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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the independent expert on minority issues, Gay McDougall\***

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\* The present report is submitted after the deadline to reflect the most recent information.

## Summary

The mandate of the independent expert on minority issues was established by the Commission on Human Rights in its resolution 2005/79. The independent expert is required, *inter alia*, to promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and to identify best practices by States and possibilities for technical cooperation by the Office of the United Nations High Commissioner for Human Rights. The independent expert submitted her previous report to the Human Rights Council in February 2007, in which she provided a summary of her activities and addressed in detail the thematic issue of minorities, poverty and the Millennium Development Goals.

The present report provides a summary of the activities undertaken by the independent expert. Since the submission of her previous annual report, the independent expert has undertaken official country missions to France, from 19 to 28 September 2007, and to the Dominican Republic, from 22 to 29 October 2007. Her visit to the Dominican Republic was conducted jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

Over the past year, the independent expert has conducted thematic work on issues relating to the discriminatory denial or deprivation of citizenship as a tool for exclusion of national, ethnic, religious and linguistic minorities, which is the thematic focus of the present report. That work included convening an expert seminar on the subject in Geneva in December 2007. Minorities often face discrimination and exclusion, and they struggle to gain access to their human rights, even under conditions of full and unquestioned citizenship. Denying or stripping them of citizenship can be an effective method of compounding their vulnerability, and can even lead to mass expulsion. Once denied or deprived of citizenship, minorities are inevitably denied protection of their basic rights and freedoms, including minority rights as established in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

According to the United Nations High Commissioner for Refugees, close to 15 million people in more than 49 countries are stateless, and numbers appear to be increasing. Many minorities live in a precarious legal situation because, even though they may be entitled under law to citizenship in the State in which they live, they are often denied or deprived of that right and may in fact exist in a situation of statelessness. While many conditions give rise to the creation of statelessness, including protracted refugee situations and State succession, most stateless persons today are members of minority groups.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1 - 12	4
A. Country visits .....	2 - 3	4
B. Activities .....	4 - 12	4
II. MINORITIES AND THE DISCRIMINATORY DENIAL OR DEPRIVATION OF CITIZENSHIP .....	13 - 19	6
III. HISTORICAL AND POLITICAL CONTEXT .....	20 - 27	7
IV. INTERNATIONAL LAW CONSIDERATIONS .....	28 - 43	9
A. Right to a nationality .....	30 - 34	9
B. Centrality of non-discrimination .....	35 - 37	11
C. Citizenship and the enjoyment of human rights and fundamental freedoms .....	38 - 40	13
D. Citizenship and the enjoyment of minority rights .....	41 - 43	14
V. IMPACT OF DISCRIMINATORY DENIAL OR DEPRIVATION OF CITIZENSHIP ON MINORITIES .....	44 - 48	15
VI. REGIONAL PRACTICES .....	49 - 70	16
A. Africa .....	50 - 55	16
B. Asia .....	56 - 64	18
C. Europe .....	65 - 68	20
D. Latin America and the Caribbean .....	69 - 70	21
VII. ACTIVITIES OF INTERNATIONAL, REGIONAL AND NATIONAL ORGANIZATIONS .....	71 - 76	21
VIII. CONCLUSIONS AND RECOMMENDATIONS .....	77 - 90	23

## **I. INTRODUCTION**

1. The independent expert is pleased to submit to the Human Rights Council her third annual report pursuant to Council resolution 2005/79. The present report provides an overview of her activities since her previous report, submitted in February 2007 (A/HRC/4/9) as well as a thematic analysis of issues as they relate to minorities and the denial or deprivation of citizenship.

### **A. Country visits**

2. Since the presentation of her previous report, the independent expert has undertaken official country missions to France, from 19 to 28 September 2007 (A/HRC/7/23/Add.2) and to the Dominican Republic, from 22 to 29 October 2007 (A/HRC/7/23/Add.3), the latter conducted jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

3. In pursuance of the independent expert's mandate to promote the implementation of the Declaration on the Rights of Minorities and to identify best practices in every region, she welcomes the positive responses of the Government of Guyana and the Government of Greece to her request for a country visit in 2008. She looks forward to continuing a dialogue with Bangladesh, Colombia, Kazakhstan, Malaysia, Nepal, Nicaragua, Panama, Surinam, Sri Lanka, Thailand and Turkey, to whom she has made requests to visit.

### **B. Activities**

4. Supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR), on 29 and 30 January 2007, the independent expert held an expert consultation aimed at assisting regional and national institutions with respect to standard setting and effective mechanisms to combat discrimination and protect the rights of minorities. The proceedings of the consultation, which was held in close consultation with the Organization of American States, considered regional perspectives on minorities, discrimination and intolerance. The outcomes contributed substantively to a revised draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. The expert consultation benefitted from the participation of civil society representatives and other international experts and practitioners from every region.

5. With a view to enhancing her collaboration with United Nations treaty bodies, and particularly the Committee on the Elimination of Racial Discrimination, in March 2007, the independent expert held a second official dialogue with the Committee, during which she discussed possibilities for collaboration with a view to contributing to the Committee's capacity to consider minority issues in its work, including with respect to its early warning, urgent action and follow-up mechanisms. The independent expert has also engaged with the Committee on country-specific issues and welcomes opportunities to enhance coordination of their respective mandates in this regard.

6. The independent expert has continued her efforts to further the mainstreaming of minority issues within the work of the United Nations. She has consulted widely with United Nations agencies and bodies, including OHCHR and the United Nations Development Programme

(UNDP). Under the auspices of the OHCHR Indigenous Peoples and Minorities Unit and the independent expert, the inter-agency group on minorities was consolidated in 2007. This important initiative provides a regular opportunity for the sharing of information and for the independent expert to meet with agency representatives. A practical outcome of this inter-agency group has been consultation towards the production of a pamphlet entitled “Questions and answers on minority issues” to assist agency field representatives in their handling of minority issues.

7. Pursuing her work in the area of poverty alleviation and realization of the Millennium Development Goals for minorities, in 2007 the independent expert continued consultations with development agencies, including UNDP. Following a commitment made by UNDP in early 2007 to work towards a policy/guidance note on minority issues, she has collaborated with UNDP as part of a task force established for the development of a resource guide on minority issues. An online questionnaire was also completed by UNDP country offices to assist in this process. The next step will be to test and validate the resource guide through regional consultations, one of which has been proposed in Bratislava in 2008.

8. The independent expert considers the prevention of violence and hate crimes against minority groups a core obligation of States under the Declaration on the Rights of Minorities and other universal standards. This leads to a need to be constantly mindful of early warnings of mass atrocities and genocide. In pursuance of that aim, she has sought to strengthen communication and collaboration with relevant United Nations bodies and mandates, intergovernmental institutions and non-governmental organizations that focus on the prevention of genocide and the developing responsibility to protect. In 2007, she held substantive dialogues with the Special Adviser to the Secretary-General on the Prevention of Genocide and Mass Atrocities, Francis Deng, and his predecessor to consider complementarities and potential synergies between their respective mandates.

