#IBELONG

# Mapping STATELESSNESS in Norway

**UNHCR Regional Representation for Northern Europe**
Stockholm, October 2015

# Mapping **STATELESSNESS** in Norway

UNHCR Regional Representation for Northern Europe
Stockholm, October 2015

Consultant: Ms. Hrefna Dögg Gunnarsdóttir
Cover photos: © UNHCR

This document is for general distribution. All rights reserved.
Reproduction and translation is authorized, except for commercial purposes, provided that UNHCR is acknowledged as the source.

Layout and design: BakOS DESIGN

# Contents


List of Abbreviations ........ 6

1. Introduction ........ 7

**1.1 Executive summary** ........ 8

**1.2 Statelessness across the globe** ........ 9

**1.2.1** Defining “a stateless person” ........ 9

**1.2.2** Causes of statelessness ........ 10

**1.2.3** Consequences of statelessness ........ 10

**1.3 The international and regional legal framework** ........ 11

2. Face of statelessness in Norway ........ 13

**2.1 Introduction** ........ 13

**2.1.1** Historical background ........ 13

**2.1.2** National legal framework ........ 15

**2.2 A statistical overview of the stateless population in Norway** ........ 16

**2.2.1** Specifics on the data used ........ 16

**2.2.2** The target population ........ 19

2.2.2.1 Groups covered by administrative data ........ 19

2.2.2.2 Groups not covered by administrative data ........ 24

**2.3 Qualitative analysis of stateless persons in Norway** ........ 25

**2.3.1** Introduction ........ 25

**2.3.2** The human face of statelessness ........ 26

**2.4 Conclusions and recommendations** ........ 26

3. Determination of statelessness and rights attached to the status ........ 28

**3.1 Introduction** ........ 28

**3.2 National legal framework** ........ 29

**3.3 Statelessness determination procedure or other procedures in which statelessness is determined** ........ 30

**3.3.1** Competent authority ........ 30

**3.3.2** Procedural aspects ........ 31

3.3.2.1 Initiating the procedure ........ 31

3.3.2.2 Questions of proof ... 32
3.3.2.3 Access to courts ... 33
**3.3.3** Conclusions ... 33
**3.4 Rights of applicants and recognized stateless persons** ... 34
**3.4.1** Rights of applicants during the statelessness determination procedure ... 34
3.4.1.1 Detention ... 34
3.4.1.2 Expulsion ... 35
**3.4.2** Rights of persons recognized as stateless ... 36
3.4.2.1 The right of residence ... 36
3.4.2.2 The right to work ... 37
3.4.2.3 The right to public relief ... 37
3.4.2.4 Identification and travel documents ... 38
3.4.2.5 Other rights guaranteed ... 39
**3.5 Conclusions and recommendations** ... 40

**4. Reduction and prevention of statelessness** ... 41
**4.1 Introduction** ... 41
**4.2 National legal framework** ... 42
**4.3 Acquisition and loss of nationality under the national legal framework and compatibility with international standards** ... 43
**4.3.1** Avoidance of statelessness at birth ... 43
4.3.1.1 Birth in the State's territory ... 43
4.3.1.2 Birth Outside the State's Territory ... 45
4.3.1.3 Foundlings ... 46
4.3.1.4 Birth on a ship or aircraft ... 46
**4.3.2** Avoidance of statelessness in the context of renunciation, loss, or deprivation of nationality ... 46
**4.3.4** Reduction of statelessness ... 48
4.3.4.1 Naturalization ... 48
4.3.4.2 Other modes ... 50
**4.4 Conclusions and recommendations** ... 51

**5. Concluding remarks and recommendations** ... 52

**Annexes** ... 55
**Annex I: Questionnaire sent to NGOs and other possible stakeholders** ... 55
**Annex II: Questions sent to the Asylum department of the Directorate of Immigration** ... 58
**Annex III: Questions sent to the Register Norway National Register** ... 59
**Annex IV: Request for break down of statistics sent to Statistic Norway** ... 60
**Annex V: Request for statistic sent to the Return department in UDI** ... 61
**Annex VI: Request for break down of data sent to the National Police** ... 62

# List of Abbreviations

| | |
|---|---|
| **CEDAW** | Convention on the Elimination of all Forms of Discrimination Against Women |
| **CPR** | Central Population Registry/Register |
| **CRC** | Convention on the Rights of the Child |
| **DUF** | Alien register (*Datasystem for utlendings- og flyktningsaker)* |
| **ECHR** | European Convention on Human Rights |
| **ICCPR** | International Covenant on Civil and Political Rights |
| **ICERD** | International Convention on the Elimination of Racial Discrimination |
| **IOM** | International Organization for Migration |
| **NID** | Norwegian ID Centre |
| **NOAS** | Norwegian Organisation for Asylum-Seekers |
| **NOSP** | Norwegian Organisation for Stateless Persons |
| **NPIS** | National Police Immigration Service |
| **NR** | National Register |
| **RRNE** | Regional Representation for Northern Europe |
| **SSB** | Statistics Norway |
| **UDB** | Utlendingsdatabasen |
| **UDI** | Norwegian Directorate of Immigration |
| **UNE** | Immigration Appeals Board |
| **UNHCR** | United Nations High Commissioner for Refugees |
| **UNCHR RRNE** | United Nations High Commissioner for Refugees<br>Regional Representation for Northern Europe |

# 1. Introduction

In November 2014, UNHCR launched a Global Campaign to End Statelessness in 10 Years. The strategy for the Campaign is set out in a Global Action Plan, which contains ten actions that need to be taken to end statelessness. States are encouraged to adopt National Action Plans that include those actions necessary to end statelessness in their own national contexts. In preparation for the Campaign, the UNHCR Regional Representation for Northern Europe (UNHCR RRNE) has, over the past three years, conducted statelessness mappings in each of the eight countries in the Northern Europe region. The mapping in Norway has been conducted by an independent consultant, Ms. Hrefna Dögg Gunnarsdóttir, working under the supervision of the UNHCR RRNE. The methodology has comprised desk research as well as consultations with governmental and non-governmental stakeholders, initially through replies to a questionnaire and thereafter through individual interviews and written correspondence. Draft versions of the mapping have also undergone an 'expert vetting' by Professor Terje Einarsen at the University of Bergen, and been shared for comments with the Ministry of Children, Equality and Social Inclusion, the Ministry of Justice and Public Security, the Norwegian Directorate of Immigration, the Immigration Appeals Board, the National Police Immigration Service, the National Register and with Statistics Norway. UNHCR RRNE is very grateful for all the cooperation extended and for the valuable input, feedback and comments received throughout these consultation processes.

The information gathered through the mappings of statelessness in the Northern Europe countries, consolidated in reports like the current one, is aimed at raising awareness and providing a better understanding among the stakeholders of the situation of stateless persons in the countries concerned, and the extent to which the international standards in this area are implemented in law and practice. UNHCR thus hopes that the findings and recommendations contained in the reports will contribute to the ongoing dialogue between UNHCR, the Governments concerned, civil society, and other relevant actors on what steps may need to be taken at national level in order to bring the respective countries' national legal frameworks, institutional capacities, and practices fully in line with the international standards in the area of prevention and reduction of statelessness and the protection of stateless persons. UNHCR, moreover, hopes that the reports can serve as a starting point for the development of National Action Plans to end statelessness in each of the countries.

The mapping of statelessness in Norway provides an overview and analysis of the numbers and basic demographic profiles of the persons who are stateless in Norway, and examines existing legislation and procedures governing the recognition of their status and enjoyment of rights. As the mapping was initiated in 2012, the statistics used for the analysis are generally derived from 2011 or earlier, though some of the data is more recent. The mapping highlights positive aspects of addressing statelessness in Norway, as well as current gaps and challenges, and suggests possible ways of improving the position of stateless persons in Norway.

The demographic section of this report consists mainly of quantitative analysis with some qualitative elements. The quantitative analysis includes a statistical overview and analysis, as well as a review of the registration methods and practices that provide the basis for the statistics. The identification methodology, i.e. how statelessness is assessed and how stateless persons are identified in Norway, is also examined.

The main purpose of the legal analysis section of the report is to investigate the implementation of the 1954 Convention relating to the Status of Stateless Persons[1] (1954 Convention) and the 1961 Convention on the

[1] UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html.

Reduction of Statelessness[2] (1961 Convention), as well as other relevant international and regional standards on statelessness in Norwegian law and policy. In analyzing current Norwegian approaches to statelessness, particular attention has been given to whether and to what extent Norwegian law and policy provide for the following ways of addressing statelessness: prevention of statelessness, identification and protection of stateless persons, and reduction of statelessness.

## 1.1 Executive summary

Norway is party to the major international and regional treaties relevant to the prevention and reduction of statelessness and the protection of stateless persons. Although Norwegian legislation does not contain express references to provisions in the two major statelessness conventions, through the "principle of presumption" (*presumsjonsprinsippet*) and the sector monism provisions found in the Immigration and Nationality Acts, the 1954 and 1961 Conventions are incorporated into Norwegian law and thus enforceable under domestic law where there is a conflict. Nonetheless, because the provisions of the Conventions have not been expressly adopted by domestic legislation, important gaps in the actual implementation of the standards remain.

Norwegian legislation contains no definition of a stateless person. Notably, however, Norwegian authorities report that they use the 1954 Convention's Article 1 definition, now customary international law. At the same time, Article 16 of the Norwegian Nationality Act impermissibly seeks to limit the scope of the definition of a stateless person by stating that a person will not be deemed stateless if, by his or her own act or omission, such person has chosen to be stateless, or if the person can in a simple way become a national of another country.

Norway does not have a dedicated statelessness determination procedure. In Norway, stateless persons are most often encountered by the authorities in asylum and other immigration procedures. Nationality or statelessness is registered as part of the identity assessment made during the asylum or other immigration process, but unified guidelines for assessing and registering someone as stateless are lacking. The absence of a determination procedure poses problems for the identification and protection of stateless persons in Norway. There is no recognized stateless status and likewise no legislative standards for the protection of stateless persons. Apart from a greatly reduced required period of residence prior to naturalization – for which they must have an independent ground – stateless persons in Norway have no freestanding rights based on their statelessness. Of particular concern is the absence of specific safeguards to prevent statelessness of persons born in Norway.

Available statistics on the stateless population in Norway are somewhat limited. While the Aliens Register and the Central Population Register record the nationality or statelessness of persons born in or residing in the country, the lack of a statelessness determination procedure appears to have contributed to inaccuracies in the registration of statelessness, as well as consequential imperfections in the statistics. For example, some people are recorded as nationals of states which they were born, though they are in fact not nationals.

Importantly, current Norwegian law has quite strong safeguards against statelessness with regard to persons born to Norwegian citizens abroad; foundlings; and loss, renunciation, and deprivation of Norwegian nationality. Some of these protections are very strong and indeed overcompliant with international standards.

NGOs working on questions related to the rights of immigrants in Norway are generally unaware of the particular challenges stateless persons may face. While some NGOs have been engaged with statelessness, it has generally been in the context of asylum and refugee issues. Though substantial, these efforts have not propelled statelessness into widespread recognition as a critical human rights issue in Norway.

2 UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: http://www.refworld.org/docid/3ae6b39620.html.

# 1.2 Statelessness across the globe

Statelessness is a global phenomenon. UNHCR estimates that there are at least ten million stateless persons worldwide. The following sections look at the definition of a "stateless person," the causes of statelessness, and the common consequences of being stateless.

## 1.2.1 Defining "a stateless person"

The definition of a "stateless person" is set forth in Article 1(1) of the 1954 Convention, which provides that a "stateless person" is "a person who is not considered as a national by any State under the operation of its law." The International Law Commission has concluded that Article 1(1) definition of a "stateless person" is part of customary international law.[3] The present report focuses on persons coming under this definition.[4]

The term "national" within the meaning of Article 1(1) refers to a formal bond between a person and a state, but it need not be an "effective" or "genuine" link.[5] The term "law" within the meaning of Article 1(1) "encompass[es] not just legislation, but also ministerial decrees, regulations, orders, judicial case law...and, where appropriate, customary practice."[6] Establishing whether an individual is considered as a national of a state requires an analysis of both the text of that state's laws, as well as their application to an individual's case.[7] The letter of the law, as well as the practice, must be examined, as some states may not precisely adhere to the letter of the law or might even "[go] so far as to ignore its substance."[8]

A person's nationality must be assessed at the time of determination of eligibility under the 1954 Convention, which is neither a historic nor a predictive exercise.[9] This means that, for the determination of whether a person is stateless, it is not relevant that that person is in the process of naturalizing or has the option to acquire the nationality of a given state. Accordingly, if, at the time of the determination, the person is in the process of losing, being deprived of, or renouncing a nationality, the person is still a national.[10] Furthermore, the 1954 Convention does not permit states to exclude from protection persons who have voluntarily renounced their nationality.[11]

---

3 *See* the International Law Commission, *Articles on Diplomatic Protection with commentaries*, 2006, p. 49 (stating that the Article 1 definition can "no doubt be considered as having acquired a customary nature"), available at: http://www.refworld.org/docid/525e7929d.html.

4 The UNHCR *Handbook on Protection of Stateless Persons* explains that "persons who fall within the scope of Article 1(1) of the 1954 Convention are sometimes referred to as "*de jure*" stateless persons," UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 7, (*"Handbook on Protection of Stateless Persons"*), available at: http://www.refworld.org/docid/53b676aa4.html. Individuals who have a nationality but are outside the country of their nationality and are denied diplomatic and consular protection accorded to other nationals by their state of nationality have been referred to as "*de facto*" stateless. *See* UN High Commissioner for Refugees (UNHCR), *Expert Meeting – The Concept of Stateless Persons under International Law ("Prato Conclusions")*, May 2010, pp. 5-8, available at: http://www.refworld.org/docid/4ca1ae002.html. The term "*de jure*" is not found in any international treaty and is not used in this report, yet it must be emphasized that the present report does not include "*de facto*" stateless persons.

5 UNHCR *Handbook on Protection of Stateless Persons*, 30 June 2014, para 54 and fn. 38.

6 *Ibid*, para. 22.

7 *Ibid*, para. 23, and fn. 12 (citing Articles 1 and 2 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws).

8 *Ibid*, para. 24.

9 *Ibid*, para. 50.

10 *Ibid*.

11 *Ibid*, para. 51 and fn. 34 (distinguishing, but not discussing, voluntary renunciation from failure to comply with formalities).

## 1.2.2 Causes of statelessness

Statelessness can be caused by numerous factors. Some of these factors are of a legal technical nature, where statelessness is caused by gaps in nationality laws or conflicts of nationality laws. States determine their own nationality laws, within certain limited restrictions imposed by international human rights law. The two principal legal frameworks governing states' nationality rules are *jus sanguinis* (citizenship by descent) and *jus soli* (citizenship by birth in the territory).

Conflicts in these laws are one of the several types of conflicts of law situations that can render a child stateless. For example, a child born in the territory of a *jus sanguinis* state to parents with nationality of a *jus soli* state would encounter problems obtaining any nationality if the national legislation of the two states relevant here do not contain provisions that would allow such a child to obtain citizenship.

Statelessness can also occur later in life. Some legal systems provide for mechanisms of automatic loss of nationality, for example after a long absence from the territory. Some states require that a person renounce his or her nationality before acquiring the nationality of that State. Withdrawal of nationality can also lead to statelessness if there is no adequate safeguard in place to prevent statelessness.

Another major cause of statelessness relates to the dissolution and separation of States, disputes about borders, transfer of territory between States, and the creation of new states. In the period of decolonization, groups of persons may have been left out of the initial body of citizens under the nationality legislation of the newly independent state. In Europe, many people were left stateless after the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia.

In addition to or underlying the aforementioned causes of statelessness, discrimination in nationality law or in practice against certain parts of the population and arbitrary deprivation of nationality contribute significantly to the creation or perpetuation of statelessness. Based on, for example, ethnicity or religious beliefs, a certain group within a State or populations living across multiple States are sometimes denied or deprived of nationality. Examples of such populations are the Rohingya in Myanmar, the Bidoon in the Arab Gulf States, and parts of the Roma population in Europe.

Discrimination on the ground of gender can also be a cause of statelessness. In some nationality laws, women are not able to pass their nationality onto their children. Moreover, women may lose their nationality upon marriage or upon dissolution of the marriage. The impossibility for women to transmit their nationality to their children is especially problematic in cases where children are born out of wedlock or where the father is unknown, has passed away, has left, is stateless or is a foreigner who is unable to transmit his own nationality or who is unwilling to take the necessary administrative steps to do so. Currently, 27 States still discriminate against women in their laws with regard to transmission of nationality to their children, the majority of which can be found in Africa, Asia and the Middle East.[12] Further, laws that discriminate against children born out of wedlock, for example by making it more difficult for them to acquire their father's nationality, can also contribute to statelessness.

## 1.2.3 Consequences of statelessness

Most stateless persons encounter many difficulties in every aspect of daily life. Stateless parents may experience difficulties obtaining a birth certificate for their children. Generally, stateless persons have problems obtaining personal identification documents. Without such documents, they have problems enjoying their basic rights. They may face obstacles accessing education or health care services, entering the labor market, traveling abroad, or owning land or other property. Stateless persons may not be able to open a bank account, inherit wealth, or get legally married. Stateless persons may be detained for prolonged

[12] UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 8 March 2014, available at: http://www.refworld.org/docid/532075964.html.

or repeated periods because they have no identity documents or right to stay in the country they are in. Consequently, stateless persons often face destitution and many stateless populations belong to the most marginalized and vulnerable groups worldwide.

Often, stateless persons are detained for periods of time, either because they cannot identify themselves or because they are considered to be illegal aliens, yet there is no country to which they can be returned. Due to the difficulty of obtaining employment legally, many stateless persons seek other means of acquiring an income, including black-market labor.

Often, stateless persons do not enjoy basic human rights protection. Even though the enjoyment of fundamental human rights is not formally dependent on citizenship status, many states extend human rights protection to their nationals only. As such, many stateless persons encounter social and economic hardship. Generally socially and economically excluded, stateless persons are vulnerable to abuse and at risk of psychological problems, such as feelings of hopelessness and depression.

## 1.3 The international and regional legal framework

The international legal framework relating to statelessness consists of international instruments and regional instruments. At the international level, two conventions deal specifically with statelessness: the aforementioned 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

The 1954 Convention guarantees to persons who are stateless the enjoyment of a minimum set of rights, while the 1961 Convention provides a set of safeguards for states to include in their nationality laws to ensure that statelessness be avoided. The 1954 Convention entered into force in 1960 and has 86 State Parties.[13] The 1961 Convention entered into force in 1975 and has 63 State Parties at the time of publication.[14]

In June 2014, UNHCR published the *Handbook on Protection of Stateless Persons*, which provides interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers, the judiciary, and others working on statelessness. The *Handbook* addresses the definition of a stateless person, procedures to determine who is stateless, and the legal status of stateless persons at the national level. UNHCR's *Guidelines on Statelessness No. 4*[15] address the prevention of statelessness at birth under the 1961 Convention. Developed on the basis of consultations with international experts and a broad range of stakeholders, the Handbook and the Guidelines will be used in the present report to elaborate upon the obligations under the Conventions.

Other international human rights instruments contain provisions relevant to issues relating to nationality and statelessness. Instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Elimination of Racial Discrimination (CERD) contain provisions on the right to a nationality, on equal treatment of men and women, and on the prohibition of discrimination.

