REGIONAL TOOLKIT ON NATIONALITY LEGISLATION

LEAGUE OF ARAB STATES

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Disclaimer

This document was produced in line with the recommendations of the 2018 Arab Declaration on Belonging and Legal Identity. The League of Arab States is the sole author of this publication. The Toolkit aims to provide guidance and to respond to regional and country-specific realities by highlighting considerations relevant to the drafting of nationality provisions. The Toolkit draws on international standards and UNHCR Guidelines. This publication is to be read in connection with international frameworks and guidance on this topic and should be seen as complementary and specific to the Arab Region. For further guidance, please refer to the UNHCR Statelessness website: https://www.refworld.org/statelessness.html, including the 2018 Handbook for Parliamentarians on good practices in nationality laws for the prevention and reduction of statelessness.

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BACKGROUND

In February of 2018, the Ministerial Conference on Belonging and Legal Identity convened by the League of Arab States (LAS) under the patronage of the President of Tunisia adopted the Arab Declaration on Belonging and Legal Identity[1]. One of the central recommendations of LAS member States reflected in the Declaration was that the LAS Secretariat should produce a Regional Toolkit on Nationality Legislation to help ensure that all persons in the region enjoy their right to a nationality. The strong and clear commitment of the Arab League to gender equality, and to belonging and legal identity, provides the basis for this Regional Toolkit on Nationality Legislation. The Declaration builds on longstanding traditions in the Arab region which recognize the right of all children to belong, to enjoy rights to family life and unity, and to have a name and legal identity. In fact, Islam was one of the frontrunners in providing international protection from persecution and recognizing this as a fundamental human right, and many tenets of the faith help ensure that the most vulnerable are never denied of protection, thereby ensuring that everyone belongs.[2] Capitalizing on this enduring tradition as well as recent developments, many countries in the region have enacted domestic measures to better protect women, children and families, including in relation to their rights to nationality, documentation and family unity. Notably, significant nationality law reforms have been enacted across the region to grant women the right to confer nationality to their children on an equal basis as men. This Toolkit on Nationality Legislation aims to build on the important work of the Arab League and reflect it in a technical legal document containing the most favorable provisions on nationality in line with international standards, which may be used by LAS member States to facilitate the possible updating or amending of their nationality laws. It is recommended that any change in law be accompanied by corresponding measures to implement the law in the form of the development of necessary regulations and directives, along with awareness-raising, publicity, training and capacity building for relevant stakeholders such as judges, local leaders and civil society. As such, the updating of legislation is most effective when accompanied by meaningful action to ensure its full implementation.

International and Regional Legal Framework

The right to belonging and legal identity are firmly recognized in international law. Belonging is a positive framing of the implementation of the principle of non-discrimination, recognized in the UDHR and also subsequent human rights law.[3] Legal identity is the recognition of a person before the law and includes the right to a name, nationality and family relations, as equally stipulated in relevant international law and frameworks.[4] Nationality is an essential part of belonging and legal identity and brings these concepts together.

Nationality is the legal bond between a person and a State, which gives rise to rights and obligations both on the part of the national and the State. Though in some areas the words 'national' and 'citizen' represent different concepts, for the purpose of this document, the terms will share the same meaning. Nationality laws refer to the set of rules that govern when an individual may acquire, change and retain one's nationality. Nationality law is essentially a domestic function, but with consequences in international law.[5] Each State has the power to determine the precise circumstances under which an individual may be granted nationality, and accordingly, when nationality may be withdrawn.[6] However, as stated by the Universal Declaration of Human Rights, everyone has a 'right to nationality' and no one shall be arbitrarily deprived of their nationality, or denied the right to change one's nationality.[7] As such, and with the development of international human rights law, States general discretion to establish rules governing nationality must be exercised within the parameters of relevant international obligations. Relevant international standards should also be taken into account.

Rights associated with the possession of a nationality in almost all countries include the unconditional right to enter and reside permanently in the territory and to return to it from abroad, the right to receive protection from the State of nationality within and outside the territory, including access to consular assistance and diplomatic protection, the variety of political rights relating to active and full membership of the State, and rights to economic, social and cultural protection.[8] However, these rights are not necessarily restricted to those who are citizens of a particular State. For example, the right to leave

and enter one's "own country" is not limited to citizens of the country, with the UN Human Rights Committee clarifying that this right is also enjoyed by stateless persons in relation to their country of habitual residence.[9] It is important to recognize that each individual, whether or not they hold a nationality, possesses human rights under international human rights law. For the most part, international human rights treaties do not distinguish between citizens and non-citizens when requiring that states respect the fundamental human rights of those within their jurisdiction or control. One chief exception is the right to political participation, which is generally reserved for citizens of a given country.[10] Though States have an obligation to ensure that fundamental human rights are enjoyed by all people within their jurisdiction or control, including those who do not possess a nationality, the practical enjoyment of these rights in reality and implementation is often compromised due to formulations in domestic law and policy. As a result, individuals without a nationality are often denied access to basic services and rights such as the ability to establish legal residence, travel, work in the formal economy, send children to school, access basic health services, purchase or own property, and vote.

Many of the international treaties which have an impact on nationality law are either universally or widely acceded to amongst LAS member States. For example, the 1989 Convention on the Rights of the Child (hereinafter CRC)[11], to which all LAS member States are party, stipulates that each child has a right to a nationality and an identity from birth. Additionally, the 1966 International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter CERD)[12], the 1979 Convention on the Elimination of all Discrimination of Women (hereinafter CEDAW)[13], the International Covenant on Civil and Political Rights (hereinafter ICCPR), and the 2007 Convention on the Rights of Persons with Disabilities[14] all contain important provisions relating to the right to acquire a nationality. The most comprehensive treaty in relation to nationality is the 1961 Convention on the Reduction of Statelessness (hereinafter 1961 Convention).[15] The 1961 Convention provides a framework of rules relating to the acquisition, renunciation, loss and deprivation of nationality. Though the 1961 Convention has not yet been acceded to by many LAS member States, the treaty remains useful as a source of norms that have been accepted by the international community. LAS member States are encouraged to consider acceding to the 1961 Convention in conjunction with making any changes to their nationality

laws. Accession to the 1961 Convention would be an effective measure to ensure that all people enjoy their right to belong, and to a legal identity.[16] Additionally, though the UN Sustainable Development Goals are not legally binding, the Arab Declaration on Belonging and Legal Identity underlines the fact that States have made an undertaking to provide a legal identity for all by 2030, as per the 2030 agenda. Furthermore, principle 20 of the Guiding Principles on Internal Displacement specifically calls on States to ensure conflict-affected and internally displaced women and men have equal access to civil status documentation to strengthen their protection and enjoyment of rights to legal identity.[17]

In terms of regional standards, the 2004 Arab Charter on Human Rights (hereinafter ArCHR)[18] and the 2005 Covenant of the Rights of the Child in Islam (hereinafter CRCI)[19], both adopted by the League of Arab States, are relevant to the law of nationality in the Arab region. In arriving at their recommendation to produce a Regional Toolkit on Nationality Legislation, LAS member States reiterated the conclusions of the Arab Charter on Human Rights which stipulates that all persons shall have the right to a legal identity and a life of dignity, and also the Sharjah Principles on the Protection of Refugee Children, which specifies that all refugee children should be registered and documented at birth.[20] Additionally, the Declaration on Belonging and Legal Identity drew on the first "Arab Conference on Good Practices and Regional Opportunities to Strengthen Women's Nationality Rights", held in October 2017, which reaffirms the importance of building on existing efforts to strengthen women's nationality rights and gender equality in nationality, as well as the Regional Expert meeting entitled "Our Children, Our Future: Belonging and Identity" held in October 2016, which acknowledges rights to birth registration, nationality and family unity. It also calls for the removal of gender discrimination in nationality laws across the region, in recognition of the linkages between the rights of women and children in the Arab region.

Rationale for a Regional Toolkit on Nationality Legislation

Access to a nationality provides significant benefits on both an individual and community level. Belonging is a foundation for people to thrive, reach their potential and be more secure in their families, communities and countries. Increasing inclusion, participation and belonging can strengthen local and national economies, lead to higher educational attainment and improve social cohesion and stability. People with a nationality are more easily able to obtain identity documents, access to the labour market beyond the informal sector or underground economy, are more likely to own property, move about freely and more meaningfully and directly contribute to economies and communities. The increased sense of belonging to a community which is fostered when people are able to enjoy their right to a nationality is likely to lead to an increase in stability and security within their home States.[21]

The Toolkit on Nationality Legislation is developed as a tool to support States that may be interested in updating elements of their nationality law. States may wish to revisit some aspects of their nationality laws due to the fact that many were originally promulgated by foreign governments, at a time when the international rules governing nationality were significantly different to the present moment. British and French legal systems had an influence on the region in the first half of the 20th Century through a mix of colonial, protectorate and mandate rule.[22] The British and French norms strongly influenced the initial post-independence nationality acts of many States in the region, the central tenets of which have largely remained in place to this day. [23] Since these laws were enacted, there have been important developments in international law, which reflect an emerging consensus that all people have the right to a nationality. The disparity between some existing laws and the current international and regional legal norms provide a strong impetus for change.

Additionally, social phenomena, such as globalization and conflict, have altered the conditions by which people acquire nationality. Global and regional crises threaten to leave millions of people, including children, in the margins. Conflict and the resulting large-scale displacement may put children at risk due to increased family separation, the non-functioning

of civil registration systems in conflict affected areas, and difficulties in registering new births and marriages. In addition, globalization has brought vastly increased levels of migration, inter-marriage and children being born outside the countries of their parents' nationalities. These emerging realities introduce new complexities, gaps and risks that were not fully envisioned or addressed in the original citizenship legislation of most States in the world.

It is a priority of the Arab League that nationality legislation be modified in order to minimize the effects of armed conflicts on conflict-affected families, so that all children are able to enjoy their right to belong. Moreover, the relatively recent phenomenon of globalization has led to increased mobility and new forms of migration. As a result, large numbers of people live outside of their country of nationality or possess multiple citizenships and live in more than one country. Marriage between people of different nationalities has become a frequent occurrence. Therefore, children whose parents may be of different nationalities, or where they are born outside of the country of nationality of their parents, amongst others, are increasingly common. In these situations, children may fail to acquire a nationality at birth due to a conflict in the nationality laws of different countries, particularly when one follows the principle of *jus soli* (nationality on the basis of the place of birth) and the other follows the principle of *jus sanguinis* (nationality on the basis of descent). In the context of increased global interaction with frequent movement of people across borders, it is no longer feasible for States to avoid leaving people without a nationality solely through the independent application of national laws; a coordinated international approach is needed.[24]

The creation of this legal framework is an important step to ensure that ongoing developments both at a national and international level foster the creation of national laws, in line with regional and international standards.

