



Somos Todos Uruguayos

Dr. Tania Reneaum Panszi
Executive Secretary Inter-American Commission on Human Rights
Organization of American States
1889 F Street, N.W. Washington, D.C. 20006

December 3, 2023

Re: Request for a Thematic Hearing on Uruguay's Compliance With Commitments to End Statelessness and Related Human Rights Issues Concerning Nationality

Dear Executive Secretary Reneaum Panszi:

Pursuant to Article 64 of the Inter-American Commission on Human Rights' Rules of Procedure, we respectfully submit this request on behalf of the Uruguayan civil association Somos Todos Uruguayos, representing the rights and interests of over 30,000 legal citizens of Uruguay, as well as those on the path to obtaining citizenship. We seek a thematic hearing on Uruguay's compliance with its commitments to end stateless and the related human rights issues that have arisen concerning the arbitrary denial of Uruguayan nationality to its naturalized citizens, called "legal citizens" in Uruguay.¹

This letter serves as an Executive Summary of the supporting materials, both factual and legal, attached hereto and provided to the Commission to underscore the urgent need for a thematic hearing. Full citations and references are provided in the submission.

This hearing is intended to provide the Commission with information concerning Uruguayan Law No. 19.682, putatively implementing Uruguay's process to identify and remedy those found to be stateless in its territory, and the fact that the law does not provide a nationality to those found stateless. Law No. 19.682 states that obtaining Uruguayan *legal citizenship* status terminates statelessness. However, Uruguayan legal and constitutional doctrine distinguishes between legal citizens and nationals, clearly indicating that *legal citizens are not Uruguayan nationals*. As will be seen in the accompanying supporting materials and at a thematic hearing, there is no ambiguity in the Uruguayan state position that legal citizens are not and cannot be Uruguayan nationals. This apparent contradiction raises broader questions about human rights issues related to Uruguay's policies on nationality and citizenship.

¹ This concern is shared by both academic and other civil society organisations. The Legal Faculty of the Universidad de la República (UdelaR) introduced the issue in its report to the Human Rights Committee at the 135th session of the International Convention on Civil and Political Rights. Similarly, the umbrella organisation for migrant-focused civil society, the *Red del Apoyo al Migrante*, has repeatedly raised this issue, as has the Human Rights Institute (INDDHH).

Uruguayan state policy declarations concerning constitutional, legal, and policy positions, if accurate, mean that those individuals found to be stateless in Uruguay remain stateless. In fact, Uruguay has declared that legal citizens, the highest status a stateless individual or any immigrant to Uruguay may obtain, are foreigners who are resident in Uruguay with equal rights to nationals (but for issues like voting, government positions, and government offices certain differences are specified). The stateless are, according to some Uruguayan policy pronouncements, “separate but equal” non-nationals. Naturalization itself, Uruguay indicates, is unknown in the Uruguayan constitutional system and, some say, prohibited by the Constitution.

Because Uruguay’s implementation of the statelessness treaties and other essential commitments concerning statelessness requires the ability for those found to be stateless to acquire nationality, the Uruguayan positions concerning the denial of nationality are either stated incorrectly, thereby allowing Uruguay to fulfill its statelessness obligations, or Uruguay’s position is stated correctly, thereby preventing Uruguayan compliance with its treaty obligations. One or the other of these competing positions must be true and only one position is possible.

A thematic discussion on the issue of nationality, citizenship, statelessness, and international law is crucial. Uruguay state and non-state actors, as well as a wide representation of civil society, must explore together the inconsistency, find solutions, or admit that the denial of nationality to legal citizens was an error in Constitutional interpretation. It is only after such a discussion and clarification of positions that civil society, the state, and international actors may move forward, whether together or in conflict.

A thematic discussion, we hope, will avoid the need to request precautionary measures or submit a complaint to this Commission. Absent such a discussion and a voluntary resolution, we believe we have no choice to raise these same issues before this Commission in a further submission.

Uruguay is a Welcoming Nation and a Model for Human Rights Compliance and Yet Faces a Significant Issue in its Denial of Nationality

Despite Uruguay's reputation as a human rights champion and its welcoming policies towards immigrants, a significant contradiction exists in its approach to statelessness. Uruguay's Law N°19.682 offers "legal citizenship" to stateless individuals, yet this status falls short of national identity, barring them from becoming Uruguayan nationals. This policy potentially breaches Uruguay's commitments under key international conventions on statelessness. This issue is not just about statelessness, but also about broader human rights implications, questioning Uruguay's adherence to its treaty obligations and its human rights integrity.

This request for a thematic hearing concerns Uruguay’s ability to fulfill its obligations under the 1954 Convention Relating to the Status of Stateless Persons² and the 1961 Convention on the Reduction of Statelessness³. Uruguay, as explained in this request, currently has taken an official position that no stateless person, refugee, asylum seeker, or immigrant can become a

² Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117.

³ Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.

Uruguayan national. In fact, Uruguay maintains that the process of naturalization is unknown in the Uruguayan political and constitutional system. The highest category any stateless person, refugee, asylum seeker, or immigrant may obtain in Uruguay is that of “legal citizen,” but Uruguay has recently hardened its official position that legal citizens are not nationals of Uruguay. They are, Uruguay maintains, foreigners or people of unknown nationality granted residency, a right of return, legal and political rights, and are generally equal to nationals. They are not, however, Uruguayan nationals.

Uruguay is a Positive Force in the World and has Signed, Ratified, and Implemented Numerous Human Rights Treaties, Optional Protocols, and Commitments to End Stateless and the State Should be Willing to Quickly End the Violations Concerning Nationality

Uruguay demonstrates a strong commitment to human rights, and this is evident through its ratification of UN treaties, including those focusing on civil, political, economic, social, and cultural rights. Many of these treaties emphasize the right to nationality, such as the Universal Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities. Additionally, Uruguay allows for international adjudication of rights violations through individual complaint mechanisms under these treaties. This adherence to international norms highlights Uruguay's dedication to human rights, which contrasts with its current stance on statelessness and nationality.

Uruguay's active role in the Inter-American System underscores its dedication to human rights. By ratifying key treaties like the American Convention on Human Rights and the Inter-American Convention against All Forms of Discrimination and Intolerance, Uruguay aligns its domestic laws with these international commitments. The principle of conventionality control ensures that national laws and constitutional interpretations conform to these international human rights treaties. This regional engagement complements Uruguay's global human rights commitments, highlighting a comprehensive and robust approach nationality.

Ending Statelessness is a Key Goal of the International Community, and the Organization of American States and Uruguay's Failed Implementation of the Statelessness Conventions is a Risk to those Goals and a Sign of Other Human Rights Issues

Uruguay demonstrated a strong commitment to combating statelessness by acceding to major international treaties like the 1961 and 1954 conventions on statelessness and the 1984 Cartagena Declaration on Refugees. It has enacted national legislation, such as Law No. 19.682, to protect stateless persons, and actively participates in regional efforts, including various declarations aimed at addressing refugee issues and statelessness in Latin America. These actions align Uruguay with broader initiatives within the Organization of American States to uphold the right to nationality and eradicate statelessness.

In November 2014, the United Nations initiated a global campaign to eradicate statelessness by 2024, supported in Latin America and the Caribbean through the Brazil Action Plan. The Organization of American States (OAS) later endorsed this initiative, recognizing

statelessness as a key human rights concern. Juan Ignacio Mondelli, UNHCR Chief in Uruguay, highlights the Inter-American Court of Human Rights' role in interpreting the right to nationality. The Court's decisions have emphasized the balance between state sovereignty in nationality matters and individual rights, focusing on preventing statelessness and ensuring due process in nationality issues.

The International Court of Human Rights Has Developed a Robust Body of Law on Nationality and Stateless and Uruguay's Policy of Providing Stateless Individuals with Non-National Status and its Practices of Arbitrary Nationality Revocation and Denial Contradict the Holdings of the Court

Article 20 of the American Convention on Human Rights encompasses the fundamental right to nationality, comprising four distinct components: the right to possess a nationality, the right to acquire the nationality of the state where one is born if no other nationality is available, the right to safeguard one's nationality, which includes protection against arbitrary denials or deprivations of nationality, and the right to change nationality.

A review of the jurisprudence of the Inter-American Court of Human Rights indicates the following principles have been affirmed or emphasized.

- *While states possess significant authority in defining their nationality criteria, the regulations must align with international legal parameters, including the prohibition of arbitrariness and discrimination.*
- *International law places limits on the ability of states to regulate nationality. Individual rights must be balanced against state prerogative.*
- *Nationality is a legal-political bond between an individual and a specific state.*
- *The Convention protects the right to nationality regardless of how it is acquired.*
- *Individuals are protected from arbitrary nationality deprivation, irrespective of whether it results in statelessness.*
- *Denial of nationality can lead to statelessness and violates the rights to name, legal personality recognition, nationality, and equality before the law.*
- *The appropriate remedy to revocation or denial of nationality is the restoration of nationality.*
- *The country of origin includes the country of habitual residence for stateless individuals. The determination of arbitrariness in denying nationality should include an analysis of domestic regulations and state obligations under international human rights law, such as the prohibition of discrimination or creating statelessness.*

The Inter-American Commission on Human Rights has recognized the implicit right not to be stateless, which, although not explicitly stated in the American Convention, aligns with the right to identity. This right encompasses acquiring nationality at birth to prevent statelessness and prohibits arbitrary deprivation of nationality. The recognition of this right is crucial in guiding states to prevent and address statelessness, emphasizing their international obligations under the American Convention and highlighting the often-overlooked issue of statelessness.

Despite All of the Positive Human Rights Developments in Uruguay and its International Leadership, State Pronouncements on the Fact that it Denies Nationality to those Found Stateless and that it has Revoked the Nationality of Other Legal Citizens is Stated Clearly and Loudly

The Uruguayan state declares unequivocally that legal citizens are not nationals. They are foreigners with certain rights in addition to residency. Uruguay maintains a clear distinction between nationality and citizenship, as evidenced by various legal documents and opinions. Nationality is considered a permanent, unalterable status linked to birth or blood, whereas citizenship is a variable political relationship defined by residency.

There is no doubt about the Uruguayan state position. On November 28, 2023, Dr. María A. Sande, Director of Human Rights and Humanitarian Law at the Ministry of Foreign Affairs, testified before a United Nations Commission that, “when the Constitution refers to 'nationals,' it is referring to individuals born within the territory of Uruguay or children of Uruguayan parents.” Echoing the doctrine that legal citizenship brings only certain civic rights and residency, she stated, “Legal citizenship is for foreigners who come to live in the country.” As can be seen in the supporting legal analysis submitted herewith, the official Uruguayan position is that naturalization is an unknown concept in Uruguay and that legal citizens are not and can never be nationals of Uruguay.

Uruguay's commitment to protecting refugees and stateless individuals is undermined by a legal contradiction in its approach to statelessness. While the country allegedly follows international conventions and has laws to protect stateless persons, its domestic legal framework, particularly Law N°19.682, is problematic. This law, which differentiates between nationality and legal citizenship, paradoxically implies that stateless individuals gaining legal citizenship in Uruguay may remain stateless. This is so even though the law provides statelessness is terminated by the grant of legal citizenship.

Uruguay's Long History of Issuing Passports with Uruguayan Legal Citizenship as the Nationality of the Holder and its Letters, Communications, and Representations to International Organizations Indicate Unambiguously Uruguay Revoked Legal Citizens' Nationality in 1994

The Uruguayan passport system reveals a significant contradiction in the country's approach to citizenship and nationality. Historically, passports differentiated between "natural" and "legal" citizens but did not label legal citizens as foreigners. However, since 1994, Uruguay has been classifying legal citizens by their birth nationality in passports, a shift based on the interpretation of constitutional law by Justino Jiménez de Aréchaga first published in 1946. This change has led to practical challenges and potential human rights issues. Legal citizens, previously recognized as Uruguayan nationals, are now identified as foreigners, nationals of their country of birth, whether true or not. We assert that the opportunity to discuss the contradiction in Uruguay's statelessness law also gives rise to a time to discuss whether the revocation of the Uruguayan

nationality of legal citizens in 1994 was arbitrary and a violation of international law. If so, the continued denial of nationality to legal citizens is also arbitrary and illegal.

It is only in 1994 that legal citizens were effectively stripped of nationality or an incident of nationality in an arbitrary manner, without the passage of a law, based on ethnicity or original nationality of origin. From this date forward, the nationality field on passports was changed to show the nationality of Uruguayan legal citizens as nationals of the nation in which they were born. This change was made worse by the fact that not all legal citizens at the time were nationals of their nation of birth.

Somos Todos Uruguayos Supports the Various Efforts to Remedy the Situation Through Interpretive Laws and Suggests That Administrative Decrees Could Be Used to Alleviate the Most Pressing Issues

Two legislative proposals in Uruguay aim to address issues of statelessness and nationality. The first bill, focused on interpreting the Constitution, proposes extending nationality to legal citizens, addressing Uruguay's shortcomings in implementing statelessness legislation and restoring nationality to those unfairly deprived. The second bill, less comprehensive, suggests that passports for legal citizens indicate their Uruguayan status, albeit with limitations. Despite detailed parliamentary reviews and academic input, these bills face challenges in progressing, highlighting the need for greater transparency in the legislative process and underscoring ongoing debates about nationality, citizenship, and human rights in Uruguay.

