

SELF-STUDY
MODULE ON

Statelessness

UNHCR 2012



UNHCR

United Nations High Commissioner for Refugees

Haut Commissariat des Nations Unies pour les réfugiés

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Chapter 1: INTRODUCTION TO STATELESSNESS

The term stateless seems to imply without a State; in fact it means without a nationality. While by no means every case of statelessness makes it to the newspapers like the high-profile example above, the condition of statelessness is universally unfortunate and deplorable. Stateless persons have been described as non-persons, unclaimed, outcasts, legal ghosts or the ultimate forgotten people. These expressions reflect the dramatic impact that statelessness can have on an individual's enjoyment of human rights and his or her overall well-being.

“

Founder of Zambia Is Declared Stateless In High Court Ruling*

Kenneth D. Kaunda, the father of modern Zambia and the country's President for 27 years, was declared a stateless person by the country's High Court today.

Ruling on a case brought by high-ranking members of the present governing party, the court ruled that Mr. Kaunda is not a Zambian citizen under the Constitution because his parents were from the former British Nyasaland, now called Malawi.

Mr. Kaunda renounced his Malawian citizenship years ago, when he was President, so he is now effectively stateless.

* Newspaper report by Donald G. McNeil Jr, New York Times, 1 April 1999

- ◀ Ukraine / Crimean Tatars were deported from Ukraine en masse from their homeland in 1944. Most later returned to Crimea and are now citizens of Ukraine. This is thanks to a series of amendments to Ukrainian law which facilitate acquisition of Ukrainian nationality by stateless persons and reduce the risk of statelessness for many Crimean Tatars who have renounced the citizenship of their former country of residence in order to acquire Ukrainian citizenship.

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1.1 Nationality

With the world divided into States, borders have become a way of demarcating territory and nationality has become the instrument for demarcating populations. Nationality is the legal bond between a State and an individual. It is a bond of *membership*.

Once held, nationality – membership – brings with it both rights and responsibilities: For the State and for the individual. Among the key rights of nationals are the right to return and to reside within the territory of the State and the right to participate in political processes of the State. There are of course circumstances in which these rights cannot be exercised but these are nevertheless considered to be two of the main functions of nationality. The corresponding duties of nationals reflect their allegiance to the State and may, for example, include the obligation to pay taxes or to perform military or equivalent service. States, in turn, are obliged to guarantee various rights to their nationals and may demand (certain expressions of) loyalty in return. Under international law, States are allowed to exercise jurisdiction (i.e. the power to exercise authority over a certain geographic area, persons or subject matter) over their nationals, even when they are abroad. They can for instance prosecute crimes allegedly committed by, or against, a national. Similarly, nationality may also influence jurisdiction in civil law suits and thus can determine which State's law should be applied.

Nationality is acquired or lost according to rules set by each State. These rules determine which links between the individual and the State – some kind of connection usually either with the territory (place of birth or residence) or with a national (descent or marriage) – should be reflected in the formal bond of membership.

1.2 Definition(s) of statelessness

Within the realm of public international law, rules have evolved in response to the problem of statelessness. A definition has also emerged: a stateless person is a person who is not considered as a national by any State under the operation of its law (sometimes referred to as *de jure* statelessness). This definition can be found explicitly in Article 1 of the 1954 Convention relating to the Status of Stateless Persons, one of the two major international instruments that deal specifically with the issue of statelessness.

Whether or not a person is stateless can be determined based on an assessment of relevant nationality laws and how these laws are implemented by the State. Since nationality is generally acquired on the basis of an existing, factual link between the individual and the State – some kind of connection either with the territory (place of birth or residence) or with a national (descent, adoption or marriage) – the task at hand is to look at the domestic nationality legislation and practice of States with which an individual enjoys a relevant factual link, to see if nationality is indeed attributed to the individual under any State's law. If not, then he or she is stateless.

Fact Box:

The global scope of statelessness

Statelessness is a global anomaly in today's world, where enjoying membership of a State is the norm. A survey on statelessness conducted by UNHCR in 2003 confirms that no region of the world is free of the problems that lead to statelessness. Nevertheless, the precise number of stateless persons around the world is unknown. States are often unwilling or unable to provide accurate data and in fact few states even have the necessary mechanisms in place for identifying or registering stateless persons. Moreover, there is no clear requirement for states to report on the numbers of stateless persons living in their territories, although UNHCR's Executive Committee urges states to share any statistics that they have compiled. Estimates of the global stateless population therefore vary. In 2010, although UNHCR identified 3.5 million stateless persons globally, it is estimated that the true number is closer to 12 million stateless persons worldwide.

Numerous states are known to host substantial populations of stateless persons. At the end of 2010, the following were the largest statelessness situations UNHCR reported on in its statistics: Estonia (100,983), Iraq (120,000), Kuwait (93,000), Latvia (326,906), Myanmar (797,388), Nepal (800,000), Saudi-Arabia (70,000) Syrian Arab Republic (300,000), and Thailand (542,505). Meanwhile, there are over a dozen states that host sizeable populations that are stateless or at risk of statelessness, but where no reliable numbers exist on the scope of the problem, including the Dominican Republic, Côte d'Ivoire, Zimbabwe, India and Indonesia. And, as mentioned above, statelessness can and has emerged as an issue, to varying degrees, in many more places.

Where people have difficulties providing proof that they meet the requirements set by law for acquisition of nationality, they are at risk of not being considered nationals by the State. Such proof may result from civil registries (notably birth certificates), witness testimony or national identity documents (indicating that the person was considered a national at the time of issuance). People who have difficulties providing proof and / or their descendants are at risk of statelessness.

The following categories of persons may be at particular risk of statelessness when they have difficulties establishing their nationality:

- migrant populations where difficulties to prove identity and nationality affect two or more generations;
- persons living in border areas;
- minorities and persons who have perceived or actual ties with foreign countries;
- nomadic or semi-nomadic populations; and
- persons who have been trafficked or smuggled.

Some persons formally possess a nationality but are in a similar situation as stateless persons and are sometimes referred to as *de facto* stateless. Traditionally, this has been viewed as referring to situations where a person is outside the country of his or her nationality and is unable, or for valid reasons, unwilling to avail him or herself of the protection of that country.¹ In practice, "de facto statelessness" is a problematic concept. Put simply, one is only considered *de facto* stateless when one's nationality is ineffective. There is, however, no consensus as to when this criterion of ineffectiveness is met. This situation may be evidenced, for instance, by the refusal of the country of nationality to allow a person to return home, even though it still recognizes the individual as a national. In such a situation, the person may also fall under the refugee definition depending on the circumstances.

¹ Section II.A. of UN High Commissioner for Refugees, *Expert Meeting - The Concept of Stateless Persons under International Law* (Summary Conclusions), May 2010, available at: <http://www.unhcr.org/refworld/docid/4ca1ae002.html>

No legal imperatives exist to grant rights to *de facto* stateless persons on grounds of their statelessness, even though the Final Act to the 1961 Convention includes a resolution recommending “that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality”. The utility of the concept thus remains rather limited. Whereas the absence or denial of a nationality is covered by the two Conventions on statelessness, the denial of rights attached to a nationality (*de facto*) is an issue addressed by the existing human rights regime.

It is important to be wary of the incorrect or inappropriate use of labels. A conclusion that a population is stateless could be used by the State as a way to deny its responsibility for the persons concerned, which makes it important to avoid using this label prematurely. In general, stateless persons should be labelled as such only when it is clear that they do not possess a nationality. In the context of prevention of statelessness it might therefore be more helpful to speak of *persons at risk of statelessness* instead of using the statelessness label.

1.3 De-mystifying statelessness

Numerous misconceptions surround the issue of statelessness. These can pose a serious obstacle to correctly understanding and thereby effectively addressing the problem. Detailed below are some points of clarification with regard to the most common misconceptions.

Statelessness is not a complex, technical, legal problem

Statelessness is sometimes thought to be such a complex problem that it is somehow unmanageable or requires an advanced degree in law to even begin to comprehend. By breaking the issue down into smaller, visibly manageable parts – i.e. definition, causes, consequences; or identification, prevention and reduction of statelessness as well as protection of stateless persons – and dealing with each in turn, it is possible to develop a comprehensive understanding of the whole. Most fundamentally, what is needed is a basic understanding of the legal and administrative mechanisms through which nationality is conferred or withdrawn and the ability to identify potential sources of statelessness within these rules. More generally, there are a number of very simple, concrete things that can be done to address issues of statelessness in any context. Chapters 5 to 8 explain what action you can take to identify, prevent and reduce statelessness in your country and how you can protect stateless persons.

Nationality is not an untouchable, delicate issue solely falling within the sovereignty of the state

It is true that the regulation of nationality is often a sensitive issue because the question of whom to accept as a full member of the political community, i.e. the state, – “who is one of us?” – touches upon the question of national identity. It may be a difficult subject to broach with States and governments may be unreceptive to outside influence. However, it has been clear for many decades that the regulation of nationality is not immune to international law. State sovereignty is subject to certain limits in relation to nationality matters, through international treaties and customary law. This means that basic legal standards are now in place to deal with statelessness. The number of cases in which States have actually modified their nationality legislation or moved to resolve situations of statelessness on the basis of external advice, assistance or pressure continues to grow. This being said, an awareness of the sensitivities involved can be helpful in designing an effective response strategy.



The 1954 and 1961 Statelessness Conventions need not necessarily form the basis for action

Although tailor-made to address statelessness, the *1954 Convention relating to the Status of Stateless Persons* (“1954 Convention”) and the *1961 Convention on the Reduction of Statelessness* (“1961 Convention”) have certain inherent limitations: there are some issues that are not covered by the Conventions and others that are not comprehensively addressed. And while, for many years, UNHCR and other organizations have been encouraging States to accede to these conventions, to date the number of State parties remains relatively low.² However, UNHCR’s action on statelessness is not limited to States that are parties to the conventions as the United Nations General Assembly has given UNHCR a global mandate to address statelessness. While it is important to continue to advocate for accession to both of these instruments, the conventions are not the only sources of international norms relating to statelessness – as is explained in detail in chapter 4. It is therefore important to develop an understanding of all legal tools available, on the international, regional and domestic level.

² As of 1 June 2012, the tally stood at 74 States parties to the 1954 Convention and 45 States parties to the 1961 Convention.

Bangladesh / The Urdu-speakers (“Biharis”) in Bangladesh are an example of successful resolution of a statelessness situation through a change in government policy which confirmed that the entire population – previously stateless – are citizens of Bangladesh.

© UNHCR / G. M. B. Akash / June 2006



Tackling statelessness involves more than just reacting to situations as they arise

For organizations like UNHCR that are accustomed to dealing with refugees and other persons that are in need of international protection, it is tempting to view statelessness as merely another situation that requires a reaction / response. But tackling statelessness is not just about ensuring or (re)instating protection for people who find themselves without a nationality or without the benefits of nationality. There is another side to the international response that is equally important: *prevention*. This involves identifying laws, practices and situations that may lead to statelessness and developing strategies to help stop new cases of statelessness from being created.

Statelessness cannot be resolved through unilateral action or without involving the State

Neither UNHCR nor any other UN agency, international or non-governmental organization can resolve statelessness unilaterally. This is because nationality can only be conferred or confirmed by States and States are responsible for protecting the fundamental rights of all the people on their territory including those of stateless persons. This means that for all activities relating to statelessness, the States concerned are indispensable partners. Partnerships with international organizations and NGOs can be equally essential to acquire the information, expertise, resources, influence and long-term staying power needed to develop and implement a fully effective strategy to address statelessness.

1.4 UNHCR's statelessness mandate

UNHCR has a specific and global mandate to prevent and reduce statelessness and to protect non-refugee stateless persons. Tackling statelessness is part of UNHCR's **core mandate** and should be approached accordingly:

“Protecting, assisting and helping to provide solutions for refugees, stressing the rights of stateless people and reducing statelessness are our core mandate. In everything we do, we can never forget our mandate, and nothing will distract us from it”.³

UNHCR's role in the field of statelessness dates back to 1974 when the United Nations General Assembly entrusted UNHCR with a specific role under the *1961 Convention on the Reduction of Statelessness*. Article 11 of that instrument calls for the establishment of “a body to which a person claiming the benefit of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the appropriate authority”. Indeed, UNHCR must intervene in such cases. Specifically, UNHCR's publication, *UNHCR Action to Address Statelessness: A Strategy Note*, provides that:

Where the State is a party to the 1961 Convention, relevant activities under article 11 include:

- *Publicizing UNHCR's role, including through contacts with relevant State authorities, NGOs and lawyers' networks;*
- *Reaching out to individuals who Field Offices believe may have valid claims under the terms of the Convention;*
- *Assessing the compatibility of the State's legislation with its obligations under the 1961 Convention with relevance to the case;*
- *Assessing whether the individual falls under the scope of a relevant provision, e.g. whether or not a child would otherwise be stateless if not granted the nationality of the State in question;*
- *Presenting findings to the individual concerned, the authorities or in court proceedings where necessary through amicus curiae briefs.⁴*

In the decades since, UNHCR's mandate on statelessness gradually expanded – to include all States and an increasing array of activities/responsibilities – thanks to a series of subsequent General Assembly resolutions. For instance, in 1995, UNHCR was asked to continue its activities on behalf of stateless persons, to promote accession to and implementation of the 1954 and 1961 statelessness conventions and to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States.⁵

At the same time, UNHCR's Executive Committee has been active in providing guidance and direction for implementing the agency's statelessness mandate as it developed. The very detailed 2006 Conclusion No. 106 on statelessness describes the problems and opportunities to prevent and reduce statelessness and protect stateless persons. It also introduces a fourth distinct area of activity, identification, which is to “serve as a basis for crafting strategies to addressing the problem”. Together, these

³ Closing statement by UNHCR High Commissioner, Mr. António Guterres, at the 58th Session of ExCom, 2007.

⁴ UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, page 18, available at: <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>

⁵ UN General Assembly, *Resolution on the Office of the United Nations High Commissioner for Refugees*, A/RES/50/152, 21 December 1995.

four areas of activity comprise a comprehensive response to the phenomenon of statelessness: identification, prevention, reduction and protection. This four-dimensional approach has now been adopted in many planning, strategy-setting and reporting documents and should be reflected in any operational response to statelessness. It also forms the basis for discussing, in greater detail, the response to statelessness in chapters 5 to 8 of this self-study module.