9. In this respect, from 11 to 13 October 2007, the independent expert participated in a high-level global conference on the prevention of genocide convened by the McGill University Centre for Human Rights and Legal Pluralism. The conference brought together genocide survivors, front-line activists and prominent political and civil society leaders from around the world, with the objective of helping to shape public debate and policy on genocide prevention. The independent expert emphasized the need for enhanced communication within and among United Nations bodies, with greater consideration of minority rights long before mass killing begins.

10. The independent expert welcomes resolution 6/15 adopted by the Human Rights Council at its sixth session, in which the Council established a forum on minority issues. The forum will provide a platform for promoting dialogue and cooperation on issues pertaining to persons belonging to minorities, which will provide thematic contributions and expertise to the work of the independent expert. In accordance with resolution 6/15, the forum will identify and analyse best practices, challenges, opportunities and initiatives for the further implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The forum will meet for two days annually in Geneva and its work will be guided and prepared by the independent expert.

11. In her initial report, the independent expert identified, as a key thematic priority for her work, enhancing the understanding of minority issues in the context of promoting inclusion and stability. In this context, on 6 and 7 December 2007, the independent expert convened an expert consultation on the issue of the discriminatory denial or deprivation of citizenship as a tool for the exclusion of minorities. The consultation served as a means to benefit from the knowledge and experience of affected communities, regional experts, United Nations bodies and agencies, representatives of regional intergovernmental institutions and civil society. In addition, on 15 October 2007, the independent expert sent a questionnaire to all Member States of the United Nations requesting information on issues related to minorities and citizenship. The responses to the questionnaire will be made available on the web page of the independent expert.

12. The section below contains an analysis of the problem of denial or deprivation of citizenship as it affects persons belonging to minorities. It is based primarily on the outcome of the expert consultation convened by the independent expert in December 2007.

## **II. MINORITIES AND THE DISCRIMINATORY DENIAL OR DEPRIVATION OF CITIZENSHIP**

13. Minorities often face discrimination and exclusion, and they struggle to have their human rights respected even under conditions of full and unquestioned citizenship. Stripping them of citizenship can be an effective method of compounding their vulnerability, and even lead to mass expulsion. Experience in all regions demonstrates this reality. Once denied or deprived of citizenship, minorities are inevitably denied protection of their basic rights and freedoms, including minority rights, as established in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

14. In the present report, citizenship is not considered by the independent expert a condition for the enjoyment of all human rights, including minority rights. Rather, international human rights law makes clear that only a limited number of rights may be made dependent on citizenship: rights to enter and reside permanently within the territory of a State; the right to be protected by the State when one is outside its territory; and a set of political rights (for example, the right to vote and hold office).<sup>1</sup> However, citizenship continues to be defined by many States as the primary legal bond between an individual and the State, which confers rights.

15. Discrimination is both a cause and a consequence of State actions that seek to marginalize minorities. The reasons for which States discriminatorily deny or deprive persons of their right to citizenship are often rooted in racist ideologies. Evidence demonstrates that discriminatory denial or deprivation of citizenship<sup>2</sup> disproportionately affects persons belonging to minorities.

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<sup>1</sup> In certain situations, economic and social rights are considered by States to be dependent on citizenship.

<sup>2</sup> The denial and the deprivation of citizenship are quite similar concepts, and the practical consequences for individuals are much the same. However, the distinction may be characterized

16. The independent expert's evaluation of minority issues in the context of denial or deprivation of citizenship is based on the Declaration on Minorities of 1992 and other relevant international standards, from which she has identified four broad areas of concern relating to minorities globally: (a) the protection of a minority's survival and existence within a territory or State, including through combating violence against them, forced expulsion and genocide; (b) the protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and (d) the guarantee of their right to effective participation in public life, especially with regard to decisions that affect them.

17. The denial or deprivation of citizenship as a policy or a tool of discrimination against minorities speaks to all of these key elements of minority rights, and is therefore also central to the work of the independent expert.

18. In the section below, the independent expert considers the historical and political context, the development of the problem and concerns posed for minorities and for States. Section IV examines the application of international human rights law in the context of discriminatory denial or deprivation of citizenship. In section V, she considers the consequences of denial or deprivation of citizenship with respect to the human rights of minorities. Section VI provides examples of affected minorities around the world and identifies specific actions which have been directed against them. Recent positive initiatives are also highlighted. In section VII, the independent expert considers relevant activities of international, regional and national actors in regard to the issue. The report concludes with a series of recommendations. For the purposes of the present report, "nationality" and "citizenship" are used as synonymous terms under public international law.

19. The country- and community-specific examples provided in the present report were chosen to illustrate the issues affecting many more minority communities in all regions. They are not presented as being the most problematic situations or as an exhaustive survey.

### III. HISTORICAL AND POLITICAL CONTEXT

20. According to the United Nations High Commissioner for Refugees (UNHCR), close to 15 million people in more than 49 countries are stateless and numbers appear to be increasing.<sup>3</sup> A great many stateless persons today are members of minority groups. Evidence from all regions demonstrates that many additional minority populations live in highly

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thus: those who are prevented from becoming citizens, either at birth or later, are denied citizenship; those who lose or are stripped of their citizenship previously held have been deprived of citizenship.

<sup>3</sup> UNHCR, "The Excluded", *Refugees*, No. 147, issue 3, 2007, p. 2.

precarious legal situations. Even though they may be entitled under law to citizenship in the State in which they live, they are often denied or deprived of this right and may in fact exist in a situation of statelessness.

21. The historical situations that have led to the denial or deprivation of citizenship to minority groups are manifold and differ from State to State. Many minority populations are indigenous and have lived in their States at least as long as the majority populations. Other minorities were established within the State by internal processes of cultural or religious diversification. Consequently, such minorities have as great a claim to belonging and to citizenship as the majority populations.

22. The centralization of political authority and the creation of defined categories of belonging have been associated with the practice of denying and depriving minorities of the right to citizenship. The way in which States have historically been constructed also helps to explain how minorities may become “locked out” of the right to citizenship, including through the re-organization of States. In all settings, minorities are subject to being seen in the context of wider geopolitical considerations and have sometimes been viewed as extensions of other powers, for example, where there is a clearly identifiable kin State with a similar ethnic composition. In this context, questions may be raised regarding political allegiance and loyalties.

23. Policies which rigidly distinguish between settled native populations and newcomers over long periods of time may give rise to racist perceptions and discrimination. Resource issues or economic slumps may trigger or strengthen protectionist policies that attempt to exclude minorities, or impose prohibitive requirements that block whole ethnic groups from acquiring citizenship rights to which they may otherwise be entitled.

