

Resolution on the right to nationality, prohibition of arbitrary deprivation of nationality and statelessness

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A. INTRODUCTION

Nationality constitutes the legal bond between a person and a given State¹. In this regard, the Commission has noted that, although there is no uniform rule in practice or in the domestic law of the States for acquiring nationality², in the context of the Americas, the granting of nationality, in most States, is carried out through a mixed system³. That is, through the combined application of two principles for granting nationality by birth. On the one hand, *ius solis* for persons born in the territory of a State and on the other, *ius sanguinis*, for persons born in another State and who acquire it by descent, through the transmission of nationality from their mothers and/or fathers⁴.

Despite the safeguards granted by the application of the principles of *ius solis* and/or *ius sanguinis* to grant nationality, the Commission continues to observe that there are challenges regarding its acquisition and/or effective enjoyment. This mainly due to a) legal barriers, because of the existence of norms that establish discriminatory restrictions regarding the application and interpretation of the right to nationality; and/or, b) practical barriers, which refer to facts or factual situations that prevent or hinder its exercise.

The Commission has also followed with concern the existence of cases of stateless persons *in situ* who, despite being born and/or residing in a given State, are arbitrarily deprived of their nationality on discriminatory grounds. Likewise, the IACHR has also monitored the existence of laws that impose discriminatory requirements between men and women regarding how to transmit nationality to their daughters and sons⁵; the arbitrary deprivation of nationality, based on discriminatory grounds, through the implementation of arbitrary administrative and legislative measures that do not ensure the guarantees of due process⁶; the implementation of measures that arbitrarily prevent the return of their nationals to their countries⁷; as well as the difficulties faced by certain persons in renewing expired passports or accessing identity documents, due to the State's refusal to issue them abroad⁸.

In addition, the IACHR has also noted limitations or impediments concerning the exercise of the right to nationality linked to the context of migration and forced displacement in the region. The difficulties in accessing a regular migratory status and valid identification documents to prove nationality has led to the existence of stateless persons and people at risk of statelessness throughout the continent, without an adequate identification of their stateless situation. On the other hand, the Commission notes that legislative measures, practices and/or policies of the States, related to the granting and acquisition of nationality, are decisive for the identification, prevention, reduction and eradication of statelessness. In this regard, the IACHR has highlighted the progress made in the region to achieve this objective. Similarly, some countries in the region have introduced legislative reforms and/or recent practices to determine the status of statelessness and/or

provide protection to stateless persons.

However, the IACHR has observed, in different countries of the region, the persistence of laws, practices and/or interpretations that cause risks of statelessness. In addition, the Commission notes that challenges persist in the identification of stateless persons, which leads to an underestimation in the statistical reports available. In this context, the IACHR has noted the adoption of judicial decisions that have retroactively affected the right to nationality and have generated a situation of intergenerational statelessness that affects the descendants of persons arbitrarily deprived of this right⁹. The existence of laws, judicial decisions, and/or interpretations that condition the acquisition of the nationality of children on the migratory status of their mothers and/or fathers is also an issue of concern, which generates risks of statelessness¹⁰.

Based on the foregoing, the purpose of this resolution is to provide general guidelines for States in the region to adopt a comprehensive, effective and lasting response to guarantee the right to nationality and to prevent, reduce and eradicate statelessness. To that end, it is founded on the principle of equality and non-discrimination and incorporates differentiated approaches based on age, gender, diversity, disability, interculturality and intersectionality, among others.

B. DEFINITIONS

For the purposes of this resolution, the content and definitions of the Resolution No. 04/19 containing the Inter-American Principles on the Human Rights of Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons is invoked¹¹, namely:

NATIONALITY: It is the fundamental human right that establishes the essential legal bond between a person and the State, by virtue of which a person belongs to the political community that a State constitutes under domestic and international law¹². This link allows acquiring and exercising rights and responsibilities inherent to belonging to a political community. Furthermore, it is a *non-derogable* right in accordance with Article 27 of the American Convention on Human Rights. Some countries use the word nationality, while others refer to the word citizenship to denote this legal bond. In international human rights law, both terms are used interchangeably¹³.

