UNITED NATIONS HUMAN RIGHTS COUNCIL

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Background guide

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Agenda:

The right to a nationality: equality in nationality rights in law and in practice [item 3] TGES MUN 2024





LETTER FROM THE BUREAU

The Presidency of the United Nations Human Rights Council at TGES Model United Nations welcomes you to the Background Guide for this simulation! This Background Guide will serve as a major resource for participants in gaining an understanding of the agenda item alongside the general expectations of the dais with regards to discussion and debate.

Model United Nations is generally recognized as a competitive environment, but the Bureau would like to state that it finds Model UN to be the perfect environment for learning. Model UN is an experience that cannot be recreated outside of the same setting. A classroom learning experience truly falters when contrasted to that of a Model UN committee hall.

Keeping this in mind, the Bureau highly encourages all participants to make the most out of their experience at the conference. Do not restrict yourselves from learning, and be open to learning new things from an environment that you may commonly associate with a lively and fun time. We highly encourage you to give this simulation your best shot, and we promise that you will not walk away without learning a thing or two.

Regards,

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Overview of the Committee

What is the UNHRC?

The Human Rights Council is the main intergovernmental body within the United Nations responsible for human rights. Established in 2006 by the General Assembly, it is responsible for strengthening the promotion and protection of human rights around the globe.

The Council, composed of 47 Member States, provides a multilateral forum to address human rights violations and country situations. It responds to human rights emergencies and makes recommendations on how to better implement human rights on the ground.

The Council benefits from substantive, technical, and secretariat support from the Office of the High Commissioner for Human Rights (OHCHR).

The Human Rights Council replaced the former United Nations Commission on Human Rights.

The Human Rights Council in numbers from 2006 to 2022:

- 51 regular sessions held
- 35 special sessions held
- 8 urgent debates held
- 1,372 resolutions adopted
- 59 Special Procedures mandates established
- 37 commissions of inquiry and fact-finding missions set up
- 123 of the 193 UN Member States have served on the Council

What exactly does the UNHRC do?

Serves as an international forum for dialogue on human rights issues with UN officials and mandated experts, states, civil society, and other participants;





- Adopts resolutions or decisions during regular sessions that express the will of the international community on given human rights issues or situations. Adopting a resolution sends a strong political signal which can prompt governments to take action to remedy those situations;
- Holds crisis meetings known as special sessions to respond to urgent human rights situations, 36 of which have been held to date;
- Reviews the human rights records of all United Nations Member States via the Universal Periodic Review;
- Appoints the Special Procedures, independent human rights experts who serve as the eyes and ears of the Council by monitoring situations in specific countries or by looking at specific themes; and
- Authorizes commissions of inquiry and fact-finding missions, which produce hard-hitting evidence on war crimes and crimes against humanity.

What does the Council comprise of?

The Human Rights Council consists of different mechanisms and entities, as set out in the Council's 'Institution-building package' (Resolution 5/1) of 2007. These include:

- The Universal Periodic Review (UPR), a State-led mechanism that regularly assesses the human rights situations of all United Nations Member States.
- The Special Procedures are individuals or groups, not employed by the UN, who speak out on themes such as education, health, free speech, and human trafficking, as well as on country situations including Ukraine, DPRK, Eritrea, and Iran, among others.
- The Advisory Committee serves as the Council's "think tank," providing it with expertise and advice on thematic human rights issues.
- The Complaint Procedure allows people and organizations to bring human rights violations to the attention of the Human Rights Council.

Source: https://www.ohchr.org/en/hr-bodies/hrc/about-council





Definition and Scope

The right to a nationality is a fundamental human right. It implies the right of each individual to acquire, change and retain a nationality. International law provides that the right of States to decide who their nationals are is not absolute and, in particular, States must comply with their human rights obligations concerning the granting and loss of nationality.

If a person does not have a nationality, it may be impossible for them to go to school, see a doctor, get a job, open a bank account, or even get married. Millions of people around the world are in this situation; they are 'stateless'.

A stateless person is 'a person who is not considered as a national by any State under the operation of its law.' The exact number of stateless people is not known, but the United Nations High Commissioner for Refugees (UNHCR) estimates that there are at least 12 million globally.

In addition to violations of their right to a nationality, stateless persons are often subject to many other human rights violations. They may have difficulty accessing basic rights such as education, healthcare, employment and freedom of movement. States shall introduce safeguards to prevent statelessness by granting their nationality to persons who would otherwise be stateless and are either born in their territory or are born abroad to one of their nationals. States shall also prevent statelessness upon loss or deprivation of nationality.

There are three primary methods by which nationality can be obtained: through birth on the territory of a state (jus soli), through descent from a citizen of a state (jus sanguinis), or through naturalization. Each state's citizenship laws determine whether they follow jus soli or jus sanguinis principles and outline the criteria for naturalization.

Source: https://www.ohchr.org/en/nationality-andstatelessness#:~:text=It%20implies%20the%20right%20of,granting%20and%20lo ss%20of%20nationality.