24. The influence of exclusionary nationalist ideologies has a long history and was demonstrated shortly after the First World War, when foreign-born citizens who had been naturalized were stripped of their citizenship by countries including Belgium, France, Turkey and the Soviet Union. Infamously, the introduction of the Nuremburg laws in Germany and Austria deprived Jews born in those countries of their right to citizenship. More recent examples demonstrate that minorities denied or deprived of citizenship continue to face dramatic consequences, such as mass expulsions from the State.

25. State succession, which is often, but not necessarily, a consequence of war, is another explanation for the prevalence of discriminatory treatment of people who may not be migrants, but may find themselves living under a different jurisdiction. The break-up of the Soviet Union, for example, fomented numerous nationality contests which left millions effectively stateless and living as minorities in new political contexts. In a similar way, the de-federation and division of Czechoslovakia left thousands of Roma in a precarious situation while their citizenship status was questioned by both successor States.

26. Wars, whether of an inter-State or internal nature, and the processes of national integration and State-building triggered by the end of conflicts, have often been central forces generating discriminatory practices towards minorities. Disputes regarding citizenship often arise against the background of pre-existing ethnic or regional conflict, linked in many cases to broader factors of poverty, competition for scarce resources and political instability.

27. Whatever the official grounds for conferral of citizenship, access may be manipulated, for example, by imposing greater burdens upon individuals belonging to minority groups to “prove” descent or long-term residency, sometimes reaching far beyond immediate parentage and the individual’s capacity to comply. Poor communities, whether majority or minority, often live without documentation and lack the resources to meet bureaucratic conditions; however, the obstacles faced by persons belonging to minority groups who lack documentation are far more formidable. Mechanisms for denial or deprivation of citizenship are frequently found at an administrative level, and revolve around the processes of registration, documentation and identification. The authority and discretion of local-level officials may be exercised in a discriminatory manner against persons identified as belonging to certain ethnic or religious minorities. Such acts may not be subject to appeal or review and are generally made with the apparent support of the Government concerned.

#### **IV. INTERNATIONAL LAW CONSIDERATIONS**

28. With limited exceptions, States owe a duty to protect and promote the complete panoply of human rights of all persons that are present within their territory, whether they are citizens or non-citizens, as established in paragraph 10 of general comment No. 31 of the Human Rights Committee. The rights of all persons belonging to minorities, as part and parcel of human rights, are equally protected.<sup>4</sup> It is now recognized that the obligation of States to respect the rights of minorities is not limited solely to its citizens.

29. The distinctions that are permissible between the rights of citizens and non-citizens cannot be discriminatory on the basis of gender, race, colour, descent or national or ethnic origin. International law prohibits the discriminatory denial or deprivation of citizenship as a means of exclusion of persons belonging to minorities. The section below provides a brief analysis of relevant international human rights standards in this regard.

##### **A. Right to a nationality**

30. The right to a nationality is a fundamental human right which is guaranteed without discrimination on the grounds of race, colour, ethnicity, language, religion, national origin or gender.<sup>5</sup> Beyond article 15 of the Universal Declaration of Human Rights, which proclaims this right in unequivocal terms, the right to a nationality is further reiterated in a number of international and regional human rights instruments.<sup>6</sup> Article 24 (3) of the International Covenant

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<sup>4</sup> See article 27 of the International Covenant on Civil and Political Rights; general comments Nos. 15 and 23 of the Human Rights Committee; articles 2 and 3 of the 1992 Declaration on Minorities.

<sup>5</sup> See article 2 (1) of the International Covenant on Civil and Political Rights, paras. 1 and 2.

<sup>6</sup> Articles 7 and 8 of the Convention on the Rights of the Child explicitly state that the child shall be registered immediately after birth and shall have the right from birth to acquire a nationality, in particular where the child would otherwise be stateless. Moreover, “States parties undertake to respect the right of the child to preserve his or her identity, including nationality”.

on Civil and Political Rights affirms the right of every child to acquire a nationality. The International Convention on the Elimination of Racial Discrimination further binds States to guarantee this right in a non-discriminatory manner.<sup>7</sup> At the regional level, this right is enunciated in the 1969 American Convention on Human Rights and the European Convention on Nationality.<sup>8</sup> The right to a nationality has been further recognized in international and regional jurisprudence, including in the concluding observations of United Nations treaty bodies, notably the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child. Important rulings in this regard have also been made by the Inter-American Court of Human Rights and the European Court of Human Rights.<sup>9</sup>

31. States must avoid rendering persons stateless and must protect the human rights of persons who are stateless. These obligations are codified and elaborated in the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons. These conventions have, however, received very few ratifications.<sup>10</sup>

32. The two fundamental bases for granting citizenship are the notions *jus solis* (provision of citizenship granted to those born within the territory) and *jus sanguinis* (provision granted by descent). Many States apply some combination of the two, alongside complex rules regarding other means of obtaining citizenship, such as through naturalization and registration. States have

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The Convention on the Reduction of Statelessness mirrors the Convention on the Rights of the Child in providing in its first article that States shall grant nationality to all persons born on their territory who would otherwise be stateless.

<sup>7</sup> See article 5 (d) (iii). See also article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, which ensures that this norm is applied equally to men and women. The right to a nationality is further recognized and regulated under the recently adopted Declaration on the Rights of Indigenous Peoples.

<sup>8</sup> Article 20 (1) and (3) of the American Convention on Human Rights. The European Convention on Nationality reiterates these same principles under its article 4. Moreover, the 2006 European Convention on the Avoidance of Statelessness in relation to State succession will, once in force, be an important standard of protection, including in providing for the right to a nationality to all who had nationality at the time of State succession if residence and historic connection exists.

<sup>9</sup> Although the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms does not explicitly provide for a right to a nationality, the right has been protected on various instances by the European Court, which found, for example, that an arbitrary deprivation of citizenship may rise to the level of inhuman or degrading treatment and violate article 3 of the European Convention, or even violate the right to respect for private and family life guaranteed under article 8 of the Convention (E/CN.4/Sub.2/2003/23), para. 10.

<sup>10</sup> Thirty-four and 62 ratifications respectively.

a prerogative to adopt laws governing the acquisition, renunciation or loss of nationality.<sup>11</sup> Article 1 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws reflects this customary norm of international law in providing that “it is for each State to determine under its own laws who are its nationals”. The Convention qualifies this, however, by stating that national law “shall be recognized by other States insofar as it is consistent with international conventions, international custom and the principles of law generally recognized with regard to nationality”.