The prevention and reduction of statelessness and increasing the rate of birth registration and individual documentation are part of UNHCR's Global Strategic Priorities for statelessness:



Fact Box:

UNHCR Global Strategic Priorities 2012-2013 and statelessness

Favourable Protection Environment

Adoption of nationality laws that prevent and/ or reduce statelessness

Global Strategic Priority	Impact indicator	Global engagement
Ensuring (...) the adoption of nationality laws that prevent and/or reduce statelessness	Extent law is consistent with international standards on prevention of statelessness	Seek improvements to citizenship laws in 70 countries so as to be consistent with the international standards on the prevention of statelessness

In UNHCR's budget structure, effective as of the 2010/11 planning cycle, the global statelessness programme is one of the four pillars, along with refugees, internally displaced persons (IDPs) and returnees. Similarly, statelessness is embedded in UNHCR's results-based management framework and the planning software FOCUS. Stateless persons are one of the population planning group types for which UNHCR assesses problems and designs activities. The combined effect of the budget structure and FOCUS is to give prominence to activities UNHCR is undertaking with respect to statelessness. The new planning process also allows UNHCR to more precisely document its funding needs in the field of statelessness. FOCUS facilitates a comparative country-by-country overview of planning and reporting on statelessness. Gaps in delivery and resources are more easily identified and thereby permit for additional support, reallocation of resources where possible and improved planning in future.

Fact Box:

Refworld – A Useful Resource on Statelessness

Over the years, UNHCR, other UN agencies, international, regional and domestic judicial bodies, NGOs and academic institutions have produced a wealth of useful and important resources on statelessness. Refworld, UNHCR's online resource for documents relating to international and national protection frameworks relating persons of concern to UNHCR, also has a dedicated Special Features Page on Statelessness, which can be located on the Refworld home page. The Statelessness Special Features page, pictured below, features the most important international legal instruments on stateless as well as key UNHCR policy and operational documents and background information on specific statelessness situations. For example, the Statelessness Special Features Page contains links to:

- relevant UN General Assembly Resolutions relating to statelessness and nationality
- key ExCom Conclusions on UNHCR's statelessness mandate
- UNHCR Guidelines on the definition of a stateless person and related issues
- the most recent regional and country studies on stateless groups around the world and;
- current nationality legislation of each country in the world.

www.unhcr.org/refworld/statelessness.html

1.5 Statelessness and other persons of concern to UNHCR

It is important to note that most stateless people worldwide live in the country where they were born or in a successor State. The fact that they were not displaced or did not migrate from one place to another does not prevent UNHCR and other actors from addressing their plight. There are also a significant number of stateless persons who have fled their countries to escape persecution. Others have been internally displaced. Yet others have migrated internationally for other reasons than persecution. Statelessness can be both a cause and a consequence of forced migration.

Statelessness and refugees

The refugee definition and cessation clauses of the *1951 Convention relating to the Status of Refugees* explicitly refer to both persons who possess a nationality and those who do not. In situations where persons are simultaneously refugees and stateless, they enjoy protection under the 1951 Refugee Convention.

On its own, statelessness does generally not constitute persecution under the refugee definition but may well be an element of persecution taken cumulatively with other factors. Arbitrary deprivation of nationality on its own can give rise to a well-founded fear of persecution, in particular where it results in statelessness. History shows that such arbitrary deprivation is often based on one of the Convention grounds, be it race, religion, nationality, membership of a particular social group or political opinion. Furthermore, where stateless persons flee their country, their statelessness may also be relevant for the determination of whether they fear persecution on grounds of membership of a particular social group.

Many refugees retain their nationality throughout their ordeal abroad and are not stateless, just as most stateless persons have never left the country where they were born and are not refugees.

The drafters of the 1951 and 1954 Conventions decided to create two separate legal regimes to protect refugees and stateless persons. While the 1951 Convention covers refugees, including those who are also stateless (i.e. stateless persons with a well-founded fear of persecution based on a Convention ground), the 1954 Convention is designed principally to protect stateless persons who are not refugees. The Preamble of the 1954 Convention refers to the need for a legal regime specifically for stateless persons by indicating “that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951 and that there are many stateless persons not covered by that Convention”.

Most of the rights granted to stateless persons under the 1954 Convention are the same as those granted to refugees under the 1951 Convention. However, due to the specific situation of refugees (who have often fled their country without obtaining the necessary travel documents and authorisation to enter other States and cannot return to their country due to a well-founded fear of persecution), the 1951 Convention contains specific reference to non-penalization for unlawful entry or presence (art. 31) and to non-refoulement (art. 33). These principles are not contained in the 1954 Convention. As explained by one of the drafters of the Conventions, it follows that “if one and the same person qualifies as a ‘refugee’ (under the terms of the Refugee Convention) and as a ‘stateless person’ (in accordance with [the 1954 Convention]) the State must apply to him (or her) the more favourable provisions of the Refugee Convention.” (N. Robinson, “*Convention relating to the Status of Stateless Persons: Its History and Interpretation*”).

Statelessness and returnees

When voluntary return operations cover stateless persons, it has to be ensured that they have access to full rights in the country of return. As set out in UNHCR’s Statelessness Strategy Note of 2010, “[r]eduction of statelessness is also a goal in the context of UNHCR’s mandate to seek durable solutions for refugees. When former refugees remain stateless, there is a heightened risk of subsequent forced displacement. Hence durable solutions strategies need to ensure that acquisition, reacquisition or confirmation of an effective nationality are outcomes for refugees.”⁶ If arbitrary deprivation of nationality has led to statelessness, citizenship should be restored. The 1996 Handbook on “Voluntary Repatriation: International Protection” therefore states: “Where refugees have lost their nationality, the country of origin should arrange for its restoration as well as for its granting to children born outside the territory and, as appropriate, to non-national spouses.”⁷ This was reiterated by UNHCR’s Executive Committee in Conclusion No. 101 (LV) of 2004 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, which also stressed that countries should accept the return of stateless refugees who have been habitually resident there.

In the same conclusion, ExCom highlighted the importance of documentation, noting “the importance of providing under national law for the recognition of the civil status of returning refugees and changes thereto, including as a result of births, deaths, adoptions, marriage and divorce, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere (...)”. Ensuring proper documentation and registration of returning refugees prevents risks that they may not be considered nationals by their country of origin.

⁶ UNHCR, UNHCR Action to Address Statelessness: A Strategy Note, March 2010, available at: <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>

⁷ UN High Commissioner for Refugees, *Handbook - Voluntary Repatriation: International Protection*, 1 January 1996, at 2.6, available at: <http://www.unhcr.org/refworld/docid/3ae6b3510.html>

Statelessness and internal displacement

Becoming internally displaced does not automatically affect a person's nationality status. In some cases, however, there might be a close connection between statelessness and internal displacement:

- Statelessness can be a cause or a contributing factor to internal displacement, such as in cases where people have been forced to flee due to discrimination based on their statelessness, including due to arbitrary deprivation of their nationality.
- Internal displacement can lead to statelessness, for instance in cases where territorial boundaries have been redrawn subsequent to displacement, or where civil registries are destroyed or birth registration flawed or absent and the nationality of a specific group is questioned.
- Statelessness can serve as an obstacle to return or relocation, particularly when it prevents people from enjoying their rights.

Kyrgyzstan / Former Tajik refugees who are now Kyrgyz citizens. Many refugees are simultaneously stateless, for instance as a result of denial or deprivation of nationality. Refugees who fled Tajikistan in the early 1990s became stateless as a result of how nationality laws were drafted by their country of origin and other successor states to the Soviet Union. When their refugee status ceased, they remained stateless and of concern to UNHCR. Fortunately, many – like this family – have been able to acquire citizenship of the country where they had sought protection as refugees. ►

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Chapter 2

CAUSES OF STATELESSNESS

Developing an understanding of when, how and why nationality is generally conferred or withdrawn allows us to recognize the causes of statelessness as well as to identify persons or groups that may be at risk of statelessness. This knowledge is key to the task of preventing new cases of statelessness from arising and can also contribute to efforts to reduce existing problems of statelessness.

2.1 The attribution of nationality

Nationality is conferred and withdrawn by States on the basis of rules that have been elaborated in their domestic law. While in principle every State is free to design its own nationality legislation and policy, developments in international law, and in particular human rights law, over the course of the last century have set important limits to State discretion in this regard.

*“In its Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923, the Permanent Court of International Justice stated that: ‘The question of whether or not a certain matter is or is not solely within the domestic jurisdiction of a State is essentially a relative question; it depends on the development of international relations’. This approach was reiterated seven years later in the Hague Convention on Certain Questions Relating to the Conflicts of Nationality Laws [...] The Hague Convention on 1930, held under the auspices of the Assembly of the League of Nations, was the first international attempt to ensure that all persons have a nationality. Article 1 of the Convention states that ‘it is for each State to determine under its own law who are its nationals’. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality’. In other words, how a State exercises its right to determine its citizens should conform to the relevant provisions in international law. Throughout the 20th century, those provisions gradually developed to favour human rights over claims of State sovereignty”.*⁸

Most States adopt similar criteria when determining the eligibility of a person for membership, *nationality*, of the State. They look for evidence of a factual link – or appropriate connection – between the individual and the State. Although the exact rules vary from one State to another, one can identify two basic forms of linkage, which are considered to warrant admittance as a national. One is a connection with the State’s territory, which may be evidenced by birth on State soil or (long-term) residence within the borders of the State. The other is a connection with the State’s existing body of nationals, which is generally substantiated through family ties with a national, such as descent or marriage.⁹ International instruments relating to nationality such as the 1961 Convention relating to the Reduction of Statelessness and the 1997 European Convention on Nationality also base their rules on these types of linkage through birth, residency or descent.

⁸ UNHCR and IPU, “Nationality and Statelessness – A Handbook for Parliamentarians”, 2005, 8-9.

⁹ In some states belonging to a certain ethnic group (generally the dominant ethnic group in the State) or religious community may also make persons eligible for nationality.

Fact Box:

Basic conflicts of laws can in some cases lead to dual or multiple nationality, and in others to statelessness

State A confers nationality to all children born on its soil (*jus soli*). State B confers nationality to all children born to one of its nationals (*jus sanguinis*).

A child born in state A, to parents who are nationals of state B will acquire two different nationalities at birth: he or she will be a dual national of countries A and B.

A child born in state B, to parents who are nationals of state A will acquire no nationality at birth: he or she will be stateless.

States' policies on nationality diverge as they attribute different weight to the various factors determining an appropriate link between individual and State. Some States focus on the connection with the territory and the importance of the community within which a person lives or grows up in the formation of his or her identity and loyalties. They therefore grant nationality at birth to children born on their soil (*jus soli*). Other States place more weight on the role of the family in providing a person his or her sense of belonging and on that basis confer nationality to children born to nationals (*jus sanguinis*). It is easy to understand that if these different doctrines function alongside one another, wholly independently and without any harmonization, they may collide. This is indeed how some people end up in the anomalous situation of statelessness. This can be prevented through simple safeguards built into the State's nationality law.

States also assess differently the circumstances in which nationality can be withdrawn and craft domestic law rules on the loss of nationality – be it automatic or at the initiative of the State or the individual. For instance, States may determine that if a national commits certain acts that are considered to contradict their duty of allegiance, they may be deprived of their nationality. Examples of such acts include service with a foreign army, treason and espionage. These policies may also carry a risk of statelessness. Here again, however, international law sets certain limits to the permissibility of withdrawal of nationality.



How do people become stateless?*

Through a bewildering series of sovereign, political, legal, technical or administrative directives or oversights which include the following:

- the transfer of territory or sovereignty which alters the nationality status of some citizens of the former state(s), leaving them without citizenship.
- arbitrary deprivation of nationality of either individuals or groups by a government.
- administrative oversights, misunderstandings or conflicts of law – for instance when a child is born in a country that grants nationality by descent only, but the laws of the state of which the parents are nationals grant citizenship by birth only on their territory.
- administrative or procedural problems such as excessive fees, unrealistic deadlines, lack of appeal or review procedures and failure to notify individuals of registration or other obligations.
- individual renunciation of one nationality without first acquiring another citizenship.
- nationality may be automatically altered in the case of marriage or dissolution of a marriage between couples from different countries.
- failure to register children at birth so there is no proof of where or to whom they were born.
- birth to a stateless person.

* The world's stateless people. Questions & Answers”, UNHCR, 2006.

2.2 Discrimination, denationalization and statelessness

Without denying that there are many different ways in which a person can actually be rendered stateless, it is also fair to say that in the vast majority of cases – in particular the difficult and protracted ones – there is one common root cause: **discrimination**.

*“It is no coincidence that many stateless people also belong to racial, linguistic or religious minorities. Others are born stateless because in some countries women do not have the right to pass on nationality to their children”.*¹⁰

Knowing that statelessness is often linked to discrimination can help us improve response strategies to statelessness in the following three ways:

- 1. It influences the way problems of statelessness are identified.** Understanding that discrimination against a certain group often lies at the heart of problems of statelessness facilitates the identification of categories of people that are exposed to a heightened risk of statelessness. Common grounds for discrimination are gender, ethnicity, religion and language.
- 2. It influences how prevention and reduction of statelessness and protection of stateless persons are addressed.** To effectively tackle the causes of statelessness (i.e. to develop *prevention* or *reduction* strategies), not only must the “sovereign, political, legal, technical or administrative directives or oversights” be dealt with, but also the underlying discrimination, because the latter feeds the former. Similarly, addressing protection issues also requires confronting discriminatory mindsets and developing a different attitude towards the group as a precondition of a truly successful and enduring solution.
- 3. It demonstrates the fundamental importance of addressing statelessness.** The discrimination that has culminated in statelessness may also fuel (further) persecution, displacement, insecurity and conflict, as will be discussed in the chapter on the consequences of statelessness. Statelessness can thus be a useful signal for a broader problem that needs attention.

Within the limits set by international law, it is up to States to develop rules for conferring (and withdrawing) nationality. Nationality laws necessarily make distinctions between people, deciding who belongs to the State and who does not: they impose language requirements for naturalization, they facilitate naturalization for certain groups of foreigners, ethnicities or particular religious groups, make distinctions between men and women or deprive persons of their nationality for acts that endanger national security. In many instances, such distinctions can amount to direct or indirect discrimination, in particular where distinctions are made on grounds of race or sex. Note that many other grounds may also be relevant. For instance, the Human Rights Council in its resolution A/HRC/10/35 “Calls upon all States to refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, especially if such measures and legislation render a person stateless”. Where discrimination is in play, an individual who enjoys an appropriate connection with a State may nevertheless not be recognized as a national or enjoy the rights attributed to that bond of membership. The discrimination may be clear and overt or created inadvertently or indirectly in the laws or through their implementation.

¹⁰ Statement by UN High Commissioner for Refugees (António Guterres) and UN High Commissioner for Human Rights (Louise Arbour), “The hidden world of stateless people”, 28 November 2007.



