

Citizenship and Equality in Practice:

Guaranteeing Non-Discriminatory Access to
Nationality,

Protecting the Right to be Free from Arbitrary
Deprivation of Nationality,

And Combating Statelessness

*Submission of the Open Society Justice Initiative to the United Nations
Office of the High Commissioner for Human Rights for Consideration
by the UN Commission on Human Rights at its Sixty-Second Session*

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Executive Summary

Today, the human right to citizenship is under threat as never before. Since the collapse of communism in Europe in 1989, ethnic nationalism has led to the manipulative exclusion of minorities from citizenship in a number of new or successor states. During the same period in Africa, latent ethnic tensions arising from decolonization and state-building, combined with the growing significance of political rights in emerging democracies, have sparked armed conflict and marginalized racial and ethnic minorities. Meanwhile, repressive governments in Asia and the Middle East are using the denial or deprivation of nationality as a tool to disenfranchise unpopular ethnic groups.

These concurrent phenomena are causing an acute crisis of statelessness at the dawn of the twenty-first century. In order to combat statelessness and the discriminatory manipulation of race and ethnicity in granting, withholding, and withdrawing nationality, the Justice Initiative emphasizes the need to adopt a comprehensive approach to enforce the prohibitions on discrimination, statelessness, and arbitrary deprivation of nationality and to create an effective framework to guarantee the universal right to a nationality. In view of the systematic nature of these problems, the Justice Initiative makes the following specific recommendations:

Introduction

The Open Society Justice Initiative respectfully submits these comments and recommendations for consideration by the UN Commission on Human Rights at its sixty-second session. The Justice Initiative welcomes resolution 2005/45 by the Office of the High Commissioner for Human Rights (OHCHR), calling upon all states to ensure the respect of the universal rights enshrined in Article 15 of the Universal Declaration of Human Rights, namely the right of every individual to have a nationality and the right to be free from the arbitrary deprivation of nationality.¹ Mindful that states retain the right to establish laws governing the acquisition, renunciation, or loss of nationality, OHCHR must play a critical role in guaranteeing that state law and practice on nationality conform to international human rights norms.

The Open Society Justice Initiative is an operational program of the Open Society Institute that promotes rights-based law reform and strengthens legal capacity worldwide through technical assistance, litigation and legal advice, advocacy, knowledge dissemination and network building. In the field of Equality and Citizenship, the Justice Initiative addresses the shared vulnerabilities of racial/ethnic minorities, non-citizens, and stateless persons. The Justice Initiative is currently working with partners to document and seek legal remedies for discrimination on grounds of citizenship status, racial and/or ethnic origin at the global level, and in national or regional projects in Russia, Mexico, Africa, Central Asia, and central and western Europe.

These comments underscore the primacy of the customary international norm against racial and ethnic discrimination over the sovereign right of states to establish laws governing the acquisition, renunciation or loss of citizenship. This submission first sets forth the development of the right to nationality, then the three norms that constrain state

¹ Throughout this document, the terms “nationality” and “citizenship” are used interchangeably.

power in regulating citizenship, namely the prohibition against discrimination, the prohibition against statelessness, and the prohibition against the arbitrary deprivation of nationality. Next, it sets forth brief examples of contemporary state practice violating these norms. In view of the urgent need to strengthen international mechanisms to render most effective the rights to nationality, the right to be free from discrimination and the right to be free from arbitrary deprivation of nationality, this submission concludes with recommendations for consideration by the UN Commission on Human Rights at its sixty-second session.

Constraints on State Power in the Field of Nationality Access and Denial

1. The Right to Nationality As a Protected Right

Since the rise of the nation-state in the 18th century the right to nationality has, in practice, become integral to the enjoyment of almost all other rights. International law has traditionally afforded states broad discretion to define the contours of and delimit access to nationality. Nonetheless, recognition of the inherent link between the right to a nationality and the enjoyment of other human rights, has confirmed that nationality laws and practices must be consistent with the principles of international law.