---

13 UN Treaty Collection database, available at: https://goo.gl/5w3hiK.

14 UN Treaty Collection database, available at: https://goo.gl/ufiVL2.

15 UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness ("UNHCR Guidelines No. 4")*, 21 December 2012, HCR/GS/12/04, available at: http://www.refworld.org/docid/50d460c72.html [accessed 6 October 2015]

In addition to these instruments, the 1951 Convention Relating to the Status of Refugees expressly applies to stateless persons who otherwise meet the definition of a refugee, as does the 1967 Protocol by implication.[16] That is to say that, although not all stateless persons are refugees, a stateless person can be a refugee and, if so, the protection afforded refugees by the 1951 Convention and the 1967 Protocol apply to such a stateless person.

At the European regional level, the Council of Europe has adopted two instruments of particular relevance to the question of statelessness. The European Convention on Nationality entered into force in 2000 and currently has twenty State Parties.[17] In its Article 4, the European Convention on Nationality states that the rules on nationality of each State Party shall be based on, among others, the principle that statelessness shall be avoided. While broader in scope, covering a range of questions relating to the acquisition and loss of nationality, this instrument contains safeguards similar to those found in the 1961 Convention. Article 6(2) of the European Convention on Nationality, to which Norway is a signatory,[18] provides a safeguard against statelessness at birth similar, though not identical, to that of the 1961 Convention. In addition, Article 7 of the European Convention on Nationality, on the loss of nationality *ex lege* or at the initiative of a State Party, contains a safeguard against statelessness, as well.

The European Convention on the Avoidance of Statelessness in Relation to the Succession of States entered into force in 2009 and currently has six State Parties.[19] It establishes rules for the acquisition of nationality with a view to preventing statelessness in the context of state succession. In addition to these two specific instruments, the European Convention on Human Rights (ECHR) is also increasingly relevant to the prevention of statelessness and the protection of stateless persons. Although the ECHR does not explicitly protect the right to a nationality, the European Court of Human Rights has recognized in its jurisprudence that the impact of the denial of citizenship on a person's social identity brings it within the scope of Article 8 of the ECHR, which enshrines the right to respect for private and family life.[20] Furthermore, the ECHR sets out rights to be enjoyed by all persons within a state's jurisdiction, whether they are the state's own nationals, foreign nationals or stateless persons.

---

16 *See* 1951 Convention Relating to the Status of Refugees, Art 1(A)(2) ("Definition of the term 'refugee'").

17 Number provided by the Council of Europe's Treaty Office as of March 2015, available at: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=&DF=&CL=ENG.

18 *See* Council of Europe, European Convention on Nationality, states parties, available at: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=&DF=&CL=ENG.

19 Number provided by the Council of Europe's Treaty Office as of March 2015, available at: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=200&CM=8&DF=&CL=ENG.

20 *See Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: http://www.refworld.org/docid/509ea0852.html.

# 2. Face of statelessness in Norway

## 2.1 Introduction

Statelessness has generally not been viewed as a critical human rights issue in Norway. Despite a number of references to statelessness in the Nationality Act and Immigration Act, Norway does not have a procedure for determining statelessness, except for the general procedure used to assess an individual's identity within the context of immigration procedures. In 2010, the "No one is illegal" campaign was launched by a consortium of human rights and humanitarian organizations. Among the objectives of the campaign was to emphasize the challenges faced by persons living in Norway without legal status, including stateless persons. The Government was urged to establish various "regularization schemes," such as the granting of residence permits to undocumented persons, or to find other solutions to resolve their irregular status.[21]

The focus of NGOs, legal aid services, and other national actors that work with foreigners has mostly been on the asylum procedure and the integration of asylum-seekers and refugees. Little emphasis has been placed on the issue of statelessness.[22] Sporadic efforts have been made, such as the creation in 1999 of The Norwegian Organization for Stateless Persons (*Norsk Organisasjon for Statsløse Mennesker*, or NOSP). The organization led initiatives to address statelessness in line with Norway's international obligations according to the 1954 and 1961 Conventions and has made efforts to provide stateless persons living in Norway with food, as well as counseling on matters relating to their statelessness.[23]

Despite the increased focus on the status of rejected asylum-seekers, and an accordingly somewhat greater focus on statelessness, by organizations such as the Norwegian Organisation for Asylum-Seekers (NOAS),[24] there appears to be a general lack of awareness of, and attention to, statelessness in Norway.[25]

### 2.1.1 Historical background

Norway's nationality law is largely based on the *jus sanguinis* principle of citizenship. Furthermore, Norway has a longstanding tradition of disallowing dual nationality, a tradition which it maintains to this day. The first Norwegian Nationality Act was adopted in 1888. That act set forth rules for the acquisition of nationality based on *jus sanguinis*, but special provisions for the acquisition of Norwegian nationality by an application (*bevelling*) were also made for aliens.[26]

---

21 For a description of the goals of the campaign see: http://papirlose.no/wp/?page_id=4.

22 *See* Chapter 2.3 for discussion.

23 Email from Lucas Kaze, the founder of NOSP, dated 27 July 2012. The organization has been in the process of closing down among other reasons due to lack of resources, and their website is no longer active as of August 2015.

24 NOAS held a seminar on Statelessness as an emerging area of international protection on 9 October 2014. *See* summary, available at: http://www.noas.no/statsloshet-og-internasjonal-beskyttelse/.

25 For the purpose of this research project, a questionnaire was sent to number of NGOs, legal aid services, and research institutions, to which many of those who responded declared lack a of experience with statelessness.

26 *Norges Offentlige Utredinger* 2000:32 (NOU), *Lov om ervervog tap av norsk statsborgerskap (Statsborgerskapsloven)*', p. 8, chapters 7.1.1 and 7.1.2., available at: http://goo.gl/fUIoA8.

As was the case across the world, gender discriminatory citizenship rules were found in Norwegian law. A woman's nationality was determined according to the nationality of her father (in the case of an unmarried woman) or her husband (if married). Any changes to the father's or husband's nationality automatically affected a woman's nationality.[27] Similarly, a child's nationality was based on the father's nationality. Women were not permitted to transmit their Norwegian nationality to their children.

The Norwegian Nationality Act has been amended numerous times since its first enactment in 1888. The year 1924 brought the first revision, in which the rights of Norwegian women were strengthened. With that amendment, divorced women could retain their Norwegian citizenship as long as they resided in Norway.[28] Other amendments based on residence in Norway were also adopted, including a lengthened residence requirement from three years to five years for naturalization applicants. Other amendments included provisions requiring that applicants be financially self-sufficient. Apart from the liberalized provisions on citizenship for women, the amendments of 1924 were generally restrictive.[29]

In the aftermath of the Second World War, cooperation among the Scandinavian countries of Denmark, Norway, and Sweden was strengthened. This cooperation resulted in revisions of the nationality acts of all three states in 1950, at which time married women gained an independent status from the husband's nationality. At the same time, Norway lengthened the residency period required for naturalization from five to seven years. A shorter residency period, as well as other liberalized provisions, were provided for nationals of Nordic countries.

Since 1950, the Nationality Act has been amended a number of times. In 1968, the act was amended to provide for the acquisition of Norwegian nationality by notification for persons who had been domiciled in Norway for ten years in their childhood and youth. In 1979, rights of women and children were also strengthened: children born in wedlock would now, for example, also be able to obtain their mother's nationality.

The current Nationality Act became law on 8 June 2005 and entered into force on 1 September 2006. It imposes on naturalization applicants certain requirements of knowledge of the Norwegian language and society.[30] Despite significant interest among some constituents to allow for dual nationality, such a provision was not adopted.[31] Dual nationality remains prohibited under Norwegian law. The provisions of the law most relevant to statelessness will be discussed in detail below.

27 Brochmann, G., *EUDO Citizenship Observatory, Country Report: Norway*, p. 9.

28 *Ibid*, p. 2.

29 *Ibid*, p. 3.

30 The Norwegian Nationality Act No 51 from 2005, *Lov om norsk statsborgerskap*, ('Nationality Act'), available at: https://lovdata.no/dokument/NL/lov/2005-06-10-51. In March 2015 a law proposal to require training on the Norwegian society as mandatory for permanent residence (in addition to the existing language training requirement in the Immigration Act § 62 (1) (d), was circulated for comments, see: https://goo.gl/ZJu2gm.

31 In 1999, a preparatory committee was appointed to revise the Nationality Act. Its findings were published in the Norges Offentlige Utredninger 2000:32 (NOU) Act on acquisition and loss of Norwegian Nationality (*Lov om erverv og tap av norsk statsborgerskap*). The majority of the committee found that requirements for the acquisition of Norwegian Nationality should be liberalized. It recommended that applicants fulfilling the requirements be entitled to Norwegian Nationality by application. Further, it recommended that parents be equated in terms of children's acquisition. These recommendations have been enacted. Further, it recommended allowing dual citizenship. It further recommended that knowledge of the Norwegian language and society not be required of applicants for naturalization. These recommendations were ultimately not enacted.

## 2.1.2 National legal framework

Norway is a party to both the 1954 Convention and the 1961 Convention,[32] without reservation to either.[33] Norway is also a party to the 1997 European Convention on Nationality of the Council of Europe, the Convention on the Avoidance of Statelessness in Relation to State Succession of the Council of Europe, and various other international and regional conventions relating to stateless persons.[34]

Norway has a dualistic system of law, which means in principle that international and regional conventions to which the Norwegian state is a contracting party will not be applicable in Norway unless special measures have been taken under domestic law.[35] Importantly, however, certain Norwegian laws contain a general provision incorporating international legal obligations. When such a provision is present, the domestic law must defer to Norway's international obligations if the two are in conflict. This is known as "sector monism," and such provisions are found in Article 3 of the Immigration Act and Article 3 of the Nationality Act.

Although the Norwegian Immigration Act does not contain express references to the two major statelessness conventions, through the sector monism provisions found in the Immigration and Nationality Acts, the 1954 and 1961 Conventions are incorporated into Norwegian law and thus enforceable under domestic law.

Under Norwegian law, administrative authorities and Norwegian courts apply and interpret domestic law according to the "principle of presumption" (*presumsjonsprinsippet*), a doctrine of interpretation under which domestic legislation shall be interpreted in accordance with relevant international obligations. The presumption is that domestic law would not have been adopted or maintained if it were in conflict with Norway´s international obligations.[36] Under Norwegian law, domestic law is to be interpreted in accordance with international law in the event of a conflict. How the law is to be interpreted where the domestic law is silent is an open question under Norwegian law. During consultations undertaken during this mapping the Norwegian Directorate of Immigration (UDI) has stated that it applies international law even where the Norwegian law is silent. In 2014, the Constitution was amended and a new Chapter E now contains a number of explicit references to human rights.[37]

Where the existing domestic law is already in harmony with a provision of a convention to which Norway is party, no amendment to the domestic law is needed (*n. konstatering av rettsharmoni*). By contrast, when domestic law is inconsistent with an international obligation, conventions can be adopted in whole or in part through an Act of Parliament.

The Norwegian Immigration Act is, for example, understood to cover many articles of the 1951 Convention relating to the Status of Refugees.[38] Some international conventions are further implemented into Norwegian law by the aforementioned methods.

---

32 Ratified 19 November 1956. *See Utenrikesdepartementet, St. prp. Nr. 75 Om innhentelse av stortingets samtykke til å ratifisere konvensjonen om statsløse stilling av 28. September 1954, Stortingsarkivet* 1956.

33 On 23 May 2001, Norway made a declaration to the reservation and declaration made by the Republic of Tunisia upon accession to the 1961 Convention about the deprivation of nationality. The Government of Norway declared that the reservations made by the Republic of Tunisia "are contrary to the object and purpose of the Convention, as they aim at limiting the obligations that States undertake when acceding to it, the core obligation being to reduce statelessness." *See also* United Nations Treaty Collection, *Convention on the Reduction of Statelessness*, available at: https://goo.gl/ufiVL2.

34 Eudo, *International Legal Norms–Norway*, available at: http://goo.gl/B8kjUr.

35 Although not specifically stated in the Norwegian Constitution, this can be implied from a number of Articles, e.g. 1, 3, 49, 88 and 93.

36 Helset, P., and Stordrange, B., *Norsk statsforfatningsrett*, 1998, pp. 165-166.

37 *See* https://goo.gl/41Mzsy.

38 Vigdis Vevstad, *Utlendingsloven* (2011). *See also* Articles 3, 28-31, and 37 of the Act of 15 May 2008 on the entry of foreign nationals into the kingdom of Norway and their stay in the realm, *Lov om utlendingers adgang til riket od deres opphold her*, ('Immigration Act'), available at: http://goo.gl/s4Dgbh

Article 2 of the Human Rights Act No 30 of 1999 (*Lov om styrking af menneskerettighetenes stilling i norsk ret or Menneskerettighetsloven*) provides an example of the incorporation of human rights conventions. The article declares the ECHR and some of its protocols, the International Covenant on Economic, Social and Cultural Rights, as well as the ICCPR and some of its protocols as Norwegian law and binding as such.

# 2.2 A statistical overview of the stateless population in Norway

## 2.2.1 Specifics on the data used

Some statistics on the number of stateless persons currently living in Norway have already been published, and others were gathered from the authorities that may register persons as stateless for this report. Several gaps were identified.

The institutional capacity to produce statistics related to statelessness is somewhat limited. Also, issues relating to registration processes present challenges. The most important authorities whose work is relevant to the mapping of the stateless population in Norway are the Norwegian Directorate of Immigration (UDI), the National Register (*Folkeregisteret,* NR) and Statistics Norway (*Statistisk Sentralbyrå*, SSB).[39] Official statistics from these authorities are easy to obtain and are published on the websites of UDI and SSB. Where not published, existing statistics can be requested. However, this report's mapping of the stateless population in Norway required more detail than was available in the published statistics.[40] In order to obtain a more comprehensive picture of the stateless population in Norway, the relevant authorities were asked to provide a more detailed breakdown of the data. Although the contacted authorities were eager to assist, some of the requested statistics could not be provided due to a lack of human resources to produce new data or technical shortcomings in the original collection of data. For these reasons, there is limited information about the causes of statelessness in Norway, gender and age distribution, civil status, and other facts that would have been of great value in mapping the profile of the stateless population in Norway.

Further, each administrative organization that provides statistics has a different purpose for its registrations, which might lead to differences in the number of persons registered as stateless by different authorities for a particular reference period. UDI has statistics on permits granted, and the National Register has statistics on persons living in Norway with a permit. Statistics prepared by UDI are based on registrations of nationality/statelessness and are produced mainly for internal, administrative use. The legal basis of UDI's competence is found in the Immigration Act and Nationality Act, which provide that UDI has authority over immigration, international protection, and citizenship.

Statistics on persons with legal residence in Norway are based on registrations made by NR, the authority that operates the Central Population Registry (CPR).[41] NR is a part of the Norwegian Tax administration. The primary aim of registration of nationality or statelessness under the CPR is the use of this information by the taxing authorities. Accordingly, the CPR is the main source for tax collection, voter rolls, and general

---

39 The role of these authorities and the nature of the statistics they produce or publish will be explained further in Chapter 2.2. UDI registers and produces statistics, the National Register only registers statistics, while the SSB only produces statistics. E-mail from Kåre Vassenden 29 June 2015.

40 Questionnaires containing, amongst others, requests for data on the stateless population in Norway, were therefore sent to the national stakeholders. *See* Annexes 1, 2 and 3.

41 The legal basis for the registration can be found in the Act on the Central Population Register, No 1 from 1970, *Lov om Folkeregistrering or Folkeregistreringloven* ('Act on the Central Population Register'), see especially Articles 1 and 8 (1), available at: http://lovdata.no/dokument/NL/lov/1970-01-16-1.

population statistics.[42] In addition, any person who is born in Norway, as well as others who have been granted a Personal Identification Number (*fødselsnummer*), such as children born outside Norway to a Norwegian parent, are registered in the CPR. Those who have been granted what is known as a D-number are also registered in the CPR.[43]

SSB uses extracts from the CPR to produce and publish demographic statistics, but it is also able to produce statistics based on other data if it is of relevance to the descriptive and analytical use of statistics from SSB.[44] Based on the information received from CPR, SSB creates its own version.[45] SSB has also carried out research commissioned by UDI aimed at estimating the number of persons living in Norway without legal residence.[46]

The National Police Immigration Service (NPIS) has provided insight into internal registration, working methods, and data quality for this study.[47] NPIS registers statelessness on the basis of the information given by the applicant upon his or her application, such as an asylum application that is submitted to the NPIS.[48] As for publishing, it only publishes statistics on forced return.[49]

Improvements have been made in recent years to harmonize the working methods for registration by these authorities.[50] However, the CPR and UDI register different "populations," which means they cannot produce the same statistics. It is thus stated below when the relevant statistics are drawn from NR or UDI.

The CPR receives information from various sources, as different registration systems are connected with the CPR, such as the Alien Register and tax offices. As statelessness in Norway often occurs in a migratory context, the Alien Register (*Utlendingsdatabasen* or "UDB," updated through *Datasystem for utlendings- og flyktningsaker*, DUF) is of a great importance. UDI, NPIS, and the Immigration Appeals Board all use the UDB for information and registrations about applications from foreign citizens for visitors' visas, residence permits, international protection, and citizenship, as well as the handling of expulsion cases, the return of persons without a legal right to be present in Norway, and appeals.[51] The UDB covers stateless persons and has a special code for them. The information in the UDB is transferred to the CPR.[52]

UDI reports that the definition of a "stateless person" used by the police for the registration of stateless asylum-seekers is the 1954 Convention Article 1(1) definition.[53] UDI also uses this definition when assessing the nationality of asylum-seekers. The definition is used by the police and UDI for purposes of registration and establishing an individual's identity.[54] Within the different registration authorities, only limited published rules or guidelines could be found concerning the evaluation of statelessness when the nationality of an

---

42 *See "Dette er folkeregisteret"*, available at: http://www.skatteetaten.no/no/Person/Folkeregister/Dette-er-folkeregisteret/.

43 The D-number is a temporary social security number given to immigrants who are obliged to pay taxes in Norway or who seek medical treatment, but who have not been granted legal residence in Norway or who will be residents in Norway for less than six months. Informationavailable at: http://goo.gl/Vpc76q. For more information on the six-month rule, *see* NR's guidelines in *Skattedirektoratet – Rettsavdelingen, Håndbok i folkeregistering* (2011), p. 31.

44 Kåre Vassenden: *Bosteds- og bosattbegrepet*, SSB 2011, pp. 1-2.

45 *Statistisk sentralbyrå*, available at: http://www.ssb.no/innvbef_en/about.html.

46 Zhang, LC., *Developing methods for determining the number of unauthorized foreigners in Norway. Statistisk sentralbyrå* 2008.

47 Kåre Vassenden, *Rapport fra en gransking og sammenligning av UDI- og SSB-filer med overganger to norsk statsborgerskap i 2007, 3. utgave*, 2009.

48 Interview with the department of strategy and analysis within the NPIS, 21 August 2012.

49 *See* https://www.politi.no/politiets_utlendingsenhet/statistikk/.

50 Interview with SSB, 20 August 2012.

51 These authorities are also the main immigration authorities in Norway and thus bear responsibility to provide the CPR with information on visas, permits and asylum granted to migrants and refugees, Vebjørn Aalandslid and Lars Østby, Country Report Norway, *National Data Collection Systems and Practices*, Prominstat 2009, p. 7.

52 SSB, *New developments in the relations between the immigration authorities and Statistics Norway*, Joint ECE-Eurostat work session on Migration Statistics, Geneva 8-10 May 2000, p. 2.

53 Article 1(1) provides: "For purposes of this Convention, the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law."

