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Good practices in nationality laws for the prevention and reduction of statelessness

Handbook for Parliamentarians N° 29

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All nationality laws were understood to be current as of the time of the writing of this handbook. As nationality laws may be amended some references are likely to become out of date over time. Official translations were relied upon where those were publicly available. Where they were not, translations were done in-house; any errors are unintentional and should be reported to the IPU or the UNHCR.

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Bosnia and Herzegovina. Support to durable solutions of the Revised Strategy for the Implementation of Annex VII of Dayton Peace Agreement

A Roma woman and her minor child who was at risk of statelessness are showing birth and citizenship certificates, which they obtained with the help provided to them by Vasa Prava BiH, UNHCR's partner organization providing free legal aid in Sarajevo. UNHCR's free legal aid partner non-governmental organization is providing legal assistance to the Roma population, a minority of which is at risk of statelessness in **Bosnia and Herzegovina**, to be registered in birth/citizenship registries. EU-UNHCR co-sponsored IPA 2012 project of supporting socio-economic integration of minority returnees and internally displaced in **Bosnia and Herzegovina**.

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Foreword

Since the first edition of the handbook, *Nationality and statelessness* was published in 2005, the United Nations High Commissioner for Refugees (UNHCR) and the Inter-Parliamentary Union (IPU) have strengthened their partnership in support of efforts to prevent new cases of statelessness and to resolve long-standing statelessness situations. That handbook (the second edition of which was published in 2014) focused largely on the international legal framework for the right to a nationality and for the reduction of statelessness. It also highlighted the role that parliamentarians can play in adopting legislation consistent with that framework and in promoting accession by their States to the two United Nations statelessness conventions. This new handbook goes a step further, in providing examples of model domestic law provisions in a number of thematic areas relevant to the elimination of statelessness.

The impact of statelessness on those it affects cannot be overstated. Statelessness typically leaves people unable to enjoy basic rights that most people take for granted, including the ability to go to school, see a doctor, get a job, open a bank account, vote, get married, and pass on nationality to their children. It can lead to desperation making victims vulnerable to extreme forms of exploitation and abuse. Statelessness affecting particular groups within communities can also impair social and economic development and lead to tensions that result in violent conflict and forced displacement.

In 2015, UNHCR, IPU and the Parliament of South Africa co-hosted a conference, *Everyone's right to a nationality* that brought together parliamentarians from around the world and helped raise awareness of the solutions to statelessness. Since then, both organizations have worked together to ensure that parliamentarians benefit from regular updates on the remarkable progress in addressing statelessness that has been achieved since UNHCR launched its 10-year #IBelong Campaign to End Statelessness by 2024. This includes 20 new accessions to the United Nations statelessness conventions, over a dozen relevant law reforms, and the grant of nationality to hundreds of thousands of formerly stateless persons.

As the mid-point of the #IBelong Campaign approaches in 2019, UNHCR and the IPU remain committed to supporting parliamentarians whose governments wish to rid the world of the blight of statelessness once and for all. We hope that this handbook will provide them with the practical guidance they need to support law reforms that help ensure that no child is born stateless, that men and women have an equal ability to pass nationality to their children, that no one is arbitrarily deprived of nationality, and that stateless persons are identified and their naturalization is facilitated. We look forward to promoting this handbook – together with States, other international organizations, civil society and other stakeholders – as a tool to facilitate efforts that will accelerate the eradication of statelessness by 2024.



Filippo Grandi
United Nations High
Commissioner for Refugees



Martin Chungong
Secretary General
Inter-Parliamentary Union

Introduction

The problem of statelessness is more widely recognized today than it has been in the recent past, thanks largely to the efforts of Governments, international organizations and non-governmental institutions to call attention to the plight of stateless people and the importance of preventing and reducing statelessness. The Inter-Parliamentary Union (IPU) and the United Nations High Commissioner for Refugees (UNHCR), the UN Agency mandated to address statelessness, have long collaborated on this subject, supporting the ability of Parliaments to reform nationality laws in accordance with international standards designed to help prevent statelessness from arising. To this end, the two organizations jointly issued a first edition of a Handbook for Parliamentarians on Nationality and Statelessness in 2005. A second edition of the handbook was published in 2014, the same year that UNHCR launched the #IBelong Campaign to End Statelessness by 2024. Building on these efforts, UNHCR and the IPU are pleased to issue this new publication, a Handbook for parliamentarians, *Good practices in nationality laws for the prevention and reduction of statelessness*. It complements the previous publication, which was focused largely on the international framework for the right to a nationality and the technical causes of statelessness. This new handbook offers practical examples of domestic legal provisions that allow States to accomplish the following:

- Avoid childhood statelessness entirely
- Eliminate gender discrimination from nationality laws
- Establish procedures to identify stateless persons and facilitate their naturalization
- Ensure that any deprivation or loss of nationality does not leave individuals stateless

This handbook also identifies and promotes certain good practices in nationality laws that all States are encouraged to consider.

Fortunately, as of 2018, the trend towards reforming laws to bring them in line with the two UN Statelessness Conventions and with the various human rights treaties is generally positive. For example, the number of States that do not allow mothers to confer nationality on their children on an equal basis as fathers has fallen significantly over the years, thereby diminishing a major cause of statelessness globally. Still, as of the date of publication of this handbook, 25 States maintain such gender discriminatory laws. Moreover, while many States now have provisions for conferring nationality on children born or found within their territories who would otherwise be stateless, many others lack such safeguards, or have them only partially or conditionally in place. As a result, childhood statelessness persists in many parts of the world. And as the children grow into adulthood they risk passing on their statelessness to their own children. It is also notable that in at least one area, deprivation of nationality, there are emerging laws and practices in certain countries that actually increase the risk of statelessness.

Fortunately, the relationships that exist between marginalization, poverty, conflict and fragility are better understood today, as reflected by the Sustainable Development Agenda, in which States have resolved to “leave no one behind”. No one is left farther behind today than stateless persons, who are often left unable to attend school, to work legally, to open a bank account, or to see a doctor. Their exclusion also affects the prosperity and stability of their communities and societies. Indeed, recent events have unfortunately served to demonstrate all too clearly that statelessness remains a potential cause of social upheaval, conflict and displacement, as well as a grave human rights problem for the individuals concerned. And yet the solutions to statelessness are technically simple ones, as this publication helps to illustrate. The #IBelong Campaign to End Statelessness is now approaching its mid-way point, and more needs to be done by all States to put an end to this blight, once and for all. UNHCR and the IPU hope that the technical guidance provided in this new handbook will help motivate States to undertake the nationality law reforms still needed.

Safeguards against childhood statelessness

Introduction

Any child born stateless is severely impaired in his or her ability to pursue a productive and fulfilling life. Yet, childhood statelessness is entirely preventable and remediable. UNHCR has therefore included the elimination of statelessness at birth as one of the key actions in its Global Action Plan to End Statelessness: 2014-2024 (“Global Action Plan”).¹

By building appropriate safeguards against statelessness at birth into their nationality laws, States can prevent the perpetuation of statelessness from one generation to the next and avoid situations where parents have a nationality but cannot confer it on their children. Appropriate safeguards also ensure that children who have been abandoned or orphaned and whose parents are unknown (“foundlings”) are not left stateless.

Provisions in the 1961 Convention on the Reduction of Statelessness

The most detailed set of international standards relevant to childhood statelessness can be found in the 1961 Convention on the Reduction of Statelessness (1961 Convention).² This instrument sets out three principal obligations for contracting parties that, if universally implemented, would effectively eradicate statelessness within a generation:³

- First, under Article 1 of the 1961 Convention, to grant nationality to all children born on their territory who would otherwise be stateless, either automatically or upon application, subject to certain permissible conditions, as enumerated in Article 1(1)(b).
- Second, under Article 1(4) and Article 4, to confer nationality on the children born abroad to one of their nationals when those children would otherwise be stateless.
- Third, under Article 2, to grant nationality to children found abandoned on their territory.

1 For an introduction to the #IBelong Campaign and Global Action Plan, visit the #IBelong website at: www.unhcr.org/ibelong-campaign-to-end-statelessness.html. For a detailed explanation of Action 2 of the Global Action Plan to ensure that no child is born stateless, see UNHCR (20 March 2017). *Good practices paper – Action 2: Ensuring that no child is born stateless*, available at: www.refworld.org/docid/58cfab014.html

2 For guidance on these principles, please see UNHCR. *Guidelines on statelessness No. 4: Ensuring every child's right to acquire a nationality through Articles 1 – 4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: www.refworld.org/docid/50d460c72.html

3 Since the launch of the Global Action Plan in 2014, the number of States Parties to the 1961 Convention has grown from 61 to 71. The UNHCR continues to work to encourage and help States accede to the Convention, in accordance with Action 9 of its Global Action Plan.

