



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness – Consultation process

Division of International Protection/Statelessness Section | 10 December 2019

UNHCR issues its Guidelines on Statelessness pursuant to its mandate on statelessness. The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

UNHCR is committed to a broad consultation process in the issuance of its *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*. To this end, UNHCR invites comments to a **draft** of these Guidelines (see below). All stakeholders, including States, other UN and regional human rights mechanisms, UN organizations or specialized agencies, national human rights institutions, non-governmental organizations, research institutions and academics are invited to provide their comments in writing to hqsql@unhcr.org.

Comments must be submitted by **15 January 2020**. To facilitate the work of UNHCR, this deadline will be strictly applied.

Submissions should:

- be submitted in English [regrettably we are not able to receive submissions in French at this time];
- be submitted in Microsoft Word format; and
- wherever possible, indicate which paragraph(s) of the draft Guidelines the comment(s) refer(s) to.

Comments will be carefully reviewed to inform UNHCR's own deliberations, alongside other consultation processes and other relevant instructive sources.

GUIDELINES ON STATELESSNESS (NO.5): Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness

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DRAFT FOR PUBLIC CONSULTATION

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UNHCR issues these Guidelines pursuant to its mandate responsibilities address statelessness. These responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6(A)(II) of the UNHCR Statute and Article 1(A)(2) of the 1951 Convention relating to the Status of Refugees. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, UNHCR's mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

These Guidelines draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October-1 November 2013 ("Tunis Conclusions") and the Expert Meeting on Developments related to Deprivation of Nationality held in Geneva, Switzerland on 5-6 December 2018.

These Guidelines are intended to provide interpretative guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff and other UN agencies involved in addressing statelessness.

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I. INTRODUCTION

a) Overview

1. Article 15 of the Universal Declaration of Human Rights (“UDHR”) establishes the right of every person to a nationality. The object and purpose of the 1961 Convention on the Reduction of Statelessness (“1961 Convention”) is to prevent and reduce statelessness, thereby helping to ensure every individual’s right to a nationality. The 1961 Convention establishes rules on acquisition, renunciation, loss and deprivation of nationality. It must be interpreted in light of complementary provisions of international law, including subsequent developments in international law.

2. These Guidelines are focused on Articles 5-9 of the 1961 Convention, which set standards on the permissibility of loss and deprivation of the nationality of a Contracting State. Articles 5-7 of the 1961 Convention pertain to loss of nationality and Article 8 focuses on deprivation of nationality. Article 9 pertains to non-discrimination in the context of deprivation of nationality. Contracting States are not permitted to make reservations to Articles 5-9 of the 1961 Convention.¹

3. While not all States are party to the 1961 Convention, all States have obligations pursuant to the prohibition of arbitrary deprivation of nationality. All States also have certain international human rights law obligations as discussed in Part III of these Guidelines.

4. These Guidelines are intended to assist States, UNHCR, and other actors to interpret and apply Articles 5-9 of the 1961 Convention.

b) General considerations pertaining to the interpretation of the 1961 Convention

5. Articles 5-9 of the 1961 Convention are to be interpreted in good faith and in accordance with the ordinary meaning of the terms used in their context and in light of the object and purpose of the 1961 Convention.² Where relevant to questions of interpretation and application, reference will be made to the *travaux préparatoires* or drafting history of the 1961 Convention, as well as other treaties which contain supplementary or corresponding obligations to those within the 1961 Convention. Developments in customary international law relevant to the interpretation of the 1961 Convention will also be set out in these Guidelines.

6. With respect to interpreting the plain language of the text of the 1961 Convention, it is important to note that the 1961 Convention was drafted in five official United Nations languages (Chinese, English, French, Russian and Spanish) and that all five language versions are equally authentic. There are some minor discrepancies in meaning between the different language versions but these are resolved through application of the rules of treaty interpretation and, in particular, by recourse to the meaning which best reconciles the texts, having regard to the object and purpose of the treaty.³

c) Defining loss and deprivation of nationality

7. The 1961 Convention generally uses the expression “loss of nationality” in Articles 5-7 to describe withdrawal of nationality that occurs automatically by operation of law (“*ex lege*”). The term “deprivation” is used in the 1961 Convention in Articles 8 and 9 to describe situations where the withdrawal is initiated by the

¹ Article 17 of the 1961 Convention is extracted as follows:

(1) At the time of signature, ratification or accession by any State may make a reservation in respect of Articles 11, 14 or 15.

(2) No other reservations to this Convention shall be admissible.

² See Article 31 of the Vienna Convention on the Law of Treaties, UNTS 1155, 331.

³ See Article 33 of the Vienna Convention on the Law of Treaties, UNTS 1155, 331.

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authorities of the State. These Guidelines will generally use the terms “loss” and “deprivation” as they are used in the 1961 Convention, and the term “withdrawal of nationality” will be used to encompass both loss and deprivation of nationality. It is important to note that different actors may use these terms interchangeably and that the prohibition of arbitrary deprivation of nationality encompasses both loss and deprivation of nationality, including where a State precludes a person or group from obtaining or retaining a nationality (e.g., on discriminatory grounds).⁴ It also covers situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual (or group) as a national (or nationals), for example, where authorities persistently refuse to issue or renew documents without providing an explanation or justification. Confiscation of identity documents and/or expulsion from the territory coupled with a statement by authorities that a person is not considered a national would also be evidence of withdrawal of nationality.

II. STANDARDS IN THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS

a) Obligations to prevent and reduce statelessness under international law

8. A person who is not considered as a national by any State under the operation of its law is stateless. This definition is now part of customary international law.⁵ The consequences of statelessness are generally extremely adverse, as the possession of a nationality is important to a person’s enjoyment of civil, political, economic and social rights in practice.

9. This Part of these Guidelines will focus on the standards contained in the 1961 Convention with respect to withdrawal of nationality. It will provide guidance on the minimum content of these standards and also provide guidance on good practice in certain areas. The provisions of the 1961 Convention must be read alongside international human rights law on the fundamental right to a nationality and the prohibition of arbitrary deprivation of nationality. For withdrawal of nationality to not be arbitrary, it must take place in accordance with the law, be proportionate to a legitimate aim and comply with due process. This will be further elaborated upon in Part III below.

10. Under Articles 7(6) and 8(1) of the 1961 Convention, there is a general prohibition of loss or deprivation of nationality where it would result in statelessness. Narrow exceptions to this prohibition are provided for in Articles 7(4), 7(5), 8(2) and 8(3).

11. Under Articles 5-7 of the 1961 Convention, loss of nationality is permitted on the grounds of change in personal status of a person; the recognition of affiliation of a child born out of wedlock; voluntary renunciation of nationality; naturalization in a foreign country; residence abroad for an extended period; or birth outside the territory of a State, not being resident within that State and failing to register with that State.

12. Under Article 8(2) of the 1961 Convention, deprivation of nationality that would result in statelessness is only permissible on the grounds of residence abroad for an extended period; birth outside the territory of a State, not being resident within that State and failing to register with that State; or misrepresentation or fraud in the process of acquisition of nationality. In addition, for States that have made a declaration to Article 8(3) of the 1961 Convention, deprivation of nationality which would result in statelessness is permitted on the grounds of behaviour inconsistent with the duty of loyalty to the State; demonstration of allegiance to another State; or repudiation of allegiance to a State. Each of these grounds for deprivation of nationality has

⁴ See paragraph 23, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/13/24, 14 December 2009.

⁵ See page 49, International Law Commission, *Draft Articles on Diplomatic Protection with commentaries*, 2006, <https://www.refworld.org/docid/525e7929d.html>.

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requirements attached to it. Article 8(4) of the 1961 Convention imposes procedural safeguards with respect to deprivation of nationality and Article 9 prohibits deprivation of nationality on discriminatory grounds.

13. States which are not party to the 1961 Convention may nevertheless wish to be guided by the standards therein in order to prevent and reduce statelessness and ensure the fundamental right to nationality and the prohibition of arbitrary deprivation of nationality.

b) Loss of nationality

14. This section focuses on circumstances in which an individual may lose nationality pursuant to the standards set out in Articles 5-7 of the 1961 Convention.

General prohibition of loss of nationality where it would render a person stateless

15. Contracting States generally may not permit loss of nationality where it would render a person stateless. Article 7(6) of the 1961 Convention provides that “a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of [the 1961] Convention.” A further safeguard against statelessness in the context of loss of nationality is found under Article 7(3) of the 1961 Convention, which provides that “a national of a Contracting State shall not lose ... nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.” There are narrow exceptions to this general prohibition, and these are outlined in paragraphs 34-45 below.

Change in personal status (1961 Convention, Article 5(1))

16. Under Article 5(1) of the 1961 Convention, a person may lose nationality as a result of a change in civil status, namely “marriage, termination of marriage, legitimation, recognition or adoption”. This is conditional upon such a loss being provided for within the law of a Contracting State⁶ and upon the person possessing or acquiring another nationality. A person may not therefore lose nationality under this ground so as to become stateless.

17. International human rights law provisions relevant to Article 5(1) of the 1961 Convention include Article 9(1) of the Convention on the Elimination of Women (“CEDAW”), under which State Parties “shall ensure ... that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.” With respect to adoption, Articles 3, 7 and 8 of the Convention on the Rights of the Child (“CRC”), read together, “may preclude the loss of nationality by a child in the context of loss of nationality due to adoption, recognition or another such act.”⁷ Contracting States that provide for loss of nationality in cases of adoption of a child by a foreigner should restrict the application of Article 5(1) of the 1961 Convention to cases where a child acquires the nationality of the adopting parent(s) by mere fact of the adoption. Forms of adoption which do not dissolve the legal relationship with one of the biological parents must never result in statelessness.