Outline of Regional Toolkit on Nationality Legislation

This Regional Toolkit on Nationality Legislation provides model provisions for the various relevant areas of nationality law. Each provision is placed within its international legal context, and relevant examples are provided in order to illustrate the potential benefits that adoption of the provisions is likely to entail. The provisions included in the Regional Toolkit on Nationality Legislation should be viewed as an ideal which individual States may modify according to their unique circumstances and legal system, while taking into consideration international legal obligations. Taken together, the provisions of the Regional Toolkit on Nationality Legislation are intended to be a complete toolbox for States to draw on, according to their needs.

The provisions included in this Regional Toolkit on Nationality Legislation provide guidance on the law relating to the acquisition, as well as the withdrawal of nationality. There are three primary ways in which nationality is conferred to individuals by States, namely, by birth on the territory (*jus soli* or law of the soil), by descent or parentage (*jus sanguinis* or law of the blood), or by naturalization. Nationality conferred according to the principles of *jus soli* and *jus sanguinis* are the two most common methods by which States provide for nationality at birth, model provisions related to both means of acquiring nationality are included. In line with recent developments in the region, the model provisions relating to the acquisition of nationality at birth strengthen women's nationality rights and gender equality in the conferral of nationality, thereby enhancing the protection of women, children and families in line with key international standards. A separate provision on the conferral of nationality to foundlings, or children who are found in the territory of a country with no identifiable parents, is included in this Regional Toolkit on Nationality Legislation. The majority of LAS member States already have provisions designed to protect foundlings, which reflects the particular vulnerability of this group of people.

Though it does not confer nationality itself, birth registration is incorporated in this Regional Toolkit on Nationality Legislation as it serves in practice as important evidence of nationality. The Declaration on Belonging and Legal Identity prioritizes universal birth registration in the region, reinforcing

the principle that every child has the right to be registered at birth, a right also enshrined by Article 7 of the CRC, and Article 24 of the ICCPR. Birth registration is defined as is the continuous, permanent and universal recording within the civil registry, of the occurrence and characteristics of births in accordance with the legal requirements of a country.[25] Registration of a birth, which usually involves the issuing of a birth certificate, is one of the primary means by which an individual may establish a connection to their State of nationality. If a country primarily relies on *jus sanguinis* to establish nationality, a birth certificate will provide proof of parentage, and where a State relies on *jus soli*, it will provide proof of place of birth. Children are at an increased risk of not being able to enjoy their right to nationality if their births are not registered, and for this reason, provisions on birth registration are included in this Regional Toolkit on Nationality Legislation.

Three sections of the toolkit are devoted to naturalization, which is the act of investing a foreign person with the status of a national in a given state. Naturalization as a result of marriage is the subject of international human rights law, and also has an impact on the nationality of children and non-national spouses. The provisions included in this Regional Toolkit on Nationality Legislation ensure that women enjoy the same rights as men in relation to any change in nationality as a result of marriage. A provision on naturalization due to long-term residence in a country is also included, highlighting the principle of non-discrimination. A crucial measure to reduce statelessness is to facilitate the naturalization of stateless persons, and therefore this Regional Toolkit on Nationality Legislation includes a provision on naturalization where a person is found to be stateless.

State succession is the replacement of one State by another, and can occur as a result of decolonization, unification, absorption, separation or dismemberment of States. A provision on State succession is included in this Regional Toolkit on Nationality Legislation, as the relatively rare occurrence often gives rise to situations where the retention of nationality can be put at risk if nationality regulation occurs in an inadequate or unorganized manner. Provisions relating to the withdrawal of nationality are included in this Regional Toolkit on Nationality Legislation. Withdrawal of nationality is a general term encompassing both loss and deprivation of nationality. Loss of nationality occurs where a person loses their nationality upon the

automatic operation of a law. A common example may be found in laws that provide for the automatic loss of nationality where an individual acquires another nationality. No provisions on loss of nationality are included in this Regional Toolkit on Nationality Legislation, as it is preferable that States do not provide for automatic loss of nationality, but instead have laws in which individual cases may be considered by a competent authority. Deprivation of nationality involves a decision of the State to remove nationality. This may occur, for example, where a person has committed a serious crime against the State. In this Regional Toolkit on Nationality Legislation, "withdrawal of nationality" will be used in a broad sense to refer to both loss and deprivation of nationality. The international laws and principles relating to these important provisions are closely examined to determine the precise circumstances in which it is permissible for nationality to be withdrawn.

This Regional Toolkit on Nationality Legislation should encourage governments to create strategic plans aimed at ensuring that their nationality laws are in line with regional and international standards.

GUIDANCE ON REGIONAL PROVISIONS FOR NATIONALITY LAWS IN THE ARAB REGION

ACQUISITION OF NATIONALITY THROUGH PARENTAGE (*JUS SANGUINIS*)

Provision

A person is a citizen of State X at birth, if either the mother or father of the person is a citizen of State X.[26]

Comments

Nationality through descent, or *jus sanguinis*, is the principal way in which nationality is granted at birth among LAS member States. Where nationality is conferred by descent, international human rights law requires that women enjoy the same rights as men to pass on their nationality to their children. This standard is found primarily in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), particularly Article 9(2). Though almost all LAS member States are parties to the CEDAW, several retain reservations to Article 9(2), which stipulates that women have the right to pass on their nationality to their children on an equal basis as men.[27] The Committee on the Elimination of Discrimination against Women, the treaty body responsible for monitoring State compliance with CEDAW, have deemed reservations to Article 9 of the CEDAW to be inconsistent with the object and purpose of the Convention.[28] In General Comment No. 32, the Committee explained that children are at a greater risk of failing to obtain a nationality at birth when they do not have access to citizenship by descent from either parent on an equal basis. According to the Committee, laws that grant nationality through paternal descent alone may leave a child without nationality if:

(a) The father is stateless;
(b) The laws of the father's country do not permit him to convey nationality in certain circumstances, such as when the child is born abroad;
(c) The father is unknown or not married to the mother at the time of the child's birth;
(d) The father has been unable to fulfil administrative steps to confer his nationality or acquire proof of nationality for his children because, for example, he has died, has been forcibly separated from his family or cannot fulfil onerous documentation or other requirements;

(e) The father has been unwilling to fulfil administrative steps to confer his nationality or acquire proof of nationality for his children, for example, if he has abandoned the family.[29]

The proposed provision ensures that women do in fact have the same ability as men to pass on their nationality to their children, in line with States' obligations under CEDAW. This law would also help to ensure that States fulfil their obligations under the CRC, which is universally ratified in the region. The CRC states that every child has a right to a nationality, and in Article 7(2), it requires that State parties "ensure the implementation of these rights in accordance with their national law, and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." Article 7 of the Covenant on the Rights of the Child in Islam similarly requires that States Parties safeguard the elements of a child's identity, including nationality.[30] The International Covenant on Civil and Political Rights, to which all but four LAS member States are parties, likewise stipulates that every child has the right to acquire a nationality.[31] The Human Rights Committee, the treaty body which oversees State compliance with the ICCPR, has elaborated on this rule and has established that State parties "are required to adopt every appropriate measure, both internally and in cooperation with other States to ensure that every child has a nationality when he or she is born."[32] The Human Rights Committee further notes that the right of children to acquire a nationality should not be impeded by practices which discriminate on the basis of "children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents."[33]

The adoption of a provision which allows for citizenship by descent from both the mother and father will help to ensure that children born both in the territory of a State, as well as those born abroad, are able to avail themselves of their right to a nationality by increasing the circumstances in which any particular child is able to access this right. In relation to children born outside the country of nationality, some countries require that there is a sufficient nexus to the State, such as habitual residence in the State by the child, particularly upon reaching the age of majority, or the parent who is a citizen of the State, or maintaining a sufficient connection to the country of nationality by registration with its consular services abroad. In order to adhere to international law which provides that there is a positive

obligation on the State to ensure that children are born with a nationality, a more inclusive formulation of the law is preferred, where children born to both female and male nationals abroad automatically acquire nationality of the State of the parent's nationality. The ability of parents of either gender to confer their nationality to their children on an equal basis in the case that they are born abroad is very important, particularly in humanitarian emergencies and situations of displacement that create family separation as well as a significantly heightened risk of statelessness, where family unity may be threatened, and women may be forced to give birth outside of their home country, and possibly without the father of the child present. In such situations, if women cannot confer nationality to their children the children may wind up stateless. Due to devastation in crisis areas, such as currently in Syria, many refugees sought and seek safety in countries in the region empty handed, with few forms of documentation, and documents that may have expired. This makes it extremely difficult for them to go through the process of obtaining a birth certificate for children that are born in exile. It is known that the lack of documentation can be a vicious cycle. For instance, people without documents cannot obtain documents for their children, they cannot access essential services, they cannot have access to vital protection, or live their lives in a normal way, as the obstacles they face are many. The risk of statelessness is even more acute because so many refugee children are separated from their families, making it even harder to establish the family links and the country to which they belong as nationals, and making it that much more important that their births are registered. Furthermore, conflicts often devastate the facilities, infrastructure and capacity of State bodies that issue nationality and identity documentation.

Application

Enacting gender equal legislation has an enormous positive impact on children and families.[34] As more children enjoy their right to a nationality, they will more easily have access to basic services such as health and education, and are protected from situations of exploitation and violence, such as child marriage, child labour, family separation, trafficking and illegal adoption. This is likely to have longer term economic impacts, as people with an education will eventually have greater job prospects. This positive impact will be further boosted as those with full nationality have unhindered access to the labour market. Allowing women to pass nationality to their children on

an equal basis as men will also help to ensure that family unity is preserved, and prevent negative coping mechanisms where families may take drastic action to secure nationality for their children, including the abandonment of new borns and fraud. These positive impacts have been seen in Egypt since the passage of their nationality law in 2004, which states that Egyptians are "Anyone who is born of an Egyptian father, or an Egyptian mother". Since implementing a nationality law which allows mothers to pass nationality to their children on the same terms as fathers, families have been able to remain together in Egypt without fear of deportation as it provided these individuals with legal residence, amongst other key rights. Additionally, access to education and employment have been enhanced, which has allowed a large number of people to more easily provide for themselves.[35] The benefits of gender equal nationality laws extend beyond citizens and their families and strengthen nations as a whole. By ensuring gender equality in the nationality law, countries such as Egypt have promoted social and economic inclusion, allowing more people to contribute to enhanced national stability, prosperity and security, as well as contribute to the countries' sustainable development.

