

Human Rights and Legal
Identity:
Approaches to Combating
Statelessness and Arbitrary
Deprivation of Nationality

Thematic Conference Paper

May 2006

I. Introduction: Understanding the Problem

The human right to citizenship¹ 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 perpetuate women's inequality through discriminatory citizenship rules and 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. Yet stateless persons remain the "ultimate forgotten people."²

Who is stateless and how many stateless persons are there today?

Article 1 of the 1954 Convention relating to the Status of Stateless Persons defines a "stateless person" as one "who is not considered as a national by any State under the operation of its law." This is a purely technical definition that ignores the power of states to politically manipulate citizenship in both law and practice. As state practice reveals, the goalposts for citizenship are not always visible and can be moved at the mercy of governments.

The preamble to the 1954 Convention clarifies that stateless persons are to be distinct from refugees, who merit protection under the 1951 Convention relating to the Status of Refugees. To be sure, at the time of the drafting of these Conventions, it was presumed that *de facto* stateless persons, namely those without an effective nationality, were indeed refugees that fell under the protection of the 1951 Convention. But the practical reality of displacement over the last half century has revealed that not all *de facto* stateless persons have crossed borders and qualify for refugee status. Today's landscape suggests that *de jure* statelessness is overshadowed by an even greater crisis of *de facto* statelessness. Yet the circumstances that fall within the "grey zone of *de facto* statelessness,"³ remain largely unexplored, and UNHCR and the international community has been slow to react in seeking practical solutions to resolve obstacles to the effective enjoyment of the right to nationality.

The exact number of stateless persons is unknown, and the task of quantifying the stateless population is complicated by definitional ambiguities of whether to include *de facto* stateless persons and who qualifies as such. Most recently, Refugees International estimated the number of stateless persons to be 11 million.⁴ This figure has been

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

² James A. Goldston, quoted in "World's Vast Ranks of the Stateless," *Christian Science Monitor*, October 13, 2005, available at <http://csmonitor.com/2005/1013/p01s04-wosc.htm>.

³ Carol A. Batchelor, *Statelessness and the Problem of Resolving Nationality Status*, 10 *Int'l Journal of Refugee Law* 145, 172 (1998).

⁴ Refugees International, *Lives on Hold* (February 2005), available at http://www.refugeesinternational.org/files/5051_file_stateless_paper.pdf.

acknowledged by UNHCR and the Inter-Parliamentary Union in their joint report, *Nationality and Statelessness: A Handbook for Parliamentarians*.⁵ A questionnaire distributed by UNHCR to UN member states requesting information on statelessness yielded a worldwide count of just over two million stateless persons. But only 74 states (38% of 191 states contacted) responded to this survey.⁶ Recognizing the limitations of this exercise, UNHCR estimated the number of stateless persons to be 9 million in 2004.⁷

Improved documentation of the number of stateless persons is crucial in order to assess how best to target international efforts in responding to crises of systematic human rights violations of populations marginalized by the arbitrary denial or deprivation of citizenship. The gap between known persons in need and those receiving assistance argues for reconsideration of UNHCR's mandate and resource allocation. In 2005, of the total population of persons UNHCR assisted, 48.1% were refugees, 28.3% were IDPs, and 7.6% were stateless persons.⁸ By contrast, as of April 2006, the distribution of persons in need was very different: UNHCR estimated there were nine million refugees,⁹ between 20 and 25 million internally displaced persons,¹⁰ and 11 million stateless persons.¹¹ The plight of stateless persons, whose projected numbers equal or surpass refugees, remains unaddressed.

A Call for a Human Rights Approach to Addressing Statelessness

A clear pattern has emerged from case studies around the world of states manipulating citizenship, in either law or practice, to marginalize and disenfranchise vulnerable groups such as racial and ethnic minorities and women. This is occurring in flagrant violation of well-established human rights principles, particularly the universal anti-discrimination norm. In order to combat statelessness and the discriminatory manipulation of race and ethnicity in granting, withholding, and withdrawing nationality, the Justice Initiative calls for the development of a comprehensive approach to enforce the prohibitions on discrimination, statelessness, and arbitrary deprivation of nationality and the creation of an effective institutional framework that will guarantee the universal right to a nationality. The following section will set forth the human rights framework establishing the right to nationality and the three norms that have developed to constrain state power in regulating citizenship, namely the prohibition against discrimination, the state duty to avoid statelessness, and the right to be free from arbitrary deprivation of citizenship.¹²

⁵ Available at <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=436774c62>.

⁶ UNHCR, *Refugees by Numbers 2005 Edition*, p. 13, available at <http://www.unhcr.org/cgi-bin/texis/vtx/basics/opendoc.pdf?id=416e3eb24&tbl=BASICS&page=basics>.

