of nationality on discriminatory grounds is arbitrary.

55. The prohibition of arbitrary deprivation of nationality is implicit in provisions of human rights treaties which proscribe specific forms of discrimination. Article 5 (d) (iii) and 1 (3) of the Convention on the Elimination of All Forms of Racial Discrimination prohibit racial discrimination in respect of the right to a nationality. The Committee on the Elimination of Racial Discrimination has indicated that States shall “recognize 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”.⁷ Under article 9 of the Convention on the Elimination of All Forms of Discrimination against Women and the 1957 Convention on the Nationality of Married Women, women have the right to retain their nationality regardless of the celebration or dissolution of a marriage or the change of nationality

⁵ Para. (i); see also conclusions Nos. 65 (r), 78 (b) and 102 (y).

⁶ 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 1.4/II/C/c.

⁷ CERD, general recommendation XXX, para. 14.

by a husband. In its general comment No. 21, the Committee on the Elimination of Discrimination against Women stated that: “Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.”⁸

56. In order to fulfil minimum procedural standards, decisions on deprivation of nationality must be issued with reasons in writing and be subject to a review by a court or other independent body. Procedural safeguards are essential to prevent abuses in the application of the law. As a result, the right to a review against deprivation of nationality is guaranteed by article 8, paragraph 4, of the Convention on the Reduction of Statelessness.

57. In explaining the scope of the prohibition against arbitrary deprivation of nationality in article 16 of the Draft Articles on Nationality of Natural Persons in relation to the Succession of States, the commentary of the International Law Commission sets out that the “purpose of the article is to prevent abuses which may occur in the process of the application of any law or treaty which, in themselves, are consistent with the present draft articles”. This is supplemented by article 17 of the Draft Articles which requires that “relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review”. The commentary to article 17 elaborates: “The elements spelled out in this provision represent minimum requirements in this respect. ... The requirement of giving reasons for any negative decisions concerning nationality should be considered as one of the prerequisites of an effective administrative or judicial review which is implicitly covered.”

58. The European Convention on Nationality, as a regional treaty dealing comprehensively with nationality issues, also contains important procedural standards on deprivation of nationality, notably that decisions shall contain reasons in writing (art. 11) and that decisions shall be open to an administrative or judicial review in conformity with internal law (art. 12).

59. Persons who have been arbitrarily deprived of their nationality must have access to an effective remedy, in particular restoration of nationality, issuance of documents allowing the individual to make nationality effective and registration as a national in relevant registries. Article 8, paragraph 2, of the Convention on the Rights of the Child, expressly stipulates: “Where a child is illegally deprived of some or all of the elements of his or her identity [including nationality], States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.” The Human Rights Council, in its resolution 7/10, calls upon States to ensure that an effective remedy is available to persons who have been arbitrarily deprived of their nationality. UNHCR’s Executive Committee, for its part has “call[ed] on States [...] to assist stateless persons to access legal remedies to redress statelessness, in particular that which results from arbitrary deprivation of nationality”.⁹ Access to effective remedies often relies on providing proof for personal identification, a task frequently

⁸ CEDAW, general recommendation No. 21, para. 6.

⁹ Executive Committee conclusion No. 102 (LVI) - 2005, para. (y).

hampered by the effects of deprivation of nationality. States may therefore be required to adopt flexible rules for evidence, which for instance allow the person concerned to provide witness testimony or resort to various sources of documentary evidence.

60. In the context of the avoidance of statelessness, arbitrary denial of nationality is just as grave as arbitrary deprivation of nationality. The Executive Committee of UNHCR has therefore encouraged States “to consider examining their nationality laws and other relevant legislation with a view to adopting and implementing safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which *results from arbitrary denial or deprivation of nationality*” (emphasis added).¹⁰

61. Nationality can be acquired automatically by operation of law, at birth or at a later stage, or as a result of an act of the administrative authorities. States enjoy a degree of discretion with regard to the criteria governing acquisition of nationality but these criteria must not be arbitrary. In order not to be arbitrary, denial of access to a nationality must be in conformity with domestic law. It must comply with procedural standards. At a minimum, a decision must be issued with reasons in writing and be subject to review by an independent authority. It must comply with substantive standards, in particular the principle of proportionality. As with arbitrary deprivation of nationality, international law has developed detailed standards governing denial of nationality, in particular where it is based on discriminatory grounds or where it results in statelessness.

62. In establishing general rules for acquisition of nationality at birth or later in life, it is legitimate to differentiate between persons who have specific links with the State such as birth on the territory, descent, residence or marriage to a national, and those who do not. However, when setting criteria for acquisition of nationality, States must not discriminate against persons concerned, in particular on grounds of race, colour, gender, religion, political opinion or national or ethnic origin, as such discrimination would constitute arbitrary denial of acquisition of a nationality. Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women prohibits distinctions between men and women with regard to acquisition of nationality and in relation to acquisition of nationality by their children. Discrimination on the grounds of race, colour or ethnicity falls under the scope of the Convention on the Elimination of All Forms of Racial Discrimination.