Acquisition of nationality through place of birth *(jus soli)*

Provision

(a) Where a child is born in the territory of State X, they will acquire the nationality of State X.

Comments

Jus soli, the principle by which nationality is granted as a result of place of birth, is not a common means for acquisition of nationality among the LAS member States. Generally speaking, this is not inconsistent with international law, as the means by which nationality is granted is generally within the purview of individual States. However, if a child is born without nationality in the territory of a LAS member State, it is important that the child is provided with citizenship of the State in which it is born, thereby fulfilling the State's obligations under Article 7 of the CRC, and Article 24 of the ICCPR to ensure that no child is born without a nationality.[36]

A child is born without a nationality if they acquire neither the nationality of their parents nor that of the State of his or her birth.[37] It is important to note that the status of the parents, that is, whether or not they are stateless, is not determinative of whether a child is born stateless. It may be the case that a child's parents cannot confer their nationality to the child even if they both possess a nationality, particularly where one or both of the parents' countries of nationality limit their ability to confer nationality to children born abroad. The numbers of children who would acquire nationality through this mode of acquisition is likely to be small, especially if all countries in the region expand their nationality laws so that women may pass their nationality to their children on an equal basis as men, which would significantly decrease the proportion of children born without nationality.

Under the international standards found in the 1961 Convention, States may provide nationality to children born within their territory who do not otherwise acquire nationality through two means, either automatically at birth or via application. States may do so automatically by operation of the law at the birth of the child (ex lege). Alternatively, a State may make the grant of nationality at a later date, such as when the child reaches majority, subject to conditions such as continued residence in the State for a prescribed number of years.[38] The European Union, in its European Convention on Nationality, requires that States either grant nationality ex lege, or "subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority".[39] The European Convention permits States to make such a grant of nationality contingent on "lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application."[40] The American Convention on Human Rights and the Africa Children's Charter both contain a clear obligation to grant nationality automatically at birth to children born in their territory who would otherwise be stateless, and do not allow for conditions in the same way as the European Convention.[41] The CRC states in Article 3 that "*in all actions concerning children… the best interests of the child should be a primary consideration*"*; taking this into account, a formulation of the law which provides for nationality automatically at birth, or upon application soon after birth is preferable to one which contains onerous requirements of habitual residence or other factors.*

The burden of proof for showing that a child is stateless must be shared between the claimant and the authorities. Decision makers need to consider Articles 3 and 7 of the CRC and adopt an appropriate standard of proof, for example, that it is established to a 'reasonable degree' that a child would be stateless but for the acquisition of the nationality of the State concerned. Requiring a higher standard of proof would leave children at a heightened risk of not being granted nationality.[42] Key steps in this regard would entail developing dedicated procedures to determine that an individual is stateless, and adopting a definition of a "stateless person" in domestic law, in line with the definition found in Article 1 of the 1954 Convention relating to the Status of Stateless Persons (hereinafter 1954 Convention)[43], which has acquired the character of a norm of customary international law.

Application

Currently, both Lebanon and Syria have enacted provisions in line with the 1961 Convention's Article 1 safeguard against statelessness, which grants nationality to children born in their territory who would otherwise be stateless at birth.[44] In practice, it seems as though these provisions are not consistently implemented, as there are no provisions in domestic law to define a "stateless person", nor to conduct a formal determination of when an individual in the territory is stateless. Implementing these measures would complement the existing law, and would greatly assist in ensuring that no child born on these territories is left without a nationality.[45]

Foundlings

Provision

"A child found in the territory of State X shall, in the absence of proof to the contrary, be considered to have been born within the territory of parents possessing the nationality of State X."

Comments

International standards encourage States to treat foundlings (children found in the territory of a country with no identifiable parents) as citizens of the country. Article 2 of the 1961 Convention provides that foundlings shall 'in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State'. The 1961 Convention does not explicitly state the age when children should be considered foundlings. If the term foundling only applies to very young children, it would create a risk that older children with unknown parentage would be left without a nationality.[46] It is most consistent with the best interests of the child (Article 3, CRC) and the right of all children to acquire a nationality (Article 7, CRC; Article 24, ICCPR) to grant nationality to an older child, up until the age of majority, who was found at some earlier point in time on the territory of a State, and who is of unknown origin. If a State were not to grant citizenship to a child in these circumstances, they would be left without nationality. In line with the requirement, found in Article 3 of the CRC, that the best interests of the child be the primary consideration in all actions relating to them, the model provision relating to foundlings directs States to grant nationality to all children found on their territory with unknown parentage. This would include all children up until the age of majority. Nationality may only be lost by children who acquired it in this manner if it were to be proven that the child concerned possesses the nationality of another State.[47] However, in practice, such loss should be conditional on the actual confirmation that the child enjoys another nationality, rather than on speculation that they may be entitled to another nationality.

Application

Presently, all but one of the LAS member States have provisions in their nationality legislation which protect children of unknown origin who are found on their territory, in line with Article 2 of the 1961 Convention. Most of the provisions stipulate that foundlings will be automatically granted the nationality of the State in which they are found, unless it is later found that they already possess another nationality. Only one State requires that the foundling must be a 'newborn,' while all others make no mention of the age of the child.[48] International State practice reveals a broad range of ages within which countries offer nationality to foundlings, including in some cases up to the age of majority.[49] Increased effort is recommended to ensure effective application of this provision in line with principles of non-discrimination. Concrete and practical guidance is needed, such as agency directives or instructions, to ensure the effective implementation of this critical safeguard in practice. This includes clarifying 1) which authorities are competent over nationality claims from foundlings, 2) who may present a claim to nationality on behalf of a foundling (as the child generally will not be able to do so on its own), and 3) which restrictions, if any, may apply.[50]

Birth registration

Provision

1. Every child born within State X will be registered at birth by State X and given a birth certificate by State X.

Comments

Birth registration is "the continuous, permanent and universal recording with the civil registry, of the occurrence and characteristics of births in accordance with the legal requirements of a country".[51] It serves as important proof of the place of birth and parentage, and as such is usually essential for the acquisition of nationality.[52] Registration of birth generally involves making an official entry in the State's registry and issuing a birth certificate. [53] A birth certificate records at a minimum the child's name, date and place of birth, and the parents' names and the parents' nationality. [54] Where national law allows nationality to be acquired on grounds of descent (*jus sanguinis*), birth certificates provide evidence of who the child's parents are. Where citizenship is acquired on grounds of birth in the territory (*jus soli*), birth certificates prove the birthplace.

It is important to distinguish between non-registration of birth and non-acquisition of a nationality. Nationality is usually acquired automatically, or ex lege, upon birth, rather than at the registration of the birth. Birth registration does not confer nationality. When a child does not acquire a nationality due to a lack of registration of their birth, they are usually entitled, by law, to receive the nationality of their parents or their place of birth. However, if a child's birth goes unregistered, the child lacks evidence of their right to nationality, thereby they are at a heightened risk of not acquiring a nationality, as the State may ultimately refuse to acknowledge them as a citizen in the absence of evidence of their identity, parentage or place of birth. In the context of displacement, birth registration becomes particularly important, as a birth certificates establish the identity and biodata of the child, as well as the family and country to which the child belongs as a national. As the Arab region almost exclusively uses the *jus sanguinis* method of acquisition of nationality, the recording of the nationality of a child's parents on their birth certificate is often essential to safeguard the child's right to a nationality in practice.

As well as usually being necessary for the acquisition of nationality, birth certificates continue to play an important role into adulthood, where they may be needed in practice for a variety of purposes: to obtain social security or a job in the formal sector, to buy or prove the right to inherit property, to obtain identity cards, to vote, and to obtain a passport. The lack of such documentation can mean that a child may enter into marriage or the labour market, or be conscripted into the armed forces, before the legal age. Registering children at birth is the first step in securing their recognition as a person before the law, safeguarding their rights, and ensuring that any violation of these rights does not go unnoticed.[55]

States have an obligation to register all births that occur in their territory. This requirement is found in Article 7(1) and 8(1) of the CRC which all LAS member States are a party to. Additionally, Article 24(2) of the ICCPR also requires that States register all births. With respect to birth registration, the Committee on the Rights of the Child has explained that States should provide a universal, well-managed system that is accessible to all children and free of charge.[56] States must pay particular attention to children who may have greater difficulties accessing birth registration, such as children with disabilities, medical needs, as well as children born out of wedlock or who live in remote areas.[57] States should also facilitate the late registration of birth, without financial penalty or lengthy procedures.[58] To ensure that birth registration systems are inclusive, accessible and effective, the State should promote education and public awareness on birth registration systems, including training public officers responsible for births and marriages in the relevant agencies.

States must also ensure that their birth registration procedures are accessible to both men and women, and available to all children whether or not they were born within wedlock. The CRC requires that the rights contained in the Convention are to be enjoyed by all children "irrespective of the child's or his parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or other status."[59] In order to remove barriers to birth registration, States should implement birth registration systems in which marriage certificates are not required for the registration of new births. In addition, no indication should appear on birth certificates to designate

children born out of wedlock as 'illegitimate' and women must enjoy equal rights as men to register the births of children. Civil registration law and practice in which only fathers may register births, or which only allow birth registration in the case of a child born in wedlock, have the effect of reducing the number of birth registrations, and therefore create a risk that children will not be able to enjoy their right to a nationality. In the case that only fathers are able to register children, children may be denied their right to birth registration where the father is stateless or unwilling to support the child in acquiring the father's nationality. Where the child was born from a marriage that is not sanctioned by the State, such as child marriage, or certain inter-faith marriages, the ensuing lack of official marriage certificate may result in the non-registration of a child. In addition to the many obligations cited above, it should be noted that restrictions and burdens placed on access to birth registration run counter to the commitment made by all States to "legal identity for all, including birth registration, by 2030 (SDG 16.9).