33. Since the adoption of the Hague Convention in 1930, international law, however, has further qualified the prerogative of States to establish laws governing the acquisition, renunciation or loss of nationality by requiring that they ensure the full protection of human rights in exercising this discretion. Thus, the Inter-American Court of Human Rights, for example, ruled that:

“the manners in which States regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the State are also circumscribed by their obligations to ensure the full protection of human rights. ... The classic doctrinal position, which viewed nationality as an attribute granted by the State to its subjects, has gradually evolved to a conception of nationality as a human right”.<sup>12</sup>

34. Deprivation of citizenship is, in very limited instances, permissible under international law, even if it results in statelessness.<sup>13</sup> However, any such deprivation must take place with due regard to procedural and substantive safeguards, including the right to appeal before an independent tribunal.

## **B. Centrality of non-discrimination**

35. States are furthermore bound by the non-derogable international norm of non-discrimination, which is of particular relevance to minorities. Non-discrimination on the grounds of race is of a customary nature. Article 1 (3) of the International Convention on the Elimination of All Forms of Racial Discrimination, for example, provides that the Convention may not be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalization, while clarifying that such provisions do not

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<sup>11</sup> Moreover, the Human Rights Committee qualifies that the International Covenant on Civil and Political Rights does not recognize the right of aliens to enter or reside in a State’s territory and that it is in principle a matter for the State to decide who it will admit to its territory. Once allowed to enter, however, there is an entitlement to the rights set out in the Covenant.

<sup>12</sup> Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of 19 January 1984. Series A, No. 4, paras. 32 and 33.

<sup>13</sup> Under article 8 of the 1961 Statelessness Convention States are allowed to deprive persons of their nationality when, inter alia, such “nationality has been obtained by misrepresentation or fraud” or when the person has “conducted himself in a manner seriously prejudicial to the vital interests of the State”. See also article 7 of the European Convention on Nationality.

discriminate against any particular nationality. Furthermore, paragraph 14 of general recommendation No. 30 of the Committee on the Elimination of Racial Discrimination on discrimination against non-citizens reiterates this principle in restating that deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to a nationality.<sup>14</sup> In this general recommendation, the Committee further called upon States to ensure that particular groups of non-citizens were not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that might exist for long-term or permanent residents. The principles of non-discrimination and arbitrariness are equally applicable vis-à-vis States' prerogative to deprive an individual of his or her nationality (E/CN.4/Sub.2/1988/35, para. 107). Moreover, while articles 2 (1) of both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child list a number of prohibited grounds for discrimination, the Convention on the Rights of the Child extends that protection to discrimination against the child that might be based on the identity of the parents.

36. The Inter-American Court, in its 2005 decision in *Dilcia Yean and Violeta Bosico v. Dominican Republic*, affirmed the prohibition of arbitrary deprivation of nationality and the application of discriminatory measures in the conferral of citizenship and the enjoyment of rights and freedoms on the basis of citizenship.<sup>15</sup> In the European Union, the specific prohibition of discrimination on the basis of nationality is entrenched in the European Community Treaty as one of its main principles, and given concrete form in other provisions of the Treaty framework in respect of specific situations, including, for example, the free movement of workers (art. 39), the right of establishment (art. 43) and the freedom to provide services (art. 50). In the Council of Europe, both the European Convention on Nationality and the European Convention on the Avoidance of Statelessness in relation to State succession prohibit racial and ethnic discrimination in relation to access and deprivation of nationality.

37. Differential treatment in conferring nationality will only be lawful if in consonance with the legitimate objectives and purposes of the Government within the limits prescribed by the International Convention on the Elimination of All Forms of Racial Discrimination and other international human rights treaties, and if applied pursuant to a legitimate aim, which is necessary and proportionate to the achievement of that objective.<sup>16</sup> For example, the

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<sup>14</sup> Committee on the Elimination of Racial Discrimination general recommendation No. 30: Discrimination against non-citizens, 1 October 2004, para. 2. See moreover concluding observations of CERD - Turkmenistan, CERD/C/TKM/CO/5, 1 November 2005, para. 16; concluding observations of CERD - Russian Federation, CERD/C/62/CO/7, 2 June 2003, para. 15; concluding observations of CERD - Croatia, CERD/C/60/CO/4, 21 May 2002, para. 14; concluding observations of CRC - Liberia, CRC/C/15/Add.236, 1 July 2004, para. 33; concluding observations of CRC - DRC, CRC/C/15/Add.153, 9 July 2001, paras. 28 and 29.

<sup>15</sup> Inter-American Court of Human Rights, case of the *Girls Yean and Bosico v. Dominican Republic*, judgement of 8 September 2005.

<sup>16</sup> *Ibid.*, para. 4.

naturalization rules of Costa Rica were not found to be discriminatory in placing less vigorous requirements for naturalization on Central Americans, Ibero-Americans and Spaniards since they objectively share much closer historical, cultural and spiritual bonds with the people of Costa Rica. The existence of these bonds permits the assumption that these individuals will be more easily assimilated within the national community and identify more readily with the traditional beliefs, values and institutions which the State has the right and duty to preserve.<sup>17</sup>

### **C. Citizenship and the enjoyment of human rights and fundamental freedoms**

38. According to the Charter of the United Nations, the Universal Bill of Rights, core international human rights conventions including, for example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and regional human rights instruments, everyone is entitled to the enjoyment of all rights and freedoms, without distinction of any kind, including national origin, birth or other status.<sup>18</sup>

39. The Human Rights Committee, in its general comment No. 15 on the position of aliens under the Covenant, provides that the rights set forth in the International Covenant on Civil and Political Rights apply, in general, to everyone irrespective of reciprocity, and irrespective of nationality or statelessness; each one of the listed rights must be guaranteed without discrimination between citizens and non-citizens, since non-citizens are protected by the general requirement of non-discrimination. Exceptions to this general rule mainly concern rights relevant to political participation and freedom of movement. Article 25 of the Covenant makes specific reference to “every citizen” in relation to the rights to take part in the conduct of public affairs, to vote and be elected and to have access to public service.<sup>19</sup> Also, the Covenant does not recognize a right to aliens to enter or permanently reside in a country. States may make a determination in that regard. The Covenant only secures the right to freedom of movement for those lawfully within the States’ territory. However, the right to leave a country is secured for everyone.

40. With regard to economic and social rights, the International Covenant on Economic, Social and Cultural Rights provides in article 2 (3) that developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals. Reference to “due regard to human rights” must be interpreted to secure that this discretion is not applied discriminatorily and therefore may not disproportionately affect certain non-national minorities. Additionally, it must

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<sup>17</sup> See Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, para. 60.

<sup>18</sup> See article 2 of the Universal Declaration, articles 2 of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, article 1 of the European and the American Conventions and article 2 of the African Commission on Human and Peoples’ Rights.

<sup>19</sup> It is interesting to note that the Universal Declaration does not refer to “citizens” in article 21 on political participation.

be noted that there are developed countries that are not States parties to the Covenant and some that have attached reservations or declarations to their ratifications that are designed to permit distinctions between how they approach the economic rights of citizens and non-citizens.

