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**SPECIFIC GROUPS AND INDIVIDUALS: OTHER VULNERABLE GROUPS  
AND INDIVIDUALS**

**Human rights and arbitrary deprivation of nationality**

**Report of the Secretary-General**

**Summary**

The present report contains a summary of the replies received from Governments and intergovernmental and non-governmental organizations pursuant to resolution 2005/45 of the Commission on Human Rights.

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## **Introduction**

1. In its resolution 2005/45, the Commission on Human Rights requested the Secretary-General “to collect information on this question from all relevant sources and to make it available to the Commission at its sixty-second session.” The present report contains a summary of the replies received.
2. In response to a note verbale dated 26 September 2005, information was received from the Governments of Colombia, Georgia, Lebanon, Mexico, Monaco and Morocco. In response to a letter sent to various intergovernmental and non-governmental organizations on 26 September 2005, the Office of the United Nations High Commissioner for Refugees (UNHCR), the High Commissioner on National Minorities, the Organization for Security and Co-operation in Europe (OSCE), the Open Society Justice Initiative and Refugees International provided their comments.

## **I. REPLIES RECEIVED FROM GOVERNMENTS**

### **Colombia**

The Government of Colombia stated that the right to nationality is founded in the Constitution. In Title III of the Constitution, which refers to the inhabitants and territory, article 96 of chapter I establishes that Colombian nationality is acquired by birth in Colombia, by the Colombian nationality of the parents, by adoption, or by naturalization. This applies in the same manner to indigenous peoples in the boarder areas, in accordance with the principle of reciprocity. It is clearly established that no Colombian by birth can be deprived of her/his nationality. Neither can it be lost by acquisition of another nationality, nor can those who have voluntarily renounced Colombian nationality can recover it according to the procedure established by law. In the same way, Colombian nationals by adoption are not obliged to renounce their nationality of origin or adoption. If a national of Colombia wants to renounce her/his nationality, s/he needs to demonstrate, with an appropriate document, to have acquired another nationality or is in the process of doing so, in order to avoid statelessness. Colombians by adoption or foreigners residing in Colombia are not obliged to take up arms against their country of origin, and neither will Colombians nationalized in a foreign country against the country of new nationality. A Colombian who has renounced her/his nationality and who acts against the interest of the country in a foreign war against Colombia will be judged and punished as a traitor (article 97 of the Constitution).

### **Georgia**

1. The Government of Georgia stated that according to article 12 of the Constitution, Georgian citizenship shall be acquired by birth or naturalization. A citizen of Georgia shall not at the same time be a citizen of another State. Citizenship of Georgia shall be granted by the President to a citizen of foreign country who has special merit for Georgia or grant of a person to whom the citizenship is in the State interests. The procedure for the acquisition and loss of citizenship is determined by the Organic Law, adopted in 1993. Article 2 of the Law stipulates that no person may be deprived of citizenship. According to article 3, a person may be considered a citizen of Georgia who (a) permanently lived in Georgia for at least five years and lived in Georgia at the time the Law came into force, unless s/he, within a period of six months,

renounced his/her citizenship in writing; (b) was born in Georgia and who left its territory after 21 December 1991 and does not meet the requirements of paragraph (a), if s/he has no other citizenship; (c) acquires citizenship of Georgia according to the Law. Article 4 underlines that citizens of Georgia are equal before the law, regardless of race, skin colour, language, sex, religion, political and other beliefs, national, ethnic and social origin, property and title status or place of residence. According to the Law, citizenship can be lost in accordance with international agreements binding upon Georgia and the Law. In particular, a person loses her/his citizenship if (a) s/he, without a permission from the competent bodies of Georgia, enters the military service, police, judicial bodies, organs of government or State administration of a foreign State; (b) s/he permanently lives in another country and for an inadequate reason failed to register at the consulate for two years; (c) s/he acquires citizenship of other State. Only the President of Georgia is empowered to pass the relevant resolutions.