One or more administrative decrees could be issued by Uruguay's Executive Power to address key issues in the country's nationality practices. Uruguay's ability to undertake this is evidenced by past successful applications, such as the recent changes to passport regulations under Decree No. 281/022. The use of decrees demonstrates the government's capacity to enact regulatory changes and suggests the potential for a new decree to equate the rights of legal citizens with those of nationals, particularly in travel contexts, though it may not fully resolve the complexities of statelessness.

International Organizations Should Not Fall Prey to Representations that Legal Scholars in Uruguay Uniformly Declare the Uruguayan Constitution Supports Prohibited Denial of Nationality and Nationality Discrimination

Legal scholars in Uruguay do not uniformly agree with the doctrinal position that legal citizens are not nationals. Alberto Pérez Pérez challenged this traditional view, asserting that in a democratic state, nationality and citizenship are identical. He argued for a perspective aligned with democratic principles and international law and indicated that perspective is compatible with Uruguayan constitutional law and history. Martín Risso Ferrand, more recently, insists that Uruguay must work to overcome the “cultural shock” associated with conventionality control and treaty obligations and accept the authority of the Inter-American Commission and Court. He emphasizes the need for Uruguayan legal frameworks to evolve, integrating international human rights norms into constitutional interpretation. In May of 2022, Dr. Daoiz Gerardo Uriarte Araújo,

Professor at the University of the Republic, and Director of the Human Rights Institute at the School of Law, testified before Parliament and emphasized the importance of conventionality control in Uruguay's laws, particularly after Supreme Court Ruling 365 in 2009, highlighting the evolving nature of nationality and citizenship and their impact on human rights. On that same day, Dr. Diego Gamarra testified that the constitutional methodologies used to assert, after 1946, that legal citizens were not nationals are flawed. He advocated for interpretations that protect individual rights, especially in the context of statelessness and citizenship.

Suggested Participants

To resolve the contradiction in Uruguay's implementation of the obligations to end statelessness, discuss Law No. 19.682 and its assertion that the status of legal citizenship ends the condition of statelessness despite lacking nationality, and, given the topic is open, discuss whether legal citizens had their nationality arbitrarily revoked and then denied since 1994, we propose invitations to the following agencies or parties.

1. Minister of Interior, Nicolas Martinell
2. Minister of Foreign Affairs, Omar Pagliarini.
3. Minister of Defense, Javier Garcia (Civil Aviation Authority – DINACIA – is the national counterpart for ICAO).
4. President of the Institute of Human Rights, Jimena Fernandez.
5. President of the Parliamentary Human Rights Commission, Oscar Amigo.
6. President of the Electoral Court, Wilfried Penco.

Given the Lack of Legislative or Interpretative Progress for Years, and the Ongoing Human Rights Violations Arising from Uruguayan Policy, a Thematic Discussion is Urgently Required and Likely to Assist All Parties

A review of Uruguay's international obligations, the commitment of the Organization of American States and this Commission to end statelessness, as well as the opinions of the Inter-American Court of Human Rights, demonstrate the importance of a comprehensive discussion on nationality, citizenship, statelessness, and international law. The issue that leads the discussion is the contradiction in Uruguay's Law No. 19.682, which declares the status of legal citizenship in Uruguay ends statelessness while Uruguay denies legal citizens are nationals. But the discussion would allow the parties to consider the Court's broader rulings on nationality and whether the nationality of legal citizens was arbitrarily revoked in 1994.

As stated at the beginning of this request, it is essential for both state and non-state entities in Uruguay, along with broad civil society representation, to collaboratively examine the existing inconsistencies and either identify viable solutions or acknowledge potential misinterpretations in constitutional matters related to the denial of nationality to legal citizens. Such collaborative discourse is vital for all parties involved - civil society, the state, and international bodies - to either move forward in agreement or acknowledge their differences.

We state again that we hope that through these discussions will allow us to circumvent the necessity for seeking precautionary measures or lodging complaints with this Commission. That is our hope, though testing that hope can only occur if this request is granted.

Respectfully submitted,

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Uruguay's Compliance with Commitments to End Statelessness and Related Human Rights Issues Concerning Nationality

Submission on Request for a Thematic Hearing

Can stateless individuals in Uruguay acquire Uruguayan nationality to end their statelessness? Law No. 19.682 states that obtaining legal citizenship status terminates statelessness. However, Uruguayan legal and constitutional doctrine distinguishes between legal citizens and nationals, clearly indicating that legal citizens are not automatically Uruguayan nationals. This apparent contradiction raises broader questions about human rights issues related to Uruguay's policies on nationality and citizenship.

Somos Todos Uruguayos, a civil association representing the rights and interests of over 30,000 legal citizens of Uruguay, as well as those on the path to obtaining citizenship, hereby submits this urgent request for a thematic discussion of Uruguay's official state declarations that those found to be stateless in Uruguay cannot and will not be provided Uruguayan nationality¹.

Uruguayan state policy declarations concerning constitutional, legal, and policy positions, if accurate, mean that those individuals found to be stateless in Uruguay remain stateless. In fact, Uruguay has declared that legal citizens, the highest status a stateless individual or any immigrant to Uruguay may obtain, are foreigners who are resident in Uruguay with equal rights to nationals (but for issues like voting, government positions, and government offices certain differences are specified). The stateless are, according to some Uruguayan policy pronouncements, "separate but equal" non-nationals. Naturalization itself, Uruguay indicates, is unknown in the Uruguayan constitutional system and, some say, prohibited by the Constitution.

¹ This concern is shared by both academic and other civil society organisations. The Legal Faculty of the Universidad de la República (UdelaR) highlights the issue in its report to the Human Rights Committee at the 135th session of the International Convention on Civil and Political Rights. Similarly, the umbrella organisation for migrant-focused civil society, the *Red del Apoyo al Migrante*, has repeatedly raised this issue, as has the Human Rights Institute (INDDHH).

Because Uruguay's implementation of the statelessness treaties and other essential commitments concerning statelessness require the ability for those found to be stateless to acquire nationality, the Uruguayan positions concerning the denial of nationality are either stated incorrectly, thereby allowing Uruguay to fulfill its statelessness obligations, or Uruguay's position is stated correctly, thereby preventing Uruguayan compliance with its treaty obligations. One or the other of these competing positions must be true and only one position is possible.

A thematic discussion on the issue of nationality, citizenship, statelessness, and international law is crucial. Uruguay state and non-state actors, as well as a wide representation of civil society, must explore together the inconsistency, find solutions, or admit that the denial of nationality to legal citizens was an error in Constitutional interpretation. It is only after such a discussion and clarification of positions that civil society, the state, and international actors may move forward, whether together or in conflict.

A thematic discussion, we hope, will avoid the need to request precautionary measures or submit a complaint to this Commission. Absent such a discussion and a voluntary resolution, we believe we have no choice to raise these same issues before this Commission in a further submission.

INTRODUCTION

Despite Uruguay's reputation as a human rights champion and its welcoming policies towards immigrants, a significant contradiction exists in its approach to statelessness. Uruguay's Law N°19.682 offers "legal citizenship" to stateless individuals, yet this status falls short of national identity, barring them from becoming Uruguayan nationals. This policy potentially breaches Uruguay's commitments under key international conventions on statelessness. This issue is not just about statelessness, but also about broader human rights implications, questioning Uruguay's adherence to its treaty obligations and its human rights integrity.

Uruguay is a model nation in terms of the protection of human rights in a stable, transparent, and durable democracy. It is an advanced social democracy, with numerous economic, social, and cultural rights in its current Constitution and its legislation. It is also seen as a welcoming and

supportive country for immigrants, with advanced liberal policies concerning equality for immigrants and programs for immigrant integration.

These observations are true and are aspects of Uruguayan social and political policy about which Uruguay should be proud. But these positive truths hide a fundamental error and possible violation of international law that deserves examination because it distorts all other aspects of Uruguayan human rights law. Indeed, if this error is not an error but is, rather, an intentional policy, it means that Uruguay is unable to fulfill its treaty obligations, especially concerning statelessness and its elimination.

This request for a thematic hearing concerns Uruguay's ability to fulfill its obligations under the 1954 Convention Relating to the Status of Stateless Persons² and the 1961 Convention on the Reduction of Statelessness³. Uruguay, as explained in this request, currently has taken an official position that no stateless person, refugee, asylum seeker, or immigrant can become a Uruguayan national. In fact, Uruguay maintains that the process of naturalization is unknown in the Uruguayan political and constitutional system. The highest category any stateless person, refugee, asylum seeker, or immigrant may obtain in Uruguay is that of "legal citizen," but Uruguay has recently hardened its official position that legal citizens are not nationals of Uruguay. They are, Uruguay maintains, foreigners or people of unknown nationality granted residency, a right of return, legal and political rights, and are generally equal to nationals. They are not, however, Uruguayan nationals.

If this official government position is flawed, Uruguay's recent legislative implementation of the statelessness convention is flawed, and Uruguay is incapable of fulfilling the treaties. Law N°19.682 provides that those found to be stateless are given a path to this non-national status,

² Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117.

³ Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.

called legal citizenship⁴. Oddly, as explored in this request, the law indicates that the grant of non-national legal citizenship “ends” the condition of being stateless.

Uruguay’s alleged denial of nationality to all of those who are stateless, refugees, asylum seekers, or immigrants seeking permanency in Uruguay implicates many more fundamental human rights than those that arise simply from Uruguay’s commitments to end statelessness. The right to identity and the growing body of customary, treaty, and regional law concerning nationality itself is at issue. For that reason, a short review of all the treaties that may be impacted by the topic of this thematic discussion are listed below and we believe these treaties and the obligations found within them should be a subject of this discussion.

INTERNATIONAL OBLIGATIONS

Uruguay has demonstrated a strong dedication and commitment to human rights, as evidenced by its broad acceptance and adoption of numerous international human rights instruments. A foundational aspect of this commitment is its adherence to the Universal Declaration of Human Rights (UDHR) of 1948⁵. Although the UDHR is not a treaty, it is a cornerstone document in international human rights law, and as a member of the United Nations, Uruguay upholds its principles.

General Obligations

Uruguay demonstrates a strong commitment to human rights, and this is evident through its ratification of UN treaties, including those focusing on civil, political, economic, social, and cultural rights. Many of these treaties emphasize the right to nationality, such as the Universal Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities. Additionally, Uruguay allows for international adjudication of rights violations through individual complaint mechanisms under these treaties. This adherence to international norms highlights Uruguay's dedication to human rights, which contrasts with its current stance on statelessness and nationality.

⁴ In October 2018, Uruguay adopted Law N°19.682 for the recognition and protection of stateless persons and applicants of such status. This legislation establishes a statelessness determination procedure and ensures the protection of stateless persons who are not refugees.

⁵ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

Further emphasizing this commitment to uphold international law, Uruguay ratified the International Covenant on Civil and Political Rights (ICCPR)⁶ in 1970. This treaty mandates the respect of civil and political rights of individuals, including rights to life, freedom of speech, religion, and voting. Uruguay has integrated these principles into its national legal framework, tailoring specific legislation to align with the ICCPR.

In the same vein, Uruguay ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷ in 1970, which focuses on rights such as education, health, and an adequate standard of living. The country has enacted laws and policies to realize these rights, though specific acts may not directly reference the ICESCR.

The Convention on the Rights of the Child (CRC)⁸, ratified by Uruguay in 1990, sets out the civil, political, economic, social, health, and cultural rights of children. Uruguay has incorporated the principles of the CRC into its national laws. The Convention on the Rights of Persons with Disabilities (CRPD)⁹, aims to safeguard and enhance the rights and opportunities of people with disabilities, shifting the perspective from viewing them as subjects of charity to recognizing them as rights-bearing individuals with the capacity for autonomy and societal contribution. Uruguay demonstrated its commitment to these principles by signing the CRPD on March 30, 2007, and ratifying it on September 11, 2009. The CRPD encompasses a wide array of rights, emphasizing non-discrimination, accessibility, and the right to life, ensuring that individuals with disabilities enjoy the same rights and freedoms as others.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹⁰ is a United Nations treaty established to prevent and eliminate racial discrimination in all its forms. It obligates states to pursue a policy of eliminating racial discrimination and promoting understanding among all races. The convention covers various forms of racial discrimination and

⁶ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁸ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁹ Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

¹⁰ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

includes measures to combat such practices. Uruguay ratified the CERD on February 9, 1967. This ratification signifies Uruguay's commitment to the principles outlined in the convention and its dedication to combating racial discrimination.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)¹¹ is a United Nations multilateral treaty aimed at the protection of migrant workers and their families. Signed on December 18, 1990, it came into force on July 1, 2003, after reaching the threshold of 20 ratifying states in March 2003. Uruguay ratified the CMW on January 30, 2004, and the Convention came into force for Uruguay on May 1, 2004. The Convention provides a comprehensive set of civil, political, economic, and social rights for migrant workers, including those who are living and/or working abroad illegally.

Uruguay stands out among many nations for its commitment to upholding international human rights standards. This is particularly evident in its acceptance of individual complaints mechanisms under various international treaties, allowing its nationals and residents to seek international adjudication for rights violations. Uruguay has accepted the individual complaints procedures under the Convention against Torture (CAT) since July 27, 1988. Furthermore, it has been a party to the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1) since April 1, 1970, following its signature on February 21, 1967. Uruguay also adhered to the individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED) on March 4, 2009.