⁷ UNHCR, *Refugees by Numbers 2004 Edition*, p. 13, available at <http://www.unhcr.org/cgi-bin/texis/vtx/basics/opendoc.pdf?tbl=BASICS&id=435f891f2>.

⁸ UNHCR, *The State of the World's Refugees: Human Displacement in the New Millennium*, p. 4, available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?id=4444afd111&tbl=PUBL>.

⁹ UNHCR, *The State of the World's Refugees: Human Displacement in the New Millennium*, p. x.

¹⁰ See *id.* at p. 200.

¹¹ See *supra*.

¹² The following section is adapted from the *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* (November 2005)

II. Defining the Human Rights Constraints on State Sovereignty over Citizenship

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.”¹³ 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.¹⁴

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.”¹⁵

The right to nationality gained wider recognition through international and regional human rights instruments in the decades after World War II.¹⁶ Binding international legal instruments such as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child further guarantee the right of every

¹³ *Nationality decrees issued in Tunis and Morocco – Advisory Opinion* [1922] PCIJ 3, ¶ 24 (Oct. 4, 1922).

¹⁴ *1930 Hague Convention on Conflict of Nationality Laws*, 179 LNTS 80; 1930 Can. T.S. No. 7.

¹⁵ Although the Declaration itself is not legally binding, international law scholars recognize that it has acquired the status of customary international law. See Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, 41 (1996).

¹⁶ 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.”

child to acquire a nationality and articulate the duty of states parties to undertake to respect this right as it pertains to children.¹⁷

Three clear international legal restrictions on state sovereignty over the regulation of citizenship have emerged: (1) the prohibition against racial discrimination; (2) the prohibition against statelessness; (3) 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.¹⁸

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.

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,¹⁹ representing a rule of customary international law.²⁰

Numerous courts have affirmed that racial discrimination is a particular evil that international and comparative law accords high priority to combating and redressing.²¹

¹⁷ 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*.

¹⁸ *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Int. Am. Ct. H.R. Case No. 12.189 (Sept. 8, 2005).

¹⁹ 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*.

²⁰ 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.”).

²¹ 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

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.²²

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 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.”²³ 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.”²⁴

The Prohibition against Statelessness

The Universal Declaration of Human Rights’ formal recognition of the right to nationality emerged in the context of the refugee and statelessness crisis in the aftermath of World War II, a war which 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 fled for their safety.²⁵

To address the uncertain nationality of displaced populations in Europe at the time, the Economic and Social Council (ECOSOC) of the United Nations commissioned the Secretary General to undertake a study on statelessness in 1948.²⁶ The ECOSOC then appointed an *ad hoc* Committee on Refugees and Stateless Persons to draft a convention that would address both refugees and stateless persons, though the former group remained the priority. The Committee prepared a convention on refugees, with a

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).

²² 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.

²³ Committee on the Elimination of Racial Discrimination, General Recommendation XXX, Discrimination against Non-Citizens (2004).

²⁴ Id., para. 14.

²⁵ Bernard Wasserstein, *European Refugee Movements after World War Two*, available at http://www.bbc.co.uk/history/war/wwtwo/refugees_print.html.

²⁶ 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).

draft protocol addressing the status of stateless persons. With the impending dissolution of UNHCR's predecessor institution, the 1951 Convention relating to the Status of Refugees was adopted and action pertaining to stateless persons was delayed.

A separate legal regime concerning stateless persons emerged. The Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness were adopted in 1954 and 1961 respectively. The first affirmed that fundamental rights of stateless persons must be protected. The second sought to create a framework in which future statelessness could be avoided. To this end, it constrains 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 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 1954 and 1961 Statelessness Conventions, they mark significant steps forward in guaranteeing the rights of stateless persons and providing substantive protection to the individual right to a nationality. They recognize that states are limited in their sovereign power to regulate citizenship by the prohibition against statelessness. Affirming the primacy of human rights concerns, 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."

The dissolution of the Soviet Union, Yugoslavia, and Czechoslovakia in the 1990s spurred further legal developments affirming the duty of states to avoid statelessness. The UN General Assembly commissioned the International Law Commission (ILC) to study and propose draft articles on nationality in relation to the succession of states, which were adopted by the ILC in 1997. In the same year, the Council of Europe adopted the European Convention on Nationality and has further developed a draft Convention on the Avoidance of Statelessness in Relation to State Succession.

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, reflecting 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. 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 in Relation to the Succession of States prepared by the International Law Commission upon commission from the UN General Assembly.

International law recognizes some permissible grounds for the deprivation of citizenship.²⁷ 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 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."²⁸ The Committee has found that "the notion of 'arbitrariness' must not be equated with

²⁷ 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.

²⁸ UN Human Rights Committee, General Comment No. 16, CCPR/C/21/Rev/ 1, pp. 19-20.

