

Statelessness determination procedures

Identifying and protecting stateless persons



A PERSONAL APPEAL
FROM THE UNITED
NATIONS HIGH
COMMISSIONER FOR
REFUGEES

Destitution, detention, lack of access to health care or education, the impossibility of marrying a loved one or registering the birth of a child. These are just some of the many problems faced by stateless people around the world, especially when their existence is ignored and their basic human rights are denied. It is vital that States formally identify stateless individuals, ensuring that they are able to enjoy the full range of human rights.

António Guterres

THE IMPORTANCE OF IDENTIFYING STATELESS PERSONS

It is important that States identify stateless people in their territory so that they can enjoy basic human rights, allowing them to live in dignity until their situation can be resolved through acquisition of a nationality.

A stateless person is someone who is not considered a national by any State under the operation of its law. Stateless persons are entitled to rights under the 1954 Convention relating to the Status of Stateless Persons (‘the 1954 Convention’) and in accordance with applicable standards of international human rights law. The growing numbers of State Parties to the 1954 Convention reflects the recognition of this treaty as the main international instrument for the protection of stateless persons. It is implicit in the 1954 Convention that States must identify stateless persons so as to provide them appropriate treatment, including secure residence and a range of rights. A statelessness determination procedure is a mechanism to do so.

Only a small number of countries have established statelessness determination procedures but there is growing interest around the world in introducing such mechanisms. This brochure explains when statelessness determination procedures are required. It also sets out what factors States should take into consideration when establishing such a procedure.



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Statelessness is often passed on from generation to generation. After her mother was recognized as a stateless person in Georgia and then acquired Georgian nationality, this girl and her siblings no longer live in a legal limbo.

WHY DO STATES NEED TO ESTABLISH A DETERMINATION PROCEDURE AND GRANT LEGAL STATUS TO STATELESS PERSONS?

- ◆ Establishing a determination procedure and granting a legal status to stateless persons allows States to ensure that they are meeting their obligations under the 1954 Convention and international human rights law.
- ◆ A statelessness determination procedure contributes to efforts to assess the size and the situation of the stateless population amongst migrant populations on the territory.
- ◆ Identifying and documenting a stateless person allows the person's stay in the country to be regularized.
- ◆ Identifying stateless persons and granting them basic rights allows them to fully participate in and contribute to the society in which they live. This in turn reduces costs and security risks related to the marginalization of stateless persons.
- ◆ Identification of statelessness reduces the risk that stateless persons will be arbitrarily detained or spend prolonged periods in detention.
- ◆ The identification of stateless persons can reveal the causes of statelessness and new trends.
- ◆ An assessment of a person's links to a nationality under a determination procedure often allows States to confirm that some are nationals of a State and to facilitate their acquisition of identity and travel documents.

WHEN DO STATES NEED TO ESTABLISH STATELESSNESS DETERMINATION PROCEDURES?

Although statelessness determination procedures generally assist States in meeting their commitments under the 1954 Convention, their use may not be appropriate in relation to certain stateless populations.

Most stateless people around the world live in a country they call their own. They have long-established ties with the country through birth or long-term residence. As a result, it is generally not appropriate to delay solutions for stateless people in these situations by having them apply for recognition as stateless persons through a determination procedure. States which host such stateless populations need to focus their efforts on facilitating the full integration of these groups by making sure that they acquire the nationality of the country. Governments can facilitate this process by changing legislation and policies to reduce or eliminate requirements for the acquisition of nationality or by assisting stateless persons to meet those requirements.

Stateless persons are also present amongst migrant populations. They may not yet have established sufficiently strong ties with their new country of residence to meet the requirements for naturalization. Acquisition of the nationality of the country with which they have the strongest ties may also prove impossible. Indeed, they may not even enjoy the right to reside in any State. Until they can acquire a nationality, stateless persons have rights under the 1954 Convention in States which are parties to this treaty and pursuant to international human rights law. A statelessness determination procedure serves to identify stateless persons among migrant populations to ensure that they enjoy the rights to which they are entitled until they acquire a nationality.

CONSIDERATIONS WHEN ESTABLISHING A STATELESSNESS DETERMINATION PROCEDURE

States have broad discretion in the design and operation of statelessness determination procedures. When establishing a statelessness determination procedure, States need to keep in mind that...

... although the 1954 Convention does not prescribe a particular procedure, **formalizing a procedure in law ensures** fairness, transparency and efficiency.