2. The Government stated that it considers that the Organic Law on “Citizenship of Georgia” provides for adequate guarantees against arbitrary deprivation of citizenship, stipulated by article 42, according which the resolution of the President of Georgia on issues of citizenship may be appealed at court pursuant to the rule established by the law. Officials are liable under the law for groundless refusal to examine an application for citizenship, violation of the terms of consideration of petitions, and other illegitimate actions. In light of the analogous recommendation in Commission resolution 2005/45 and in the concluding observations of the Committee on the Elimination of Racial Discrimination upon considering the periodic report of Georgia in 2005, the Government is currently considering acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

## **Lebanon**

The Government of Lebanon stated that Law No. 15 of 19 January 1925, as amended on 11 January 1960, governing the acquisition, renunciation or loss of nationality, is in conformity with the principles of international law, and with the international human rights conventions. This law is in conformity with the Universal Declaration of Human Rights, according to which everyone has the right to a nationality and no one shall be deprived of his/her nationality.

## **Mexico**

1. The Government stated that in Mexico there are neither discriminatory measures nor laws arbitrarily depriving persons of their nationality on grounds of race, colour, gender, religion, political opinion, or national or ethnic origin. The Government, through its plans and programmes, prevents loss of nationality. In this context, the National Development Plan of 1995-2000 included a “Mexican Nation” initiative. The key element of the initiative was the promotion of constitutional and legal reforms aimed at allowing Mexicans who have acquired another nationality to preserve their Mexican nationality.

2. The Government further reported that on 20 March 1997, constitutional reform was carried out modifying articles 30, 32 and 37 with a view to preventing any person who was a Mexican citizen at birth from being deprived of her/his nationality. Furthermore, the Nationality Law which came into force on 20 March 1998 regulates the implementation of the new

provisions on nationality. The Mexican Constitution, primarily in its article 30, establishes the basis for Mexican nationality to be granted, without discrimination on the basis of race, colour, gender or religious belief. These grounds are: (a) birth in Mexican territory; (b) having parents of Mexican nationality, either by birth or by naturalization; and (c) naturalization. The rights and limitations associated with holding Mexican nationality are stipulated in the Mexican legislation. The Government also reported that there are a number of posts and functions in the military, police forces and public security that, according to the Constitution, must be filled by persons having Mexican nationality at birth. The same condition applies to certain persons connected with the operator of sea or aircraft flying the Mexican flag.

3. The Government also described how Mexican nationality can be lost. While no one who is Mexican at birth can be deprived of Mexican nationality, one can lose citizenship under certain circumstances such as acting against the nation's interest. Naturalization can be revoked in the following cases: by voluntary acquisition of a foreign nationality; by using a foreign passport, or accepting or using titles of nobility that imply submission to a foreign State; and by residing for a five-year period in a foreign country.

4. The Government also noted that Mexico is a State party to the Convention relating to the Status of Stateless Persons, as well as other human rights instruments related to the prohibition of arbitrary privation of nationality, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Nationality of Married Women, and the Convention on the Elimination of All Forms of Discrimination against Women. Domestically, in 1980, the Government established the Mexican Commission for the Assistance to Refugees, whose members are, among others, representatives of the Ministry for Foreign Affairs and the Ministry of Labour and Social Welfare. This body can make recommendations concerning refugees and stateless persons and suggest solutions for voluntary repatriation, resettlement, or permanent integration into Mexican society. The innovative perspective that motivated the establishment of this body will help to create operational systems that will allow for full compliance with international instruments and national laws regarding refugees and the stateless persons. In addition to the international obligations and the need to establish a legal framework specifically addressing the conditions of refugees and stateless persons beyond the current migration regulatory framework, a bill on refugees and stateless persons has been sent to the legislature for its consideration.

## **Monaco**

The Government of Monaco reported that the following laws are in force with regard to the issue of nationality: Law No. 1155 of 18 December 1992 related to nationality; Law No. 1.276 of 22 December 2003, modifying Law No. 1155; Law No. 1.296 of 12 May 2005 related to the transfer of nationality through mothers. Article 18 of the Constitution of 17 December 1962, modified by Law No. 1249 of 2 April 2002, provides that nationality can be acquired or lost only pursuant to legal means.