Expanding the list, Uruguay ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) on July 26, 2001, after signing it on May 9, 2000. The country accepted the individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) on September 11, 1972. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR-OP) was also ratified by Uruguay on February 5, 2013, after signing it on September 24, 2009. Furthermore, Uruguay accepted the individual complaints procedure under the

¹¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, opened for signature 18 December 1990, 2220 UNTS 3.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) on April 13, 2012. Uruguay provided disabled individuals individual complaint rights by signing the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP) on October 28, 2011. Lastly, it ratified the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-IC) on February 23, 2015, following its signature on February 28, 2012.

This comprehensive acceptance of individual complaints procedures demonstrates Uruguay's dedication to the protection and promotion of human rights, providing its citizens with a means to seek justice at an international level.

We identify each of these international covenants not solely to demonstrate Uruguay's good faith and prior positive history, but also to raise the fact that many of these treaties also discuss the right to a nationality.

- Universal Declaration of Human Rights (UDHR): Article 15 states that everyone has the right to a nationality and should not be arbitrarily deprived of their nationality or denied the right to change it.
- International Covenant on Civil and Political Rights (ICCPR): Article 24(3) provides that every child has the right to acquire a nationality.
- Convention on the Rights of the Child (CRC): Article 7 states that a child has the right from birth to acquire a nationality. This Article also highlights that this right should apply under the relevant international instruments in this filed, in particular where the child would otherwise be stateless.
- Convention on the Rights of Persons with Disabilities (CRPD): Article 18 recognizes the rights of persons with disabilities to liberty of movement and nationality, including the right to acquire and change nationality.
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD): This convention acknowledges the right to nationality.

Of course, this is not a complete list of Uruguay's general international treaties. All the general obligations assumed by Uruguay under its conventions under the auspices of the United Nations are listed by the United Nations and could be consulted directly¹².

The Inter-American System

Uruguay's active role in the Inter-American System underscores its dedication to human rights. By ratifying key treaties like the American Convention on Human Rights and the Inter-American Convention against All Forms of Discrimination and Intolerance, Uruguay aligns its domestic laws with these international commitments. The principle of conventionality control ensures that national laws and constitutional interpretations conform to these international human rights treaties. This regional engagement complements Uruguay's global human rights commitments, highlighting a comprehensive and robust approach nationality.

Uruguay is deeply integrated into the foundational Inter-American System, a crucial part of which is the Inter-American Commission on Human Rights. The obligations under the Inter-American system are often more direct than in other treaty systems, and the principle of conventionality control may provide a more effective remedy for issues concerning nationality in Uruguay. This principle ensures that constitutional determinations and domestic laws in Uruguay are in conformity with the international human rights treaties the country has ratified, offering a robust framework for addressing human rights violations.

Further solidifying its commitment within this regional framework, Uruguay has signed and ratified several human rights treaties under the auspices of the Organization of American States (OAS). Notably, Uruguay signed the American Convention on Human Rights, also known as the Pact of San Jose, on November 22, 1969, and ratified it on March 26, 1985¹³. This convention is a significant instrument in the Inter-American human rights system, providing a comprehensive range of civil, political, economic, social, and cultural rights.

¹² Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?Lang=en .

The Inter-American Convention against All Forms of Discrimination and Intolerance was adopted on June 6, 2013. Uruguay was the first state to sign the treaty and ratified it on May 11, 2018. Additionally, Uruguay has shown its commitment to combating discrimination by adopting the Inter-American Convention against All Forms of Discrimination and Intolerance¹⁴. This convention was adopted on June 5, 2013, and entered into force on February 20, 2020. The adoption of this convention demonstrates Uruguay's dedication to addressing various forms of discrimination and intolerance, further strengthening the human rights framework within the country and the broader region.

These actions within the Inter-American system underscore Uruguay's ongoing efforts to uphold and enhance human rights protections, particularly in areas related to nationality, discrimination, and intolerance. The country's active participation in these regional human rights treaties complements its commitments under global human rights instruments, showcasing a comprehensive approach to human rights issues.

Statelessness and Nationality

Uruguay demonstrated a strong commitment to combating statelessness by acceding to major international treaties like the 1961 and 1954 conventions on statelessness and the 1984 Cartagena Declaration on Refugees. It has enacted national legislation, such as Law No. 19.682, to protect stateless persons, and actively participates in regional efforts, including various declarations aimed at addressing refugee issues and statelessness in Latin America. These actions align Uruguay with broader initiatives within the Organization of American States to uphold the right to nationality and eradicate statelessness.

Uruguay has demonstrated a strong commitment to addressing the issue of statelessness, as evidenced by its accession to several key international and regional treaties. In 2001, Uruguay acceded to both the 1961 Convention on the Reduction of Statelessness and the 1954 Convention

¹⁴ Inter-Am. Conv. Against All Forms of Discrimination and Intolerance, opened for signature June 5, 2013, OAS T.S. No. 69.

relating to the Status of Stateless Person.¹⁵ The accession to these conventions marked Uruguay's dedication to reducing statelessness and ensuring that stateless individuals are afforded a minimum set of human rights. Additionally, Uruguay adheres to the 1984 Cartagena Declaration on Refugees,¹⁶ which provides a broader definition of refugees in the Latin American context and addresses statelessness issues. This series of actions underscores Uruguay's role in the global effort to provide legal protections and essential rights to individuals without a nationality.

In addressing statelessness, international law is guided by two pivotal conventions and a significant regional declaration. The 1954 Convention relating to the Status of Stateless Persons defines statelessness and mandates a set of human rights for stateless individuals, including rights to education, employment, housing, identity, travel documents, and administrative assistance. The 1961 Convention on the Reduction of Statelessness furthers this by setting an international framework to prevent and reduce statelessness, emphasizing every person's right to nationality, and establishing safeguards against statelessness at birth and later in life.

Contrasting these global conventions, the 1984 Cartagena Declaration on Refugees, a non-binding regional instrument specific to Latin America, extends the definition of refugees, thus indirectly addressing statelessness. It includes individuals fleeing generalized violence, foreign aggression, internal conflicts, massive human rights violations, or other disturbances to public order. This broadened perspective encompasses a wider range of displacement causes, including indirect effects such as poverty, economic decline, and violence. The Cartagena Declaration, notable for its expansive approach, has been adopted by Uruguay and incorporated into the national laws and practices of several Latin American countries. The Cartagena Declaration has resulted in

¹⁵ Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175; Convention relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117. UNHCR Africa, Uruguay accedes to Statelessness Convention (Sep. 28, 2001), <https://www.unhcr.org/africa/news/briefing-notes/uruguay-accedes-statelessness-convention>.

¹⁶ Cartagena Declaration on Refugees, Nov. 22, 1984, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, <https://www.unhcr.org/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central> .

subsequent declarations, enhancing cooperation among these nations in addressing displacement and statelessness.

Uruguay's active participation in regional initiatives addressing refugees and statelessness is marked by its agreement to three major regional declarations. The San José Declaration of 1994 was visionary in its approach to internal displacement, laying the groundwork for future principles in this area. The Mexico Plan of Action in 2004, which Uruguay agreed to, focused on improving the asylum system, enhancing social and economic development for refugees, and crafting new legislation for refugee protection. Lastly, the Brazil Declaration and Plan of Action in 2014, also joined by Uruguay, redefined the term “refugee” to encompass statelessness and included comprehensive strategies for asylum processes, border safety, and addressing human rights violations. This declaration also acknowledged the need to confront migration caused by climate change and committed to the eradication of statelessness, highlighting Uruguay's commitment to regional efforts in addressing the complex challenges of refugees and stateless persons in Latin America.

The Organization of American States (OAS) is committed to ending statelessness, as evidenced by various actions and declarations by its member states, including Uruguay. This commitment is reflected in many actions, initiatives, and findings. This body to whom we submit this request for a thematic discussion, the Inter-American Commission on Human Rights (IACHR), has welcomed actions taken by several member states, including Uruguay, to protect the right to a nationality and to prevent and eradicate statelessness in the region. The IACHR has called on states to continue adopting measures to ensure the effective enjoyment of this right.¹⁷

The actions of countries like Panama, Uruguay, Haiti, Paraguay, Chile, and Colombia demonstrate a regional commitment to protecting the right to nationality and addressing statelessness. These efforts are part of a larger movement in the Americas, with countries establishing legal

¹⁷ Inter-Am. Ct. H.R., Press Release No. 42/19, IACHR and UNHCR Sign Agreement to Eradicate Statelessness in the Region (2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/042.asp .

frameworks to ensure the right to nationality for all people in the region, joining earlier initiatives by Mexico, Costa Rica, Ecuador, and Brazil¹⁸

Uruguay, specifically, has taken concrete steps towards this commitment. On November 7, 2018, Uruguay enacted Law No. 19.682 on Recognition and Protection for Stateless Persons. This law, which was the region's second specific law on the issue, includes a process to determine whether a person is stateless.

Nationality and Statelessness in the Inter-American System

In November 2014, the United Nations initiated a global campaign to eradicate statelessness by 2024, supported in Latin America and the Caribbean through the Brazil Action Plan. The Organization of American States (OAS) later endorsed this initiative, recognizing statelessness as a key human rights concern. Juan Ignacio Mondelli, UNHCR Chief in Uruguay, highlights the Inter-American Court of Human Rights' role in interpreting the right to nationality. The Court's decisions have emphasized the balance between state sovereignty in nationality matters and individual rights, focusing on preventing statelessness and ensuring due process in nationality issues.

In November 2014, the United Nations High Commissioner for Refugees (UNHCR) initiated a global plan to eliminate statelessness by 2024. This plan was embraced in December 2014 by 28 countries and three territories in Latin America and the Caribbean through the Brazil Action Plan. The Organization of American States (OAS) endorsed these initiatives in June 2016, recognizing statelessness as a significant humanitarian issue and a breach of human rights. These actions underscore the region's commitment to the right to nationality, a fundamental human right detailed in key American human rights documents.¹⁹

In an overview published in 2017, Juan Ignacio Mondelli, currently UNHCR Chief, Uruguay, explored the Inter-American Court of Human Rights' evolving jurisprudence on nationality and its link to preventing

¹⁸ Inter-Am. Comm'n H.R., Press Release No. 42/19, IACHR Welcomes Actions to Protect the Right to a Nationality and to Prevent Statelessness in the Region (2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/042.asp.

¹⁹ Juan Ignacio Mondelli, Notas sobre nacionalidad y apatridia en la jurisprudencia de la Corte Interamericana de Derechos Humanos, in XLIV Curso de Derecho Internacional 83 (Comité Jurídico Interamericano & Dep't de Derecho Internacional de la Secretaría de Asuntos Jurídicos de la Organización de los Estados Americanos eds., 2017).

statelessness, protecting stateless individuals, and resolving statelessness issues. Mondelli methodically summarized the Court's advisory opinions and judgments, presenting case facts, court guidelines, and insights regarding statelessness.

Nationality and the American Convention on Human Rights

Article 20 of the American Convention on Human Rights encompasses the fundamental right to nationality, comprising four distinct components: the right to possess a nationality, the right to acquire the nationality of the state where one is born if no other nationality is available, the right to safeguard one's nationality, which includes protection against arbitrary denials or deprivations of nationality, and the right to change nationality.

When considering the four components of Article 20, it is crucial to differentiate between the right to nationality and the right to a nationality, Mondelli indicates.²⁰ Notably, this right applies universally to all individuals, without regard to age. While states have the authority to establish criteria and procedures related to nationality, they must adhere to international legal principles, such as prohibiting arbitrariness and discrimination, in defining and regulating these aspects of nationality.

While states possess significant authority in defining their nationality criteria, the regulations must align with international legal parameters, including the prohibition of arbitrariness and discrimination.

Article 20.1 establishes the initial component, emphasizing the right to have at least a single nationality. The article implies a twofold entitlement: first, the right to acquire nationality from a state in accordance with its domestic and international obligations, and second, the right to avoid statelessness. While states possess significant authority in defining their nationality criteria, the regulations must align with international legal parameters, including the prohibition of

²⁰ Id.

arbitrariness and discrimination. Moreover, Article 20.1 underscores the prohibition of statelessness, obligating states to ensure that all individuals maintain a nationality at all times.

Article 20.2 further builds upon the right to nationality, specifically addressing the prevention of statelessness at birth. This provision stipulates that an individual must acquire the nationality of the state in whose territory they were born, provided they lack entitlement to another nationality. However, it exclusively guarantees the acquisition of the nationality of the birth country and does not encompass other scenarios, such as those covered by Article 4.1 of the 1961 Convention, which addresses statelessness prevention for individuals born outside the territory of a contracting state. Article 20.2 remains silent on situations where a person is born abroad, but one of their parents holds the nationality of a party state. In such cases, the principle articulated in Article 20.1 would obligate the party state to grant nationality to prevent statelessness.

Article 20.3 of the Convention delves into the prohibition of arbitrary deprivation of nationality, encompassing two distinct rights: the right to retain nationality throughout one's life, preventing arbitrary deprivation and loss, and the right to avoid arbitrary denial of nationality. States are granted the authority to prescribe lawful grounds for nationality deprivation, such as cases involving fraudulent acquisition. This provision applies regardless of whether statelessness results from deprivation or if the act of deprivation itself is arbitrary but does not lead to statelessness. Furthermore, it safeguards individuals against arbitrary denial of nationality. These components collectively underscore the multifaceted nature of the right to nationality and its intricate relationship with preventing statelessness while upholding individual rights and international legal principles.