18. As a matter of good practice, the domestic legislation of Contracting States should provide that adopted children automatically acquire the nationality of their adoptive parents. This would provide a robust safeguard against statelessness.⁸

⁶ See paragraphs 97-98 below.⁷ See paragraph 16, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

⁷ See paragraph 16, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

⁸ See paragraph 36, Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children*, CM/Rec(2009)13, 9 May 2009, <https://www.refworld.org/docid/4dc7bf1c2.html>.

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Recognition of affiliation of children born out of wedlock

19. Article 5(2) of the 1961 Convention provides that “[i]f, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such an application must not be more rigorous than those laid down in paragraph 2 of Article 1 of [the 1961] Convention.”

20. This provision encompasses children born out of wedlock who possess the nationality of a Contracting State and acquire a second nationality following the formal acknowledgment of parenthood by a parent of a different nationality. In the context where a State does not permit its nationals to be dual nationals, a child may lose their nationality as a result of acquisition of another nationality. Children should be able to recover any nationality lost as a consequence of recognition of affiliation regardless of whether the nationality lost was that of a Contracting State or a State not party to the 1961 Convention.

21. The 1961 Convention states that a child who loses the nationality of a Contracting State makes an application to recover nationality under Article 5(2) of the 1961 Convention, the Contracting State must not impose requirements more stringent than the conditions found in Article 1(2) of the 1961 Convention. Those are:

- the condition of a fixed period for lodging an application immediately following the age of majority (Article 1(2)(a));
- the condition of habitual residence in the Contracting State for a fixed period, not exceeding five years immediately preceding an application nor ten years in all (Article 1(2)(b)); and
- the condition that a person has not been convicted of certain types of crimes (Article 1(2)(c)).

Imposition of any other condition would violate the terms of the 1961 Convention.⁹

22. While the conditions in Article 1(2) of the 1961 Convention are permitted, they are the most rigorous requirements permissible wherever a child makes an application under Article 5(2). As a matter of good practice, Contracting States are encouraged not to apply the permitted conditions and simply allow recovery of nationality upon submission of an application.¹⁰

Renunciation of nationality

23. Pursuant to Article 7(1)(a) of the 1961 Convention, loss of nationality is permitted where a person renounces nationality in accordance with the law of a Contracting State only where “the person concerned possesses or acquires another nationality.”¹¹ Under Article 7(1)(b) of the 1961 Convention, Article 7(1)(a) does not apply in situations where it would be “inconsistent with the principles stated in Articles 13 and 14 of the Universal Declaration on Human Rights.” These provisions of the UDHR provide for the rights to freedom of movement and residence within the borders of each State; to leave any country; to return to one’s own country; and to seek and enjoy asylum from persecution in other countries.¹² States have international human

⁹ The condition stipulated in Article 1(2)(d) of the 1961 Convention has intentionally not been cited in these Guidelines as it does not apply to circumstances encompassed by Article 5(2). See paragraph 36, UNHCR Guidelines (No. 4).

¹⁰ Further interpretive guidance on the four conditions laid out in Article 1(2) may be found in paragraphs 37-48 of UNHCR Guidelines (No. 4).

¹¹ See paragraph 9, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013: “states are increasingly accepting the legitimacy of dual nationality, such that nationality laws are becoming more tolerant of their nationals voluntarily acquiring a new nationality. Nevertheless, this ground for loss or deprivation of nationality remains commonplace.”

¹² The *travaux préparatoires* show that reference was made to the Universal Declaration on Human Rights on the basis that if a person were to lose their nationality voluntarily, they ought to still be able to avail themselves of protection in another State. See UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 10th Plenary Meeting, A/CONF.9/SR.10, pages 8-12.

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rights obligations under Articles 13 and 14 of the UDHR, and may not make the enjoyment of those rights conditional upon renunciation of nationality.¹³ Article 7(1)(b) is therefore of very limited relevance to Contracting States.¹⁴

24. Paragraphs 26-28 below provide guidance with respect to renunciation of nationality in the context of acquisition of another nationality by naturalisation.

Naturalization in a foreign country

25. Article 7(2) of the 1961 Convention provides that “[a] national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.”¹⁵ According to Resolution II of the Final Act of the 1961 Convention, a “naturalized person” refers to a person who has acquired nationality upon an application which the State concerned has the discretion to refuse.

26. Naturalization procedures often require the renunciation of existing nationality before a new citizenship may be acquired through naturalization. If the national of a Contracting State needs to renounce the nationality of that Contracting State in order to be naturalised as a citizen of another State, the Contracting State should ensure that statelessness does not result from this renunciation. As a matter of good practice, the assurance of acquisition of a second nationality referred to in Article 7(2) should consist of a written statement from the State in which nationality is being sought that acquisition of nationality is imminent. Contracting States should ensure that an individual will not be left without a nationality for a prolonged period, and that nationality may be automatically re-acquired in the event that the assurance proves false or where there are significant delays in the naturalization process.¹⁶

27. Where a Contracting State does not permit its naturalized citizens to hold another nationality, it is strongly encouraged to allow for grace period of not less than one year immediately after naturalization during which an individual may renounce their first nationality. This would act as a safeguard against an individual being left without a nationality during the process of naturalization. Where an individual faces impediments during a naturalization process which results in their ultimately not being naturalized, and the individual has renounced their original nationality as part of the naturalization process, the Contracting State should take all possible steps to assist the individual concerned in re-acquiring their former nationality.

28. States not party to the 1961 Convention that require naturalized citizens to renounce any other nationality and States whose nationals renounce nationality as part of a naturalization process in another State are strongly encouraged to apply the guidance in paragraphs 85-88 below as a method of safeguarding the fundamental right to a nationality.

Loss of nationality of the child or spouse of a person whose nationality has been withdrawn

29. Under Article 6 of the 1961 Convention, “[i]f the law of a Contracting State provides for loss of its nationality by a person’s spouse or children as a consequence of that person losing or being deprived of nationality, such loss shall be conditional upon their possession or acquisition of another nationality.” A Contracting State may therefore not permit automatic loss of nationality of spouses or children of individuals whose nationality it has withdrawn where it would render that child or spouse stateless.

¹³ See paragraphs 123-125 below.

¹⁴ In addition, Article 7(1)(b) of the 1961 Convention is exceedingly unlikely to be relevant to Contracting States which are party to the ICCPR, which post-dates the 1961 Convention and provides in Article 12(2) that “[e]veryone shall be free to leave any country, including his own.”

¹⁵ See also Article 15(2) of the Universal Declaration of Human Rights which provides that “[n]o one shall be ... denied the right to change his nationality.”

¹⁶ See paragraph 8, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

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30. Contracting States are further reminded of their obligations with respect to preventing statelessness among children.¹⁷ At the time of writing, all Contracting States to the 1961 Convention are also party to the CRC. Under the CRC, Contracting States are obliged to ensure that all actions taken with respect to a child's nationality are in the child's best interests.¹⁸ The CRC also provides for protection against discrimination on the basis of the status of the child's parents or guardians.¹⁹

31. States party to the Convention on the Elimination of Discrimination against Women ("CEDAW") are obliged under Article 9(1) of that Convention to "ensure ... that neither marriage to an alien nor change of nationality by [a] husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband." Any provision for loss of nationality under the grounds in Article 6 of the 1961 Convention should not contravene States' obligations under CEDAW.

32. In order for loss of nationality under Article 6 of the 1961 Convention to comply with the prohibition of arbitrary deprivation of nationality, the grounds for withdrawal of nationality should not automatically be extended to spouses or children. Contracting States must ensure that loss of nationality under Article 6 only occurs after an individual assessment of whether the consequences of loss of nationality for the child or spouse in question is proportionate to the aim being pursued by the Contracting State in permitting the loss of nationality. This assessment must be separate to the assessment leading to the withdrawal of nationality of the person whose spouse or children would be affected.

33. Given that loss of nationality under Article 6 of the 1961 Convention is conditional upon possession or acquisition of another nationality, the guidance in paragraphs 85-88 below is particularly relevant to the application of Article 6.

Exceptions to the general prohibition of loss of nationality resulting in statelessness

34. Under Article 7(3) of the 1961 Convention, a person cannot lose their nationality "on the ground of departure, residence abroad, failure to register or on any similar ground" where it would result in their becoming stateless, except in circumstances exhaustively set out in Articles 7(4) and 7(5). This is underscored by Article 7(6) of the 1961 Convention, set out in paragraph 15 above.

35. Both Articles 7(4) and 7(5) respectively make reference to declaration and registration with an "appropriate authority." Identifying the competent authority depends on the structures within the State in question and in many cases there will be more than one competent authority involved.²⁰

Loss of nationality on account of residence abroad for not less than seven consecutive years (Article 7(4))

36. Under Article 7(4) of the 1961 Convention, a person may in certain limited circumstances lose nationality such that they would become stateless. Article 7(4) provides that "[a] naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality." As an exception to the general prohibition of loss of nationality resulting in statelessness, this provision should be applied restrictively.

¹⁷ For information on the applicability of the CRC to the 1961 Convention, see paragraphs 9-12 of UNHCR Guidelines (No. 4).

¹⁸ See Articles 3, 7, 8 of the CRC.

¹⁹ See Article 2 of the CRC.

²⁰ See paragraph 27 of the UNHCR Handbook 2014.

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37. The first condition of Article 7(4) of the 1961 Convention is that the person concerned must be a naturalized person.²¹ This makes naturalized citizens more vulnerable to loss of nationality resulting in statelessness than citizens by birth. The increased vulnerability is mitigated by limitations contained in international human rights law, including with respect to non-discrimination as explained in paragraphs 114-116 below. Given that naturalized citizens are more likely to be from minority groups (for example, ethnic or religious minorities), Contracting States should exercise caution in the application of Article 7(4) so as to avoid a disparate impact on minority groups.²²

38. The second condition of Article 7(4) of the 1961 Convention is that the naturalized person must have resided abroad for a period of “not less than seven consecutive years.”²³ As a matter of good practice, the individual concerned should not lose nationality so as to become stateless if they do not have permanent residence in the State abroad and enjoy all the rights attached to permanent residence.