That international law limits state sovereignty to regulate citizenship was first made clear in 1923 by the Permanent Court of International Justice, which ruled that “[t]he question of whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relevant question; it depends on the development of international relations.”² Article 1 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws affirmed this principle:

It is for each State to determine under its own laws who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.³

In response to the mass atrocities of World War II and the refugee crisis involving millions of displaced persons throughout Europe, the international community declared its commitment to the protection of human rights while recognizing the critical role that nationality plays in ensuring individual access to the enjoyment of these rights. Thus, Article 15 of the Universal Declaration of Human Rights guarantees that “[e]very one has a right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” Although the Declaration itself is not legally binding, international law scholars recognize that it has acquired the status of customary international law.⁴

² *Nationality decrees issued in Tunis and Morocco – Advisory Opinion* [1922] PCIJ 3, ¶ 24 (Oct. 4, 1922).

³ *1930 Hague Convention on Conflict of Nationality Laws*, 179 LNTS 80; 1930 Can. T.S. No. 7.

⁴ Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, 41 (1996).

The right to nationality gained wider recognition through international and regional human rights instruments in the decades after World War II.⁵ Binding international legal instruments further guarantee the right of every child to acquire a nationality and articulate the duty of states parties to undertake to respect this right as it pertains to children.⁶

In the half century since the right to nationality was articulated in Article 15 of the Universal Declaration of Human Rights, three clear international legal prohibitions on the sovereign right of states to regulate citizenship have emerged: the prohibition against racial discrimination; the prohibition against statelessness; and the prohibition on arbitrary deprivation of citizenship. The Inter-American Court of Human Rights, echoing global jurisprudence, has most recently affirmed these prohibitions in the realm of nationality law:

Although the determination of who is a national of a particular state continues to fall within the ambit of state sovereignty, states' discretion must be limited by international human rights that exist to protect individuals against arbitrary state actions. States are particularly limited in their discretion to grant nationality by their obligations to guarantee equal protection before the law and to prevent, avoid, and reduce statelessness.⁷

The general principles of law regarding these three prohibitions are set forth below, as are illustrations of state violations of these principles, highlighting the urgent need for stronger international legal protection to safeguard these rights.

2. The Prohibition against Racial Discrimination

State sovereignty over nationality is most clearly restrained by the prohibition against racial and ethnic discrimination. The principle against racial discrimination is integral to all international and regional human rights instruments,⁸ representing a rule of

⁵ Article 4 of the European Convention on Nationality provides: "(a) Everyone has a right to a nationality; (b) statelessness should be avoided; (c) no one shall be arbitrarily deprived of his or her nationality." Article 20 of the American Convention on Human Rights affirms the general right to a nationality and the prohibition against arbitrary deprivation, adding that "[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."

⁶ Article 23(3) of the *International Covenant on Civil and Political Rights*; Articles 7(1) and 8(1) of the *Convention on the Rights of the Child*.

⁷ *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Int. Am. Ct. H.R. Case No. 12.189 (Sept. 8, 2005).

⁸ The prohibition on racial and ethnic discrimination is enshrined in the following provisions of international and regional human rights instruments: Article 1(3) of the *United Nations Charter* (the purpose of the Charter is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction to race, sex, language or religion."); Article 55(c) of the *United Nations Charter* (committing the United Nations to promote non-discrimination); Articles 2 and 7 of the *Universal Declaration of Human Rights*; Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR); Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights*; Article 14 of the *European Convention of Human Rights* (ECHR); Articles 1 and 2 of *Protocol No. 12 to the ECHR*; Article 21 of the *European Charter of Fundamental Freedoms*; Chapter 1, Article 2 of the *African Charter on Human and Peoples' Rights*; and Articles 1(1) and 24 of the *American Convention on Human Rights*.