54 Letter from UDI of 8 June 2015.

applicant is registered. For that reason, the respective authorities were contacted in order to gain a clearer understanding of the assessment of a person's statelessness.[55]

Although a definition of a stateless person is provided in NR's handbook,[56] how the definition is applied in practice is unclear, as is the relationship between NR and UDI in this specific context. It has been confirmed that in many cases the registration of UDI will be automatically copied by NR in the CPR,[57] but it is unclear in what circumstances the registration by UDI will be questioned by NR, and what happens in the event of inconsistencies.

The differences in registration methods become apparent when the statistics published by SSB, which are mostly based on the registrations in the CPR made by NR, are compared to the statistics published by UDI. In the statistics published by SSB, there is a special code for unknown nationality, but until recently, UDI registered persons of unknown nationality as stateless.[58] Differences in statistical information are especially apparent in the statistics on naturalized stateless persons in 2011, discussed further below.

In addition to the aforementioned sources, information about stateless persons in Norway was sought from other stakeholders, including the Norwegian Centre against Racism (*Antirasistisk Senter*). To determine the number of stateless persons not covered by the regular administrative registrations, a questionnaire was sent to these stakeholders, in which they were asked, among other things, if they had worked with or on behalf of stateless persons in Norway.[59] Most statekeholders noted that they had not come across stateless persons in their work. However, the Health Clinic for Irregular Migrants in Norway reported having worked with stateless persons.

Challenges were also faced when considering persons not covered by administrative registrations, and it is difficult to determine their number. Reports and articles have been written about and some estimations made of the number of people living in Norway who are not covered by administrative data,[60] known as the "hidden population" of stateless irregular migrants. The existing studies on this topic have used different methods, including door-to-door visits, death and birth records, and data from special regularization programs.[61] Other methods include surveys, for example through visits to sites or institutions where the targeted population is likely to be present, or estimations by experts on the number of the target population.[62] Governmental authorities or institutions that cover a specific sector can also have information on populations that are not covered by normal administrative data, for example information on the nationality of children enrolled in Norwegian schools, cases of emergency assistance at hospitals, visits to emergency shelters, or information from humanitarian organizations.[63] Because of the resources involved in gathering and analyzing such data, an estimate of the number of stateless persons not counted by administrative data was beyond the scope of the current research project. For this report, the numbers provided on the stateless population not covered by

---

55 *See* Annex II.

56 The Handbook states that a stateless person is a person who is not a national of any country. *Skattedirektoratet – Rettsavdelingen, Håndbok i folkeregistering* (2011), p. 193, para. 18.4. In Norwegian the wording is the following: *"At en person er statsløs, vil si at han ikke har statsborgerskap i noe land."*

57 Email from Thor Emil Granlund at NR to the researcher, dated 20 August 2012.

58 Interview with UDI, 20 August 2012 and Letter from UDI of 8 June 2015.

59 These stakeholders are NGOs that work with homeless persons, foreigners, and women.

60 *See*, *e.g.,* Solveig Holmedal Ottesen, *Papirløse migranter, En undersøkelse av situasjonen formennesker uten lovlig opphold I Norge, og humanitære tiltek for denne gruppen I andre europeiskeland* (2008), UDI, *Myte: "Det er 30 000 papirløse I Norge, og mange av dem er kriminelle"*, available at: http://www.udi.no/globalassets/global/aarsrapporter_i/aarsrapport, *see also* UDI, *Papirløse og Ureturnerbare?*, 21 March 2011, available at: http://www.udi.no/globalassets/global/aarsrapporter_i/aarsrapport-2010.pdf.

61 Jandl, M., The estimation of illegal migration in Europe, *Studi Emigrazione/Migration Studies*, Vol. XLI, March 2004, pp. 141-155 and Pinkerton, C., McLaughlan G. and Salt J. *Sizing the the Illegally Resident Population* in the UK Home Office Online Report 58/04, Home Office 2004; see also the Clandestino Project Final Report, available from: http://www.gla.ac.uk/media/media_147171_en.pdf.

62 Zhang, LC., *Developing methods for determining the number of unauthorized foreigners in Norway. Statistisk sentralbyrå* 2008, p. 4.

63 *Ibid*, p. 7.

administrative data are therefore limited to specific sectors, for example the number of unregistered stateless persons who have sought medical assistance from the Health Clinic for Irregular Migrants in Norway.[64]

## 2.2.2 The target population

UDI has confirmed that certain groups of people at high risk of statelessness, such as Palestinians, Bedoons, and stateless minorities from the Baltic States, are registered as stateless by UDI. However, no further information has been made available on the working methods when registering statelessness or the definition of statelessness used.[65] UDI registers the citizenship of an applicant in DUF from a drop-down menu that lists different countries of citizenship and a category for stateless persons. UDI did not until recently register any other categories relevant to this research, but now have a different category in use for applicants of unknown nationality.

Based on these sources, the stateless population covered by the statistics presented are (1) stateless persons seeking entry visas, asylum or other residence permits[66] (through application and approval rates, and through enforcement and deportation in case of rejection); (2) stateless persons living in Norway on the basis of a residence permit; [67] (3) and former stateless persons who have naturalized.[68]

According to the information from UDI on the origins of stateless persons seeking asylum in Norway, a significant number of persons registered as stateless in the first half of 2012 were Palestinians from the West Bank or Gaza, 45 out of 124 persons in total. Other significant numbers of stateless asylum-seekers came from Iraq (32) and Syria (23). This is consistent with information provided by other stakeholders. According to NOSP, most of the stateless persons counseled during the existence of the now-defunct organization were Palestinians. Other stakeholders, such as NOAS and the Norwegian Centre against Racism, shared similar stories.

### 2.2.2.1 GROUPS COVERED BY ADMINISTRATIVE DATA

#### Ad 1) Stateless persons seeking entry visas, asylum, or other residence permits

UDI processes all visa-applications, including those submitted by stateless persons.[69] UDI has a special code for "stateless" in its registration system. Published statistics on applications for visitors' visas include both persons registered as stateless and those indicated as being of unknown nationality.

According to UDI's statistics for the year 2011, a visitor's visa was granted to 564 stateless persons, which represents an approval rate of 77 percent for such a visa.[70] In 2010, 496 of 621 stateless applicants were granted a visitor's visa, respresenting 79.9 percent of stateless applicants in that visa category. The total number of approved visitors' visas in 2010 was 118,622 and the overall grant rate was 94 percent.[71]

---

64 Sincere thanks go to Kåre Vassenden, a statistic expert with SSB for his insight, help and expertise on the statistics presented in this research.

65 UDI (Statistics and Analysis Division) reply dated 10 August 2012 to a questionnaire prepared by the researcher in relation to mapping of statelessness in Northern Europe, dated 25 July 2012. It also has to be mentioned that NOAS noted that the Bedoon were registered as Kuwaitis by UDI and it is thus not fully clear if the registration of Bedoon is correct.

66 According to data received from UDI.

67 According to data received from SSB.

68 According to data received from UDI and SSB.

69 UDI, *How do I apply for visitor's visa*, available at: http://goo.gl/xP8r8n

70 UDI, *Annual Report 2011*, Table 8: Visitor's visas granted in first instance according to citizenship, available at: http://www.udi.no/globalassets/global/aarsrapporter_i/aarsrapport-2011.pdf.

71 UDI, *Besøksvisumvedtak fordelt på statsborgerskap 2010*, statistics available at: http://goo.gl/xRITBx.

Table 1 shows the grounds for the approval of first-time residence permits, visitors' visas included. In some circumstances, it is possible that a stateless person may have been granted a first-time visitor's visa and subsequently a student residence permit or another kind of permit.[72]

**Table 1:** Number of first-time residence permits granted to stateless persons by ground (2011)[73]

| | Protection | Work | Education | Family immigration | Visitor's visa | Permanent residence | Citizenship | Total |
|---|---|---|---|---|---|---|---|---|
| **Stateless** | 122 | 78 | 16 | 242 | 564 | 162 | 917 | 2,101 |

Table 1 shows the bases on which residence permits were granted to stateless persons in 2011. In the column "citizenship", it indicates the number of stateless persons who naturalized that year.

As shown in Table 2, some stateless persons are granted residence permits by Norway on the basis of family immigration. The number of stateless children who were granted a family immigration permit was 157 in 2011.

**Table 2:** Number of residence permits granted on ground of family immigration (disaggregated by family relation, 2011)[74]

| | | Family relation | | | | |
|---|---|---|---|---|---|---|
| | Number granted | Spouse/partner | Fiancé/e/ cohabiting partner | Children | Parent | Other [75] |
| **Stateless** | 242 | 74 | 9 | 157 | 1 | 1 |

The number of stateless children granted a family-based immigration permit in Norway warrants further research into this population. For example, research on country of origin or previous habitual residence, the grounds of their parents' residence permit, with whom they are uniting, and their living conditions in Norway might be explored.

In the following tables, a closer look will be taken at the statistics on asylum-seekers. The majority of stakeholders highlighted the difficult situation of rejected asylum-seekers who are stateless and remain in Norway.

As illustrated in Table 3 below, the number of asylum applications filed by stateless persons has been relatively stable during the last ten years, except for a notable increase in the number of applications in 2007-2010, with a peak in 2009, when 1,280 stateless persons applied for an asylum in Norway. The number of stateless applicants is roughly proportionate to the total number of asylum applications filed in 2007-2009. However, the number of stateless persons applying for asylum decreased in relation to the total number of applications in 2010 and 2011. Despite this decrease in the number of stateless applications, stateless applicants were the eighth largest group among asylum-seekers in 2011.

**Table 3:** Asylum applications, by stateless persons and total number of asylum applicants (2002-2011)[76]

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Stateless** | 391 | 366 | 298 | 209 | 237 | 515 | 940 | 1 280 | 448 | 262 |
| **Total** | 17,480 | 15,613 | 7,950 | 5,402 | 5,320 | 6,528 | 14,431 | 17,226 | 10,064 | 9,053 |

72 UDI (Statistics and Analysis Division) reply dated 10 August 2012 to a questionnaire prepared by the researcher in relation to mapping of statelessness in Northern Europe, dated 25 July 2012.

73 UDI, *Annual Report 2011*, Table 1: Number of first-time permits granted according to citizenship and type.

74 UDI, *Annual Report 2011*, Table 5: Family Immigration.

75 Foster children, siblings, aunts/uncles, etc. are categorized as "other."

76 UDI, *Annual Report 2011*, Table 14: Asylum applications according to citizenship, 2002-2011.

In the first half of 2012, the number of stateless persons seeking asylum in Norway was 124 (compared to 131 in the first half of 2011).[77] During the first half of 2012, stateless applicants were the ninth largest group of asylum applicants. Among the 124 stateless persons who applied for asylum in the first half of 2012, 70 persons were male adults and 10 were applying as unaccompanied male children. There were 21 stateless female asylum-seekers and no unaccompanied female children registered as stateless. The number of children accompanied by an adult was 23. The number of unaccompanied children in the first half-year of 2012 was in line with the relatively low number of stateless, unaccompanied minors indicated in Table 4.

**Table 4:** Unaccompanied stateless (claimed) children seeking asylum (2002-2011)[78]

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Stateless** | 12 | 18 | 4 | 11 | 3 | 3 | 9 | 18 | 27 | 13 |
| **Total** | 894 | 916 | 424 | 322 | 349 | 403 | 1,374 | 2 500 | 892 | 858 |

Upon request, UDI provided a further specification of the countries of origin of stateless asylum-seekers. According to its data, 45 stateless asylum-seekers in the first half of 2012 came from Palestine (the West Bank or Gaza), 32 came from Iraq, 23 from Syria, 4 from Lebanon, 4 from Kuwait, 3 from the Russian Federation, 3 from Thailand, 2 from Western-Sahara and 1 from the Czech Republic.[79] Although these figures only partially account for the origins of stateless asylum applicants in Norway, they give an indication of the origins of the stateless asylum applicants. It information also confirms that the majority of stateless asylum applicants appear to be of Palestinian origin.

The rate of positive decisions for stateless persons indicated in Table 5 for 2011 was 39 percent, which was substantially lower than the overall rate of 51 percent. A further breakdown showing the rate of rejections or positive decisions on asylum applications by stateless persons by country of origin could not be produced for this study.

**Table 5:** First instance (UDI) decisions on protection (asylum) of stateless applicants by outcome, 2011[80]

| Nationality of applicants | Total number of cases (decisions) | Convention refugee (asylum) | Other refugee status | Humanitarian grounds | Rejected | Percentage granted residence |
|---|---|---|---|---|---|---|
| **Stateless** | 432 | 30 | 2 | 90 | 191 | 39% |
| **Total number of decisions in 2011** | 10,493 | 2,810 | 766 | 439 | 3,813 | 51% |

It must be noted that Table 5 does not include decisions in which an asylum-seeker was returned in accordance with the Dublin regulation, nor other formal rejections, such as when a person applies from abroad. Nor does the table include the number of applications withdrawn before a decision was made.

77 Email from Marie Hesselberg, dated 22 August 2012.

78 UDI, *Annual Report 2011*, Table 15: Asylum-seekers, unaccompanied minors, according to citizenship, 2002–2011 (includes everyone claiming to be an unaccompanied minor when seeking asylum).

79 Email from Marie Hesselberg, dated 22 August 2012. It is important to note that the information about origin only covers 117 persons and thus the origin of seven persons is not covered. According to UDI those are most likely to have been born in Norway, email from Marie Hesselberg, dated 6 September 2012.

80 UDI, *Annual report 2011*, Table 16: Decisions on protection (asylum) according to citizenship and result.

Table 6 indicates the number of stateless persons refused entry to Norway in 2011, and the reasons for refusal.

**Table 6:** Entry refusal for stateless persons (by reason, 2011)[81]

| | Reasons | | | | | | |
|---|---|---|---|---|---|---|---|
| | Lack of funding | Stated purpose unlikely | No passport/ visa | No permit | Convicted | Other | Total |
| **Stateless** | 4 | 3 | 11 | 1 | – | – | 19 |
| **Total number of decisions made** | 298 | 182 | 182 | 81 | 30 | 101 | 874 |

Table 7 indicates the number of decisions to deport stateless persons in 2011 and the reasons for the deportation. As indicated, a total of 137 decisions were taken to deport stateless persons. The reasons for deportation were violations of the Immigration Act (86 decisions) and violations of the Penal Code (50 decisions). Deportation decisions where the person of concern is stateless comprise 4.4 percent of all deportation decisions.

**Table 7:** Deportation decision affecting stateless persons (by reason, 2011)[82]

| | | Reason for deportation | | | |
|---|---|---|---|---|---|
| | Total | EEA rules | Violation of Penal Code | Violation of Immigration Act | Other reasons |
| **Stateless** | 137 | – | 50 | 86 | 1 |
| **Total number of persons who received a deportation decision in 2011** | 3,143 | 635 | 794 | 1,713 | 1 |

As Table 8 shows, in 2011, 157 stateless persons without legal stay in Norway returned voluntarily or were forcibly returned by the police. Of these 157 persons, 70 returned voluntarily. Table 8 also contains a breakdown of the reasons for the decisions on deportation.

**Table 8:** Voluntary and forced returns of stateless persons (2011)[83]

| | Voluntary, assisted return | Forced return (removed by police) | | | |
|---|---|---|---|---|---|
| | | Asylum application rejected | Dublin decisions* | Other reasons** | Total |
| **Stateless** | 70 | 56 | 89 | 12 | 157 |
| **Total number of persons who returned voluntarily, or forcibly, in 2011** | 1,812 | 1,482 | 1,503 | 1,759 | 4,744 |

* *People whose asylum applications have been processed in another Schengen country, or whose asylum applications should be processed in another Schengen country according to the Dublin II Regulation.*

** *People who have been refused entry to Norway or deported from Norway, including people who have been convicted of a crime.*

Statistics on the number of stateless persons who, in 2011, were assisted to voluntarily return are consistent with statistics provided by the International Organization for Migration (IOM) in Norway, which assists applicants to return voluntarily to the country of origin or country of former habitual residence. According

81 UDI, *Annual Report 2011*, Table 12: Entry refusal decisions according to citizenship and basis.

82 UDI, *Annual Report 2011*, Table 13: Deportation decisions according to citizenship and basis.

83 UDI, *Annual Report 2011*, Table 20: Voluntary and forced returns.

to IOM, in 2011, 179 Palestinians applied for voluntary return, of whom 70 were assisted by IOM to actually return that year.[84]

Although assistance with voluntary returns is provided by IOM on behalf of UDI, 109 applications with IOM for voluntary return did not result in a departure, because the application was withdrawn, the applicant did not follow up on his/her application, or the applicant was stateless and did not have a right to enter or reside in any country and could thus not return voluntarily. For example, rejected Palestinian asylum-seekers whose country of former residence was Iraq cannot return to Iraq, since Iraqi authorities will not readmit Palestinians who have been away from Iraq for more than six months.[85] The same is true of many Gulf States and appears to be the case for Palestinians as well as other stateless persons who originate from the Gulf States.[86]

The number of rejected stateless asylum-seekers who were to be forcibly deported in 2011 was 56. However, many of the persons who received a final rejection of their asylum claim by the Norwegian authorities could not be deported. NPIS shared information, with the consultant contracted to undertake the mapping, on rejected asylum-seekers or persons whose applications for residence permits were rejected and who are currently awaiting deportation. According to the feedback received from NPIS, as of 30 September 2012, there were 259 persons registered as stateless living in asylum reception centers (*asylmottak*) in Norway and who had received a final negative decision on their application for protection.[87] Of these 259 persons, 77 were under 18 years old (32 girls and 45 boys).[88]

In addition, as of 30 September 2012, there were 208 persons registered as stateless and as living at a private address (outside the asylum reception centers) who had received a final negative decision on their application for protection. Of these 208 persons, three were under the age of 18 years.[89]

Under the Immigration Act, a foreigner who has received a final negative decision and has no valid residence permit has a duty to leave the country before a stated date (usually one month after the date of the final negative decision).

## Ad 2) Stateless persons granted residence in Norway

SSB's statistics, which are available on its website, cover persons who are registered in the CPR. These persons are in Norway on the basis of a residence permit valid for at least six months.

The total population of stateless persons with lawful residence in Norway increased considerably in the past decade, from 767 in 2004 to 3,118 in 2011. According to the published statistics (see Table 9), a total of 3,118 stateless persons were registered as living in Norway at the start of 2011. At the start of 2012, a total of 2,773 stateless persons were registered as living in Norway. In addition, 96 persons living in Norway in 2011 were registered as having unknown nationality. The analogous figure for 2012 was 91 persons.

---

[84] It should be highlighted that there is not a separate code for Palestinians in UDI´s statistics, who are registered as stateless. *See* IOM Statistics in Annex III.

[85] Meeting with IOM Norway, 23 August 2012.

[86] UDI's (Statistics and Analysis Division) reply dated 10 August 2012 to a questionnaire prepared by the researcher in relation to mapping of statelessness in Northern Europe, dated 25 July 2012. This issue was also highlighted at the IOM meeting, 23 August 2012, the NOAS meeting and the meeting with the Norwegian Centre against Racism, 22 August 2012.

[87] According to UDI, the comparable figure for April 2015 was 91 individuals.

[88] Email from NPIS, dated 16 October 2012.

[89] *Ibid*. As stated in the email, some of the rejected applicants registered as living in private homes may have left Norway without informing the Norwegian immigration authorities.