... **a centralized procedure is preferable** as it is more likely to develop the necessary expertise among decision makers.

... **some stateless persons may also be refugees**. Therefore, States may consider combining statelessness and refugee determination in the same procedure. Confidentiality requirements for applications by asylum-seekers and refugees *must be* respected regardless of the form or location of the statelessness determination procedure.

... **it is not easy for people to prove that they are stateless**. Most of the time, stateless persons have no documents or other evidence to prove that they are not considered a national by any State. In light of this, both the applicant and the determination authority must cooperate to obtain evidence to establish the facts. Authorities undertaking statelessness determination must consider all available evidence, oral or written, regarding an individual claim. This may include the analysis of nationality laws of other countries and how they are applied.

... it is important that applicants throughout the country have **easy access to a determination procedure and that they are informed** of the existence of the procedure, for example through information in institutions which provide services to migrants.

... because fundamental rights are at stake, States need to incorporate **procedural safeguards** in determination procedures, including:

- ◆ Refraining from removing an applicant from the territory pending the outcome of the determination process;
- ◆ Access to legal counsel - where free legal assistance is available, it is to be offered to applicants without financial means;
- ◆ Giving the applicant a right to an interview with a decision-making official;
- ◆ Decisions that are made and communicated to the applicant within a reasonable time, in writing, in a language they understand, and with reasons;
- ◆ A right for the applicant to appeal a first instance negative decision.

More procedural safeguards are described in the UNHCR *Handbook on Protection of Stateless Persons*.

HOW UNHCR ASSISTS STATES TO DETERMINE WHO IS STATELESS

UNHCR can assist States in a variety of ways:

- ◆ The UNHCR Handbook on Protection of Stateless Persons can assist government officials, decisionmakers, NGOs and legal practitioners in their efforts to identify and protect stateless persons.
- ◆ UNHCR can provide specific advice to States on the development of new statelessness determination procedures and the enhancement of existing ones.
- ◆ UNHCR can facilitate enquiries made by statelessness determination authorities with authorities of other States and can counsel and support applicants and their legal representatives.
- ◆ UNHCR may conduct statelessness determinations of individuals or groups if necessary.

www.refworld.org/statelessness

UNHCR is also a resource for information on nationality laws and practices. Refworld, UNHCR's country of origin database, includes the world's most complete set of nationality laws, as well as relevant sources of information on the application of nationality laws.

Railya became stateless after the break-up of the Soviet Union. She ended up in France where she was granted legal status as a stateless person under France's statelessness determination procedure. To learn more about Railya, please watch <http://unhcr.org/railya>

My name is Railya Abulkhanova. I am stateless.

FREQUENTLY ASKED QUESTIONS ABOUT THE IDENTIFICATION AND PROTECTION OF STATELESS PERSONS

■ Will the establishment of a statelessness determination procedure create a pull factor?

Unlikely. Countries that have established a statelessness determination procedure have not seen increased arrivals of persons to the country claiming statelessness status.

■ Will all asylum-seekers whose claim was rejected on appeal seek protection as stateless persons if a statelessness determination procedure is established?

Unlikely. The vast majority of asylum-seekers around the world are nationals of the State from which they claim a fear of persecution. For most, their nationality is not in question. Experience from countries that have established a statelessness determination procedure shows that very few rejected asylum-seekers go on to make a claim for statelessness status.

■ Will a statelessness determination procedure result in additional costs?

Unlikely. Additional costs can be limited by locating the statelessness determination procedure within an existing government authority with related competence, such as competence in refugee status determination, thereby avoiding the creation of a new institution or administrative apparatus.

Given that countries that have established a statelessness determination procedure continue to experience low numbers of applications, the costs of running the procedure are likely to remain low. By formally identifying and recognizing stateless persons, States avoid the high costs associated with failed attempts at removal and the frequent, repeat and often prolonged detention of stateless persons because of their inability to regularize their stay.

■ Does the State need to grant nationality to all stateless persons identified in the country?

No. The 1954 Convention does not oblige states to grant nationality to all stateless persons who have arrived in the territory. It does require that States shall as far as possible facilitate the naturalization of stateless persons, for example by reducing or waiving conditions for naturalization.

■ Does the State need to grant all the rights of the 1954 Convention to all persons determined to be stateless in the country?