customary international law.⁹ As such, it has attained the status of a *jus cogens*, or peremptory, norm, one that is “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.”¹⁰

Numerous courts have affirmed that racial discrimination is a particular evil that international and comparative law accords high priority to combating and redressing.¹¹ Discrimination on the grounds of national origin is a form of racial discrimination prohibited by international and comparative law, as confirmed by decisions of UN treaty bodies, including the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee on the Rights of the Child.¹²

Regional protection mechanisms also recognize the *jus cogens* nature of the antidiscrimination norm. For example, the Inter-American Court of Human Rights has so affirmed:

[T]he principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable.¹³

Although the International Convention on the Elimination of All Forms of Racial Discrimination provides for the distinction between citizens and non-citizens, the Committee on the Elimination of Racial Discrimination has made clear that this exemption “must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights

⁹ See, e.g., *Restatement (Third) The Foreign Relations Law of the United States*, § 702 (1987) (“Customary International Law of Human Rights: A state violates international law if, as a matter of state policy, it practices, encourages, or condones . . . systematic racial discrimination); *R. v. Immigration Officer at Prague Airport*, UKHL 55, ¶ 46 (2004) (“The great theme which runs through subsequent human rights instruments, national, regional and international, is the legal right of equality with the correlative right of non-discrimination on the grounds of race. . . It is true that in the world, as we know it, departures from this norm are only too many. But the international community has signed up to it. The moral norm has ripened into a rule of customary international law. It is binding on all states.”).

¹⁰ Article 53 of the *1969 Vienna Convention on the Law of Treaties*.

¹¹ See, e.g., *East African Asians v. U.K.*, 3 EHRR 76, ¶ 207 (1973) (holding that immigration legislation which singled out for exclusion a particular racial group constituted “degrading treatment” under the European Convention of Human Rights and noting that “a special importance should be attached to discrimination based on race”); *Brown v. Board of Education*, 347 U.S. 483 (1954).

¹² See, e.g., UN Human Rights Committee, *Concluding Observations of the Human Rights Committee Sweden 24/4/2002*, ¶ 12 UN Doc. CCPR/CP/74/SWE; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Ireland 03/08/93*, ¶ 17 UN Doc. CCPR/C/79/Add.21; UN Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Elimination of Racial Discrimination: Dominican Republic 26/08/99*, ¶ 11 UN Doc. CERD/304Add.74; UN Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Iceland 31/01/2003*, ¶ 22 UN Doc. CRC/C/15/Add.203.

¹³ *Juridical Conditions and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03 of September 17, 2003*, Inter-Am. Ct. H.R. (Ser. A) No. 18, ¶ 101 (2003).

and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”¹⁴ The Committee has further recommended that states “[r]ecognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States Parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.”¹⁵

3. The Prohibition against Statelessness

The Universal Declaration of Human Rights’ formal recognition of the right to nationality emerged in response to the crisis of statelessness, as World War II resulted in the largest population movements in European history. Hundreds of thousands of Jews who survived the Nazi-perpetrated genocide fled their home countries for safe haven elsewhere, while millions of Germans were expelled from Eastern Europe, and millions of Poles, Ukrainians, Belorussians, and other ethnic populations within the Soviet Union were either forcibly expelled from their homes or voluntarily fled for their safety.¹⁶

To address the very real problems associated with the uncertain nationality of the displaced populations in Europe at the time, the Economic and Social Council of the United Nations commissioned the Secretary General to undertake a study on statelessness in 1948.¹⁷ His study addressed the separate issues of improving the actual status of stateless persons on the one hand, and of proposing recommendations to eliminate statelessness on the other. To address the sources of statelessness, the study recommended that every child receive a nationality at birth and that no individual should be permitted to lose a nationality unless the acquisition of another nationality is guaranteed. These recommendations form the foundational principles behind legal developments addressing statelessness. The first direct result of the Secretary General’s study was the adoption of the Convention relating to the Status of Stateless Persons in 1954, which affirmed that fundamental rights of stateless persons must be protected.