Côte d'Ivoire / Born in Côte d'Ivoire, the only identity document this 49-year-old woman has is an expired ID card, issued around the time of the 2000 presidential election. She repeatedly tried to obtain a new ID over the years, but says that when authorities saw her northern name, they rejected her application. "Now this is a worthless paper," she says. © UNHCR / Jamal Saidi / 2010

Decrees depriving groups of persons of their nationality constitute the most direct and obvious discriminatory mechanism resulting in statelessness:

"Some people – like Hannah Arendt, who lost her German citizenship after fleeing the Nazis in [the 1930s], or the Feili Kurds who were expelled from Saddam Hussein's Iraq – became stateless as a result of official decrees deliberately aimed at excluding them from any meaningful role in society, or at driving them out of the country, or (in the case of Europe's Jews in the Nazi era) as a prelude to an attempt to exterminate them altogether".¹¹

It is also possible that a change in nationality laws, for example following a change of government or in reaction to other circumstances within the State, results in the sudden exclusion of certain persons or groups. This was for instance the case in Zaire (now the Democratic Republic of Congo), where the Government enacted a decree in 1972 that granted nationality to all persons of Rwandan or Burundian origin who had settled in the country prior to 1950. Ten years later, the 1972 act was retroactively invalidated by the State's parliament, rendering stateless members of the Banyarwanda minority who had acquired nationality on the basis of the decree. Discrimination can also play a role in the creation of statelessness through many other concrete mechanisms such as gender-biased nationality laws.

¹¹ Philippe Leclerc and Rupert Colville, "In the shadows", *Refugees Magazine*, No. 147, 5.

2.3 Statelessness at birth

Birth constitutes a critical point in a person's life as States' laws and policies determine whether or not to grant nationality to the newborn. As a number of factors could leave the child without a nationality, prevention of statelessness is of the essence.

As already outlined above, States generally confer nationality at birth based on a link with the State through blood (*jus sanguinis*, descent from a national) or through the soil (*jus soli*, birth on State territory), or a combination of the two. Since there is more than one doctrine for the conferral of nationality at birth, it is possible that a conflict of laws will lead to statelessness even though there is nothing "wrong" with either of the laws when read independently. As the fact box above already illustrated, when a child is born in a country that grants nationality by descent only, but the laws of the State of which the parents are nationals grant citizenship by birth only on their territory, the child is stateless.

Besides a "simple" conflict of laws, there are numerous other problems that a child can encounter at birth that may result in his or her statelessness. In countries which only apply *jus sanguinis*, "many stateless people are condemned to pass on their statelessness to their own children – as if it were some sort of genetic disease".¹² Moreover, without special provisions in place, the nationality of orphaned or abandoned children may remain unclear or lacking because the key fact of parentage – or even place of birth – may be unconfirmed.

If **gender** discrimination is also a factor, the risk of statelessness increases further. Although the practice of discriminating against women in the ability to pass on nationality to their children is gradually being abolished in many countries, there are still numerous States in Africa, Asia, the Caribbean and the Middle East that maintain such a policy.¹³ In such States, *jus sanguinis* is applied through the paternal bloodline only. With the mother unable to pass on her nationality to her children, they become reliant on their father for the acquisition of citizenship. If the father is unknown, or a foreigner who cannot confer his nationality automatically to his children born abroad, or is himself stateless, the child will be stateless:

Sleiman was born in Lebanon and is now more than 50 years old, but does not have Lebanese citizenship. Sleiman's father and paternal ancestors never registered their family with civil registrars in Lebanon. His father, however, married Sleiman's mother, a Lebanese citizen, who is not permitted to pass on her nationality to her children under Lebanese law. Sleiman is married to a Lebanese woman. They have two children who are both stateless as they do not have any citizenship through Sleiman and cannot obtain Lebanese citizenship through their mother due to the discriminatory citizenship law. "Now my son is 14 years old. I can pay for him to go to private university. But if he is an engineer, if he is a Doctor, he won't be able to practice his profession because he has no citizenship. Lebanon is not thinking about the future of its children."¹⁴

¹² Philippe Leclerc and Rupert Colville, "In the shadows", *Refugees Magazine*, No. 147, 6.

¹³ UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness, 8 March 2012, available at: <http://www.unhcr.org/refworld/docid/4f59bdd92.html>

¹⁴ For this and other testimonies of persons affected by gender discrimination in nationality laws, see *UNHCR and CRTD. A Regional Dialogue on Gender Equality, Nationality and Statelessness: Overview and Key Findings*, January 2012, available at: <http://www.unhcr.org/refworld/docid/4f267ec72.html>

In cases where the child's parents are unmarried, the risk of statelessness increases still further in some countries because many laws restrict the possibilities for unmarried mothers and/or fathers to pass on their nationality. For example, in the Netherlands, new regulations introduced in 2003 on the legal parenthood of children born out of wedlock had dramatic consequences for children born from a mixed relationship – a Dutch national father and a foreign mother. The new rules required the father to make a declaration during the woman's pregnancy that the fetus was his child in order for legal parenthood to be recognized from the moment of birth and for the child to automatically acquire Dutch citizenship. Failure to make such a declaration meant that the child could rely only on the mother's country of nationality (if any) for acquisition of nationality. Many children were not eligible for their mother's citizenship (due to gender discrimination in *jus sanguinis* laws or the non-recognition of a child born out of wedlock) and were rendered stateless.

Problems also occur on a large scale in practice when the father refuses to recognize the child as his own or to take action to register the child with the authorities of his or her country. The following quote relates to women in Arab countries married to Arab non-nationals.

“The first painful contact with reality women have to face is when they find out that they are unable to register their children in national civil records. Many women in the sample spoke of the shock they received and the intense feeling of indignity upon realizing the limits to their rights as citizens.

*In most cases the only option available for women to register their children is at the embassies of their husbands' countries. However, the husband is often the only person entitled to execute that function, which makes the situation more difficult in cases of death, separation or divorce. Some women in the sample, whose husbands worked abroad, were compelled to wait for more than one year to register their child”.*¹⁵

It is crucial to note the link between **birth registration** and statelessness. Every year, many millions of births go unrecorded. This presents a problem for the avoidance of statelessness because whatever the laws on conferral of nationality at birth, if the State fails or refuses to register all births, children will be unable to establish their identity and may thus fail to acquire or prove their entitlement to any nationality (through their parents or place of birth).

While nationality is normally acquired independently and birth registration in and of itself does not normally confer nationality upon the child concerned, birth registration does constitute a key form of proof of the link between an individual and a State. It thereby serves to prevent statelessness.¹⁶

Many a time birth registration facilities are inadequate or simply do not exist, notably in remote areas. As a consequence, many births are not registered. Moreover, discrimination often exacerbates the problem since the rate of non-registration is higher among children belonging to minority groups and other vulnerable groups such as (irregular) migrants, refugees, indigenous peoples and the stateless. Indeed the denial of birth registration by State authorities can be a way of ensuring that certain children are unable to establish their claim to nationality.

¹⁵ CRTD-A, “Gender, Citizenship and Nationality Programme”, Denial of Nationality: The Case of Arab Women, Summary of Regional Research, Beirut, 2004, 21. Available online at <http://www.pogar.org/publications/gender/nationality/crtdesum.pdf>.

¹⁶ UNHCR, State of the World's Refugees: In Search of Solidarity, Box 4.2 “The Importance of Birth Registration”, p 181.



2.4 Statelessness upon a change of civil status (e.g. adoption, marriage and divorce)

Family ties can form and dissolve through processes such as adoption, marriage and divorce. When this happens, the States involved are faced with the question of whether this change in civil status should have an impact on the individual's nationality. Generally, States make naturalization easier for persons married to or adopted by a national. Conversely, some States consider depriving an individual of his or her nationality because of a change in civil status. Divergent approaches leave some people without a nationality.

Again, discrimination on the grounds of **gender**, in particular against women and in the context of marriage, will heighten the risk of statelessness. For instance, some States automatically alter a woman's nationality status when she marries a non-national, basing this policy on the principle of dependent nationality or unity of nationality of the spouses:

"The result of the application of this principle was that a woman who married a foreigner automatically acquired the nationality of her husband upon marriage. Usually this was accompanied by the loss of her own nationality. The rationale for the principle of dependent nationality derived from two assumptions: first, that all members of a family should have the same nationality and, secondly, that important decisions affecting the family would be made by the husband".¹⁷

¹⁷ United Nations Division for the Advancement of Women, "Women, nationality and citizenship", 2003.

- ◀ Viet Nam / Vietnamese Chi, 33 and her daughter at their house in Ho Chi Minh city, Vietnam. Chi married a foreign man and renounced her Vietnamese nationality to apply for her husband's nationality. Before she could acquire her husband's nationality, the couple filed for a divorce and as a result, Chi remained stateless. In 2008, Vietnam adopted a new Citizenship Law which made it easier for citizens who had renounced their nationality without being granted a foreign one to reacquire Vietnamese nationality. This reform paves the way for resolving statelessness affecting thousands of women like Chi.

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Statelessness may result if the woman automatically loses her original nationality upon marriage to a non-national but does not receive the nationality of her husband, or if her husband has no nationality. Conversely, she may also lose an acquired nationality in the event of divorce or even upon the death of the husband. Even where the woman's nationality is not automatically affected by a change in her civil status, she may have the option of applying for her husband's nationality and the laws governing this procedure may pose problems.

Problems have also been known to arise in the context of adoption – in particular where inter-country adoption is involved. In such cases, a similar conflict of laws creates statelessness.

2.5 Statelessness upon a change of nationality

Many people decide at some point in their life to apply for a different nationality – for example after marriage to a non-national or long-term residence abroad. Sometimes the State for whose nationality these persons apply does not accept that they have another nationality and requires applicants to renounce their nationality. This may pose a problem when the individual renounces his or her previous nationality but then fails to secure the new nationality; the individual would become stateless.

Where legislation prohibits dual nationality, safeguards must therefore be in place to avoid statelessness. While a prohibition of dual nationality does not violate international law, it should be underlined that more and more States accept dual or even multiple nationalities to accommodate realities of increased migration.

Regardless of whether or not dual nationality is allowed, people sometimes wish to renounce their previous nationality before acquiring a new one. Legislation that allows for renunciation without even a guarantee of acquiring a new nationality causes statelessness if the individual does not acquire a new nationality.

In some cases, States revoke naturalization when they find that the requirements for acquisition of nationality were not fulfilled at the time of acquisition, in particular in cases of misrepresentation or fraud. While it is not *per se* in violation of international standards to render a person stateless through withdrawal of nationality in these cases, States must consider the proportionality of their act. If the fraud was only minor and the individual has lived for a long time as a national in the State and is well integrated, it may not be justifiable to deprive him or her of the State's nationality considering the detrimental effects of statelessness.

Administrative practices for acquisition of nationality may put individuals at risk of prolonged statelessness if the person has already lost or renounced his or her former nationality. It is not uncommon that a person who is eligible for nationality according to the letter of the law is unable to finish the naturalization or confirmation process because of troublesome administrative practices like excessive fees, deadlines or documentary requirements that are impossible to meet, deliberate withholding of information about the procedures or the lack of an opportunity to appeal against (arbitrary) decisions.

2.6 Statelessness in the event of international migration or forced displacement

If people emigrate and leave the territory of a State, the States involved are faced with the question of whether this should have an impact on the individual's nationality. For instance, they have to consider whether the connection between the person and the State has weakened to such a degree that they would no longer consider the person a national. Conversely, they need to determine when the link between individual and State has deepened in such a way that the individual qualifies for acquisition of the State's nationality. There is often an inconsistency between the answers to these two questions that may lead to statelessness. For instance, several States provide for the automatic loss of citizenship after a number of years if a person has taken up residence abroad. In some cases, procedures are in place for the retention of nationality following emigration – for instance through registration at the embassy of the country of nationality. However, these procedures are sometimes under-publicized or overly complicated to be entirely effective in practice. Indeed, people who migrate may not know that they could automatically lose their nationality after a certain number of years abroad.

Many host States offer access to nationality after a number of years, most often through naturalization, but this period may be lengthy and the acquisition of nationality is usually conditional upon the individual meeting a whole range of other requirements such as language proficiency, an understanding of the domestic political system and a clean criminal record. Moreover, if the individual remains abroad, yet moves from one country to another, he or she may never become eligible for naturalization elsewhere, yet still be deemed to have forfeited his or her original nationality. Where children are concerned, quite a number of States maintain a policy whereby the second generation of children born abroad (grand-children of the original migrant) is not eligible to nationality *jus sanguinis*. At the same time there is no guarantee that the host country applies *jus soli* at least to children whose parents were already born on its territory (double *jus soli* rule), or that all children would be eligible to benefit from it. Children whose parents are in an irregular situation are particularly vulnerable to exclusion from the benefits of any, otherwise comprehensive, *jus soli* policy.

More generally, the overall increase in migration and forced displacement across international frontiers is contributing to an increase in marriages between persons of different nationalities and of children born to mixed nationality parents. This may lead to problems of statelessness as described above. As mentioned earlier, the non-registration of births has been found to particularly affect children of various types of migrants and refugees. Children born to refugees, especially those in protracted situations, make a good case in point: the parents are unable to approach the consular authorities of their country of nationality in order to register or claim documents for the child, but the host State may also be unwilling to provide for birth registration. Similarly, even where countries grant their nationality to children born on their territory who would otherwise be stateless or have a general *jus soli* rule, they often discriminate against refugee children and exclude them from the scope of such provisions, either in law or in practice. The lack of birth registration may make it difficult for these individuals to prove – for instance when they are eventually able to return to their country of origin – that they are nationals of the State.

Another major problem is that in the process of migration or forced displacement of an individual, his or her identity documents may be lost, forfeited or destroyed. This issue has also been flagged in the context of **smuggling** and **trafficking**: there are widespread reports of documents being stolen or destroyed either on arrival in a third country or prior to transfer. However, this problem could affect any category of migrant or displaced person. Once undocumented, problems can arise in relation to the establishment of both identity and nationality. This, in turn, may make it impossible for the individual to prove his or her status when they try to re-enter their country – of their own accord or where the host country attempts to return them – or obtain assistance while in the host State. The longer the person remains undocumented



◀ Croatia / Following the dissolution of Yugoslavia, many people risked becoming stateless because they had problems proving they were citizens of one of the successor States. This was particularly the case if they lacked documentary evidence of their link to one of the newly independent States. Many Roma and members of other minorities remain at risk of statelessness because it is particularly difficult for them to confirm their nationality and obtain identity documents.