39. The third and fourth conditions of Article 7(4) of the 1961 Convention are that the person must have “fail[ed] to declare to the appropriate authority his intention to retain his nationality”;²⁴ and that the Contracting State has specified in its domestic laws that loss of nationality may occur on the grounds laid out in Article 7(4), even if it would result in statelessness. Resolution III of the Final Act of the 1961 Convention “[r]ecommends that Contracting States making retention of nationality by their nationals abroad subject to a declaration or registration ... 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.” A Contracting State should also, as a matter of good practice, seek the written acknowledgement of receipt of such information from the individual concerned before it considers that individual to have lost nationality under Article 7(4) of the 1961 Convention.

40. Particular attention must be paid to loss of nationality resulting in statelessness being proportionate to the pursuit of the aim of Article 7(4) of the 1961 Convention. The aim of Article 7(4) is to preserve a Contracting State’s ability to ensure that its nationals maintain an effective connection to it.²⁵ The notion of what constitutes an effective connection to a State has changed since the drafting of the 1961 Convention. Society has evolved such that people are much more mobile, and it is no longer unusual for a person to habitually reside in a country other than their country of citizenship. Contracting States are encouraged to take these developments into account when applying Article 8(2).

41. The obligation all States have to act in a manner that is proportionate in the context of avoiding arbitrariness (as discussed in Part III of these Guidelines) significantly narrows the circumstances in which loss of nationality resulting in statelessness is appropriate under Article 7(4), as the consequences of statelessness for the individual are severe compared with the consequences to a State if its nationals abroad do not declare or register their intention to preserve their connection to the State. The circumstances in which a person may lose their nationality under Article 7(4) such that this loss would render them stateless are therefore very limited.

²¹ Pursuant to Resolution II of the Final Act of the 1961 Convention, “the term “naturalized person” shall be interpreted as referring only to a person who has acquired nationality upon an application which the Contracting State concerned may in its discretion refuse.”

²² See paragraphs 114-116 below.

²³ See Article 7(4) of the 1961 Convention.

²⁴ See Article 7(4) of the 1961 Convention.

²⁵ UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 11th meeting of the Committee of the Whole, A/CONF.9/C.1/SR.11, pages 2-4; UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 16th meeting of the Committee of the Whole, A/CONF.9/C.1/SR.16, pages 2-3.

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Birth outside the territory of a Contracting State and failure to register less than one year after reaching the age of majority (Article 7(5))

42. Article 7(5) of the 1961 Convention is the second narrowly defined exception to the general prohibition of loss of nationality where it would render the person concerned stateless (per Articles 7(3) and 7(6)). It provides that “[i]n the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.”

43. The fact that Article 7(5) applies to nationals born outside a Contracting State necessarily implies that the person acquired the nationality of the Contracting State through their parent(s).²⁶

44. It must be prescribed by the domestic law of the Contracting State that the retention of the person’s nationality “after the expiry of one year from ... attaining the age of majority [is] conditional upon residence at that time in the territory of the State or registration with the appropriate authority.”²⁷ Registration with the appropriate authority should include any administrative action pertaining to the renewal or issuance of identity documents (such as passports and birth certificates) or the seeking of confirmation of recognition as a national.²⁸

45. Resolution III of the Final Act of the 1961 Convention recommends that Contracting States “take all possible steps” to inform nationals abroad who stand to lose their nationality on account of failure to register of relevant time-limits and formalities. Contracting States should as a matter of good practice also make provision for an extension of the time limit by application in circumstances where an individual is unable to register their intention to retain nationality within one year of reaching the age of majority.

c) Deprivation of nationality

46. As stated in paragraph 7 above, “deprivation” of nationality is used within the 1961 Convention (Articles 8-9) to describe situations where withdrawal of nationality is initiated by the authorities of the State. Article 8(1) of the 1961 Convention prohibits deprivation of nationality where it would result in statelessness. Narrow exceptions to Article 8(1) are set out in Articles 8(2) and 8(3) of the 1961 Convention. In all cases of deprivation of nationality, Contracting States have due process obligations under Article 8(4) and must adhere to Article 9 on non-discrimination.

General prohibition of deprivation of nationality where it would render a person stateless

47. Article 8(1) of the 1961 Convention provides that “[a] Contracting State shall not deprive a person of its nationality if such deprivation would render [the person] stateless.” Article 8(4) of the 1961 Convention states that Contracting States may only exercise the power to deprive a person of nationality “in accordance with the law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body”, including where the State is permitted to cause statelessness through withdrawal of nationality.²⁹ Article 9 provides that “[a] Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.” Exceptions to the prohibition of deprivation of nationality resulting in statelessness under Article 8(1) of the 1961 Convention are exhaustively defined in

²⁶ See paragraph 35 of UNHCR Handbook 2014: “Where nationality is acquired automatically, documents are typically not issued by the State as part of the mechanism. In such cases, it is generally birth registration that provides proof of place of birth and parentage and thereby provides evidence of acquisition of nationality, either by *jus soli* or *jus sanguinis*, rather than being the formal basis for the acquisition of nationality.”; footnote 24: “*Jus soli* and *jus sanguinis* refer to the two main principles governing acquisition of nationality in the legal systems of States, on the basis of place of birth and descent from a national, respectively.”

²⁷ Article 7(5) of the 1961 Convention (emphasis added).

²⁸ See paragraphs 39-40 and 42-44 of the UNCHR Handbook 2014.

²⁹ See Part III below for further information on States’ due process obligations.

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Articles 8(2) and 8(3) of the 1961 Convention and guidance on the scope of these exceptions is set out in paragraphs 50-78 below.

48. Domestic legislation which allows a person to be deprived of their nationality under Articles 8(2) or 8(3) at the discretion of individual members of the Executive Branch of a State (e.g., the Foreign Minister, the Home Secretary) without a fair hearing before a court or independent body is not in compliance with Article 8(4) of the 1961 Convention, the requirements of which are set out in paragraphs 79-80 below.

49. Individuals wrongfully deprived of nationality (regardless of whether it renders them stateless) must have access to an effective remedy. Such remedy should include the automatic restoration of nationality.³⁰

Exceptions to the general prohibition of deprivation of nationality where it would render a person stateless

50. Articles 8(2) and 8(3) of the 1961 Convention provide for exceptions to the general prohibition of deprivation of nationality where it would result in statelessness under Article 8(1) of the 1961 Convention. Under Article 8(2) of the 1961 Convention, “[n]otwithstanding the provisions of [Article 8(1)], a person may be deprived of the nationality of a Contracting State (a) in the circumstances in which, under [Articles 7(4) and 7(5)] it is permissible that a person should lose his nationality; [and] (b) where the nationality has been obtained by misrepresentation or fraud.”

51. Article 8(3) provides as follows.

“Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

- (a) that, inconsistently with his duty of loyalty to the Contracting State, the person
 - (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
 - (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;
- (b) that the person has taken an oath, or made a formal declaration of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.”

52. Developments in international law and, more specifically, in international human rights law, have further narrowed the scope of application of Articles 8(2) and 8(3) of the 1961 Convention, as discussed in Part III of these Guidelines.

Residence abroad and/or birth outside the territory of a Contracting State and failure to register (Articles 8(2)(a), 7(4) and 7(5))

53. Under Article 8(2)(a), a person may be deprived of nationality, even where it would render them stateless, under the circumstances in Articles 7(4) and 7(5), which are discussed in paragraphs 36-45 above. The core aim of Article 8(2)(a) is the same as that of Articles 7(4) and 7(5), namely to ensure that citizens have an effective connection to the country of citizenship.³¹ Deprivation on this ground so as to render an individual

³⁰ See paragraphs 110-112 below.

³¹ See paragraph 40 above.

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stateless is unlikely to be proportionate to this aim given the severe adverse consequences to an individual rendered stateless.

Misrepresentation and fraud (1961 Convention, Article 8(2)(b))

54. Under Article 8(2)(b) of the 1961 Convention, a State may deprive a person of nationality “where the nationality has been obtained by misrepresentation or fraud” notwithstanding the general prohibition of deprivation of nationality where it would render a person stateless in Article 8(1). The aim of Article 7(4) is to create a punitive consequence for serious misconduct in the acquisition process. Misrepresentation under Article 8(2)(b) must be dishonest misrepresentation on the part of the person concerned.

55. Given that Article 8(2)(b) prescribes that nationality must be *obtained* by misrepresentation or fraud, there is clear implication that the misrepresentation or fraud must have been a key causal factor in the person concerned acquiring nationality in the first place. Deprivation of nationality is not permissible if the nationality would have been acquired even if the misrepresentations or concealment had not occurred.³²

56. Where an individual’s nationality status changes because of unintentional mistakes regarding material facts (for example, because of a misunderstanding of the law), acquisition of nationality is to be considered valid even if there is no legal basis for the acquisition. Nationality may only be invalidated when the State completes the procedure for deprivation of nationality in accordance with the prohibition of arbitrary deprivation of nationality and applicable international human rights law.³³

57. Contracting States should carefully consider the proportionality of deprivation of nationality on the grounds of fraud, especially where statelessness results. The nature or gravity of the fraud or misrepresentation must be weighed against the consequences of withdrawal of nationality (including statelessness). The length of time elapsed between the acquisition of nationality and the discovery of fraud should also be taken into account. The longer the period elapsed, the more serious the fraud required to justify the deprivation of nationality.³⁴

58. The impact of fraud or mistake in the acquisition of nationality should be distinguished from the fraudulent acquisition of documents which may be presented as evidence of nationality.³⁵ On this subject, the threshold for documentation to be considered fraudulent should not relate to mere failure to fulfil formalities, such as lack of an official stamp.