#### **D. Citizenship and the enjoyment of minority rights**

41. In interpreting article 27 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated in its general comment No. 15, that where aliens constitute a minority within the meaning of article 27, they should not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Moreover, in its general comment No. 23 on rights of minorities, the Committee took that principle a step further by asserting that, insofar as minority rights were applicable to minorities that existed within a State's territory, the individuals designed to be protected need not be citizens of the State party; neither was it relevant to determine the degree of permanence that the term exist connotes. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities were entitled not to be denied the exercise of those rights. This position is further buttressed by the principle that the existence of a national, ethnic, religious or linguistic minority in a given State does not depend upon a decision by that State but rather is to be established by objective criteria.<sup>20</sup> Indeed, various suggestions to include citizenship as a necessary element in definitions of minorities have been rejected.<sup>21</sup>

42. Similarly, the European Court accepted as admissible alleged violations of the European Convention irrespective of the fact that the persons belonging to the affected minorities were not citizens of States parties concerned.<sup>22</sup>

43. Discussions have gone beyond examining citizenship as the sole determining criterion to define access to certain minority rights; other elements, such as the length of residency in a State, have gained relevance in this analysis. In its commentary on the 1992 Declaration on Minorities, the Working Group on Minorities, while restating the general principle that citizenship as such should not be a distinguishing criterion to exclude some persons or groups from enjoying minority rights, argued that other factors could be relevant. Those minorities which, for example,

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<sup>20</sup> General comment No. 23: The rights of minorities (art. 27), 8 April 1994, para. 5.2.

<sup>21</sup> For example, in 1979, the Sub-Commission on Prevention of Discrimination and Protection of Minorities refused to endorse Special Rapporteur Francesco Capotorti's suggested definition of a minority, as it included citizenship as one of its elements. Moreover, there is a risk, and State practice in Europe demonstrates, that such inclusion of citizenship as a criterion within States' definitions of minorities, could lead to legitimizing the denial of minority rights to non-citizen minorities. See report on Non-citizens and Minority Rights, paras. 10, 20-31 respectively.

<sup>22</sup> European Commission for Democracy Through Law, Report on Non-citizens and Minority Rights, CDL-AD(2007)001, Venice, 15-16 December 2006, para. 18.

live compactly together in a part of a State's territory might be entitled to rights regarding the use of language, and street and place names which are different from those who are dispersed, and might in some circumstances be entitled to various forms of internal autonomy.<sup>23</sup>

## **V. IMPACT OF DISCRIMINATORY DENIAL OR DEPRIVATION OF CITIZENSHIP ON MINORITIES**

44. Despite the above legal framework, States continue to engage in practices that discriminatorily deny or deprive persons of citizenship. The consequences of denying or depriving citizenship to minority groups are considerable, with a negative impact on the affected persons' living conditions and the degree of their integration in society.<sup>24</sup> State practice demonstrates that citizenship still matters when it comes to the practical aspects of accessing many fundamental rights, including minority rights.

45. Some States explicitly reserve the enjoyment of minority rights for citizens, or minorities legally recognized by the State. Those denied or deprived of citizenship face additional challenges to the realization of the right to the protection and promotion of their collective cultural identity, including in regard to the recognition and use of minority languages or the freedom to practice minority religions. Deprivation of citizenship generally results in the inability to participate politically, by silencing minority voices and skewing political representation.

46. By linking citizenship to ownership rights, employment or access to services, the State allows access to wealth and resources to those groups it favours, to the detriment of those it wishes to marginalize. Often impoverished and uneducated, they are disempowered, are no longer guaranteed the protection of the State and are rendered vulnerable to further discrimination. They are often subjected to violent attack, arbitrary expulsion or deportation. A minority's physical existence in a State can be threatened by mass expulsion on the grounds of their lack of citizenship status.

47. The marginalization and disenfranchisement of large groups of minorities may undermine conditions of human security and sow the seeds for underdevelopment and unrest. If minorities are located in border regions, and indeed if there are defined transnational communities, then the deliberate exclusion of particular populations may have significant consequences for both internal and regional security.

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<sup>23</sup> Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (E/CN.4/Sub.2/AC.5/2005/2), para. 10.

<sup>24</sup> See Thematic discussion on Non-Citizens and Racial Discrimination (CERD/C/SR.1624). See also concluding observations of the Human Rights Committee - Estonia (CCPR/CO/77/EST), para. 14.

48. Under such conditions, not only do individuals lose but so do States, in aggregate terms. In addition to the dramatic effects of instability and conflict, States lose in terms of lower economic output and a reduced fiscal base. Denied full access to higher education and skilled employment, persons belonging to minorities cannot contribute to their full potential. Under conditions of repression and following programmes of denationalization, States risk creating situations where restrictions on educational and employment opportunities encourage brain drain and flight. In extreme situations, repercussions can be severe for members of particular minority groups, society as a whole, and the wider stability of the State.

## VI. REGIONAL PRACTICES

49. While examples of exclusionary citizenship practices are numerous in all regions, the section below only provides a brief discussion of a number of country and community examples considered during the expert consultation. These are not presented as an exhaustive list of cases, nor as the most egregious. Rather, the examples discussed below include a number of promising recent developments. However, they remain mere first steps in the right direction.

### A. Africa

50. The issue of citizenship is often particularly complex in Africa because borders were drawn by colonial powers with little regard for the peoples inhabiting the continent. Most African States are pluri-ethnic and multicultural. As is set out below, in some cases, minority populations were never included in the body of citizens, while in others they were initially considered citizens and then intentionally excluded. In recent years, the increasing prevalence of multiparty democracy has meant that some politicians have been tempted to denationalize specific individuals and entire minority groups for partisan political advantage. At the same time, the growing emphasis on national security has meant that people increasingly need to possess proof of their identity. However, nomadic and semi-nomadic populations often have links with several States but may be unable to prove they possess the nationality of any of them because they were never registered at birth and were not issued with personal identity documents.

51. In Côte d'Ivoire, the question of disputed citizenship is at the heart of the civil war that has its origins in the mid-1990s, when political leaders reportedly began manipulating the interpretation of ambiguous citizenship provisions to effectively denationalize a large swathe of the Ivorian population and exclude political candidates on that basis, while at the same time amending the electoral law and Constitution to disqualify certain individuals from running for office under the concept of *ivoirité*. The conflict in Côte d'Ivoire has been attributed to eligibility for citizenship of some 3 million immigrant residents, the exploitation of ethnicity for political gain and competition for land resources between "indigenous" and "immigrant" communities.<sup>25</sup> Some optimism stems from the 2007 Ouagadougou peace agreement. Pursuant to that agreement, the National Unity Government has conducted late birth registrations and issued birth certificates which can be used to establish nationality. Renewed peace and stability will greatly depend on the success of this process.