MODALITIES OF ACQUISITION OF NATIONALITY: Nationality can be acquired according to automatic or non-automatic modalities. The automatic modalities allow the acquisition of nationality when certain criteria established by law are met, such as: being born in a territory or descending from nationals of a State. On the other hand, the non-automatic modalities require an act of a person or a State authority for its acquisition.

RENEWAL OF NATIONALITY: Refers to the right of persons to renounce a nationality, in accordance with the provisions of the State regulations, and provided that the person has or acquires another nationality instead. The act of resignation requires a formal and voluntary manifestation from the interested person.

LOSS OF NATIONALITY: Refers to the circumstances under which a person's nationality may be automatically withdrawn. Under the automatic modality, nationality is lost as soon as the criteria established by law are met. Particularly, due to the application of a law that automatically deprives a person of their nationality, for example, in situations of prolonged residence abroad¹⁴.

ARBITRARY DEPRIVATION OF NATIONALITY: Comprises situations initiated by State authorities, whereby they actively remove a person's nationality¹⁵. In particular: i) decisions adopted by administrative and/or judicial authorities that arbitrarily deprived a person of its nationality based on discriminatory grounds; ii) when authorities persistently refuse to issue or renew documents without providing an explanation or justification; and, iii) in cases of confiscation of identity documents and/or expulsion from the territory together with a declaration by the authorities that a person is not considered a national.

STATELESS: A person who is not considered a national by any state under its legislation. It is noteworthy that the 1954 Convention relating to the Status of Stateless Persons does not allow reservations for Article 1(1) and, therefore, this definition is binding on all States Parties to the treaty. Furthermore, the International Law Commission concluded that the definition in Article 1(1) is part of customary international law¹⁶.

PEOPLE AT RISK OF STATELESSNESS: People who face legal and/or administrative barriers to prove that they have nationality ties with a given State¹⁷. This is mainly attributable to the existence of impediments to access documents to prove nationality, due to legal and/or administrative barriers, or insurmountable impediments to confirm their nationality.

FOUNDINGS: Children born of unknown parents who were found abandoned in the territory of a State¹⁸. In this sense, they are presumed to have been born in the territory of the State where they were found and, therefore, should be considered nationals of that State.

C. PREAMBLE

RECALLING the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness; the 1984 Cartagena Declaration on Refugees; the Global Compact on Refugees; the Global Compact for Safe, Orderly and Regular Migration; the Global Action Plan to End Statelessness; the Brazil Declaration and Plan of Action and the Los Angeles Declaration on Migration and Protection and other relevant international instruments;

RECOGNIZING the obligation of American States to guarantee the effective enjoyment of the right to nationality, as well as to prevent, reduce, and eradicate statelessness in the region, in accordance with the Charter of the Organization of American States (OAS); the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Additional Protocol to the American Convention on Economic, Social, and Cultural Rights ("Protocol of San Salvador"); the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ("Belem do Pará Convention"); the Inter-American Convention against All Forms of Discrimination and Intolerance; the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance; and the Inter-American Convention on Protecting the Human Rights of Older Persons;

EMPHASIZING the universality, indivisibility, interdependence, interrelatedness, progressiveness and non-regression of all human rights and fundamental freedoms, and the need for all persons to enjoy the full respect and effective exercise of their human rights, in accordance with Articles 1 and 2 of the American Convention;

RECALLING that Article 15 of the Universal Declaration of Human Rights establishes that everyone has the right to a nationality and that no one shall be arbitrarily deprived of its nationality, nor of the right to change it. Likewise, Article 20 of the American Convention on Human Rights and Article XIX of the American Declaration of the Rights and Duties of Man recognize the right to nationality;

RECALLING that, at the regional level in the Americas, the 2014 Brazil Declaration and Plan of Action enshrines the importance of establishing fair and effective procedures for the determination of statelessness; promoting the harmonization of domestic regulations and practice on nationality with international and inter-American standards; facilitating universal birth registration and the provision of documentation; adopting regulatory frameworks of protection that guarantee the rights of stateless persons, and providing facilities for their naturalization¹⁹;

EMPHASIZING that the Inter-American Court of Human Rights (Court or IACtHR) has held that nationality is a *non-derogable* fundamental right²⁰, which encompasses a double aspect and means providing a person with a minimum of legal protection in international relations, by establishing through nationality their link to a particular State²¹. At the same time, it protects them against the arbitrary deprivation of their nationality²² and prevents them from being deprived of all the rights that are based on their nationality²³;

EMPHASIZING that the Commission has recognized that the right to nationality is a fundamental right of the human person²⁴, and is *non-derogable*²⁵, which means that it cannot be suspended in the event of war, public danger or other emergency that threatens the independence or security of a State, in accordance with the provisions of Article 27.2 of the American Convention²⁶;

EMPHASIZING that States have the obligation to provide equal and effective protection of the law and without discrimination with respect to the exercise of nationality²⁷.