Opinions of the Inter-American Court of Human Rights Concerning Statelessness & Nationality

In Advisory Opinion OC-4/84, the Inter-American Court of Human Rights addressed the content and scope of Article 20 of the American Convention on Human Rights in response to a consultation by Costa Rica regarding proposed constitutional reforms affecting the naturalization of foreign individuals. The reforms aimed to impose stricter conditions for acquiring Costa Rican nationality, including extended residency requirements and language and history exams.

International law places limits on the ability of states to regulate nationality.

Individual rights must be balanced against state prerogative.

The Court analyzed the issue in light of various Convention articles, concluding that while Article 20 was not violated overall, the reforms exhibited discrimination by granting preferential treatment to foreign women marrying Costa Ricans. The Court emphasized that while states have significant discretion to regulate nationality, international law imposes limits to protect human rights, emphasizing a balance between state prerogative and individual rights.

Nationality is a legal-political bond between an individual and a specific state.

In the subsequent case of Castillo Petruzzi, the Court reiterated its guidelines from OC-4/84, emphasizing that nationality is a legal-political bond between an individual and a specific state. It confirmed that international law imposes limits on state discretion to set conditions and procedures for acquiring nationality, even though domestic law primarily governs this area. In this case, Peru did not violate the right to nationality, as it did not question Chilean nationality, nor did it impose Peruvian nationality on the victims. The Court's judgment in Castillo Petruzzi further solidified its jurisprudence on nationality as a human right, highlighting the importance of distinguishing between the different components of Article 20 in allegations of violations.

In the Ivcher Bronstein case of 2001, the Inter-American Court of Human Rights addressed the arbitrary deprivation of nationality acquired through naturalization. The case

The Convention protects the right to nationality regardless of how it is acquired.

revolved around Mr. Ivcher, who had obtained Peruvian nationality through naturalization and subsequently renounced his original Israeli nationality. However, following his critical editorial decisions as chairman of a television company, the Peruvian authorities invalidated his nationality certificate without following due process, leading to a violation of his right to nationality as outlined in Article 20.1 and 20.3 of the American Convention on Human Rights. The Court underscored that the Convention protects the right to nationality regardless of how it is acquired, emphasizing that once nationality is granted, it cannot be arbitrarily deprived for discretionary reasons. The Court also highlighted that arbitrary deprivation of nationality can occur both through substantive violations and violations of due process norms, emphasizing that such actions are contrary to international human rights principles.

Furthermore, the Court clarified that Article 20.3 safeguards individuals from arbitrary nationality deprivation, irrespective of whether it results in statelessness or not. It established that the withdrawal

Individuals are protected from arbitrary nationality deprivation, irrespective of whether it results in statelessness.

of nationality is arbitrary when it occurs for reasons not provided for by law, and any administrative or judicial act that affects a person's rights derived from their nationality constitutes a violation of Article 20.3. The Court further found that the State's actions in this case constituted a breach of due process norms, illustrating that the arbitrary deprivation of nationality encompasses both substantive and procedural aspects. This landmark decision solidified the Court's jurisprudence on the right to nationality as a fundamental human right, setting clear boundaries on the state's authority to regulate nationality while emphasizing the importance of adhering to due process in such matters.

Denial of nationality can lead to statelessness and violates the rights to name, legal personality recognition, nationality, and equality before the law.

In the case of the Yean and Bosico Girls (2005), the Inter-American Court of Human Rights addressed statelessness and the right to nationality, legal personality recognition, name, and personal integrity within the context of discrimination, protective measures, and child protection.

The case involved two girls born in the Dominican Republic to Haitian parents, who were denied late birth registration, preventing them from obtaining Dominican identity documents, accessing education, healthcare, and social assistance. The Court found that the state's actions constituted an arbitrary deprivation of nationality, emphasizing that nationality should be granted to those born within a territory. It stressed that the denial of nationality could lead to statelessness and violated the rights to name, legal personality recognition, nationality, and equality before the law. The Court also noted the obligation to prevent statelessness and the duty to protect children's rights, highlighting the importance of best interests when interpreting Convention rights. Ultimately, the Court called for measures to facilitate timely birth registration, simplified late registration procedures, and compliance with legal requirements to prevent future statelessness situations.

In the Gelman case, issued in 2011, the Inter-American Court of Human Rights addressed the forced disappearance of María Claudia García Iruretagoyena de Gelman in 1976. She was pregnant at the time and later gave birth to her

The appropriate remedy to revocation or denial of nationality is the restoration of nationality.

daughter, María Macarena Gelman García Iruretagoyena, who was taken and raised by a Uruguayan couple under false identity. The Court recognized this as a complex violation of rights involving the alteration of identity and nationality, which affected the child's right to identity, as defined in the Convention on the Rights of the Child. The Court highlighted the intimate connection between identity and nationality, stating that deprivation of nationality could result from such forced disappearances. It found that Uruguay was responsible for arbitrarily depriving María Macarena Gelman of her Argentine nationality due to the circumstances of her birth. The Court emphasized that the violation of the right to nationality persists until the victim recovers their true identity. The appropriate remedy is the restoration of nationality, which the State must

ensure by providing the legal and factual means for the victim to regain their identity. This case underscores the importance of recognizing the right to identity and the duty of States to restore nationality in cases of forced disappearance.

In Advisory Opinion OC-21/14 (2014), the Inter-American Court of Human Rights responded to queries related to migrant children and their rights under various articles of the American Convention, the American Declaration, and the Inter-American Convention to Prevent and Punish Torture. While not explicitly referring to Article 20 of the Convention, the Court addressed issues related to the identification and international protection of stateless children. It emphasized that

The country of origin includes the country of habitual residence for stateless individuals.

the notion of international protection extends to stateless persons, and the country of origin includes the country of habitual residence for stateless individuals. The Court also highlighted that

international law on children's rights, particularly the Convention on the Rights of the Child, plays a crucial role in defining the scope of the American Convention when the rights holder is a child. It stated that border authorities should not reject foreign children, even if unaccompanied, and should conduct an initial assessment, including nationality determination, and referral to statelessness or refugee determination procedures if necessary. The Court's guidelines in OC-21/14 provide valuable guidance on the identification and protection of stateless children and emphasize the importance of fair and efficient procedures sensitive to age, gender, and diversity needs.

Regarding the expulsion of nationals, the Court clarified that Article 22.5 of the American Convention, which prohibits the expulsion of nationals, also applies to individuals who have lost or been arbitrarily deprived of their nationality, considering them as if they were nationals. However, two conditions must be met: the denial,

The determination of arbitrariness in denying nationality should include an analysis of domestic regulations and state obligations under international human rights law, such as the prohibition of discrimination or creating statelessness.

loss, or arbitrary deprivation of nationality must have been arbitrary, and the determination of arbitrariness should include an analysis of domestic regulations and state obligations under international human rights law, such as the prohibition of discrimination or creating statelessness. This interpretation aims to prevent individuals from being expelled from their own country, aligning with the Convention's goal to protect individuals from expulsion from their country of origin.

In the case of *Expelled Dominican and Haitian Persons (2014)*, the Inter-American Court of Human Rights addressed a complex situation involving individuals of Haitian descent in the Dominican Republic. The case involved individuals who were born in the Dominican Republic but faced difficulties in obtaining official identity documents due to their parents' irregular migration status. The Court examined the compatibility of Dominican laws, including the 2010 Constitution, with the American Convention on Human Rights. The Court concluded that the Dominican Republic violated the right to nationality, the right to recognition of legal personality, name, and identity, as well as the right to move and reside freely for those affected. It also emphasized the importance of preventing statelessness and ruled against the arbitrary denial of nationality. The Court ordered the Dominican Republic to take measures to recognize the nationality of the victims, nullify discriminatory legal provisions, and adopt legislative measures to ensure birth registration for all individuals born in the territory.

Conclusions on Inter-American Court Positions on Nationality and Statelessness

The Inter-American Commission on Human Rights has recognized the implicit right not to be stateless, which, although not explicitly stated in the American Convention, aligns with the right to identity. This right encompasses acquiring nationality at birth to prevent statelessness and prohibits arbitrary deprivation of nationality. The recognition of this right is crucial in guiding states to prevent and address statelessness, emphasizing their international obligations under the American Convention and highlighting the often-overlooked issue of statelessness.

In an overview published in 2019, Mondelli further explored the evolving law of statelessness and nationality in the Inter-American System.²¹ The Inter-American Commission on Human Rights (CIDH) recently acknowledged the principle that every individual has the right not to be stateless (Principle 22) within the Inter-American System of Human Rights. While international and regional instruments concerning statelessness and human rights do not explicitly establish this right, the recognition of the right not to be stateless is a way to encompass a set of rights applicable to individual's facing statelessness.

The American Convention does not explicitly address the right not to be stateless, and the Inter-American Court has not specifically discussed this right in cases related to statelessness. Nevertheless, a parallel can be drawn with the Court's approach to the right to identity, which is not explicitly stated in the Convention but is recognized. Similarly, the right not to be stateless can be considered an implicit right or one of the minimum components of the right to nationality under Article 20 of the Convention.

The right not to be born stateless ensures entitlement to nationality in the birth country if no other nationality is applicable, aiding both de jure stateless individuals and those facing barriers to acquiring another nationality. This right also supports those at risk of statelessness. Examining state practices, like Colombia's approach to nationality acquisition, is key to understanding the

²¹ Juan Ignacio Mondelli, *El Derecho Humano a No Ser Apátrida en la Convención Americana sobre Derechos Humanos*, at 172, in *XLVI Curso de Derecho Internacional* (46th : 2019 : Río de Janeiro, Brasil) (organized by the Comité Jurídico Interamericano and the Departamento de Derecho Internacional de la Secretaría de Asuntos Jurídicos de la Organización de los Estados Americanos, held from July 22 to August 9, 2019).

evolution of this international law. Additionally, this right prevents arbitrary nationality deprivation and mandates states to actively combat statelessness, offering a framework to reinforce international duties under the American Convention and highlighting the critical, often neglected issue of statelessness.

Uruguay's "Majority" Doctrinaire Nationality Policy

The Uruguayan state declares unequivocally that legal citizens are not nationals. They are foreigners with certain rights in addition to residency. Uruguay maintains a clear distinction between nationality and citizenship, as evidenced by various legal documents and opinions. Nationality is considered a permanent, unalterable status linked to birth or blood, whereas citizenship is a variable political relationship defined by residency.

There are many places to begin and from which to quote the current position of the Uruguayan state. In fact, choosing one is difficult. Nevertheless, we begin with a decision rendered by the Ministry of the Interior denying that a legal citizen was a national of Uruguay. It was issued on March 13, 2023, and provides the alleged philosophical basis of Uruguayan nationality doctrine, based on "natural law."

It is essential to clarify the conceptual difference between these two conditions ... that nationality and citizenship are two distinct individual conditions; nationality is a permanent status of individuals that does not undergo any alteration, regardless of the point on the Earth they inhabit, while citizenship, on the contrary, is variable and changes with the different domiciles that citizens acquire in the different societies into which humanity is divided (Professor Justino Jiménez de Aréchaga, *La Constitución Nacional*, Volume II, page 186); that nationality is the natural or original bond that links an individual to a state community (whether derived from birth, blood, or voluntary action), which produces certain consequences of law; citizenship is a political relationship defined by the internal law of each country that grants individuals who possess it political duties and rights such as the right to vote, hold public office, and be elected.²²

The Ministry of the Interior, National Civil Identification Department, Legal Department Opinion No. 08/2013, issued in 2013, stated even more clearly that legal citizens are not nationals of Uruguay.

²² Ministerio del Interior, Uruguay, 31 Dirección Nacional de Identificación Civil, Dirección/ Sub Dirección/ 31 Gestión Documental, Recurso de Revocación y Jerárquico Contra Resolución (March 13, 2023).

In our law, the concepts of nationality and citizenship are distinguishable, the former being of a real or sociological nature and the latter of a legal nature. This differentiation makes up the traditional concept that comes from the illustrious exponent of our Constitutional Law, Master Justino Jiménez de Aréchaga.

The latter held that nationality and citizenship are two completely different individual conditions; that nationality is a permanent state of individuals that does not undergo any alteration whatever the point of the earth they inhabit, and citizenship is on the contrary variable and alters with the different domiciles that men acquire in the different societies into which humanity is divided.

The source of citizenship, he added, is in the current domicile and not in the nationality.

That is why he says: "each state feels who its nationals are and declares it by its law; on the other hand, each state decides who its citizens are, and provides it by its law, since nationality corresponds to a certain sociological or psychological reality" (JUSTINO JIMÉNEZ DE ARECHAGA, *La Constitución Nacional*, Volume II, page 186).²³

Uruguay's Ministry of the Exterior restated the same denial of nationality to legal citizens in 2018 in Expediente No. 2018-4-31.

As you are aware, the regulations governing natural and legal citizenship in our country are established by Articles 73, 74, and 75 of the Constitution of the Republic. Legal citizenship has special characteristics; those who acquire it retain their original nationality. Citizenship and nationality are different things. Natural citizens acquire political rights as they acquire nationality, unlike legal citizens, which is a special case worldwide.²⁴

Uruguay has a simplistic understanding of the "nationality" of its legal citizens. The 2013 legal opinion referenced above provides that "the Uruguayan Passport [of legal citizens] reflects this precept; thus, in the space designated for the nationality of its holder, the geographical place of their birth is recorded."