Implementation

There are a number of challenges that are likely to arise in the area of birth registration in the context of displacement. The requirement of possession of a marriage certificate before a birth may be registered can be particularly difficult. Important documents may be lost or destroyed during flight. Where refugees flee and are unable to provide an official marriage certificate to the authorities of their country of asylum, they may not be able to register the birth of their children.[60] An additional complication may take place where birth registration is dependent on the father, particularly amongst female headed households. Where evidence of the nationality of the father is not available, mothers may face difficulties registering the birth of a child if government authorities demand the presence or proof of the identity of the father.[61]

Despite the challenges regarding birth registration, there have been numerous positive developments in the region in relation to the forced displacement caused by the conflict in Syria, which have allowed for significant improvements in the number of refugee children able register their births.[62] In Jordan, the Civil Status Department has facilitated registration of certain refugee children in cases where their parents lack official marriage

certificates and has identified alternative sources of proving marriage.[63] In 2013, in order to ensure that all children are born with legal documentation, Lebanon simplified the birth registration procedure, and issued directives to local authorities reaffirming that birth certificates should be issued to Syrian children born in Lebanon. Iraq has similarly prioritized birth registration for all children of concern, including refugees, and in the Kurdistan Region of Iraq, the authorities have adopted flexible birth registration procedures. These changes have had a dramatic impact on birth registration the region, with the number of children born in Lebanon, Jordan, Iraq, Egypt and Turkey each year without any form of identity documents reducing rom 35% in 2012 to 1% in 2020. This means that children will grow up more likely to be able to access public services including education, health and social services, and are protected from some of the negative consequences which may arise due to lack of registration, such as early marriage or early entry to the labour market, before they have reached the minimum legal age.

Naturalization on the basis of marriage

Provision

1. The foreign spouse of a national of State X may apply for citizenship of State X.
2. change in marital status will not automatically change the nationality of a national of State X, result in the loss of their nationality or force upon them the nationality of their spouse.

Comments

It is common practice for States to permit their nationals to convey citizenship by marriage to foreign spouses upon proving the existence of a bona fide marriage. In most instances, citizenship by marriage applies to people who already hold a nationality, and therefore the risk that an individual will be left without nationality due to narrowly constructed laws is minimal, providing that renunciation of one's nationality is made conditional on the successful acquisition of the spouse's nationality through marriage. As such, it is at the discretion of a State whether the acquisition of nationality by marriage is contingent on residency within the country, and if so, the length of the residency required before nationality may be conferred. Additionally, States may decide that an individual who applies for citizenship though marriage must renounce prior citizenship before being naturalised. If they do so, States must ensure that the individual in question would not be left stateless as a result of the renunciation. An effective measure to avoid statelessness in this context is to ensure that the renunciation of nationality does not take legal effect until and unless the acquisition of the second nationality is effective. This safeguard is particularly important in avoiding statelessness in cases where an individual's marriage is terminated before the application to acquire nationality by marriage is approved, or where the application to acquire nationality is rejected for other reasons, or where it remains pending indefinitely.

Though States possess a broad discretion in the area of conferral of nationality through marriage, they must ensure that their laws allow equal conferral between men and women, as stipulated in international law. Article 9(1) of

CEDAW provides that women are to have the same rights as men to acquire, retain or change their nationality, regardless of marriage and divorce and what their husbands do with their own nationality. In General Recommendation No. 32, the Committee on the Elimination of Discrimination against Women confirmed that Article 9(1) of CEDAW also means that women must enjoy the same rights as men in conferring nationality to their foreign spouse.

Application

Laws that do not allow women to pass on their nationality to their spouse in the same manner as men can pose risks to family unity. Foreign men may be forced to live away from their children as they may find it more difficult to acquire residency permits, and they may face barriers to employment, thus jeopardising the social and economic security of the children and family. Additionally, if foreign husbands are not able to obtain a work permit, women may be compelled to provide for the whole family, which may force them to accept precarious and exploitative conditions of work that have a negative impact on their human rights.

The practice of ensuring that a woman does not have her own nationality revoked or changed automatically due to a change in her marital status, or a change in the nationality of her husband affords women vital protection from statelessness that can arise in connection with marriages, separations, or changes in the citizenship status of their spouses. Operating in tandem with the principle that women should enjoy full and equal rights to convey nationality to children, this requirement also offers enhanced protection against children being born without nationality by ensuring that a mother remains in possession of a nationality which can then be conveyed to her child.

States in the Gulf region have enacted a number of positive provisions in this area, including protections which ensure that a woman cannot lose her nationality in connection with changes in her marital status or her husband's citizenship, if such loss would render her stateless. Kuwait, Saudi Arabia, and Bahrain have all adopted dedicated provisions to this effect. Kuwait and Saudi Arabia further clarify that a woman will not lose her nationality upon marrying a foreign national until and unless she acquires the nationality of

the foreign husband, and does so at her own request. This approach upholds two key principles from international law—first, that no one should lose their nationality until they have already acquired another nationality, and second, that a woman's nationality should not be changed or lost without her full and explicit consent.[64] The laws of Bahrain also feature similar protections, noting that a Bahraini woman cannot lose her nationality in connection with marriage to a foreign national until and unless she acquires his citizenship.[65]

Naturalization on the basis of residence

Provision

1. A foreign national who has lived in State X for at least 5 years with a valid residence permit, may apply to become a national of State X.

Comments

Naturalization due to long residence is the voluntary acquisition of citizenship by a foreign person, based on prolonged residence. The law with respect to naturalization due to long residence remains largely at the domestic discretion of States. As a result, naturalization laws vary widely. Each State may determine the length of time that a person must live in their territory before they are eligible for citizenship through naturalization, and they may also determine whether that length of residency must be continuous. States may also choose to impose other conditions under which they will grant citizenship. Ideally, any conditions imposed by the State should not be excessively onerous for the applicant, and that exceptions be available for those who may not be able to meet the requirements due to disability or other reasons. In terms of procedure, so long as an individual fulfils the requirements of naturalization, it would be preferable that they be automatically naturalized upon application, rather than upon a decision of the responsible State authorities.

The most important limit on State discretion imposed by international human rights law in the area of naturalization is that any laws must not be discriminatory. This prohibition is found in Article 2 of the UDHR, and is given form in the ICCPR which requires that States apply the treaty without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[66] The CRC contains a similar provision, and stipulates that the rights contained in the Convention apply equally to all children without discrimination of any kind. CEDAW provides that women must have the right to acquire nationality on the same basis as men, while CERD specifically prohibits racial discrimination. The prohibition against racial discrimination is also a *jus cogens* norm of international law, and is particularly important in the area of naturalization, where discrimination on this ground has historically occurred. Additionally, Article 18 of the Convention on the Rights of Persons with Disabilities explicitly outlines that all persons with disabilities have the right to acquire and change a nationality, and must not be deprived of their nationality arbitrarily or on the basis of disability.

Application

Most LAS member States provide for naturalization based on prolonged residence of a specified number of years, though the length of time varies greatly, ranging from five to thirty years. Lebanon may be seen as a good practice as it has a law which allows for the acquisition of nationality by foreigners who have lived in Lebanon for five consecutive years. A person may apply for Lebanese nationality after this time without any additional conditions.[67]

Facilitated naturalization of stateless persons

Provision

1. A person currently residing in State X who has been determined to be stateless by a competent authority, may apply to become a national of State X."

Comments

The 1954 Convention on contains an obligation for States to "facilitate the assimilation and naturalisation of stateless persons."[68] In practice, this would require States to have robust procedures by which they might determine whether a person on their territory is stateless.[69] States which determine that an individual is stateless should expedite their naturalization proceedings. This would mean that, once an individual is determined to be stateless, any residency requirements should be minimized or waived, and that any income or language requirements that States may impose on other applicants should be exempted for stateless applicants. Laws that impose onerous documentation requirements should also be waived for stateless persons, as they are more likely to not have obtained, for example, a birth certificate.

Application

There are relatively few States world-wide which have adopted dedicated statelessness determination procedures. One State which has recently implemented such a procedure is Moldova. Moldova's law contains substantial procedural guarantees, such as the right to an interpreter and legal aid, and explicitly grants the applicant a right to stay in the country during the procedure.[70] It also takes into account the difficulties inherent in proving statelessness, and as such, the burden of proof is shared between the applicant and the relevant authority, which may take steps to collect documents to substantiate the application from countries with which the applicant has a link.[71] This effective statelessness determination procedure is an important step in facilitating the eventual naturalization of stateless persons.

State succession

Provision

1. In situations of State succession, persons whose habitual residence is in the successor State acquire the nationality of the successor State on the date of such succession, unless or until they choose otherwise.

Comments

State succession, as defined by the Vienna Convention on Succession of States in Respect of Treaties, and as followed by all legislative efforts since that time is "the replacement of one State by another in the responsibility for the international relations of territory"[72]. State succession, which can take the form of the emergence of new States or the transfer of territory between existing States, can lead to statelessness if no proper safeguards are in place. When one State ceases to exist, and is replaced by another, the individuals who held the nationality of the predecessor State are at risk of losing their nationality and being left stateless as a result of not being able to acquire the nationality of a successor state. Avoidance of statelessness in such cases is essential to promoting social inclusion and stability. International regulation in the area of State succession has attempted to balance the often-competing principles of the right to a nationality, the right of individual choice, and the criterion of a genuine or effective link to the territory in question.[73] The international instruments in the area of State succession provide important guidance as to the minimum standards which must be followed by States in the area of nationality. Read together, they contain a strong requirement of both predecessor and successor States to prevent the loss of nationality by any individual who might be affected by State succession.

The 1961 Convention on the Reduction of Statelessness contains provisions which serve as a general outline of the obligations of States in the circumstance of State succession. Article 10 stipulates that "any treaty which provides for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer" of territory. The primary method of ensuring that all individuals are able to

retain a nationality in the event of State succession envisioned by the 1961 Convention is essentially an obligation of conduct between States involved in State succession (both predecessor States, and successor States) to ensure that all individuals are accounted for with regards to nationality. The Convention does, however, also contain an explicit obligation for the State to which territory is transferred to 'confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition'.[74]

The Council of Europe, in response to a string of State successions in the 1990s, created a Convention on the Avoidance of Statelessness in relation to State Succession,[75] which offers more specific guidelines as to the responsibilities of predecessor and successor States. As per the Convention, successor States must grant nationality to those who would become stateless as a result of the State succession if 'they were habitually resident in the territory which has become territory of the successor State', or if they have an otherwise 'appropriate connection' with the successor State, which may include a legal bond, birth on the territory of the successor State, or their last habitual residence on the territory of the successor State.[76] Furthermore, predecessor States must not 'withdraw its nationality from its nationals who have not acquired the nationality of a successor State and who would otherwise become stateless as a result of State succession.'[77] These twin requirements would have the effect of securing the nationality of concerned individuals, and would be effective measures to be implemented to prevent statelessness in the event of State succession. The Council of Europe Convention envisions two ways in which States may grant nationality in the case of State succession; either the passage of legislation accepting the population concerned as nationals of the State ex lege, or the provision of registration or naturalisation procedures. In the event that an individual may have the right to acquire more than one nationality, the person's wishes should be respected.[78]

The International Law Commission (ILC) has produced Draft Articles on Nationality of Natural Persons in relation to the Succession of States, which provide guidance as to the standards that should be observed to ensure that individuals are not left without nationality in the event of State succession. In a similar manner to the 1961 Convention, the rules set out by the ILC seek to limit instances whereby an individual would be rendered without nationality by requiring that States "take all appropriate measures to prevent persons

who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession."[79] In the event of State succession, States may safeguard the nationality of affected people either through legislation, or though treaties with other relevant States.[80] As a precautionary measure to prevent temporary loss of nationality in the period before legislation or treaties conferring nationality come into effect, States should presume that "persons concerned having their habitual residence in the territory affected by the succession of States acquire the nationality of the successor State on the date of such succession."[81]

Underlying the requirement that States act to ensure that individuals retain nationality is the right of every individual who had the nationality of a predecessor State to a nationality of at least one of the States concerned. [82] The ILC lists the following criteria as relevant for the purpose of attributing nationality: habitual residence, appropriate legal connection with one of the constituent units of the predecessor State, or birth in the territory. It also includes a broad criterion of 'any other appropriate connection to the territory'.[83] The ILC intended the terminology of 'appropriate connection' to be wider than 'genuine link' in order to prevent statelessness in the event of State succession.[84] The Draft Articles also provide that an individual's wish plays a role where there at least two States to which the individual might be linked.[85] The right of option for nationality of the predecessor of successor State is further extended to those who would not be encompassed by the 'appropriate connection' criteria, to opt for nationality, thereby reducing the risk that an individual would remain without a nationality.