Complementary provisions in human rights treaties

A number of widely ratified human rights instruments contain complementary provisions and principles related to the protection of children against statelessness. The International Covenant on Civil and Political Rights (ICCPR), with 170 States Parties, establishes that “[e]very child has the right to acquire a nationality” (Article 24(3)).

In addition, the United Nations Convention on the Rights of the Child (CRC), ratified by 194 countries, provides that every child “shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents” (Article 7(1)). The implementation of this right applies “in particular where the child would otherwise be stateless” (Article 7(2)). Importantly, Article 3 of the CRC, applied in conjunction with Articles 7 and 8, requires that all actions concerning children, including in the area of nationality, be undertaken with the *best interests of the child* as a primary consideration.⁴

The *European convention on nationality* (ECN), applicable to its European States Parties, also echoes the 1961 Convention in providing for the *ex lege* acquisition of nationality by foundlings and other children born on the territory who would otherwise be stateless.⁵ Both the *American convention on human rights and the African Charter on the rights and welfare of the child* also provide for the right to a nationality. Each of these instruments places an obligation on the State of the child’s birth similar to the one found in the 1961 Convention towards children who do not acquire another nationality at birth.⁶

Although not mentioned explicitly in the 1961 Convention, birth registration often serves as a key means of proving a child’s eligibility for a certain nationality or nationalities. Documentation issued upon registration of birth contains at a minimum the child’s name, date and place of birth, and the parents’ names. This information thus generally provides proof of a child’s entitlement to nationality, either based on descent or place of birth. As such, the establishment of proper regulations and procedures for birth registration can be considered a crucial component of safeguards against childhood statelessness.

Moreover, birth registration is an obligation under a range of international human rights treaties, including the ICCPR, Article 24(2), and the CRC, Article 7(1). Both instruments require States to ensure registration immediately after birth and without discrimination of any kind, irrespective of the child’s legal status or that of the parents.⁷ The right to be registered at birth is also affirmed in the UN Convention on Migrant Workers’ Rights (Article 29), the UN Convention on the Rights of Persons with Disabilities (Article 18(2)), and a number of regional human rights instruments.⁸ For more comprehensive commentary on the importance of birth registration and examples of good practice in

4 Article 3(1) of the CRC reads: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

5 Article 6(1)(b), (2)(a) and (2)(b).

6 *American convention on human rights*, Article 20(2); *African charter on the rights and welfare of the child*, Article 6(4). In 2014, the African Committee of Experts on the Rights and Welfare of the Child adopted a *General comment on Article 6 of the African charter on the rights and welfare of the child*, ACERWC/GC/02, 2014, available at: www.refworld.org/docid/54db21734.html.

7 See UN Human Rights Committee, *General Comment 17 on Article 24 (Rights of the Child)*, 7 April 1989, paras 7 – 8, at: www.refworld.org/docid/45139b464.html.

8 See, e.g. *African charter on the rights and welfare of the child*, Article 6(2); *Covenant on the right of the child in Islam*, Article 7(1).

this area, please refer to the UNHCR *Good practices paper – Action 7: Ensuring birth registration for the prevention of statelessness*, November 2017.⁹

Sample laws and good practices

This section features examples of laws that contain one or more of the three safeguards outlined above. The adoption of provisions covering all three of these safeguards by all States would significantly assist in eliminating childhood statelessness around the world.¹⁰

1. Providing nationality to children born in the territory who would otherwise be stateless

The 1961 Convention compels Contracting States to grant nationality to children born in their territory who would otherwise be stateless. The Convention does not mandate a single way for States to confer nationality on such children but gives them a choice: either automatically or upon application. In the latter case, however, the 1961 Convention does establish outer limits on the conditions that States may place on a child's eligibility to apply for nationality. The list of permissible conditions, as contained in Article 1(2), are as follows:

- A requirement that the application be lodged during a period “beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years” (Article 1(2)(a)).
- A requirement of habitual residence in the Contracting State for a fixed period, “not exceeding five years immediately preceding an application nor ten years in all” (Article 1(2)(b)).
- Restrictions based on criminal history (Article 1(2)(c)).
- The condition that the person concerned has always been stateless (Article 1(2)(d)).

The 1961 Convention does not permit the imposition of any other conditions. A Contracting State may not, for instance, limit the grant of its nationality to children whose parents are legal residents of the State. A child's right to acquire a Contracting State's nationality is to be ensured independently of the parents' legal status.

Although not required by the 1961 Convention, laws that grant nationality automatically at birth are considered best practice.¹¹ They conform with the principle of the “best interests of the child,” as set forth in Articles 3 and 7 of the CRC, and the principle of avoiding statelessness, a principle that some now regard as having

⁹ See UNHCR, *Good practices paper – Action 7: Ensuring birth registration for the prevention of statelessness*, November 2017, available at: www.refworld.org/docid/5a0ac8f94.html.

¹⁰ See UNHCR, *Good practices paper – Action 2, supra*.

¹¹ See UNHCR, *Guidelines on statelessness No. 4: Ensuring every child's right to acquire a nationality through Articles 1 – 4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: www.refworld.org/docid/50d460c72.html

attained the status of customary international law.¹² If a State chooses to grant its nationality upon application, the imposition of any conditions permitted under Article 1(2) of the 1961 Convention must not have the effect of leaving the child stateless for a considerable period of time.¹³

An example of an automatic safeguard for otherwise stateless children can be found in **Guinea-Bissau**, whose Nationality Law (amended in 2010) provides: “*É cidadão guineense de origem... O individuo nascido no território nacional quando não possua outra nacionalidade*” (unofficial translation: “A Guinean citizen is... anyone who is born in the territory and who does not possess other nationality”).¹⁴ Similarly, **Bulgaria**’s Citizenship Law, amended in February 2013, states that a “Bulgarian citizen by place of birth is every person born within the territory of the Republic of Bulgaria who has not acquired another citizenship by origin.”¹⁵

These provisions appropriately cover all children born in the territory “who would otherwise be stateless,” without limiting their application to the children of stateless parents or parents who are legally resident in the territory of the State. They also avoid the pitfall of applying only to children without legal right or entitlement to another nationality, since international law defines a stateless person as someone who is not considered a national by any State *under the operation of its law*,¹⁶ an assessment to be made in the present, not as a predictive or historical exercise.¹⁷

Contracting States may opt for an application procedure rather than automatically granting nationality to children born on their territory who would otherwise be stateless. Such States should provide detailed information to the parents concerned about the possibility of acquiring the nationality, how to apply and what conditions must be fulfilled.¹⁸

2. Granting nationality to children born to nationals abroad when the children would otherwise be stateless

The 1961 Convention establishes an obligation for Contracting States to extend nationality to children born to one of their nationals abroad when those children would otherwise be stateless. Most States provide for the transfer of nationality by descent (*jus sanguinis* principle). However, such transfer sometimes comes with certain conditions – often restrictive – that can impair the ability of children born abroad to inherit their parents’ nationality.

The nationality law in **Brazil** is an example of positive reform in this regard. In 1994, the Brazilian parliament passed an amendment to the Constitution providing that the

12 The *Explanatory report to the European convention on nationality* (ECN), which codifies this principle in Article 4(b), refers to the obligation of avoidance of statelessness as a part of customary international law. See ECN, ETS No. 166, 1997, para. 33: <https://rm.coe.int/16800ccde7>.

13 See UNHCR, *Guidelines on statelessness No. 4*, supra, para. 11.

14 Lei da Nacionalidade, Lei No. 6/2010, Article 5.

15 Law for the Bulgarian citizenship (last amended February 2013), Article 10.

16 Article 1 of the 1954 UNHCR Convention on the Status of Stateless Persons.

17 See UNHCR, *Handbook on protection of stateless persons*, 30 June 2014, para. 50, available at: www.refworld.org/docid/53b676aa4.html.

18 See UNHCR, *Guidelines on statelessness No. 4*, supra, paras 53 – 54.

children of Brazilian citizens born abroad could become Brazilian only if they came “to reside in the Federative Republic of Brazil and opt[ed] for the Brazilian nationality.”¹⁹

In 2007, following a sustained campaign by civil society, the media and politicians, the Brazilian parliament replaced this law with a new provision enabling stateless children born abroad to a Brazilian mother or father to acquire Brazilian nationality simply upon registration at a Brazilian consulate.²⁰ A constitutional amendment in 2007 ensured that statelessness would be prevented from arising in the future with a special transitional provision entitling all children already stateless to acquire Brazilian citizenship.²¹

3. Nationality for foundlings

Article 2 of the 1961 Convention requires States Parties to extend nationality to abandoned children whose parents cannot be identified (“foundlings”). This category includes children who lack a legal parental relationship in the relevant state – for instance, because the child is born out of wedlock and not recognized by the father or mother.