Key International Instruments

The right to a nationality is recognized in a series of international legal instruments, including:

- Article 15 of the 1948 Universal Declaration of Human Rights, "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."
- the International Convention on the Elimination of All Forms of Racial Discrimination,
- the International Covenant on Civil and Political Rights,
- the Convention on the Rights of the Child,
- the Convention on the Elimination of All Forms of Discrimination against Women,
- the Convention on the Nationality of Married Women,
- the Convention on the Rights of Persons with Disabilities
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The issues of nationality and statelessness are also regulated in:

- Convention on the Reduction of Statelessness
- Convention relating to the Status of Stateless Persons
- Convention relating to the Status of Refugees
- Protocol relating to the Status of Refugees
- Declaration on the Human Rights of Individuals who are not nationals of the country in which they live

Source: https://www.ohchr.org/en/nationality-and-statelessness/internationalstandards-relating-nationality-and-statelessness





Inequality in Law

Several countries have nationality laws that deny women equal rights with men, in violation of international human rights law. A few countries even deny women the right to confer nationality on their children and on an equal basis with men. Others deny women equal rights to confer nationality on spouses, or to acquire, change, or retain their own nationality. A significant portion of countries with gender-discriminatory nationality laws are conflict-affected, fragile states, have a sizable internally displaced population or have an increased risk of natural disasters.

In times of stability, gender discrimination in nationality laws causes wideranging human rights violations. In displacement contexts, genderdiscriminatory nationality laws impact even greater portions of a population, while further exacerbating protection concerns and the vulnerability of internally displaced persons (IDPs). For example, IDPs often face family separation and the loss of civil documents, such as birth and marriage certificates and identity documents, making it sometimes impossible to prove a child's legal link to their father, while the discriminatory nationality law prevents the mother from conferring nationality on her child.

Those affected by gender-discriminatory nationality laws may, as a result, lack nationality in their country of residence and some are rendered stateless. Affected persons may be denied freedom of movement, thereby exacerbating threats to physical security when undocumented persons cannot pass security checkpoints. Those without nationality also often face obstacles in securing equal access to healthcare, education, and other social services, as well as formal employment. As a result of this marginalization, affected persons are also at an increased risk of human trafficking and child marriage risks that are heightened in displacement contexts.

Outside of gender-discriminatory practices, governments commonly give preferential treatment to nationals of certain states in accessing citizenship, for reasons of common history, shared language, or other attachments. This is appropriate. However, some governments have gone further to target particular ethnic groups for exclusion, including by creating insurmountable bureaucratic hurdles and requirements that effectively deny certain groups citizenship based on ethnicity and race.





Examples of invidious discrimination in access to citizenship include the following:

- In Kuwait, the government has excluded from nationality the people it has classified as Bidun, namely descendants from nomadic tribes and migrants who have lived in Kuwait for decades.
- In Burma, members of the Rohingya Muslim minority, who have been living in the northern state of Ankara since the 12th century, are excluded from citizenship by the 1982 citizenship law, which provides for several categories of citizenship, none of which the Rohingya are deemed to satisfy.
- Palestinians in a number of Arab states, including Lebanon and Syria, have been barred from acquiring citizenship by legal requirements.
- In Kenya, the Nubian community, composed of more than 100,000 descendants of persons originally from the territory of Sudan who were resettled by the British colonial government, live as de facto stateless persons without adequate legal protection as they are systematically denied their right to Kenyan citizenship and to own land.

Sources:

https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/published_gcenr_submission.pdf

https://www.justiceinitiative.org/uploads/427de178-aaaa-4237-b566c6432cab47d3/identity_20060501.pdf





Inequality in Practice

Despite the development of legal norms limiting state discretion in the realm of nationality law, contemporary state practice suggests that states regularly act without regard to any constraints on their sovereignty. Around the world, states manipulate nationality as a tool to exclude and marginalize unpopular racial and ethnic minorities, giving rise to an acute crisis of statelessness at the dawn of the twenty-first century.

The manifestations of this most recent wave of statelessness have varied, yet encompass three distinct phenomena: the denial of access to citizenship, the arbitrary deprivation of citizenship, or denationalization, and situations of state succession that have effectively excluded ethnic groups rendering them stateless. In each category, statelessness may be the result of administrative practice, or of arbitrary action by state officials. However, one common denominator has been that ethnic and racial minorities are often the principal victims.

- In Bhutan, overly burdensome requirements of successive citizenship acts in 1977 and 1985 resulted in the arbitrary deprivation of nationality of over 100,000 southern Bhutanese of Nepali origin and their forcible expulsion from Bhutan to Nepal in the early 1990s.
- Tens of thousands of black Mauritanians were stripped of citizenship documents and forcibly expelled from their country in 1989 and have lived in a situation of de facto statelessness in Senegal ever since. In 2000, the African Commission on Human and Peoples' Rights ruled that the expulsions and associated violence breached numerous articles of the African Charter on Human and Peoples' Rights and ordered that the refugees be readmitted to Mauritania and that their citizenship documents be returned to them. To date no action has been taken by the Mauritanian government.
- Dominican authorities routinely claim that Dominicans of Haitian descent are "in transit"—even when they have lived in the country for decades—in order to bar them from claiming lawful citizenship. Some medical personnel have refused to provide undocumented parents of newborns with birth certificates—a prerequisite for obtaining proof of Dominican citizenship. The Inter-American Court of Human Rights recently condemned this practice and policy in the Dominican Republic as unlawful.





Source: https://www.justiceinitiative.org/uploads/427de178-aaaa-4237-b566c6432cab47d3/identity_20060501.pdf

Further Reading and Resources

https://www.refworld.org/en/download/147696

https://www.researchgate.net/publication/369441107_Citizenship_and_Natio nality_Terms_Concepts_and_Rights

https://assets.cambridge.org/97811070/32446/frontmatter/9781107032446_fro ntmatter.pdf

https://www.defactolaw.in/post/nationality-under-international-law-optional

https://www.rjhssonline.com/AbstractView.aspx?PID=2013-4-4-20

https://law.yale.edu/sites/default/files/area/center/schell/bosnia_const_ct_ami cus_080229.pdf



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