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<sup>25</sup> Human Rights Watch, *2007 World Report*, Côte d'Ivoire, p. 103.

52. Among numerous long-standing situations in Africa is the insecure nationality status of the Banyamulenge, a minority group considered to be of Tutsi origin, resident in eastern Democratic Republic of the Congo. In 1972, a presidential decree granted citizenship to all of Rwandan or Burundian origin who had settled in the country before 1950. In 1981, this law was replaced with another, which based citizenship rights on descent from the population resident in the territory in 1885, making it almost impossible for the Banyamulenge to retain citizenship. The recent peace process led to the enactment of a new nationality law in 2004 which, together with the 2005 Constitution, again recognized the Banyamulenge as Congolese nationals on the basis of their historic residence in the country. In order for these amendments to achieve their potential, including in regard to stability in the region, implementation must be a priority. Members of the Banyamulenge minority reportedly continue to be the subject of discriminatory treatment and ethnic tensions on this basis.

53. The independent expert was also presented with information concerning adherents of the Baha'i faith in Egypt who are reportedly not recognized as a religious minority and experience difficulties obtaining identity cards necessary to prove citizenship. Without valid identity cards, Baha'is are said to encounter difficulties in registering their children in school, opening bank accounts, establishing businesses and gaining access to government services, including education and employment. Preventing the Baha'is from officially identifying themselves as such violates their right to the protection of their minority identity, a problem which is replicated in other countries in which they are a religious minority, particularly in the Islamic Republic of Iran. In January 2008, the Court of Administrative Justice in Cairo reportedly upheld arguments made in two cases concerning Baha'is seeking to restore their full citizenship rights by requesting permission to leave the religious affiliation field blank on official documents. The Government is urged to implement this ruling.

54. According to information presented at the expert consultation, members of the Nubian minority in Kenya are, on the basis of their ethnicity and their perceived identification with the colonial power, reportedly denied their right to Kenyan nationality, despite the fact that Nubians have lived in Kenya for more than 100 years and individuals meet criteria for Kenyan citizenship under the Constitution. They are prevented from voting and standing for office, claiming employment and owning land. Nubians are not recognized as an ethnic group and are categorized only as "other Kenyan". Consequently, Nubians have been discriminated against in the registration and issuance of identity documents. To acquire identity documents, they are reportedly required to produce their parents' and their grandparents' birth certificates, conditions that are not made on members of other groups. Discriminatory treatment is considered to be based on the notion that the community is not indigenous to Kenya; the Government claims that Nubians living in the country are foreigners who have not renounced their Sudanese citizenship.

55. In 1989, on the basis of tensions between pastoralists and farmers, the Government of Mauritania deprived approximately 70,000 minority black Mauritians their Mauritanian nationality and expelled them en masse to Senegal and Mali. About 20,000 remain in Senegal, living in camps with refugee status. Positive developments are now under way since, with the support and collaboration of UNHCR, the Government initiated in 2007 a process of voluntary

return of those previously expelled. Under a tripartite agreement signed by the Government of Mauritania, the Government of Senegal and UNHCR, Mauritania is committed to ensuring that returnees enjoy the same rights as other Mauritanian nationals.<sup>26</sup>

## B. Asia

56. There are a range of situations in Asia in which minority groups have been arbitrarily denied or deprived of their nationality, typically because they are viewed as not belonging to the mainstream of society on account of their minority status or because their ancestors migrated to the territory relatively recently. As in other regions, these situations often result from legislation which was designed to exclude specific populations by, for example, imposing evidentiary requirements for acquisition or confirmation of citizenship which are impossible to meet. These situations are sometimes compounded by discrimination against women in regard to acquisition, change and retention of nationality and conferral of nationality on their children. In recognition of the negative impact of statelessness, a number of States have recently taken measures to grant or confirm nationality of minority populations.

57. Despite the fact that the Urdu-speaking minority in Bangladesh, the Biharis, qualify for citizenship under the Constitution and nationality legislation, it is reported that an estimated 300,000 Biharis were, until recently, still being denied citizenship mainly on the basis of accusations of disloyalty and political support for Pakistan. For more than 30 years, this minority community has reportedly not only been denied citizenship, but also segregated from the rest of the population and has faced severe discrimination regarding opportunities to obtain a decent living standard, access to education and employment. In a favourable development, the Government recommended in September 2007 that citizenship be granted to most of the Bihari community habitually residing in Bangladesh.

58. Participants in the expert consultation described how in 1985, the Citizenship Law of Bhutan stripped an estimated 100,000 individuals of ethnic Nepali origin of their citizenship rights, a factor leading to their forced expulsion from the country. According to the participants, the Bhutanese of Nepali ethnic origin are allegedly prevented from returning to their own country, denied the right to a nationality in their country of residence and are de facto stateless. Those remaining in Bhutan are also denied citizenship and consequently continue to live in a precarious legal limbo and fear similar expulsion from the country.

59. According to information given at the expert consultation, the Rohingya in Myanmar are, on the basis of their group identity, denied their right to citizenship under the 1982 Citizenship Law. They suffer from restrictions on their freedom of movement and right to a family life, difficulty in gaining access to civil services, violations of their right to health and education, land confiscations, and are subject to forced labour and arbitrary taxes. These deprivations have resulted in many Rohingya fleeing as refugees to neighbouring and other countries.

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<sup>26</sup> UNHCR briefing notes at [www.unhcr.org/news/NEWS/46d7f3042.html](http://www.unhcr.org/news/NEWS/46d7f3042.html).

60. In Nepal, ingrained discriminatory sentiments mainly against Madhesis, Dalit and Janjatis have been blamed for the denial or deprivation of citizenship and undocumented status of such groups. However, the Government recently granted citizenship to about 2.4 million previously stateless persons, including approximately 1.2 million Madhesis from the Terai region. This was made possible by the introduction of a new citizenship law in 2006, followed by a government initiative in early 2007 to create mobile teams which visited the country's 75 districts, including the remotest of regions, to issue citizenship certificates. Efforts are still needed to ensure that those who did not benefit from the latter process may take advantage of opportunities for late registration.

61. In Sri Lanka, despite having lived there for generations, "estate" or "plantation" Tamils were historically denied the right to Sri Lankan nationality because of their status as plantation workers and the country's stringent citizenship laws. Following community efforts, in 2003, legal developments led to the immediate conferral of citizenship to this minority group. Mobile clinics and information campaigns supported by UNHCR and the direct involvement of the minority concerned were critical to success. Follow-up is however necessary, as reports indicate that the process of obtaining the necessary documentation has slowed down in recent years; a problem which may be associated with the ongoing conflict in the country.