Overarching requirements for deprivation of nationality under Article 8(3)

59. Article 8(3) of the 1961 Convention contains exhaustive exceptions to the general prohibition in Article 8(1). These are available only to States that have deposited an appropriate declaration as required by this Article.³⁶

60. A Contracting State’s declaration under Article 8(3) needs to specify which of the grounds within Article 8(3) the Contracting State will rely on to deprive a person of their nationality, even where it would render that person stateless. The relevant ground must also be “existing in its national law at that time”, i.e., the time of signature, ratification or accession.³⁷ The aim of this provision is to “freeze” the existing legislative situation

³² See paragraph 10, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

³³ See paragraphs 45-46 on nationality acquired in error or bad faith of the UNHCR Handbook 2014.

³⁴ See paragraph 10, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

³⁵ See paragraph 46 of the UNHCR Handbook 2014.

³⁶ As of November 2019, thirteen Contracting States (out of a total of 74) have made declarations to Article 8(3).

³⁷ See Article 8(3) of the 1961 Convention.

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of the relevant Contracting State at that time.³⁸ Subsequent changes to such legislation by States that have made declarations may accordingly only further narrow the grounds for deprivation under Article 8(3).

Behaviour inconsistent with the duty of loyalty to the State (Article 8(3)(a))

61. Depending on the content of their declarations,³⁹ Contracting States may deprive a person of nationality and render that individual stateless under Article 8(3)(a) if the person in question has, “inconsistent[ly] with his duty of loyalty to the Contracting State”, either (i) “in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received emoluments from, another State” or (ii) “conducted himself in a manner seriously prejudicial to the vital interests of the State”.

62. Any individual meeting the thresholds in Articles 8(3)(a)(i) or (ii) must have conducted themselves with the intention of acting inconsistently with their duty of loyalty to the Contracting State. The duty of loyalty to the State may be characterized as the firm and constant support to the State as a whole (as opposed to a specific part of the State or a specific Government in power at a given time). Without clear evidence that an individual intended to act inconsistently with their duty of loyalty to the Contracting State, the State should not deprive an individual of nationality under Article 8(3)(a)(i) or (ii).

Rendering services to or receiving emoluments from another State (Article 8(3)(a)(i))

63. With respect to services rendered to or emoluments received from another State, “services” include civil and military services, and “emoluments” refer to any kind of reward, including monetary rewards and other types of benefits.⁴⁰

64. An individual being deprived of nationality on this ground would have had to have acted “in disregard of an express prohibition by the Contracting State.”⁴¹ It is not sufficient for a State to deprive a person of nationality only on the grounds that the law generally prohibits the rendering of such services or the receiving of such emoluments.⁴² An express prohibition made under Article 8(3)(a)(i) must be an individual notice, directed towards the person concerned. In addition, Contracting States seeking to deprive an individual of nationality under Article 8(3)(a)(i) should issue a warning to this effect which enables the individual to cease or amend their behaviour in order to avoid facing the consequence of deprivation of nationality. The individual should then be given a fair and reasonable time to respond to such a warning.

65. Services or emoluments rendered to an entity which does not constitute a State, such as a non-State armed actor, an intergovernmental organization, a non-governmental organization or a business entity would not fall under the scope of Article 8(3)(a)(i). This is in line with how a State is defined under international law.⁴³

Conduct seriously prejudicial to the vital interests of the Contracting State (Article 8(3)(a)(ii))

66. Article 8(3)(a)(ii) establishes a very high threshold for deprivation of nationality resulting in statelessness. The ordinary meaning of the terms “seriously prejudicial” and “vital interests” indicate that the conduct covered by this exception must threaten the foundations and organization of the State whose nationality is at issue. The term “seriously prejudicial” requires that the individual in question has the capacity to negatively impact the State. The conduct triggering deprivation of nationality under Article 8(3)(a)(ii) must not be incidental to the harm to be caused but rather fundamentally related to it. For example, conduct that involves

³⁸ See page 9, UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 12th meeting of the Committee of the Whole, A/CONF.9/C.1/SR.12.

³⁹ As of November 2019, three of the thirteen States who have made declarations under Article 8(3) have limited their declarations to the grounds under Article 8(3)(a), and the remaining ten have made declarations under Article 8(3) as a whole.

⁴⁰ See page 7, UN Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 20th meeting of the Committee of the Whole, A/CONF.9/SR.20.

⁴¹ See Article 8(3)(a)(i) of the 1961 Convention.

⁴² See paragraph 14, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

⁴³ See Article 1 of the Montevideo Convention on the Rights and Duties of States.

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remote support that does not materially affect whether or not the harm in question would occur is not “seriously prejudicial.” Thus a small financial donation or the written expression of support for particular harm committed which is unnecessary to the achievement of the harm would fall short of the “seriously prejudicial” threshold, even if those acts amount to conduct inconsistent with the duty of loyalty to the State.

67. The term “vital interests” is to be interpreted as imposing a higher threshold than offences against “national interests”.⁴⁴ The essential function of the State is to safeguard its integrity and external security and protect its constitutional foundations. Only acts which are seriously prejudicial to that function and other vital interests warrant deprivation of nationality under Article 8(3)(a)(ii).⁴⁵ This excludes criminal offences of a general nature.

68. For an individual to be deprived of the nationality of a Contracting State under Article 8(3)(a)(ii), they must already have committed the relevant acts at the time a decision to deprive them of their nationality is taken. Conduct giving rise to deprivation of nationality under this provision cannot consist of acts potentially occurring in the future.

69. Depending on the domestic context, certain “terrorist acts” may fall within the scope of Article 8(3)(a)(ii). Generally, terrorist activities are aimed, *inter alia*, at “threatening territorial integrity, security of States and destabilizing legitimately constituted Governments.”⁴⁶

70. Laws that permit deprivation of nationality on the grounds of terrorism should be publicly available and be precise enough to enable individuals to understand the scope of impermissible conduct. States should regularly review domestic legislation on counter-terrorism to ensure compliance with developments in international law.⁴⁷ Legislation on membership or affiliation with terrorist groups or armed non-State actors amounting to conduct which could result in deprivation of nationality should clearly define “membership” and the thresholds for conduct which would trigger legal proceedings on deprivation of nationality.⁴⁸

71. Contracting States may further be guided by the international conventions and protocols relating to terrorism, which set out specific acts considered to be of a terrorist nature, including the 1997 Suppression of Terrorist Bombings Convention,⁴⁹ the 1999 Convention on Terrorist Financing,⁵⁰ and the 2005 Convention for the Suppression of Acts of Nuclear Terrorism.⁵¹ These instruments encompass contribution to specific acts, such as aircraft hijacking, hostage-taking, bombings and nuclear terrorism. Mere membership in a terrorist group or the fact of receiving training from a terrorist group generally does not constitute a terrorist act. These instruments also generally require States to prosecute or extradite individuals involved in criminal activity.

72. Contracting States must bear in mind that deprivation of nationality must be the least intrusive means proportionate to achieving the legitimate aim of protecting their vital interests.⁵² Deprivation must, therefore, *inter alia*, be important to protecting a Contracting State’s vital interests.

73. States have a duty under international human rights law “to ensure that action is taken so that violations and abuses are prevented and/or not repeated, to promptly, thoroughly, independently and impartially investigate allegations of such violations and abuses, to punish perpetrators and to ensure an adequate

⁴⁴ The term “national security” is used in the wording of Articles 1(2)(c) and 4(2)(c) of the 1961 Convention

⁴⁵ Page 13, United Nations Conference on the Elimination or Reduction of Future Statelessness, Summary Records, 21st Plenary Meeting, A/CONF.9/SR.21.

⁴⁶ Preambular paragraph 7, UN General Assembly Resolution 60/288 of 2006.

⁴⁷ See paragraphs 28-29, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/28/28, 19 December 2014.

⁴⁸ See paragraph 26, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/28/28, 19 December 2014.

⁴⁹ See Article 2 of the International Convention for the Suppression of Terrorist Bombings.

⁵⁰ See Article 2 of the International Convention for the Suppression of the Financing of Terrorism.

⁵¹ See Article 2 of the International Convention for the Suppression of Acts of Nuclear Terrorism.

⁵² See paragraphs 99-102 below.

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remedy and redress are provided to victims.”⁵³ This is reflected in UN Security Council Resolution 2322 of 2016, which emphasises the need for cooperation among States in order to address and counter terrorism,⁵⁴ including in the context of investigation and prosecution of terrorist acts.⁵⁵ Under the Resolution, “States shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or supporting of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings”.⁵⁶

74. Wherever possible, countries of nationality of foreign terrorist fighters should effectively investigate and prosecute those foreign fighters.⁵⁷ Where deprivation of nationality results in an individual not being able to return to the State of (former) nationality, this may increase security risks and may hinder efforts at enhancing cooperation between States to counter terrorism in line with UN Security Council Resolution 2322 of 2016. In addition, it may foster a sense of impunity for foreign terrorist fighters if Contracting States fail to hold perpetrators of violations to account.⁵⁸

Allegiance to another State or repudiation of allegiance to a Contracting State (Article 8(3)(b))

75. Where a relevant declaration has been made,⁵⁹ Article 8(3)(b) allows for an exception to the basic rule that deprivation of nationality may not cause statelessness where either a person “has taken an oath, or made a formal declaration, of allegiance to another State” or they have “given definite evidence of his determination to repudiate his allegiance to the Contracting State”.⁶⁰ “Allegiance” to a State is equivalent to loyalty to a State.⁶¹

76. Deprivation of nationality may thus occur if the individual in question has taken a formal step in declaring their allegiance to another State (i.e., an oath or formal declaration). For example, an individual may take such an oath of allegiance during a naturalization procedure. As with all acts of withdrawal of nationality,

⁵³ See paragraph 40, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/28/28, 19 December 2014.