The Nationality Law of **Iraq** of March 2006 provides a good example of conformity with Article 2: “A person shall be considered Iraqi if (b) he/ she is born in Iraq to unknown parents. A foundling found in Iraq shall, in the absence of proof to the contrary, be considered to have been born therein.”

In terms of who qualifies as a “foundling,” the Constitution of **Kenya** of 2010 provides that: “A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.”²²

The 1961 Convention does not define an age limit beyond which a child may not be considered a foundling, but States are encouraged to recognize that status up to the age of majority. At a minimum, the safeguard for foundlings should apply to all young children not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth,²³ in line with the principle of the best interests of the child.

Importantly, nationality acquired by foundlings pursuant to Article 2 of the 1961 Convention may only be lost if it is proven that the child concerned possesses another State’s nationality. For instance, according to the Nationality Law of **Egypt**, as amended in 2004, an Egyptian is: “Anyone who is born in Egypt from unknown parents. A foundling in Egypt shall be considered born in it unless otherwise established.”²⁴ Nevertheless, States may establish provisions that allow children

19 Constitutional Amendment No. 3 of 1994.

20 Constitutional Amendment 54/07 on 20 September 2007, Art. 12.

21 Constitutional Amendment 54/07 on 20 September 2007, Art. 12(c). UN High Commissioner for Refugees (UNHCR), *Good practices paper – Action 1: Resolving existing major situations of statelessness*, 23 February 2015, available at: www.refworld.org/docid/54e75a244.html.

22 Constitution of 2010, Art. 14(4).

23 See UNHCR, *Guidelines on statelessness No. 4*, *supra*, para. 57-58.

24 Law No. 154 Amending some provisions of Law No.26 of 1975 Concerning Egyptian nationality, Art. 2(2).

to keep the nationality granted to them when found. A child born or found in the territory of **Bosnia and Herzegovina**, for example, acquires that nationality if “*both parents are unknown or of unknown citizenship or are stateless, or if the child is stateless*”.²⁵

Key sources to consult

- Convention on the Reduction of Statelessness.
- Convention on the Rights of the Child.
- UNHCR, *Good practices paper – Action 1: Resolving existing major situations of statelessness*, 23 February 2015, available at: www.refworld.org/docid/54e75a244.html.
- UNHCR, *Good practices paper – Action 2: Ensuring that no child is born stateless*, 20 March 2017, available at: www.refworld.org/docid/58cfab014.html.
- UNHCR, Guidelines on statelessness No. 4: Ensuring every child’s right to acquire a nationality through Articles 1 – 4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: www.refworld.org/docid/50d460c72.html.

²⁵ *Law on citizenship of Bosnia and Herzegovina*, consolidated *Official Gazette* nos. 4/97, 13/99, 41/02, 6/03, 14/03, 82/05, 43/09, 76/09, 87/131, Art. 7 (unofficial translation).

Gender equality in nationality laws

Introduction

Gender inequality in nationality laws can lead to statelessness among adults and children alike. Such laws are inconsistent with the obligations of States under international law, which provide for equal treatment of women and men.²⁶

States Parties to the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) have an explicit obligation to grant women and men equal rights with respect to both parental and spousal transfer of nationality. Under Article 9(1) of CEDAW, the States Parties are compelled to “grant women equal rights with men to acquire, change or retain their nationality”. In particular, “they shall ensure...that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband”.

Under Article 9(2) of CEDAW, “States Parties shall grant women equal rights with men with respect to the nationality of their children.” *The Committee on the Elimination of Discrimination against Women has specified that* “[n]ationality laws that grant nationality through paternal descent alone infringe article 9(2) and may render children stateless” where the father is stateless, unknown, not married to the mother, unwilling to fulfil administrative steps to confer his nationality or otherwise unable to transmit his nationality to the children.²⁷ In order to minimize the risk of statelessness and comply with the international norm of non-discrimination, States should recognize the right of mothers to transmit their nationality to their children on an equal basis with fathers.

In addition, the United Nations Convention on the Rights of the Child (CRC) requires States Parties to undertake actions in accordance with the *best interests of the child*.²⁸ As regards nationality acquisition, it is in the best interest of children for States to allow both mothers and fathers, regardless of their legal or marital status, to transfer their nationality to their children on an equal basis.

26 The duty of non-discrimination, a *jus cogens* norm, is enshrined in Article 7 of the *Universal Declaration of Human Rights* (UDHR) as well as in Article 26 of the *International covenant on civil and political rights* (ICCPR). Common Article 3 of the ICCPR and the *International covenant on economic, social and cultural rights* (ICESCR) specifically provides for equality between men and women in the enjoyment of all rights.

27 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, para. 61, available at: www.refworld.org/docid/54620fb54.html

28 Article 3(1) of the CRC reads: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Reforms to incorporate gender equality can often be achieved through relatively simple changes to the formulation of nationality laws, and indeed there is a growing willingness and commitment by States to take positive action in this regard. Since the launch of the UNHCR's Global Action Plan, several States have undertaken reforms to abolish gender discrimination in the conferral and transfer of citizenship.²⁹

Sample laws and good practices

This section showcases examples of legal provisions that ensure gender equality in nationality matters.

1. Parental transfer of nationality

Article 9(2) of CEDAW establishes an obligation for Contracting States to abolish gender discriminatory provisions on the transfer of nationality from parents to children. The same obligation is supported by the principle of the best interests of the child, enshrined in Article 3 of the CRC.

Several States have recently reformed their nationality laws in accordance with this international standard. For example, **Madagascar, Senegal, Morocco and Egypt** all previously limited the transfer of nationality from the paternal line, unless the father was stateless, unknown or otherwise unable to establish kinship with the child. Following reforms in these countries, mothers and fathers can transfer their nationality to their children on an equal basis. Senegal's amended law of 2013 states: "Any child born as a direct descendant of a Senegalese is Senegalese."³⁰ In a slightly different formulation, the relevant law in Madagascar, as reformed in 2017 provides: "*Est malagasy, l'enfant né d'un père et/ou d'une mère Malagasy*" (unofficial translation: "The child born of a Malagasy father and/or mother is Malagasy").³¹ Not only do such new provisions abolish gender discrimination, but they also add clarity and simplicity to the law.

In some States, the transition to gender-neutral laws on transfer of nationality to children has gone hand in hand with the elimination of restrictive and often convoluted requirements that children born abroad and/or out of wedlock must fulfil to acquire nationality. **Sierra Leone** is a case in point. According to the previous citizenship law of 1973, Sierra Leonean women could only transmit nationality to their children born abroad if the child had not acquired the citizenship of another State.³² Under the new Citizenship Act of 2017, women and men have equal rights to

29 For an overview of recent changes to several countries' nationality laws, see UNHCR, *Background Note on gender equality, nationality laws and statelessness 2018*, 8 March 2018, available at: www.refworld.org/docid/5aa10fd94.html. For a description of UNHCR's Action 3 to abolish gender discrimination in nationality laws, see UNHCR, *Good practices aper – Action 3: Removing gender discrimination from nationality laws*, 6 March 2015, available at: www.refworld.org/docid/54f8377d4.html.

30 *Loi n° 2013-05 dated 8 July 2013 portant modification de la loi n° 61-10 du 7 mars 1961 déterminant la nationalité*, 8 July 2013, Art. 5, available at: www.refworld.org/docid/51ed5ef14.html.

31 *Loi n°2 016-038 modifiant et complétant certaines dispositions de l'Ordonnance n° 60-064 du 22 juillet 1960 portant Code de la nationalité malagasy*, 25 January 2017 (in force as of 8 May 2017), Art. 9, available at: <http://docplayer.fr/46645663-Loi-n-modifiant-et-complétant-certaines-dispositions-de-l-ordonnance-n-du-22-juillet-1960-portant-code-de-la-nationalite-malagasy.html>.