Where did this originate? We must turn to the third jurist who bears the name Justino Jiménez de Aréchaga. He wrote the first edition of his multipart work on the Uruguayan Constitution in 1946. Over the years, it has changed little, and we find the following doctrinal position stated in the volume used today.

²³ MINISTRY OF INTERNAL AFFAIRS, NATIONAL CIVIL IDENTIFICATION DEPARTMENT, NOTARIAL LEGAL DEPARTMENT, Opinion No. 08/2013 (Montevideo, January 8, 2013).

²⁴ Dirección General para Asuntos Consulares y Vinculación, Ministerio de Relaciones Exteriores, 2018, in Expediente No. 2018-4-31.

First of all, as we have often pointed out, obtaining legal citizenship does not grant Uruguayan nationality. In American law, the institute most similar to legal citizenship is naturalization, but naturalization has the dual effect of granting the political rights inherent to a citizen plus the nationality of the country to which the naturalized person gains access.

The institute of naturalization implies the recognition of the principle that individuals can change their nationality. There is a voluntary element included in the very concept of nationality. However, in our system, the notion of nationality is stricter, and changing it by voluntary act or by government concession is prevented.²⁵

Justino Jiménez de Aréchaga opinion hardened over the years and remains a fundamental aspect of Uruguayan Constitutional law. In 1957, in *"Significado del vocablo uruguayo"*, *La Revista de Derecho, Jurisprudencia y Administración* he, he wrote:

The "Oriental" or the "Uruguayan" is the national of this nation. The debaters only differ on which of these denominations should be preferred. In other words, to describe an individual as "Oriental" or "Uruguayan" is equivalent to affirming that the individual is connected by a natural bond, one that the law does not create but merely recognizes in this nation. ... Now, we must decide who, according to current Constitutional Law, our nationals are, that is, the individuals who can be correctly understood by the designations "Oriental" or "Uruguayan."

Only those born within the territory of the Republic are recognized as nationals of this community. The Constitution reserves the designation - connotative of nationality - of "Oriental" for them. Only the "Orientals" are nationals, and only those born within the territory of the Republic are "Orientals."

So, if the nouns "Oriental" and "Uruguayan" are equivalent, it must be concluded that, in strict legal terms, only individuals born within the territory of the Republic are Uruguayan. This designation excludes ... legal citizens.

All of the major Uruguayan legal textbooks state the same principal today.²⁶ For example, Ruben Correa Freitas writes:

In summary, applying the logical-systematic interpretation criterion, it can be concluded that the Uruguayan Constitution of 1967 distinguishes between nationals and foreigners on one hand and between natural citizens and legal citizens on the other hand. According to the constitutional text, nationality and natural citizenship are synonymous, meaning that every man or woman born in Uruguay, or more precisely, within the territory of the

²⁵ Justino Jiménez de Aréchaga, *La Constitución Nacional*, Tomo I, Sección III.

²⁶ There is a growing body of legal jurists, though in the minority, who believe that the doctrinal position is incorrect, must evolve, is subject to an interpretative law, or must be modified under control of conventionality. Those jurists are not included here.

Republic, or the child of Uruguayan parents who settles and registers in the Civic Registry is a natural citizen (Article 74) and, therefore, a national, irrevocably according to Article 81.

The position persists and was officially delivered by Dr. María A. Sande, Director of the Directorate of Human Rights and Humanitarian Law at the Ministry of Foreign Affairs. Dr. Sande provided this testimony before a United Nations Commission on November 28, 2023. On that date, she testified:

When the Constitution refers to 'nationals,' it is referring to individuals born within the territory of Uruguay or children of Uruguayan parents.

Legal citizenship is for foreigners who come to live in the country.

The position of the Uruguayan state is that legal citizens are not nationals of Uruguay. We do not expect this position to be disputed by the current government.

Uruguay's Implementation of Statelessness Convention

Uruguay's commitment to protecting refugees and stateless individuals is undermined by a legal contradiction in its approach to statelessness. While the country allegedly follows international conventions and has laws to protect stateless persons, its domestic legal framework, particularly Law N°19.682, is problematic. This law, which differentiates between nationality and legal citizenship, paradoxically implies that stateless individuals gaining legal citizenship in Uruguay may remain stateless. This is so even though the law provides statelessness is terminated by the grant of legal citizenship.

Uruguay has a strong historical commitment to protecting refugees and stateless individuals but a potentially ineffective law implementing procedures to prevent statelessness. The country is a party to key international conventions related to refugees and statelessness. Uruguay's domestic legal framework, most outside observers believed, was aligned with international protection standards, including an extended refugee definition following the 1984 Cartagena Declaration.

In 2018, Uruguay adopted legislation to recognize and protect stateless persons, establishing procedures for statelessness determination and ensuring the protection of stateless individuals

who are not refugees.²⁷ The country's Migration Law includes safeguards for asylum seekers and prevents refoulement at its borders. Uruguay actively participates in creating a "regional protection space" in the Southern Cone, working with neighboring countries to address refugee issues.

A review of Law N°19.682 indicates that it is ineffective in ending statelessness given Uruguay's denial that legal citizens are nationals of Uruguay. Let us examine why.

Article 1 begins with a definition of stateless person. "The term stateless person," the law provides, "shall designate any person who is not considered as a national by any State under its legislation." The law sets up a procedure by which the declarative act of identifying stateless individuals is accomplished. While the law has numerous provisions, Article 15 is the provision we examine next. It provides, "The condition of stateless person shall cease when ... the stateless person has obtained the legal citizenship in the country, according to the established in article 75 and following of the Constitution of the Republic."

Here we encounter this simple topic that is the gateway to all other issues related to the denial of nationality to Uruguayan legal citizens. That simple topic is the contradiction that legal citizenship ends the condition of not being considered a national while denying Uruguayan nationality to the stateless person. A legal citizen who was stateless will remain stateless. Alternatively, the doctrinal position that legal citizens are not nationals may be incorrect and legal citizenship does, indeed, provide nationality. This is a binary choice. Either legal citizens are nationals or they are not. Only nationality ends statelessness.

The international community was warned about Uruguay's potential non-compliance with international stateless conventions in a report from 1952. In that report from the earliest years of work on ending statelessness, Uruguay stated that "stateless persons may not acquire Uruguayan nationality by law".²⁸ Uruguay further wrote, "no one may be naturalized as an

²⁷ Under law 18.076, refugees cease their condition of refugee where they obtain Uruguayan legal citizenship (art. 6 G)

²⁸ United Nations, ECOSOC, The Problem of Statelessness, E/223D, A/CN.4/56, 26 May 1952, English, Fourteenth session, Report by the Secretary-General.

Uruguayan.” We see the origin of the problem in this next assertion, “Nationality is distinct from citizenship” and “Citizenship represents the legal status of an individual with political rights and duties.”

THE ARBITRARY REVOCATION AND DENIAL OF NATIONALITY FOR LEGAL CITIZENS

The Uruguayan passport system reveals a significant contradiction in the country's approach to citizenship and nationality. Historically, passports differentiated between "natural" and "legal" citizens but did not label legal citizens as foreigners. However, since 1994, Uruguay has been classifying legal citizens by their birth nationality in passports, a shift based on the interpretation of constitutional law by Justino Jiménez de Aréchaga first published in 1946. This change has led to practical challenges and potential human rights issues. Legal citizens, previously recognized as Uruguayan nationals, are now identified as foreigners, nationals of their country of birth, whether true or not. We assert that the opportunity to discuss the contradiction in Uruguay’s statelessness law also gives rise to a time to discuss whether the revocation of the Uruguayan nationality of legal citizens in 1994 was arbitrary and a violation of international law. If so, the continued denial of nationality to legal citizens is also arbitrary and illegal.

Uruguay issued passports from 1830 to 1919, but the “modern” passport as an identification document was first implemented in Uruguay in 1919. From 1919 to 1994, Uruguay did not indicate that legal citizens were “foreigners” on the passports of those citizens. The history of the field reflecting nationality and the content of that field over time are contained in this table.

Passport Type	Name of Field	Content of Field
Type A (1919 – 1928)	Indicated after name of passport holder without a separate field	Ciudadano legal or Ciudadano legal uruguayo (translated into English on passports as “naturalized citizen”)
Type B (1928 to 1946)	Nationality	Ciudadano legal
Type C (1947 to 1969)	Nationality	Ciudadano legal or ciudadano legal uruguayo or legal uruguayo
Type D (1969 to 1994)	Uruguayan Citizenship	Legal

Type E (1994 to Present)	Nationality	Nationality for legal citizens is now indicated as the nationality of “nation of birth”, e.g., Polish, Austrian, Spanish, etc.
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The Early History: From 1830 to 1919

Before the end of the First World War, Uruguay issued oversized single-page documents commonly referred to as "passports" for three reasons. One of these reasons was to facilitate the entry and mobility of foreign individuals within its borders, which would now be classified as a right granted by a "visa." This authorization permitted a non-national of Uruguay to enter the country for a defined purpose and period and to travel within a designated geographical area. Passports were also issued to request safe passage for Uruguayan citizens or foreigners traveling from the country to another and were recognized by foreign authorities. Lastly, the passports served as a form of protection for Uruguayan citizens or foreigners traversing from a region controlled by the Colorado Party or National Party to a region controlled by the other party during the era of departmental political division and divided control of the country. These “internal passport” documents were issued by local police chiefs, not the Ministry of the Government or the Ministry of Foreign Affairs, and typically featured a smaller paper size than passports issued for entry into Uruguay by foreigners or for Uruguayans to travel abroad.

Passports from before 1919 are classified as “Type 0” in the accompanying table of this document.²⁹ An example of a passport issued in 1851 to a resident of Montevideo for travel abroad and an example of a “Passport for the Interior” issued for travel from Salto to Montevideo are included in the images in the Annex of this paper, showcasing the typical size, information, and appearance of these two documents.

²⁹ The categorization of passports into different "types" results from a comprehensive examination of such documents. Andrew Scott Mansfield has collected and analyzed 119 Uruguayan passports, leading to the creation of the classifications utilized in this research. The acquisition and review of historical passports remain ongoing, and this paper will be updated accordingly with newly acquired data or information that may challenge the existing classifications. Despite this, we have high confidence in the accuracy of the schema and evolution of the Uruguayan passport as described in this paper. A representative sample of the passports is available online here: <https://issuu.com/somostodosuy>

The “Modern” Passport: From 1919 to the Present

Type A Passport (1919 to 1928)

Type A Passports are composed of twelve numbered pages and have a soft paper cover. Despite being issued within Uruguay, they appear to have been granted by the Ministry of Foreign Affairs.³⁰ Measuring 13.5 cm in width and 19 cm in height, the physical dimensions of these passports is closer to the size of a modern passport and in the format of a booklet. The Type A Passport appears to have been in circulation from 1919 to 1928, though the end date is inferred from the introduction of the Type B Passport in 1928, discussed further below.

In contrast to contemporary passport design, the Type A Passport does not feature fields for either nationality or citizenship. Instead, there is a designated area in which the issuing government officer wrote the name of the passport holder, followed by one of the following designations, as recorded in the collected passports:

- Ciudadano legal
- Ciudadano legal uruguaya
- Uruguayo

It is noteworthy that the internal section of the passport, which contains the holder's nationality information as indicated behind his or her name, was also translated into French, Italian, and English by Uruguay. In the French section, "ciudadano legal" is translated as "citoyen naturalisé." In the English section, "ciudadano legal" is rendered as "naturalized citizen."

The request for protection, as indicated in these passports, is presented as follows:

In the name of His Excellency the President of the Republic Oriental of Uruguay, the Minister of Foreign Relations requests and requires all civil and military authorities of Foreign States to allow

³⁰ A more in-depth analysis of the consular and interior manuals and regulations governing passport issuance will enable the establishment of a timeline outlining the division of responsibility between the two relevant ministries. Such a development is not required for the purposes of this section, which shows the arbitrary revocation of Uruguayan nationality in 1994.

[Named Person, naturalized citizen] to pass freely and to afford to him every assistance and protection of which he may stand in need.

There is no distinction in the protection to be afforded to natural citizens and legal citizens. All are provided the same protection.

Type B Passport (1928 to 1946)

The creation of the Type B Passport marked a significant moment in the standardization of common passports on a global scale. The effort to standardize was led by the Provisional Committee of Communications and Transit at the Conference on Passports, Customs Formalities and Through Tickets, organized by the League of Nations, in October of 1920.

The United Nations Office at Geneva houses the Total Digital Access to the League of Nations Archives, which provides access to the original source materials, notes, minutes, letters, and other official document transmissions related to the passport standardization efforts before the Second World War. On October 21, 1920, the Conference on Passports, Customs Formalities, and Through Tickets adopted a Resolution that called for participating states to establish a uniform ordinary passport format that would be identical for all countries.

This resolution marked the beginning of a unified approach to international travel documentation. The resolution passed in 1920 aimed to simplify travel for citizens and reduce the formalities required for those holding the appropriate identity papers. By establishing a uniform type of ordinary passport, the resolution aimed to enhance the efficiency and convenience of international travel, with the added hope that this would promote greater understanding and cooperation among nations.