**Table 9:** Stateless persons and persons with unknown nationality in Norway on the basis of a residence permit, 2004-2011[90]

| | | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|
| **Male** | Stateless | 490 | 583 | 590 | 653 | 718 | 1,136 | 1,756 | 1,801 |
| | Unknown | 22 | 28 | 31 | 35 | 36 | 39 | 47 | 59 |
| **Female** | Stateless | 277 | 340 | 351 | 399 | 391 | 652 | 1,104 | 1,317 |
| | Unknown | 33 | 33 | 37 | 33 | 31 | 30 | 35 | 37 |
| **Total stateless** | | 767 | 923 | 941 | 1,052 | 1,109 | 1,788 | 2,860 | 3,118 |
| **Total unknown** | | 55 | 61 | 68 | 68 | 67 | 69 | 82 | 96 |
| **Total stateless and unknown** | | 822 | 984 | 1,009 | 1,120 | 1,176 | 1,857 | 2,942 | 3,214 |

## Ad 3) Stateless persons and naturalization

The number of stateless persons who have acquired Norwegian nationality has increased in recent years. According to the statistics published by UDI, 917 stateless persons acquired Norwegian nationality in 2011. Stateless persons who naturalized are the fourth largest group of persons who naturalized in Norway in 2011, after naturalized Somalis (2,100), Afghans (1,300), and Iraqis (940). The figure for 2011 represents a substantial increase in the number of naturalized stateless persons from 2010, when 426 stateless persons were naturalized.[91]

SSB figures for naturalized stateless persons in 2011 differ from those of UDI. As shown in Table 10, which is based on SSB's data, 790 stateless persons and 14 persons with unknown nationality were naturalized in 2011.[92] However, like UDI's statistics, SSB's statistics show an increased number of naturalized stateless persons in 2011 over 2010, when the naturalization figures were 423 stateless persons and 12 persons of unknown nationality.[93]

**Table 10:** Naturalizations (2002-2011)[94]

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Stateless** | 49 | 43 | 97 | 145 | 117 | 422 | 154 | 152 | 423 | 790 |
| **Unknown** | 7 | 5 | 4 | 4 | 5 | 11 | 7 | 2 | 12 | 14 |

The discrepancy in the statistics between SSB and UDI indicates a need to review the registration of stateless persons' naturalization.

### 2.2.2.2 GROUPS NOT COVERED BY ADMINISTRATIVE DATA

In order to shed light on the number of stateless persons not covered by administrative data, a questionnaire was sent to various NGOs and actors in the social services, asking if they had worked with or on behalf of stateless persons in Norway.[95] In addition, meetings were held with questionnaire respondents working with or on behalf of stateless persons.

90 SSB, *Statbank, 05196: Folkemengde, etter kjønn, alder og statsborgerskap*, available at: http://goo.gl/TDfOUC.

91 UDI, Who are the new citizens? *Annual report 2011*, available at: http://goo.gl/Qb9Sw4. For 2010 see UDI, *Annual report 2010*, available at; http://goo.gl/JapYoH.

92 SSB, *Statbank, Utenlandske statsborgere som har fått norsk statsborgerskap, etter tidligere statsborgerskap, tid og statistikkvariabel*.

93 *Ibid*.

94 SSB, *Statbank, 07114: Utenlandske statsborgere som har fått norsk statsborgerskap, etter tidligere statsborgerskap*.

95 The questionnaire sent and the list of recipients can be found in Annex 2.

The Health Centre for Undocumented Immigrants serves people irregularly in Norway, among whom are some stateless people. The Health Centre's statistics shed some light on the hidden world of stateless persons not covered by administrative data.

The Health Centre registers their patients according to the information given by the patient. From the opening of the Centre on 27 October 2009 until 30 June 2012, 1,400 first-time patients were registered with the Centre.[96] Of these patients, 10 were registered as stateless or of unknown nationality, and 47 patients were registered as Palestinian.[97] Again, these figures were based on information provided by the patients themselves. According to the Centre's statistics, two-thirds of their patients are one-time asylum-seekers who received a final rejection.[98] The Centre's impression is that most of them might fall into the category of being "unreturnable," including stateless persons living irregularly in the greater Oslo area.[99]

# 2.3 Qualitative analysis of stateless persons in Norway

## 2.3.1 Introduction

While UNHCR would have liked to conduct participatory assessments[100] with stateless persons living in Norway to enhance its understanding of the background and current situation of this population, it was not possible within the scope of this research project. This was due to the fact that the stateless population in Norway can neither be easily identified as a group, nor can their contact details be readily obtained in order to call individual stateless persons for interviews or focus group discussions, using UNHCR's participatory assessment methodology.

Instead, a questionnaire was sent to a number of stakeholders likely to come into contact with stateless persons in Norway. The goals were: a) to obtain a picture of the human face of statelessness in Norway from the viewpoint of stateless persons themselves; b) to identify the stakeholders likely to have information about stateless persons in Norway, who would be interviewed and c) to analyze the origins of stateless persons in contact with specific stakeholders, as well as the likely causes of their statelessness.

The stakeholders selected to receive the questionnaire work in different sectors, but all provide support in various forms. They included emergency shelters for women and children; free legal assistance for immigrants, especially women; and counseling on Norwegian society and social services for immigrants and other groups likely to include immigrants.[101] Most of the stakeholders responded that they had not come across stateless persons in their work. For that reason, the following information is mostly drawn from the four organizations that reported to have had contact with stateless persons: the Norwegian Centre against Racism, NOAS, NOSP, and the Health Centre for Undocumented Immigrants.

As discussed above, stateless persons in Norway usually appear in a migratory context. Their experiences with judicial and administrative processes has mostly been in relation to an application for asylum or a

---

96 The Statistics provided by the Health Centre for Undocumented Immigrants covers the period from 27 October to 30 June 2012.

97 Statistics provided by the Health Centre for Undocumented Immigrants. It has to be kept in mind that the given statistics do not necessarily show a population living in Norway at a later date, since there is no guarantee that the patients were still present in Norway.

98 The last third of the patients are foreigners that have never been registered or have overstayed their expired visa or residence permit.

99 Health Centre for Undocumented Immigrants, Meeting 23 August 2012.

100 UN High Commissioner for Refugees (UNHCR), *UNHCR Tool for Participatory Assessment in Operations*, May 2006, First edition, available at: http://www.refworld.org/docid/462df4232.html

101 *See* Annex II for the questionnaire and list of recipients.

residence permit. In none of these processes does their statelessness *per se* appear to have been given much attention, as discussed in greater detail in Chapter 3.

### 2.3.2 The human face of statelessness

Most known stateless persons in Norway appear to be asylum-seekers and refugees. Also, stateless persons are among unreturnable persons. In many cases, it is likely that asylum-seeking stateless persons have faced various obstacles due to their statelessness before arriving in Norway.

Even less appears to be known about stateless children in Norway. Stakeholders who specialize in advocacy, counseling, and research on the status of children, like UNICEF Norway, had not come across stateless children in their work. Moreover, UNICEF Norway is not familiar with any issues in relation to the situation of children born in Norway who have no nationality.[102] The Health Centre for Undocumented Immigrants, however, highlighted that children born to irregular immigrants in Norway and are not registered with any authorities are at risk of statelessness.

## 2.4 Conclusions and recommendations

Awareness of statelessness as a human rights issue independent of refugee or asylum-seeker status is generally low among government authorities, NGOs, and the public. There is a corresponding lack of research on the situation of stateless persons in Norway, as well as a lack of targeted assistance aimed at this group. For these reasons, it was difficult to get a picture of the origins, backgrounds, and profiles of stateless persons in Norway.

Because available statistics on stateless persons do not provide more detailed information on their origins and backgrounds, they are of limited value for capturing a picture of the human face of statelessness. Unfortunately, the scope of this research project did not allow UNHCR to conduct participatory assessments[103] with stateless persons in Norway, which would have been of value to learn more about stateless persons' profiles and situations. UNHCR would therefore recommend that such a participatory study be undertaken, as it would shed light on the situation of stateless person and how they are impacted by the current legal framework and practice in this area.

Although there is no formal statelessness determination procedure in Norway, individuals can be registered as stateless in the course of having their identity, including nationality (or lack thereof), established within the context of immigration procedures. Although the definition of a stateless person, as set forth in Article 1 of the 1954 Convention, is not found in Norway's domestic legislation, it is applicable in Norway, given sector monism in the area of immigration and nationality law. Indeed, UDI reports that it applies the Article 1 definition. Nonetheless, UNHCR recommends expressly incorporating the Article 1 definition into national law. Such an approach would dispel any possibility of ambiguity under national law.

Various government authorities are involved in the registration of persons on Norwegian territory, including persons who are stateless and who, for example, are seeking asylum or an entry visa. The different authorities register persons for different purposes, at different points in time, and in different registries, which are more or less connected and streamlined.

---

[102] Email from UNICEF Norway, dated 8 August 2012.

[103] UN High Commissioner for Refugees (UNHCR), *UNHCR Tool for Participatory Assessment in Operations*, May 2006, First edition, available at: http://www.refworld.org/docid/462df4232.html

UDI registers applicants for residence permits and maintains statistics on approvals and denials. It has also been involved in efforts to quantify the number of persons irregularly staying in Norway. UDI is thus the administrative office that can provide statistics on stateless persons who apply for visas, residence permits, and asylum.

NR registers in the CPR all persons with a legal residence permit in Norway, persons born in Norway, Norwegian citizens born abroad, as well as others who have been granted a Personal Identification Number. Hence, stateless persons with a valid residence permit in Norway who will be staying for more than six months are registered by NR in the CPR; however, it should be noted that such individuals have already been registered in the DUF by UDI when applying for a residence permit or, for example, asylum. The NR also has secondary data on persons who do not have legal domicile but have nonetheless been issued a D-number in Norway.[104]

The NPIS may also register persons as stateless. For example, asylum applicants who claim to be stateless are registered as such on the basis of the information given by the applicant upon his or her application, submitted to the NPIS. However, the NPIS only publishes statistics on forced returns.

The CPR incorporates information from various sources, as different registration systems are connected with the CPR, such as the Alien Register and tax offices. The UDB is used by UDI and NPIS for information and registrations about applications from foreign citizens for visitors' visas, residence permits, international protection, and citizenship, as well as the handling of expulsion cases, the return of persons without a legal right to be present in Norway, and appeals. The UDB includes stateless persons, who have a special code. The information in the UDB is transferred to the CPR.

Notably, the criteria and procedures used by NPIS, UDI, and NR for registering information that a person is stateless do not appear to be fully harmonized, as will be examined in greater depth in Chapter 3.3. Thus, the various authorities registering a person as stateless would be advised to review which definition and criteria they use for determining whether an individual possesses a nationality or is stateless. In particular, procedural standards for making conclusions as to nationality or statelessness ought to be harmonized. In this regard, UNHCR recommends that each authority who may register persons as stateless have working guidelines at their disposal. Such guidelines would include the 1954 Convention's Article 1 definition of a stateless person and would provide guidance on how to assess whether an individual is stateless.

Furthermore, UNHCR would recommend UDI and NR to examine how potential weaknesses in the current practices of the transfer of registrations between these two entities could be improved. This could include looking at ways of improving the procedures for handling transferred registrations, including corrections of prior errors.

[104] The D-number is a temporary social security number issued to certain persons. *See* Chapter 2.2.1

# 3. Determination of statelessness and rights attached to the status

## 3.1 Introduction

As noted in Chapter 1.3.1, a stateless person is defined in Article 1(1) of the 1954 Convention as "a person who is not considered as a national by any State under the operation of its law." This definition identifies the persons who are entitled to the core protections of the 1954 Convention, with additional convention rights depending on the individual's residence status, as discussed below. While ultimately only the acquisition of a nationality will end a person's statelessness, in situations where this is not yet possible, it is necessary to protect stateless persons. A formal statelessness determination procedure makes it possible to identify those persons who are entitled to the protection regime of the 1954 Convention.

For a statelessness determination procedure to be fair and efficient, a number of procedural safeguards must be taken into consideration. The procedure must be accessible for stateless persons,[105] and while the procedure is underway, applicants should be entitled to certain rights.[106] During the procedure, stateless persons may not be detained for reasons relating to their statelessness. Where they are detained, it must be a measure of last resort and the person may not be held with convicted criminals or individuals awaiting trial.[107] Moreover, pending the outcome of the procedure, the applicant may not be expelled from the State where the procedure is ongoing.[108]

The 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, with some protections applicable to all stateless persons and others dependent on the precise legal status of the individual.[109] When a person's statelessness has been determined, he or she is entitled to the core rights of the 1954 Convention.[110] In the first place, this means granting the right of residence, which is not explicitly set forth in the 1954 Convention, but follows from its object and purpose.[111] Also, stateless persons have a right to work, based on Article 17 of the 1954 Convention. Apart from the 1954 Convention, other instruments also provide content to the protection of stateless persons. Human rights law instruments, including the ICCPR,

---

105 UNHCR *Handbook on Protection of Stateless Persons*, paras. 68-70.

106 *Ibid*, paras. 144-146.

107 *Ibid*, paras. 112-115.

108 *Ibid*, paras. 72 and 145.

109 For a detailed discussion, *see ibid*, paras. 132-139. *See also ibid*, paras 14 and 16 (on the status of a stateless person and attendant rights even prior to a formal determination of his or her statelessness).

110 Some convention rights apply to all stateless persons in a state's territory or otherwise subject to the state's jurisdiction. Others are dependent upon factors such as the type of residence the individual holds. *See ibid.*

111 *Ibid*, para. 147.

the International Covenant on Economic, Social and Cultural Rights (ICESCR), the CRC, CEDAW and in Europe the ECHR, enumerate certain rights relevant to the protection of stateless persons.

The 1954 Convention foresees that stateless persons who are "lawfully in" a State party (in French *"se trouvant régulièrement"*), are entitled to, *inter alia*, protection from expulsion (Article 31).[112] For stateless persons to be "lawfully in" a State party, their presence in the country needs to be authorized by the State. The concept encompasses both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all personal circumstances of the individual. The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention, applicants for statelessness status who enter a determination procedure are therefore "lawfully in" the territory of a State party. By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not "lawfully in" the country.[113]

# 3.2 National legal framework

References to statelessness can be found in the Norwegian Nationality Act, although neither this Act, nor the Immigration Act, contains a definition of a stateless person. As discussed in Chapter 2.1.2 of this report, both acts do, however, contain provisions incorporating international law in general, which would include the definition contained in the Convention.[114]

Notably, Article 16 of the Norwegian Nationality Act states that a person who by his or her own act or omission has chosen to be stateless, or who in a simple way can become a national of another country, is not deemed to be stateless. This language is in contravention of Article 1 of the 1954 Convention, which asks only whether someone is considered as a national of any state. An individual's nationality is to be assessed as of the time of the determination. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question.[115] Likewise, with regard to the determination of a person's statelessness, the 1954 Convention does not inquire into the causes of an individual's statelessness, specifically whether the individual may have played a role in his or her statelessness. Article 1(1) looks only at whether a person is considered as a national, not whether his or her statelessness may have been voluntary.

UDI reports that it does indeed use the 1954 Convention's Article 1 definition of a "stateless person." However, there is no distinct statelessness determination procedure in Norway allowing for the systematic identification of stateless persons. Importantly, UDI's procedures are set forth in circulars,[116] which are guidelines to UDI staff on numerous things, including the assessment of a person's nationality. The governing standard of proof is that of the preponderance of evidence. UDI reports that its working methods cannot be easily compared to the methods of NR, which are discussed in more detail below.[117] Although NR's methods are different from UDI's, it also reportedly uses the Article 1 definition of a stateless person. Thus, although Article 16 of the Nationality Act redefines a stateless person in a manner incompatible with the 1954 Convention, in practice, Norwegian authorities appear to apply the proper definition.

---

112 UNHCR, *Handbook on Protection of Stateless Persons*, para 134.

113 *Ibid*, para 136.

114 *See* the Immigration Act Article 3 and the Nationality Act Article 3.

115 UNHCR *Handbook on Protection of Stateless Persons*, para. 50.

116 *See* generally UDI circular RS 2012-009, available from: https://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2012-009/.

117 Interview with UDI dated 20 August 2012. *See also* NR's guidelines in *Skattedirektoratet – Rettsavdelingen, Håndbok i folkeregistering* (2011).

Although there is no statelessness determination procedure in Norway, a person's nationality is assessed as part of establishing his or her identity, in the course of registration under certain immigration procedures, including application for a visa, asylum, other immigration procedure, or acquisition of a residence permit. As explained above in Chapter 2.2, such registration can be done by UDI, NR, and/or NPIS. If, in the course of such registrations, it is concluded that a person does not hold any citizenship, he or she will be registered as stateless. Relevant sub-chapters within Chapter 3.3 will discuss in more detail the criteria and procedural standards for making an assessment that a person is stateless for the purpose of such registration.

An immigrant's identity and nationality are assessed in accordance with the UDI circular RS 2012-009. The circular describes how to assess and determine the applicant's identity. The interpretation of the identity requirement in the Norwegian Nationality Act is explained in the regulations,[118] Chapter 1, and the circular Q-40/2013.[119]

As there is no statelessness determination procedure in Norway leading to the grant of the status of stateless, there are no express provisions in national legislation governing the rights to which stateless persons are entitled under the 1954 Convention.

## 3.3 Statelessness determination procedure or other procedures in which statelessness is determined

As explained above, there is no formal statelessness determination procedure in Norway. Rather, the assessment of nationality or statelessness is mostly seen in relation to immigration procedures. Registration of statelessness appears to be a part of the overall evaluation that takes place when a person applies for visa, residence permit, or asylum in Norway. The "determination" is thus in reality the evaluation that takes place when the applicant has to establish his or her identity and nationality as part of his or her application for a residence permit or international protection in Norway, rather than a determination that leads to the grant of the status of stateless and its attendant protections. In this context, it should also be noted that no determination of the status of statelessness takes place with respect to persons who are, for example, rejected asylum-seekers but who later are found to be "unreturnable," possibly as a result of their statelessness.

### 3.3.1 Competent authority

The asylum procedure is set forth in the Immigration Act.[120] The supervising authority is the Minister of Justice. Upon arrival of an asylum-seeker, the Immigrant Department of NPIS registers the person's nationality, or statelessness in the case of persons who cannot present a passport or otherwise provide sufficient proof of their identity. The appropriate unit within UDI will then further process the application.[121]

Special attention is warranted with regard to failed asylum-seekers, some of whom might be stateless. If an asylum application is rejected, the registration of the applicant's nationality or statelessness that has been made in the DUF by UDI is the only statelessness-related procedure that takes place. UDI can thus be said

---

118 https://goo.gl/HSWOLC

119 https://lovdata.no/dokument/SF/forskrift/2006-06-30-756
https://goo.gl/g5tdDh (NB! Outdated)

120 *See* Chapter 4 of the Immigration Act.

121 The Norwegian ID Centre (NID) also has some involvement in this procedure. NID is an independent administrative body under the NPIS Directorate, whose purpose is to strengthen the immigration authorities' and the police's capabilities regarding the establishment of the identity of foreign nationals applying for entry to or residence in Norway. For information about NID, *see* its official website at: https://www.nidsenter.no/en/About-NID/

to be the competent authority for the determination of nationality or statelessness of a rejected asylum-seeker.[122] As there is no statelessness determination procedure in Norway, to which rejected, "unreturnable" asylum-seekers registered as stateless could have access, the nationality/statelessness assessment made during the asylum application process by UDI (and UNE in the event of appeal) governs.