32 *Sierra Leone Citizenship Act, 1973*, 24 May 1973, available at: www.refworld.org/docid/3ae6b50610.html, as amended by *The Sierra Leone Citizenship (Amendment) Act, 2006*, No. 11 of 2006, 26 October 2006 (Part II, Sections 5 and 6), available at: www.refworld.org/docid/481596b42.html.

transmit nationality to their children born in the country or abroad. It states: “Every person **born outside** Sierra Leone on or after the nineteenth day of April 1971, of a **father or mother** who was or would but for his death have been a citizen of Sierra Leone by virtue of sections 2, 3 and 4, is a citizen of Sierra Leone by birth.”³³

Similarly, in **Kenya**, the amended Citizenship and Immigration Act of 2011, which tracks the 2010 Constitution, stipulates that: “A person **born outside** Kenya shall be a citizen by birth if on the date of birth that person’s **mother or father** was or is a citizen by birth.”³⁴ This provision replaced Section 90 of the previous Constitution, which stated that: “A person born outside Kenya after 11th December, 1963 shall become a citizen of Kenya at the date of his birth if at that date his father is a citizen of Kenya.”³⁵

In **Denmark**, the process of reform led to equality with regard to a father’s ability to transmit his nationality to children born out of wedlock and abroad. As of July 2014, all children of a Danish parent (father or mother) now acquire Danish citizenship automatically at birth.³⁶ Similarly, the relevant provision adopted in **Madagascar**, in 2017,³⁷ replaced a provision of the 1960 Madagascan Nationality Code,³⁸ whereby children born out of wedlock to a foreign mother and a Madagascan father were denied automatic birthright citizenship.³⁹

2. Spousal transfer of nationality

Article 5 of the 1961 Convention prohibits loss of nationality resulting from a change of personal status unless the person concerned possesses or acquires another nationality. For the purposes of Article 5, changes of personal status include events such as marriage and termination of marriage. Article 5(1) is supplemented by Article 9(1) of CEDAW.⁴⁰ According to the Committee on the Elimination of Discrimination against Women, Article 9(1) of CEDAW requires Contracting States to refrain from enacting provisions that place women at risk of statelessness after marriage. It is not uncommon for States to have laws that tie a woman’s nationality to that of her husband. In some States, a woman automatically loses her nationality upon marriage to a foreign national, the presumption being that she will immediately assume her husband’s citizenship. Women in countries where no safeguards in line with Article 5 of the 1961 Convention are in place are at risk of statelessness, because most countries do not grant automatic citizenship to the spouses of nationals.⁴¹

33 *Sierra Leone Citizenship Amendment Bill 2017*, available at: <http://citizenshiprightsafrica.org/wp-content/uploads/2017/06/Sierra-Leone-Citizenship-Amendment-Bill-2017.pdf>

34 *The Constitution of Kenya*, 27 August 2010, available at: www.refworld.org/docid/4c8508822.html

35 *The Constitution of Kenya (Revised edition (2001)(1998))*, 2001, available at: www.refworld.org/docid/47162cfc2.html

36 Automatisk erhvervelse af dansk statsborgerskab, available at: <http://uim.dk/arbejdsomrader/statsborgerskab/danske-statsborgere-1/automatisk-erhvervelse-af-dansk-statsborgerskab>

37 *Loi n° 2016-038*, Art. 9, *supra*.

38 *Ordonnance n° 60 - 064 du 22 juillet 1960 portant Code de la nationalité malgache* (J.O. n° 111 du 23.07.60 p. 1305), modifiée par la loi n° 61-052 du 13 décembre 1961 (J.O. n° 201 du 23.12.61, p. 2260), la loi n° 62-005 du 6 juin 1962 J.O. n° 228 du 16.06.62, p. 1075), l’ordonnance n° 73-049 du 27 août 1973 (J.O. n° 934 E.S. du 27.08.73, p. 2713) et par la loi n° 95-021 du 18 septembre 1995 (J.O. n° 2341 du 01.01.96, p. 3, 13). [Madagascar], 1 January 1996, Art. 10, available at: www.refworld.org/docid/4f5473682.html.

39 UNHCR *Background note on gender equality, nationality laws and statelessness 2014*, *supra*.

40 UNHCR, *Expert Meeting – Interpreting the 1961 Statelessness Convention and avoiding statelessness resulting from loss and deprivation of nationality (Tunis conclusions)*, March 2014, paras 33 – 34, available at: www.refworld.org/docid/533a754b4.html.

41 CEDAW, *General Recommendation No. 32*, *supra*, para. 54.

Laws that render a woman's citizenship dependent on that of her husband place her at risk of statelessness in additional ways. For example, when her husband loses his citizenship, changes his nationality or becomes stateless – or when the marriage ends in divorce or separation – the woman may also lose her nationality, absent appropriate safeguards.⁴²

Model nationality laws that reflect the international norm of non-discrimination and help to avert statelessness share the following features:

1. Their provisions apply equally to women and men without discrimination of any kind; they allow women to transfer their nationality to their spouses, for instance, on an equal basis as men.⁴³
2. They allow each spouse to choose whether any change in personal status impacts his or her nationality, as opposed to automatic loss of nationality as a result of a change in marital status, for instance.⁴⁴
3. They make any loss of nationality resulting from changes in personal status conditional upon possession or acquisition of another nationality.
4. They establish naturalization requirements that are equally accessible to women and men.⁴⁵

The post-2005 reforms to the nationality law in **Algeria** provide an example of positive reform. In response to a sustained campaign led by women, the country's president issued a decree, later confirmed by parliament, allowing women to transfer Algerian citizenship to their foreign spouses. The new gender-neutral provision of the Algerian Nationality Code reads: "*La nationalité algérienne peut s'acquérir par le mariage avec un algérien ou avec une algérienne, par décret dans les conditions suivantes...*" (unofficial translation: "Algerian nationality can be acquired by decree through marriage to an Algerian man or woman, under the following conditions...").⁴⁶

Another movement towards gender equality in nationality laws occurred in **Senegal**. In June 2013, the Senegalese Parliament amended previously discriminatory legislation to establish the right of Senegalese women, on the same basis as men, to transfer their nationality to their foreign spouses. Article 7 of the Nationality Code now provides: "*L'étranger qui épouse une sénégalaise ou l'étrangère qui épouse un sénégalais acquiert, à sa demande, la nationalité sénégalaise après cinq ans de vie commune à compter de la célébration ou de la constatation du mariage...*" (unofficial translation: "The foreigner who marries a Senegalese woman or man acquires, upon application, the Senegalese nationality after five years of conjugal life counting from the day of celebration or recognition of the marriage...").⁴⁷

42 Ibid., para. 60.

43 Ibid., para. 54, 62.

44 Ibid., para. 63.

45 Ibid., para. 62.

46 *Algérie: Ordonnance n° 70-86 du 15 décembre 1970 portant code de la nationalité algérienne modifiée et complétée* par Ordonnance n° 05-01 du 27 février 2005, Art. 9, available at: https://droit.mjustice.dz/code_nation_alger.pdf.

47 *Loi 2013-05 dated 8 July 2013 portant modification de la loi n° 61-10 du 7 mars 1961 déterminant la nationalité*, 8 July 2013, available at: www.refworld.org/docid/51ed5ef14.html.

In **Kenya**, a similar amendment process brought the country's nationality law into line with international standards. Under the 1969 Constitution, only Kenyan men could pass their nationality on to non-national spouses. The 2010 Constitution has since established equal naturalization requirements for the wives and husbands of Kenyan nationals. Under the new law: "A person who has been married to a citizen for a period of at least seven years is entitled on application to be registered as a citizen."⁴⁸

The movement towards gender-neutral provisions in nationality laws is a positive development, and all States are encouraged to reform their legislation in line with CEDAW Articles 9(1) and 9(2). However, gender equality does not ensure a full safeguard against statelessness at marriage. Indeed, States are encouraged to establish naturalization processes applicable to both sexes that are minimally burdensome following marriage. In particular, provisions that protect naturalized spouses against loss of citizenship upon later changes in marital status provide better protection against statelessness.

Key sources to consult

- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Article 9.
- Convention on the Reduction of Statelessness.
- UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, para. 61, available at: www.refworld.org/docid/54620fb54.html
- UNHCR, *Good practices paper – Action 3: Removing gender discrimination from nationality laws*, 6 March 2015, available at: www.refworld.org/docid/54f8377d4.html.
- UNHCR, *Background Note on gender equality, nationality laws and statelessness 2018*, 8 March 2018, available at: www.refworld.org/docid/5aa10fd94.html.

48 The Constitution of Kenya, 27 August 2010, Art. 15(1), available at: www.refworld.org/docid/4c8508822.html.

Statelessness determination procedures and facilitated naturalization

Introduction

Establishing statelessness determination procedures

The 1954 Convention relating to the Status of Stateless Persons (1954 Convention) requires the States Parties to ensure a certain standard of treatment for stateless persons within their jurisdictions. For example, Article 16 establishes the right of stateless persons to “free access to the Courts of Law on the territory of all Contracting States”, and Article 25 guarantees stateless persons access to administrative assistance in acquiring “such documents or certifications as would normally be delivered to aliens by or through their national authorities”.