## **Morocco**

The Government of Morocco stated that Law No. 132.60.1 of 6 September 1958 governing Moroccan nationality is in conformity with Commission on Human Rights resolution 2005/45, and does not violate human rights standards, including those on

discrimination. Under article 19 of the Moroccan nationality law, the loss of nationality could occur at the concerned person's request after s/he acquires another nationality. Under article 22 of the same law, those who had acquired the Moroccan nationality within the last 10 years could be deprived of it under the following specific circumstances: assaulting or insulting the King or a member of the royal family (subject to a judgement); committing a felony or a crime against international or national security; committing a crime carrying penalty of over five years' imprisonment; avoiding military obligations; and committing actions against Morocco for the benefit of another State. The deprivation of nationality has to take place within five years from the commission of the act. Deprivation of nationality is not based on any form of discrimination, e.g. on the basis of race, colour, gender, ethnicity, political affiliation, or religion. As part of Morocco's commitment to its international obligations, King Mohamed VI, on 30 July 2005, made a statement asking the Government to amend legislation to allow a Moroccan mother to pass on her nationality to her children. This is a step towards ensuring equality between men and women.

## **II. REPLIES RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS**

### **Office of the United Nations High Commissioner for Refugees**

1. UNHCR stated that its role in preventing arbitrary deprivation of nationality and seeking legal remedies to redress such cases originates from the organization's designation in General Assembly resolution 3274 (XXIV) of 1974, as the mediating agency under article 11 of the 1961 Convention on the Reduction of Statelessness. This role was reconfirmed by Assembly resolution 31/36 of 1976 and in 1996 resolution 50/152 again encouraged the High Commissioner to continue her activities on behalf of stateless persons, as part of her statutory function of providing international protection and of seeking preventive action, and reaffirmed the organization's responsibilities under the above-mentioned resolutions. As explicitly acknowledged in resolution 50/152 and the UNHCR Agenda for Protection, arbitrary deprivation of nationality often results in statelessness, which in turn may be a root cause of both refugee flows and situations of internal displacement. This recognition has led UNHCR to place increasing emphasis on the reduction and prevention of statelessness, as well as on protecting the rights of stateless persons in the countries where they habitually reside. Most recently, the 2005 General Conclusion on International Protection of the Executive Committee of the High Commissioner's Program called on States, "in cooperation with UNHCR and other relevant actors to address the needs of persons in protracted situations of statelessness and to assist stateless persons to access legal remedies to redress statelessness, in particular that which results from arbitrary deprivation of nationality" (A/AC/.96/1021, para. 20 (y)).

2. UNHCR welcomes the adoption of Commissions resolution 2005/45, to the formulation of which UNHCR contributed. The organization welcomes in particular the resolution's call upon States that have not already done so to consider accession to the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons, but notes that all the co-sponsors of the resolution have yet to accede to one or both of the conventions. UNHCR also remains concerned that, despite a gradual improvement of the international instruments available to prevent and reduce statelessness, arbitrary deprivation of nationality continues to be a major cause of statelessness and has led to some of the most protracted situations of statelessness in the world. Paragraph 3 of the resolution calls upon States

to refrain from enacting or maintaining discriminatory legislation and measures, in particular if these render a person stateless. Deprivation of nationality may indeed result from and be legitimized by the national authorities through the application of discriminatory legislation or measures, but may also at times be enacted without basis in or in ignorance of national legislation.

3. UNHCR noted that the objective of reducing the instances of statelessness resulting from arbitrary deprivation of nationality is integrated in its general activities to prevent and reduce statelessness and to protect stateless persons. Regarding paragraph 4 of resolution 2005/45, contributions to the drafting of relevant international instruments and provision of technical and advisory services to States that are adopting or amending nationality legislation are among the Office's key activities related to the prevention of statelessness. In 2004 and 2005, the Office's involvement in drafting international instruments has been connected in particular with the draft Protocol on the Avoidance of Statelessness in relation to State Succession, which is being prepared within the auspices of the Council of Europe. UNHCR also commented on constitutional provisions or nationality legislation in States where large groups of the population are stateless as a result of being arbitrarily deprived of their nationality. In October 2005, UNHCR, as a result of its long-standing cooperation with the Inter-Parliamentary Union, published "Nationality and Statelessness: A Handbook for Parliamentarians", which is intended to increase the awareness around statelessness issues among parliamentarians, government officials and civil society, and provide practical advice on how statelessness can be prevented and reduced. UNHCR also provides training for these target groups and UNHCR staff on issues related to nationality and statelessness.