The 1961 Convention on the Reduction of Statelessness first articulated the constraint on unfettered state regulation of citizenship by codifying the positive legal duty of states to eliminate and prevent statelessness in nationality laws and practices. Article 1 of this Convention mandates that a “Contracting State *shall grant* its nationality to a person born in its territory who would otherwise be stateless,” while additional provisions specify protections to ensure that states grant citizenship or are constrained not to deprive citizenship to those who would otherwise be stateless.

Another key provision of the 1961 Convention is its clear articulation of the duty of states not to create statelessness through the deprivation of nationality. Article 8(1) directs that a “Contracting State *shall not* deprive a person of his nationality if such

¹⁴ Committee on the Elimination of Racial Discrimination, General Recommendation XXX, Discrimination against Non-Citizens (2004).

¹⁵ *Id.*, para. 14.

¹⁶ Bernard Wasserstein, *European Refugee Movements after World War Two*, available at http://www.bbc.co.uk/history/war/wwtwo/refugees_print.html.

¹⁷ The summary of this historical account has been drawn from Johannes M.M. Chan, *The Right to a Nationality as a Human Right: The Current Trend Towards Recognition*, 12 Hum. Rts. L.J. 1, 3-4 (1991).

deprivation would render him stateless.” Though Article 8 lists limited legitimate grounds for the deprivation of nationality even if the deprivation would result in statelessness, it provides an important safeguard in mandating that such deprivation can occur only after providing individuals concerned with due process protections.

Though relatively few countries have ratified the 1961 Convention, it marks a significant step forward in providing substantive protection to the individual right to a nationality. It recognizes that states are limited in their sovereign power to regulate citizenship by the prohibition against statelessness. In addition, both the 1954 and 1961 Conventions addressing statelessness affirm the primacy of the prohibition against discrimination. Article 3 of the 1954 Convention confirms that “[t]he Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.” Article 9 of the 1961 Convention goes even further: “A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”

Further evidence of the primacy of the prohibition against statelessness has emerged since the collapse of communism in Europe resulted in political transitions and state succession after the dissolution of the Soviet Union, Yugoslavia, and Czechoslovakia. For example, Article 4 of the 1997 European Convention on Nationality upholds the principle that states are prohibited from depriving individuals of nationality should that result in statelessness. Similarly, the Preamble to the 1997 Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, commissioned by the United Nations General Assembly, affirms as its guiding principle the duty to avoid statelessness in the context of state succession.

4. The Prohibition against Arbitrary Deprivation of Nationality

The prohibition against the arbitrary deprivation of nationality was set forth as concomitant with the right to a nationality in Article 15 of the Universal Declaration of Human Rights. This reflects the international community’s condemnation of the mass expulsions and manipulative denationalization of Russians, Jews, and other racial and ethnic minorities in Europe that had occurred in the 1920s, 1930s, and 1940s. The negative formulation of this right equals the positive right of individuals to be free from arbitrary deprivation of nationality. Article 20(3) of the Inter-American Convention on Human Rights similarly prohibits the arbitrary deprivation of nationality, as does Article 16 of the 1997 Draft Articles on Nationality commissioned by the UN General Assembly..

International law does recognize some permissible grounds for the deprivation of citizenship. Article 8 of the 1961 Convention on the Reduction of Statelessness, for example, recognizes that states are allowed to deprive an individual of nationality if that nationality is obtained through misrepresentation or fraud, among several other accepted grounds. But deprivation of nationality, even on these permissible grounds, must be accompanied by important procedural and substantive safeguards.

The Universal Declaration of Human Rights does not expound upon what constitutes the arbitrary deprivation of nationality. Recent denationalizations of various

populations and individuals show the urgency for the international community to articulate clear guidelines as to what constitutes a violation of the right to a nationality and to be free from arbitrary deprivation of nationality. The UN Commission on Human Rights and the Office of the High Commissioner for Human Rights are uniquely situated to assist in developing these principles.