Applications

In the political restructuring that can follow state succession, it is often the case that many people are at risk of losing their nationality, as they may be subject to different jurisdictions and administrative procedures.[86] On such occasions, the inclusion of provisions in nationality legislation whereby the preference of individual is taken into consideration is useful to protect the right of nationality. One example of State succession where the 'right of option' was included in the legislation of the successor State was in the case of the dissolution of Czechoslovakia. The Czech Republic, at the time of dissolution, enacted legislation by which they granted nationality to all individuals

who had been part of the federal Czech Republic prior to dissolution. Contemporaneously, they also granted the right of option to those individuals who were not citizens of the federal State, but who were habitually resident in the territory. Such individuals were offered the possibility to acquire the nationality of the Czech Republic. Nearly all individuals who were habitually resident in Czech territory who did not acquire Czech nationality ex lege on the basis of the criterion of "citizenship" of the prior federal Czech unit acquired such nationality via optional application. Therefore, approximately 376,000 Slovak nationals acquired Czech nationality in the period from 1 January 1993 to 30 June 1994.[87]

Withdrawal of nationality

There is a growing consensus, based on the development of international human rights law, that statelessness should never result from the deprivation of nationality.[88]

There are a number of crucial steps that need to be observed preceding any decision with respect to the possible withdrawal of a person's nationality. In line with international standards on due process, the first step is the full examination of the allegations against the individual concerned, which include the right of the individual to confront the evidence against them and to present evidence on their own behalf, by a competent and independent tribunal responsible for adjudicating culpability for the alleged offense under civil or criminal law. The best practice in this regard is the full respect of due process and full procedural guarantees, including the right to a fair hearing by a court or other independent body, access to counsel, and the right to appeal first instance decisions as provided by law. Subsequent to the fair hearing, and once it has been determined that the individual has committed the alleged offense, a determination has to be made by the respective tribunal with regard to the penalties to be imposed in line with criminal and civil law.[89]

Subsequent to these critical steps that safeguard the right to a fair hearing to reliably adjudicate whether the underlying offense was actually committed, the State can take into consideration whether it considers it absolutely necessary to impose the deprivation of nationality in addition to the civil or criminal penalties to which the individual has already been sentenced. This consideration should be guided, inter alia, by considerations of proportionality, including by examining the impact on the individual and what benefits, if any, the use of nationality deprivation will have for the State. An important element that merits further deliberation is that once a person is deprived of his/her nationality, he/she will no longer be considered by the State as 'a national under the operation of its law', which may limit the State's jurisdiction over the individual and thus potentially hamper its ability to exercise its control over the person and to effectively apply its laws.

Provision

This model law sets out two alternative and possible legal provisions. Formulation A outlines a framework that never results in statelessness, which is the ideal formulation and best practice. Formulation B is an alternative that allows statelessness in very limited and extreme circumstances, but always in line with international standards.

Formulation A

1. Where persons have been convicted in a court of law of committing an offense which may result in the deprivation of nationality as specified by law,

2. Such person may, at the discretion of the State and after judicial review by a competent tribunal, be deprived of nationality by a competent authority in the following circumstances, provided that the act of deprivation of nationality must never leave the person stateless:
    - (a) In the last five years, they have acquired nationality as a result of fraud, meaning an intentional misrepresentation of material facts, including the use of adulterated or fraudulently obtained documents, or the provision of false facts or particulars;
    - (b) To uphold due process and prevent against erroneous or arbitrary deprivations of nationality, persons subject to the potential deprivation of their nationality under Section 1(a) will be afforded an opportunity to be heard before a competent authority prior to withdrawal of nationality being made final and effective. In coming to a decision, the competent authority must take into account the following factors:
        - i. whether or not the perpetrator of the fraud has another nationality;
        - ii. the severity of the fraud;
        - iii. the time that has passed since the fraud;
        - iv. the strength of the link of the person in question with State X, including; birth on the territory, length of residence, family

ties, economic activity, and linguistic and cultural integration;
v. the consequences of the deprivation of nationality for the perpetrator of fraud and members of their family, taking into account all of the relevant circumstances; and
vi. the best interests of the child, if the fraud was conducted on behalf of a child by an adult guardian.
vii. Whether the fraud at issue can be adequately addressed through other sanctions, including possible civil or criminal penalties, without also imposing the withdrawal of nationality

(c) An individual rendered, or continued rendering services to, or received or continued to receive emoluments from, another State, in disregard of an express request to cease such activities by State X within 6 months of receiving such notice;
(d) An individual has been found guilty by a competent criminal court of conduct seriously prejudicial to the vital interests of State X;
(e) To uphold due process and prevent against erroneous or arbitrary deprivations of nationality, persons subject to the potential deprivation of their nationality under Sections 1(c) and (d) will be afforded an opportunity to be heard before a competent authority prior to withdrawal of nationality being made final and effective. In coming to a decision, the competent authority must take into account the following factors:

i. whether or not the person in question has another nationality;
ii. the seriousness of the conduct;
iii. the time that has passed since the conduct;
iv. the strength of the link of the person in question with State X, including; birth on the territory, length of residence, family ties, economic activity, and linguistic and cultural integration;
v. the consequences of the deprivation of nationality for the perpetrator and members of their family, taking into account

all of the relevant circumstances; and

vi. the impact of the conduct on State X.

vii. Whether the misconduct at issue can be adequately addressed through criminal penalties, without also imposing the withdrawal of nationality.

Formulation B

3. At the discretion of the State and after judicial review by a competent tribunal, a person may be deprived of nationality by a competent authority where:

(a) In the last five years, they have acquired nationality as a result of fraud, meaning an intentional misrepresentation of material facts, including the use of adulterated or fraudulently obtained documents, or the provision of false facts or particulars;

(b) To uphold due process and prevent against erroneous or arbitrary deprivations of nationality, persons subject to the potential deprivation of their nationality under Section 1(a) will be afforded an opportunity to be heard before a competent authority prior to withdrawal of nationality being made final and effective. In coming to a decision, the competent authority must take into account the following factors:

viii. whether or not the perpetrator of the fraud has another nationality;

ix. the severity of the fraud;

x. the time that has passed since the fraud;

xi. the strength of the link of the person in question with State X, including; birth on the territory, length of residence, family ties, economic activity, and linguistic and cultural integration;

xii. the consequences of the deprivation of nationality for the perpetrator of fraud and members of their family, taking into account all of the relevant circumstances; and

xiii. the best interests of the child, if the fraud was conducted on behalf of a child by an adult guardian.

(c) An individual rendered, or continued rendering services to, or received or continued to receive emoluments from, another State, in disregard of an express request to cease such activities by State X within 6 months of receiving such notice;

(d) An individual has been found guilty by a competent criminal court of conduct seriously detrimental to the vital interests of State X;

(e) To uphold due process and prevent against erroneous or arbitrary deprivations of nationality, persons subject to the potential deprivation of their nationality under Sections 1(c) and (d) will be afforded an opportunity to be heard before a competent authority prior to withdrawal of nationality being made final and effective. In coming to a decision, the competent authority must take into account the following factors:

i. whether or not the person in question has another nationality;
ii. the seriousness of the conduct;
iii. the time that has passed since the conduct;
iv. the strength of the link of the person in question with State X, including; birth on the territory, length of residence, family ties, economic activity, and linguistic and cultural integration;
v. the consequences of the deprivation of nationality for the perpetrator and members of their family, taking into account all of the relevant circumstances; and
vi. the impact of the conduct on State X.

Comments

Where the basis for nationality, such as a genuine connection or allegiance to a State no longer exists, States can provide for the termination of nationality in exceptional circumstances [90]. Most of the international standards regarding withdrawal of nationality have been derived from the 1961 Convention. The 1961 Convention sets out two ways that nationality may be permissibly withdrawn; loss of nationality, in which nationality is automatically withdrawn by the operation of law, and deprivation of nationality, which occurs due to a discretionary act at the initiative of the State, exceptionally. Under the general rules of treaty interpretation, as found in the Vienna Convention on the Law of Treaties, the ordinary meaning of the terms used in the 1961 Convention must be read in their context, taking into account the object and purpose of the Convention.[91] The object and purpose of the 1961 Convention is to prevent and reduce statelessness, thereby ensuring every individual's right to a nationality.[92] The 1961 Convention must also be read in light of subsequent developments in international law, in particular the growing body of international human rights law which broadly recognizes the right of all people to acquire and retain a nationality.[93] Considering both the object and purpose of the 1961 Convention, and the subsequent developments in international human rights law, any provisions on withdrawal of nationality should always weigh the effect of withdrawal of nationality on an individual against the interests of the State, adhering to the principle of proportionality.

There are numerous bases outlined in the 1961 Convention upon which States may choose to provide for loss of nationality. Though some States allow for the automatic loss of nationality, it is preferable that States retain discretion over the withdrawal over an individual's nationality. Where States are able to review decisions to withdraw nationality, they may take into account individual circumstances, and assess whether the withdrawal of nationality is proportional. Additionally, the grounds for loss of nationality as provided for in the 1961 Convention, that is the acquisition of a foreign nationality, a change in personal status, or prolonged residence abroad are diminishingly used by States, and with the advent of globalisation, have become increasingly obsolete. Therefore, no methods of automatic loss of nationality were included in this toolkit. However, as some LAS member

States currently have laws which allow for automatic loss of nationality, the international legal principles which govern these grounds are examined in the following paragraphs.