RECOGNIZING that it is contrary to international law any position that maintains that everything related to the right of nationality is a matter in which States have absolute discretion, based on which they may disregard the obligations they have undertaken internationally. In particular, those relating to human rights and the prevention of statelessness²⁸.

RECALLING that the right of every person to retain their nationality is linked to the obligation of States deriving from the absolute prohibition of arbitrary deprivation of nationality.

CONSIDERING that the Commission has been emphatic in indicating that the deprivation of a person's nationality cannot be arbitrary. And that, if it is applied, it must respond to a legitimate purpose, be proportional to the object it seeks to achieve and may not be motivated on discriminatory reasons.

REAFFIRMING that the deprivation of nationality resulting in statelessness is prohibited and is contrary to international and Inter-American standards for the protection of human rights.

EMPHASIZING the obligation of States to reduce, prevent and eradicate statelessness²⁹.

NOTING that only thirteen OAS Member States have acceded to the 1954 Convention Relating to the Status of Stateless Persons and six are parties to the 1961 Convention on the Reduction of Statelessness;

EMPHASIZING the relevance of promoting the adherence to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;

ADOPT the following resolution on the right to nationality, prohibition of arbitrary deprivation of nationality and statelessness

D. OPERATIVE PART

The Inter-American Commission on Human Rights (Commission or IACHR), in exercise of the mandate conferred upon it by Article 106 of the Charter of the Organization of American States (OAS) and in application of Article 41(b) of the American Convention on Human Rights ("Pact of San José, Costa Rica" or "American Convention") and Article 18(b) of its Statute;

SECTION I GENERAL PRINCIPLES

A. Equality and non-discrimination

1. States must ensure the unrestricted application of the principle of equality and non-discrimination in all measures adopted to guarantee the *non-derogable* right to nationality, prohibit arbitrary deprivation of nationality, and prevent, reduce and eradicate statelessness.
2. In particular, States must refrain from adopting laws or practices in contravention of the principle of equality and non-discrimination, which make distinctions based on gender, legal, civil, or migratory status to transfer nationality to daughters and sons at birth.
3. States must incorporate approaches that consider additional factors of discrimination, such as those affecting women, children and adolescents, LGTBIQ+ persons, persons with disabilities, Afro-descendants, indigenous peoples, victims of human trafficking, as well as other groups in situations of vulnerability with respect to the protection and guarantee of the right to nationality.
4. States must apply the principle of the child's best interests, along with the principle of equality and non-discrimination, to assess the risks of statelessness and its disproportionate effects on children and adolescents.
5. States must prevent and combat any action that promotes discrimination and other factors that incite violence against stateless persons.

B. Differentiated and intersectional approaches to protection

6. To ensure the right to nationality, avoid arbitrary deprivation of nationality, and prevent, reduce and eradicate statelessness, States must incorporate differentiated, intersectional and intercultural approaches in all laws and practices they adopt to ensure protection. Such measures should consider the multiple discrimination and possible legal and/or practical obstacles that people may face in accessing and enjoying the right to nationality, and that respond to factors such as gender and gender identity, age, disability, ethno-racial origin, socioeconomic status, sexual orientation, nationality, among others.

Pro-Person Principle

7. States have the obligation to design and implement comprehensive policies, laws and practices that privilege the person and are based on human rights, with respect to the principles of non-regression and non-derogability of human rights in terms of the right to nationality, prohibition of arbitrary deprivation of nationality, prevention, reduction and eradication of statelessness.

SECTION II

THE RIGHT TO NATIONALITY

8. Everyone has a right to nationality. Mainly, in the State in whose territory he was born if he does not have the right to another, which must be interpreted considering the obligation to guarantee to every person subject to the jurisdiction of the State the exercise of their civil and political, economic, social, cultural and environmental rights. Therefore, States are obliged to provide mechanisms to guarantee access to nationality for people who are their nationals, in accordance with the applicable domestic law provisions, which must be in accordance with international law and international standards in the matter.