The concept of arbitrariness is a standard of reference in international law, from which it is possible to derive guiding principles behind the prohibition against arbitrary deprivation of nationality. First and foremost, the prohibition against arbitrariness mandates procedural fairness and due process to constrain states from taking unitary action that would shield them from accountability. This procedural due process requirement is clear in the context of nationality and statelessness as provided by Article 8(4) of the 1961 Convention on the Reduction of Statelessness, which provides that a “Contracting State shall not exercise a power of deprivation . . . except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.” Two components of procedural due process therefore include the prescription by law of an objective standard that provides for deprivation of nationality and the meaningful opportunity for individuals to go before an independent tribunal.

The notion of arbitrariness, however, comprises more than procedural fairness. International jurisprudence interpreting what constitutes arbitrary action in various contexts instructs that standards of necessity, proportionality, and reasonableness are relevant to the inquiry. As the Human Rights Committee has observed: “[T]he introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the [ICCPR] and should be, in any event, reasonable in the particular circumstances.”¹⁸ The Committee has found that “the notion of ‘arbitrariness’ must not be equated with ‘against the law’ but be interpreted more broadly to include such elements as inappropriateness and injustice.”¹⁹

The substantive scope of the notion of arbitrariness in the context of deprivation of nationality includes at least two elements, namely the prohibition against discrimination and the prohibition against statelessness.

Just as the *jus cogens* prohibition against racial and ethnic discrimination limits state discretion over citizenship, so does any deprivation of nationality based on racial or ethnic discrimination count as being arbitrary. UDHR Article 15(2)’s prohibition of arbitrary deprivation of nationality, taken together with the non-discrimination provision in Article 2 of the Universal Declaration, mandates as much. Thus, the UN Commission on Human Rights in resolution 2005/45 reaffirmed that the right to a nationality is a fundamental human right and that “arbitrary deprivation of nationality on racial, national, ethnic, religious, political or gender grounds is a violation of human rights and fundamental freedoms.” Article 9 of the 1961 Stateless Convention explicitly prohibits

¹⁸ UN Human Rights Committee, General Comment No. 16, CCPR/C/21/Rev/ 1, pp. 19-20.

¹⁹ *A. v. Australia*, Communication No. 560/1993: Australia, ¶ 9.2; CCPR/C/59/D/560/1993 (April 30, 1997).

states from depriving “any person or a group of persons of their nationality on racial, ethnic, religious or political grounds.”

Similarly, any deprivation of nationality that results in statelessness must be considered arbitrary. This is affirmed by the protections afforded in Article 8 of the 1961 Convention on the Reduction of Statelessness. With the right to nationality a fundamental human right, the deprivation of nationality that results in statelessness can only be deemed arbitrary.

The Contemporary Crisis of Statelessness Resulting from State Practice in Violation of the Prohibited Norms

Despite the development of legal norms limiting state discretion in the realm of nationality law, contemporary state practice suggests that states regularly act without regard to any constraints on their sovereignty. Around the world, states manipulate nationality as a tool to exclude and marginalize unpopular racial and ethnic minorities, giving rise to an acute crisis of statelessness at the dawn of the twenty-first century. The manifestations of this most recent wave of statelessness have varied, yet encompass three distinct phenomena: the denial of access to citizenship, the arbitrary deprivation of citizenship, or denationalization, and situations of state succession that have effectively excluded ethnic groups rendering them stateless. In each category, statelessness may be the result of legislation, of administrative practice, or of arbitrary action by state officials. However, one common denominator has been that ethnic and racial minorities are often the principal victims.