To fulfil these obligations, States need to be able to identify stateless persons. Many States have accordingly established statelessness determination procedures (SDPs) to identify individuals who meet the definition of a stateless person set forth in Article 1(1) of the 1954 Convention,⁴⁹ and to extend to them appropriate rights and protection. Establishing such procedures is the most effective and reliable means for State Parties to ensure compliance with the Convention in this regard.

The UNHCR *Handbook on protection of stateless persons* provides detailed guidance to States on how to develop SDPs, drawing from good practices observed in existing SDPs as well as analogous procedures for determining refugee status.⁵⁰ While there is significant leeway for States to adapt them to existing national institutions and legal traditions, fair and effective SDPs embody certain key features.

First, SDPs need to be accessible to concerned populations. Allowing for differences in administrative systems and structures, some degree of decentralization in the operation of SDPs is necessary to ensure that authorities with the mandate to identify stateless individuals are present throughout the territory, including in remote areas. Along the same lines, information on how to apply for statelessness determination should be disseminated widely, and counselling services should, if possible, be provided to applicants in a language they understand. Furthermore, any practical and legal barriers to accessing the procedure should be eliminated or minimized. For example, strict application deadlines and legal status requirements, such as proof of lawful residence, should be avoided. **France** and **Mexico** are among a number of States that have established SDPs that do not impose any conditions on access to these kinds of procedures.⁵¹

49 The definition of stateless person established in Article 1(1), as “a person who is not considered as a national by any State under the operation of its law”, is recognized as a rule of customary international law.

50 See UNHCR *Handbook on the protection of stateless persons*, supra; and UNHCR, *Good practices paper – Action 6: Establishing statelessness determination procedures to protect stateless persons*, 11 July 2016, available at: www.refworld.org/docid/57836cff4.html.

51 France’s procedure can be found in Article L812 of the *Code de l’entrée et du séjour des étrangers et du droit d’asile* available at: www.legifrance.gouv.fr/affichCode.do?jessionid=DBAF2D87A75F0E4BFA43FA49C6DF68D9.tpdila07v_1?idSectionTA=LEGISCTA000030950753&cid-Texte=LEGITEXT000006070158&dateTexte=20160323. In Mexico a formal SDP was established pursuant to the Migration Law (2011) and its Regulations (2012) available at: www.refworld.org/docid/57836cff4.html, p. 13.

Second, The UNHCR handbook recommends that the bulk of the burden in proving lack of nationality not be placed on the applicant, but that the burden be shared. State examiners should adopt a collaborative, non-adversarial approach in investigating a person's foreign citizenship.⁵² States must refrain under all circumstances from making such enquiries with foreign authorities if the individual alleges a well-founded fear of persecution by the State concerned. In general, the standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence.⁵³

Third, SDPs should incorporate fundamental due process guarantees, including access to an individual interview with legal assistance and the aid of an interpreter, the right to a timely decision in writing with an explanation of the grounds on which it was made, and the right to appeal a first-instance rejection of an application without the threat of expulsion.

In addition, the procedure should accommodate particular vulnerabilities and conditions, including special safeguards for children, women and disabled persons as well as priority processing, provision of appropriately trained legal aid, and assumption by the State of a greater share of the burden of proof.⁵⁴

Facilitated naturalization

Under the 1954 Convention, one of the obligations of the States Parties is to “facilitate the assimilation and naturalisation of stateless persons” (Article 32). After recognizing an individual or group of individuals as stateless, Contracting States have a duty to lower the barriers to their becoming citizens – in particular, by making “every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.”⁵⁵

Echoing this provision, the *European convention on nationality* (ECN) provides that “[e]ach State Party shall facilitate in its internal law the acquisition of its nationality for... stateless persons and recognised refugees lawfully and habitually resident on its territory” (Article 6(4)). Similarly, Action 6 of the Global Action Plan to End Statelessness calls on States to grant protection status to stateless migrants (through the establishment of SDPs) *and to facilitate their naturalization*.⁵⁶

52 See UNHCR, *Handbook on the protection of stateless persons*, *supra*, paras 89 – 90.

53 *Ibid.*, paras 91 – 93.

54 *Ibid.*, para. 119.

55 1954 Convention, Art. 32.

56 For a detailed explanation of Action 6 and examples of State practice, see UN High Commissioner for Refugees (UNHCR), *Good practices paper – Action 6: Establishing statelessness determination procedures to protect stateless persons*, 11 July 2016, available at: www.refworld.org/docid/57836cff4.html.

Sample laws and good practices

Facilitated naturalization entails the elimination or minimization of legal and practical hurdles to accessing citizenship. Each State has a right to impose conditions for naturalization in accordance with national law, provided the conditions comply with customary international legal standards (e.g. non-discrimination). The 1954 Convention encourages States to reduce or eliminate such conditions for recognized stateless persons.

For example, where a State normally requires applicants for naturalization to have lived on the territory for a certain period of time, to provide proof of lawful residence or to show mastery of the national language, a best practice in line with the 1954 Convention is to include separate, relaxed standards for recognized stateless individuals and their kin.

A number of States have already incorporated such provisions into their nationality codes. The following are a few notable examples.

1. Laws that reduce residency requirements for stateless persons

Greece is one of the growing number of States that have reduced the period of residency required for stateless persons to be eligible for naturalization. Article 5 of the reformed nationality code (Law 3838/2010) stipulates that “a foreign national who wishes to become a Greek citizen by naturalization should... have lawfully resided in Greece for seven continuous years before the submission of the application for naturalisation”⁵⁷, but also provides, in section (1)(d), that recognized refugees and stateless persons need only have lawfully resided in Greece for a period of three consecutive years.

Brazil has moved its nationality law in the same direction, halving the normal residency requirement⁵⁸ (from four years to two) in the case of stateless persons.⁵⁹

Brazilian law does not require legal residence, which would impose a burden on stateless individuals, many of whom lack legal status or documentation.

2. Laws that waive proof of language mastery and livelihood

Some States, to help integrate naturalized populations and assure them a certain standard of living, require applicants for citizenship to demonstrate mastery of the national language and/or culture as well as proof of means of sustenance. In the case of stateless persons, however, some States have waived such requirements, and appropriately so.

57 See Article 5 of Law 3838/2010, available at: <http://eudo-citizenship.eu/admin/?p=file&app=currentCitizenshipLaws&f=GRE%20Citizenship%20Code%20%28as%20of%202010%2C%20English%29.pdf>.

58 See Article 65 of Law No. 13,445, available at: www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13445.htm.

59 See Decree No. 9199 of November 20, 2017, Art. 99, available at: <https://presrepublica.jusbrasil.com.br/legislacao/522434860/decreto-9199-17>.

In **Bosnia and Herzegovina** (BiH), for instance, stateless persons are exempted from a number of conditions for naturalization, including language proficiency and proof of livelihood. Article 11(a)(1) of the country's nationality law reads as follows: "A stateless person and a recognized refugee may acquire BiH citizenship, **without fulfilling requirements stipulated by Article 9 paragraph (1) subparagraphs 2., 3., 6., 9. and 10.,** only if he/she has continually resided in BiH, as a stateless person or a recognized refugee, for a period of five years preceding the application" (emphasis added).⁶⁰ The relevant articles relate to applicants' knowledge of language and "permanent source of income in an amount that allows his/her existence or that he/she is able to provide a reliable proof of funds available for his/her support."⁶¹

3. Laws that lower other documentation requirements for stateless persons

In recognition of the absence of documentation often associated with statelessness, some States have adjusted their documentation requirements for stateless persons. **Bosnia and Herzegovina** provides an example here as well. In 2014, the country's government adopted a by-law for facilitated naturalization that exempted stateless persons from the need to obtain documents from other countries proving lack of criminal history.⁶² Similarly, **Greece** exempts stateless persons from the need to present a birth certificate (as required of other applicants), allowing them to submit "any other official certificate."⁶³

4. Laws that waive or reduce application fees for stateless persons

Along the same lines, a number of States have eliminated or reduced fees and other administrative costs related to applications for the naturalization of stateless persons. The relevant legislation in Kosovo (S/RES/1244 (1999)), as reformed in 2013, echoes the 1954 Convention in calling for competent authorities to "make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings" (Article 14).

Some States do not eliminate fees for stateless persons but sharply reduce them. The application fee in **Greece**, for instance, is 700 euros for regular first-time applicants but only 100 euros for recognized stateless persons and refugees.

5. Facilitated naturalization of children and other kin of stateless persons

Although not required by the 1954 Convention, some States facilitate the naturalization of the children and other family members of stateless persons, in recognition of the importance of family unity and the need to reinforce safeguards against child statelessness. For instance, Kosovo's (S/RES/1244 (1999)) law stipulates that family members of stateless persons are entitled to acquire citizenship (Article 15(2)).

