



# General Assembly

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## Human Rights Council

### Twenty-third session

Agenda item 2

### Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General

Agenda item 3

### Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

## Written statement\* submitted by the Open Society Institute, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 May 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Right to nationality for women and children**

The Open Society Justice Initiative welcomes the Office of the High Commissioner for Human Rights' (OHCHR) report on discrimination against women in relation to their right to nationality, and the impact of such discrimination on children (A/HRC/23/23), prepared pursuant to the Human Rights Council's resolution on the same subject (A/HRC/RES/20/4). We offer two specific recommendations to the Council along with five recommendations to States which can enhance the protection of nationality rights of women and children around the world, and prevent statelessness.

This resolution, adopted by consensus in July 2012, is the first-ever by the Council on the right to nationality recognizing statelessness as a serious human rights issue and one that particularly affects women and children. Nationality is a gateway to realizing many other human rights, including access to education, health and social services, freedom of movement, political participation, the right to marry, the right to own property, and access to justice. For this reason, nationality has been recognized as a fundamental right, "critical to full participation in society." The Inter-American Commission has stated that nationality is secondary in importance only to the "right to life itself," as nationality embodies the totality of social, political and legal bonds connecting individuals to a specific State. Without recognition as citizens by any government, stateless persons often lack the protection of the law and are unable to exercise and enjoy many other fundamental human rights.

The Open Society Justice Initiative has a particular interest and expertise in the area of the right to nationality and statelessness. Since 2002, the Justice Initiative has worked in several countries, including the Dominican Republic, Kenya, Mauritania, Lebanon, and Cote d'Ivoire and in international fora to secure the right to nationality and combat statelessness. For example, we have advocated for the right of Nubian children in Kenya to have their nationality recognized. We have also intervened on behalf of two children of Haitian descent in the Dominican Republic in a case before the Inter-American Court of Human Rights challenging the arbitrary denial of their right to nationality on the basis of their ethnic background. We have also supported research documenting discriminatory nationality laws and practices in the Middle East and North Africa.

According to the United Nations High Commissioner for Refugees (UNHCR), as many as 12 million people around the world are stateless, denied their right to nationality. Discrimination in access to nationality is one of the main causes of statelessness and disproportionately affects women and children.

The OHCHR report provides a useful overview of discriminatory laws that deny women equal rights to a nationality, including the ability to acquire and retain nationality and, importantly, to confer it to their children. Laws that do not allow women to pass their nationality to their children make many children stateless, even where the mother is a national. According to the OHCHR report, almost 30 countries, mostly in the Middle East and in North and Sub-Saharan Africa, maintain nationality laws that discriminate against women. .

Laws and practices that restrict access to nationality on the grounds of race, ethnicity, disability, economic background, age, marital status or religion also lead to statelessness. The report highlights the impact that cumulative or multiple forms of discrimination can have upon women's access to nationality.

Certainly, the causes of statelessness go beyond discrimination. Lack of birth registration is a significant risk factor. Foundlings or abandoned children are often unable to prove where

they were born or who their parents are and as a result may become stateless. Children may also become stateless because of gaps or conflicts in laws.

Where it occurs, statelessness is often self-perpetuating. Stateless individuals face obstacles in registering the births of their children. Furthermore, children may inherit the stateless status of their parents unless applicable laws and regulations provide for a solution such as conferral of nationality to children born on a State's territory who would otherwise be stateless.

**Without documentation of identity, individuals, especially children, are extremely vulnerable to exploitation and abuse, such as trafficking.**

The cycle of statelessness can be broken by application of basic principles contained in international human rights treaties. For example, Article 7 of the Convention on the Rights of the Child, a treaty that has secured near-universal ratification, states that children have a right to acquire a nationality. However, some States argue that this obligation is vague and hence not readily implementable or have questioned what obligation, if any, Article 7 imposes. The Committee on the Rights of the Child (CRC), which oversees implementation of the Convention, has stressed that States have an obligation to take every appropriate measure to ensure that no child is left stateless.

The OHCHR's report offers several important recommendations for addressing gender discriminatory nationality laws, and we offer the following comments and additional recommendations.

**With respect to individual States:**

- We fully support the call for States to reform discriminatory nationality laws and to ensure that their legal and policy framework and its implementation guarantee equal rights to women and men in the acquisition, conferral, change and retention of nationality.
- As provided for by the CRC Article 7 and recommended by the OHCHR report, States must ensure that all children are registered immediately after birth without discrimination of any kind. Furthermore, equal access to documents to prove nationality, in particular passports, identity documents and birth and marriage certificates, is vital to the protection of a person's legal identity. This fact is reflected in CRC Article 8, which protects the right of every child to preserve his or her identity.
- We welcome the efforts made by some States, as highlighted in the report, to reform their nationality laws to bring them into line with their international legal obligations. However, many States still have not signed the two key treaties designed to reduce statelessness or actively embraced their legal obligations: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. We encourage States to ratify these Conventions and incorporate their provisions into national laws.
- States need to do more than simply removing overtly discriminatory laws and policies in order to provide necessary protections against statelessness. Article 7 of the CRC should be understood to oblige State Parties to grant nationality to children born on their territories who would otherwise be stateless – indeed this is the standard of the 1961 Convention on the Reduction of Statelessness, Articles 1 and 4. This is the duty imposed on States parties to the European Convention on Nationality, the African Charter on the Rights and Welfare of the Child, and the American Convention on Human Rights.

- States should provide an expedient and transparent process for acquiring nationality to all children habitually resident on their territories.

**With respect to the Human Rights Council:**

- The Council should encourage states to ensure that every child has a right to a nationality, in particular where the child would otherwise be stateless – and to ensure these children can realize such a right in practice.
  - Finally, the Council should also continue to ensure that the particular vulnerabilities of stateless persons to a range of human rights violations are reflected in relevant resolutions, and that concerns about discriminatory nationality laws, policies and practices and statelessness are addressed, including in the context of the Universal Periodic Review.
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