First, state practice that violates the right to nationality occurs through discriminatory laws and policies that limit individuals’ access to citizenship. Governments commonly give preferential treatment to nationals of certain states in accessing citizenship, for reasons of common history, shared language, or other attachments. This is appropriate. However, some governments have gone further to target particular ethnic groups for exclusion, including by creating insurmountable bureaucratic hurdles and requirements that effectively deny certain groups citizenship based on ethnicity and race. Examples of invidious discrimination in access to citizenship include the following:

- In Thailand, over half of the Hill Tribe population has been denied access to Thai citizenship as a result of excessively burdensome requirements to prove their nationality, even though the Hill Tribe people, who number over one million, were born in Thailand and have lived there all of their lives.
- In Kuwait, the government has excluded from nationality the people it has classified as Bidun, namely descendants from nomadic tribes and migrants who have lived in Kuwait for decades.
- In Burma, members of the Rohingya Muslim minority, who have been living in the northern state of Ankara since the 12th century, are excluded from citizenship by the 1982 citizenship law, which provides for several categories of citizenship, none of which the Rohingya are deemed to satisfy.

- Palestinians in a number of Arab states, including Lebanon and Syria, have been barred from acquiring citizenship by legal requirements.
- Authorities in Syria have denied identity documents and citizenship to ethnic Kurds, including those who have lived in Syria for generations.
- Dominican authorities routinely claim that Dominicans of Haitian descent are “in transit”—even when they have lived in the country for decades—in order to bar them from claiming lawful citizenship. Some medical personnel have refused to provide undocumented parents of newborns with birth certificates—a prerequisite for obtaining proof of Dominican citizenship. The Inter-American Court of Human Rights recently condemned this practice and policy in the Dominican Republic as unlawful.
- In the Russian Federation, regional authorities in Krasnodar Krai have arbitrarily denied approximately 13-16,000 Meskhetians, a Turkish-speaking Muslim ethnic minority, all rights of Russian citizenship to which they are entitled as former Soviet citizens. Local officials have repeatedly singled out the Meskhetians through special residency regulations citing their ethnicity as the basis for their disparate treatment. UNHCR has described Meskhetians as *de jure* citizens, *de facto* stateless.
- In Kenya, the Nubian community, composed of more than 100,000 descendants of persons originally from the territory of Sudan who were resettled by the British colonial government, live as *de facto* stateless persons without adequate legal protection as they are systematically denied their right to Kenyan citizenship and to own land.

Second, in countries around the world, racial and ethnic minorities have been arbitrarily stripped of their nationality and rendered stateless in direct contravention of the prohibition against arbitrary deprivation of nationality in Article 15 of the Universal Declaration of Human Rights. While the manifestations of this most recent wave of denationalization have varied from place to place, in almost all situations, racial and ethnic minorities have been among the main targets. Examples of this practice include the following:

- In Bhutan, overly burdensome requirements of successive citizenship acts in 1977 and 1985 resulted in the arbitrary deprivation of nationality of over 100,000 southern Bhutanese of Nepali origin and their forcible expulsion from Bhutan to Nepal in the early 1990s.
- In the Democratic Republic of Congo, a 1981 citizenship law effectively stripped of citizenship members of the Banyamulenge, a Kinyarwanda-speaking ethnic group many of whom have resided in the eastern region of the DRC since before the creation of colonial boundaries more than a century ago.

- Tens of thousands of black Mauritians were stripped of citizenship documents and forcibly expelled from their country in 1989 and have lived in a situation of *de facto* statelessness in Senegal ever since. In 2000, the African Commission on Human and Peoples' Rights ruled that the expulsions and associated violence breached numerous articles of the African Charter on Human and Peoples' Rights and ordered that the refugees be re-admitted to Mauritania and that their citizenship documents be returned to them. To date no action has been taken by the Mauritanian government.
- In Zimbabwe, a citizenship act adopted shortly before the presidential election of 2002 obliged anyone presumed to have any other citizenship to renounce the claim to that second citizenship or else lose Zimbabwean citizenship. The act was applied specifically against particular ethnic groups with surnames considered "non-Zimbabwean." Some of these individuals have been stripped of Zimbabwean citizenship and rendered stateless.