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in the host State, the more difficult it becomes to prove his or her connection to the country of nationality – for example through witness testimony or secondary documentary evidence (such as school records). Similarly, over time it becomes gradually harder to prove that any children (or grandchildren) born to such undocumented individuals have a link with either the host country or the country of nationality of their parents.

2.7 State succession and statelessness

Most of the mechanisms of statelessness described above are triggered by a particular event in the lifespan of an individual – such as birth, marriage, emigration – whereby the State involved finds itself (re) evaluating the existence of an appropriate connection for the purposes of nationality. Another possibility is that statelessness arises at a critical juncture in the lifespan of a State: the moment at which the State is (re-)formed. There is indeed a strong connection between **State succession** and statelessness.

State succession is a collective term used to describe any transfer of territory or sovereignty between States. There are four basic situations:

- An area belonging to the territory of one State is transferred to another State, expanding the second State's territory (such as the 2008 cession of the Bakassi Peninsula from Nigeria to Cameroon).
- Two or more States unify to become one larger State (such as in the case of Germany or Yemen, both in 1990).
- A large State dissolves to form two or more smaller, independent States (such as in the case of the USSR in 1991, Yugoslavia in the early 1990s or Czechoslovakia in 1992).
- An area belonging to the territory of one State separates to form its own independent State (such as in the process of decolonization, or when Eritrea became independent from Ethiopia in 1993 and South Sudan from the Republic of Sudan in 2011).



Kazakhstan / Oralman children at a festival in Almaty to mark the end of the month-long celebration of Nowruz (Persian New Year). The Oralman, who are ethnic Kazakhs, have been encouraged to move to Kazakhstan from Mongolia, Uzbekistan, Turkey, Iran and China, among other countries. Some of them became stateless when they renounced their previous citizenship but failed to qualify for Kazakh citizenship. Legislative measures have since been put in place to limit this risk.

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In any of these scenarios, the States involved must decide afresh who is and who is not a national. What happens, in other words, to the people found within the territory over which sovereignty has been transferred? It is likely that a new nationality law will be enacted or the existing law amended to address this question. In this context, it is important to be alert for the possibility that a certain portion of the population affected is overlooked and statelessness may result – through a deliberate and discriminatory policy of exclusion or through a conflict between two or more newly drafted nationality laws. It was in the context of State succession that large stateless populations were created within the territory of Bangladesh, Sri Lanka and others:

*“Perhaps the most spectacular example in recent years was the break-up of a single state – the USSR – into 15 separate successor states. In December 1991, Soviet citizenship ceased to exist, leaving 287 million people in need of a new identity. As a result of this unprecedented political earthquake, an estimated 54-65 million people suddenly found themselves living ‘abroad’. Many were eventually able to sort out their situation, but some with links to two states found themselves citizens of neither”.*¹⁸

Ukraine provides an example of a statelessness situation linked to State succession. Under Josef Stalin's regime, more than 200,000 Crimean Tatars were deported in 1944 from what is today Ukraine, mainly to what is today Uzbekistan. Around the collapse of the Soviet Union in 1991, many of these formerly deported people (FDPs) migrated back to Ukraine. Ukraine determined that all who were citizens of the former USSR, and who were permanently residing on Ukrainian territory at the moment of the Declaration of Independence (August 24, 1991) were automatically considered as citizens of Ukraine. Those who were not permanent residents or who arrived later failed to acquire citizenship automatically and needed to apply for it. As other successor States devised similar nationality laws specifying different cut-off dates for acquisition of their nationality, it became evident that many persons were at risk of falling through the cracks; that is, to become stateless. In particular, this affected people who moved from one successor State to another around the time when the citizenship laws were adopted.¹⁹

Furthermore, the major upheaval that state succession causes in the countries involved, accompanied by substantial turmoil, generates conditions that are conducive to the creation of new cases of statelessness. There may, for instance, be some disruption to civil registration processes or records may even be destroyed in the event of internal or international conflict. Another consideration is the possible displacement of populations before, during or after the process of State succession. This may result in problems of statelessness as described in the previous section.

Finally, just as the States involved in State succession are forced to (re)consider the existence of an appropriate connection with the affected population, so too may individuals be forced to (re)consider their own allegiance. Some individuals may suddenly be eligible for more than one nationality and will need to make a choice – others may return from a long period of exile and try to re-establish their claim to membership to a State. In the aftermath of State succession there may therefore be an increase in the number of cases of change of nationality as people attempt to ensure that they end up with citizenship of the State to which they feel most closely connected. This situation brings with it the risk of statelessness, in particular where the applicable nationality rules allow renunciation of nationality without acquisition of another one; do not allow individuals to apply for a nationality without renouncing a previous one; establish complicated or costly procedures; make unrealistic documentary requirements; set very tight deadlines; or are generally poorly publicized.

¹⁸ Philippe Leclerc and Rupert Colville, “In the shadows”, *Refugees Magazine*, No. 147, 10.

¹⁹ Please see Chapter 6.5 for information on how this situation was addressed.



Chapter 3 CONSEQUENCES OF STATELESSNESS

There is general agreement within the international community that statelessness is an undesirable anomaly. This is based on the understanding that the condition can have a dire impact on the human rights and well-being of the stateless individuals themselves – as described in the citation above – but also on the finding that statelessness can have severe consequences for the States involved as well as the wider international community. With these considerations in mind, it becomes clear that wherever possible statelessness must be avoided. And for those cases that do slip through the net, it is important to be aware of the effects of statelessness and to take steps to mitigate the negative impact that it can have until a solution is found.

“

Statelessness (denationalization) as a punishment*

It is a form of punishment more primitive than torture for it destroys for the individual the political existence that was centuries in the development [...] His very existence is at the sufferance of the country in which he happens to find himself.

* According to the US Supreme Court in *Trop v. Dulles*, 1958, where the court was asked to consider the permissibility of denationalization in the context of desertion from the army.

- ◀ Kenya / Before the Galjeel were stripped of their Kenyan identity documents and evicted from their land in 1999, their children were going to school and “were educated and smart” says one of the Galjeel elders. International aid agencies were building a new school for the Galjeel children but construction was halted in 2005. Most children in the community do not go to school. Those who do must walk several miles and face harassment.
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3.1 The impact on the individual and the family

Statelessness can have a very severe impact on the lives of the individuals concerned. This is due in part to the role that nationality, as membership, plays in the formation of a person’s identity and the connection that they feel to the place where they live and the people around them. To be rejected by every State is to be enveloped by a debilitating “sense of worthlessness”.²⁰ Stefan Zweig, an author born in Austria and made stateless in 1938 described his experiences as follows:

“Since the day when I had to depend upon identity papers or passports that were indeed alien, I ceased to feel as if I quite belonged myself. A part of the natural identity with my original and essential ego was destroyed forever”.²¹

In consequence, statelessness is found to have a huge impact on mental health and can lead to depression, alcoholism, (domestic) violence and suicide.²² But the role that nationality plays in people’s lives goes far beyond this contribution to their sense of worth:

“Because no country considers them citizens, stateless persons often do not have access to the rights that citizens take for granted. Statelessness frequently means living without identity documents conferring legal personality and the rights that go with them – access to health care, education, property rights, and the ability to move freely. Births and deaths may not be registered with the result that stateless persons legally can be invisible: their existence experienced, yet never legally recognized”.²³

On the one hand, international law admits that nationality may still form a prerequisite for claiming the right to participate in the government of the State (to vote and to stand for election or work in public service). Thus almost by definition, stateless persons suffer from disempowerment and voicelessness. On the other hand, beyond this, international law in principle offers stateless persons the full range of human rights.

According to the UN Special Rapporteur on Non-citizens, David Weissbrodt, “all persons should by virtue of their essential humanity enjoy all human rights unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate objective and are proportional to the achievement of that objective”.²⁴ But Weissbrodt also acknowledges that there is “a disjuncture between the rights that international human rights law guarantees to non-citizens and the realities that non-citizens must face”.

²⁰ Feelings expressed by a stateless woman as cited in Philippe Leclerc and Rupert Colville, “In the shadows”, *Refugees Magazine*, No. 147, 6.

²¹ In his autobiography, “The World of Yesterday”, Pushkin Press, 2009.

²² Constantin Sokoloff for the Advisory Board on Human Security, “Denial of Citizenship: a challenge to human security”, February 2005. 22.

²³ UNHCR Assistant High Commissioner for Protection Erika Feller in her foreword to “Statelessness: An Analytical Framework for Prevention, Reduction and Protection”, UNHCR, 2009.

²⁴ UN Special Rapporteur David Weissbrodt, Final report on “Prevention of discrimination – the rights of non-citizens”, 2003, 2.

And this is indeed the problem that the stateless face – the inability to exercise a whole host of rights to which they are formally entitled. As a result, the true humanitarian implications of statelessness are much more dramatic. For example, in Syria, this was the situation of Kurds who were denationalized in 1962:

“Kurds interviewed by Human Rights Watch disputed vigorously that they had the rights of other Syrians, noting that individuals who carry the special red “foreigner” identity cards face tremendous difficulties in their everyday lives:

- They are not permitted to own land, housing or businesses, a fact which the government does not dispute.*
- They are not eligible for food subsidies or admission to public hospitals.*
- They cannot be employed at government agencies and state-owned enterprises, although the government maintains that this is not the case.*
- They cannot practice as doctors or engineers, a claim also disputed by the government.*
- They do not have the right to vote in elections or referenda, or run for public office.*
- They are not issued passports or other travel documents, and thus may not legally leave or return to Syria as a matter of right”.²⁵*

A solution for one part of the stateless population emerged in 2011 when a presidential decree provided the opportunity to apply for citizenship.

Stateless people can experience great difficulty entering or staying in the country that is their home. And because, in the absence of nationality, there is often no State that is obliged to offer them lawful stay, stateless persons are also prone to prolonged or indefinite detention as well as to becoming the object of a game of human ping-pong as they are shuttled back and forth between States. One such case reached all the way to the European Court of Human Rights in 2010:

“On September 2, 2010, the European Court of Human Rights communicated the case Lakatosh and others v. Russia”[.] This is the first case dealing with the deportation of a person without citizenship from the territory of the Russian Federation, as well as on the conditions of the detention of foreign nationals in the reception center in St.Petersburg. Currently there are about 200 people in similar circumstances, awaiting their deportation from the Russian Federation.

The applicants were detained for a period of 1 year and 10 days, during which any prospects for their deportation were absent as the applicants were stateless persons of Ukraine, and Ukraine refused to accept them on its territory. This was well known to the authorities responsible for their detention and deportation. The applicants however couldn’t secure their release, as in Russia there are no mechanisms for periodic judicial review of the lawfulness of detaining persons for deportation, and for their release if they cannot be deported”.²⁶

The case concluded with an offer from the Russian authorities to reach a friendly settlement and award the applicants just satisfaction (i.e. compensation). It is the first case of detention of stateless persons ever reaching an international tribunal.

²⁵ Human Rights Watch , “Syria – The Silenced Kurds”, 1996. See also Maureen Lynch and Perveen Ali , “Buried Alive – Stateless Kurds in Syria”, Refugees International, 2006.

²⁶ “Lakatosh and others v. Russia: State Admits Violations of European Convention”, *ADN Memorial*, 3 July 2011, available at <http://memorial.spb.ru/www/75.html?lang=en>

This lack of enjoyment of rights results in overall hardship and a poor standard of living. Thus, when addressing the problems of stateless people, the challenge is not only to establish their legal status and the formal recognition of their rights, but also to ensure that they are actually able to enjoy the rights and facilities to which they are entitled. General discriminatory attitudes towards stateless persons further impede enjoyment of rights.

One of the most serious problems faced by the stateless is long-term or indefinite **detention**. Stateless persons commonly lack identity or travel documents which are usually issued by States to their nationals. Moreover, their legal or *immigration* status is often precarious because, being non-nationals everywhere, stateless persons do not necessarily have an automatic right to remain in a specific State. The combined effect of these two factors may be the detention of the stateless person – either as a direct consequence of unlawful entry or residence and attempts to remove them to a different State, or in the context of efforts by the State in question to establish the individual’s identity, including their nationality. Ultimately, even if it is possible to determine in which country the stateless person previously resided, there is no guarantee that this country will re-admit him or her. The danger then is that detention will be prolonged, quite possibly indefinitely.

Statelessness has a particularly severe impact on **children**. Not only does it negatively affect their opportunity to access education and to enjoy the benefits of child health programmes (including, for example, important childhood vaccinations), but it often places them in a situation of great physical and psychological hardship:

“Lack of citizenship subjects children to significant threats to their safety and well-being. Children without official papers are vulnerable to abduction, sale and trafficking, illegal adoption, and sexual exploitation. Many more are living in slave-like conditions after being trafficked for labour or sexual purposes in other countries. Unable to prove their true ages without legal documentation, stateless children cannot legally prove that they are too young to work or serve in the military”.²⁷

Moreover, unless his or her statelessness is redressed, the stateless child will continue to face problems into adulthood as described above.

²⁷ From a specific study on how children are affected by statelessness. Sarah Aird, Helen Harnett and Punam Shah, “Stateless Children – Youth who are without citizenship” , Youth Advocate Program International, 2002. See also: Plan International and UNHCR, *Under the Radar and Under Protected: The Urgent Need to Address Stateless Children’s Rights*, 2012.

Kyrgyzstan / Many former refugees from Tajikistan have acquired Kyrgyzstan citizenship in recent years and can now own or rent land and cultivate various crops. ►

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The position of stateless **women** is also precarious. The hardships that stateless women experience may drive them to look for their own creative coping mechanisms or “solution” to their plight. For instance, they may seek to marry a national in the hope of acquiring nationality – or at least secure some basic legal status. Because the relationship is one of heavy dependence on the part of the woman, she may be vulnerable to violence and exploitation yet be trapped in the relationship. The following problems were reported by stateless ethnic Uzbek women, married to Kyrgyz citizens, who took part in a Participatory Assessment in southern Kyrgyzstan:

*“[The women] usually carry expired Uzbek passports and lack the resources to travel to the Uzbek Embassy in Bishkek to request an extension of their validity. Absence of stable sources of income also prevents them from legalizing their stay in the Kyrgyz Republic. Lacking valid passports and fearing problems with border guards, they cannot legally cross the border any longer to visit relatives in Uzbekistan. If they manage to find day-labour, they often do not receive their salaries, as these are paid to their parents-in-law instead. Financially, they thus fully depend on their in-laws. They cannot receive social benefits for their children, and without valid documents, they are even denied access to medical services during delivery. In case of divorce, they are not entitled to any alimony or property and would have no place to live as they do no longer possess the travel documents allowing them to return to Uzbekistan”.*²⁸

Elderly stateless persons can also face specific problems. These include an inability to claim a pension or increased difficulty in accessing citizenship through onerous naturalization procedures.