As detailed in Annex I of the October 21, 1920, Resolution, the new "International" passport was designed to consist of 32 pages, with 28 of those reserved for visas. The passport was to be written in both the national language of the issuing country and French, with a cover made of bound cardboard and measuring 15.5 cm by 10.5 cm.

Unlike the passports issued by Uruguay between 1919 and 1928, passports issued in accord with the model adopted by the League of Nations, as per the guidelines set forth in the Resolution of October 21, 1920, were required to include a field for “nacionalidad/nationalité.” The model passport provided in Annex I to the Resolution included the necessary information. This page additionally featured a distinct field for “lugar y fecha del nacimiento” (place and date of birth).

Before adopting the standardized model passport in accordance with the 1920 Resolution, two communications were sent by Uruguay to the League of Nations, shedding light on the nation's passport practices and understanding of nationality. In both communications to the League of Nations, the evidence suggests Uruguay did not distinguish between natural and legal citizens but considered both to have Uruguayan nationality.

The fact that legal citizens were considered nationals, or had the incidents of nationality, is reflected further in document sent by the Ministry of Foreign Affairs in response to a League of Nations request. This communication was a formal response to the League and was referred to as "397/25-197." The Ministry of Foreign Affairs then made a noteworthy admission in its March 24, 1925, response to the League of Nations:

“The Uruguayan passport (**which is issued only to nationals, whether natural or legal,** and to foreign women married to Uruguayans ...) is valid without the need for a visa in France, Italy, Switzerland, Belgium and Luxembourg.”

The robustness of the representation by the Ministry of Foreign Affairs is further emphasized by the French translation of the letter, which clarifies, when translated from French to English, that passports are only issued to "nationals, either by birth or through naturalization."

In November 1928, Uruguay officially adopted the standardized passport developed by the League of Nations. Along with its implementation, the Ministry of Foreign Relations published a booklet titled *Report and Regulations on the Passport* or, in Spanish, *Informe y Reglamentación Sobre el Pasaporte*.

The implementation regulations booklet was introduced by President Juan Campisteguy³¹ and commenced with a message from him.

“Taking into account that said regulation is framed within the legal provisions that govern the matter, that its adoption is convenient for standardizing procedures within the guarantee and security that consular officials who issue passports must follow; that the new model passport formulated is of practical application **and contemplates all the requirements that are required for broader recognition of this nationality and identity document...**”

Romeo Maeso, the Director of the Consular Section, authored the second part of the *Informe y Reglamentacion Sobre el Pasaporte*. Maeso notes the addition of a nationality field on the new passport. At no time was mention made that legal citizens were not “nationals” or that the nationality field presented any problems.

Information contained in the Type B Passports

It appears that the utilization of the Type B passport occurred between 1928 and 1948. The information shows that Uruguay began to incorporate the standard "nationality" field into the passport and that the “nationality” field was completed as either “uruguayo” or “ciudadano legal.”

Type C Passport (1947 to 1969)

The passport used by Uruguay underwent a significant change in 1947 with the introduction of the Type C passport. The former blue cover booklet, consisting of a cardboard front and back, was replaced by a green paper booklet adorned with a repeating pattern of the Uruguayan Coat of Arms. This change in design may have arisen from the collapse of the League of Nations and the absence of a standardized passport structure under the Chicago Convention of December 7, 1944, providing Uruguay with the opportunity to redesign the format of passports.

In the Type C passport, the field for "nationality" remained a critical aspect and was unchanged from the Type B Passport. A review of historical passports from this era showed a consistent

³¹ President Juan Campisteguy wrote his dissertation for his law degree on nationality and citizenship. It is entitled *Breves consideraciones sobre nacionalidad y ciudadanía* in 1877.

pattern in the completion of the nationality field. In the “nationality” field, natural citizens were designated as "uruguayo or uruguaya" while legal citizens were identified as "ciudadano legal," "ciudadana legal uruguaya," or simply "legal uruguaya." A field for the place of birth field was also present. However, there is no indication of assigning legal citizens a “foreign” nationality. The “nationality” of legal citizens was Uruguayan legal citizen.

Type D Passport (1969 to 1994)

The advent of the Type D passport represents a marked departure from previous passport formats in Uruguay. The recognizable blue booklet returns as the dominant form and its dimensions parallel those of the passport model instituted in 1930. The pages showcasing the identification details and likeness of the passport bearer are now arranged horizontally.

Adopting the Type D passport in 1969 marked a departure from previous iterations because the name of the field that was “nationality” was replaced with the name “Uruguayan citizenship.” The Uruguayan citizenship was filled either with the label "natural" or "legal." Again, it should be recognized that there is no information on these passports that suggests a “legal citizen” of Uruguay was treated as a foreigner or labeled with a foreign nationality.

Types E and E-VIZ Passports (1994 to Present)

The transformation from Type D to Type E passports took place between the months of February and October in 1994.³² This shift marked the replacement of the field "ciudadania uruguaya" with the now ubiquitous "nationality" field. The abruptness of this change is reflected in the lack of pre-printed information on the first passports to feature this revised interior, as they were handwritten on separate paper and appear to have been implemented as a temporary solution. These handcrafted versions persisted until at least sometime in 1995.

Given the long-standing tradition, dating back to 1919, of designating both natural and legal citizens as possessing Uruguayan nationality, with natural citizens denoted as "uruguayo" and

³² Research is underway to find and review the legal opinions, internal discussions, or any other information related to this dramatic change in 1994. Perhaps the Uruguayan state could produce all such materials, legal opinions, and communications related to this change during the thematic discussion.

legal citizens identified as "ciudadano legal," it would have been reasonable for this practice to have continued in the restored nationality field. But the practice did not continue. **A new dramatic reclassification of legal citizens as foreigners appears to have resulted instead.**

It is only in 1994 that legal citizens were effectively stripped of nationality or an incident of nationality in an arbitrary manner, without the passage of a law, based on ethnicity or original nationality of origin. From this date forward, the nationality field on passports was changed to show the nationality of Uruguayan legal citizens as nationals of the nation in which they were born. This change was made worse by the fact that not all legal citizens at the time were nationals of their nation of birth.

In 1998, the Type E Passport variant, or E-VIZ (for its visible machine-readable code section), was introduced in Uruguay. To be recognized by airport, airline, and immigration scanning systems, the nationality field must include a three-digit code for the nation granting the passport and, in addition, a three-digit code for the nationality of the passport holder. The code assigned to Uruguay is URY. A transition to this passport was mandated by ICAO to be completed by 2015. At this time, as previously explored in other published and ongoing research³³, the DNIC and the MREE, relying on Justino Jiménez de Aréchaga's 1946 textbook *La Constitución Nacional*, made the determination that legal citizens were considered non-national foreigners and therefore had to be denoted as such on international identification documents.

The basis for this significant reclassification is a series of legal discussions and opinions between the DNIC and the MRREE in 2013 and 2018. The only source of support for this reclassification is the opinion of Justino Jiménez de Aréchaga, which has been upheld and perpetuated by numerous legal scholars in Uruguay from the post-war era to the present day. Reliance on this 1946 legal opinion ignores the fact that legal citizens were described as nationals in international communications and treated as nationals on passports until 1994.

³³ Andrew Scott Mansfield, Esq., JD, MTS, BA, "The Constitutional Interpretation of Uruguayan Nationality According to the Uruguayan Constitutional Methodology," 29 ILSA J. Int'l & Comp. L. 443 (2023).

The Type E Passport has undergone another revision, incorporating an Radio-frequency identification (RFID) biometric chip that stores the data from the Visual Inspection Zone (VIZ - machine-readable code) section, facial scan, and fingerprint data. The coded information is then processed through various security and data-sharing systems throughout the traveler's journey, from ticket purchase to check-in, immigration processing, and arrival.

Again, we emphasize that the obvious contradiction in Uruguay's Law N°19.682 provides an opportunity to review whether legal citizens were treated as nationals and had all the rights and incidents of nationality prior to the change in passports in 1994. If so, the revocation was not by law, and therefore appears arbitrary. It would therefore be illegal.

THE HUMAN IMPACT AND THE NEED FOR DISCUSSION

The genesis of our civic association, Somos Todos Uruguayos, was the manifestation of Uruguay's nationality policy and denial of nationality to legal citizens as manifested in Uruguayan passports. With the growing interdependence of the world, international travel, security, and identification systems, Uruguayan legal citizens became aware they had been stripped of nationality in 1994 in the period 2005 to 2015 as new passports were introduced. An issue that at first seemed related to safe travel, diplomatic protection, security, and family unification during travel, as well as the ability to pass through borders at all, quickly grew. The impacts on the human lives of those denied nationality in Uruguay is multifaced. Here we provide some of those impacts.

1. Airlines reject the passport as valid for travel. Having a different nationality, including sometimes one that is not legally held, naturally causes concern for airlines.
2. Embassies reject the passport. Usually this occurs as embassy employees are not sure if a visa is or is not required, in some cases as the passport is not considered a valid document.
3. Migration officials reject or challenge the validity of the passport. For the same reasons, which can lead to periods of significant questioning and/or being deported back to Uruguay.

4. Ambiguity on consular and diplomatic protection is manifest and problematic. For example, does the individual enter a third country as a Uruguayan or the nationality on the passport? If it is the nationality on the passport, does Uruguay, should it seek to assert diplomatic protection at all, have a valid claim to protect a “national” that it has otherwise denied is a national?
5. Individuals who lose their citizenship of origin face the challenging decision of whether to accept a false nationality shown in their passport by the Uruguayan state, which can mean they can never return to their country of origin (as false information is clearly seen there) or complete a complex process where Uruguayan authorities accept the individual can be classified as having an “unknown nationality” (XXX). This classification allows the authorities to neither consider the individual as stateless (XXA) nor a refugee (XXB, XXC). The individual however has no nationality and bears a nationality code of XXX on the Uruguayan passport, even though the passport is not a “travel document” for those who are stateless or refugees in need of transit.
6. Children and adolescents cannot exercise their right to Uruguayan citizenship because legal citizenship, in addition to bearing no nationality, is not available until a person is 18, even if stateless. Even so, individuals who came as young children now have to accept, they will never be “Uruguayan” given the shift towards a more excluding interpretation Uruguayan identity associated with legal citizenship.
7. Cases have been reported of children facing discrimination within schools, unable to defend their Uruguayan identity. Most obvious cases are children of Uruguayan legal citizens who have reported to not being allowed to carry the national flag (as “foreigners”).
8. Those under 18 and often adults who are adult legal citizens, cannot represent their country (Uruguay) in official events (eg: sporting events) – these usually require nationality as a condition of participation.
9. Government communication increasingly refers to legal citizens as “foreigners”. This is incongruous with the issuance of “certificado de no-naturalizacion³⁴” issued for

³⁴ <https://www.gub.uy/tramites/certificado-ciudadania-no-naturalizacion>

residents requiring proof of non-naturalization. It is also incongruous considering Uruguay's history of Ministers, Senators, and other individuals of note, who are or were legal citizens.

10. Legal agreements, primarily bilateral agreements, are ambiguous in their reach where "nationality" is used. A number define nationality to include citizens, others only refer to nationals.
11. Individuals unable to take up employment in third countries that do not accept the passport as valid (eg: Switzerland, France) or not allowed residence in countries where their nationality is not allowed (a reality faced by Russian-born Uruguayan citizens in some EU countries).

What is it like to live as a "foreigner" who is a legal citizen of Uruguay? One story among many shows the contradictions, rejection, and pain.

Ms G escaped civil war as a young woman over two decades ago, seeking refuge in Uruguay and subsequently became a legal citizen. Her country of origin (Tajikistan) does not allow dual citizenship. However, she understood Uruguayan citizenship to imply nationality, and initially was able to travel as a Uruguayan, including with her Uruguayan family. At no point was she warned that she should not expect this right, including when applying and being given Uruguayan citizenship.

More recently, these rights have been revoked. The State has hardened its language more frequently defining legal citizens as foreigners. And her passport no longer offers the same protection, facing challenges when travelling and fear of being deported to the country of her stated nationality on her passport (Tajikistan). As this is false information, it is an obvious risk. She has also lost her right to visit her country of birth as has no valid document allowing her to visit family, including her own parents, as she does not hold a document stating the true citizenship (Uruguayan).

SOLUTIONS / PROPOSALS

Proposed Laws or Bills (Proyectos de Ley)

Two legislative proposals in Uruguay aim to address issues of statelessness and nationality. The first bill, focused on interpreting the Constitution, proposes extending nationality to legal citizens, addressing Uruguay's shortcomings in implementing statelessness legislation and restoring nationality to those unfairly deprived. The second bill, less comprehensive, suggests that passports for legal citizens indicate their Uruguayan status, albeit with limitations. Despite detailed parliamentary reviews and academic input, these bills face challenges in progressing, highlighting the need for greater transparency in the legislative process and underscoring ongoing debates about nationality, citizenship, and human rights in Uruguay.

Two proposed laws were introduced in Parliament in 2021. One seeks to interpret the Constitution, which, as we know, contains no mention of nationality but for the fact that it cannot be lost by natural citizens. Based on the silence of the Constitution, and the fact that the current doctrine mandating nationality be denied to legal citizens arises only from secondary legal opinions, one proposed law extends nationality to all citizens, remedying the failure of Uruguay's implementing legislation on statelessness, and restoring nationality to those arbitrarily deprived or denied the same. The other bill is a technical remedy that does not address statelessness. It would only provide that Uruguayan passports held by legal citizens identify legal citizens as Uruguayan, with some limitations provided below.