Among the many categories of persons NR registers in the CPR are recognized refugees who are also stateless, as well as other stateless persons granted a residence permit in Norway.[123] According to Article 6 of the Act on the Central Population Register (CPR), a person has the duty to inform NR of one's nationality (*statsborgerforhold*).[124] The Act provides the basis for NR's role as registrar of persons living in Norway, but it does not provide that NR shall be the competent authority for determination of statelessness.

The definition of a stateless person in use by NR is set out in the Handbook on Population Registration (*Håndbok i folkeregistering*), in which it is stated that a stateless person is "a person who is not a national of any country."[125] Further, the Handbook on Population Registration states that the main principle is that NR will register nationality in accordance with the registration in the DUF and, hence, in accordance with the registration carried out by UDI. The Handbook on Population Registration further states that if there is any doubt as to a person's nationality, the matter needs to be taken up with UDI.[126]

## 3.3.2 Procedural aspects

### 3.3.2.1 INITIATING THE PROCEDURE

The registration of an asylum-seeker as stateless during the asylum application procedure starts when the applicant files an application for asylum with the Immigration Department of the NPIS, which informs UDI. When doing so, the applicant hands in a passport or other travel document, if any,[127] to assist in clarifying his or her identity.[128] In the absence of a passport or travel document, the NPIS will register the applicant's nationality or statelessness in accordance with the information given by the applicant.[129] The application will then be sent to UDI, which further processes the application. Based on the outcome of these procedures, UDI will register the nationality or statelessness of the applicant in question in the DUF.

---

122 Subject to an appeal of UDI's decision (*see* Chapter 3.3.2.3)

123 In accordance with its role stipulated in Article 1 of the Act on the Central Population Register.

124 Article 6 is applicable if there is a national or local survey implemented by the ministry as mentioned in Article 5, or on request from the tax office, cf. Article 11.

125 *Skattedirektoratet – Rettsavdelingen, Håndbok i folkeregistrering* (2011), p. 193, para. 18.4. In Norwegian the wording is the following: *"At en person er statsløs, vil si at han ikke har statsborgerskap i noe land."* Please note that the *Håndbok* has been updated and is available at http://goo.gl/svNZoY

126 *Ibid*, para. 18.10.3. *See also Håndbok*, Chapter 17.10.3. It bears noting here that occasionally, stateless persons from Latvia who come to Norway state that their nationality is that of Latvia when registering with NPIS and are consequently registered as Latvian nationals. However, as explained in an email of 23 August 2012 from Kåre Vassenden, because their passports are *"passport for foreigners,"* the registration as Latvian nationals is usually changed by NR to stateless.

127 Article 93 (1) of the Immigration Act. *See also* Article 17-21 (1-3) of the Immigration Regulation No 1286 from 2009 ('Immigration Regulation'), available at: https://goo.gl/c7t647.

128 In accordance with Article 83 of the Immigration Act and Article 17-7 of the Immigration Regulation.

129 Email from NPIS, dated 16 October 2012. For details on the registration procedure carried out by NPIS in cases of applicants for residence permit on the grounds of strong humanitarian considerations or a particular connection with Norway, *see* UDI, *Fornyelse av tillatelser etter utlendingsloven § 38 som er begrenset på grunn av tvil om identitet eller udokumentert identitet*, RS 2013-017, available at: http://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2013-017/.

### 3.3.2.2 QUESTIONS OF PROOF

Although the Convention does not articulate a standard of proof, states are encouraged to make a finding of statelessness where it is established to a "reasonable degree" that an individual is not considered as a national by any State under the operation of its law.[130] Given the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Moreover, statelessness, by its very nature, cannot normally be proved. Rather, it is an individual's nationality that can be proved. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence.[131]

Norwegian law operates with different identity requirements depending on the nature of the type of residence permit sought. Under some provisions, it must be probable that the identity is correct, whereas under other provisions, a person's identity must be documented. If none of these requirements are met, the individual may be granted a limited residence permit. It may be determined that the permit shall not form the basis for a permanent residence permit.

When assessing an applicant's identity and nationality or statelessness, UDI applies the preponderance of evidence (more likely than not) standard of proof.[132] The initial registration will, however, often be based on information provided by the applicant,[133] verified by the passport or other official documents issued by the authorities of the country of origin, if any.

As noted above, NR will follow UDI's registration entries. Under Norwegian law, as a general rule, foreigners must document their identity in immigration procedures.[134] Persons applying for international protection are required to submit travel documents and have a duty to cooperate to establish their identity.

Although the governing standard of proof is the preponderance of evidence, it is unclear precisely how that standard is applied in practice. For example, it is unclear what evidentiary weight is given to expired documents or statements of consular authorities. If an applicant cannot prove that he or she is stateless with documentation, the person will be registered in accordance with the nationality the person had before coming to Norway. It is further stated that for refugees, this would normally be the country from which the refugee fled.[135]

The practice of registering a person as a national of the country of former habitual residence if he or she cannot prove his or her statelessness poses problems under the 1954 Convention, as stateless persons often lack documents and cannot prove their statelessness. Norway is therefore urged to adopt the standard of proof of a "reasonable degree" when making determinations as to a person's statelessness.

130 UNHCR *Handbook on Protection of Stateless Persons*, para 91.

131 *Ibid*, at para 90. For a detailed discussion, *see ibid*, paras 89-107 (discussing, *iter alia*, evidentiary issues such as the proper consideration of passports, enquiries with and responses from foreign authorities, the importance of conducting interviews with the individual whose nationality or statelessness is at issue, and credibility issues).

132 *See* generally UDI circular RS 2012-009, available from: https://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2012-009/.

133 *See* UDI circular RS 2012-009, available from: https://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2012-009/, para. 4.

134 Immigration Regulation § 10-2 (2).

135 *Skattedirektoratet – Rettsavdelingen, Håndbok i folkeregistrering* (2014), p. 193, para. 17.10.5. In Norwegian the wording is the following: Dersom en person hevder å være statsløs, må vedkommende dokumentere at han eller hun har mistet borgerretten sin. Kan han/hun ikke det, må skattekontoret registrere ham/henne med den borgerretten han/hun hadde før han eller hun kom til Norge. For flyktninger vil det normalt være det landet de har flyktet fra.

#### 3.3.2.3 ACCESS TO COURTS

Administrative decisions made by UDI on asylum, or other immigration-related claims within its competence, are appealable to UNE.[136] UNE's decisions, in turn, can be brought before the regular judicial system where, *inter alia*, the validity of the administrative decision can be tested.[137]

However, as there exists no formal statelessness determination procedure in Norway and no formally recognized status of stateless with rights attached to that status, there is no mechanism by which persons who have been wrongly identified as nationals of a given country can appeal such a decision to a court of law, or to an independent, quasi-judicial body like UNE.

Rejected asylum-seekers, including those who are stateless, can apply for voluntary return programs[138] or face the possibility of forced deportation. In practice, it may not be possible to implement the deportation decision due to an individual's statelessness. Even in such cases, stateless persons are nonetheless obliged to leave Norway, or face the risk of being subjected to criminal prosecution if they fail to do so, as there is no provision under Norwegian law that affords stateless persons a residence permit on the ground of statelessness. (However, see Chapter 3.4.2.5. for an overview of situations in which persons for whom there are practical obstacles to return can be granted a residence permit.)

### 3.3.3 Conclusions

There exists no statelessness determination procedure in Norway leading to the formal grant of the status of stateless. Likewise, under current Norwegian law, a person's statelessness cannot serve as the sole basis for the protections guaranteed by the 1954 Convention.

The only evaluations of a person's statelessness that exist today are the assessments done by UDI, NR, and NPIS in the course of their registration of a person during immigration procedures, including the residence permit application process. Given that the definition of a stateless person set forth in Article 1 of the 1954 Convention has not been expressly incorporated into national legislation or guidelines, and because the procedures employed by authorities that register a person's identity have not been harmonized, there may be discrepancies in the registration of a person as stateless.

The standard of proof governing UDI's assessments of nationality or statelessness is the preponderance of evidence. However, it is unclear precise what evidentiary weight different forms of evidence are given. It was also not possible to ascertain whether the NR and NIPS apply the burden and standard of proof in the same manner as the UDI, when registering a person as stateless.

In view of the above, UNHCR recommends that the definition of a stateless person set forth in Article 1 of the 1954 Convention be expressly incorporate into national law, that the authorities that register persons as stateless in the course of establishing their identity for purposes of immigration procedures develop clear and harmonized guidelines for the evaluation of nationality to ensure accuracy and consistency in registration. In this regard, it is specifically recommended that the authorities adopt the standard of proof of "to a reasonable degree," in recognition of the difficulties inherent to statelessness and that fact that statelessness, by its very nature, cannot ordinarily be proved.

---

136 In accordance with Article 76(1) of the Immigration Act.

137 *Ibid*, Article 79 (3). *See also Domstol Administrasjonen: Courts of Norway*, available at: http://goo.gl/tkgmik. *See*, *e.g.*, Oslo District Court: *A* vs. *the State (Immigration Appeals Board)* in case no. TOSLO-2006-160098 and Oslo District Court: *Amjad Adel Mohamed Kaddoura* vs. *The State (Immigration Appeals Board)* in case no. TOSLO-09-030719TVI-OTIR/08.

138 IOM, Information on "Voluntary Assisted Return Programs," available at: http://www.iom.no/index.php/en/varp/voluntary-return.

Further, it is recommended that a formal procedure for the determination of a person's status as stateless be established. In this regard, UNHCR would recommend that the Norwegian authorities consider placing such a procedure within the framework of the asylum procedure. If authorities were thus able to build upon existing structures and experiences, additional resources would generally be limited to the development of specialized competence for the determination of statelessness, and to the introduction of the procedural standards and safeguards set out in the UNHCR *Handbook on Protection of Stateless Persons*.

# 3.4 Rights of applicants and recognized stateless persons

## 3.4.1 Rights of applicants during the statelessness determination procedure

As Norway has not established a statelessness determination procedure, there are no provisions in Norwegian law governing the rights of persons applying for the status of stateless. Thus, under current Norwegian law and practice, statelessness alone does not serve as a ground for rights. Rather, the rights of stateless persons are attached to whatever residence status they are granted on the basis of, for example, international protection, a visitor's visa, work permit, or a student permit.

### 3.4.1.1 DETENTION

Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, an individual's undocumented status or lack of necessary immigration permits cannot be used as a general justification for the detention of such persons.[139]

Article 9 of the ICCPR, guaranteeing the right to liberty and security of person, prohibits unlawful as well as arbitrary detention. For detention to be lawful, it must be regulated by domestic law, preferably with maximum limits set on such detention, and subject to periodic and judicial review. For detention not to be arbitrary, it must be necessary in each individual case, reasonable in all the circumstances, proportionate, and non-discriminatory. Indefinite as well as mandatory forms of detention are arbitrary *per se*.[140]

Detention is therefore a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention. Alternatives to detention – from reporting requirements or bail/bond systems to structured community supervision and/or case management programs – are part of any assessment of the necessity and proportionality of detention. General principles relating to detention apply *a fortiori* to children, who as a rule are not to be detained in any circumstances.[141]

---

139 UNHCR, *Handbook*, para 112 (citing the UN Working Group on Arbitrary Detention, Report to the Human Rights Council, A/HRC/13/30, 18 January 2010, http://www.refworld.org/docid/502e0fa62.html. In relation to stateless persons specifically, please see UNHCR Executive Committee Conclusion 106 (LVI) of 2006 on identification, prevention and reduction of statelessness and protection of stateless persons, http://www.unhcr.org/453497302.html which "Calls on States not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law... " *See ibid* generally, paras 112-115.

140 UNHCR *Handbook on Protection of Stateless Persons*, para. 112.

141 *Ibid*, para. 113.

Norwegian law contains no express reference to the detention of stateless persons or their freedom of movement. Stateless persons who apply for asylum are in most cases moved to an open or minimal security transfer center, where they stay for two to ten days. The majority of asylum applicants are then moved to an asylum reception center. The reception center is chosen based on the applicant's personal status (such as age, gender, or civil status) or the status of the application.[142]

In some instances provided for by Article 106 of the Immigration Act, aliens, including asylum-seekers and stateless persons, can be detained. A foreign national can be arrested and remanded to custody if the person in question is not cooperative when establishing his or her identity, or if the Norwegian authorities have reason to believe that the person has given wrong information about his or her identity.[143]

With the law amendments effective 1 March and 1 July 2012, various changes were made to the Immigration Act, including changes to rules regarding deprivation of liberty of foreign nationals. Some have expressed their concern that these amendments lowered the evidentiary standard for the detention of foreign nationals. When there is a doubt that the person is providing correct identity information, the threshold of evidence in Article 106 (1) a has been lowered from "reasonable grounds for suspicion" to "concrete grounds to assume."[144]

The possibility that stateless persons in Norway might be subjected to criminal sanction and detained raises concerns under the 1954 Convention.

#### 3.4.1.2 EXPULSION

Article 31(1) of the 1954 Convention prohibits contracting States from expelling a stateless person lawfully in the territory save on grounds of national security or public order. A stateless person is also entitled to submit evidence to clear him- or herself, to appeal a decision on expulsion and be represented by a person specially designated by the competent authority. In addition, a stateless person is entitled to a reasonable period to seek legal admission into another country. The State implementing the expulsion can apply internal measures as necessary.[145]

Article 66 of the Immigration Act, which provides for expulsion of foreign nationals who do not hold a residence permit, applies equally to stateless persons. No special protections against expulsion of stateless persons are found in the Immigration Act. Under Article 66, a foreign national can be expelled if he or she has grossly or repeatedly breached one or more provisions of the Immigration Act. A foreign national can also be expelled if he or she has wilfully or through gross negligence provided materially incorrect or manifestly misleading information in a case subject to the Immigration Act, or has evaded the implementation of an administrative decision requiring him or her to leave Norway.[146]

If UDI determines that there are grounds to expel a person from Norway, the foreign national who is to be expelled is informed of this in writing. An appeal must be lodged within three weeks, with short extensions permitted under certain circumstances.[147] UDI will reevaluate the grounds for expulsion, taking into account the person's connection to Norway, the principle of proportionality, and whether the person will be in danger if returned. If UDI does not reverse its decision and the expulsion order is upheld, the person will be informed and the case is automatically forwarded to UNE, which makes the final decision. If UNE confirms

---

[142] Global Detention Project, *Norway Detention Profile*, available at: http://goo.gl/g7afiI. Interview with NOAS, 23 August 2012, interview with the Norwegian Centre against Racism, 22 August 2012.

[143] Article 106(1) (a) and (e) of the Immigration Act.

[144] Norwegian Centre for Human Rights, *Comments from the NI to the Committee Against Torture's 49th session and the consideration of Norway's combined sixth and seventh periodic reports (CAT/C/NOR/6-7) submitted in response to the list of issues (CAT/C/NOR/Q/7)*, 12 October 2012, p. 4, available at: http://goo.gl/OR0eFP.

[145] Article 31(2)-(3) of the 1954 Convention.

[146] Article 66(1), para. a.

[147] RS 2010-024, Utvisning etter utlendingsloven §§ 66, 67 og 68 – brudd på utlendingsloven og/eller straffbare forhold, available at: https://goo.gl/nXS5zD, para. 10.1.

the expulsion, the person is obliged to leave the Schengen area. However, unless deferred implementation is granted, the person can be deported before the appeal has been processed. The person is also registered in the Schengen Information System (SIS) and cannot enter the Schengen area for a given period of time.[148]

## 3.4.2 Rights of persons recognized as stateless

### 3.4.2.1 THE RIGHT OF RESIDENCE

Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.[149]

It is therefore recommended that States grant persons recognized as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interest of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.[150]

In certain limited circumstances, a state might have discretion to provide a residence status that is more transitional in nature where the person in question is able to acquire or reacquire a different nationality through a simple, rapid, and non-discretionary procedure that is a mere formality or where the person enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.[151] Importantly, these limited instances in which a state party might be able to transfer responsibility to another state with which the individual has links are discussed in the context of the 1954 Convention. The protections afforded stateless persons born in the territory are notably stronger, as the state in which the person was born is obliged to give such persons its nationality if they would otherwise be stateless, as discussed in more elsewhere in this report.

Recognition of an individual as a stateless person under the 1954 Convention also triggers the "lawfully staying" rights, in addition to a right to residence. Thus, the right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.[152]

As noted elsewhere in this report, current Norwegian practice does not provide for obtaining a residence permit, whether temporary or permanent, on the ground of statelessness. Normally, only if a stateless person has an independent ground to reside in Norway can he or she obtain a right to reside. If a stateless asylum-seeker is denied asylum or subsidiary protection, the person will not have a right to reside and could be deported to the country of origin.[153] In some circumstances, unreturnable persons might be granted a temporary residence permit.

Moreover, there is no provision in Norwegian law to grant a residence permit to a stateless child born in Norway on the ground of his or her statelessness. This is the case even for a child born in Norway to parents

---

148 UDI, *Case Procedure–Expulsion*, available at: http://www.udi.no/en/word-definitions/expulsion/. *See also* NPIS, *Bruk av tvangsmidler etter utlendingsloven*, available at: https://goo.gl/os7jyu.

149 UNHCR *Handbook on Protection of Stateless Persons*, para 147.

150 *Ibid*, para 148.

151 *Ibid*, para. 154. For more detail, *see ibd*, paras. 153-157.

152 *Ibid*, para 150.

153 Stateless persons who fall under the Dublin Regulation will also be returned to the country where they first applied for asylum. Interview with UDI, 20 August 2012. As explained in Chapter 3.4.2.5, stakeholders and the authorities have expressed their concern for stateless persons who cannot be deported despite such a decision, due to their statelessness.

seeking – but not yet granted – asylum or a residence permit on humanitarian grounds.[154]

Hence, in order to ensure that persons qualifying for the status of stateless persons are guaranteed the rights set out in the 1954 Convention and find a durable solution, UNHCR recommends that persons recognized as stateless be granted a residence permit in line with the guidance set out in the UNHCR *Handbook on Protection of Stateless Persons*.

### 3.4.2.2 THE RIGHT TO WORK

Chapter III of the 1954 Convention addresses Gainful Employment. These articles refer to stateless persons "lawfully in" (Article 18, self-employment) or "lawfully staying " (Article 17, wage-earning employment; and Article 19, liberal professions) in the territory and require that contracting states provide such stateless persons "treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances." Although the Convention does not define the term "wage-earning employment," it should be interpreted in the broadest sense of the term.[155]

In Norway, if a stateless person is granted a residence permit that entails a work permit, the stateless person will be entitled to the same right as others holding the same permit. Stateless persons recognized as refugees who are holding a corresponding residence permit are entitled to the right to work.[156]

### 3.4.2.3 THE RIGHT TO PUBLIC RELIEF

Article 23 of the 1954 Convention provides: "The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals." The right to social security is set forth in Article 24 and is also a "lawfully staying" right.[157] Like Article 23, Article 24 requires that states treat stateless persons "lawfully staying" in the territory in the same manner in which nationals are treated with respect to certain labor and social security provisions, as detailed in Article 24.

There is no reference in national legislation to any specific public relief granted to stateless persons. Public relief will thus be granted in accordance with the legal status of the stateless person in question. So, for example, if the stateless person is applying for asylum, he or she will have access to the same public relief as other asylum applicants.[158] Stateless persons with a right to stay in Norway are eligible for the social insurance system and public services like others who have these rights.[159]

---

154 *See also* two Norwegian Supreme Court cases dated 21 December 2012 (Rt-2012-1985 and Rt-2012-2039).

155 Robinson, N., *Convention Relating to the Status of Stateless Persons, Its History and Interpretation, A Commentary* (1955), p. 62.