The difficulties experienced by stateless persons can also have a severe knock-on effect on their families. Indeed the problems start as soon as a stateless person wishes to start a family because he or she may be unable to contract marriage or to ensure that the marriage is officially recognized and registered. The vulnerable status of the children born to stateless persons has already been discussed, but it is worth recalling the fact here: “Many stateless are condemned to pass on their statelessness to their own children – as if it were some sort of genetic disease”.²⁹ The statelessness of one individual can thus endanger the legal status of his or her family members and even the recognition of the family ties as such. Moreover, the economic and social insecurity created by statelessness – as well as the impact of statelessness on (mental) health – will necessarily affect the standard of living and well-being of the entire family.

²⁸ UNHCR, Summary Results of Participatory Assessments with Stateless Persons in the Kyrgyz Republic July-August 2009,

²⁹ Philippe Leclerc and Rupert Colville, “In the shadows”, *Refugees Magazine*, No. 147, 6.



3.2 The impact on society and the state

The enjoyment of an effective nationality is now seen as a crucial component of human security and statelessness as creating the conditions for **human insecurity**. This means that nationality disputes and statelessness are connected with broader issues that affect the surrounding community, such as poverty, social unrest, displacement and conflict.

Statelessness has been shown to have a serious impact on the surrounding community. From a short term perspective, it may appear that the surrounding community can benefit from the disenfranchisement and economic marginalization of the stateless population. However, in the longer run, the exclusion of a certain population group is unlikely to be in anyone's interests:

*“The exploitation of the non-citizen population by their neighbours is likely to create both interdependence and tensions. Social exclusion breeds desperation, violence and crime [...]. Areas inhabited by excluded populations may be redefined as decaying zones, and hence, subject to disinvestments. Services could be withdrawn without regard for the consequences on the national population, which would then suffer from the same conditions of social exclusion as the non-citizens. This happened in parts of the State of Arakan in Myanmar, where health care and education services were virtually abandoned by government authorities. In sum, denial of citizenship is unlikely to foster social harmony between the non-citizen population and the surrounding communities. Instead, it destabilises both groups in a process that naturally leads to social unrest and generalised insecurity”.*³⁰

³⁰ Constantin Sokoloff for the Advisory Board on Human Security, “Denial of Citizenship: a challenge to human security”, February 2005, 25.

This means that, whatever the initial hopes or intentions of the State, a policy of (enduring) statelessness can provoke a harsh impact on the social, economic and political situation in the country:

*“The state which creates statelessness by denationalising large numbers of its nationals may gain some temporary political advantages by thus securing its internal value system. However, in the long run the state may be forced into restricting personal freedoms within its borders or expending most of its economic resources on internal security in order to neutralise activities of its expelled “ex-nationals” aimed at overthrowing the ruling elite. Furthermore, denationalisation accompanied by expulsion or exclusion from participation in the internal value processes can deprive the state of the effective services of many of its highly qualified people with serious consequences to the stability and growth of the state itself”.*³¹

In a worst-case scenario, social unrest and insecurity created by statelessness escalate into **national instability and internal conflict**:

*“Denationalisation always causes people’s marginalisation and their exclusion from mainstream society. In the absence of civil rights and peaceful means for mitigating inequalities, the outcome is often violent [...]. In a number of cases, populations gradually deprived from citizenship rights rose against the State and national communities. The Lhotshampas, for example, were increasingly marginalized in Bhutan during the 1980s. Citizenship requirements had been revised to their disadvantage and their ethnic identity challenged. They demanded democratic reforms and organised several demonstrations, which turned into violent conflict [...]. The ongoing civil war in the Ivory Coast illustrates the marginalisation of large population groups through a reversal of citizenship policies; the country’s leadership fabricated a new nationality identity – the ‘Ivoirité’ – as a tool in the pursuit of nationalistic policies. This was used to justify the exclusion from governance and eventual expulsion of large population groups from the country. The question of citizenship polarised the country’s population and exacerbated internal tensions; it caused the civil war and brought the Ivory Coast to the brink of international conflict”.*³²

The formalization of discrimination through exclusion from membership in the State, nationality, may seem a simple method of neutralizing a (perceived) threat from minority or opposition groups. However, even leaving aside for one moment the question of whether such a policy violates international legal commitments, the foregoing examples illustrate that the negative impact on stateless individuals will often spread, threatening the social, economic or political stability of the State.

³¹ Dorothy Jean Walker, “Statelessness: Violation or Conduit for Violation of Human Rights?”, *Human Rights Quarterly*, Vol. 3, No. 1, 1981, 107-108.

³² Constantin Sokoloff for the Advisory Board on Human Security, “Denial of Citizenship: a challenge to human security”, February 2005.

3.3 The impact on the international community

Since statelessness violates the right to a nationality and leads to the inability to enjoy a host of other rights, the issue deserves to be placed on the international agenda. Apart from affecting the lives of individuals and the wider community, statelessness also impacts on the international community:

A major and severe consequence of statelessness is **displacement**:

*“The loss of fundamental rights sets non-citizens in untenable situations. Discrimination, exclusion from mainstream society or the inability to keep a different cultural identity and in general insecurity are all elements which press non-citizens into considering voluntary migration [...]. The Rohingya, for example, migrated out of Myanmar and into Bangladesh when conditions were particularly difficult in Arakan [...]. Significant shuffling of populations linked to citizenship issues has also taken place in the aftermath of the disintegration of the Soviet Union and Yugoslavia. In Africa, important population movements have been linked to citizenship issues and related conflicts”.*³³

Statelessness may also result in **instability**:

*“[T]he issue of statelessness is of particular concern to the international community, as if one state fails to grant nationality to a person or group, this becomes a potential problem for all states. Unless the state which fails to grant nationality decides, nonetheless, to allow the stateless persons to remain resident with full legal entitlements equivalent to that of nationals, which raises the question of why they were excluded from nationality status in the first place and may in itself be discriminatory, then this group will likely either seek full national legal identity elsewhere, or look for mechanisms of redress where they are. The instability created for them can easily be translated to the international level, and can become a root cause of displacement or of conflict, particularly where no redress is possible”.*³⁴

Furthermore, as a cause of displacement, individual and national insecurity, nationality disputes and statelessness can feed **international and non-international armed conflict**:

*“About 1.5 million Banyarwanda living in the North and South Kivu provinces of the Democratic Republic of Congo (DRC) are denied citizenship. The issue of ethnicity as basis for citizenship, manipulated to political ends in the past 40 years, has been at the centre of every single conflict in the Great Lakes Region”.*³⁵

Grasping the link between statelessness and each of the severe problems described in this chapter helps to build a case for negotiation, advocacy or public information campaigns for the prevention or reduction of statelessness and the protection of stateless persons.

³³ Constantin Sokoloff for the Advisory Board on Human Security, “Denial of Citizenship: a challenge to human security”, February 2005, 27.

³⁴ Carol Batchelor, “Transforming international legal principles into national law: the right to a nationality and the avoidance of statelessness”, *Refugee Survey Quarterly*, Vol. 25, Issue 3, 10.

³⁵ Constantin Sokoloff for the Advisory Board on Human Security, “Denial of Citizenship: a challenge to human security”, February 2005, 8. To read about how citizenship issues contributed to conflict in the Great Lakes region, see Alert Net/ George Fominyen, Expert Views – Did statelessness fuel the conflict in Congo?, 23 August 2011, available at <http://www.trust.org/alertnet/news/expert-views-did-statelessness-fuel-the-conflict-in-congot>.



Chapter 4 THE INTERNATIONAL RESPONSE TO STATELESSNESS

The discussion of both the underlying causes and the consequences of statelessness in the previous chapters has exposed the necessity for the international community to address statelessness. In light of this necessity, the international community has responded. This chapter briefly describes the historic development of that international response; it sets out the current international legal framework on statelessness and explains which role UNHCR and other actors can play in dealing with this issue.

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The campaign for nationality is far from over*

The world community is no longer silent about statelessness. In recent years, countries such as Bangladesh, Estonia, Mauritania, Nepal, and Sri Lanka have made significant strides to protect the rights of stateless persons. The response of the United Nations (UN) has improved. Non-governmental agencies, legal experts, affected individuals, and others are joining forces to gather more accurate information and reduce the incidence of this often overlooked global phenomenon. Media attention has increased. Yet some 12 million people around the world are still stateless, and progress toward ending the problem is limited and slow. The campaign for nationality rights is far from over.

* “Nationality rights for all” by Refugees International, March 2009.

- ◀ Myanmar / Under the gaze of curious villagers, a young Muslim girl in northern Rakhine State picks up newly-issued ID cards for her family as part of a documentation campaign to ease the effects of statelessness on the Muslim majority in the area.

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4.1 Historical overview

The international community first began to take an active interest in the problem of statelessness and the regulation of nationality in the early twentieth century. At that time, there were two parallel yet separate developments. The first was the settlement of a series of agreements to respond to the immediate practical needs of the masses of people who found themselves displaced and / or stateless in the aftermath of World War I. However, these agreements focused on a number of specific, known groups such as the Russian and Armenian refugees and neither attempted to formulate universally applicable definitions or standards, nor to resolve the actual *statelessness* of individuals. The long-term impact of these agreements was thus limited. The second relevant development was the codification of a number of rules and principles relating to the regulation of nationality by the League of Nations Committee of Experts for the Progressive Codification of International Law. The resulting 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws was designed to enable, among other things, the abolition of cases of both dual nationality and statelessness. However revolutionary this Convention may have seemed at the time, it was not comprehensive enough to really achieve the avoidance of statelessness and never nor attracted many State parties.

After World War II, the international community was again faced with the pressing needs of millions of newly displaced and / or stateless persons. This time it was the turn of the United Nations to consider how to best address the problem. A study was commissioned – the “Study of Statelessness”³⁶ – and following its recommendation an “Ad hoc Committee on Statelessness and Related Problems” was established to work out the details of a new international instrument dealing with such persons who were in need of protection. It is at this stage that the terms “refugee” and “stateless person” truly took on autonomous meanings: the work of the committee eventually resulted in the adoption of two separate conventions, the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. These sister conventions call into being the legal status of a “refugee” and “stateless person” respectively and offer a largely comparable catalogue of rights – a minimum standard of treatment – to individuals that qualify under each respective definition.

The Nazi campaign to exterminate Jews began with their denationalization and deportation. The events of the World War II thus clearly illustrated that denationalization could be part of such terrifying acts as persecution and even killing of those deemed undesirable by the ruling authorities. Following the war, there was therefore not only a renewed interest in the problem of the protection of stateless persons (and refugees), but also in the underlying question of the regulation of nationality. The Universal Declaration of Human Rights set the scene by including “the right to a nationality” among its provisions. Article 15 states:

“Everyone shall have the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.

³⁶ United Nations Department of Social Affairs, A Study on Statelessness, Lake Success, New York, August 1949.

This provision became the inspiration for similar articles in many other human rights instruments and spurred on the international community in its attempts to ensure the eradication of statelessness. After lengthy debates, the 1961 Convention on the Reduction of Statelessness was adopted: an instrument devoted in its entirety to limiting, as far as possible, the number of cases of statelessness worldwide. To that end, the 1961 Convention prescribes certain limits on the freedom of States to attribute and withdraw nationality at will, but only where statelessness would otherwise arise – it does not aspire to prescribe general international guidelines on nationality.

Since the beginning then, international law has evolved along two tracks: to protect and assist individuals who were already stateless, and to try to eliminate, or at least reduce, the incidence of statelessness. This is a development that has continued to this day: human rights law guarantees relevant to both aims have evolved and new, specific instruments were also adopted. Moreover, a range of key actors have become increasingly active in this field. Together, these factors have led to a number of breakthroughs in the response to stateless situations in recent years. The following sections provide a more in-depth analysis of the current international legal framework and the role of different bodies/organizations in tackling statelessness.

4.2 International legal framework³⁷

International legal standards

When considering the influence of international law on questions of statelessness, the first instruments that spring to mind are the tailor-made statelessness conventions mentioned above: the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. These two documents do indeed reflect the dual development of international law: their focus lies on the *protection* of stateless persons and the *prevention* and/or *reduction* of statelessness. As such, they are an important source of guidance for addressing these matters.

As mentioned in chapter 1, there are issues for which the Conventions do not provide a (comprehensive) response and to date the number of State parties, to the 1961 Convention in particular, remains relatively low. However, these conventions are only one part of the overall international legal framework on statelessness which developed both in advance of and subsequent to their adoption. The full spectrum of “international law on statelessness” comprises a multitude of treaties, soft law standards and customary law norms that address, on the one hand, the right to a nationality and reject, on the other hand, the idea that stateless people are *rightless* people.

³⁷ For a refresher on the system of international human rights law, please refer to the UNHCR learning module on “Human Rights and Refugee Protection” (RLD 5), available at www.unhcr.org.

The bulk of international law relevant to the problem of statelessness comprises universal and regional human rights instruments such as the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child*, the *International Convention on the Elimination of All Forms of Racial Discrimination*. Most of these conventions address both the right to a nationality³⁸ as well as the fundamental rights to be enjoyed by stateless persons (and indeed all other persons). Consider the following examples:

- The *International Covenant on Civil and Political Rights* (article 24) sets out both children's right to acquire a nationality and their right to have their birth immediately registered, thereby preempting many problems relating to the inability to establish an entitlement to a (particular) nationality. The *Convention on the Rights of the Child* has a similar provision and explicitly calls upon States to take action where a child would otherwise be stateless (article 7).
- The *International Convention on the Elimination of All Forms of Racial Discrimination* (article 5) prohibits discrimination in the enjoyment of the right to a nationality on the grounds of race, colour, or national or ethnic origin. The *Convention on the Elimination of All Forms of Discrimination Against Women* (article 9) guarantees equal rights for men and women with regard to the acquisition, change and retention of nationality as well as with respect to the transmission of nationality to their children.
- The Human Rights Committee has explained that State parties to the *International Covenant on Civil and Political Rights* are obliged "to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction".³⁹ Moreover, according to the Committee on the Rights of the Child, the enjoyment of rights contained within the *Convention on the Rights of the Child* "is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children [...] irrespective of their nationality, immigration status or statelessness".⁴⁰

Some of these norms are now considered to have achieved the status of customary international law with the result that they are applicable to all States, irrespective of a State's precise treaty commitments. In particular, the prohibition of racial discrimination is a key customary norm that impacts both on the attribution of nationality and the treatment of stateless persons.