In 2021, a bill titled "Right to Equal Citizenship: Interpretation of Articles 77 y 81 of the Constitution of the Republic" was introduced to the Uruguayan Parliament. Over the past two years, it has undergone numerous hearings within the Parliamentary Human Rights Committee, during which various members of Parliament (Diputados) have repeatedly requested additional information from government agencies and academic experts. Despite the thorough examination and discussion, the bill has received, its passage before the upcoming election seems unlikely. However, if it were to pass, it would represent a significant step forward. The bill aims to address

and resolve issues related to statelessness and would restore nationality to legal citizens, thereby rectifying a longstanding issue in Uruguayan law.

This legislative proposal clarifies longstanding legal ambiguities resulting from Law No. 16.021 and Law No. 19.362. Both laws were originally created to address the nationality of children or citizenship of grandchildren of Uruguayan-born citizens. Some confusion today results from reading the laws more broadly than they were intended. It would therefore ensure all citizens are considered equally as Uruguayan nationals. In addition, it extends the right to Uruguayan nationality to the children of naturalized citizens, who currently, simply due to their age, do not have a legal pathway to become citizens – even if stateless or refugees. The primary objective is to clear up longstanding legal ambiguities and inconsistencies concerning the definitions of nationality and citizenship in Uruguay. The proposed changes include a redefinition of the criteria for being considered a Uruguayan national, which would extend beyond the place of birth to include children of individuals already recognized as natural citizens. Additionally, it would recognize as nationals those who obtain Legal Citizenship (*Carta de Ciudadanía*) through the Electoral Court, in accordance with the Uruguayan Constitution³⁵. The bill also mandates that identification documents, such as national ID cards and passports, clearly indicate Uruguayan nationality and reference the law number. The enactment of this law would be effective immediately upon its promulgation.

Our understanding is that this proposed law will move to debate and approval so long as the constitutional academic experts remain divided. Lawmakers in Uruguay are, rightly, exercising care not to overstep constitutional limits. We do not think this is an issue, of course, but it is another reason why a thematic discussion on the topic, guided by the Commission, would serve all parties to this current debate.

Another bill was submitted in the Uruguayan Parliament in 2021, specifically targeting the most acute aspect of the denial of nationality to legal citizens. However, this bill too has struggled to

³⁵ The *Carta de Ciudadanía* results in the individual having the identity of a legal citizen, which is closer to those associated with civic concept of nationality. The rights and responsibilities associated with the political concept of citizenship is provided after a period of three additional years, where the citizen is expected to register in the electoral registry (*Registro Cívico*)

make significant progress, being constantly referred for further review by academics and agencies. Legal scholars, some who are known to advocate the view that a plebiscite is required to amend the situation as per the Constitution, have been a significant barrier to its advancement. Nevertheless, we maintain that an interpretative bill would be sufficient to address these issues.

The Parliamentary Commission on the Constitution, Codes, Laws and General Administration reviewing this specific bill recently requested and received reports from various legal scholars and agencies on the constitutional and legal implications of the bill before them. Despite requests from this group, those reports, though delivered to Parliament, have not been provided as not considered public documents. This is a departure from Uruguayan transparency and open government. We hope that all such reports will be made public soon, perhaps as a result of this thematic discussion.

The proposed law, titled "Freedom of Movement for Uruguayan Legal Citizens," was introduced in September 2021. It is aimed at ensuring that Uruguayan legal citizens, while exercising their citizenship, enjoy the same rights as nationals of the Republic, particularly concerning identification, diplomatic protection, and freedom of movement. The bill promotes the principle of non-discrimination and favors interpretations that support equality of rights between nationals and foreigners.

Article 1: Stipulates that during the exercise of their citizenship, Uruguayan legal citizens should have the same rights and prerogatives as nationals of the Republic for identification purposes, diplomatic protection, and freedom of movement.

Article 2: To guarantee these rights, travel documents of legal citizens must indicate their status as nationals, along with the number of this law. The Executive Branch is authorized to update previously issued travel documents and issue necessary certificates to facilitate entry into countries that allow free entry to Uruguayan nationals. Additionally, it mandates government agencies to seek bilateral solutions for administrative border conflicts.

Article 3: The law will become effective from the date of its promulgation by the Executive Branch.

The accompanying explanatory memorandum highlights that since 2015, Uruguay has been subject to the recommendations of the International Civil Aviation Organization, which necessitates the "Nationality" field in travel documents. This regulation has inadvertently limited the freedom of movement for legal citizens of Uruguay.

The bill addresses the longstanding terminological confusion between "nationality" and "citizenship" in Uruguay's Constitution since 1830. The bill notes that currently, Uruguay doesn't offer a naturalization process. Therefore, individuals who were not born in Uruguay or do not descend from Uruguayan parents or grandparents can never acquire Uruguayan nationality but only legal citizenship. This situation results in travel documents of legal citizens displaying their country of origin in the "Nationality" field, causing confusion at international borders and often leading to entry denials.

The memorandum emphasizes that this discrepancy has personal and economic impacts on legal citizens, creating inequality between legal and natural citizens. It also underlines that this limitation infringes on fundamental human rights, such as physical freedom and freedom of movement, which are protected by both national and international laws.

Administrative Decrees

One or more administrative decrees could be issued by Uruguay's Executive Power to address key issues in the country's nationality practices. Uruguay's ability to undertake this is evidenced by past successful applications, such as the recent changes to passport regulations under Decree No. 281/022. The use of decrees demonstrates the government's capacity to enact regulatory changes and suggests the potential for a new decree to equate the rights of legal citizens with those of nationals, particularly in travel contexts, though it may not fully resolve the complexities of statelessness.

We wish to discuss whether a simple administrative decree, within the Executive Power, could solve some of the most troubling aspects of Uruguayan nationality practices. The decree power has been used in the past, without challenge, to modify the information on passports and the process by which they are issued.

For example, changes have been recently made to the issuance of passports, particularly affecting the grandchildren of Uruguayan citizens. The Decree No. 281/022, approved on August 31, 2022, modified the regulations related to the issuance of common passports, identity, and travel documents.

According to this decree, those entitled to apply for a passport include individuals born in Uruguay, children of Uruguayan parents born abroad, and their children, i.e., the grandchildren of Uruguayans. In the case of grandchildren of Uruguayan-born, this is under the protection of Law No. 19.362, dated December 31, 2015, which provides the right to natural citizenship, but not nationality. The decree highlights that for these citizens, the passport should be issued in the same way as they are issued for Uruguayan nationals.

A decree in Uruguay is a legal instrument issued by the executive branch of the government, typically the President or a Minister, to enact regulations, administrative measures, or to clarify or interpret existing laws. Such decrees have the force of law and are used to manage various aspects of governance.

Decrees can be used for a wide range of purposes, such as implementing or detailing provisions of new laws passed by the legislature, setting administrative procedures, changing organizational structures within government departments, or adjusting regulations in response to evolving situations. In the case of Decree No. 281/022, it is used specifically to modify regulations related to the issuance of passports and travel documents, adapting them to new needs or circumstances, such as extending eligibility to grandchildren of Uruguayan nationals. This demonstrates the decree's role in updating and refining policy implementation.

We believe that the Executive Power has the immediate ability to issue a decree providing that legal citizens be treated the same as “Uruguayan nationals” when travelling, restoring to legal

citizens a broader right to diplomatic protection, the right of return, and the right of free passage. While a decree may be unable to address the problems inherent in Uruguay's implementation of its statelessness obligations, it could assist legal citizens in other ways. One such change could easily be accomplished to make the passports of Uruguayan legal citizens is consistent with international standards, contained in ICAO guidance, most clearly expressed in Machine Readable Travel documents manual 9303 part 3, section 7.1. The current placement of nation of birth and the corresponding code for nation of birth on the passports of legal citizens appears to be a known error. That error according to ICAO, occurs when the "citizenship" (nationality) field incorrectly reports the country of birth rather than citizenship.

Alternative Uruguayan Legal Positions

Legal scholars in Uruguay do not uniformly agree with the doctrinal position that legal citizens are not nationals. Alberto Pérez Pérez challenged this traditional view, asserting that in a democratic state, nationality and citizenship are identical. He argued for a perspective aligned with democratic principles and international law and indicated that perspective is compatible with Uruguayan constitutional law and history. Martín Risso Ferrand, more recently, insists that Uruguay must work to overcome the "cultural shock" associated with conventionality control and treaty obligations and accept the authority of the Inter-American Commission and Court. He emphasizes the need for Uruguayan legal frameworks to evolve, integrating international human rights norms into constitutional interpretation. In May of 2022, Dr. Daoiz Gerardo Uriarte Araújo, Professor at the University of the Republic, and Director of the Human Rights Institute at the School of Law, testified before Parliament and emphasized the importance of conventionality control in Uruguay's laws, particularly after Supreme Court Ruling 365 in 2009, highlighting the evolving nature of nationality and citizenship and their impact on human rights. On that same day, Dr. Diego Gamarra testified that the constitutional methodologies used to assert, after 1946, that legal citizens were not nationals are flawed. He advocated for interpretations that protect individual rights, especially in the context of statelessness and citizenship.

Some legal voices in Uruguay strongly disagree with the “doctrinal” position advocating that legal citizens are not nationals. Some scholars are developing ways forward within the Uruguayan constitutional and parliamentary legal framework.

For example, Alberto Pérez Pérez³⁶, who served as Judge of the Inter-American Court of Human Rights, wrote an article entitled "Legal Citizens Are Not Foreigners," commemorating the fifty-fifth anniversary of the legal journal "La Justicia Uruguaya."³⁷ The focus of the article by Dr. Pérez Pérez's was "the legal status of naturalized citizens within the legal system" of Uruguay.

He identifies an "orthodox" position (which we had called the majority or doctrinal position in this request to the Commission) accepted since the 1940s and associated with Justino Jiménez de Aréchaga, that views nationality and citizenship as distinct and heterogeneous concepts. Nationality is seen as having a real or sociological character, while citizenship has a legal character. Dr. Pérez Pérez critiques this viewpoint and rejects it.

Pérez Pérez instead asserts that "the concepts of nationality and citizenship are identical, at least in a democratic state." Pérez Pérez attributes this view to "democratic thought, fundamentally from Rousseau, enshrined in the 18th-century revolutions in North America and France, and the 19th century in Latin America, and which in my opinion remains valid as an interpretation of our constitutional texts, from 1830 to the present."

Pérez Pérez indicates that the philosophical and legal basis of Uruguayan law and the historical evolution of the Constitutions of South America, particularly those available to the Uruguayan constituents in 1829, indicate the constituents (which in Spanish is equivalent to drafters) of the Constitution meant that all Uruguayans were the same in as defined by what we today call

³⁶ Alberto Pérez Pérez was a prominent Uruguayan legal scholar, human rights advocate, and an influential figure in constitutional law. Pérez Pérez's academic journey was marked by notable achievements. He graduated with honors as a lawyer from the Faculty of Law at the University of the Republic in 1960. He later pursued further studies in the United States, obtaining a Master of Comparative Law from Columbia University. He was elected Dean of the Faculty of Law at the University of the Republic in 1973 but was quickly deposed following the military dictatorship's intervention in the university. He returned to this position in 1984, serving until 1985. Pérez Pérez was notably a Judge at the Inter-American Court of Human Rights.

³⁷ Alberto Pérez Pérez, *Los ciudadanos legales no son extranjeros*, 111 *La Justicia Uruguaya* 297 (2009).

nationality. Dr. Pérez Pérez begins with the Constitution of Cádiz, the 1812 Constitution, drafted during the War of Independence when much of Spain was occupied by Napoleonic France. The Spanish, having retreated to Cádiz, provided the world with one of the original liberal constitutions. The Spanish constitution, with which the constituents were intimately familiar, offered foreigners who obtained a letter of naturalization the opportunity to become not only Spaniards, first, and then, if they wished, Spanish citizens. To move from a naturalized status to citizen new Spaniards had to obtain a "special letter of citizenship."

The term nationality, we are informed by Pérez Pérez, was not commonly used in 1812, nor even 1829. The Cadiz model was followed in the Constitutions of Mexico, Colombia, Peru, Bolivia, Ecuador, Guatemala, El Salvador, Nicaragua, Honduras, the Dominican Republic, and Costa Rica.

Pérez Pérez concludes, of course, that:

Consequently, all citizens (i.e., both legal and natural) as a whole form a category opposed to that of foreigners. This is true whether we call all citizens "nationals," or whether (for certain reasons of the constitutional text in our country) we reserve this term to distinguish natural citizens and designate legal citizens as "naturalized." In other words, every national is a citizen and every citizen is national (or "naturalized"), although not all may exercise political or active citizenship rights.

Pérez Pérez argues that legal citizens were, at least in effect, originally "nationals" in Uruguay for four reasons.

1. This position agrees with the liberal and democratic conceptions that inspired the Uruguayan constitution from the constituents of 1829.
2. There is no evidence that the original or subsequent constituents distinguished between nationality and citizenship.
3. A proper use of the Uruguayan constitutional interpretative methodology, ironically developed largely by Justino Jiménez de Aréchaga, supports that legal citizens are not foreigners. At the very least, Pérez Pérez indicates that he can find no interpretation of the

Uruguayan constitution using the official methodology that supports a denial of nationality for legal citizens.