⁵⁴ See page 2, Security Council Resolution 2322 of 2016, which states that “terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States ... to impede, impair, isolate and incapacitate the terrorist threat”.

⁵⁵ See page 2, Security Council Resolution 2322 of 2016; preamble, Security Council Resolution 2178 of 2014; paragraph 72, UN Counter-Terrorism Implementation Task Force, *Guidance to States on human rights-compliant responses to the threat posed by foreign fighters*, 2018, <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>.

⁵⁶ See page 4, Security Council Resolution 2322 of 2016.

⁵⁷ See paragraph 44, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/28/28, 19 December 2014; and, for the UN Security Council’s definition of the term “foreign terrorist fighter”, paragraph 6(a) of UN Security Council Resolution 2178 of 2014.

⁵⁸ See paragraph 20, UN Counter-Terrorism Implementation Task Force, *Guidance to States on human rights-compliant responses to the threat posed by foreign fighters*, 2018, <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>. See also the discussion on impunity on page 6, Economic and Social Council, Commission on Human Rights, *Updated Set of principles for the protection of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, 8 February 2005, which states that impunity may be interpreted as being “the impossibility ... of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims”. See also paragraph 44, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/28/28, 19 December 2014: “Accountability for all gross violations of international human rights law and violations of international humanitarian law through effective investigation and prosecution of those responsible is essential to ensure justice, to provide redress to victims and prevent further violations. The responsibility for accountability falls primarily on States, which are obliged to ensure investigations and, where the evidence warrants, prosecutions of such violations, meeting minimum international standards of justice.”

⁵⁹ As noted in paragraph 61 above, as of November 2019, three of the thirteen Contracting States who lodged declarations under Article 8(3) limited their declarations to the grounds in Article 8(3)(a). These States may not therefore deprive individuals of nationality under the grounds in Article 8(3)(b). The ten Contracting States whose declarations encompass Article 8(3)(b) may rely on that Article where the requirements therein, set out in paragraphs 75-79, are fulfilled.

⁶⁰ This should be interpreted in line with the definition of a State in international law. See paragraph 65 above.

⁶¹ See paragraph 62 above.

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important due process considerations must be met in order for deprivation on this ground to occur. As a matter of good practice, Contracting States should ensure that the elements constituting the relevant oath or declaration of allegiance to another State are clearly stipulated in domestic legislation. In addition, the Contracting State should give the individual in question appropriate warning that as long as their oath or declaration remains valid, they are at risk of being deprived of the nationality of the Contracting State. The individual should also be given a fair and reasonable time to respond to the warning.

77. In the case of repudiation of allegiance to a Contracting State, the act constituting the repudiation should be of comparable gravity to taking an oath or making a formal declaration of allegiance to another State. For example, an individual may fall within the scope of Article 8(3)(b) if they defect from the military during an armed conflict and join the military of an opposing State party to the conflict. Alternatively, there must be “definite evidence” of a person’s “determination to repudiate their allegiance” to the Contracting State in order for deprivation of nationality to occur. This necessitates a thorough assessment of all evidence on which the Contracting State is relying before it can be determined that the individual concerned has met the relevant threshold for deprivation of nationality on this ground. The assessment must take place in accordance with law which should provide the right to a hearing before a court or other independent body and meet the requirements of a fair trial under international human rights law.⁶²

78. In keeping with Article 8(4) of the 1961 Convention (see paragraphs 79-80 below) and the prohibition of arbitrary deprivation of nationality (outlined in Part III below), Contracting States must assess whether deprivation of nationality under Article 8(3)(b) is the least intrusive means by which to achieve the aim being pursued by the Contracting State.

Deprivation of nationality must be in accordance with law which provides for a fair hearing

79. Article 8(4) of the 1961 Convention provides that “[a] Contracting State shall not exercise a power of deprivation permitted by [Articles 8(2) or 8(3)] except in accordance with law, which shall provide the person concerned the right to a fair hearing by a court or other independent body.” In addition, explicit reference is made to the requirement that withdrawal of nationality be prescribed by law under Articles 5, 6, 7(1), 7(4), 7(5) and 8(3). Articles 8(3) and 8(4) of the 1961 Convention provide explicitly that certain procedural requirements must be fulfilled before a Contracting State may deprive a person of nationality.⁶³ Articles 5 and 7 on loss of nationality, particularly when read together with Resolution III of the Final Act of the 1961 Convention, create procedural obligations for Contracting States with respect to registration and declaration procedures through which a person may avoid loss of nationality *ex lege*. These requirements are supplemented by the due process requirements necessary to uphold the prohibition of arbitrary deprivation of nationality.⁶⁴

80. Decisions of a court or other independent body on loss or deprivation of nationality should be binding on the Executive Branch of a Contracting State. Furthermore, the person affected by deprivation of nationality should have the right to have the decision issued in writing, including the reasons for the deprivation.⁶⁵

⁶² See Article 8(4) of the 1961 Convention and paragraphs 79-80 and 103-112 below.

⁶³ Under Article 8(3) of the 1961 Convention, Contracting States may only deprive a person of nationality on the grounds found therein where they have fulfilled the procedural requirements of a declaration to that article and show that these grounds exist in their laws at the time of signing, accession or ratification.

⁶⁴ See paragraphs 103-112 below.

⁶⁵ Article 8(4) is pertinent to situations in which Contracting States wish to deprive individuals of nationality *in absentia*. See paragraph 109 below for further details.

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No deprivation on discriminatory grounds⁶⁶

81. Article 9 of the 1961 Convention provides that Contracting States “may not deprive any person or group of persons of [its] nationality on racial, ethnic, religious or political grounds.”

82. Article 9 applies irrespective of whether or not statelessness would result from the deprivation. Under Article 9, a Contracting State may not deprive a group of persons of nationality with one administrative, legal or any other act. Individual assessments in accordance with Article 8(4) of the 1961 Convention must take place before a Contracting State deprives an individual of nationality.

83. Deprivation of nationality must not be based on conduct which is consistent with an individual’s freedom of expression, freedom of assembly or other rights guaranteed under international human rights law. This is particularly relevant to situations in which a Contracting State may seek to rely on an individual’s political convictions as a basis for deprivation of nationality under Article 8(3) of the 1961 Convention. In no circumstances should deprivation of nationality be used as a means to delegitimize political points of view that are different from those of the government in power, or to delegitimize groups holding certain political views.

84. Article 9 of the 1961 Convention is complemented by international human rights law. The relevant law is set out in paragraphs 114-116 below.

d) Determination of possession or acquisition of another nationality

85. Subject to the narrow exceptions to the general prohibition of statelessness as a result of loss or deprivation of nationality outlined in the 1961 Convention, Contracting States should ensure that safeguards against statelessness exist in national legislation wherever they provide for withdrawal of nationality. An individual’s nationality is to be assessed at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise.⁶⁷ As such, and subject to Articles 8(2) and 8(3) of the 1961 Convention, Contracting States may not deprive an individual of nationality on the basis that they have previously held, are eligible for, or may (re-)acquire another nationality. As a matter of good practice, Contracting States should provide in domestic legislation that withdrawal of nationality may only occur where the individual is already in possession of another nationality.

86. The question relevant to whether an individual will be rendered stateless through withdrawal of nationality is whether the individual *currently possesses* and has proof of another nationality. This assessment should not be made on the basis of one State’s interpretation of another State’s nationality law but rather should be informed by consultations with and written confirmation from the State in question.

87. If a Contracting State seeks to deprive an individual of nationality in line with Article 8 of the 1961 Convention, it must conduct an assessment of whether it would render that individual stateless at the moment that the deprivation of nationality would occur. It is statelessness upon withdrawal of nationality and not the question of an individual’s potential *eligibility* for another nationality that is salient for the purposes of the 1961 Convention. Laws which permit an individual to be deprived of a nationality if they are considered to be eligible for or entitled to another nationality are problematic as there is a high risk that individuals may be left stateless upon being deprived of their nationality.

88. Where a Contracting State makes loss of nationality under Articles 5-7 of the 1961 Convention conditional upon acquisition of another nationality, such acquisition of nationality should be certain and imminent. Moreover, the Contracting State should restore an individual’s nationality in the event that acquisition of a

⁶⁶ The provisions listed in Parts III (a) and (b) of these Guidelines, which codify the right to a nationality and the related prohibition of arbitrary deprivation of nationality, are relevant to the application of Article 9 of the 1961 Convention as many of them refer to non-discrimination as a key aspect of the prohibition of arbitrary deprivation of nationality.

⁶⁷ See paragraph 50 of the UNCHR Handbook 2014.

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second nationality does not occur swiftly after the nationality of the Contracting State is lost, for example, within one year. In any event, where withdrawal of nationality is conditional upon acquisition of another nationality, a State should only withdraw nationality where individuals are able to avail themselves of a nationality acquisition procedure that is easily accessible, both physically and financially, as well as one that is simple in terms of procedural steps and evidentiary requirements. Moreover, the acquisition/reacquisition procedure must be swift and the outcome guaranteed because it is non-discretionary where prescribed requirements are met.⁶⁸

III. THE RIGHT TO NATIONALITY AND THE PROHIBITION OF ARBITRARY DEPRIVATION OF NATIONALITY IN INTERNATIONAL LAW

89. The right to a nationality and the prohibition of arbitrary deprivation of nationality feature prominently in international human rights law. Contracting States should note the relevance of the provisions which codify the right to a nationality and prohibition of arbitrary deprivation of nationality to the exercise of their powers to withdraw nationality under the 1961 Convention. The guidance in Part II above as well as in this Part is relevant to States not party to the 1961 Convention in their efforts to ensure the right to a nationality and uphold the prohibition of arbitrary deprivation of nationality.