9. When regulating the granting of nationality, States must:

- i) provide equal and effective protection of the law and without discrimination, with respect to the exercise of nationality; and,
- ii) prevent, reduce and eradicate statelessness.

SECTION III

ACQUISITION AND LOSS OF NATIONALITY

Acquisition of nationality

10. States must adopt safeguards against statelessness in their laws on acquisition of nationality. Likewise, States must also guarantee the acquisition of nationality by birth and/or by descent. In this regard, States may grant nationality by birth through the principle of *ius solis* or, by descent, through the principle of *ius sanguinis*. States must grant nationality to mothers and/or fathers who are nationals of a State, whether they are in the State of their nationality or outside it, and regardless of whether they were born outside or within its territory.

11. States must develop actions aimed at having legal frameworks that guarantee the effective enjoyment of the right to nationality for all.

12. States must guarantee the acquisition of nationality through a mixed system, that is, that their regulations must jointly incorporate the principles of *ius solis* and *ius sanguinis* to avoid the denial of nationality, as well as to prevent, reduce and eradicate statelessness in the region.

13. States must also guarantee the acquisition of nationality by option or naturalization. They must grant nationality by option or naturalization to foreign persons, including stateless persons, who have habitually resided for a period fixed by the domestic law of the State and who meet the requirements established.

Renunciation of nationality

14. Everyone has the right to renounce their nationality in accordance with the domestic law of each country and the provisions established by applicable international treaties.

15. States must ensure that the renunciation of a nationality, in no case, results in statelessness. In this regard, States must develop regulatory frameworks that establish that the effectiveness of such renunciation shall be subordinated to the possession or acquisition of an alternative nationality.

Procedures for loss of nationality

16. States must not allow the loss of nationality when it results in statelessness.

17. If the legislation of a State provides for the loss of nationality because of a change of civil status, such as marriage, dissolution of marriage, legitimation, recognition or adoption, the effectiveness of said loss shall be subordinated to the possession or acquisition of the nationality of another State.

18. States must adopt measures to ensure that, in cases where a woman marries a foreign national, this does not result in an automatic change of her nationality, the imposition of the husband's nationality or the risk of statelessness if she loses her nationality without having acquired another nationality.

19. If a person may lose their nationality and become stateless because of the recognition of filiation, States must offer the possibility of recovering nationality through an application submitted to the competent authority. In this regard, States must develop appropriate regulations so that the interested person can present said request to the competent authority.

20. States must refrain from reforming or modifying existing laws if such laws permit the loss of nationality and create a risk of statelessness by naturalization in another state. In particular, States must allow naturalized persons to possess another nationality and, otherwise, refrain from requesting that they renounce their nationality before obtaining naturalization in another State.

21. States must not reflect in their regulations the possibility of loss of nationality of a person for reasons of departure, residence abroad, lack of registration in the civil registry or any similar reason that could result in a risk of statelessness.

Prohibition of arbitrary deprivation of nationality

22. The right to nationality entails the State obligation to provide a minimum of legal protection to people against their nationality's deprivation. Therefore, States have the obligation to evaluate, in each specific case, the risk of statelessness of a person, prior to carrying out procedures for deprivation of nationality.

23. States must not deprive a person of their nationality if such deprivation would render them stateless. Deprivation of nationality leading to statelessness is considered arbitrary and is prohibited under international human rights law.

24. For deprivation of nationality procedures to be compatible with States obligations, they must respond to a legitimate objective of the State, be proportional to the objective sought to be achieved and can never be based on discriminatory

grounds. Arbitrary deprivation of nationality procedures that do not comply with these conditions are prohibited and are contrary to international human rights law.

25. States must ensure that persons deprived of their nationality have access to an effective remedy, which must guarantee the possibility of restitution of nationality and compensation³⁰.

26. States may apply exceptions to the general rule of deprivation of nationality, which must be interpreted in a restrictive sense and in a manner complementary to international and inter-American standards on the matter and the obligations of States regarding the protection of the right to nationality.

27. The restrictions on the right to nationality are limited to cases where a person has acquired nationality by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant. When deciding on the deprivation of a person's nationality, the State must consider the proportionality of this measure, considering all the circumstances of the case.