63. With regard to the acquisition of nationality, the Committee on the Elimination of Racial Discrimination recommended that States parties to “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” and to “take into consideration that 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, in violation of the Convention’s anti-discrimination principles”.¹¹ The Human Rights Committee, in its general comment No. 24 has stated: “No discrimination with

¹⁰ Executive Committee conclusion No. 106 (LVII) - 2006, para. (i). Report of the independent expert on minority issues, Gay McDougall, 28 February 2008, A/HRC/7/23.

¹¹ CERD, general recommendation XXX.

regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.” The Inter-American Court of Human Rights, in the case of the Yean and Bosico children also underlined the prohibition of discrimination regarding access to a nationality.¹²

64. Regardless of the general rules which govern acquisition of nationality, States should ensure that safeguards are in place to ensure that nationality is not denied to persons with relevant links to that State who would otherwise be stateless. This is of particular relevance in two situations, at birth and upon State succession. As regards the right to acquire a nationality under article 24, paragraph 3, of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that “States are required to adopt every appropriate measure ... to ensure that every child has a nationality when he is born”. In this context, birth on the territory of a State and birth to a national are the most important criteria used to establish the legal bond of nationality. Where there is only a link with the State on whose territory the child was born, this State must grant nationality as the person can rely on no other State to ensure his or her right to acquire a nationality and would otherwise be stateless. Indeed, if nationality is not granted in such circumstances then article 24, paragraph 3, of the International Covenant as well as article 7 of the Convention on the Rights of the Child would otherwise be meaningless. In concrete terms, the circumstance referred to above may arise, for example, where a child is born on the territory of a State to stateless parents or with respect to foundlings. Given the consequences to the children concerned, denial of nationality in such instances must be deemed arbitrary.

65. A child may have a link to more than one State, for instance where a child is born on the territory of one State to parents who are nationals of another State. As States adopt diverging rules on the acquisition of nationality, a conflict of laws between the States involved typically will leave the child stateless if the State of birth grants nationality *jus sanguinis* and the State of nationality of the parents grants nationality *jus soli*. The Convention on the Reduction of Statelessness resolves such conflicts by providing in its article 1 that Contracting States must grant nationality to a person born on their territory who would otherwise be stateless, and in article 4 that Contracting States must grant nationality if a person is born to one of their nationals outside of a Contracting State and would otherwise be stateless. Similar rules are also contained in article 20 (2) of the American Convention on Human Rights and article 6 (4) of the African Charter on the Rights and Welfare of the Child.

66. Article 1 of the Draft Articles on Nationality of Natural Persons in relation to the Succession of States sets out that “Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present draft articles.” The Draft Articles establish rules for acquisition of nationality and in particular stipulate a presumption that persons having their habitual residence in the territory affected by succession acquire the nationality of the successor State.

¹² Inter-American Court of Human Rights, 8 September 2005, para. 141.

67. UNHCR recommended that, where national legislation allows for deprivation of nationality, States must include safeguards to ensure that such deprivation not be arbitrary. States should, in particular: (a) establish procedural standards, notably issue reasons in writing and grant the right to a review to a court or an independent body; and (b) establish substantive standards, notably prohibit deprivation of nationality based on discriminatory grounds, in particular on grounds of race, colour, gender, religion, political opinion or national or ethnic origin; and prohibit deprivation of nationality resulting in statelessness on grounds other than those foreseen in the Convention on the Reduction of Statelessness and where such a deprivation is not in conformity with the principle of proportionality, taking in particular into account the consequences of statelessness and the quality of the link between State and individual.

68. Furthermore, UNHCR recommended that States must provide effective remedies for all persons who have been arbitrarily deprived of their nationality, in particular restoration of nationality, and where applicable, provision of identity documents, correction of registries and facilitating proof of identity.

69. UNHCR also recommended that States should take all appropriate measures to prevent arbitrary denial of acquisition of a nationality. States must not deny acquisition of their nationality based on discriminatory grounds, in particular on grounds of race, colour, gender, religion, political opinion or national or ethnic origin. States should grant nationality to all persons born on their territory who would otherwise be stateless.

70. Finally UNHCR urged States, pursuant to resolutions of the General Assembly and Human Rights Council as well as conclusions of the Executive Committee of UNHCR, to accede to the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness which currently have respectively 63 and 35 States parties. States are also urged to accede to relevant universal and regional human rights instruments and, where applicable, to withdraw reservations to provisions on nationality issues.

III. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Refugees International

71. Refugees International submitted a series of its recently produced reports, releases and press articles detailing the situation, inter alia, of stateless Biharis in Bangladesh, of stateless Biduns in United Arab Emirates and Kuwait, of stateless Kurds in the Syrian Arab Republic, of stateless persons in Senegal, of undocumented children in Malaysia, of stateless persons in Kyrgyzstan, and of stateless persons in the Dominican Republic. Refugees International also submitted its report, "Lives on hold: the human cost of statelessness", which highlights protracted cases of statelessness in Bangladesh, Estonia and the United Arab Emirates.