Not always. Sometimes, a stateless person may have a realistic prospect in the near future of obtaining protection in another State. Protection is considered available

when the person can (re)acquire nationality through a simple, rapid, and nondiscretionary procedure or can enjoy permanent residence in the country where he or she resided previously. In that case, the host country can provide a more limited set of rights to that stateless person, while arrangements are made for return to the State where he or she can obtain protection, often the country of his or her previous habitual residence.

■ Must a State be a contracting party to the 1954 Convention in order to establish a statelessness determination procedure?

No. A number of countries that are not contracting parties to the Convention have introduced statelessness determination procedures, based on their commitments under international human rights law.

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CERTIFICAT POUR USAGE ADMINISTRATIF

Le Directeur de l'Office Français de Protection des Réfugiés et Apatrides a l'honneur de faire savoir à Monsieur le Préfet du Var que Monsieur Louis GLASER, demeurant à la Ferme de Gringalet, La Londe (Les Maures), Var, né le 4 Septembre 1889 à Berlin (Allemagne), fils de Louis Glaser et de Catherine née Schoenemann, est réfugié d'origine allemande, placé sous la protection juridique et administrative de l'Office Français de Protection des Réfugiés et Apatrides.

Le présent Certificat lui est délivré pour la régularisation de sa situation administrative./.

PARIS, le 4 Février 1954

Le Directeur:

Since it was established in 1952, the French Office for the Protection of Refugees and Stateless People (OFPRA) has recognized and granted legal status to refugees, to stateless refugees and to stateless persons who are not refugees. Louis Glaser, referred to in the document, was a stateless refugee.

INTERNATIONAL CALLS FOR IDENTIFICATION AND PROTECTION OF STATELESS PERSONS

- ◆ **UN General Assembly:** Notes the work of the High Commissioner in regard to identifying stateless persons, preventing and reducing statelessness and protecting stateless persons, and urges the Office of the High Commissioner to continue to work in this area in accordance with relevant General Assembly resolutions and Executive Committee conclusions.
UN General Assembly, *Office of the United Nations High Commissioner for Refugees: resolution / adopted by the General Assembly*, 6 March 2013, A/RES/67/149
- ◆ **General Assembly of the Organisation of American States:** *Emphasizing* that on that occasion, several member states formally assumed specific commitments regarding their adhesion to the applicable international instruments and regarding the adoption of measures to establish national mechanisms for determining statelessness; (...) *Recognizing* that some countries of the region have recently introduced legislative amendments or practices to determine the status of, or to provide protection to, stateless persons; (...) *resolves* (...) To urge member states, without prejudice to their ratification of, or accession to, the international instruments on statelessness, to consider revising their domestic law or, when necessary, adopting domestic legal provisions to prevent and reduce statelessness and to protect stateless persons (...) Resolution of the General Assembly, *Prevention and Reduction of Statelessness and protection of Stateless Persons in the Americas*, 5 June 2013, AG/RES. 2787 (XLIII-O/13)
- ◆ **The Executive Committee of the High Commissioner's Programme:** (t) *Requests* UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons; (u) *Encourages* States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons to treat stateless persons lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation.
UN High Commissioner for Refugees (UNHCR), *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006

USEFUL RESOURCES

- ◆ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at <http://www.refworld.org/docid/53b676aa4.html>. The Handbook sets out UNHCR guidance relating to the definition of a stateless person, statelessness determination procedures and the status of stateless persons at the national level.
- ◆ UNHCR country information collection: www.refworld.org/statelessness
- ◆ European Network on Statelessness, *Statelessness Determination and the Protection Status of Stateless Persons*, 2013, available at: <http://www.refworld.org/docid/53162a2f4.html>

Cover:

Since Georgia established a statelessness determination procedure in 2012, stateless persons have been able to obtain a residence permit and exercise a range of human rights. Some also acquired Georgian nationality subsequently, like the family in this photo.



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I would like more information about:

UNHCR and its work on statelessness

Visit UNHCR's statelessness website at www.unhcr.org/statelessness. You can also consult the Conclusions on International Protection of UNHCR's Executive Committee, in particular Conclusion 106 on *Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons* (2006).

For a more detailed discussion of statelessness see *Nationality and Statelessness: Handbook for Parliamentarians* (UNHCR and Interparliamentary Union, 2005, updated in 2014) and the *Handbook on Protection of Stateless Persons* (UNHCR, 2014). To access these and other relevant international documents, visit UNHCR's Refworld website at www.refworld.org.

Protecting refugees
Rebuilding lives
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