90. The UDHR provides in Article 15 that “[e]veryone has the right to a nationality.” There is a strong international consensus that the right to a nationality and, relatedly, the prohibition of arbitrary deprivation of nationality are fundamental principles of international law. The two principles are closely linked and mutually reinforcing. They are found side by side in the UDHR as paragraphs 1 and 2 of Article 15.⁶⁹ The prohibition of arbitrary deprivation of nationality extends to all situations in which an individual who was once considered to be a citizen of a particular State is arbitrarily no longer considered as such (thereby encompassing both loss and deprivation of nationality as defined in Part II (c) above).⁷⁰ The right to a nationality and the prohibition of arbitrary deprivation of nationality are relevant to all States irrespective of whether they are parties to the 1961 Convention.

a) The right to a nationality

91. Owing to the fact that the right to a nationality and the prohibition of arbitrary deprivation of nationality are codified in numerous widely ratified international treaties, all States have some obligation to protect this right and uphold this prohibition. The International Covenant on Civil and Political Rights (“ICCPR”) provides in Article 24(3) that “[e]very child has the right to acquire a nationality.” The CRC specifies in Article 7(1) that “[t]he child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his parents.” The CEDAW provides in Article 9(1) that States Parties “shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.” Article 9(2) of CEDAW provides that “States Parties shall grant women equal rights with men with respect to the nationality of their children.”

⁶⁸ See paragraph 155, UNHCR Handbook 2014.

⁶⁹ Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 Ga. J. Int'l & Comp. L. 287 (1996), available at <https://digitalcommons.law.uga.edu/gjic/vol25/iss1/13/>. See also pages 45-46, Gerard-René de Groot and Olivier Willem Vonk, *International Standards on Nationality Law: Texts, Cases and Materials* (Wolf 2015).

⁷⁰ See paragraph 23, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/13/34, 14 December 2009: “While the question of arbitrary deprivation of nationality does not comprise the loss of nationality voluntarily requested by the individual, it covers all other forms of loss of nationality, including those that arbitrarily preclude a person from obtaining or retaining a nationality, particularly on discriminatory grounds, as well as those that automatically deprive a person of nationality by operation of the law, and those acts taken by administrative authorities that result in a being arbitrarily deprived of a nationality.”

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92. Article 5 of the Convention on the Elimination of Racial Discrimination (“CERD”) obligates Parties to guarantee the right of everyone to enjoy certain rights, explicitly including the right to a nationality, without distinction as to race, colour, or national or ethnic origin. The Convention on the Rights of Persons with Disabilities (“CRPD”) in Article 18 specifies that States Parties shall ensure that persons with disabilities have the right to acquire and change a nationality and are not deprived of nationality on the basis of disability. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“ICRMW”) provides in Article 29 that “[e]ach child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.”⁷¹

93. The fundamental nature of the right to a nationality and the prohibition of arbitrary deprivation of nationality was recalled by the General Assembly in Resolution 50/152 of 1996, in which the General Assembly called upon States to “adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality.”⁷² Human Rights Council Resolutions 2005/45 of 2005, 7/10 of 2008, 10/13 of 2009, 13/2 of 2010, 20/5 of 2012, 26/14 of 2014 and 32/5 of 2016 also reaffirm that the right to nationality is a fundamental human right. The UN Secretary General has accordingly observed that “States must enact laws governing the acquisition, renunciation and loss of nationality in a manner that is consistent with their international obligations, including in the field of human rights.”⁷³

94. The strong international consensus on the right to a nationality is further evidenced by a number of regional treaties containing references to it. These include the African Charter on the Rights and Welfare of the Child (Article 6), the American Convention on Human Rights (Article 20), the American Declaration of the Rights and Duties of Man (Article 19), the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Article 24), the Covenant on the Rights of the Child in Islam (Article 7), the Arab Charter on Human Rights (Article 29) and the ASEAN Human Rights Declaration (Article 18). The European Convention on Nationality does not use the language of “rights” but does set out rules for States Parties to follow concerning acquisition of nationality that are intended to prevent statelessness (Article 6).⁷⁴

95. In addition, there are a number of regional declarations that highlight the importance of the right to nationality and ending statelessness, including the Brazil Declaration and Plan of Action: A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean,⁷⁵ the Abidjan Declaration of Ministers of ECOWAS Member States on the Eradication of Statelessness,⁷⁶ the Arab Declaration on Belonging and Legal Identity,⁷⁷

⁷¹ See Article 25(4) of the International Convention for the Protection of All Persons from Enforced Disappearance UNTS 2716, 3.

⁷² Paragraph 16, UN General Assembly Resolution 50/152 of 1996.

⁷³ See paragraph 3, *Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they would otherwise be stateless: Report of the Secretary General, A/HRC/31/29*, 16 December 2015.

⁷⁴ See also Article 4 of the European Convention on Nationality:

“The rules on nationality shall be based on the following principles:

- (a) everyone has the right to a nationality;
- (b) statelessness shall be avoided;
- (c) no one shall be arbitrarily deprived of his or her nationality;
- (d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.”

⁷⁵ *Brazil Declaration and Plan of Action*, 3 December 2014, <https://www.refworld.org/docid/5487065b4.html>.

⁷⁶ *Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness*, 25 February 2015, <https://www.refworld.org/docid/54f588df4.html>.

⁷⁷ *Arab Declaration on Belonging and Legal Identity*, 28 February 2018, <https://www.refworld.org/docid/5a9ffbd04.html>.

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the Declaration of the International Conference on the Great Lakes Region on the Eradication of Statelessness⁷⁸ and the N'Djamena Initiative on the Eradication of Statelessness in Central Africa.⁷⁹

b) The prohibition of arbitrary deprivation of nationality

96. As reflected in the 2009 Report of the Secretary General on human rights and arbitrary deprivation of nationality, the minimum content of the prohibition of arbitrary deprivation of nationality is that withdrawal of nationality conforms to what is prescribed by law as well as procedural and substantive standards, including the principle of proportionality.⁸⁰ Withdrawal of nationality must be the least intrusive means of achieving a legitimate purpose which is consistent with international human rights law. Each of these elements will be discussed in paragraphs 97-112 below.

Withdrawal of nationality must take place in accordance with the law

97. The prohibition of arbitrary deprivation of nationality requires that any withdrawal of nationality by a State must have a clear basis in law. This element of the prohibition of arbitrary deprivation of nationality is reflected in Article 8(4) of the 1961 Convention.⁸¹ The legislation in question must sanction the State's ability to withdraw nationality (thereby curtailing an individual's right to nationality) and be sufficiently precise so as to enable citizens to reasonably foresee the consequences of actions which trigger a withdrawal of nationality. As a matter of good practice, domestic legislation on withdrawal of nationality should have safeguards equivalent to those found in the 1961 Convention.⁸²

98. States may apply legislation pertaining to withdrawal of nationality that is in force at the time that the individual commits the act or omission giving rise to the withdrawal. As a safeguard against statelessness or other adverse consequences of withdrawal of nationality, where a new ground for loss or deprivation of nationality is introduced in national law, the State should include a transitional provision to prevent an individual from losing their nationality due to acts or facts which would not have resulted in loss or deprivation of nationality before the introduction of a new ground.

Withdrawal of nationality must always be proportionate to a legitimate aim

99. The principle of proportionality is reflected in numerous international human rights instruments, including international and regional human rights treaties.⁸³ For withdrawal of nationality to be proportionate, measures leading to the withdrawal of nationality "must serve a legitimate purpose that is consistent with ... the objectives of international human rights law" and be the least intrusive means necessary to achieve the aim pursued by the State.⁸⁴ Therefore, the consequences of loss or deprivation of nationality must be weighed against the aim pursued. The impact of withdrawal of nationality on the individual's ability to access and enjoy other human rights (in particular those discussed in these Guidelines) should be taken into consideration.

⁷⁸ Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness, CIRGL/CIMR/DEC/15/10/2017, 16 October 2017, <https://www.refworld.org/docid/59e9cb8c4.html>.

⁷⁹ N'Djamena Initiative on the Eradication of Statelessness in Central Africa, 12 December 2018, <https://www.refworld.org/docid/5c2f3f8b4.html>.

⁸⁰ See paragraph 25, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/13/34, 14 December 2009.

⁸¹ See paragraphs 79-80 above.

⁸² See Part III of these Guidelines for a detailed outline of the standards in the 1961 Convention.

⁸³ For further information, see page 450, Yutaka Arai-Takahashi, *Proportionality* in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law*, Oxford University Press, 2013, <http://www.oxfordhandbooks.com/view/10.1093/law/9780199640133.001.0001/law-9780199640133-e-20>.

⁸⁴ See paragraph 25, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/13/34, 19 December 2013; paragraph 4, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013; paragraph 56, *Rottmann v. Freistaat Bayern*, C-135/08, Court of Justice of the European Union, 2 March 2010, https://www.refworld.org/cases_ECJ_4be130552.html.

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100. The question of whether a person is in possession of another nationality is relevant to the assessment of whether loss or deprivation of nationality is proportionate to the aim pursued by the State because it is a key factor in determining the consequences for the individual concerned. If the person is not in possession of another nationality, the withdrawal of nationality will result in statelessness.⁸⁵ Even where a person is in possession of another nationality or may be able to (re-) acquire another nationality, any loss of the right to reside in the State in question will result in the loss of all the rights which attach to residence. States should therefore ensure that there are no less intrusive alternatives to achieve the relevant aim before withdrawal of nationality occurs. Given the severe consequences of statelessness, withdrawal of nationality that results in statelessness would only be possible to justify as proportionate in extremely limited and narrow circumstances, if at all.⁸⁶ This is reflected by the very narrow circumstances under which a Contracting State may withdraw nationality under the 1961 Convention.