28. States must, even in cases in which nationality was acquired based on fraudulent information, false information or misrepresentation of facts, evaluate the nature or seriousness of said conduct considering the consequences that the removal of nationality would have in each specific case³¹. In this regard, States must examine aspects such as the person's relationship with the State; in particular, the time that has passed between the acquisition of nationality and the moment in which the fraud is evident, as well as the family and social ties that the person has developed.

29. States must refrain from enacting or perpetuating laws, adopting public policies or practices that deprive anyone of their nationality. Except in exceptional circumstances and for non-discriminatory reasons (including racial, ethnic, religious or political reasons, among others) previously established by law.

SECTION IV

THE OBLIGATION TO PREVENT, REDUCE AND ERADICATE STATELESSNESS

Registration of births and issuance of identity documents

30. States must register children immediately after birth and grant nationality to any child born in the State's territory if they would otherwise be stateless. If there is no certainty that the child would not be stateless, the State has an obligation to automatically grant nationality to avoid statelessness. This obligation subsists regardless of the legal or migratory status of the mother and/or father.

31. States must grant nationality to children who may be stateless due to being abandoned or separated from their families, including in migration contexts.

32. In cases of adoption of children, States shall adopt measures to ensure that they legally acquire the nationality of their mothers and/or adoptive parents, without discrimination and regardless of the State in which the adoption took place.

33. In all cases where there is a risk of statelessness with respect to children, States must apply the principle of the best interest of the child, jointly with the obligation of States to reduce, prevent and eradicate statelessness.

34. States must establish different deadlines for registering births of people who live in rural areas or whose birth took place outside of a health center. These measures must consider the sociocultural aspects of birth registration.

35. States must examine the risk of statelessness for some population groups that present greater challenges in registering their births in a timely manner. In this sense, they must adopt measures to register the birth and issue documentation that proves the identity of people belonging to nomadic populations, in remote or difficult-to-access areas, border areas, indigenous populations, minorities, people of African descent, and people in human mobility, abandoned, orphaned, unaccompanied or separated children, who are considered especially vulnerable. Likewise, States must consider language barriers and illiteracy as possible difficulties in registering and adopt measures to overcome them.

36. Border States must consider signing binational agreements to implement joint activities that bring registration services closer to border areas and provide a timely response to complex cases of late registration.

37. States should implement mobile registration and documentation brigades regularly and facilitate durable solutions for cross-border, rural and human mobility populations.

38. States must incorporate procedures to ensure the registration of daughters and sons of people born abroad through consulates and embassies. Furthermore, States must ensure that their consulates and embassies are legitimately obliged, as a competent authority, to take a position on the status of that person's nationality, within their powers of consular protection, renew passports and other documents that prove the nationality of a person.

39. States must consider authorizing their consular representatives to conduct late birth registrations and grant documentation to persons born in the same country they represent.

40. States must develop simplified administrative procedures for late birth registration and execute campaigns to register older children and adults. This registration should be free, affordable and non-discriminatory.

41. States must have procedures in place to ensure that persons entitled to a nationality can acquire documentary proof of that nationality. Likewise, States must ensure that the procedures to obtain it are affordable, expeditious and do not contain onerous requirements for applicants.

Other provisions on prevention, reduction and eradication of statelessness

42. States should adopt legislative measures, practices, interpretations and policies regarding the granting and acquisition of nationality to prevent, reduce and eradicate statelessness³²;

43. States must identify the fundamental causes and new trends of statelessness to adopt specific measures aimed at its prevention, reduction and eradication.

44. States must review their laws on the granting of nationality to prevent new cases of statelessness resulting from the denial or arbitrary deprivation of nationality.

45. States should enact nationality laws that ensure women the right to confer nationality to their sons and daughters on an equal basis with men.

46. States actions to reduce and eliminate statelessness must be designed, implemented and evaluated by mechanisms that guarantee transparency, involvement and social participation of affected people, groups and communities. In this regard, States should consider accessibility, availability of information, language, age and disability conditions, among others.

47. To prevent and address the risk of statelessness, States must implement mechanisms that examine legal and/or practical obstacles to obtain documents, certificates and declarations in the country of origin.