156 *See, e.g.*, UDI, *Immigration Act and Immigration Regulations*, and Vejørn Aalandslid and Lars Østby, Country Report Norway, *National Data Collection Systems and Practices*, Prominstat 2009, p. 13.

157 *See* UNHCR *Handbook*, para 137, noting, "The 'lawfully staying' requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorised by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category.84 It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be 'lawfully staying.' Individuals recognised as stateless following a determination procedure but to whom no residence permit has been issued will generally be 'lawfully staying' in a State party by virtue of the length of time already spent in the country awaiting a determination." *See also* Waas, L.V., *Nationality Matters*, pp. 325-327.

158 Interview with UDI, 21 August 2012. See for example Nordic Network for Research on Refugee Children, *Reception of asylum seeking and refugee children in the Nordic countries: The Norwegian report* (2010), available at: http://goo.gl/ZpQzSo. *See also* The Directorate of Health, *Helsetjenestetilbudet til asylsøkere, flyktninger og familiegjenforente* June 2010, available at: http://goo.gl/mxZf8k.

159 Links to many of the social and health services legislations: *Helsetilsynet*, available at: https://goo.gl/RBXzD1. List of the most important social services Government bodies: *Helsetilsynet*, available at: http://goo.gl/o5Evbd. All persons who intend to stay in Norway for six months or more and have a valid residence permit are registered in the CPR and given a Personal Identification Number (PIN-code) that is of crucial importance for everyday life in Norway such as the access to the Norwegian National Health Services; Vejørn Aalandslid and Lars Østby, Country Report Norway, *National Data Collection Systems and Practices*, Prominstat 2009, pp. 4 and 6.

Because the language of Articles 23 and 24 expressly requires that lawfully staying stateless persons be treated on a par with nationals in certain respects, the linking of stateless persons' public assistance rights, as well as certain labor and social security rights, to their residence permit would be impermissible where such a permit granted individuals fewer rights than those to which nationals are entitled.

### 3.4.2.4 IDENTIFICATION AND TRAVEL DOCUMENTS

Article 27 of the 1954 Convention provides, "The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document."

Article 28 requires that states parties issue stateless persons "lawfully staying" in their territory travel documents. It also requires that states give sympathetic consideration to the issue of travel documents to certain other stateless persons in their territory.

In Norway, a stateless person cannot obtain an identity document or travel document on the basis of his or her statelessness. Instead, stateless persons who have another basis for obtaining a Norwegian-issued card and who do not hold a passport or a travel document from their country of origin can apply for either a refugee travel document, or for an immigrant's passport or travel document, which are issued to immigrants who are not refugees.[160] The application procedure for a travel document is well explained on UDI's website and the application form is easily accessible.[161]

Article 27, by its own terms, requires that states parties "issue identity papers to *any* stateless person in their territory *who does not possess a valid travel document*" (emphasis added). Because Norwegian law and practice do not provide a mechanism for a stateless person present in the Norwegian territory to obtain an identity document on the ground of statelessness, Norway is urged to modify its practice so that it can bring it into accordance with Article 27. Likewise, it is urged to modify its practice vis-à-vis travel documents such that "lawfully staying" stateless persons be issued travel documents.

---

[160] UDI, *Who can be issued Norwegian travel documents?*, available at: http://www.udi.no/en/want-to-apply/immigrants-passport-and-travel-document/.

[161] Applicants submit their application for a refugee travel document or an alien's passport to the police. The police have the authority to grant an applicant for a travel document or an alien's passport. However, if the applicant's eligibility is unclear, the application is sent to UDI, for evaluation. If UDI rejects the application, the applicant has three weeks to appeal. In case of an appeal, UDI will reconsider its previous evaluation. If UDI does not overturn its former decision, the application will be sent automatically to UNE which makes the final decision on the issuance of a travel document. UDI, *Case Procedure–Travel documents*, available at: http://www.udi.no/en/want-to-apply/immigrants-passport-and-travel-document/.

### 3.4.2.5 OTHER RIGHTS GUARANTEED

Although ordinarily Norwegian law does not expressly provide for rights on the ground of statelessness, certain requirements are waived for stateless persons.

In Norway, most welfare system rights are linked to residency status. For example, if a child has a residence permit in Norway valid for at least six months, the child will be issued a social security number and will thus have certain rights and be provided with the relevant services. Importantly, however, essential healthcare and primary education are not linked to residence status. A child need only be physically present in Norway to obtain and exercise these rights. Thus, even stateless children in Norway who have not been granted any permit, such as stateless asylum seeking children and stateless children seeking a residence permit, are entitled to education and essential healthcare. This is a right is guaranteed all children in Norway.[162]

The Immigration Regulation § 8-7 governs the right to a residence permit in the event of practical obstacles to return beyond the control of the foreign national. The prerequisites for obtaining a residence permit pursuant to this regulation are: (a) it must have been three years since the case was opened without the rejection having been implemented, and it must be considered unlikely that it will be possible to carry out the return; (b) there must not be any doubt as to the identity of the applicant, and as a general rule, the applicant must have assisted in clarifying his/her identity during the period as an asylum-seeker; and (c) the individual must have contributed to making his/her return possible, including by helping to procure a travel document issued by his/her country of origin. Unreturnable persons who qualify for a residence permit under § 8-7 have reduced rights in Norway, such as a reduced subsistence allowance for their basic needs and the right only to emergency healthcare.[163] These people can live in a legal limbo for many years. Under current practice, there is little likelihood of regularizing an irregular stay, though there are certain exceptions, including for families with children who have been in Norway for more than 4.5 years.[164] According to NOAS, the provision is rarely invoked, and the police rarely consider the applicant to have assisted in clarifying his/her identity or to have contributed to making his/her return possible.[165]

If a child is born in Norway to asylum-seeking parents who are not granted refugee status, the child will be returned along with the parents to a home country, assuming the parents are returnable. If there is no receiving country, the child will be left in the same legal limbo as the parents. The Immigration Act § 38 does, however, require that the authorities consider if there are strong humanitarian considerations and whether the foreign national has a particular connection with the realm, which implies that a residence permit should be granted under such circumstances. The Immigration Act § 38 (3) provides that in cases concerning children, the best interests of the child shall be a primary consideration. Accordingly, children may be granted a residence permit even if the situation is not so serious that a residence permit would have been granted to an adult. The Immigration Regulation § 8-5 elaborates on what factors should be accorded weight in the assessment of what is in the best interests of the child.

---

[162] Vitus, K. and Lidén, H, 2010, *The Status of the Asylum-seeking Child in Norway and Denmark: Comparing Discourses, Politics and Practices*, p. 62, s*ee also Reception of asylum seeking and refugee children in the Nordic countries, The Norwegian report*, see, for example, p. 16.

[163] The asylum procedure and to some extent the living conditions of rejected asylum-seekers who are stateless have been covered in various reports and articles, such as NOAS, *Retur til Hva?* (2011), Euro-Mid Observer for Human Rights Report: *Palestinian Refugees in Iraq and whom under Threat of Deportation Back to Iraq* (2012), see especially pp. 18-19 and Solveig Holmedal Ottesen, *Papirløse migranter, En undersøkelse av situasjonen for mennesker uten lovlig opphold I Norge, og humanitære tiltek for denne gruppen I andre europeiske land* (2008), see especially pp. 8-19.

[164] *See* https://goo.gl/fny6r8.

[165] Email from NOAS lawyer Marek Linha, 30 September 2015.

## 3.5 Conclusions and recommendations

The situation in which stateless persons may find themselves, and the protections to which they are entitled, have received relatively little attention in Norway. Although the 1954 and 1961 Conventions, to which Norway is party, are incorporated into Norwegian law through the general reference to international law and the principle of sector monism,[166] most provisions of the conventions have not been codified, nor are they normally reflected in administrative practices. Norwegian legislation does not expressly reference the definition of a stateless person, nor is there a statelessness determination procedure in place. Assessments of statelessness occur only in the course of other procedures, such as the refugee status determination procedure, where nationality or statelessness is assessed in relation to the identity of the applicant. Under Norwegian law, statelessness does not constitute an independent ground for legal protection.

With these findings in mind, it is therefore recommended that the 1954 Convention's Article 1 definition of a stateless person, now customary international law, be expressly incorporated into Norwegian legislation, to ensure a consistent practice by all authorities. In this connection, Article 16 of the Nationality Act, which seems to restrict the definition of a stateless person, should be reviewed.

Where assessments of an individual's statelessness take place as part of the establishment of identity during immigration and civil registration processes, the criteria for considering someone as stateless, and the application of these, should be harmonized across the different government agencies involved.

To ensure that Norway meet its international obligations under the 1954 Convention, the establishment of an accessible and efficient statelessness determination procedure is necessary. Such a procedure could be established within UDI and build on existing institutional capacities. The UNHCR *Handbook on Protection of Stateless Persons* provides guidance to states as to the form and procedural safeguards of statelessness determination procedures. In this context, it is recommended that "unreturnable" persons have access to the statelessness determination procedure where there are indications the individual may be stateless.

It is moreover recommended that persons determined by Norway to be stateless be granted a residence permit on the ground of their statelessness, thereby allowing them to enjoy the core protections of the 1954 Convention.

Stateless persons, pursuant to the definition in Article 1 of the 1954 Convention, should moreover – on account of their statelessness – be entitled to the rights set out in that Convention, including identity papers and travel documents, as elaborated in the UNHCR *Handbook on Protection of Stateless Persons*.

[166] *See* the Immigration Act Article 3 and the Nationality Act Article 3.

# 4. Reduction and prevention of statelessness

## 4.1 Introduction

The 1961 Convention is the leading international instrument that provides rules for the conferral and non-withdrawal of citizenship to prevent cases of statelessness from arising. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to Article 15 of the Universal Declaration of Human Rights, which recognizes that "everyone has the right to a nationality."

Underlying the 1961 Convention is the notion that, while States maintain the power to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided. By adopting the 1961 Convention safeguards that prevent statelessness, States contribute to the reduction of statelessness over time. The Convention seeks to balance the rights of individuals with the interests of States by establishing general rules for the prevention of statelessness, while simultaneously allowing some exceptions to those rules.

A central focus of the Convention is the prevention of statelessness at birth by requiring States to grant citizenship to persons born on their territory, or born to their nationals abroad, who would otherwise be stateless. To prevent statelessness in such cases, States may either grant nationality to children automatically at birth or subsequently upon application. States must also ensure that foundlings and persons born on a ship or aircraft acquire a nationality.

The Convention further seeks to prevent statelessness later in life by prohibiting the withdrawal of citizenship from States' nationals–either through loss, renunciation, or deprivation of nationality–when doing so would result in statelessness. The 1961 Convention further seeks to prevent statelessness upon a change in civil status. This is complemented by Article 9 of CEDAW, which grants women equal rights with men to acquire, change, or retain nationality, in particular in the context of marriage.

The safeguards of the 1961 Convention are triggered only where statelessness would otherwise arise and for individuals who have some link with a country. These standards serve to avoid nationality problems which might arise between States.

The provisions of the 1961 Convention must be read and interpreted in light of developments in international law, in particular international human rights law. Relevant instruments include the ICCPR, CEDAW, and the CRC, which is of paramount importance in determining the scope of the 1961 Convention obligations to prevent statelessness among children. Article 7 of the CRC sets out that every child has the right to acquire a nationality. The drafters of the CRC saw a clear link between this right and the 1961 Convention and therefore specified in Article 7(2) of the CRC that "States Parties shall ensure the implementation of these rights in

accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."[167]

Regional instruments, such as the 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession, are also relevant.

The obligations under the 1961 Convention to prevent and reduce statelessness are discussed in greater detail below. National measures will be assessed against the relevant international standards to examine to what extent domestic laws and practices are line with the Convention.

## 4.2 National legal framework

Norway was among the first group of states to accede to the 1961 Convention, having acceded without reservation in 1971. The Convention entered into force on 13 December 1975.[168] Norway is also a party to CERD, the ICCPR,[169] CEDAW[170] the CRC, the 1997 European Convention of Nationality, the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, and the ECHR.

The main statute governing Norwegian nationality is the Norwegian Nationality Act No. 51 of 2005 (*Lov om norsk statsborgerskap* or *statsborgerloven*).[171] The Nationality Act is read in conjunction with relevant regulations, first and foremost the Regulation on the granting and loss of Norwegian nationality No. 756 of 2006 (*Forskrift om erverv og tap av norsk statsborgerskap or statsborgerforskriften*), which discusses the social contract between a national and the state.[172]

Importantly, under Article 3 of the Nationality Act, the Act shall be applied subject to the limitations that follow from agreements with other states and pursuant to all obligations under international law. This is the sector monism that governs Norwegian immigration and nationality law. Although Article 3 of the Nationality Act expressly requires that domestic law and practice in the area of immigration and nationality reflect Norway's obligations under international law, the majority of the provisions of both the 1954 and 1961 Conventions have not been codified in domestic law. This has resulted in a number of gaps, which are identified below.

---

167 UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness* (UNHCR *Guidelines on Statelessness No. 4*), 21 December 2012, HCR/GS/12/04, para 10, available at: http://www.refworld.org/docid/50d460c72.html

168 Norway acceded on 11 August 1971, see further information United Nations: *Treaty Collection*, available at: https://goo.gl/mf5roo.

169 The Convention entered into force as regards Norway on 6 August 1970.

170 The Convention entered into force as regards Norway on 21 May 1981.

171 Under Article 2, the Norwegian Nationality Act is implemented by the Government; the Ministry of Children, Equality, and Social Inclusion; the Immigration Appeals Board; UDI; the police; and Norwegian foreign missions.

172 Ot.Prp. nr. 41, 2004-2005 p. 21.

# 4.3 Acquisition and loss of nationality under the national legal framework and compatibility with international standards

## 4.3.1 Avoidance of statelessness at birth

### 4.3.1.1 BIRTH IN THE STATE'S TERRITORY

Article 1(1) of the 1961 Convention provides, "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless."

The Norwegian Nationality Act does not expressly provide for the right of a person born in Norway who would otherwise be stateless to acquire Norwegian nationality. That is to say that there is no provision in Norwegian law implementing Article 1 of the 1961 Convention.

Article 1(1) allows a State Party to provide for the grant of its nationality to such a person either a) "at birth, by operation of law," or b) by way of an application procedure.[173] Article 1(2) lists the four enumerated conditions that a State Party can permissibly impose on a person who comes under Article 1(1). Importantly, this list is exhaustive. The four conditions a state may permissibly impose on an Article 1 applicant for nationality are a fixed period for application within certain rules set forth by Article 1(2)(a);[174] a requirement of habitual residence within the rules set forth by Article 1(2)(b);[175] certain exceptions for certain criminal offenses, as described by Article 1(2)(c);[176] and that the person concerned has always been stateless, as provided by Article 1(2)(d).[177]

The importance of a child's obtaining a nationality is reiterated by Article 7 of the CRC and Article 24 of the ICCPR, the latter of which has been described in the UN Human Rights Committee General Comment No. 17 as follows: "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born."[178] It follows from these articles and Article 3 of the CRC, which describes the principle of the best interest of the child, that a child may not be left stateless for an extended period of time.[179] Specifically, when read with Article 1 of the 1961 Convention, the right of every child to acquire a nationality (Article 7 of the CRC) and the principle of the best interests of the child (Article 3 of the CRC) require that States grant nationality to children born in their territory who

---

173 Article 1(b) provides for the grant of nationality "upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected." Note that the final paragraph of Article 1(1) further provides: "A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by *operation of law* at such age and subject to such conditions as may be prescribed by the national law" (emphasis added). Any such conditions must be within the limitations of Article 1(2).

174 Article 1(2)(a) provides: "that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so."

175 Article 1(2)(b) provides: "that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all."

176 Article 1(2)(c) provides: "that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge."

177 Article 1(2)(d) provides: "that the person concerned has always been stateless."

178 UN Human Rights Committee (HRC), *CCPR General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, para 8, available at: http://www.refworld.org/docid/45139b464.html.

179 UNHCR *Guidelines on Statelessness No. 4*, para 11.

would otherwise be stateless either (i) automatically at birth or (ii) upon application shortly after birth. Thus, if the State imposes conditions for an application as allowed for under Article 1(2) of the 1961 Convention, this must not have the effect of leaving the child stateless for a considerable period of time.[180]

Any stateless child applying for Norwegian nationality must do so on a ground independent of his or her statelessness and birth in Norway, as Norwegian law currently has no provision mirroring Article 1(1) of the 1961 Convention. However, it bears noting here that persons born in Norway who would otherwise be stateless and who have an independent right to acquire Norwegian nationality – i.e., on grounds *other* than statelessness and birth in the territory – are not prevented from so doing. Just like anyone else with a claim to Norwegian nationality, such persons can acquire Norwegian nationality through the application procedure established by Article 7 of the Nationality Act. Although under domestic law a child cannot obtain Norwegian nationality on the ground of statelessness, stateless children who have an independent ground for obtaining Norwegian citizenship are exempted from the requirement that he or she be at least twelve years old to be eligible to apply for Norwegian nationality.[181]

Also, a stateless child with such an independent claim to Norwegian nationality is not required to fulfil the ordinary requirement of a minimum length of residence of seven years imposed upon other naturalization applicants. For stateless children with a claim to Norwegian nationality – normally these will be stateless refugees or children of refugees – the residence requirement is reduced to three years. However, the child must fulfil the conditions of Article 62 of the Immigration Act, which provide that the three-year residence in Norway must have been pursuant to a residence permit. Other requirements for naturalization under Article 7 also apply: the identity of the child must be established; the child needs to be a resident and intend to remain a resident of Norway; and he or she must not have been sentenced to a special criminal sanction or a penalty.[182]

These provisions do not afford the protections guaranteed by Article 1 of the 1961 Convention. First, as noted above, Article 1 requires that a state party grant its nationality to a person born in its territory who would otherwise be stateless irrespective of whether that person has an independent claim to the state's nationality, such as refugee status. Second, if a state party imposes conditions upon an applicant who was born in the territory and is stateless, the conditions must be within the limitations expressly contemplated by Article 1(2) of the Convention.

Importantly, Article 1(2)(b) permits a state party to impose a requirement of *habitual* residence, but it does not permit a state party to impose a requirement of lawful residence. Nor does it permit a state to consider whether the individual intends to remain a resident in the future. Thus, the existing requirement under present Norwegian law that a stateless child's three-year period of residence be pursuant to a residence permit is inconsistent with Article 1(2)(b).[183] Likewise, the requirement that an Article 1 applicant for nationality must prove his or her intent to remain a resident of Norway is in contravention of Article 1.

Article 1(2)(c) permits a state to impose a requirement "that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge." The broad language of the Norwegian law ("special criminal sanction or penalty"), must be interpreted in accordance with Article 1(2)(c) if the Norwegian law is to be consistent with the Convention.

---

180 *Ibid*, para 34.

181 Article 16 states that Article 7 (1) b, the minimum age requirement of 12 years, is not applicable to stateless persons. UDI Rundskriv, *Informasjon om statsborgerloven med forskrift*, 21 March 2012, doc no. RS 2012-005 ('UDI Information on the Citizenship Act with Regulations'), para. 4.10 § 16, available at: http://www.udiregelverk.no/no/rettskilder/udi-rundskriv/.

182 The Norwegian Government has issued a law proposal for comments amending Article 16, *see* Høring – endringer i utlendingsloven og utlendingsforskriften – hevet botidskrav for permanent oppholdstillatelse mv. – endringer i statsborgerloven, available from: https://goo.gl/ZJu2gm; and UNHCR's comments to the proposal, available at: https://goo.gl/7XJe5d.