4. UNHCR stated that it has been encouraged in several General Assembly resolutions and UNHCR Executive Committee conclusions to promote accession to the two international instruments relating to statelessness: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Unfortunately, neither convention has been ratified by a sufficient number of States for it to have had a truly significant effect on reducing statelessness and protecting stateless persons: Senegal became the fifty-eighth State to accede to the 1954 Convention and the thirtieth signatory to the 1961 Convention in September 2005. Thus, UNHCR considers it important also to promote the implementation of specific provisions referring to nationality and statelessness in international instruments which have been ratified by a large number of States, including the International Covenant on Civil and Political Rights (art. 24), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5), the Convention on the Elimination of All Forms of Discrimination against Women (art. 9), the Convention on the Rights of the Child (art. 7), as well as relevant regional instruments. In view of this, and the Office's lead role in preventing and reducing statelessness, UNHCR is working to increase its cooperation with other United Nations agencies and treaty monitoring bodies, as well as other organizations engaged in statelessness and nationality issues, such as the Council of Europe and OSCE.

5. UNHCR further noted that while Europe and the countries of the former Soviet Union are the regions where the focus on solving protracted statelessness problems has, until recently, been the greatest, most of the individuals and groups that have been affected by arbitrary deprivation of nationality reside in Africa, Asia and the Middle East. Aiming at broadening the geographical scope of its statelessness activities, UNHCR has reached an agreement with the

Asian African Legal Consultative Organization to study the magnitude and scope of statelessness in Africa, Asia and the Middle East; determine linkages between statelessness and migration, displacement and trafficking; outline particular vulnerabilities for individuals, including women and children; and identify best practices among States. UNHCR also aims at enhancing cooperation on issues of statelessness and nationality with other regional organizations, such as the African Union, the Organization of the Islamic Conference, the Arab League, the Association of South-East Asian States and the Inter-American Court and Commission on Human Rights.

6. UNHCR noted that in its 2005 Progress Report on activities in the field of statelessness to the Standing Committee of the Executive Committee of the High Commissioner's Programme, it outlined the following future directions for its work to prevent and reduce statelessness and protect stateless persons: increase its capacity to undertake research in partnership, where appropriate, with relevant academic institutions to identify and profile stateless populations, so as to better identify and profile stateless populations, as a basis for strategies to assist them to acquire an effective citizenship; promote a consistent UN inter-agency response to protracted statelessness situations, in particular with the Office of the United Nations High Commissioner for Human Rights, UNICEF and UNIFEM, as well as assist concerned States to integrate or reintegrate marginalized communities by developing programmes favouring education, housing, and income-generating projects, in particular in partnership with UNDP and ILO; assist States to put in place specific procedures to identify stateless persons and grant them a secure status, as envisaged in the 1954 Convention, as well as to provide specific training to persons and entities administering these procedures; and assist stateless persons to access legal remedies to redress statelessness, in particular that which results from deprivation of nationality, by, inter alia, ensuring the availability of legal counselling, including through tangible support to NGOs providing this legal advice.

### **OSCE High Commissioner on National Minorities**

1. The High Commissioner's Office stated that it often confronts the issue of nationality/citizenship. In all situations where citizenship has been or remains an issue, the High Commissioner has stressed that equal access to and enjoyment of citizenship are required to reduce feelings of inferiority and to create the basis for equitable intercultural integration. In the work of the High Commissioner, citizenship correlates very closely with the idea of integrating diversity. His experience shows that the risks of alienation or isolation leading to tensions may well be exacerbated by the lack of citizenship. Especially important aspects of citizenship relate to electoral rights, the possibility of working in the public service or holding public positions, the possibility of enjoying certain social benefits and certain economic benefits (such as participation in the process of privatizing State-owned property).

