

**MEASURES RECOMMENDED FOR THE STATES OF THE AMERICAS
TO PREVENT STATELESSNESS**

(presented by Dr. José Luis Moreno Guerra)

Mandate

The OAS General Assembly instructed the Inter-American Juridical Committee to prepare a document with recommendation for the Members States, aimed at avoiding statelessness.

Concept

Nationality is an individual's legal bond to the state; the absence of that bond brings about statelessness.

Sources of nationality

- *Jus soli*
- *Jus sanguinis*
- *Jus domicili*
- *Jus argentum*

Jus soli Right to nationality of a country on whose soil a person is born.

Jus sanguinis Right to nationality of one's father or mother, or of both.

Jus domicili Option of gaining naturalization in a state in which a foreigner is permanently resident.

Jus argentum Incentive whereby a state offers nationality to a foreigner who invests a certain previously-determined minimum amount.

Causes of statelessness

- A state's refusal to recognize dual and multiple nationality.
- Cancellation of nationality as punishment for a crime committed.
- Withdrawal of nationality of origin from anyone who is naturalized in another country.
- Requirement that original nationality must be relinquished for naturalization procedures to begin.
- Cancellation of Naturalization Certificate.
- Reluctance to allow nationality of origin to be restored.

- Birth, in a country that applies *jus sanguinis*, to foreign parents who are citizens of a country that applies *jus soli*.
- Lack of awareness that parents' nationality can be acquired through registration of birth at a Consulate.
- Extinction or disappearance of the state of one's citizenship.
- Administrative provisions of a state that applies *jus soli* but still denies nationality to children born in its territory to "de facto" immigrants.
- Lack of documents to prove nationality, especially among peasant, illiterate, displaced, and refugee groups.
- Dysfunction in the Civil Registry or lack of national coverage.
- Negligence by local authorities, doctors, midwives, and clinic and hospital staff, who know about a birth but fail to notify the competent authorities.

Observation

Statelessness is an irregular situation that ought to be prevented or corrected by states, since it affects human rights.

Measures recommended for Member States to prevent statelessness

- Accept dual and multiple nationality, a universal trend that seeks to better protect people, without detriment to the state; an individual is more likely to lose his or her only nationality than to lose more than one.
- Broaden the source of nationality, so that *jus soli* and *jus sanguinis* can operate together in every state.
- Abolish penalties that deprive individuals of the bond of nationality, choosing instead other equivalent penalties for similar crimes.
- Eliminate administrative penalties that deprive individuals of their nationality of origin if they become naturalized in another country.
- Do away with the requirement that nationality of origin must be relinquished as a standard requirement before naturalization certificate procedures, since it opens up a temporary opportunity for statelessness and could make it indefinite insofar as a Nationalization Certificate is granted at the discretion of the state.
- Admit that a Naturalization Certificate creates a legal bond for the holder until death, unless he or she decides to expressly relinquish it; naturalization is therefore subject neither to time limits nor administrative conditions; nationality by birth or by naturalization are of equal legal value.
- Repeal Naturalization Certificate cancellation clauses.

- Include members of the immediate family on Naturalization Certificates.
- Shorten periods for granting Naturalization Certificates; there are cases that take years because of the needless formality of requiring the signature of the President of the Republic.
- Facilitate restoration of nationality of origin, because it is a right that never fades away.
- Instruct consular officers to constantly remind fellow nationals within their jurisdiction about the possibility and usefulness of registering the birth of children with a Consulate.
- Address the lack of identification documents by using other proofs of ties, such as witness statements.
- Rebuild ties for refugees and displaced persons with the approval of consular agents of the country of origin.
- Allow people to become naturalized by rendering as unnecessary those conditions that are impossible to meet, such as demanding birth certificates from countries that have no civil registry.
- Modernize and decentralize Civil Registry services, so that those giving birth in indigenous or peasant communities in remote areas do not have to make long and expensive trips.
- Simplify birth registration procedures.
- Get rid of deadlines for births to be registered, so as to avoid incurring penalties that subsequently scare people away.
- Repeal legislative or administrative provisions of a state that applies *jus soli* yet denies nationality to "de facto" immigrants' children born in its territory.
- Make it mandatory for managers of hospitals, clinics, and health centers, as well as doctors, midwives, and administrative authorities to report births that have occurred at their facilities or within their jurisdiction, otherwise face penalties.
- Expedite procedures to get identification documents for the first time or to replace lost, damaged, or stolen ones.

* * *