183 It is not the duration of the three-year requirement is objectionable, as Article 1(2)(b) permits a residence of up to five years immediately preceding the application for residence. Rather, it is the requirement that that period be fulfilled on the basis of a residence permit that violates Article 1(2)(b), which contemplates only the imposition of *habitual* residence, not lawful residence.

Finally, states parties are encouraged to be mindful of the great difficulties stateless persons have in proving their identity – difficulties inherent to their condition of stateless. Accordingly, states are encouraged to share the burden of establishing the identity of the person in question. It is assumed for purposes of this analysis that the requirement under Norwegian law that an applicant for nationality must establish his or her identity will be applied to stateless persons born in Norway in a manner consistent with the principles of the 1961 and 1954 Conventions, which recognize the difficulties stateless persons have in procuring documents.

In sum, Norwegian law does not provide for the grant of its nationality to persons born in its territory who would otherwise be stateless on the grounds of their statelessness and birth in the territory. Even where Norwegian law provides for a reduced statutory period for stateless children who qualify for naturalization on other grounds, it imposes several requirements on the child that are not permitted under the 1961 Convention.

For these reasons, Norway is encouraged to amend its nationality law so as to bring it into compliance with Article 1 of the 1961 Convention.

By applying Article 1 of the 1961 Convention in conjunction with Article 7 of the CRC and the principle of the best interests of the child, UNHCR recommends that states grant nationality to children born in their territory who would otherwise be stateless automatically at birth. UNHCR thus recommends Norway to introduce provisions in its national law, allowing for the automatic grant of nationality to children born in Norway.

Where states instead opt to grant nationality upon application pursuant to Article 1(1)(b) of the 1961 Convention, and the exhaustive criteria in Article 1(2), this must not have the effect of leaving the child stateless for a considerable period of time. Hence, if Norway instead decides to grant its nationality to children who would otherwise be stateless through an application procedure, then the current requirements need to be revised and restricted to the permissible conditions set out in Article 1(2).

#### 4.3.1.2 BIRTH OUTSIDE THE STATE'S TERRITORY

Article 4 of the 1961 Convention sets forth the obligation of a Contracting State to "grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State."

Norwegian nationality law is based on the *jus sanguinis* principle. Chapter 2, section 4 of the Nationality Act which governs births on or after 1 September 2006, provides that a child born to a Norwegian mother or father acquires nationality at birth. The provision applies regardless of where the birth occurs. This provision allows for transmission of Norwegian nationality to all children born to at least one Norwegian national, irrespective of whether the child would otherwise be stateless or of whether the child was born in the territory of a Contracting State. It is thus overcompliant with Article 4 of the 1961 Convention, and Norway is to be commended.

Importantly, however, different rules apply to persons born before 1 September 2006. To assess whether there is a gap in Norwegian law, further investigation into the pre-September 2006 rules is warranted, including whether Norwegian law allows such children to acquire Norwegian nationality later in life. There is a question whether persons born to Norwegian nationals abroad – including persons who are still minors – might be stateless.

#### 4.3.1.3 FOUNDLINGS

Article 2 of the 1961 Convention provides, "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State." It has been argued that this rule has become an international customary norm and it surely has been reiterated in other international and regional conventions.[184] At a minimum, the safeguard for Contracting States to grant nationality to foundlings is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality. A contrary interpretation would leave some children stateless."[185]

Foundlings in Norway are entitled to Norwegian nationality, unless and until it is established that the child is the national of another state, as provided by Article 4(2) of the Nationality Act. Neither the statute nor the relevant guideline articulates an age limit.[186] The Norwegian law and practice in this regard thus provide a strong safeguard against statelessness for foundlings and are in compliance with Article 2 of the 1961 Convention. Norway is to be commended for its provisions in law granting nationality to foundlings.

#### 4.3.1.4 BIRTH ON A SHIP OR AIRCRAFT

Article 3 of the 1961 Convention provides that a "birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be." The provision should be interpreted as referring to all vessels registered in the state. In addition, the provision applies equally to ships that are within the territorial water or a harbor of another state and as well to an aircraft at an airport of another state.[187]

No provision governing births on a ship or aircraft exists in the Norwegian Nationality Act. However, it appears that Norway's law provides for general jurisdiction on her sailing vessels, such that a birth aboard a Norwegian-flagged ship will be deemed to have occurred in the Norwegian territory. Norwegian law is thus compliant with Article 3 of the 1961 Convention with regard to births aboard a ship.

There is no analogous domestic provision applicable to aircraft. Norway's civil aviation authority has indicated that relevant international conventions would govern such a case. It is assumed that Norway would interpret its own laws in accordance with Article 3 of the 1961 Convention and thus deem a birth aboard a Norwegian aircraft as having occurred on Norwegian territory, although it is possible that there may be a gap in Norwegian law with respect to such births.

### 4.3.2 Avoidance of statelessness in the context of renunciation, loss, or deprivation of nationality

Articles 7, 8, and 9 of the 1961 Convention contain detailed provisions governing the loss, renunciation, and deprivation of nationality. Article 7(1) generally prevents states parties from permitting renunciation of nationality "unless the person concerned possesses or acquires another nationality." Article 7(2) contains a similar safeguard against statelessness applicable in situations where the person concerned is seeking naturalization in a foreign country. Article 7(3) establishes safeguards against statelessness for nationals abroad. In addition, Article 7(6) prohibits automatic loss of nationality if it would render the person stateless, with certain enumerated exceptions.

---

184 Waas, L.V., *Nationality Matters*, pp. 70-71 and 90.

185 UNHCR *Guidelines on Statelessness No. 4*, para. 58.

186 Article 4(2) of the Nationality Act. UDI Information on the Citizenship Act with Regulations, para. 6.3.1.

187 UNHCR *Guidelines on Statelessness No. 4*, paras. 62 and 63.

Article 8 governs deprivation of nationality. Article 8(1) provides, "A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless." Articles 8(2) through 8(4) contain certain enumerated exceptions, as well as important procedural safeguards.

Article 9 provides in its entirety: "A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."

Norwegian law does not permit dual nationality. Under Article 23 of the Norwegian Nationality Act, a Norwegian citizen who acquires another nationality by application or explicit consent shall lose his or her Norwegian nationality.[188] This provision contains a safeguard against statelessness.

Article 24 governs loss of Norwegian nationality in certain cases of prolonged absence from Norway. This article contains a safeguard against statelessness, expressly providing that loss of Norwegian nationality will not occur if the person concerned will thereby become stateless. This is in accordance with Article 7(3) of the 1961 Convention.

Under Article 25 of the Nationality Act, a Norwegian national who resides outside Norway and has another nationality is entitled to be released from his or her Norwegian nationality upon application. The individual may only be released from Norwegian nationality if it would be unreasonable to refuse to allow this. The Norwegian national cannot, however, be released from Norwegian nationality if it would result in statelessness.

Article 26 provides that Norwegian nationality shall be revoked if the requirement of release from another nationality, as provided by Article 7(1)(h) in conjunction with Article 10 of the Nationality Act, has not been fulfilled, except under certain circumstances stipulated in the Article.

According to UDI, its practice in relation to revocation of Norwegian nationality is carried out in accordance with the guidelines regarding the citizenship application process (*n. Retningslinjer for behandling av statsborgersaker*) from 22 March 2012 (last altered February 2014).[189] UDI's method is based on the extensive information it has on the various nationality legislations of different countries. The methods used when evaluating a possible revocation of Norwegian nationality in accordance with Article 26 therefore differs from one situation to another based on the information that UDI has gathered in relation to the applicant's country of nationality about the possibility of renouncing that nationality.

In countries where applicants are automatically released from their nationality when granted another nationality, the requirements for release do not apply.[190] Hence, where an individual seeking to obtain Norwegian nationality is a national of a country that automatically releases its nationals from their citizenship where they obtain a second nationality, Norway does not require that they prove to Norway that they have been released from their original nationality. UDI will then emphasize the need that applicants from such countries have already been released from that nationality when they were granted Norwegian nationality or, at least, that they meet the one-year time limit of Article 10 of the Nationality Act.

Norway has developed certain practices to protect nationals of foreign countries who are seeking to obtain Norwegian nationality. Where an individual seeking Norwegian nationality cannot, under the laws of his country of original nationality, be released from that nationality before obtaining another nationality or the promise thereof, UDI will issue a legally binding promise to grant Norwegian citizenship (*n. "får et tilsagn om statsborgerskap"*). The applicant can show that written promise to the authorities in the country of

---

188 Notably, a person who has lost Norwegian nationality due to acquisition of the nationality of another Nordic state has a right to recover Norwegian nationality by notification, provided that the person has a residence in Norway and can establish evidence of release from the other Nordic nationality, effective no later than the date of the acquisition, pursuant to Article 21 of the Nationality Act.

189 UDI Information on the Citizenship Act with Regulations, Chapter 11.

190 This is the case, for example, for nationals of China, Denmark, and India seeking Norwegian nationality. Email from UDI OPROS, dated 14 August 2012.

original nationality and seek for a release of that nationality. The applicant is in this case required to deliver to Norway a confirmation within one year that he or she has been released from the former nationality.[191] If the applicant does not submit the proof of release from former nationality, the application for Norwegian nationality based on Article 7 of the Nationality Act will be denied. However, UDI is aware that in some cases release can take longer than a year. When the one-year time limit has passed, the applicant has, in practice, the possibility to write to UDI explaining why the requisite document has not been submitted. UDI may then postpone a decision on the applicant's case and grant the applicant a Norwegian Citizenship certificate, "almost without exemptions," although the applicant submits the required proof after the one-year time limit has expired.[192]

In some cases, the other country will not permit a national to be released from his or her nationality unless he or she has acquired another nationality. In such cases, UDI will grant the applicant Norwegian nationality, but revoke the Norwegian nationality according to Article 26, if the person is not released from his or her former nationality within the one-year time limit.[193]

In exceptional cases, UDI will not revoke Norwegian nationality but rather allow dual nationality. This is the case when the applicant has refugee status and the authorities in the country of nationality can therefore not be contacted. This is also the case if UDI is aware that nationals of such countries are never released from their nationality, despite the fact that it is possible according to relevant legislation in the applicant's country of nationality.[194]

Finally, Article 6 of the Nationality Act provides that a child who acquired nationality by birth or through adoption shall never have been Norwegian in the event of a decision or admission that the circumstances that formed the basis for the acquisition of nationality do not subsist.[195] This provision, however, shall not be applied if the child would become stateless or if the decision or admission is made after the person concerned reaches the age of 18 years.[196]

The Nationality Act does not contain any provision allowing for the deprivation or revocation of nationality based on grounds other than those described above. For example, under current law, a Norwegian national cannot be deprived of his or her nationality based on certain criminal offences or acts of treason.[197] In regard to prevention of statelessness in the context of loss and deprivation of nationality, the Nationality Act is in line with the provisions of the 1961 Convention.

## 4.3.4 Reduction of statelessness

### 4.3.4.1 NATURALIZATION

Article 32 of the 1954 Convention provides, "The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

---

191 This is the case, for example, for nationals of Iceland, Pakistan, Sweden, and the United States seeking Norwegian nationality. Email from UDI OPROS, dated 14 August 2012.

192 UDI: Telephone conversation with UDI Nationality department (OPROS), and emails dated 14 and 28 August 2012.

193 This is the case for example in Poland, New Zealand, Spain, Turkey and Vietnam. Email from UDI OPROS, dated 14 August 2012.

194 *Ibid.*

195 Article 6 (1) of the Nationality Act.

196 Article 6 (1) of the Nationality Act.

197 The Norwegian Government recently circulated an Official Norwegian Report (NOU) and for comments regarding a possible amendment which would allow for the loss of nationality, *see Høring – NOU 2015: 4 Tap av norsk statsborgerskap*, available from: https://www.regjeringen.no/no/dokumenter/horing-nou-20154-tap-av-statsborgerskap/id2404185/.

Notably, the period of residence required to qualify for naturalization in Norway is reduced by four years (from seven to three years) for stateless persons, pursuant to Article 16 of the Norwegian Nationality Act. Norway is to be commended for reducing by four years the statutory residence period required of stateless applicants for naturalization.

Importantly, however, in order to obtain Norwegian nationality, a person must have a claim to citizenship independent of statelessness.

Under Article 7 of the Norwegian Nationality Act, an applicant has a right to Norwegian nationality if the applicant, at the time of the decision-making: a) has clearly established his or her identity; b) is at least 12 years old; c) currently is and will be a resident in the Norwegian state; d) fulfils the conditions for a permanent residence permit set out in Article 62 of the Immigration Act;[198] e) has a total of seven years' residence in the country over the last ten years, with residence permits of duration of at least one year (residency during one or more application procedures is to be included in the 7-year period); f) fulfils the Norwegian language learning requirement; g) has not been sentenced to penalties or special criminal sanctions or has endured the waiting period; and h) fulfils the requirement of renunciation of another nationality in accordance with Article 10 of the Nationality Act.

Article 16 of the Nationality Act establishes exceptions to the requirements of Article 7 for stateless persons who apply for Norwegian nationality. According to Article 16, stateless persons are exempted from the minimum age requirement of Article 7(b), and the requirement of the minimum length of residence of Article 7(e) is reduced from seven to three years. In addition, the requirement of Article 7(h) that the applicant prove he or she has been released from a former nationality is not relevant to stateless persons and is therefore not applied.[199]

The other requirements of Article 7 apply equally to stateless persons as to other applicants for Norwegian nationality. For example, as per Article 7(1)d, a stateless applicant needs to fulfil the requirements to be granted a permanent residence permit according to Article 62 of the Immigration Act, which states a minimum length of three years of residence in Norway based on a temporary residence permit.[200] It should be noted that it is not required that the applicant has applied or has been granted a permanent residence permit at the time of the application for Norwegian nationality. He or she just needs to meet the requirements as set out in Article 62 of the Immigration Act.

Stateless applicants for Norwegian nationality also need to establish their identity, as per Article 7(1)a of the Nationality Act. Amendments to Article 7(1) were passed in the Norwegian Parliament on 27 April 2012,[201] according to which the wording of Article 7(1)a of the Nationality Act now states that the applicant will have to "establish his identity," with no further references to documentary requirements as was previously the case.[202] This amendment lowers the evidentiary burden as to the requirement of establishing one's identity. The exemptions apply to applicants who: (i) are born in Norway and are registered in NR; (ii) came to Norway as minors and have at least one parent with established identity; (iii) applicants who have resided legally in Norway for five years and who had not turned 14 years at the time when they were granted their first residence permit, and who cannot provide sufficient passport; or (iv) applicants who have resided legally in Norway for ten years and were 14, 15 or 16 years old at the time when they were granted their first residence permits and cannot provide sufficient passport.

---

198 Article 62 of the Immigration Act describes conditions to be fulfilled to gain permanent residence.

199 Article 16 of the Nationality Act.

200 The Norwegian Government has issued a law proposal increasing the required period of residence to five years, *see* Høring – endringer i utlendingsloven og utlendingsforskriften – hevet botidskrav for permanent oppholdstillatelse mv. – endringer i statsborgerloven, available from: https://goo.gl/ZJu2gm; and UNHCR's comments to the proposal, available from: https://goo.gl/7XJe5d.

201 Act of amendments to the Nationality Act no. 22/2012, *Lov om endringer i statesborgerloven nr. 22/2012*.

202 *Ibid*, changes to Article 7 (1) a of the Nationality Act, entered into force on 1 January 2013.

The changes made concerning these groups were the following: a) it is not necessary to present a copy of a passport with the application and b) the applicant does not bear the responsibility to prove his or her identity. Nevertheless, applicants must show that they have taken measures in order to try to establish their identity.[203] The amendments took effect on 1 July 2012. Consequently, applications using these exemptions were given priority.

In the absence of a specific statelessness determination procedure, the requirement for the stateless person to establish his or her identity can still be problematic. According to Article 16 of the Nationality Act, stateless applicants for naturalization also need to establish their identity pursuant to Article 7(1)(a). No "special requirements for the documentation" are applied to stateless applicants, although the applicant is asked to provide ID-documents, a birth certificate, or travel documents if possible.[204] A stateless applicant does, however, need to prove his or her statelessness.[205] A prior decision on the applicant's identity, and hereunder statelessness, made by UDI in relation to an application for a visa, asylum or a residence permit is taken into account and is the determining factor in relation to the citizenship application.[206] If, however, the applicant provides different information on his or her nationality or statelessness, i.e. a copy of a passport, from that registered in his file with UDI at an earlier stage, UDI's nationality department, evaluating the application for Norwegian nationality based on the exemptions in Article 16, will question the applicability of Article 16.[207] A caseworker carries out a thorough evaluation and must for example consider the law and practice in the applicant's former country of residence.[208] Different information on the applicant's identity may also lead to a rejection of the application pursuant to Article 7(1)a, if the identity requirement is not fulfilled according to Article 16.

Article 32 of the 1954 Convention specifically stipulates that states should reduce possible costs of naturalization proceedings. Indirect costs, such as authentication of documents, must not constitute an obstacle for otherwise stateless individuals to exercise the right to acquire the nationality of Contracting States.[209] Under Article 32 of the Nationality Act, fees can be charged in order for the application to be processed. Children under the age of 18 years are, pursuant to the Nationality Regulation § 15-1, exempted from paying a fee.

#### 4.3.4.2 OTHER MODES

Children under the age of 18 years of parents who acquire Norwegian nationality in accordance with Articles 20 and 21 of the Nationality Act will automatically acquire Norwegian nationality through their parents, provided that the child has a residence in Norway, is released from any other nationality (if applicable) at the time of the acquisition, and is not married or in a registered partnership, as provided by Article 22.

According to Article 5 of the Nationality Act, a child will acquire Norwegian nationality if a) the child is adopted by a Norwegian citizen and b) the child is under 18 years of age at the time of the adoption and the adoption is in accordance with the Norwegian Adoption Act.[210]

---

203 UDI, *Ny bestemmelse om unntak fra kravet om klarlagt identitet I statsborgerskapsaker*, 6 July 2012, available at: http://goo.gl/HtLqqQ, and UDI, *Prioritering av søknader om statsborgerskap*, 20 November 2012, available at: http://goo.gl/qQzDuQ.

204 DI (Statistics and Analysis Division) reply dated 10 August 2012 to a questionnaire prepared by the researcher in relation to mapping of statelessness in the Northern Europe, dated 25 July 2012.

205 *See* UDI Information on the Citizenship Act with Regulations, para. 6.3.

206 *Ibid*, para. 2.1.

207 UDI (Statistics and Analysis Division) reply dated 10 August 2012 to a questionnaire prepared by the researcher in relation to mapping of statelessness in Northern Europe, dated 25 July 2012.

208 UDI Information on the Citizenship Act with Regulations, para. 2.2.

209 UNHCR *Guidelines on Statelessness No. 4*, para. 54.

210 The Adoption Act, *Lov om Adopsjon nr. 28/1986*, available at: https://lovdata.no/dokument/NL/lov/1986-02-28-8.

# 4.4 Conclusions and recommendations

Although Article 3 of the Norwegian Nationality Act incorporates international law and thus Norway's commitments under the 1954 and 1961 Conventions, these international obligations have largely not been expressly incorporated into domestic law.

The Nationality Act does not contain any express provisions under which persons born in Norway who would otherwise be stateless can obtain Norwegian nationality. For such persons, Norwegian law provides neither for the acquisition of Norwegian nationality at birth by operation of law nor by application. Norwegian law is thus not in accordance with the international standards set forth by Article 1 of the 1961 Convention.