60 *Law on citizenship of Bosnia and Herzegovina*, Art. 11, available at: www.ecoi.net/en/file/local/1155041/1226_1471601612_bih-law-citizenship-1997-am2013-en.pdf.

61 *Ibid.*, Art. 9.

62 *Bosnia and Herzegovina: Bylaw of 2014 on specified evidence of eligibility for acquisition of the citizenship of Bosnia and Herzegovina through naturalization or facilitated naturalization*, 29 January 2014, Art. 7, available at: www.refworld.org/docid/531721a14.html.

63 See Art. 6(3)(d) of Law 3838/2010, *supra*.

In **Bosnia and Herzegovina**, minor children of stateless persons with temporary residence are not only entitled to BiH nationality but are granted even more favourable exemptions for naturalization.⁶⁴

Some States take a *discretionary* approach to facilitating the naturalization of stateless persons. These States invest a government official, normally a Minister, with ultimate discretion to grant or deny an application for naturalization even when all formal conditions have been met. UNHCR recommends a non-discretionary approach as a best practice to facilitate the naturalization of stateless persons.

Key sources to consult

- Convention Relating to the Status of Stateless Persons.
- UNHCR, *Handbook on protection of stateless persons*, 30 June 2014, available at: www.refworld.org/docid/53b676aa4.html.
- UNHCR, *Good practices paper – Action 6: Establishing statelessness determination procedures to protect stateless persons*, 11 July 2016, available at: www.refworld.org/docid/57836cff4.html.

⁶⁴ *Law on citizenship of Bosnia and Herzegovina*, Art. 11, available at: www.ecoi.net/en/file/local/1155041/1226_1471601612_bih-law-citizenship-1997-am2013-en.pdf.

Loss of nationality

Introduction

Loss of nationality can result from a person's active renunciation or from the automatic operation of law ("*ex lege*"). It is to be distinguished from deprivation of nationality, which occurs when government authorities take the initiative to revoke nationality.⁶⁵ The 1961 Convention prohibits loss of nationality when it would cause statelessness, with two exceptions:

- In the case of a naturalised person who resides abroad for not less than seven consecutive years, if the person fails to declare to the appropriate authority an intention to retain the nationality (Article 7(4)).
- In the case of nationals born abroad, if they do not take residence in the territory of the State before the expiration of one year after attaining the age of majority or do not register before the expiration of that period (Article 7(5)).

With regard to Article 7(5), the United Nations Conference on the Elimination or Reduction of Future Statelessness, in Resolution III of its Final Act, recommended that States which condition the retention of nationality by their nationals abroad on a declaration or registration should take "all possible steps to ensure that such persons are informed in time of the formalities and time limits to be observed if they are to retain their nationality".⁶⁶

Apart from the exceptions above, the 1961 Convention requires that all other laws and regulations providing for *ex lege* loss of citizenship must include a safeguard against statelessness. Under Article 5(1), laws stipulating loss of nationality "as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption... shall be conditional upon possession or acquisition of another nationality". Similarly, under Article 6, loss of nationality "by a person's spouse or children as a consequence of that person losing or being deprived of that nationality... shall be conditional upon their possession or acquisition of another nationality".

The 1961 Convention also prohibits renunciation of nationality "unless the person concerned possesses or acquires another nationality" (Article 7(1)(a)). This provision is meant to safeguard against statelessness, not to encroach upon the right to freedom of movement or the right to seek asylum from persecution as enshrined in the Universal Declaration of Human Rights.⁶⁷

65 The *European convention on nationality* makes this distinction explicit, separating provisions on "*ex lege* loss of nationality", Article 7, from provisions on "loss of nationality at the initiative of the authorities", Art. 8. See also UNHCR *Tunis Conclusions*, *supra*, para. 9.

66 Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness held at Geneva from 24 March to 18 April 1959, and Resolutions I, II, III and IV of the Conference, concluded at New York on 30 August 1961. Available at: www.refworld.org/pdfid/3ae6b39620.pdf.

67 Article 7(1)(b) states: "The provisions of sub-paragraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in Articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations."

States parties to the ECN have substantive and procedural obligations beyond those established by the 1961 Convention. Notably, Article 7(3) of the ECN forbids provisions for the loss of nationality if persons concerned would thereby become stateless, even where there is no “genuine link between the State Party and a national habitually residing abroad”⁶⁸

Additionally, Chapter IV of the ECN sets forth a number of procedural safeguards and requirements that apply to all matters relating to nationality: applications must be processed in a timely manner (Article 10); decisions must be issued with accompanying reasons in writing (Article 11); there must be access to judicial or administrative review (Article 12); and fees must be reasonable and not an obstacle for applicants seeking review (Article 13).

Sample laws and good practices

From the point of view of avoiding statelessness, a general good practice for States is simply to avoid establishing or applying grounds for loss of nationality *ex lege*. A number of States do not provide for loss of citizenship at all, minimizing the risk of statelessness resulting from mere unawareness about the requirements applicable – to register with national authorities while residing abroad, for example.

Other States retain provisions on *ex lege* loss of nationality but still provide a full safeguard against statelessness. The Nationality Act of **Finland**, for example, provides for loss of Finnish nationality by dual nationals who at age 22 lack a sufficient connection with the country. Persons are deemed to retain a sufficient connection if they give “notice in writing to a Finnish diplomatic mission, or a consulate headed by a career consul or the Register Office, of his or her wish to retain Finnish citizenship.”⁶⁹ Importantly, the law compels national authorities to maintain a “population information system” with the addresses of all Finnish citizens reaching the age of 18 years “so that they can be reached” and “given instructions on how to retain citizenship when reaching the age of 22 years”. In addition, “[i]f a person has lost Finnish citizenship when reaching the age of 22 years because he or she has not had a sufficient connection with Finland, the Register Office will make an entry to that effect in the population information system and so notify the party of this if his or her address is available.”⁷⁰ Such a regulation follows the object and purpose of the 1961 Convention and conforms to the Final Act on the Elimination or Reduction of Future Statelessness.⁷¹

68 ECN, Art. 7(1)(e).

69 Nationality Act (359/2003), 359/2003, 1 June 2003, Section 34, available at: www.refworld.org/docid/3ae6b51614.html.

70 Ibid., Section 37 – 38.

71 Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness, Resolution III, *supra*.

The law of Finland also accords with the 1961 Convention in requiring that renunciation of nationality not result in statelessness. Section 35 of the country's Nationality Act provides that:

“A Finnish citizen who also holds the citizenship of a foreign State or who wishes to become a citizen of a foreign State may be released from Finnish citizenship on application... If the applicant is not yet a citizen of a foreign State when the decision is made on the application, he or she may be released from Finnish citizenship only by a decision whose entry into force requires that the applicant produces a report on the acquisition of citizenship of a foreign State within the time limit mentioned in the decision. After the report on the acquisition of citizenship of a foreign State has been produced, a certificate will be issued of the requirement being met”.⁷²

Finland quite appropriately protects applicants against statelessness by requiring them to produce proof of having acquired another citizenship. Laws that allow renunciation or loss of nationality by persons “deemed to have a claim to” another nationality, or when “State authorities are satisfied that” such a person can acquire another nationality, do not go far enough in safeguarding against statelessness. Based on the standard set by the 1961 Convention, persons should be released from their current nationality only upon secure possession of another. The 2013 Law on Citizenship of **Turkmenistan** may be considered another useful model, with its clear and consistent provisions for the avoidance of statelessness. Its Article 5 establishes “the prevention and reduction of statelessness” as one of the “basic principles of Turkmenistan citizenship”⁷³ Article 7, entitled “Citizenship of Turkmenistan at contraction or dissolution of a marriage,” then provides for independent citizenship rights for spouses and children, without regard to changes of marital status. Furthermore, Article 16 provides that an “application from a citizen of Turkmenistan for the renunciation of Turkmen citizenship shall not be processed if he or she... becomes thereby stateless”

In accordance with international principles on the rights of the child, Chapter IV of Turkmenistan’s citizenship law sets out special safeguards for children. Article 18(2) in that chapter states that: “If the parents ([or] the only parent) of the child renounce Turkmen citizenship or lose Turkmen citizenship, the child shall also renounce Turkmen citizenship if he or she does not become thereby stateless.” Article 19(2) provides that “If one of the parents of Turkmenistan acquires Turkmen citizenship and the other parent continues to be stateless, the child shall become a citizen of Turkmenistan regardless of the place of his or her residence” No emphasis evident. Finally, Article 23 requires that any change in a child’s citizenship – flowing from a change in the parents’ citizenship or from an adoption – be made pursuant to the explicit and voluntary consent of the child.