2. The High Commissioner noted that some OSCE participating States consider that non-citizens are not entitled to minority rights. This issue is further complicated by the absence of an internationally agreed definition of national minorities. The High Commissioner emphasizes that internationally protected human rights are universal, and therefore must be guaranteed to everyone within the jurisdiction of the State, without discrimination, and that minority rights are an integral part of human rights. He recalls that international human rights law confers minority rights on the bases of specific differentiated needs and desires that relate to all human beings within the jurisdiction of the State, precisely refuting a citizen/alien distinction.



### **III. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS**

#### **Open Society Justice Initiative**

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

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

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

- (i) Join in the creation of an inter-agency task force on statelessness with representation from OHCHR, UNHCR, other relevant international organizations and the NGO sector, which will meet regularly to increase agency awareness and exchange information on statelessness to ensure a consistent and comprehensive approach to the identification of stateless groups and individuals and a resolution of their status. The inter-agency task force on statelessness should periodically include representatives of regional human rights mechanisms to ensure the effective coordination of monitoring and protection activities;
- (ii) Designate at least one human rights officer to monitor report and coordinate the Office's advocacy on nationality and statelessness;
- (iii) Include nationality and statelessness in all country-specific and thematic monitoring, reporting, training and protection activities and across treaty bodies and special procedures;

(b) To the Commission on Human Rights:

- (i) Create a working group on nationality whose mandate would include the following: the submission of annual reports to the Commission (or successor entity), as well as relevant treaty-based United Nations entities, on nationality and statelessness; the conducting of field missions to

investigate and report on statelessness and the arbitrary deprivation of nationality; the elaboration of principles defining the arbitrary deprivation of nationality; a complaints procedure for groups or individuals to request advisory opinions on statelessness and the arbitrary deprivation of nationality;

- (ii) Alternatively, nominate a special rapporteur on nationality whose mandate would include monitoring and reporting on statelessness and the right to be free from arbitrary deprivation of nationality;
  - (iii) Survey and report on the problems of nationality deprivation, discriminatory access to citizenship and statelessness;
  - (iv) Call on all States to ratify the 1954 and 1961 Conventions;
- (c) To the United Nations treaty bodies:
- (i) The Human Rights Committee and the Committee on the Elimination of Racial Discrimination, Committee on the Rights of the Child (CRC), and the Committee on the Elimination of Discrimination against Women (CEDAW) should monitor issues of discrimination, access to nationality and statelessness through country reports and, where appropriate, individual complaints;
  - (ii) CRC should issue a general comment on a child's right to a nationality under article 7 of the Convention on the Rights of the Child;
  - (iii) CEDAW should investigate discrimination against women in access to or deprivation of citizenship and issue a general comment on women's right to nationality and citizenship under article 9 of the Convention on the Elimination of All Forms of Discrimination against Women.

## **Refugees International**

1. Noted that its report, "Lives on Hold: The Human Cost of Statelessness", issued in February 2005, highlights protracted cases of statelessness in Bangladesh, Estonia and the United Arab Emirates, and presents a 70-country compendium. In late 2005, it visited the Syrian Arab Republic to investigate the situation of stateless Kurds. Refugees International is committed to raising awareness of increasing respect for the fundamental human right to a nationality and pressing for resolution of the status of more than 11 million persons whose everyday lives and individual well-being are profoundly affected by the effective lack of a nationality.

2. Refugees International commended the adoption of resolution 2005/45 and recommended that the Commission on Human Rights:

- (a) Appoint a special rapporteur on statelessness and arbitrary deprivation of nationality;

- (b) Establish an expert working group to reduce statelessness and restore nationality rights;
- (c) Develop a theme on protection of stateless persons and others effectively lacking a nationality;
- (d) Require member States to evaluate affected populations and remedies in their own territories;
- (e) Strategically and systematically utilize relevant United Nations human rights mechanisms and treaty bodies to identify and reduce problems of statelessness.

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