³⁸ At the universal level, these include: the *Convention on the Elimination of All Forms of Racial Discrimination* (article 5(d)(iii)), the *International Covenant on Civil and Political Rights* (article 24), the *Convention on the Elimination of All Forms of Discrimination Against Women* (article 9), the *Convention on the Rights of the Child* (articles 7 and 8), the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (article 29), the *Convention on the Rights of Persons with Disabilities* (article 18) and the *Convention on the Nationality of Married Women*.

³⁹ UN Human Rights Committee, *General Comment No. 31: The nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 26 May 2004, paragraph 3.

⁴⁰ UN Committee on the Rights of the Child, *General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2005, paragraph 12

International supervisory mechanisms

The growing list of human rights treaties of relevance to nationality matters and the protection of the stateless has heralded the involvement of an increasing number of judicial and semi-judicial institutions in these questions as well as a swelling body of related soft law and jurisprudence. Each major universal human rights convention has its own “treaty body” that pronounces on the interpretation of the treaty’s norms and monitors States’ compliance with their commitments. On the one hand then, the documents produced by and for treaty bodies can be an important source of information on the situation in a particular State, in particular the periodic reports by each State party and the accompanying response by the committee to the situation as it is observed in the country (the “Concluding Observations”). For example, the Committee on the Rights of the Child stated the following regarding the situation of stateless children in Thailand:

*“The Committee is concerned that a significant number of children residing in Thailand remain stateless, which adversely impacts their full enjoyment of rights, including education, development and access to social and health services, and which renders them vulnerable to abuse, trafficking and exploitation [...] The Committee reiterates its recommendation that the State party withdraw its reservations to articles 7 and 22 of the Convention and urges it to continue to implement measures to ensure that all stateless persons born in Thailand and living under its jurisdiction can acquire a nationality, including the possibility of acquiring Thai nationality”.*⁴¹

On the other hand, the treaty bodies offer guidance as to the interpretation of human rights standards in their “General Comments” and “General Recommendations”. For example, the Human Rights Committee stated the following regarding the right to enter ‘his own country’ (article 12) and the extent to which certain groups of stateless persons may benefit from this norm:

*“The scope of ‘his own country’ is broader than the concept ‘country of his nationality’. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language [...] moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence”.*⁴²

⁴¹ Committee on the Rights of the Child, Concluding Observations: Thailand, CRC/C/THA/CO/2, 27 January 2006, paragraphs 33-34. Thailand lifted the reservation to article 7 of the *Convention on the Rights of the Child* in 2010. Note that article 7 of the Convention prescribes the right of every child to birth registration and to acquire a nationality.

⁴² Human Rights Committee, CCPR General Comment No. 27: Freedom of movement, CCPR/C/21/Rev.1/Add.9, Geneva: 2 November 1999, para. 20.

Many other institutions have evolved within the universal human rights framework and may contribute in a similar fashion to the information available about specific situations of concern and the content of relevant international norms. The following are a number of key examples:

- The former UN Commission on Human Rights adopted various relevant country-specific and thematic resolutions, including a number of resolutions on “Human Rights and Arbitrary Deprivation of Nationality”.⁴³ The Human Rights Council, which has replaced the Commission in 2006, adopted resolutions on the same issue in 2008, 2009 and 2010.⁴⁴
- The special procedures created by the Human Rights Council are another source of State-specific and thematic information: the Special Rapporteur on the situation of human rights in Myanmar has for example expressed concern at issues of statelessness in the country;⁴⁵ similarly, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance raised the issue of statelessness in Latvia and Estonia after his country visits.⁴⁶ The Independent Expert on minority issues published a report on Minorities and the Discriminatory Denial or Deprivation of Citizenship.⁴⁷ A major advantage of these special procedures is that they can consider any topic or situation as long as it falls within the terms of their mandate – they do not, for example, depend on the status of treaty ratifications.
- Moreover, resolutions adopted by the UN General Assembly (UNGA) may be relevant. For instance, in 2002, the UNGA declared that, coupled to the birth registration process, there must be a system in place that is designed to “fulfill his or her right to acquire [...] a nationality”.⁴⁸ And the UN General Assembly also provides the impetus for ongoing standard-setting: the *Articles on Nationality of Natural Persons in relation to the Succession of States* were prepared by the International Law Commission at the request of the UNGA.⁴⁹
- Recall that it was also a series of UN General Assembly resolutions that bestowed UNHCR with its mandate on statelessness and that Executive Committee conclusions that have subsequently provided guidance on implementation of this mandate are a source of soft law.

All of these resolutions, conclusions, reports, comments and other documents help to identify the problems that need to be tackled, provide guidance for the proper course of action, and provide material for advocacy efforts with the State(s) concerned.

⁴³ UN Human Rights Commission, *Resolutions on Human rights and arbitrary deprivation of nationality*, 1997/36, 11 April 1997; 1998/48, 17 April 1998; 1999/28, 26 April 1999; 2005/45, 19 April 2005.

⁴⁴ UN Human Rights Council, *Resolutions on Human rights and arbitrary deprivation of nationality*, 7/10, 27 March 2008; 10/13, 29 March 2009; and 13/2, 14 April 2010.

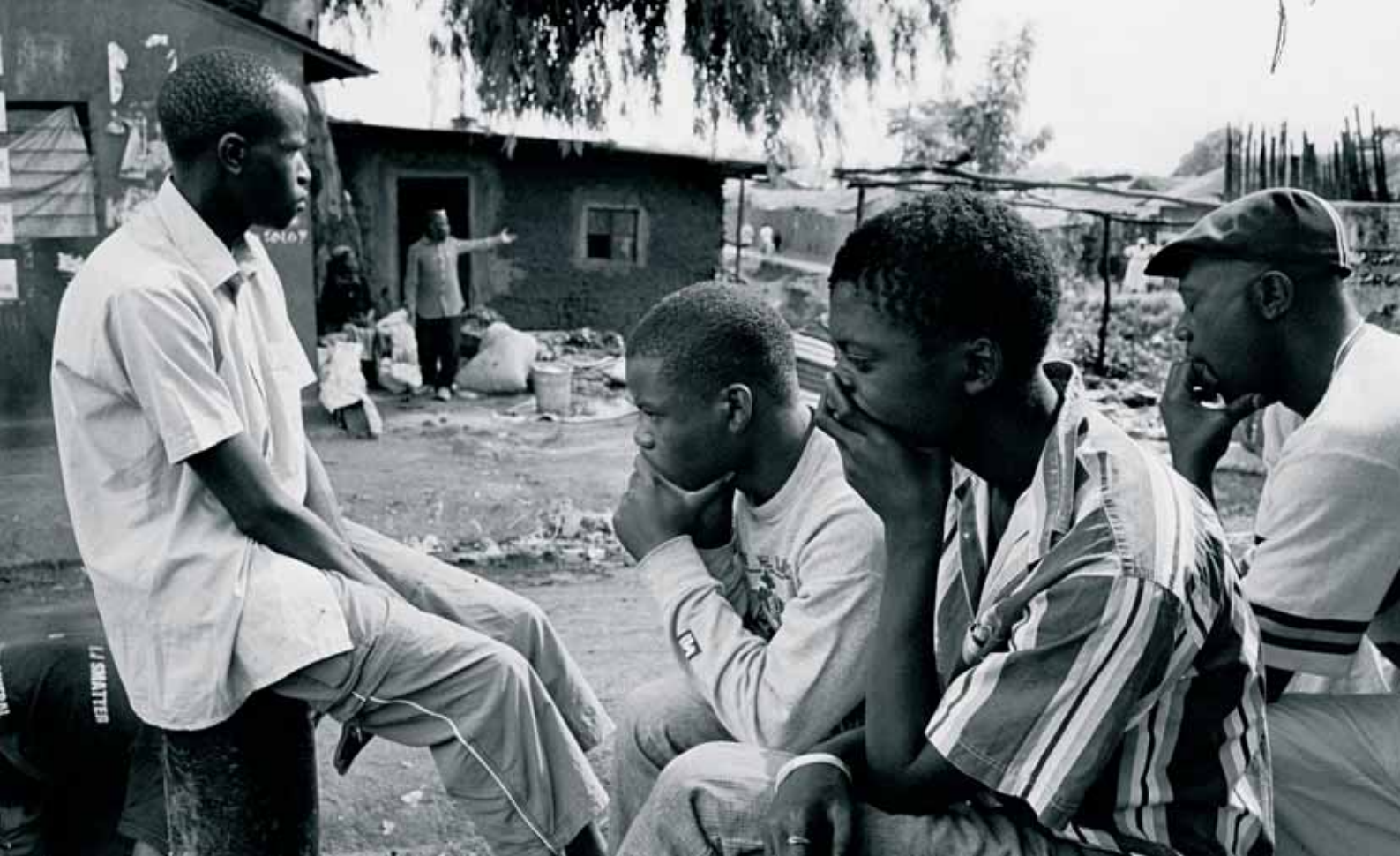
⁴⁵ See for example “Situation of human rights in Myanmar” by UN Special Rapporteur Paulo Sérgio Pinheiro, A/62/223, 2007.

⁴⁶ See mission reports on his country visits to Latvia and Estonia by the UN Special Rapporteur Doudou Diène, A/HRC/7/19/Add.3 and A/HRC/7/19/Add.2.

⁴⁷ See “Minorities and the Discriminatory Denial or Deprivation of Citizenship Report” by the independent expert on minority issues, Gay McDougall, A/HRC/7/23.

⁴⁸ United Nations General Assembly Resolution, “A world fit for children”, Twenty-Seventh Special Session of the GA, 11 October 2002, at paragraph 44 (1).

⁴⁹ UN General Assembly, *Resolution on Nationality of natural persons in relation to the succession of States*, A/RES/66/92 of 2011



Regional legal frameworks

The development of regional human rights frameworks has complemented international standards applicable to the problem of statelessness. The *American Convention on Human Rights* (article 20), the *African Charter on the Rights and Welfare of the Child* (article 6), the *Arab Charter on Human Rights* (article 29), and the *CIS Convention on Human Rights and Fundamental Freedoms* (article 24) all confirm the right to a nationality as a human right. The American Convention and the African Charter specifically guarantee the right of every child to acquire the nationality of the State in which they are born if they would otherwise be stateless. The Covenant on the Rights of the Child in Islam (article 7) guarantees the right to nationality determination and the right to a nationality for children of unknown descent. Moreover, all regional instruments, including those mentioned above and the *European Convention on Human Rights* set out rights that are to be enjoyed by everyone within the jurisdiction of the State.

In Europe, although the *European Convention on Human Rights* does not directly address questions of nationality, detailed standards for the attribution of nationality have been established in the *European Convention on Nationality*. Among the general principles included in this Convention are the principle of the avoidance of statelessness and the prohibition of arbitrary deprivation of nationality. Provisions on the grant and loss of nationality and relevant procedures give force to these general principles.⁵⁰ In addition, within the context of the Council of Europe a number of additional instruments and recommendations have emerged that address some aspects of nationality. The most important of these are the *Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession*⁵¹, *Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness and Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children*.

⁵⁰ Note that an *Explanatory Report* accompanies the *European Convention on Nationality*. It explains the content and the background to each of the provisions and is helpful in developing a full understanding of the instrument.

⁵¹ The Convention entered into force on 1 May 2009 after ratification by three member States.

Fact Box: Analysing the international legal framework

There are three basic questions that must be addressed when assessing the elements of the international legal framework that is relevant to a particular state / to a particular situation of statelessness:

- Which universal and regional (human rights) instruments has the state ratified / acceded to?
- With respect to any instrument ratified / acceded to, have reservations been lodged against articles that are relevant to statelessness issues?
- Have any international human rights bodies commented on the question of attribution of nationality or the rights of stateless people in the country (treaty bodies, special procedures, regional courts/commissions, etc)?

Recall however, that the international legal framework is only one element of the overall normative setting applicable. Domestic law must also be considered. A key question to investigate is whether domestic law and practice reflects the state's international commitments. In other words, does domestic law incorporate – or at least comply with – the applicable international standards mapped on the basis of the three questions posed above?

- ◀ Kenya / Nubian youth sit around because they cannot find work. For years, young Nubians had to go through a nationality verification process called vetting. When they reached the age of 18, they needed to appear before a panel of government officials and prove their connection to Kenya, including by presenting documents to back their claim. Unemployment is high among Nubian youth because they cannot work without an ID card, which proves nationality. In a landmark decision on an individual communication in 2011, the African Committee of Experts on the Rights and the Welfare of the Child concluded that Kenya was violating several rights under the African Children's Charter in relation to Nubian children. It recommended that Kenya ensure that otherwise stateless children of Nubian descent acquire Kenyan nationality and that all children be registered immediately at birth. Kenya's 2011 Citizenship and Immigration Act now provides for a means to resolve the situation of the Nubians by granting all stateless persons who have been stateless since independence the opportunity to apply for citizenship within a five-year period. © UNHCR / G. Constantine / December 2008

Regional supervisory mechanisms

At the regional level, the development of a human rights framework has also brought with it the establishment of various courts, commissions and other institutions that supervise the implementation of regional human rights treaties. Jurisprudence within the European and Inter-American human rights systems has been particularly helpful in elaborating the content and scope of regional norms relating to different aspects of the problem of statelessness. Consider, for example, the 2005 judgment in the case of *Yean and Bosico v. Dominican Republic*. There, the Inter-American Court of Human Rights found that:

“States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons.

[...]

*The Court considers that the Dominican Republic failed to comply with its obligation to guarantee the rights embodied in the American Convention, which implies not only that the State shall respect them (negative obligation), but also that it must adopt all appropriate measures to guarantee them (positive obligation), owing to the situation of extreme vulnerability in which the State placed the Yean and Bosico children, because it denied them their right to nationality for discriminatory reasons, and placed them in the impossibility of receiving protection from the State and having access to the benefits due to them, and since they lived in fear of being expelled by the State of which they were nationals and separated from their families owing the absence of a birth certificate”.*⁵²

The court subsequently ordered the Dominican Republic to rectify its nationality and birth registration policy so as to bring it into compliance with its commitments under the American Convention on Human Rights.

⁵² Inter-American Court of Human Rights, *Case of Yean and Bosico v. Dominican Republic*, Series C, Case 130, 8 September 2005, paragraphs 142 and 173. Note that article 20 of the American Convention on Human Rights addresses the right to a nationality while article 24 protects equality before the law.