⁷² Ibid.

⁷³ Turkmenistan: Law of 2013 on Citizenship, 22 June 2013, available at: www.refworld.org/docid/527235634.html.

Key sources to consult

- Convention on the Reduction of Statelessness.
- European Convention on Nationality.

Deprivation of nationality

Introduction

The most elaborate set of international standards concerning deprivation of nationality is contained in the 1961 Convention. Article 8(1) sets out the basic rule that a Contracting State shall not deprive a person of his or her nationality if such deprivation would render him or her stateless. Paragraphs 2 and 3 then enumerate an exhaustive set of grounds on which States may deprive a person of nationality. These are:

- When nationality was obtained by misrepresentation or fraud (Article 8(2)(b))
- When a “person has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State” (Article 8(3)(a)(i)).
- When a person “has conducted himself in a manner seriously prejudicial to the vital interests of the State” (Article 8(3)(a)(ii)).

When a person “has taken an oath or made a formal declaration of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State” (Article 8(3)(b)).

Importantly, according to the 1961 Convention, these grounds of deprivation may only be relied upon under three conditions. First, the power to deprive can only be exercised “in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body” (Article 8(4)). Second, the policy or practice of deprivation cannot be based “on racial, ethnic, religious or political grounds” (Article 9). Finally, the right to deprive according to the permissible grounds mentioned above may only be exercised by States which, “at the time of ratification, signature or accession” to the Convention, specified their retention of such a right pursuant to existing domestic law (Article 8(3)).

State law and practice in the decades immediately following the negotiation of the 1961 Convention suggested a growing consensus that deprivation of nationality should be avoided where such action would result in statelessness. Accordingly, the ECN, which is binding on 21 members of the Council of Europe, further limits the grounds for deprivation to instances where a person has acquired nationality “by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant”⁷⁴ That is, the ECN does not allow deprivation of nationality, even on grounds permitted by Article 8(3) of the 1961 Convention (see above), when it would render a person stateless. The ECN also explicitly codifies, in its Article 4(b), the principle of avoidance of statelessness.

The ECN also elaborates on standards introduced in the 1961 Convention with regard to due process and non-discrimination. Articles 10 – 13 of the ECN establish norms on minimum procedural guarantees, including requirements that any decisions on nationality

⁷⁴ *European convention on nationality*, Art. 7.

be rendered in writing “within a reasonable time”; and be subject to administrative or judicial review. Meanwhile, Article 5(2) develops the norm of non-discrimination in the context of citizenship, stipulating that “[e]ach State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently”.

Complementary international standards

Prohibition against arbitrary deprivation of nationality

A number of international instruments – e.g. the Convention on the Rights of the Child (Article 8(1)) and the *Draft articles on nationality of natural persons in relation to the succession of States*⁷⁵ (Article 16) – as well as various regional treaties,⁷⁶ explicitly prohibit the arbitrary deprivation of nationality. These provisions echo Article 15 of the Universal Declaration of Human Rights, which states that “no one shall be arbitrarily deprived of his nationality”.

It is generally accepted that an action is not arbitrary if it: (1) serves a legitimate purpose; (2) is the least intrusive instrument to achieve the desired result; and (3) is proportional to the interest to be protected.⁷⁷ In addition, lack of arbitrariness is generally understood to entail compliance with minimum due process standards and procedural safeguards. These include ensuring that decisions on nationality be issued in writing, that there be an opportunity for the meaningful review of such decisions, and that judgements on deprivation (and expulsion) be suspended pending the result of a final appeal.⁷⁸ Deprivation of nationality that results in statelessness may be particularly difficult to justify as proportional, “[g]iven the severity of the consequences where statelessness results.”⁷⁹

Extension of deprivation to spouses and children

Other international treaties recognize the independent nationality rights of women⁸⁰ and protect the rights of children to preserve their identity, including nationality.⁸¹ The 1961 Convention (Article 6) and the ECN (Article 7(2)) explicitly prohibit the extension of deprivation of nationality to spouses and children where it would result in statelessness. Also relevant is Article 3 of the CRC, which sets forth the principle that “the best interests of the child shall be a primary consideration” in all State actions concerning children. It is never in the best interests of the child to be rendered stateless.⁸²

75 Text adopted by the UN International Law Commission at its fifty-first session, in 1999.

76 E.g. the *European convention of nationality* (Art. 4 (c)), the *American convention on human rights* (Art. 20 (3)), the *Revised Arab charter on human rights* (Art. 29), and the *ASEAN human rights declaration* (Art. 18).

77 UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, available at: www.refworld.org/docid/52f8d19a4.html

78 *Ibid.*, para. 31 – 33. See also, *European convention on nationality*, Art. 11 and Art. 12., which set similar standards.

79 *Ibid.*, para. 4.

80 1957 UN Convention on the Nationality of Married Women, Art. 1; UN Convention on the Elimination of All Forms of Discrimination against Women, Art. 9; *European convention on nationality*, Art 4(d).

81 See, e.g., Convention on the Rights of the Child, Art. 8; *Covenant on the rights of the child in Islam*, Art. 7(2)

82 See, e.g., *Tunis Conclusions*, *supra* para. 62.

Sample laws and good practices

In response to growing concerns about terrorism, a number of countries have recently expanded the powers of State authorities, or have made more active use of existing powers, to deprive their citizens of nationality. Many other States, however, have taken care to maintain or establish safeguards against statelessness.

Canada provides one such example. Amendments to the Citizenship Act in 2014 introduced revocation of citizenship on grounds that included a conviction for terrorism.⁸³ In June 2017, Canada's Parliament voted to repeal many of the 2014 amendments, reverting to legislation passed in 1985 that allowed deprivation of nationality resulting in statelessness only in instances of misrepresentation, fraud or concealment of material facts in relation to the acquisition of nationality.⁸⁴

The law on citizenship in **Ukraine**, last amended in 2016, sets out principles in Article 2, that include "prevention of statelessness" and "impossibility of Ukrainian citizens being deprived of Ukrainian citizenship". Under Article 19, grounds for loss of nationality "shall not be applied if the Ukrainian citizen will become a stateless person as a result" (unofficial translation).⁸⁵

The nationality law in Ukraine also provides that termination of marriage or loss of Ukrainian citizenship by a spouse shall not result in the automatic loss of Ukrainian nationality by the other spouse, consistent with best practices for gender equality in nationality laws (see section on gender equality beginning on p. 15).⁸⁶ Indeed, without appropriate safeguards, deprivation of nationality can have downstream effects on the targeted individuals' children and spouses. Some States have therefore adopted provisions in their nationality laws that specifically protect such family members from loss of nationality and/or statelessness. For example, under the nationality law of **Madagascar**, as reformed in 2017, a Malagasy citizen's loss of nationality "does not extend to the children and the spouse of the sanctioned individual".⁸⁷

In application, laws on deprivation of nationality that contain safeguards against statelessness can inadvertently result in the creation of different classes of citizens. In some countries, deprivation on grounds of terrorist activity is reserved for dual nationals, whose second nationality ensures against statelessness. The experience in **Canada** with such differential treatment ultimately proved unacceptable: amendments adopted in 2014, allowing deprivation in the case of dual citizens convicted of terrorism offences, were ultimately repealed. A similar process unfolded in **France**, where proposed amendments

83 The 2014 Strengthening Canadian Citizenship Act had introduced provisions allowing for Canadian citizens to be deprived of their nationality for a number of offences, including being convicted of terrorism, treason or espionage as defined in the Criminal Code. However, it had also barred revocation of citizenship resulting in statelessness: "Subsections 10(2) and 10.1(2) do not operate so as to authorize any decision, action or declaration that conflicts with any international human rights instrument regarding statelessness to which Canada is signatory" (Art. 10.4(1)).

84 Canadian Citizenship Act 1985, Art. 10(1).

85 www.legislationline.org/documents/action/popup/id/7179.

86 *Ibid.*, Art. 2.

87 *Loi n°2016-038 modifiant et complétant certaines dispositions de l'Ordonnance n° 60-064 du 22 juillet 1960 portant Code de la nationalité malagasy*, 25 January 2017 (in force as of 8 May 2017), Art. 52, available at: <http://docplayer.fr/46645663-Loi-n-modifiant-et-complétant-certaines-dispositions-de-l-ordonnance-n-du-22-juillet-1960-portant-code-de-la-nationalite-malagasy.html>.

to extend deprivation of citizenship to dual nationals following the November 2015 terrorist attacks in Paris were opposed and ultimately shelved in early 2016.