48. States should incorporate appropriate safeguards in their nationality laws to prevent the perpetuation of statelessness from one generation to the next and avoid situations where mothers and/or fathers with a nationality are unable to transmit it to their descendants.

49. States must consider the determination of statelessness as the last resort. If the applicant can acquire a nationality, this will be considered the priority option. In these cases, States will refer the request to the corresponding administrative or consular bodies with the consent of the applicant.

SECTION V

PROTECTION OF THE RIGHTS OF PERSONS IN A SITUATION SIMILAR TO THAT OF STATELESS PERSONS

50. States should extend the rights recognized to stateless persons to those persons who have no possibility of returning to their country of nationality, due to a legal and/or practical impediment to return and are attributable to the authorities of said State.

51. In the case of persons who are in a situation similar to that of stateless persons and cannot return to their countries of nationality, States must consider authorizing the temporary residence of said person for humanitarian reasons. Likewise, States must consider granting a special travel document for foreigners who cannot obtain a valid travel document from the authorities of their country of nationality³³.

SECTION VI

DUE PROCESS GUARANTEES

52. States must respect the due process guarantees developed in Principles 50 and 51 of the Commission's Resolution No. 04/19, in all procedures related to the guarantee of the right to nationality, loss and deprivation of nationality, as well as for the recognition of statelessness.

53. States must establish timely and simplified procedures, as well as make the documentary requirement more flexible in all the procedures incorporated in this resolution. In addition, they must provide the guarantees mentioned below.

Procedures for acquisition and loss of nationality

54. States must respect due process guarantees so that decisions regarding the acquisition, deprivation or change of nationality do not contain any element of arbitrariness and are subject to review, in accordance with their international human rights obligations.

55. In particular, States must guarantee full respect for the right of defense and judicial protection, including but not limited to notification and the issuance of a duly substantiated decision, together with the possibility of challenging the decision with suspensive effects.

Statelessness determination procedures

56. States must guarantee access to the territory and to accessible, simple and expeditious procedures that allow individualized assessment of differentiated international protection needs of stateless persons.

57. States must adopt centralized procedures for determining the status of statelessness that are accessible, equitable, transparent and effective, which must be processed and resolved by a body specialized in the matter, which must be responsible for making decisions on all applications submitted.

58. States must guarantee that applicants for recognition of stateless status are provided with sufficient and appropriate information. This must include advice in a language they understand on eligibility criteria, deadlines, procedures, decisions and their possible effects, including their rights in the event of being recognized, as well as the possibility and means of appeal. Also, information dissemination must consider intersectionality and interculturality approaches.

59. States should refrain from introducing admissibility mechanisms for applications for recognition of stateless status that are not provided for in domestic law and that could unreasonably or disproportionately hinder the granting of protection.

60. Statelessness determination procedures must observe the principle of *non-refoulement* as a peremptory norm of international law. To ensure that these procedures are fair and efficient, States must refrain from expelling a person from their territory until the determination process has been resolved and all ordinary remedies under domestic law have been exhausted.

61. States should guarantee the right to an individual interview and the necessary assistance with translation and/or interpretation throughout the statelessness determination process, as essential elements to ensure that applicants have the opportunity to present their case and evidence that are substantial for their request.

62. Regarding the burden of proof in statelessness determination procedures, statelessness would be justified when it is proven to a "reasonable degree" that a person is not considered a national by any State, according to its legislation. Also, States must respect the principle of shared burden of proof, whereby both the applicant and the authorities of the examining State must cooperate to obtain the evidence and establish the facts, respecting the pro-person principle³⁴.

63. States must regulate in advance, in their domestic legislation, the duration of stateless procedures, as well as the period available for the competent authority to take a decision.

64. States must implement cooperation mechanisms that consider administrative and/or legal impediments to obtaining documents, certificates and declarations in the country of origin. This, in order to prevent the risk of statelessness for all people. In particular, in the context of births and/or mobility of newborns.

65. States must adopt hospitality and non-discrimination policies to strengthen local integration through the promotion of respect for diversity and interculturality, highlighting the positive contribution of stateless persons to host communities.

66. States must respect and preserve the family unity of the stateless person and the applicant for recognition of such status, with her or his spouse or partner, including persons of the same sex, minor children, and other relatives or persons with whom she or he has a relationship of economic, cultural, psychological, emotional or any other type of dependency that the immigration authorities deem appropriate.