‘against the law’ but be interpreted more broadly to include such elements as inappropriateness and injustice.”²⁹

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 Statelessness Convention explicitly prohibits 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 Statelessness Convention. With the right to nationality a fundamental human right, the deprivation of nationality that results in statelessness can only be deemed arbitrary.

III. Illustrating the Contemporary Crisis of Statelessness

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

²⁹ A. v. *Australia*, Communication No. 560/1993: Australia, ¶ 9.2; CCPR/C/59/D/560/1993 (April 30, 1997).

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 Kinyarwandan-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.

IV. Developing an Agenda for Action

In convening this meeting of UN actors and advocates from international non-governmental organizations and representatives of affected stateless populations from around the globe, the Justice Initiative seeks to share our perspective and garner support for an improved human rights approach to enforcing the prohibitions on discrimination, statelessness, and arbitrary deprivation of nationality and to create an effective framework to guarantee the universal right to a nationality.

We hope that congregating this unique cross-section of actors will foster constructive dialogue and exchanges that will identify concrete collaboration in the following areas:

- Foster joint UNHCR and civil society initiatives;
- Identify stateless situations suitable for litigation under human rights provisions at the national level to be taken up to either regional human rights bodies or UN Treaty Bodies;
- Devise strategies for enforcing judicial pronouncements favorable to resolving statelessness problems (such as the Inter-American Court's Dominican Republic decision, the African Commission's Mauritania decision, and the Bangladesh Supreme Court's national decisions on citizenship for Biharis) that will induce states to comply with these decisions and resolve situations of statelessness;
- Develop arguments to ensure that official resolutions or conclusions (such as forthcoming conclusions of the UNHCR Executive Committee and the future Human Rights Council) include human rights protections for stateless persons;
- Identify allies within governments and other nongovernmental bodies to raise the profile of statelessness;
- Combine forces in advocating for institutional reform within the United Nations system to address statelessness.

V. **Justice Initiative Recommendations to the UN System**

To the United Nations High Commissioner for Refugees (UNHCR)

- Lead the creation of an Inter-Agency Task Force on Statelessness with representation from other relevant United Nations agencies, including OHCHR, OCHA, UNICEF, and UNIFEM, 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.
- Improve its methodology to collect comprehensive and reliable data on statelessness.
- Include citizenship in all voluntary repatriation agreements and efforts to seek comprehensive durable solutions for those in protracted refugee status.
- Expand its statelessness unit and increase field capacity, particularly in Asia, the Middle East, and Africa, to advise governments and collaborate with civil society actors to resolve situations of statelessness and disputed 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 UNHCR.
- 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 United Nations Human Rights Council:

- Take up the issue of the right to nationality and the arbitrary deprivation of nationality as was foreseen by the Sixty-Second Session of the dissolved Commission on Human Rights.

- 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 United Nations 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.

To the United Nations Children's Fund (UNICEF)

- Expand its birth registration programs and its activities on behalf of stateless children
- Improve monitoring of Article 7 of the CRC, and increase its activities on behalf of stateless children.

To the United Nations Development Fund for Women (UNIFEM):

- Increase its activities advocating for women's equal treatment in state citizenship provisions and on behalf of stateless women
- Increase monitoring of Article 9 of CEDAW

OPEN SOCIETY
JUSTICE INITIATIVE

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), 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 the following 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.

The Justice Initiative is governed by a Board composed of the following members: Aryeh Neier (Chair), Chaloka Beyani, Maja Daruwala, Anthony Lester QC, Juan E. Méndez, Diane Orentlicher, Wiktor Osiatyński, András Sajó, Herman Schwartz, Christopher E. Stone, Abdul Tejan-Cole and Hon. Patricia M. Wald.

The staff includes James A. Goldston, executive director; Robert Varenik, director of programs; Zaza Namoradze, Budapest office director; Mirna Adjami, legal officer, equality and citizenship; Kelly Askin, senior legal officer, international justice; David Berry, senior officer, communications; Sandra Coliver, senior legal officer, freedom of information and expression; Indira Goris, program officer, equality and citizenship; Julia Harrington, senior legal officer, equality and citizenship; Katy Mainelli, administrative manager; Chidi Odinkalu, senior legal officer, Africa; and Martin Schönteich, senior legal officer, national criminal justice.

E-mail: info@justiceinitiative.org

New York

400 West 59th Street
New York, NY 10019 USA
Phone: +1 212-548-0157
Fax: +1 212-548-4662

Budapest

Oktober 6. u. 12
H-1051 Budapest, Hungary
Tel: +36 1 327-3100
Fax: +36 1 327-3103

Abuja

Plot 1266/No.32, Amazon Street
Maitama, Abuja, Nigeria
Phone: +234 9 413-3771
Fax: +234 9 413-3772

www.justiceinitiative.org



OPEN SOCIETY INSTITUTE