62. According to information presented by participants at the expert consultation, in the Middle East region, denial or deprivation of citizenship is widespread and complex and reportedly affects minority groups including, but not limited to, Palestinians, Kurdish communities and the Baha'i minority. In Israel, for example, the Citizenship and Entry into Israel Law (Temporary Order) of 31 May 2003 suspends the possibility of Palestinians from the Occupied Palestinian Territory from obtaining Israeli citizenship and residence permits in Israel, including through family reunification. According to seminar participants, the effect of this discriminatory law is that thousands of Palestinian families must separate, emigrate or live illegally in Israel under constant risk of arrest and deportation.<sup>27</sup>

63. According to seminar participants, in 1962, an exceptional census aimed to differentiate between Kurds who had a right to live in the Syrian Arab Republic and those who had illegally entered from Turkey or Iraq after 1945 was conducted. Thousands were subsequently stripped of Syrian citizenship. Reportedly, little notice of the census was given and insufficient information was distributed regarding the consequences of not participating. Thousands were unable to provide the required documentation proving their residency before 1945. Of over 1.5 million Kurds, current estimates of those denied or deprived of citizenship reach 300,000. Stateless Kurds are reportedly denied full access to their rights, including the right to own property, to have access to public services and to use the Kurdish language in education. While the Government of the Syrian Arab Republic has, since 2004, made promises to grant nationality, the independent expert is informed that thousands remain registered as Ajanib or foreigners in the country.

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<sup>27</sup> Report of the Committee on the Elimination of all Forms of Racial Discrimination in the *Official Records of the General Assembly, Sixty-second session, Supplement No. 18 (A/62/18)*, para. 213.

64. The independent expert was further informed on the situation of the *Bidun* (which literally means “without” in Arabic), another minority group that has been disproportionately affected by amendments to laws on nationality following State reconstruction in the Gulf region - the independence of Kuwait, Bahrain and Qatar and the formation of the United Arab Emirates. In Kuwait, for example, there are an estimated 130,000 Bidun whose rights were revoked by law in the mid-1980s and who have since been unable to naturalize. They reportedly live in appalling conditions, are denied the right to employment, travel, education, free medical care, to register marriages or in most cases to hold a driving licence. Although the situation has reportedly not improved in Kuwait, other States have started to take measures to address the status of the Bidun within their territories. In 2001, Bahrain naturalized 2,090 Bidun, who were of Iranian origin but no longer maintained links with the Islamic Republic of Iran. In 2006, the United Arab Emirates issued directives allowing for the naturalization of the Bidun; in the first phase, the naturalization of approximately 1,294 Bidun was recorded.<sup>3</sup>

### C. Europe

65. In Europe, a number of problems relate particularly to the way citizenship and nationality have been constructed in view of State succession and State restoration, as demonstrated in the countries of the former Soviet Union and Yugoslavia. As in other regions, minority groups are disproportionately affected by the failure to register all children at birth and to issue identity documents to all citizens. As a result, in some States, members of the Roma minority and other populations are unable to exercise the full range of rights afforded by citizenship.

66. In Latvia, according to the Law on Citizenship, only persons who were citizens before 17 June 1940 and their descendants received automatic citizenship after independence in 1991, effectively excluding minorities such as ethnic Russian-speaking minorities. Since 1995, a process of naturalization has contributed to solving the problem, however, there are reportedly 400,000 non-citizens still in the country (an estimated 18 per cent of the population). In Estonia, the citizenship law of 1938 was reintroduced in 1992, thereby reportedly excluding one third of the population, including ethnic Russian-speaking minorities, from the citizenship of the newly independent State. Since the mid-1990s, about 150,000 people have reportedly been naturalized in a process which remains far from complete (currently about 8 per cent of the population are reported to be stateless). According to information received at the expert consultation, many former Soviet citizens who previously resided legally in the Russian Federation have allegedly been disenfranchised following entry into force in 2002 of the Federal Laws on Russian Citizenship and on the Legal Status of Foreign Citizens.

67. In Slovenia, thousands of minority residents, including Bosnians, ethnic Albanians from Kosovo, Macedonians, Roma and Serbs were, according to information submitted during the expert consultation, denied citizenship on the basis of restrictive citizenship laws introduced in 1991 and a very short time limit was allowed to file applications for minority non-ethnic Slovenians. The overall legal framework was improved considerably by the Law on Settling of the status of citizens of other Socialist Federal Republic of Yugoslavia Successor States in the Republic of Slovenia in 1999, although some minorities, including the Roma, reportedly remain affected. Participants further explained how The former Yugoslav Republic of Macedonia implemented an extremely restrictive citizenship law after independence, giving rise to a number

of categories of excluded groups, most notably ethnic Albanians and Roma. Widely touted amendments in 2004 failed to remedy the underlying problem that Macedonian officials fail to acknowledge the legitimate ties of a number of categories of persons to the country.

68. Despite continuing problems, the region has undergone substantial positive developments, mainly because of the work of a number of supranational bodies in Europe, including the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), which have for some time been addressing these issues in the region.

#### **D. Latin America and the Caribbean**

69. In Latin America and the Caribbean, the majority of States have a generous tradition of conferring nationality on the basis of *jus solis*; for that reason, few individuals should be left stateless at birth. However, lack of resources and infrastructure obstacles have resulted in a low percentage of populations having documentation of their civil status. To address this concern, the Organization of American States (OAS) is currently focusing on the right to an identity as a major policy thrust, placing central importance on universal birth registration as an objective to resolve issues related to the denial of citizenship to minorities. OAS member States are currently endeavouring to achieve free, timely and universal birth registration in the region by 2015. Chile, Cuba and Guyana have reportedly almost reached the goal.

70. A notable example where problems persist is the Dominican Republic. Haitians and Dominicans of Haitian descent born in the Dominican Republic experience severe racial discrimination, heightened vulnerability to deportation and obstacles to their access to economic and social services. Most live in a status of legal limbo as a result of being denied Dominican citizenship. The focus of recent controversy is Migration Law 285-04, which presents problems of conflicts with the *jus soli* provision of the Dominican Constitution, retroactivity and discriminatory application with respect to people of Haitian descent. The recent implementation of a pink birth-certificate registration procedure and “foreigners-book” in practice denies citizenship to children of Haitian descent born in the Dominican Republic. Hope for change came with the decision in 2005 of the Inter-American Court, which declared that the Dominican Republic had breached the international human right to a nationality in its arbitrary and discriminatory practice in this regard. However the Government is yet to fully comply with this decision.<sup>28</sup>

### **VII. ACTIVITIES OF INTERNATIONAL, REGIONAL AND NATIONAL ORGANIZATIONS**

71. The independent expert has been encouraged by the important work being carried out by relevant stakeholders in this field worldwide, including by agencies of the United Nations, regional intergovernmental organizations and numerous non-governmental organizations. She

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<sup>28</sup> For a full consideration of the situation in the Dominican Republic see the report of the joint visit of the independent expert and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance conducted in October 2007 (A/HRC/7/23/Add.3).

welcomes the commitment of States to addressing the issues concerned, as evidenced by the substantial number of replies received in response to a questionnaire regarding States' treatment of citizenship issues.