Third, the recent wave of state succession in Europe, Africa, and Asia has resulted in the creation of groups of stateless individuals who were excluded from citizenship at the time of state succession as a result of exclusive ethnic and racial policies. Examples of this practice include the following:

- The enactment of discriminatory nationality laws in Estonia and Latvia following state succession from the Soviet Union, resulting in the loss of nationality for large Russian minorities in each country.
- The loss of citizenship by many Roma following the 1993 split of Czechoslovakia and by the enactment of new citizenship legislation in the countries to emerge from the former Yugoslavia.
- The loss of citizenship by ethnic Serbs who were long-time residents in Croatia following that country's independence.
- The retroactive deprivation of citizenship of Eritreans living in Ethiopia and of Ethiopians living in Eritrea following the succession of Eritrea from Ethiopia in 1993.
- Over 200,000 stateless Biharis first granted citizenship at the time of Bangladeshi independence later denied citizenship by the Bangladeshi government, today live in camps in Bangladesh, deprived of citizenship by both Bangladesh and Pakistan.

General Recommendations

The international community is confronted with an acute crisis of statelessness as contemporary state practice reveals increasing violations of the clear international legal prohibitions against discrimination, arbitrary deprivation of citizenship, and statelessness.

In view of the systematic nature of these problems, the Open Society Justice Initiative offers the following recommendations to the UN Commission on Human Rights, the Office of the High Commissioner for Human Rights and additional bodies within the United Nations system to devise a comprehensive strategy to guarantee the effective right to a nationality:

To the Office of the High Commissioner for Human Rights (OHCHR):

- Join in the creation of an Inter-Agency Task Force on Statelessness with representation from OHCHR, the United Nations High Commissioner for Refugees, other relevant international organizations, and the NGO sector, that regularly meets to increase agency awareness and information exchange on statelessness to ensure a consistent and comprehensive approach to the identification of stateless groups and individuals and resolution of their status. The Inter-Agency Task Force on Statelessness should periodically include representatives of regional human rights mechanisms to ensure the effective coordination of monitoring and protection of equality and the right to nationality.
- Designate at least one human rights officer to monitor, report, and coordinate OHCHR's advocacy on nationality and statelessness.
- Include nationality and statelessness in all country-specific and thematic monitoring, reporting, training and protection activities and across treaty bodies and special procedures.

To the UN Commission on Human Rights:

- Create a Working Group on Nationality whose mandate includes the following: the submission of annual reports to the Commission on Human Rights (or successor entity) as well as relevant treaty-based United Nations entities on nationality and statelessness; conducting field missions to investigate and report on statelessness and the arbitrary deprivation of nationality; the elaboration of principles defining the arbitrary deprivation of nationality; a complaints procedure for groups or individuals to request advisory opinions on statelessness and the arbitrary deprivation of nationality.
- In the alternative, create a Special Rapporteur on Nationality whose mandate includes monitoring and reporting on statelessness and the right to be free from arbitrary deprivation of nationality.
- Survey and report on the problems of nationality deprivation, discriminatory access, and statelessness.
- Call on all states to ratify the 1954 and 1961 Statelessness Conventions.

To the UN Treaty Bodies:

- The Human Rights Committee and the Committees on the Elimination of Racial Discrimination (CERD), the Rights of the Child (CRC), and the Elimination of Discrimination Against Women (CEDAW) should monitor issues of discrimination, access to nationality, and statelessness through country reports and, where appropriate, individual complaints.
- CRC should issue a General Comment on a child's Article 7 right to a nationality.
- CEDAW should investigate discrimination against women in access to or deprivation of citizenship and issue a General Comment on women's Article 9 right to nationality and citizenship.

OPEN SOCIETY
JUSTICE INITIATIVE

The Open Society Justice Initiative, an operational program of the Open Society Institute, pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in four priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.

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