4.3 UNHCR and statelessness

As outlined in the first chapter, UNHCR has a specific and global mandate to prevent and reduce statelessness and protect non-refugee stateless persons. The reason for bestowing UNHCR with a mandate on statelessness issues – and subsequently continuing and expanding that mandate – was that the agency could draw on its growing expertise in issues relating to nationality. Dealing with statelessness requires, in many ways, a similar approach to dealing with refugees. Many of the types of activities that are undertaken in response to refugee situations are also effective in response to statelessness – intervening on protection problems facing particular individuals or groups, for example, or developing public information campaigns to promote awareness of certain rights and procedures. This also means that the skills developed under UNHCR's refugee mandate, such as negotiating, interviewing, providing training, and many others, are readily transferable to the statelessness mandate where they can be put to equally good use. In addition, UNHCR is accustomed to identifying and working with both the international legal framework and domestic law and cooperating with strategic and operational partners – tools for successfully addressing both refugee situations and statelessness.

UNHCR must be pro-active in identifying problems and working towards solutions. If necessary, the agency can initiate statelessness activities in a given operational setting, coordinating its efforts with all relevant partners. Past experience has shown that through diligent networking, UNHCR has been able to engage a wide range of partners in work on statelessness – acting as a catalyst by providing technical advice and overall support, while leaving the execution of certain activities to organizations that are better placed to carry them out.

There are many different kinds of activities that UNHCR – and its partners – can consider, depending on the situation at hand. For instance, by assisting states to undertake a careful review of nationality laws as well as any regulations and procedures in place relating to statelessness, the domestic framework for the prevention of statelessness and protection of stateless persons can be strengthened. To complement such technical support, UNHCR can also assist the state to build capacity to implement measures that help to prevent statelessness.

For example, in Serbia, UNHCR worked with the national authorities to computerize civil registries which will help displaced people and Roma populations to acquire proof of identity more easily. Another way in which UNHCR can help to prevent statelessness, by improving access to personal documentation, is through direct assistance to the population at risk. Thus, in Côte d'Ivoire, UNHCR and the Norwegian Refugee Council ran legal aid centers which both helped people to obtain identity documents and also generated greater understanding within the population of the importance of such documentation. Similarly, direct assistance to the population may take the form of providing legal assistance to persons who are attempting to navigate procedures for the acquisition of a nationality. For example, in the Former Yugoslav Republic of Macedonia, UNHCR's partner, the Legal NGO Network assisted long-term residents with their applications for citizenship and offered legal advice in instances where an appeal was brought against the decision, with some cases reaching the Supreme Court.

Capacity building, legal aid and awareness-raising activities can all play an equally important role in the reduction of statelessness. In Sri Lanka, UNHCR provided support for a media campaign after the “Grant of Citizenship to Persons of Indian Origin Act” was introduced in 2003 to inform those who would benefit from the law of the relevant procedures. UNHCR and the Ceylon Workers’ Congress organized workshops to build the capacity of the authorities to implement the new law. This included recruiting and training 500 volunteers to participate in 50 mobile teams to assist with the task of registering persons for citizenship through a major campaign, organized by the Sri Lankan government in cooperation with UNHCR and the Ceylon Worker’s Congress. Subsequently, UNHCR and its partners continued to monitor access to citizenship and identify persons who had been overlooked by the campaign and were still at risk of statelessness.⁵³ During 2007 and 2008, UNHCR joined forces with the government and UNDP’s Equal Access to Justice Project to conduct further mobile documentation clinics. More than 10,000 persons were thereby informed of their rights regarding citizenship and were able to obtain basic documentation like birth certificates and identity cards.

Additional activities which can be undertaken by UNHCR are explored in Chapters 5 – 8.

4.4 Working in partnership

As mentioned above, an effective response to statelessness cannot be realized by UNHCR alone. Indeed, no single organization is likely to have the capacity to effectively tackle all the issues involved. Working in partnership and making good use of the specificity of partners – their particular skills, knowledge and resources – is critical to a successful response to statelessness. The most important partners are the affected population and the State(s) concerned. Since statelessness is a problem of lack of protection, it is the relationship between these two that must be resolved. In seeking to steer this process, their characteristics and capacities need to be mapped out.

While the State and the affected population itself are arguably the central stakeholders in any situation of statelessness, there are many additional actors that may also have a role to play. These third parties can be a source of information, strategic allies in pushing for a particular response and/or collaborators in the operationalization and implementation of activities. Throughout many guidelines and reports on activities in the field of statelessness, constant references can be found to different partners that could be or have been involved in implementing a response to statelessness. For instance, in its conclusion 106, UNHCR’s Executive Committee urges the agency to cooperate with “governments, other United Nations and international as well as relevant regional and non-governmental organisations” in realizing all four areas of its statelessness mandate. This reference uncovers the other main categories of potential partners: third States, international and regional organizations, bodies within the UN family and civil society. Within each category, there will be a number of obvious candidates whose partnership potential should always be considered.

The opportunity to engage each of these different actors in partnership when tackling statelessness and related issues is briefly outlined below.

⁵³ UNHCR, *Citizenship for All: The Campaign Against Statelessness in Sri Lanka 2003-2004*.

The affected population

The affected population itself has a key role to play in addressing situations of statelessness. A precondition for this is involving the population, that is assessing their situation in a participatory manner and similarly planning activities by soliciting the views of all groups. Any analysis must pay due consideration to factors which may lead to different situations and needs within one population, e.g. where they are linked to age or gender.

In other cases it may first be necessary to seek ways to boost the capacity of the affected population in order to improve the opportunity for an effective response. For example, in the context of prevention, reduction or protection, where the awareness of relevant laws and procedures is low, it can be helpful to combine information campaigns with legal aid / counseling to enable the affected population to more effectively assert their rights.

It is important to recall that when considering “the population” in the context of statelessness, attention should not be limited to those individuals who are, already, without a nationality. Since a crucial element of the response to statelessness is prevention, an assessment of the population should also, wherever possible, include those who are at risk of statelessness. Such groups may include migrant populations where difficulties to prove identity and nationality affect two or more generations or persons living in border areas whose nationality is questioned. Where such high-risk groups are identified, a thorough analysis of their situation is invaluable to planning a response and should also include participation of the population itself.



The State(s) concerned

It is, with very few exceptions, State action or inaction that creates statelessness, allows it to subsist and perpetuate and raises protection concerns. Recall that the power to grant, withdraw or confirm nationality lies with States and States alone, meaning that their involvement in all statelessness issues is decisive for success. In other words, statelessness is first and foremost a problem for States to resolve. Moreover, States also bear the ultimate responsibility for the protection of the rights of the people within their jurisdiction – nationals, stateless persons and other non-citizens. Ensuring that stateless people are treated in accordance with their rights is therefore not a question of substituting the State, but of helping the State to meet its international commitments towards these populations.

The harsh reality that underlies the stagnation of many cases of statelessness is “the fact that stateless individuals have been largely ignored by the governments of the countries where they are living and by the global community at large”.⁵⁴ This lack of interest and/or willpower can be a major stumbling block for any response. Finding a way to increase the willingness of the state to tackle an issue within its jurisdiction may therefore be key. One effective strategy in this respect may be to organize a seminar or workshop that engages different parts of the administration – and other partners as well – in order to sensitize the government to the fact that addressing the issue of statelessness is in their interest. This approach will facilitate the creation of a common understanding of the problem and a shared determination to work towards a solution.

In Vietnam, for example, where around 7,500 former refugees from Cambodia remained with an unclear citizenship status, numerous seminars were held with different layers of the government to try to garner support for a response. The Ministry of Justice, the Ministry of Foreign Affairs, the Prime Minister’s Office, the Planning Ministry, the Security Department, and officials from local and provincial administrations where the affected population lives were all engaged through this series of seminars that eventually led to the adoption of a facilitated naturalization procedure to resolve cases of statelessness.⁵⁵

There are some additional techniques that can add persuasive force to the message that statelessness must be tackled, for instance by offering concrete incentives for redressing statelessness issues in which the State is involved. Conversely, the State can be actively discouraged from ignoring the situation. Such strategies may be more effective in cooperation with one or more partners, such as third States, regional organizations and the development assistance community – any body or organization with leverage in the situation. On the other hand, in some instances it may be equally, or indeed more, productive to invoke forces from within the State to induce the authorities to tackle statelessness. The initial unwillingness to address the situation might be a reflection of overall unfavourable attitudes within other sectors

◀ Slovenia / “The erased” is the name for a group of people in Slovenia that remained without a legal status after the declaration of the country’s independence in 1991. An undetermined number of “the erased” of Slovenia are stateless and UNHCR has been advocating for a resolution to their situation. In a landmark judgment in 2012, the European Court of Human Rights ruled that Slovenia had violated the right to family in combination with the right to non-discrimination by failing to comprehensively remedy the situation of individuals who had been erased from the registry of permanent residents in 1991. Since 2009, Slovenia has taken steps to address the situation by allowing “the erased” to apply for permanent residence permits or to be issued such permits retroactively. However, not all the affected people could meet the conditions. The Slovenian government is required to establish a compensation scheme for “the erased” within one year of the judgment of the European Court.

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⁵⁴ “Lives on Hold – The Human Cost of Statelessness”, Maureen Lynch for Refugees International, 2005, pg 21.

⁵⁵ Reports from a range of regional and country-level meetings and conferences are available at on the Refworld Statelessness Special Features page available at: https://intranet.unhcr.org/intranet/unhcr/en/home/protection_and_operational/refworld/refworld_internal.html.html

of society towards the stateless group, thus impeding its inclusion and integration. If public opinion turns in favour of a resolution of the situation, then it is no longer politically untenable to support such a strategy and the problem of State unwillingness may be solved. Fostering a more accommodating attitude to the affected population may be achieved through a public information campaign that meticulously rebuts any misconceptions and works to transform discriminatory attitudes.

On the other hand, State incapacity to prevent and reduce statelessness may form an obstacle. The authorities may have inadequate skills, resources or infrastructure at their disposal. For example, where the State is incapable of processing the applications of all stateless individuals who seek to acquire its nationality, this may be due to poorly trained or informed officials, outdated and unsuitable systems and procedures or a lack of sufficient offices or materials throughout the country. In such cases, strategies will need to be devised and programmes implemented to build the capacity of the State to respond to issues of statelessness. Wherever possible, partners should be engaged in these efforts as their specificity will often be indispensable to the success of an operation. The donor community may also need to be mobilized to provide the required funding.

There are many types of capacity-building activities for States that can be considered, depending on the analysis of the problem at hand: offering technical guidance on the content of citizenship laws where the expertise is lacking; training government officers in the appropriate implementation of policies and procedures (possibly under the rubric of information-sharing workshops, roundtables or consultations); improving the dissemination of information on rights and procedures; or supporting the modernization of the nationality and documentation procedures and population registries.

Third States, international and regional organizations

The States directly involved in a situation of statelessness are not the only ones with an interest in its resolution or indeed with the potential to contribute to a response. Third States can also become engaged and it is important to ensure that their role is a constructive one. Third States can make good strategic partners and through diplomacy they can exert pressure to induce the States that are directly involved to take action. In the search for such diplomatic support, consider which third States may have an interest in the resolution of the situation (for example because of geographical proximity and the threat of spreading instability), and/or which States have the potential to exert significant influence (for example thanks to close trade links, as substantial contributors to development assistance programmes or thanks to expertise in a relevant domain). Such efforts on the part of third States to persuade other States concerned into tackling their statelessness issues may be even more effective if a group of States or regional organization can pool their bargaining power, for example through existing structures such as regional caucuses or organizations. As an example, the process of European integration has had a positive impact on the resolution of civil registration and documentation problems affecting ethnic minorities in the Western Balkans.

Meanwhile, third States may offer technical or financial assistance, for example through their development ministries or agencies or indirectly through the support that they pledge to international (non-governmental) organizations. A further reason for seeking cooperation with third States may be to investigate the possibility of resettlement for stateless persons who find themselves in particularly protracted or harsh situations.⁵⁶

⁵⁶ The role of resettlement in addressing statelessness is discussed in chapter 7 where the *reduction* of statelessness is dealt with.

Intergovernmental organizations can also play a multitude of roles in responding to statelessness. There are of course intergovernmental organizations of all sorts, at both the international level (with a potentially global reach but often a thematic specificity) and at the regional level (dealing with a wide range of issues but within a limited geographical setting). Some examples of international organizations with a particular specificity that makes their work of interest to or relevant for stateless issues are the Inter-Parliamentary Union (IPU), International Commission on Civil Status (ICCS) and Hague Conference on Private International Law.

It is also important to recall that many major regional organizations have developed an interest, to one degree or another, in statelessness and related issues. For the Council of Europe, the Organisation of American States, the African Union and the Organisation of the Islamic Cooperation, the basis for initiatives in this area is provided by the relevant regional standards on the right to a nationality. Other regional organizations, such as the European Union, the Organisation for Security and Cooperation in Europe and the Asian-African Legal Consultative Organisation have followed suit in tackling questions of statelessness or issues that touch upon it. These regional organizations may be able to supply valuable information, diplomatic force, resources or expertise as partners in the response to statelessness. Through the development of their own legal standards, a number of these regional organizations have also brought into existence a variety of additional enforcement mechanisms that may assist in monitoring and resolving issues of statelessness.

UN bodies and agencies

While UNHCR, thanks to its specific mandate, has a central role in tackling statelessness, it is by no means the only agency within the United Nations family that is or can be engaged in addressing this issue. Indeed inter-agency cooperation within the UN framework is strongly encouraged in responding to statelessness. UNHCR's Executive Committee has pointed out numerous UN partners with which the agency should seek to cooperate, including the following: the Office of the High Commissioner for Human Rights (OHCHR), United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA), United Nations Department of Political Affairs (UNDPA) and United Nations Development Programme (UNDP).⁵⁷ As set out in a Guidance Note from the Secretary General:

"The UN General Assembly has entrusted the Office of the United Nations High Commissioner for Refugees (UNHCR) with a mandate relating to the identification, prevention and reduction of statelessness and protection of stateless persons. However, this Guidance Note affirms that all UN entities system-wide must increase their efforts to address statelessness. The UN should tackle both the causes and consequences of statelessness as a key priority within the Organization's broader efforts to strengthen the rule of law. Given the magnitude and complexity of the problem and the damaging impact on human lives, efforts would need to be redoubled to prevent statelessness and to address statelessness wherever it occurs, including in States outside of UN peace and political operations. The UN, particularly UNHCR, also needs to provide leadership in this regard and work with States, international and regional organizations, and non-governmental organizations."⁵⁸

⁵⁷ UNHCR ExCom Conclusion 106.