One relatively common ground for loss of nationality is where it is based on possession or acquisition of a foreign nationality. However, this justification for loss of nationality is becoming more rare, as people are migrating more frequently and States recognize that individuals may have enduring ties to more than one nation.[94] In 1960, the voluntary acquisition of another citizenship led automatically to the loss of the citizenship of the country of origin in approximately one third of all countries.[95] As of 2018, the number of States that allow citizens to acquire the nationality of another country without the automatic loss of nationality of their country of origin has grown to approximately seventy five percent.[96] In line with this global trend, some LAS member States have laws which allow for dual citizenship. Despite the global movement towards laws which allow for multiple nationalities, many States, including some LAS member States, provide for loss of citizenship upon possession, acquisition of, or application for a foreign nationality. As per the principles outlined in the 1961 Convention, and otherwise widely accepted in complementary areas of international law, acquisition, possession of, or application to possess another nationality should never leave an individual stateless. If a provision prohibiting dual nationality exists or is enacted, States should ensure that they do not allow the withdrawal of nationality to take effect before an individual acquires another nationality, or, alternatively, that the loss of nationality is void if the individual concerned fails to acquire the new nationality within a fixed period of time, such as one year.[97] States may also adopt this measure in relation to the voluntary renunciation of nationality. This precaution would help to ensure that women who renounce their citizenship in situations where they marry, or intend to marry, a foreign man are not left without a nationality. Many LAS member States have adopted positive measures to this effect.[98] Another approach to ensure that individuals are not left without a nationality, is for States to provide for the facilitated reacquisition of nationality upon application by a former citizen.

Some States provide for a loss of nationality as a result of change in personal status, though it is becoming increasingly rare to do so.[99] Such a change in personal status may occur, for example, through a successful denial of paternity where a legal system relies on the principle of *jus sanguinis* through the father as a basis for citizenship, or where the identity of a parent was erroneously recorded. As in all actions relating to children, States must take into account the best interests of the child as per their obligations under the CRC before making decisions. According to the Committee on the Rights of the Child "the ultimate purpose of the child's best interests should be to ensure the full and effective enjoyment of the rights recognized in the Convention and the holistic development of the child". The best interests principle, coupled with the exceptionally strong norm in international law against childhood statelessness, means that in no circumstances should States allow for the loss of nationality of a child where doing so would result in statelessness.[100] As already outlined, article 9(2) of CEDAW prohibits an automatic change in the nationality of women as a result of marriage or termination of marriage, to ensure that women do not lose their nationalities on the basis of a change in personal status. Though marriage or termination of marriage resulting in a loss of nationality is less common in practice for men, the same principles should apply. In all circumstances relating to personal status, in no instance should a change in personal status result in a loss of nationality leading to statelessness. Loss must be conditional on possession or acquisition of another nationality.[101]

The 1961 Convention allows for loss of nationality for naturalised citizens based on prolonged residence abroad, for a period not less than seven consecutive years if they do not express their intention to retain their nationality. The Convention also permits loss of nationality if a national born abroad does not return to reside in their country of nationality, or register with an appropriate authority within a year of reaching majority. In the time since the 1961 Convention was drafted, the bond between individual and state has changed considerably, largely as a result of increased international migration. Between 1990 and 2017, the number of international migrants worldwide rose by over 105 million people, or by sixty-nine percent.[102] Socio-economic, demographic and political factors are causing more people than ever to live outside of their country of birth. Communication technology,

diasporic and familial ties, as well as international agreements also serve to increase the accessibility of migration. Given this reality, any laws which result in a loss of nationality due to living abroad are anachronistic.[103] Of all LAS member States, only one country maintains laws by which its citizens by birth may lose their nationality based on prolonged residence abroad. A small number has provisions by which a naturalised citizen who lives abroad for a certain period of time may lose their nationality, with all of the relevant time periods being less than seven years. If States are to maintain provisions permitting the loss of nationality based on time spent living abroad, it would be preferable for them to provide for the potential loss of nationality rather than making it automatic upon time spent living abroad, so as to allow the authorities to take relevant circumstances into account. Additionally, it is incumbent upon States to notify the individual living abroad of the potential loss of nationality associated with their continued residence abroad, so as to give them sufficient time to either return to their State of nationality or to take any such measure as may assist them to retain their nationality.[104] Though the 1961 Convention allows for the loss of nationality on these grounds to lead to statelessness, the evolution of international law towards a state whereby individuals have a right to acquire and retain a nationality, requires that any loss of nationality due to prolonged residence abroad should never result in an individual being left without a nationality, as the impact on the individual would far outweigh the objective sought by the State.[105]

As indicated, two formulations of a model provision in relation to deprivation of nationality are included in this Toolkit on Nationality Legislation. In the first, the ideal provision, the law does not allow for the deprivation of nationality to result in statelessness. Though the 1961 Convention does permit the creation of statelessness as a result of deprivation of nationality in very limited and exceptional circumstances, there is a growing consensus, based on the development of international human rights law, that statelessness should never result from the deprivation of nationality. The second formulation of the provision does allow for statelessness to occur as a result of deprivation of nationality in the specific occasions that are outlined by the 1961 Convention. When States formulate their own laws on the deprivation of nationality, they are urged to adopt the first approach. As well as the negative humanitarian consequences which may result from a person being made stateless, States

should be mindful of the consequences and practical utility of rendering an individual, deemed to be a threat to national security, as stateless. States may find that other existing measures, such as criminal prosecution, may more effectively achieve the aim of increasing national security.

Article 8 of the 1961 Convention sets out limited reasons by which States may legitimately deprive an individual of nationality. Under these limited exceptions, the 1961 Convention accepts that an individual may be left stateless as a result of one of these grounds of deprivation. They include:

- where nationality was acquired on the basis of misrepresentation or fraud (Article 8(2)(b)),

- where, inconsistently with the duty of loyalty to the State, nationals have rendered services to or received emoluments from another State in disregard of an express prohibition by the country of nationality (Article 8(3)(a)(i)) or conducted themselves in a manner which is seriously prejudicial to the vital interests of the State (Article 8(3)(a)(ii)

- where a national has taken an oath or made a formal declaration of allegiance to another State or given definitive evidence of determination to repudiate allegiance to the State (Article 8(3)(b)).

The second and third of these grounds are only permitted by the 1961 Convention where a State 1) already has legislation to that effect at the time of ratification of or accession to the treaty and 2) has deposited a declaration of its intention to retain the use of these grounds.

Where an individual is deprived of their nationality on the basis of misrepresentation or fraud, the fraud or misrepresentation must have been deliberate, and not the result of an honest mistake nor of minor errors or discrepancies resulting from the poor quality of supporting documents from civil authorities. The fraud must have been material, meaning it was actually

the cause of the acquisition of nationality.[106] It is for this reason that the model provision requires that an individual acquire nationality as 'a result of fraud' before their nationality may be withdrawn by the competent authority. This means that deprivation of nationality is not permissible if the nationality would have been acquired even if the fraud did not occur. State practice in recent years has tended to limit the period following the acquisition of nationality within which it may be revoked.[107] The model provision sets this period at five years, as a reflection of State practice in the region, but States may choose longer or shorter periods of time.

In relation to services rendered to a foreign government as a ground for deprivation of nationality, a State must serve an individual with notice, rather than merely prohibiting the rendering of such services through law. This helps to guarantee an individual the opportunity to change their behaviour to avoid the loss of nationality, while also ensuring that the State's behaviour is predictable.[108]

The kind of conduct that should be considered seriously prejudicial to the vital interests of the State is not general criminal offences, even very serious ones, but rather conduct which threatens the foundation and organisation of the State itself.[109] It is likely to include treason and other activities directed against the State, such as work for a foreign secret service.[110] Increasingly, terrorism offences have been considered as a basis for deprivation of nationality on the ground that they are seriously prejudicial to vital State interests.[111] According to both the ordinary meaning of the words, and also the *travaux preparatoires*, the term 'vital interests' should be considered as a higher threshold than 'national interests'.

In making any decision to deprive someone of their nationality, States must ensure that they are not doing so arbitrarily. The Arab Charter on Human Rights, to which many LAS member States are a party, prohibits the deprivation of nationality without a legally valid reason.[112] The prohibition on the arbitrary deprivation of nationality found in article 15(2) of the UDHR has been given form by subsequent human rights treaties such as the CRC, and resolutions of the Human Rights Council and reports of the UN Secretary General. From the

UN instruments, it is possible to discern some general principles in relation to the arbitrary deprivation of nationality. Deprivation of nationality will be arbitrary unless it is established by law, is non-discriminatory, serves a legitimate purpose, is the least intrusive instrument to achieve the desired result, and is proportionate to the interest to be protected.[113] Additionally, any decision to deprive an individual of their nationality must be made in conformity with due process standards and procedural safeguards.

A decision to deprive someone of their nationality will be established by domestic law if it is predictable, and therefore the ex post facto deprivation of nationality through laws which deprive individuals of nationality retroactively would be arbitrary. Likewise, a provision regarding the acquisition of nationality may not be repealed or restricted with retroactivity.[114] The requirement that any decision to deprive someone of nationality be made in accordance with law is also found in Article 8(4) of the 1961 Convention, which elaborates that the person concerned has "the right to a fair hearing by a court or other independent body". In addition to the above requirements, the decision to deprive a person of his or her nationality must follow certain procedural standards so as to not be arbitrary.[115] This would include the right to have a reasoned decision in writing, that is open to administrative or judicial review, and subject to an effective remedy.[116]

The 1961 Convention does not allow for deprivation of nationality where it is based on 'racial, ethnic, religious or political grounds.'[117] International human rights law has built on this limitation, and deprivation of nationality will be arbitrary, and therefore not permissible, if it is based on discrimination on any ground prohibited in international human rights law. Those include the grounds found in the ICCPR, namely race, colour sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[118] The CERD contains a specific prohibition of racial discrimination in relation to nationality, which historically has been a common basis for arbitrary deprivation of nationality of groups of people.[119] Furthermore, the prohibition on racial discrimination is considered a *jus cogens* norm of international law.[120] The deprivation of nationality of people on the ground of disability, including health conditions, is also prohibited by the Convention

on the Rights of Persons with Disabilities.[121] In addition, States must establish that any deprivation of nationality is not based on conduct by which an individual is enjoying their right to freedom of expression, freedom of assembly or other rights guaranteed under international human rights law.[122]