Stateless persons in Norway are not barred from acquiring Norwegian nationality, but they cannot do so on the basis of their statelessness and birth in Norway. Even where stateless persons are exempted from certain conditions generally applicable to persons seeking naturalization (a lowered residence period and exemption from the requirement to prove release from nationality), Norwegian naturalization law imposes conditions upon applicants that, when applied to stateless persons born in Norway, are impermissible under Article 1(2).

In light of these findings, a review of the Nationality Act is therefore recommended. Specifically, it is recommended that the domestic law be amended to provide for the grant of Norwegian nationality to persons born in Norway who would otherwise be stateless, preferably automatically, by operation of law (*ex lege*), at birth, as provided by Article 1(1)(a) of the 1961 Convention, or by application pursuant to its Article 1(1)(b).

By applying Article 1 of the 1961 Convention in conjunction with Articles 3 and 7 of the CRC, UNHCR recommends that states grant children born on their territory who would otherwise be stateless nationality automatically at birth.

If Norway, on the other hand, chooses to grant its nationality by application pursuant to Article 1(1)(b), it then needs to be done in line with the enumerated conditions set out in Article 1(2) of the 1961 Convention.

With regard to facilitation of naturalization of stateless persons under the 1954 Convention, it is noted here that Norway provides for a reduced residence period for stateless persons from seven to three years. This is a considerable reduction in the residence period and is to be commended. Norway is encouraged to consider the possibility of reducing some of the other criteria for naturalization for stateless persons, in order to further facilitate their ability to acquire a nationality.

Current Norwegian law has strong *jus sanguinis* provisions for children born abroad to Norwegian nationals. Norway is overcompliant with the relevant 1961 Convention provisions and is thus to be commended. It is recommended, however, that further research be conducted with regard to children born abroad to Norwegians prior to the change in the law of 1 September 2006 to assess whether these children might be at risk of statelessness.

Norwegian law contains strong protections for foundlings that are compliant with the 1961 Convention and Norway is thus to be commended.

Norwegian law contains a general jurisdiction provision providing that Norwegian law applies aboard Norwegian-flagged sailing vessels. It is understood that Norwegian law will be interpreted such that a birth aboard a Norwegian-flagged ship shall constitute a birth on Norwegian territory for purposes of the 1961 Convention. However, some ambiguity remains as to the law governing Norwegian-registered aircraft. It is therefore recommended that Norway reviews if it may be necessary to amend its laws to expressly provide that births aboard a Norwegian aircraft be deemed to have taken place in Norwegian territory for purposes of the 1961 Convention.

# 5. Concluding remarks and recommendations

Current Norwegian law has quite strong safeguards against statelessness with regard to persons born to Norwegian citizens abroad, foundlings, and loss, renunciation, and deprivation of Norwegian nationality. Indeed, some of these protections are very strong and overcompliant with international standards. Norway also has a good practice with regard to facilitated naturalization of stateless persons in the form of a greatly reduced residence period for stateless persons seeking naturalization. However, stateless persons seeking to naturalize must do so on a ground independent of their statelessness.

In a number of areas, there are gaps in Norwegian law. The national legislation contains no definition of a stateless person, and one statutory provision impermissibly seeks to limit the scope of who will be deemed stateless. Nor is there a determination procedure or a formally recognized status of stateless with accompanying rights, including to identity and travel documents. When persons who arrive in Norway in a migratory context have contact with the authorities, their nationality or statelessness will be registered when establishing their identity. However, the lack of consistent guidelines used by the registering authorities, and the absence of a statelessness determination procedure, appears to lead to inconsistencies in such registrations, and to the lack of recognition of persons as stateless. Accordingly, there are imperfections in statistics on statelessness. Importantly, Norwegian law does not specifically provide for the grant of nationality to persons born in Norway who would otherwise be stateless.

Therefore, in order to facilitate Norway's full compliance with its obligations under the 1954 and 1961 Conventions and to ensure that stateless persons be able to enjoy the rights to which they are entitled, UNHCR makes the following suggestions and recommendations.

## Identification and registration of statelessness

---

**IT IS RECOMMENDED THAT CONSISTENT ADMINISTRATIVE GUIDELINES BE USED BY ALL OF THE AUTHORITIES THAT MAY REGISTER PERSONS AS STATELESS** in the context of immigration and residence-related procedures/situations, to ensure that the respective authorities use the same definition of statelessness and apply the same criteria and procedural standards, including on burden and standard of proof. This would help to streamline the working methods and facilitate a consistent approach, and ensure that only those individuals who are stateless are registered as such, as well as avoid the risk of having the same individual registered in different ways in the existing registration systems and databases.

---

**IT IS RECOMMENDED THAT THE DEFINITION OF A STATELESS PERSON SET FORTH IN ARTICLE 1 OF THE 1954 CONVENTION BE INCORPORTED IN NATIONAL LEGISLATION** to strengthen the understanding and application of the binding definition of a stateless person in Norwegian law and practice.

**IT IS RECOMMENDED THAT THE PROVISIONS OF ARTICLE 16 OF THE NATIONALITY ACT THAT REDEFINE A STATELESS PERSON BE REVISED TO BRING THE DEFINITION OF A STATELESS PERSON IN NORWEGIAN LAW IN LINE WITH ARTICLE 1 OF THE 1954 CONVENTION.** Under Article 16, a person who by his or her own act or omission is stateless, or who in a simple way can become a national of another country, is not deemed to be stateless.

**IT IS RECOMMENDED TO IMPROVE QUANTITATIVE AND QUALITATIVE DATA ON STATELESS PERSONS IN NORWAY,** including the accessibility of such, by improving the **s**tatistics and information on the situation of stateless persons in Norway using a range of methods, such as analyses of civil registration data, population censuses, targeted surveys and studies. In this regard, it is necessary to ensure that separate data on stateless persons on the one hand, and on refugees on the other, be recorded and published. The Norwegian authorities involved in registration are also encouraged to examine the current system for use and transfer of data between the various registration systems, in order to ensure consistency in registrations and reporting on statistics.

**IT IS RECOMMENDED THAT A PARTICIPATORY ASSESSMENT BE CARRIED OUT WITH STATELESS PERSONS IN NORWAY** in order to acquire a better understanding of their individual profiles and situation, and how their lives are impacted by their statelessness.

## Determination of stateless persons and the rights attached to the status

**IT IS RECOMMENDED THAT A STATELESSNESS DETERMINATION PROCEDURE BE ESTABLISHED** to determine who, within Norwegian territory, is stateless, including persons in detention who cannot be expelled ("unreturnables"). The most effective way to ensure Norway meet its international obligations towards stateless persons under the 1954 Convention and in human rights law is through the establishment of an accessible and efficient statelessness determination procedure that identifies stateless persons on Norwegian territory, in line with the requirements elaborated in the UNHCR *Handbook on Protection of Stateless Persons*. Such a procedure could be established within the Norwegian Directorate of Immigration, and build upon existing structures and competencies.

**IT IS RECOMMENDED TO INTRODUCE PROVISIONS GUARANTEEING APPLICANTS, AS WELL AS PERSONS RECOGNIZED AS STATELESS, THE RESPECTIVE RIGHTS TO WHICH THEY ARE ENTITLED UNDER THE 1954 CONVENTION.** The UNHCR *Handbook on Protection of Stateless Persons* describes which rights applicants for the statelessness status are entitled to, and which are reserved for persons determined to be stateless.

**IT IS RECOMMENDED THAT A SPECIFIC RESIDENCE PERMIT BE INTRODUCED FOR PERSONS RECOGNIZED AS STATELESS** and that these stateless persons be granted the "lawfully staying" rights guaranteed by the 1954 Convention, as elaborated in the UNHCR *Handbook on Protection of Stateless Persons*.

## Prevention and reduction of statelessness

**IT IS RECOMMENDED THAT RESEARCH ON STATELESS CHILDREN BORN IN NORWAY** be carried out in order to determine the number, current legal status, profiles and needs of these children.

**IT IS RECOMMENDED THAT THE NORWEGIAN NATIONALITY ACT BE AMENDED TO INCLUDE SAFEGUARDS PREVENTING CHILDREN FROM BEING BORN INTO STATELESSNESS** by providing for the automatic grant of Norwegian nationality at birth to persons born in the territory who would otherwise be stateless, in accordance with Article 1(1)(a) of the 1961 Convention or, alternatively, that nationality be granted by application pursuant to Article 1(1)(b). Importantly, if Norway chooses to grant its nationality by application, it must be done in line with the enumerated permissible conditions set out in Article 1(2). Pursuant to Article 1(1)(a) of the 1961 Convention, and Articles 7 and 3 of the CRC, UNHCR recommends states to grant children born on the territory who would otherwise be stateless citizenship automatically at birth.

**IT IS RECOMMENDED THAT NORWAY GRANT ITS NATIONALITY TO ALL PERSONS WHO WERE BORN STATELESS IN ITS TERRITORY REGARDLESS OF AGE AND WHO ARE STILL STATELESS TODAY** in recognition of its longstanding commitments under the 1961 Convention, the retroactive provisions of that Convention, and the fact that persons born in Norway and guaranteed protection by Article 1 of the Convention may now be well into adulthood and remain stateless.

**IT IS RECOMMENDED THAT THE NATIONALITY ACT BE INTERPRETED SUCH THAT BIRTHS ABOARD A NORWEGIAN AIRCRAFT** be deemed to have occurred on the Norwegian territory.

**IT IS RECOMMENDED TO REVIEW THE CRITERIA FOR NATURALIZATION TO CONSIDER THE POSSIBILITY OF FURTHER REDUCING THE REQUIREMENTS PLACED UPON STATELESS PERSONS, IN ORDER TO FACILITATE THEIR NATURALIZATION.** For example, it is recommended that the standard of proof governing proving one's identity be reviewed so that the burden is shared between the individual and the state. It is likewise recommended that the criteria for acquisition of permanent residence be reviewed.

# Annex I: Questionnaire sent to NGOs and other possible stakeholders

## MAPPING OF STATELESSNESS IN THE BALTIC AND THE NORDIC REGION – Norway –

### THE PROJECT

UNHCR is carrying out research on the issue of statelessness in Norway. This research aims to find out the number, situation and profile of stateless persons in Norway and analyze Norwegian law, policy and practice relating to stateless persons in light of the international standards in this area, in particular the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

### WHAT DOES BEING STATELESS MEAN?

A stateless person is someone who does not enjoy citizenship – the legal bond between a state and an individual – with any country. They find themselves marginalized, often unable to obtain identity documents, to travel, access health or education or even marry. There are at least 10 million stateless persons worldwide, including over 600,000 living in Europe. It is currently not known how many stateless persons are living in Norway.

### HOW WILL THE RESEARCH BE USED?

The numbers, status and rights of stateless persons in Norway are currently unknown and a detailed mapping of Norwegian legislation, practice and institutional capacity in the area of statelessness has so far not been undertaken. Our research aims to gather data and through indicative examples, better understand the situations stateless persons find themselves in. This questionnaire is one of the ways we will use to capture this data.

### HOW CAN YOU HELP?

We need your help to identify the numbers and status of stateless persons in Norway. It would be of great value to this research if you could fill out the following questionnaire, in accordance with the experience of your organization.

**All information will be treated in confidence and the identity will remain anonymous in the report. Participation can be withdrawn at any stage before the publication of the report. Please find enclosed an informed consent form.**

Please return this questionnaire and the informed consent form, in English or in Norwegian, as early as possible but ideally before **17 August 2012** to Hrefna Dogg Gunnarsdottir, legal consultant at the UNHCR Regional Office in Stockholm, Sweden via email: dogg@unhcr.org, who can be contacted for any question you may have about the project.

**Thank you for your time**

# INFORMED CONSENT FORM

## TITLE OF THE RESEARCH:

Mapping of Statelessness in the Baltic and the Nordic Region, Norway.

## NAME OF THE RESEARCHER:

Hrefna Dögg Gunnarsdóttir

## AIM OF THE RESEARCH:

The research project is being undertaken by the UNHCR Regional Office for the Baltic and Nordic Countries. The purpose is to complete a detailed mapping of the number, situation and profile of stateless persons in Norway and an analysis of relevant Norwegian law, policy and practice relating to stateless persons in light of the international standards in this area.

## WHAT WE REQUEST FROM YOU:

We ask for your insight into the number, situation and profile of stateless persons in Norway gained through your organization's experience working with or on behalf of stateless persons. Further, we ask for your permission to use the answers given in the enclosed questionnaire for the purpose of this research. If needed, we might ask you to meet us to follow up on information given in the questionnaire.

## CONFIDENTIALITY AND ANONYMITY:

The data collected from your organization will only be used for the purpose of this study and may be published in a report, but all identifying details about your client(s) will remain strictly confidential.

## WITHDRAWING YOUR CONSENT:

If you have changed your mind and no longer wish to participate in the research on behalf of your organization, please notify the researcher.

## ADDITIONAL QUESTIONS:

If you have any questions about the project you can direct them to the researcher directly:

Hrefna Dögg Gunnarsdottir

Regional Office for the Baltic and Nordic Countries
Ynglingagatan 14, 6th fl.
SE-113 47 Stockholm
Sweden

Tel: +46 (0)8 457 48 85
Fax: +46 (0)8 457 48 87
dogg@unhcr.org

## INFORMED CONSENT

I ..............................................., the undersigned, on behalf of the organization ................................................. have read and understood the information above and any questions I have asked have been answered to my satisfaction. The enclosed answers given on behalf of the organization may be used in the ongoing research by UNHCR on Statelessness and the report that will be published as the final product of the UNHCR research.

☐ I agree that the research data collected for the study may be published on the condition that all identifying details of my client(s) are not used.

☐ I understand that I may withdraw my consent at any stage before the publication of the report.

Signed: ..................................................................................................

Date: ......................................................................................................

## QUESTIONNAIRE

**1. Your organization?**

1.1. Name:

1.2. Type:

1.3. Address:

1.4. Contact person:

**2. Statistical overview of the stateless population in Norway**

2.1. Has your organization worked with or on behalf of stateless people in Norway?

2.2. Description of your client(s) age, sex, country of origin and number of clients, if more than one.

**3. Origin of statelessness (If questions number 2.1 or 2.2 were answered with a yes)**

3.1. Description of your client(s) reason/s for coming to Norway?

3.2. Description of your client(s) living conditions before coming to Norway?

3.3. Description of your client(s) origin of statelessness:

| CAUSES OF STATELESSNESS | NO. OF CLIENTS |
|---|---|
| **Not registered at birth**<br>Please specify if you have any further information: | |
| **Had a citizenship but lost it**<br>Please specify if you have any further information: | |
| **Had a citizenship but was deprived of it**<br>Please specify if you have any further information: | |
| **Had a citizenship but was renounced of it**<br>Please specify if you have any further information: | |
| **Never had a citizenship of a country**<br>Please specify if you have any further information: | |
| **Other**<br>Please specify if you have any further information: | |

**4. Procedures (If questions number 2.1 or 2.2 were answered with a yes)**

4.1. Description of your client(s) contact with judicial and administrative procedures

4.1.1. If detained or sentenced in the Norwegian legal system, please specify reasons of detention/sentence.

**5. Status and Rights (If questions number 2.1 or 2.2 were answered with a yes)**

5.1. Description of your client(s) current status and residence

5.2. Description of your client(s) living conditions in Norway as a stateless person

5.3. Description of your client(s) ways to support him/herself

5.4. Description of your client(s) ability to travel

**6. Any other information that might be of value to this research:**

# **Annex II:** Questions sent to the Asylum department of the Directorate of Immigration

1. **During the asylum process, what definition is used to determine if an asylum seeker is stateless?**
2. **Does the asylum seeker have to proof his nationality/statelessness?**
3. **Does the appropriate case worker determine the nationality/statelessness of the asylum seeker?**
4. **Does the appropriate case worker have guidelines/internal working method that she/he has to follow when determining the nationality/statelessness of an asylum seeker?**
    a. If yes to question no 4, are the same guidelines/internal working method in use in other procedures (residence permits etc.)?
    b. If yes to question no 4, would it be possible to have an access to the guidelines or receive an explanation of the working method in use?
5. **What are the codes (statelessness, unknown etc.) that a case worker can choose from when determining statelessness?**
6. **Does the Folkeregisteret have authority to change UDI's decision made in relation to nationality/statelessness?**
    a. If yes to question no 6, what are the differences between the determination of statelessness by UDI vs Folkeregisteret?
7. **If an applicant is not happy with the determination of his nationality/decision, is there a possibility to appeal the decision made on his nationality/statelessness?**
8. **Has statelessness per se ever been a reason for a refugee status, subsidiary protection or residence permit on humanitarian grounds?**

# Annex III: Questions sent to the Register

## Norway National Register

1. **What is the description/definition behind the category "Stateless"?, i.e. when are people categorized as stateless (statsløs)?**
2. **What is the description/definition of the code unknown in Folkeregisteret's statistics?, i.e. when are people categorized under the code unknown country or citizenship (ouppgitt)?**
3. **Is there a possibility that people who are stateless are categorized as having unknown nationality or categorized in accordance with there country of birth?**
4. **What is the description/definition of the code Palestinians in Folkeregisteret's statistics?, i.e. when are people categorized under the code Palestine (Det palestinske området)**
5. **How are Kuwaiti Bidounis and those born in the Baltics presenting ID cards of recognized non-citizens categorized in Folkeregisteret's statistics?**
6. **If information from UDI show that a person has been registered stateless, what effect (if any) does that have on Folkeregisteret's registration?**

# Annex IV: Request for break down of statistics sent to Statistic Norway

1. **Number of stateless persons with a residence permit in Norway in year 2011 = X**
2. **Number of stateless persons with a residence permit in Norway in the first half of 2012 = X**
3. **X for the year 2011 and 2012 broken down according to:**
   a. Year
   b. Origin (Immigrants, descendants, Norwegian origin)
   c. Country of Origin
   d. Country of birth
   e. Age
   f. Gender
   g. Civil Status (Never married, married, widowed, divorced)
   h. Regional Distribution (According to legal residence in Norway)
   i. Other codes available and of interest?
4. **Number of stateless children in Norway in 2011= Y**
5. **Number of stateless children in Norway in the first half of 2012= Y**
6. **Y broken down according to:**
   a. Year
   b. Origin
   c. Country of Birth
   d. Age
7. **Number of stateless children born in Norway in 2011= Z**
8. **Number of stateless children born in Norway in the first half of 2012= Z**
9. **Z broken down according to:**
   a. Year
   b. Origin
   c. Age

# Annex V: Request for statistic sent to the Return department in UDI

1. **In year 2011, to which countries were stateless persons returned?**
2. **The stateless persons that were returned in year 2011, what was their country of origin/ relationship with the state they returned to**
3. **How many stateless persons were, despite their interest in returning, in practice not returned due to**
   a. no receiving state,
   b. denial of entry in a receiving state or
   c. no country is willing to issue a travel document or
   d. any other reason.

# Annex VI: Request for break down of data sent to the National Police

a. How many stateless persons are currently waiting to be deported

b. How many stateless children are currently waiting to be deported

1. How many people were in practice (and despite the final rejection) not deported, due to their statelessness?

If it is possible, it would be great to divide the numbers in accordance to the following categories:

2. How many were not deported due to;

a. No receiving country?;

b. No right of entry or residence in another state?;

c. Any other reason?

STATELESSNESS

**UNHCR Regional Representation for Northern Europe**
Stockholm, October 2015