101. Considerations of timing are also relevant to the proportionality test. The longer the period elapsed since the conduct triggering withdrawal of nationality, the more serious the conduct required to justify withdrawal of nationality. States are therefore encouraged to ensure that there is a defined and limited period with respect to the time elapsed between commission of an act and its discovery by the authorities, and between the discovery and the withdrawal of nationality.

102. Where a State wishes to impose administrative measures which have a similar effect as withdrawal of nationality, such as the confiscation of passports, such measures should also conform to the principle of proportionality. The result of such measures is that the individual loses practical access to various other human rights, such as the right to leave any country and re-enter one's own country, and these consequences must be weighed against the aim of the administrative measure.

Withdrawal of nationality is arbitrary where there is no due process

103. In order to avoid arbitrary deprivation of nationality, it is necessary for States to implement procedural safeguards in all cases of withdrawal of nationality. This includes cases where the result of loss or deprivation of nationality would be statelessness. It also includes all interim assessments and decisions taken, including determinations of whether an individual possesses or may acquire another nationality. This element of the prohibition of arbitrary deprivation of nationality is reflected in Article 8(4) of the 1961 Convention.⁸⁷

104. Under Article 14(1) of the ICCPR, "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Decisions by States which infringe upon a person's right to a nationality must follow due process in accordance with international human rights law. The minimum content of the requirement of due process in this context is that an individual is able to understand the reasons why their nationality has been withdrawn and has access to legal and/or administrative avenues through which they may challenge the withdrawal of nationality. Therefore, at a minimum, States should ensure the procedural safeguards described below are in place.⁸⁸

⁸⁵ See paragraph 57, *Rottmann v. Freistaat Bayern*, C-135/08, Court of Justice of the European Union, 2 March 2010, https://www.refworld.org/cases_ECJ_4be130552.html.

⁸⁶ See paragraph 4, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

⁸⁷ See Part II (c) above.

⁸⁸ Even in situations when derogation from Article 14 is permissible, the fundamental requirements of a fair trial must be respected. See paragraph 12, UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/63/223, 6 August 2008. Other relevant provisions include Article 6 of the European Convention on Human Rights, Article 8 of the American Convention on Human Rights, Article 7 of the African Charter on Human and Peoples' Rights and Articles 17 and 21 of the International Convention for the Suppression of the Financing of Terrorism. See also UN Human Rights Committee, *General comment no. 32: Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, <http://www.refworld.org/docid/478b2b2f2.html>.

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105. State decisions involving the acquisition, retention or renunciation of nationality should be issued in writing and open to effective administrative or judicial review.⁸⁹ The individual whose nationality is withdrawn should be provided with written reasons for the withdrawal in a language they understand.

106. An individual must be afforded the right to a fair trial, which includes the ability to appeal decisions made at the first instance.⁹⁰ Where the withdrawal of nationality occurs as a result of an administrative action or decision by the Executive Branch of the State, the individual must have access to judicial review of that decision. Judicial decisions on the legality of withdrawal of nationality should be binding upon the Executive Branch of the State. Moreover, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or completed, the individual must still be considered a national.⁹¹ Lodging an appeal should suspend the effects of the decision to withdraw nationality such that the individual continues to enjoy nationality – and related rights – until such time as the appeal has been settled.⁹²

107. Where States impose immigration sanctions (including detention, travel bans and other restrictions on freedom of movement and confiscation of identity documents) as a result of withdrawal of nationality, there should be a periodic review of whether these measures are proportionate to the aim being pursued by the State in withdrawing nationality. At a minimum, individuals should not be arbitrarily detained without periodic review of whether detention is a proportionate measure in all the circumstances of the case. This is the case both while legal and/or administrative proceedings are ongoing and after a final decision is taken.

108. Wherever the question of whether withdrawal of nationality is permissible involves the determination of an individual's possession or acquisition of another nationality, a State wishing to rely on the fact that an individual is recognised as a national by another State should as a matter of good practice obtain written confirmation of that citizenship status from that other State.

109. Administrative or legal proceedings resulting in withdrawal of nationality *in absentia* pose due process problems. Individuals whose nationality is withdrawn while they are abroad are likely to face insurmountable practical barriers to challenging the withdrawal, not least because they may not know that their nationality has been withdrawn and/or may miss the deadline for appeal on account of being abroad. Where a Contracting State withdraws an individual's nationality *in absentia* and that individual comes forward subsequently to challenge the withdrawal, the State should as a matter of good practice declare the initial withdrawal void and undertake the relevant legal and administrative proceedings afresh. Failing this, the State should, at a minimum, ensure that there is practical access to an appeal procedure following the withdrawal *in absentia*, and suspend the withdrawal of nationality while the appeal procedure is ongoing.

Effective remedy

110. States must ensure that an individual whose nationality has been withdrawn in contravention of the prohibition of arbitrary deprivation of nationality has access to an effective remedy. The right to an effective remedy is codified within several widely ratified international human rights treaties including Article 2(3) of the ICCPR and Article 8(2) of the CRC. It supplements Article 8(4) of the 1961 Convention in that the right to a fair hearing by a court or any other independent body should include an effective remedy where the person

⁸⁹ See page 31, International Law Commission, *Yearbook of the International Law Commission*, 1999, vol II (2); Article 11 of the European Convention on Nationality; paragraph 32, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

⁹⁰ See paragraph 32, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

⁹¹ See paragraph 50, UNHCR Handbook 2014.

⁹² See paragraph 33, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013: "Access to the appeals process may become problematic and related due process guarantees nullified if the loss or deprivation of nationality is not suspended and the former national, now alien, is expelled. Similarly, if withdrawal of nationality results in the loss of property rights, the individual may have to forfeit his home or business, as well as other acquired rights – an interference which may be difficult to repair if it is subsequently established that the loss or deprivation of nationality was unlawful or arbitrary and must be reversed."

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concerned has lost or been deprived of their nationality in a manner inconsistent with the 1961 Convention and applicable international human rights law.

111. States can ensure the right to an effective remedy for wrongful withdrawal of nationality through ensuring that any person claiming such a remedy shall have the right thereto determined by competent judicial, administrative or legislative authorities and “that the competent authorities shall enforce such remedies when granted.”⁹³ States should also ensure that persons arbitrarily deprived of nationality have practical access to an effective remedy,⁹⁴ and that the remedy consists of restoration of nationality and compensation.⁹⁵ States are encouraged to ensure that restoration of nationality as a remedy for arbitrary deprivation of nationality is automatic, and preferably with retroactive effect to the moment of deprivation.⁹⁶ Where proof of identification is necessary to procure an effective remedy, States should adopt flexible rules of evidence as withdrawal of nationality may hamper an individual’s ability to produce such documentation. For example, witness testimony or reliance on other sources of documentary evidence could be permitted in place of identity documents.⁹⁷

112. Where withdrawal of nationality is linked to past persecution against a particular group within the society of a State, the State is encouraged to implement a simple, non-discretionary application procedure so that individuals from this group can re-acquire nationality.

c) Other relevant provisions in international human rights law

113. International human rights law on non-discrimination, non-refoulement, the prohibition of torture, the right to leave one’s own country, the right to enter one’s own country and the right to private and family life are relevant to the permissibility of withdrawal of nationality. States must adhere to their obligations under international law as well as relevant treaty provisions pertaining to these principles in all cases of withdrawal of nationality.

114. The principle of non-discrimination appears in numerous widely ratified international human rights treaties, including Article 26 of the ICCPR, Article 2 of the CRC, Article 9 of the CEDAW and Article 5 of the CERD.⁹⁸ These provisions complement Article 9 of the 1961 Convention.

115. States should ensure that the practical effect of withdrawal of nationality is not that certain groups (e.g., ethnic or religious minorities) are disproportionately affected by laws and policies on and practices of withdrawal of nationality.⁹⁹ Such a discriminatory effect on a particular group may be present even when legislation in the State contains strong safeguards against statelessness.

⁹³ See Article 2(3) of the ICCPR. See also Article 8(2) of the Convention on the Rights of the Child which provides that “[w]here a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”

⁹⁴ Administrative or financial hurdles which cause significant delay or practical difficulties with respect to the restoration of nationality are likely to curtail the right to an effective remedy. Such hurdles might include lack of information on application procedures and prohibitively high administrative fees.

⁹⁵ See Human Rights Council Resolutions 7/10 of 2008 and 10/13 of 2009; page 23, UN Counter-Terrorism Implementation Task Force, *Guidance to States on human rights-compliant responses to the threat posed by foreign fighters*, 2018, <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>.

⁹⁶ For further details, see paragraphs 28-29 of the Tunis Conclusions.

⁹⁷ See paragraph 12, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/13/34, 14 December 2009; paragraph 59, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/10/34, 26 January 2009.

⁹⁸ See also International Law Commission, Art 15 of *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>; Article 5(1) of the European Convention on Nationality.

⁹⁹ Article 5(d)(iii) of the CERD provides that “[i]n compliance with [their] fundamental obligations laid down in ... [the] Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the ... right to nationality”. It post-dates the 1961 Convention and therefore adds the obligation to ensure there is no disparate impact of withdrawal of nationality on particular groups within society.

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116. Articles 5–8 of the 1961 Convention distinguish between mono- and dual-nationals such that different standards apply depending on whether a person is in possession of or can acquire another nationality. This is relevant to determining whether loss or deprivation of the nationality of a Contracting State would result in a person becoming stateless. There is also a variance in standards applicable to nationals by birth and nationals by naturalization. Any inequality of treatment between nationals by birth and naturalized citizens should, as a matter of good practice, be minimized through ensuring that there is a defined and limited period during which naturalized citizens may be subjected to loss or deprivation of nationality on an unequal basis with nationals by birth.¹⁰⁰ For example, a naturalized citizen should not be subject to a different set of rules on withdrawal of nationality to a national who acquired nationality by birth after a limited and defined period (e.g. one year) from the date of their acquisition of nationality by naturalization. In addition, given that naturalized citizens are more likely to be from ethnic minority groups, Contracting States should exercise caution with respect to laws and practices which make naturalized citizens more vulnerable to withdrawal of nationality than citizens by birth.