Naturalized citizens may also be more vulnerable to deprivation of nationality. First, nationality can be deprived on grounds of fraud or misrepresentation only if conferred by naturalization as part of a troubling new pattern have been revoking nationality by retroactively nullifying naturalization on grounds of fraud or non-fulfilment of the conditions for acquiring nationality. Second, the perception that a naturalized person will have, or be eligible to acquire, another nationality may be erroneous. This form of inequality between natural-born and naturalized citizens may raise concerns under international law. To avoid such concerns, the 2015 *Citizenship amendment act of Australia*, in introducing grounds for deprivation based on terrorism-related offences, stipulates that the new grounds apply “to a person who is an Australian citizen regardless of how the person became an Australian citizen (including a person who became an Australian citizen upon the person’s birth).”⁸⁸

Importantly, several States with such new terrorism-related grounds for deprivation have preserved or established due process protections in line with Article 8(4) of the 1961 Convention. The 2015 Citizenship Amendment Act in **Australia**, for instance, includes specific provisions on the right to speedy and written notice and to review “in the High Court of Australia under section 75 of the Constitution, or in the Federal Court of Australia under section 39B of the Judiciary Act 1903.”⁸⁹ Establishing appropriate due process safeguards along these lines is crucial to ensuring that deprivation of nationality is not arbitrary.

As a final, practical note, States should be mindful that revocation of nationality may actually be less effective as a national security measure than existing tools available under international law, including monitoring and surveillance, criminal investigation and prosecution. Depriving terrorists or suspected terrorists of nationality may also conflict with a State’s obligation to extradite or prosecute perpetrators of international crimes.⁹⁰ Removing dangerous individuals may endanger citizens living abroad, and the citizens of other States. Alternative means of addressing security-related concerns are therefore to be encouraged.

⁸⁸ Australian Citizenship Amendment (Allegiance to Australia) Act 2015, Section 33AA, available at: www.legislation.gov.au/Details/C2015A00166.

⁸⁹ *Ibid.*, Section 33AA(10) and 33AA(11).

⁹⁰ See, UN Security Council resolution 2322 (2016) Adopted by the Security Council at its 7831st meeting on 12 December 2016, S/RES/2322 (2016), available at: [http://undocs.org/S/RES/2322\(2016\)](http://undocs.org/S/RES/2322(2016))

Key sources to consult

- Convention on the Reduction of Statelessness.
- *European convention on nationality.*
- UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, available at: www.refworld.org/docid/52f8d19a4.html.

Model legal provisions for the prevention and reduction of statelessness

1. Safeguards against childhood statelessness

General safeguard against statelessness at birth <i>(1961 Convention, Article 1)</i>	Every person born on the territory of X who would otherwise be stateless is a citizen by birth.
	Every person born on the territory of X who does not acquire another nationality by origin is a citizen by birth.
Safeguard for foundlings <i>(1961 Convention, Article 2)</i>	A child shall be considered a citizen of X if he/she is found on the territory and his/her parents are unknown.
	A foundling found on the territory shall be presumed to have been born therein to parents who are citizens of X.
Safeguard against statelessness for children born abroad <i>(1961 Convention, Article 4)</i>	A person born abroad to a mother or a father who is a national of X is entitled to X citizenship automatically at birth if that person would otherwise be stateless.
	A person born abroad to a mother or a father who is a national of X is entitled to X citizenship automatically at birth if that person acquires no other nationality.

2. Gender equality in nationality law

Parental transfer of nationality <i>(CEDAW, Article 9(2))</i>	A child acquires X nationality at birth if the father or mother is a citizen of X.
	Every person born inside or outside the territory of X, to a father or mother who was or would but for their death have been a citizen of X, is a citizen of X by birth.
Spousal transfer of nationality <i>(CEDAW, Article 9(1))</i>	The non-national spouse of a national will acquire the citizenship of X following Y years of marriage.
	The nationality of X can be obtained by spouses of citizens upon application.

3. Statelessness determination procedures (SDPs)

Burden of proof	Applicants for statelessness status and national authorities share the burden of proof.
Standard of proof	The finding of statelessness shall be justified when it has been established to a reasonable degree that the individual is not considered a national by any State under the operation of its law.
Administrative and judicial review	Resolutions concerning statelessness status shall be reviewed in accordance with the ordinary system for the administrative and judicial review of administrative acts. The lodging of appeals or administrative or judicial remedies shall suspend the execution of any resolution concerning expulsion.

4. Facilitated naturalization

Dissemination of information about the procedure	The competent authority shall provide stateless persons with information about the criteria and requirements for their naturalization in a language they can understand.
Costs	Stateless persons are exempted from paying the fees normally required in the naturalization process, including expenses for filing their application, the costs of obtaining documents (e.g. certificates), legalizations, etc.
Duration	Applications filed by stateless persons shall be processed on a priority basis.
Burden of proof	Stateless persons seeking naturalization must provide all the evidence in their possession or which they may reasonably obtain, while the competent authority shall facilitate as far as possible the attainment of the remaining required documents.
Standard of proof	When necessary to resolve an application, the competent authority shall give the benefit of the doubt to stateless persons who have cooperated throughout the naturalization procedure in order to meet the requirements of the process.
Free legal assistance	Stateless persons with no economic means shall be provided with free legal assistance in all stages of the naturalization procedure.

Residency requirements	Stateless persons shall be eligible to apply for naturalization without having to fulfil the period of residence usually required of foreigners who are nationals of other countries.
Language and other proficiency	Stateless persons shall be exempted from taking exams testing knowledge of language, history or culture.
Documentation requirements	Stateless persons shall be exempted from presenting certificates of proof of good health or criminal record from their country of origin when they do not have it and may not reasonably obtain it.

5. Loss and renunciation of nationality

General safeguard against statelessness	A person’s loss of nationality due to marriage, termination of marriage, legitimation, recognition or adoption shall be conditional upon that person’s possession or acquisition of another nationality.
Renunciation provisions	An application from a citizen of X for the renunciation of citizenship shall not be processed if he or she thereby becomes stateless.
	A citizen’s renunciation of nationality does not extend to that person’s children and/or spouse.

6. Deprivation of nationality

<p>General safeguard against statelessness</p>	<p>Grounds for deprivation of nationality shall not be applied if the person will become stateless as a result.</p>
	<p>Provisions of this Act on the loss and deprivation of citizenship must not be applied if as a consequence of their application a person becomes stateless.</p>
	<p>A citizen's deprivation of nationality does not extend to the children and the spouse of the sanctioned individual.</p>
<p>Due process guarantees</p>	<p>All persons subject to deprivation of nationality have a right to receive notification of any decision in writing, a right to a fair hearing, as well as a meaningful opportunity to contest or appeal that decision before a court or independent body. Any judgements on deprivation (and expulsion) shall be suspended pending the result of a final appeal.</p>

A few words about...

UNHCR

UNHCR, the United Nations refugee organization, is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees, and together with governments to work for the resolution of refugee problems.

UNHCR's primary purpose is to safeguard the rights and well-being of refugees. UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State. By assisting refugees to return to their own country voluntarily or to settle in another country, UNHCR also seeks lasting solutions to their plight.

UNHCR's efforts are mandated by the organization's Statute and guided by the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol. Over the years, the UN General Assembly and the UN Economic and Social Committee (ECOSOC) have expanded UNHCR's responsibility to include protecting various groups of people not covered by these instruments who are in a variety of other situations of forced displacement resulting from armed violence and conflict. Some of these people are known as "mandate" refugees; others are returnees, stateless persons and, in certain circumstances, internally displaced persons.

The organization seeks to reduce situations of forced displacement by encouraging States and other institutions to create conditions that are conducive to the protection of human rights and the peaceful resolution of disputes. In pursuit of the same objective, UNHCR seeks to consolidate the reintegration of returning refugees in their country of origin, thereby averting the recurrence of refugee-producing situations.

UNHCR offers protection and assistance to refugees and others in an impartial manner, on the basis of their need and irrespective of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status. In all of its activities, UNHCR pays particular attention to the specific needs of children and seeks to promote the equal rights of women and girls and vulnerable and/or marginalized groups. In its efforts to protect refugees and to promote solutions to their problems, UNHCR works in partnership with governments, regional organizations, international and non-governmental organizations.

UNHCR is committed to the principle of participation, by consulting refugees on decisions that affect their lives, and to mainstreaming age, gender and diversity.

The Inter-Parliamentary Union

The Inter-Parliamentary Union The Inter-Parliamentary Union (IPU) is a unique organization made up of national parliaments from around the world. We protect and build democracy through political dialogue and concrete action. As at November 2018, the IPU has **178 Member Parliaments** and 11 Associate Members. We work closely with the United Nations and other partner organizations whose goals we share.

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