72. UNHCR is comprehensively implementing its statelessness mandate globally, as required by the General Assembly, to ensure progress in identification, prevention and reduction of statelessness and the protection of affected persons.<sup>29</sup> It has expressed its willingness to support the work of the independent expert in recognizing that minorities who are denied or deprived of citizenship constitute a significant constituency of affected persons. As an example, UNHCR is undertaking work with the Government of Viet Nam on the naturalization of former Cambodian refugees who are now stateless. Moreover, in November 2007, the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees jointly expressed their determination to address statelessness resolutely.

73. The United Nations Children's Fund (UNICEF) is working with partners to implement key provisions of the Convention on the Rights of the Child related to citizenship issues. The UNICEF child protection from violence, exploitation and abuse programme focuses on the centrality of birth registration as a means to ensure that all children have access to, inter alia, a legal identity and therefore all other rights. Other United Nations agencies that are engaged in working on citizenship issues include the United Nations Population Fund with regard to census and documentation through civil registries. UNDP is working with UNHCR on issues relating to social and economic inclusion of stateless populations through poverty reduction programmes and the rule of law and directly with the independent expert to enhance its consideration of minority issues across its key focus areas.

74. During the Geneva expert consultation, the OSCE High Commissioner for National Minorities noted the centrality to his conflict-prevention mandate of citizenship issues in Europe, particularly as they affect minority groups. While recognizing that much work remains, particularly with regard to discriminatory and exclusionary policies practised including Roma and others, he emphasized the notable efforts and considerable success of his office in working with States to improve citizenship legislation in Europe and to ensure a more balanced and successful integration of groups into their respective societies. Work has also been carried out with concerned minority groups directly, including Russian-speaking minorities in Estonia and Latvia and Crimean Tartars.

75. Until recently, few non-governmental organizations had addressed citizenship issues in their human rights concerns. However, as problems in this field have grown and been increasingly recognized, civil society initiatives have increased to engage in monitoring, reporting, advocating and litigating to solve problems in denial or deprivation of citizenship. This is the case in Asia, Africa, Europe, Latin America and the Middle East. Such civil society activities should be encouraged and supported by the international donor community.

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<sup>29</sup> Executive Committee Conclusion 106 on the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons.

76. Numerous civil society initiatives include the launch in 2007 of the Citizenship Rights in Africa Initiative as a joint initiative by the Open Society Justice Initiative, the International Refugee Rights Initiative and the Global Pan Africa Movement. The Citizenship Rights in Africa Initiative establishes itself as a campaign dedicated to ending statelessness and the arbitrary denial of citizenship in Africa; in this context, it monitors, investigates, documents, denounces and, where necessary, litigates cases of statelessness and denial of citizenship rights in Africa. Also of note is the symposium on regional integration and citizenship that was held on 31 August 2007 by the Rwanda Centre for Strategic Studies in Kigali. In Latin America, the work of the Movement of Dominican-Haitian Women, in partnership with other national and international non-governmental organizations, on the rights of the minority of Dominicans of Haitian descent in the Dominican Republic, particularly as they relate to the right to nationality, has led to establishing international jurisprudence on the right to a nationality and the prohibition of arbitrary discriminatory practices in this regard.<sup>13</sup> The equality and citizenship programme of the Open Society Justice Initiative continues to work globally, directly with States and communities concerned on issues relating to the rights of non-citizens. Refugees International is also acknowledged for its work in reporting on stateless populations around the world.

### VIII. CONCLUSIONS AND RECOMMENDATIONS

**77. The independent expert welcomes the important work being done to address and combat the causes and consequences of the discriminatory denial or deprivation of citizenship of minorities and developments in this regard, and encourages the international community to use the present report as a tool to take those steps further. While positive practices have been identified, few have fully addressed and resolved the situations faced by members of minority communities in all regions. Efforts must be intensified by all relevant actors, and most importantly States themselves, which have primary responsibility for the protection of the rights and welfare of all individuals residing on their territories irrespective of their citizenship status. The independent expert makes the recommendations as set out below.**

**78. The right to a nationality is a fundamental human right and must be considered as such by all States.**

**79. While States have a prerogative to establish laws governing the acquisition, renunciation or loss of nationality, they must do so within the framework of international human rights law. In situations relating to constitutional amendments or changes to national legislation relating to the conferral of citizenship, States should not revoke citizenship retroactively.**

**80. States must not arbitrarily deny or deprive minorities of citizenship on the basis of colour, descent, national or ethnic origin, language, race or religion. Fundamental fairness, including the right to appeal, must be guaranteed in all immigration and citizenship procedures.**

**81. With limited exceptions, States must not consider citizenship a condition for the enjoyment of human rights, including the rights of persons belonging to minorities.**

- 82. States are urged to ratify or accede to all relevant international conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Reduction of Statelessness, to ensure that nationality legislation is consistent with such standards and to fully conform to international obligations.**
- 83. UNHCR and OHCHR should undertake a study to reveal further the dimensions of the statelessness problems of minorities globally. This should include, to the extent possible, the collection and analysis of statistical data disaggregated on the basis of gender, ethnic, linguistic and religious criteria.**
- 84. States must register all children and issue birth certificates immediately after birth in a non-discriminatory manner. Where birth registration certificates do not confer nationality, States should allow for procedures for citizenship determination by an independent body shortly after birth.**
- 85. States must grant nationality to children born on their territory if the child would otherwise be stateless. In this case, the immigration status of parents should be irrelevant.**
- 86. States are urged to allow dual or multiple nationality.**
- 87. States are encouraged to facilitate the acquisition of citizenship through naturalization procedures or permanent residency to persons lawfully resident in the country for a period commensurate with their having created established social, economic and community ties in the State. It is recommended that the period be no longer than 10 years.**
- 88. State requirements for the granting of citizenship should be reasonable and not be overly burdensome for individuals.**
- 89. States should facilitate full access to identity documentation in a non-discriminatory manner. In any determination that supporting documents are fraudulent, the burden should be upon the State to prove falsity and such determination should be subject to judicial review and appeal. Registration should take into account the particular circumstances of persons belonging to minorities, including lack of birth registration when ancestors arrived in the territory of the State. Registration costs should be minimal, and registration offices should be physically accessible to all. Registration forms should be in all national languages and in the languages spoken by large minority populations.**
- 90. States should conduct information campaigns on the right to citizenship and necessary procedures to obtain recognition of this right, in a language and a form accessible to all. Minority groups should be directly involved and represented in relevant administrative structures. Mobile campaigns are often a good means of addressing existing documentation problems and reaching rural areas.**

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