A decision to deprive someone of their nationality should be proportional, meaning that States must balance the interest that they are trying to protect with the impact of deprivation on the individual and their families.[123] The provisions related to the deprivation of nationality included in this Regional Toolkit on Nationality Legislation are drafted in such a way as to direct a decision maker to review all the circumstances of individual cases of potential deprivation with a view to arriving at a proportional result. In all instances, deprivation must be proportional in light of the severity of the conduct, the time that has passed since the conduct, and the consequences of the deprivation of nationality for the person involved and the members of the family.[124] The particular vulnerabilities of all members of affected families should be considered when arriving at a decision. In cases where international law would permit statelessness as a result of deprivation of nationality, it should be avoided, as the severe consequences for the individual would generally not be proportional to the potential harm to the State. In relation to the provision on fraudulent acquisition of a nationality, the provision directs a decision maker to pay particular attention to the best interest of the child in the case of fraud perpetuated by a guardian on behalf of a child, keeping in mind that it is never in the best interests of the child to be left without a nationality.[125] Similarly, it would not be proportional to impose statelessness upon children by extension because their parents are deprived of nationality. This rule should apply even if the conduct of the parents was so serious as to allow for deprivation of nationality resulting in statelessness.[126]

Application

Iraq has taken substantial steps to ensure that their law does not allow for the arbitrary deprivation of nationality. Prior to 2006, Iraq's nationality law, Law No. 46 of 1963, provided that the Minister may deprive aliens of nationality if they have attempted to commit an act 'dangerous to the State's security and safety.'[127] This formulation of the law affords scope for the

arbitrary deprivation of nationality, as the decision is at the sole discretion of the Minister, and there are no due process requirements or procedural safeguards incorporated into the legislation. This situation worsened in 1980 when Resolution No. 666 entered into force, which provided that Iraqi nationality 'shall be dropped from any Iraqi of foreign origin if it is appeared that he is not loyal to the homeland, people, higher national and social objectives of the Revolution.'[128] These laws made it possible for individuals to be denaturalized on discriminatory grounds, and did not afford them the opportunity to have the decision reviewed by a competent authority. With the 2006 reform of the law, the Minister may only deprive a naturalized citizen of Iraqi nationality following a final court judgement 'if he is proved to have perpetrated or attempted to perpetrate an act considered to jeopardize State security or safety or has provided wrong information of himself or his family upon submitting the application.'[129] With this amendment, Iraq has ensured that any decision to deprive someone of nationality is made in accordance with the law. The amended law also attempts to rectify the discrimination that occurred in the past. It does so by automatically restoring nationality to those who lost their nationality as per Resolution No. 666 of 1980, and by granting other individuals the right to restore their nationality by application if they were previously denaturalized on 'political, religious, racist or sectarian grounds'.[130]

Conclusion

Under the continued leadership of the Arab League, this Toolkit on Nationality Legislation is part of a set of new and important initiatives in the Arab region to better protect women, children and families, including in relation to their rights to nationality, documentation and family unity. The drafting of this Toolkit came in response to the request of LAS member States, and was included as one of the recommendations of the Arab Declaration on Belonging and Legal Identity.

Specifically, this Regional Toolkit on Nationality Legislation provides examples of provisions in various relevant areas of nationality law. Each provision is placed within its international legal context, and relevant examples are provided in order to illustrate the potential benefits that adoption of the provisions is likely to entail. The provisions included in the Regional Toolkit on Nationality Legislation should be viewed as examples which individual States may modify according to their unique circumstances and legal system, while taking into consideration international legal obligations and international standards. Taken together, the provisions of the Regional Toolkit on Nationality Legislation are intended to be a complete toolbox for States to draw on, according to their needs.

It is hoped that this Toolkit on Nationality Legislation will prove to be a valuable resource for the Arab region countries to facilitate the possible updating or amending of their nationality laws. The Arab League is pleased to offer any technical support that may be required to member States along the lines of the provisions contained in the Toolkit on Nationality Legislation, in line with regional and international legal standards.

It is recommended that any change in law must be accompanied by corresponding measures to implement the law in the form of the development of necessary regulations and directives, along with awareness-raising, publicity, training and capacity building for relevant stakeholders such as judges, local leaders and civil society. As such, the updating of legislation is most effective when accompanied by meaningful action to ensure its full implementation. It is equally recommended that any amendments to any nationality law are complemented by efforts to implement the other recommendations contained in the Arab Declaration on Belonging and Legal Identity, which are seen as mutually reinforcing.

These actions together are intended to safeguard the right of everyone to belong, to enjoy rights to family life and unity, and to have a name and legal identity, building on longstanding traditions in the Arab region, as well as core principles in Islam. This will ultimately promote social and economic inclusion and provide the foundations for more sustainable development.

Glossary

Nationality

A legal relationship between an individual person and a State. Nationality affords the State jurisdiction over an individual and affords an individual the protection of the State.

Citizenship

Used interchangeably with the term 'nationality' in international law. 'Citizenship' and 'nationality' may constitute distinct legal statuses at the domestic level.

Belonging

Belonging is a positive framing of the implementation of the principle of non-discrimination, recognized in the UDHR and also subsequent human rights law.

Legal Identity

Legal identity is the recognition of a person before the law, which also includes the right to a name, nationality and family relations.

Stateless person

Someone who is not recognized as a national by any State under the operation of its law.

Jus Soli

Lit.: the right of the soil: a person acquires the nationality of their country of birth.

Jus Sanguinis

Lit.: the right of the blood: a person acquires the nationality of the parent at birth or by the establishment of a parent-child family relationship.

Naturalization

The act of investing a foreign person with the status of a national in a given State.

Birth registration

The continuous, permanent and universal recording within the civil registry, of the occurrence and characteristics of births in accordance with the legal requirements of a country.[131]

State succession

The replacement of one State by another in the responsibility for the international relations of territory. [132]

Loss of nationality

Withdrawal of nationality which is automatic, by operation of law.

Deprivation of nationality

Withdrawal of nationality which is initiated by the authorities of the State.

Withdrawal of nationality

A general term encompassing both loss and deprivation of nationality.

Footnotes

1 League of Arab States, Arab Declaration on Belonging and Legal Identity (28 February 2018).

2 UN High Commissioner for Refugees (UNHCR), The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study, June 2009, available at: https://www.refworld.org/docid/4a549f9f2.html (accessed 5 February 2019).

3 Particularly relevant are Art. 2 of the International Covenant on Civil and Political Rights (ICCPR), Art. 2 of the Convention on the Rights of the Child (CRC), and Art. 2 International Covenant on Economic, Social and Cultural Rights (ICESCR).

4 Stipulated in Art 6. of the Universal Declaration of Human Rights (UDHR), Art 16 of the International Covenant on Civil and Political Rights (ICCPR) and Art 7 and 8 of the Convention on the Rights of the Child (CRC), the Arab Charter on Human Rights, and the Sharjah Principles on the Protection of Refugee Children. Relevant are also Principle 20 of the United Nations Guiding Principles on International Displacement, and Goal 16.9 of the Sustainable Development Goals (SDGs), "legal identity for all, including birth registration".

5 Ivan Shearer and Brian Opeskin, 'Nationality and Statelessness' in Brian Opeskin, Richard Perruchoud, and Jillyanne Redpath-Cross (eds.) Foundations of International Migration Law (Cambridge University Press, 2012), 93.

6 Nottebohm Case (Liechtenstein v. Guatemala), [1955] ICJ Rep. 4, 23.

7 Universal Declaration of Human Rights (UDHR), GA Res 217A (III), UN Doc A/810 (10 December 1948), art 15.

8 Alice Edwards for UNHCR, 'Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women' PPLAS/2009/02 August 2009, 37-8.

9 Human Rights Committee, General Comment No. 27., CCPR/C/21/Rev.1/Add.9, (November 1999) para 20.

10 See, for example the International Covenant on Civil and Political Rights (ICCPR), opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Art 25.

11 Convention on the Rights of the Child (CRC), opened for signature 20 Nov 1989, 1577 UNTS 3 (entered into force 2 November 1990).

12 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), opened for signature 21 December 1965, 660UNTS 195 (entered into force 4 January 1969).

13 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

14 Convention on the Rights of Persons with Disabilities (CPRD), opened for signature 24 January 2007, 2515 UNTS 3 (entered into force 3 May 2008).

[15] Convention on the Reduction of Statelessness (1961 Convention), opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).

[16] See also: UNHCR, Good Practices Paper – Action 9: Acceding to the UN Statelessness Conventions, 28 April 2015, available at: https://www.refworld.org/docid/553f617f4.html [accessed 16 July 2019].

[17] United Nations OCHA, Guiding Principles on Internal Displacement, September 2004.

[18] League of Arab States, Arab Charter on Human Rights (ArCHR), opened for signature 22 May 2004, reprinted in 12 Int'l Hum. Rts/ Rep. 893 2005 (entered into force 15 March 2008).

[19] Organization of the Islamic Conference (OIC), Covenant on the Rights of the Child in Islam, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final.

[20] Sharjah Principles, 16 Oct 2014, 3.

[21] Brad Blitz and Maureen Lynch, Statelessness and the Benefits of Citizenship: A Comparative Study (Oxford Brookes University 2009),
p 23.

[22] The Legal Agenda in partnership with Tilburg University and the Open Society Foundations, Nationality and Cases of Statelessness in the Middle East and North Africa, Laura van Waas and Zahra Albarazi (eds.) 2016, p 51.

[23] Ibid.

[24] UN High Commissioner for Refugees (UNHCR), Progress report on UNHCR activities in the field of statelessness, EC/49/SC/CRP.15, Geneva: 4 June 1999.

[25] United Nations Children's Fund (UNICEF), A passport to protection: A guide to birth registration programming, 2013, p 11.

[26] UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness 2018, 8 March 2018, available at: https://www.refworld.org/docid/5aa10fd94.html.

[27] Egypt, Iraq and Tunisia withdrew their reservations to Article 9(2) of CEDAW after altering their nationality laws to be gender equal. See UN High Commissioner for Refugees (UNHCR), Equal Citizens, Thriving Families, Stronger Societies: Realizing Gender-Equal Nationality Rights in the Middle East-North Africa Region, 5 April 2018, available at: http://www.refworld.org/docid/5ac335644.html.

[28] UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 2, 3 and 4, adopted at the Sixth Session, 1987 (contained in Document A/42/38), 1987, A/42/38, available at: https://www.refworld.org/docid/453882a822.html, UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 20: Reservations to the Convention, 1992, available at: https://www.refworld.org/docid/52d91fd34.html, UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core

Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, available at: https://www.refworld.org/docid/4d467ea72.html.

29 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, available at: http://www.refworld.org/docid/54620fb54.html [accessed 26 September 2018].