4. Finally, more important than ever given the growing importance of conventionality control in the Inter-American system, denying nationality to legal citizens is contrary to public international law, both customary and conventional.

Dr. Pérez Pérez expands and supports each of these four points, but the logic and evidence in their favor are overwhelming. His work supports the position that the arbitrary revocation of Uruguayan nationality for legal citizens in 1994 is a violation of international law.

More recently, in the article "Towards a New Constitutional Interpretation. The Reality in Uruguay," Dr. Martín Risso Ferrand³⁸ critically examines the evolution of constitutional interpretation in Uruguay.³⁹ Risso Ferrand advocates for an expanded hermeneutical approach that includes international human rights norms and principles. He urges his colleagues to move beyond the traditional "lógico sistemático teleológico" method. He highlights the influence of political and ideological affiliations on legislative and judicial decisions, noting a concerning trend where constitutional compliance is often secondary to political objectives.⁴⁰ Through analysis of specific cases, Risso Ferrand observes a gradual shift in the judiciary towards a more human rights-centric approach, particularly in medical amparo cases, although this shift is not uniformly embraced. He underscores the need for comprehensive reform in constitutional hermeneutics, advocating for an approach that integrates international human rights law and respects the

³⁸ Dr. Martín Risso Ferrand is a distinguished Uruguayan legal scholar and professor. He serves as the Director of the Department of Constitutional Law and Human Rights at the Catholic University of Uruguay. Additionally, he holds the position of Full Professor of Constitutional Law, both at the undergraduate and graduate levels at the same institution.

³⁹ Martín Risso Ferrand, *Hacia una Nueva Interpretación Constitucional. La Realidad en Uruguay [Towards a New Constitutional Interpretation. The Reality in Uruguay]*, 12 *Estudios Constitucionales*, no. 1, 2014, at 239.

⁴⁰ We believe that the delay or inaction on the restoration of nationality and the repair of Law 19.682 concerning statelessness are driven by just such political concerns in light of the upcoming election and issues related to immigration and the view of immigrants. Risso Ferrand suggests that in Uruguay, despite a professed adherence to a purely legal method of interpretation, political, ideological, and societal factors have often influenced interpretations, albeit under the guise of legal reasoning.

dynamic nature of legal interpretation to maintain the rule of law and uphold constitutional and human rights norms in Uruguay.

Of greatest import to this request for a thematic hearing, Risso Ferrand suggests incorporating additional elements to make the method more comprehensive and applicable to modern contexts. These elements, listed below, require the incorporation of the decisions of the Inter-American Court of Human Rights, described earlier in this request, and we believe mandate the restoration of nationality and the repair of Law 19.682.

Incorporation of International Human Rights Law: Risso Ferrand emphasizes the importance of integrating International Human Rights Law and the principles of human rights into constitutional interpretation. This includes respecting the principle of preferring interpretations that best protect and guarantee human rights, regardless of whether they are sourced from constitutional or international law.

Role of the Inter-American Court of Human Rights (Corte IDH): The judgments and general interpretative criteria of the Inter-American Court of Human Rights should be considered in the process of interpretation, particularly in matters related to human rights. This involves a balance between adhering strictly to these criteria and considering them as a significant, though not the sole, guide.

Control of Conventionality: This concept refers to the duty of all public authorities to ensure that domestic laws and actions are compatible with the American Convention on Human Rights and its supplementary instruments. Risso Ferrand discusses different logical responses to this control, emphasizing the need to reconcile domestic law with international human rights standards.

Application of Principles in Constitutional Interpretation: Principles in constitutional law require an active and engaged form of interpretation. They are not applied mechanically or passively but require the interpreter to take a stance in each specific case, aligning their interpretation with the broader values represented by these principles.

Risso Ferrand identifies an item that should be a key topic at the requested thematic discussion. Those of us working in Uruguay often proceed under the assumption that Uruguayan politicians and legal scholars, coming from a legal tradition dedicated to human rights, social justice, political stability, and economic parity accept international law, the role of the Inter-American Commission on Human Rights, the function of the Inter-American Court on Human Rights, and the concept of conventionality control. Risso Ferrand informs us this may not always be correct.

In this article, for example, he identifies “cultural shock” experienced in Uruguay in dealing with the judgments of international courts such as the Inter-American Court of Human Rights (IACtHR). This phenomenon primarily stems from the historical and national perspective that challenges the acceptance of the supremacy of international courts over the country's supreme court. Despite Uruguay's sovereign acceptance of the jurisdiction of the appropriate Inter-American organs, exemplified in 1985 when Uruguay unanimously ratified the American Convention on Human Rights (ACHR) through its legislative bodies, the notion of an international tribunal superseding national jurisdiction is met with resistance.

Risso Ferrand helps us understand that this resistance is deeply rooted in traditional views of Uruguayan state sovereignty, where the national supreme court and Parliament are seen as the highest authorities on Uruguayan law and policy. The cultural and legal tradition in Uruguay has long upheld the primacy of national legal frameworks, making the deference to international norms and judgments that at first seem unusual or unfamiliar to Uruguayans a challenging concept to assimilate.

The conflict arising from this cultural shock is not merely judicial but extends into the realm of pre-judicial considerations. According to Risso Ferrand, it involves a clash between the established constitutional norms and the obligations imposed by international law, specifically the ACHR and the Vienna Convention on the Law of Treaties. The Vienna Convention, which Uruguay is a party to, clarifies that international treaties like the ACHR are binding upon the signatories, further complicating the national vs. international law debate.

Risso Ferrand's observation suggests that the Uruguayan judiciary and legal community are at a crossroads. On one hand, there is a need to honor international commitments and recognize the authority of international human rights law. On the other hand, there is an inherent tension in relinquishing aspects of national sovereignty and traditional legal practices.

We are here today, as representatives of legal citizens and immigrants, to say that there is no more time to wait for Uruguay to honor its commitments to end statelessness, repair Law No. 19.682, address the arbitrary revocation and denial of nationality to legal citizens, and otherwise cease offering historical and disputed constitutional interpretations as reasons that Uruguay cannot comply with the modern international norms of nationality. Despite any remaining culture shock, Uruguay must ensure compliance and we have faith in the inherent commitment of Uruguay to justice and equality. Uruguay is a fair and progressive society and a thematic discussion, exploring each of the issues identified in this request, is likely to result in a consensus approach to compliance.

In May of 2022, Dr. Daoiz Gerardo Uriarte Araújo, Professor at the University of the Republic, and Director of the Human Rights Institute at the School of Law, provided his views on the issue of nationality and its impact on statelessness in Uruguay.⁴¹ Dr. Uriarte believes that all laws and constitutional interpretations in Uruguay, after Supreme Court Ruling 365 in 2009⁴², must pass conventionality control before being analyzed for constitutionality.

Uriarte stated that all concerned parties recognize, since the Hague Conference of 1930, that there is an international effort to unify nationality and citizenship. Separating them often results in human rights violations and international difficulties. Citing the fact that Uruguay addressed nationality with two interpretative laws, Law No. 16.021 and Law No. 19.632, Uriarte said, “often,

⁴¹ Daoiz Gerardo Uriarte Araújo, Derecho a la Ciudadanía en Igualdad Interpretación de los artículos 77 y 81 de la Constitución de la República, Comisión de Derechos Humanos, Carpeta No. 2123 de 2021, No. 871 de 2022, (11 de mayo de 2022).

⁴² Blanca Stela Sabalsagaray Curutchet v. [Name of Respondent if available], Sentencia N° 365, Corte Suprema de Justicia de Uruguay, (19 de octubre de 2009), Ficha 97-397/2004.

interpretative laws need to be reinterpreted” because “there is an evolution in the concept of nationality and citizenship.”

Nationality, we are told, “is normally based on a special bond between the individual and the State” and it is not with “the land.” The bond examined, according to Dr. Uriarte, is the link of the individual with the State as an organization. Of extreme relevance to the proposed thematic discussion, Uriarte provided extended testimony on the right to a nationality and the obligations of the State concerning statelessness.

According to international conventions arising from refugee and statelessness situations, States can and should recognize and grant nationality to people who were not born in the country or do not have a blood link with it. This is about protection. Why? Because international norms require that everyone have a nationality. We say that the right to nationality is one of those rights ... called perfect subjective rights. Why? Because perfect rights do not admit limitation. One cannot have half a nationality. One either has a nationality or not. It is like the right to life, to physical integrity, to personality. One cannot limit them. Moreover, international norms, in Article 27 of the American Convention on Human Rights, explicitly state that in states of exception there are rights that cannot be limited. It is admitted that one can limit freedom of movement, freedom of the press, but not the right to life, to physical integrity, to freedom of thought; and neither can one limit the right to personality or to nationality.

Uriarte’s conclusion is direct and simple. “When situations arise in our country of people who are stateless,” he said, “we have the obligation to grant them nationality to solve this problem, for example, in the case of refugees, so that they can have the right to a passport.”

Dr. Diego Gamarra, professor at Catholic University Uruguay, School of Law, also provided his analysis of nationality and citizenship to the Human Rights Commission on that same day.⁴³ Dr. Gamarra begins by pointing out that the concept of nationality is referenced only twice in the

⁴³ Doctor Diego Gamarra, representante del Departamento de Derecho de la Universidad Católica del Uruguay, Derecho a la Ciudadanía en Igualdad Interpretación de los artículos 77 y 81 de la Constitución de la República, Comisión de Derechos Humanos, Carpeta No. 2123 de 2021, No. 871 de 2022, (11 de mayo de 2022)

Constitution of Uruguay. The references are so tangential nationality is not a concept subject to detailed constitutional regulation. Gamarra dismisses the constitutional methodology employed by Justino Jiménez de Aréchaga, first in 1946, as unsustainable and one that should be discarded. A consistent and wholistic understanding of the Constitution indicates that legal citizens are not and were not foreigners and that they had the incidents of what we would call nationality today.

Gamarra makes clear that if one accepts that the question of whether legal citizens are nationals is unclear, Uruguayan methodology indicates that when the interpreter is faced with different reasonable interpretations, the interpreter should opt for the one that is most protective of individuals' rights. Because affirming that legal citizens are nationals leads to those Uruguayan citizens having freedom of movement, diplomatic protection, protection from family separation at borders, and statelessness, the interpretation the legal citizens are nationals must be accepted as the proper interpretation.

The thematic discussion is not being requested to settle any internal matters of constitutional interpretation. Points of view such as those provided herein by Dr. Perez Perez, Dr. Risso Ferrand, Dr. Uriarte, and Dr. Gamarra could be considered at such a discussion. The reason they are included here is to ensure that the Commission understands that many legal scholars and politicians in Uruguay do believe that legal citizens are and have been nationals. When these opinions are combined with the practice of issuing passports to legal citizens that identified them as Uruguayan until the practice was changed in 1994, as well as international communications to the League of Nations that indicate legal citizens were nationals, the likelihood that Uruguay arbitrarily deprived its legal citizens of nationality in 1994 increases. All this evidence, as it accumulates, demonstrates the urgent need for a discussion to remedy the inadequacy of Law No. 19.682 to the extent it provides legal citizenship to end statelessness. At the same time, the discussion should include, given the topic is open and before all parties, concerning the arbitrary revocation and denial of nationality that begin in 1994.

SUGGESTED PARTICIPANTS

To resolve the contradiction in Uruguay's implementation of the obligations to end statelessness, discuss Law No. 19.682 and its assertion that the status of legal citizenship ends the condition of statelessness despite lacking nationality, and, given the topic is open, discuss whether legal citizens had their nationality arbitrarily revoked and then denied since 1994, we propose invitations to the following agencies or parties.

- Minister of Interior, Nicolas Martinell
- Minister of Foreign Affairs, Omar Pagliarini.
- Minister of Defense, Javier Garcia (Civil Aviation Authority – DINACIA – is the national counterpart for ICAO).
- President of the Institute of Human Rights, Jimena Fernandez.
- President of the Parliamentary Human Rights Commission, Oscar Amigo.
- President of the Electoral Court, Wilfried Penco.

CONCLUSION

A review of Uruguay's international obligations, the commitment of the Organization of American States and this Commission to end statelessness, as well as the opinions of the Inter-American Court of Human Rights, demonstrate the importance of a comprehensive discussion on nationality, citizenship, statelessness, and international law. The issue that leads the discussion is the contradiction in Uruguay's Law No. 19.682, which declares the status of legal citizenship in Uruguay ends statelessness while Uruguay denies legal citizens are nationals. But the discussion would allow the parties to consider the Court's broader rulings on nationality and whether the nationality of legal citizens was arbitrarily revoked in 1994.

As stated at the beginning of this request, it is essential for both state and non-state entities in Uruguay, along with broad civil society representation, to collaboratively examine the existing inconsistencies and either identify viable solutions or acknowledge potential misinterpretations

in constitutional matters related to the denial of nationality to legal citizens. Such collaborative discourse is vital for all parties involved - civil society, the state, and international bodies - to either move forward in agreement or acknowledge their differences.

We state again that we hope that through these discussions will allow us to circumvent the necessity for seeking precautionary measures or lodging complaints with this Commission. That is our hope, though testing that hope can only occur if this request is granted.