117. Where withdrawal of nationality results in the removal of the individual concerned to another State, States must ensure respect for the customary international law principle of non-refoulement and the prohibition of torture. The principle of non-refoulement is embedded in numerous widely ratified international human rights treaties¹⁰¹ and encompasses situations in which the transfer of an individual by one State to a territory where the individual may face inhuman or degrading treatment, persecution, torture or enforced disappearance. Relevant provisions include Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) and Article 16 of the Convention for the Protection of All Persons from Enforced Disappearance.¹⁰² Relatedly, the prohibition of torture¹⁰³ is codified in numerous widely ratified treaties and instruments, including Article 5 of the Universal Declaration of Human Rights, which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, Article 7 of the ICCPR, Article 27 of the CRC, Article 15 of the CRPD and Article 10 of the ICRMW.¹⁰⁴ The CAT obliges States to take specific measures to implement the prohibition of torture.¹⁰⁵

118. Where the withdrawal of nationality results in removal of an individual from the State (including by way of extradition or expulsion), removal of an individual to a place where they may suffer treatment amounting to torture or cruel, inhuman or degrading treatment or punishment would be a violation of non-refoulement and the prohibition of torture.¹⁰⁶

119. A Contracting State would be in violation of non-refoulement if it withdrew nationality from an asylum-seeker or refugee who was at risk of persecution in their country of origin, and who would be forced to return to their country of origin as a result of that withdrawal.¹⁰⁷

¹⁰⁰ See paragraph 6, Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, A/HRC/25/28, 19 December 2013.

¹⁰¹ Article 4 of the Declaration of States Parties to the 1951 Convention Relating to the Status of Refugees and/or its 1967 Protocol states as follows: “Acknowledging the continuing relevance and resilience of this international regime of rights and principles including at its core the principle of *non-refoulement*, whose applicability is embedded in customary international law.”

¹⁰² Numerous provisions in regional human rights treaties also codify the principle of non-refoulement, including Article 22(8) of the American Convention on Human Rights, Article 13(4) of the Inter-American Convention to Prevent and Punish Torture, Article 19(2) of the Charter of Fundamental Rights of the European Union, Article 28 of the Arab Charter on Human Rights and Article 40(4) of the European Convention on Action against Trafficking in Human Beings.

¹⁰³ These Guidelines will use the term “prohibition of torture” to encompass all treatment prohibited under customary international law, including cruel, inhuman and degrading treatment or punishment.

¹⁰⁴ The CEDAW does not contain a specific provision on torture, however, see Committee on the Elimination of Discrimination against Women (CEDAW), *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), A/47/38, 1992* as General Recommendation No. 19 focuses on violence against women, including torture.

¹⁰⁵ 1. Regional instruments which codify the prohibition of torture include the European Convention on Human Rights (Article 2), American Convention on Human Rights (Article 5), African Charter on Human and Peoples’ Rights (Article 5) and the Arab Charter on Human Rights (Article 8).

¹⁰⁶ For further information, see *Agiza v Sweden*, Communication no 233/2003, UN Committee against Torture, 20 May 2005.

¹⁰⁷ This is notwithstanding Article 33(2) of the 1951 Convention relating to the Status of Refugees which reads as follows.
Article 33 – Prohibition of expulsion return (“refoulement”)

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120. If there are substantial grounds¹⁰⁸ for believing that a person whose nationality has been withdrawn would suffer human rights violations as a consequence of such withdrawal, this consideration must also be part of the assessment of whether withdrawal of nationality would be proportionate to the aim pursued. Consideration as to whether expulsion, return or extradition would be disproportionate should include taking into account “the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”¹⁰⁹

121. States must also consider whether a person may be subject to arbitrary detention upon removal to another country. Where an individual is detained (including for enforcement of immigration laws and in the context of military detention) as a result of withdrawal of nationality, such detention must not be arbitrary. Arbitrary detention includes situations in which there is no oversight or review as to the length of detention, which may in some circumstances amount to torture or cruel, inhuman or degrading treatment or punishment. This is particularly relevant where an individual no longer has the right to reside in a State as a result of withdrawal of nationality but has no other nationality or place of (legal) residence, and as a result, is detained for an indefinite period.¹¹⁰

122. A State should ensure that in all cases where it withdraws nationality from an individual and withdraws their permission for that person to reside in its territory, another State has formally agreed to admit that person and provide them with protection consistent with international human rights law.¹¹¹ Absence of such formal agreement creates a great risk that States will cause further human rights violations such as prolonged arbitrary detention pending the transfer or removal of the individual concerned to another State.¹¹²

123. The right to enter one’s own country is codified in Article 13 of the UDHR, Article 12(4) of the ICCPR¹¹³ and in various other international and regional treaties, including the CERD (Article 5(d)(ii)), the CRC (Article 10(2)), the ICRMW (Article 8) and the CRPD (Article 18(c-d)).¹¹⁴ The right to leave one’s own country (per Article 13 UDHR) goes beyond the country of nationality in the formal sense, and the right to return after having left one’s own country “may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person’s State of nationality).”¹¹⁵ It also guarantees the right of entry, and thus the right to remain, to individuals who, due to their special ties to a State, cannot be considered mere aliens.¹¹⁶ This includes, for instance, stateless persons long-established in a State as well as persons who have been stripped of their nationality in violation of international law.¹¹⁷

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- (1) No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
 - (2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

¹⁰⁸ For a details on what amounts to “substantial grounds” See *Agiza v Sweden*, Communication no 233/2003, UN Committee against Torture, 20 May 2005.

¹⁰⁹ See Article 3(2) of the CAT; Article 16(2) of the Convention for the Protection of All Persons from Enforced Disappearance.

¹¹⁰ Also relevant is the prohibition of arbitrary deprivation of nationality. For further information, see Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/22/44, 24 December 2012.

¹¹¹ For further information on non-refoulement, see paragraphs 52 and 78, UNHCR, *UNHCR intervention before the Supreme Court of Canada in the case of Manickavasagam Suresh (Appellant) and the Minister of Citizenship and Immigration, the Attorney General of Canada (Respondents)*, 8 March 2001, <https://www.refworld.org/docid/3e71bbe24.html>.

¹¹² For details on diplomatic assurances that may be considered reliable for dispelling reasonable grounds to believe in the risk of torture, see paragraph 13.4, *Agiza v Sweden*, Communication no 233/2003, UN Committee against Torture, 20 May 2005.

¹¹³ The provisions under Article 12 of the ICCPR, including the right to leave one’s country, can be subject to restrictions under Article 12(3) if provided for by law, including on the basis of national security and public order. However, this does not apply to Article 12(4), under which “no one should be arbitrarily deprived of the right to re-enter [their] own country.”

¹¹⁴ See also the American Declaration on the Rights and Duties of Man (Article 8), the African Charter on Human and People’s Rights (Article 12) and Protocol No. 4 of the European Convention on Human Rights (Article 3).

¹¹⁵ See paragraphs 19-20, Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9, 2 November 1999, <http://www.refworld.org/docid/45139c394.html>.

¹¹⁶ See paragraphs 19-20, Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9, 2 November 1999, <http://www.refworld.org/docid/45139c394.html>.

¹¹⁷ See paragraph 142, UNHCR Handbook 2014.

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124. If a person who is a national of a State is abroad, that State should not prevent the individual from returning to the territory of the State by arbitrarily depriving that person of nationality.¹¹⁸ Where withdrawal of nationality manifests in the withdrawal of an individual's passport or other identity document, States must nevertheless consider whether denial of entry into one's own country is prescribed by law and proportionate to a legitimate aim.¹¹⁹ In cases where travel bans are imposed, affected persons should be given all necessary information to be able to effectively challenge the ban if they consider it to be a disproportionate measure. This includes information on the facts leading to the imposition of the travel ban.¹²⁰

125. A State may impose measures aimed at restricting travel abroad (e.g. restrictions on travel abroad for terrorist purposes) and thereby limit the right to leave one's own country, provided they meet the proportionality test, and are furthermore in line with what has been requested by the Security Council on this matter.¹²¹

126. The UDHR provides under Article 12 that "[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence" and under Article 16(3) that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Withdrawal of nationality may have implications with respect to the right to private and family life, including where families are separated as a result of such withdrawal. Interference with the right to private and family life should therefore be taken into consideration within a State's assessment of whether withdrawal is permissible and appropriate.

127. Notably, States have specific obligations with respect to protecting private and family life under several widely ratified treaties, including Articles 17(1) and 23 of the ICCPR, Article 10 of the International Covenant on Economic, Social and Cultural Rights, Article 16 of the CRC, Article 23 of the CRPD and Article 44 of the ICRMW. Regional instruments such as the European Convention on Human Rights (Article 8) also provide for the right to private and family life.

¹¹⁸ See paragraph 21, Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9, 2 November 1999, <http://www.refworld.org/docid/45139c394.html>.

¹¹⁹ Paragraph 2 of Security Council Resolution 2178 of 2014 and paragraph 2 of Security Council Resolution 2396 of 2017 call on States to prevent inter-State travel of foreign terrorist fighters, including through effective border controls and controls on issuance of identity papers and travel documents.

¹²⁰ See page 17, UN Counter-Terrorism Implementation Task Force, *Guidance to States on human rights-compliant responses to the threat posed by foreign fighters*, 2018, <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>

¹²¹ See paragraph 14, Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9, 2 November 1999, <http://www.refworld.org/docid/45139c394.html>.