30 Organization of the Islamic Conference (OIC), Covenant on the Rights of the Child in Islam, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final, available at: http://www.refworld.org/docid/44eaf0e4a.html [accessed 26 September 2018], Article 7.

31 ICCPR, Art 24(3).

32 UN Human Rights Committee (HRC), CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, available at: https://www.refworld.org/docid/45139b464.html.

33 Ibid.

34 See also: UNHCR, Good Practices Paper - Action 3: Removing Gender Discrimination from Nationality Laws, 6 March 2015, available at: https://www.refworld.org/docid/54f8377d4.html [accessed 16 July 2019].

35 Women's Refugee Commission, Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa, June 2013, ISBN:1-58030-112-6, available at: http://www.refworld.org/docid/51c02a084.html [accessed 18 September 2018]

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37 UN High Commissioner for Refugees (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: https://www.refworld.org/docid/50d460c72.html, para 18.

38 See also: 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: https://www.refworld.org/docid/50d460c72.html [accessed 16 July 2019].

39 Council of Europe, European Convention on Nationality, opened for signature 6 November 1997, 166 ETS (entered into force 1 March 2000) Art 2(b).

40 European Convention on Nationality, Art 6.

[41] Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at: https://www.refworld.org/docid/3ae6b36510.html. Art. 20: "[e]very person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality." Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), available at: https://www.refworld.org/docid/3ae6b38c18.html, Art. 6(4): "State Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."

[42] UNHCR Guidelines on Statelessness No. 4, supra, para 21.

[43] Convention Relating to the Status of Stateless Persons (1954 Convention), opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

[44] Legislative Decree 276 - Nationality Law [Syrian Arab Republic], Legislative Decree 276, 24 November 1969, available at: https://www.refworld.org/docid/4d81e7b12.html Art. 3(d) Decree No15 on Lebanese Nationality including Amendments [Lebanon], 19 January 1925, available at: https://www.refworld.org/docid/44a24c6c4.html Art 1.

[45] See also: UNHCR, Good Practices Paper - Action 2: Ensuring that no child is born stateless, 20 March 2017, available at: https://www.refworld.org/docid/58cfab014.html [accessed 16 July 2019].

[46] See also: 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: https://www.refworld.org/docid/50d460c72.html [accessed 16 July 2019].

[47] Ibid, para 60.

[48] Mauritanie: Loi N° 1961-112, Loi portant code de la nationalité mauritanienne, 13 June 1961, available at: https://www.refworld.org/docid/3ae6b5304.html Art. 10.

[49] See e.g. Article 3(2) of the Kingdom Act on Netherlands Nationality. UNHCR Guidelines on Statelessness No. 4, supra, para 57.

[50] See also: UNHCR, Good Practices Paper - Action 2: Ensuring that no child is born stateless, 20 March 2017, available at: https://www.refworld.org/docid/58cfab014.html [accessed 16 July 2019].

[51] UNICEF, A passport to protection: A guide to birth registration programming, supra, p11.

[52] Ibid.

[53] Ibid.

[54] UN High Commissioner for Refugees (UNHCR), Child protection Issue Brief: Birth Registration (August 2013), at: http://www.refworld.org/docid/523fe9214.html.

[55] The right to legal identity is enshrined in Article 15 of the UDHR, Articles 7 and 8 of the CRC and Article 24 of the ICCPR.

[56] UN Committee on the Rights of the Child (CRC), General comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, available at: http://www.refworld.org/docid/460bc5a62.html.

[57] Ibid.

[58] Ibid.

[59] CRC, Art. 2(1).

[60] UN High Commissioner for UNHCR, In Search of Solutions: Addressing Statelessness in the Middle East and North Africa, September 2016, available at: https://www.refworld.org/docid/57dbdaba4.html p21.

[61] Albarazi and van Waas, Understanding Statelessness in the Syria Context, supra.

[62] See also: UNHCR, Good Practices Paper - Action 7: Ensuring birth registration for the prevention of statelessness, November 2017, available at: https://www.refworld.org/docid/5a0ac8f94.html [accessed 16 July 2019].

[63] UNHCR, In Search of Solutions: Addressing Statelessness in the Middle East and North Africa, supra.

[64] See Nationality Law (Kuwait, 1959); Resolution No. 4, 25/1/1374 H (Saudi Arabia, amended 1379 H and 1380 H).

[65] See Bahrain Citizenship Act (1963); Decree Law No. 10 (1981) Amending Bahrain Citizenship Act (1963); Decree Law No. 12 Amending Bahrain Citizenship Act (1963).

[66] ICCPR Art 2.

[67] Decree No15 on Lebanese Nationality including Amendments [Lebanon], 19 January 1925, available at: https://www.refworld.org/docid/44a24c6c4.html.

[68] 1954 Convention, Art 32.

[69] 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.

[70] 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.

[71] Ibid.

[72] Vienna Convention on Succession of States in Respect of Treaties, Art 2(1)(b).

[73] Ineta Ziemele, 'State succession and issues of nationality and statelessness' in eds. Alice Edwards, and Laura van Waas, Nationality and Statelessness under International Law (Cambridge University Press, 2014) p 223.

[74] 1961 Convention, Art 10.

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[76] Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, Art 5.

[77] Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, Art 6.

[78] Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, Art 7.

[79] Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, Art 4.

[80] International Law Commission, Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), 3 April 1999, Supplement No. 10 (A/54/10), available at: https://www.refworld.org/docid/4512b6dd4.html.

[81] Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), Art 5.

[82] Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), Art 1.

[83] Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), Art 22.

[84] Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), para 9.

[85] Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), Art 23.

[86] Blitz, supra, p 6.

[87] Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), p 44, and see: Czech Republic: Act No. 40/1992 on the Acquisition and Loss of Citizenship of the Republic (repealed), 1 January 1993, available at: http://www.refworld.org/docid/3ae6b51a8.html, Art 6.

[88] UNHCR, Good practices in nationality laws for the prevention and reduction of statelessness, November 2018, Handbook for Parliamentarians N° 29, page 29, available at: https://www.refworld.org/docid/5be41d524.html.

[89] UNHCR, Tunis Conclusions.

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[93] See: CRC Arts 7 and 8, ICCPR Art 24, CEDAW Art 9, CRPD Art 18(2), CERD Art 5(iii) and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), opened for signature 18 December 1990, A/RES/45/158 (entered into force 1 July 2003), Art 29.

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[95] Maarten Vink, Gerard-Rene De Groot, Ngo Chun Luk, 2015, “MACIMIDE Global Expatriate Dual Citizenship Dataset”, doi:10.7910/DVN/TTMZ08, Harvard Dataverse, V3.

[96] Ibid.

[97] UNHCR, Tunis Conclusions, supra, para 32.

[98] See, for example, the positive measures adopted by Kuwait, Saudi Arabia and Bahrain which ensure that a woman cannot lose her nationality in connection with changes in her marital status or her husband’s citizenship, if such loss would render her stateless.

[99] UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, HRC/25/28, para 16.

[100] UNHCR, Tunis Conclusions, supra, para 62.

[101] UNHCR, Tunis Conclusions, supra, para 37.

[102] UN Department of Economic and Social Affairs, The International Migration Report 2017, ST/ESA/SER.A/403, December 2017.

[103] Jorunn Brandvoll, 'Deprivation of Nationality: Limitations on rendering persons stateless under international law', eds. Edwards, Alice and van Waas, Laura, Nationality and Statelessness under International Law (Cambridge University Press, 2014) p 209.

[104] This point was made by the United Nations Conference on the Elimination or Reduction of Future Statelessness which recommended that States 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'. See: 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.

[105] See: CRC Arts 7 and 8, ICCPR Art 24, CEDAW Art 9, CRPD Art 18(2), CERD Art 5(iii) and CMW Art 29.

[106] UNHCR, Tunis Conclusions, supra, para 58.

[107] UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, HRC/25/28, para 11.

[108] Ibid, para 14.

[109] UNHCR, Tunis Conclusions, supra, para. 68.

[110] Alice Edwards, and Laura van Waas, Nationality and Statelessness under International Law (Cambridge University Press, 2014) p 202.

[111] Harald Waldrauch, 'Loss of Nationality' in Rainer Baubock, Eva Ersboll, Kees Groenendijk, and Harald Waldrauch, (eds.), Acquisition and Loss of Nationality. Volume 1: Comparative Analysis. Policies and Trends in 15 European Countries (Amsterdam University Press, 2006) p 23, 29.

[112] Arab Charter on Human Rights, Art 29.

[113] UN Human Rights Council, Human rights and arbitrary deprivation of nationality, supra.

[114] UN High Commissioner for Refugees (UNHCR), Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions"), March 2014, available at: http://www.refworld.org/docid/533a754b4.html [accessed 7 October 2018], para 16.

[115] UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, 14 December 2009, A/HRC/13/34, available at: http://www.refworld.org/docid/4b83a9cb2.html, para 25

[116] Ibid, paras 43-6.

[117] 1961 Convention, Art 9.

[118] ICCPR, Art 2.

[119] See, for example, refugees of Bhutanese origin in Nepal. Human Rights Watch, 'Last Hope: The Need for Durable Solutions for Bhutanese Refugees in Nepal and India' (Report) (16 May 2007), Volume 19, No. 7(C));

[120] South West Africa Cases (Liberia v. South Africa; Ethiopia v. South Africa) 1962 ICJ Rep. 319.

[121] CRPD, Art 18.

[122] UNHCR, Tunis Conclusions, supra, para 71.

[123] Human Rights Council, Report of the Secretary General etc, HRC/25/28, para 4.

[124] Gerard-René de Groot, Towards a toolbox for nationality legislation Text of the Valedictory Lecture as Professor of Comparative Law and Private International Law at Maastricht University delivered on 14 October 2016, 44.

[125] UNHCR, Tunis Conclusions, supra, para 62.

[126] UNHCR, Tunis Conclusions, supra, para 41.

[127] Law No. (46) of 1963 - Iraqi Nationality, 1963, available at: https://www.refworld.org/docid/3ae6b4ec38.html.

[128] Revolutionary Command Council of Iraq, Resolution No. 666 of 1980 (nationality), 26 May 1980, available at: https://www.refworld.org/docid/3ae6b51d28.html.

[129] Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006, available at: https://www.refworld.org/docid/4b1e364c2.html, Art 15.

[130] Ibid, Arts 17, 18.

[131] United Nations Children's Fund (UNICEF), A passport to protection: A guide to birth registration programming, 2013, p 11.

[132] Vienna Convention on Succession of States in Respect of Treaties, opened for signature 23 Aug 1978, 1946 UNTS 3 (entered into force 6 Nov 1996) Art 2(1)(b).

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