67. States must grant temporary residence permits to members of the family group who are nationals of another country, while the application for recognition of statelessness is being resolved. Likewise, States must also take measures to facilitate reunification of stateless persons with their family³⁵.

Naturalization procedures and documentation relaxation for stateless persons

68. States must facilitate the naturalization of stateless persons as much as possible. In this regard, States have the duty to reduce the legal and administrative barriers so that people can acquire a nationality. In particular, by accelerating naturalization procedures and reducing the costs and expenses of the procedures.

69. States must make the requirements and procedures for the naturalization of stateless refugees and stateless migrants more flexible and accessible to facilitate the acquisition of nationality.

70. States must facilitate the naturalization of children and adolescents and other family members of stateless persons, in recognition of the importance of family unity and the need to strengthen safeguards against child statelessness. 71. States must facilitate the requirements regarding the presentation of documentation, considering the situation of persons who have not been able to access or do not have access to any civil documents.

72. States must consider establishing exemptions or documentation facilities, as well as legalization and apostille, for international protection recognition procedures for persons arbitrarily deprived of nationality and stateless persons, pondering the existence of legal and/or practical barriers to obtaining said documents.

73. States must consider implementing measures to make visas, immigration requirements and necessary documentation required for international protection procedures more flexible within the framework of statelessness determination procedures.

74. States must facilitate the naturalization of stateless persons through appropriate procedures, as part of a durable solutions strategy, in accordance with the domestic legislation of each State.

Interrelationship between statelessness and asylum procedures

75. If States identify that a person may be considered both a refugee and a stateless person, they must provide appropriate advice and information regarding the legal options available and the avenues for submitting both applications.

76. If States identify that a stateless person may be entitled to international protection as a consequence of having been arbitrarily deprived of their nationality on account of race, religion, nationality, membership of a particular social group or political opinion, they should recognize both conditions and provide the protection of the 1954 Convention relating to the Status of Stateless Persons and the 1951 Convention relating to the Status of Refugees simultaneously³⁶.

77. If possible, the competent authorities should process both applications so that both conditions are recognized in their corresponding resolutions, or one of them, accordingly.

78. States must ensure that the authorities and services involved in refugee and statelessness protection mechanisms and actions act in coordination to avoid that one procedure may prejudice the other, or that the integrity of the applicant may be placed at risk.

79. States must extend and respect the principle of confidentiality also in statelessness determination procedures, in cases where the same applicant may meet both conditions.

Interrelation between statelessness and late birth registration procedures, acquisition of nationality and acquisition of the nationality of another country.

80. If, during a stateless recognition procedure, States determine that the applicant was born in the territory of the country, without his or her birth having been timely registered, they must suspend the procedure and refer the case to the competent registration authority, so that the late registration may proceed, as appropriate. If the late registration procedure is not feasible, States must resume the statelessness determination procedure.

81. If, during a stateless recognition procedure, States determine that the applicant is entitled to acquire the nationality of the country through a procedure other than naturalization, they must duly inform the applicant so that the person may consider initiating it. If the applicant gives his or her consent to initiate said alternative procedure, States must process the nationality application as a matter of urgency and priority.

82. If, during a stateless recognition procedure, States determine that the applicant is entitled to acquire the nationality of another country, they must inform the applicant in a timely manner so that the person may consider it. If the applicant consents to initiate said alternative procedure, States must interpose their good offices with the foreign authorities to facilitate the acquisition or recovery of his or her nationality, as appropriate. However, States should not suspend the stateless determination procedure unless the applicant so requests³⁷.

SECTION VII

ACCESSION AND RATIFICATION OF INSTRUMENTS IN THIS FIELD

83. If they are not yet a party, States are encouraged to adhere to international treaties on the protection of nationality and the prevention, reduction and eradication of statelessness. In particular, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Notes

- 1 IACHR Court. *Yean and Bosico v. Dominican Republic*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130 para. 139.
- 2 IACHR, *Complaint in Case 12.189 (Dominican Republic)*, regarding the girls Dilcia Yean and Violeta Bosico, July 11, 2003, para. 49.
- 3 IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.LV/II., Doc. 45/15, December 31, 2015, para. 212.
- 4 IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.LV/II., Doc. 45/15, December 31, 2015, para. 212.
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