⁵⁸ UN Secretary-General (UNSG), Guidance Note of the Secretary General: The United Nations and Statelessness, June 2011, available at: <http://www.unhcr.org/refworld/docid/4e11d5092.html>

UNICEF, for example, has been very actively engaged in the issue of birth registration, with awareness-raising and capacity-building programmes across the globe and it also gathers comprehensive statistics on registration rates. For instance, in Georgia and Kyrgyzstan, UNHCR and UNICEF joined forces to promote birth registration of children at risk of statelessness. In addition, UNICEF is involved in other children's rights issues that may relate to statelessness. For example, in Vietnam, the agency has facilitated a campaign to prevent early and uninformed marriage by Vietnamese girls to foreign men. This is an exercise that also helps to prevent statelessness among these women, since many of them in the past renounced their Vietnamese citizenship to acquire the husband's nationality and were rendered stateless when the marriage failed before the naturalization process was completed. UNFPA, meanwhile, is a critical partner in the pursuit of more complete and reliable statistics on statelessness, since it supports countries in the collection and use of population data. In a joint letter by the heads of both agencies, UNHCR and UNFPA have therefore pledged to increase cooperation on population counts with a view to furthering the understanding of the scale and impact of statelessness worldwide.

The list of potential partners that can be identified within the UN family is in reality much longer and, depending on the situation or issue at hand, other candidates are: the UN human rights bodies (treaty bodies, special procedures and so on), the UN Office on Drugs and Crime (UNODC), UN Women, the UN Statistics Division (UNSD), the UN Educational, Scientific and Cultural Organisation (UNESCO), the UN Department of Peacekeeping Operations (DPKO) and the International Law Commission (ILC). The ILC, for instance, has played a central role in the development of standards relating to statelessness. Its work has included, most recently, the formulation of Articles on Nationality of Natural Persons in Relation to the Succession of States which aim to prevent statelessness from arising from a situation of state succession, as well as Articles on Diplomatic Protection which include provisions relating to the diplomatic protection of stateless persons.

Moreover, within the UN human rights framework, there are many partners to consider beyond the OHCHR itself. The human rights treaty bodies and the special procedures mandated by the Human Rights Council can contribute to furthering the understanding of and engagement on issues relating to statelessness. Reports submitted by States under the treaty bodies periodic review system, as well as the findings of the treaty bodies themselves, offer insight into changes in the situation in a country. These reports can help to identify populations at risk of statelessness, protection concerns relating to existing stateless populations and new avenues to pursue in search of durable solutions. Similarly, the work undertaken under a special procedures mandate can help to elucidate issues relating to statelessness and offer technical support for the reform of national legislation or implementation of activities in response to concerns identified. For example, in 2007 and 2008, the Independent Expert on Minority Issues conducted thematic work on issues relating to the discriminatory denial or deprivation of citizenship as a tool for exclusion of national, ethnic, religious and linguistic minorities.⁵⁹

Wherever statelessness is linked to migration as a cause or a consequence of migration, the International Organisation for Migration (IOM) may become a potential partner. For instance, registration and documentation of stateless migrants and migrants at risk of statelessness, prevention of trafficking and smuggling and return of stateless migrants may be areas where UNHCR can address statelessness together with IOM. Similarly, cooperation may also take place with the International Committee of the Red Cross on cases of stateless persons who are in detention or in the context of their family tracing programme.

⁵⁹ See, for instance, G. McDougall, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development – Report of the Independent Expert on Minority Issues*, A/HRC/7/23, 28 February 2008.



Dominican Republic / A protection workshop run for young children of Haitian origin – including those who are undocumented or at risk of statelessness – at the remote town of Elias Pina near the Dominican Haitian border. The workshop is part of a programme run by Plan International on behalf of UNHCR.

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Civil society

The broad category of civil society encompasses a wide variety of different actors that may make good strategic and/or operational partners. Here are just some of the possibilities that may be at hand at the international and/or domestic level:

- International and local non-governmental organizations;
- National Human Rights Institutions;
- Academic institutions and experts;
- Legal aid groups;
- Trade unions and other workers organizations;
- Associations of minorities or indigenous peoples; and
- Religious associations.

The (international) NGO community is a good place to begin securing partnerships with civil society. There is a clear trend towards the increasing engagement of NGOs on statelessness. In fact, there are now a number of major international NGOs that have added statelessness or a related issue to their core programme of activities. These include Refugees International, Open Society Justice Initiative and Plan International. Other organizations touch upon issues of or related to statelessness in the course of their work, such as Human Rights Watch and Amnesty International.

National Human Rights Institutions – although technically established by a national government – are independent bodies devoted to advancing and defending human rights at the domestic level. The right to a nationality, the right to birth registration and the prohibition of discrimination are among the standards that these institutions promote. An overview of National Human Rights Institutions can be found at www.nhri.net. In some countries, similar functions are undertaken by ombudspersons.

The list of civil society actors provided above, which goes on to mention academics, legal aid groups and others, is by no means exhaustive. It depends entirely on the problem at hand and the situation in the country of operation as to which actors can potentially be engaged. On the basis of a comprehensive profile of the affected population and diligent mapping of the problems at hand, it is possible to be creative in identifying out potential partner organizations. For instance, if the majority of individuals affected follow a particular religion it may be possible to engage religious leaders and associations in the response. Where the population affected by statelessness works largely in a particular sector of the economy, the role of workers organizations can be considered. Alternatively, if the particular problem at hand affects a broader population spectrum, it may be more helpful to think thematically and consider which organizations or institutions may offer relevant specialization or expertise. Thus if the problem is an overall under-registration of births, consider who could be called upon in the context of that issue – for example midwives, general practitioners, medical centres, family support groups or schools that can register children upon enrollment.

Ukraine / A major objective of UNHCR's assistance programme in Ukraine is to facilitate the acquisition of Ukrainian citizenship by Crimean Tatars who had been deported to Central Asia during the second World War. The legal aid programme, run by the local NGO "Assistance," helps the Crimean Tatars avoid becoming stateless in the process of renouncing their previous citizenship and acquiring that of Ukraine. ►

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Chapter 5 IDENTIFICATION OF STATELESSNESS

As outlined by UNHCR’s Executive Committee in Conclusion No. 106, the identification of stateless persons lies at the heart of any response to statelessness. It is all about identifying and mapping *existing* stateless populations as well as groups that are *at risk* of statelessness. This does not just mean acquiring basic statistics, although that is an important part of the identification process, but also building a comprehensive picture of the situation by uncovering the full profile of the population affected. Identification of affected individuals and groups in this way is a prerequisite to comprehensively guaranteeing protection and resolving nationality status: the information can be put to use in devising strategies for the *prevention* and *reduction* of statelessness as well as for the *protection* of stateless persons.

“ The need for identification*

Identifying stateless persons remains key to addressing their difficulties and to enabling UNHCR to fulfil its mandate with respect to stateless persons. Measuring statelessness is complicated by the very nature of the phenomenon. Stateless people often live in precarious situations on the margin of society, frequently lacking identity documentation, and subject to discrimination.

* “UNHCR Global Trends 2011” at pg 29.

◀ Ukraine / Svyetlana, 41, married a Crimean more than 20 years ago. In 1993, they moved to Ukraine, where she is now stateless. Ukraine adopted measures in the 1990s and early 2000s that made it easier for formerly deported Crimean Tatars to obtain Ukrainian citizenship.

© UNHCR / G. Constantine / 2009

5.1 The different aspects of identification

For many years, different groups and organizations have bemoaned the lack of comprehensive and reliable information on stateless populations around the world. One indication of just how discrepant, for example, basic statistics on statelessness are, is the broad estimate of the global stateless population. For 2011, UNHCR reported data on 3.5 million stateless people but estimated that the true total may be closer to 12 million. UNHCR's Executive Committee therefore has called "[...] on UNHCR to establish a more formal, systematic methodology for information gathering, updating, and sharing".⁶⁰

There has been in recent years a gradual expansion in coverage and knowledge on stateless persons. Thus, by the end of 2011, statistics on statelessness were available for 64 countries. This compares to 30 countries in 2004, the first year UNHCR started collecting statistics on stateless populations in a more systematic way, and reflects the efforts of UNHCR offices to gather better data on statelessness.⁶¹ These efforts were bolstered by an increasing awareness of statelessness in a number of countries around the world.

The increase in data coverage means that there will also be a gradual narrowing of the gap between the reported data on stateless populations and the global estimate. Nevertheless, identification of statelessness remains a challenge. With this problem in mind, UNHCR's Executive Committee has voiced the need to do more to determine the full scale of the problem by identifying situations of statelessness and groups at risk. In particular, the Executive Committee

"Calls on UNHCR to continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality residing in their territory, in cooperation with other United Nations agencies, in particular UNICEF and UNFPA as well as DPA, OHCHR and UNDP within the framework of national programmes [and] encourages those States which are in possession of statistics on stateless persons or individuals with undetermined nationality to share those statistics with UNHCR".⁶²

The compilation of statistical and other basic data is not only of interest in building a more comprehensive picture of the global scale of statelessness, it can also inform advocacy, allowing to commend States for positive steps taken. For instance,

"Significant progress was made in obtaining statistics on the reduction of the number of stateless persons due to acquisition or confirmation of nationality. Approximately 119,000 stateless persons in 27 countries acquired nationality during the year. Almost half of this number was as a result of steps to resolve the stateless situation of part of the Kurdish population in the Syrian Arab Republic."⁶³

Statistical data is obviously equally useful in planning, implementing and monitoring *prevention* and *protection* activities – for example to determine the level of resources needed for an awareness-raising campaign.

⁶⁰ ExCom Conclusion 106, para d.

⁶¹ UNHCR, Global Trends 2011, 2012.

⁶² UNHCR Executive Committee Conclusion No. 106, paragraphs (b) and (d).

⁶³ UNHCR Global Trends 2011, pg 29

Bangladesh / To identify the stateless Urdu-speaker (“Bihari”) population in Bangladesh in 2006, UNHCR undertook a survey of Bihari settlements and a review of the legal framework, including national jurisprudence. The situation was resolved in 2008 following a landmark High Court judgment and voter registration. ►

© UNHCR / G. M. B. Akash / June 2006

To achieve a more coherent picture of statelessness in different countries, it is important that there is a common understanding of the relevant terms and **definitions**. To this end, UNHCR’s Executive Committee “encourages UNHCR to continue to provide technical advice and operational support to States, and to promote an understanding of the problem of statelessness”.⁶⁴ UNHCR has therefore published Guidelines on how the definition of a stateless person in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons is to be interpreted,⁶⁵ which are intended to assist States, UNHCR and other actors to identify who is stateless.

It is also important to be wary of the incorrect or inappropriate use of labels. Recall that a stateless person is “a person who is not considered as a national by any State under the operation of its law”. Persons or groups should therefore be called stateless only when it is clear that they do not possess a nationality, since a premature finding of statelessness could be used by the State as a way to deny its responsibility for the persons concerned.

However, as mentioned above, the challenge of identification is not limited to questions of labels and statistics. It also involves building a comprehensive population profile. In the context of statelessness, an assessment of the population profile should take in, at a minimum, the following elements: size; demographic composition, in particular age and gender; location(s); language(s) spoken; ethnicity; migratory background; overall level of education enjoyed an awareness of relevant laws, procedures and rights; structures and organization within the population; cultural factors or attitudes that may be of influence to the situation; level of documentation; and legal status and enjoyment of rights, especially in comparison to nationals.

The issue of legal status illustrates how the outcome of identification enables us to better understand how to prevent and reduce statelessness, as well as how to improve the protection of stateless persons. Among the questions that could be considered if a stateless or at-risk person also holds an irregular immigration status (unlawfully stays in the territory) are the following:

- **Prevention:** Will their children be able to access birth registration and to acquire a nationality in practice?
- **Reduction:** Are they able to develop a connection with the State that will enable access to acquire a nationality, for instance through naturalization?
- **Protection:** What rights are enjoyed by persons with an irregular status?

A comprehensive identification exercise of stateless and at-risk populations that covers the aspects outlined above will help to ensure that any response envisaged can be elaborated into a detailed and appropriate strategy. Knowing what languages are spoken by the population concerned is vital, for instance, because this information is needed to effectively plan and conduct activities such as consultations with the population (are interpreters needed?) or public information campaigns on nationality and documentation procedures (what languages should the materials be available in?). Assessing the existence of structures within the population and identifying types and patterns of organization can be a first step towards identifying and engaging partners. For each of the aspects mentioned it is possible to conceive of multiple ways in which the information can be used for strategy setting and the implementation of a response.

⁶⁴ UNHCR Executive Committee Conclusion No. 106, paragraph (f).

⁶⁵ UNHCR, Guidelines on the Definition of “Stateless Person” in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons, 2012.



5.2 Research, data collection and sources of information

Population profiling is an activity that features in several different areas of UNHCR's mandate. The primary objective of profiling is to obtain baseline information and a subsequent overview of the population to allow, for example, better targeting of advocacy and assistance or understanding of dynamics among the communities. Several tools have already been developed to assist with this task, including a specific UNHCR guidance document on measuring stateless populations.⁶⁶ To map statelessness, there are a number of relatively straight-forward activities that can be undertaken. These include a desk review, consultations and a stakeholder review.

The **desk review** is a powerful tool for situation analysis. It involves compiling and analyzing existing information and is highly resource-efficient since data collection is both expensive and time consuming. Once a desk review has been completed, it is also possible to pin-point precisely where there are gaps in available data and to devise data collection efforts to complete the picture without spending additional time and resources.

Information about or related to statelessness issues is generated by a wide range of institutions and mechanisms. The best way to start a desk review is to make an inventory of potential/available data sources. There are at least three broad categories of data sources that can be listed. First, the applicable normative framework, which may include citizenship laws, the constitution, decrees, regulations, and jurisprudence; second, governmental and non-governmental institutions (including academia) that have collected data on stateless populations and issues; and third, general data collection mechanisms that may already be in place in the country, such as civil registries, from which information about stateless situations persons can be extracted.

⁶⁶ UNHCR, Guidance document on measuring stateless populations, May 2011 (provisional release).



◀ Kenya / Ahmed belongs to the Galjeel, who are a Somali sub-clan that has lived in Kenya since the 1930s. They had Kenya national ID cards, participated in local and national elections, owned businesses, were provided with State services and lived peacefully for decades. But in the late 1980s and early 1990s the Galjeel were stripped of their identification documents, evicted them from their land and many were deported to Somalia. Ahmed had his ID card confiscated in 1989 and has re-applied for a card five times. Each time, the application waiting card given to him has expired. He is holding an Application for Registration Acknowledgement form.

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A few comments should be made on the last of the three categories of information sources mentioned, the existing data collection mechanisms. A review of the following mechanisms may provide helpful details about the affected population in the context of statelessness:

- **Administrative registers**

These include population registers (including family and residence registers), civil registration (birth, marriage and death registers), voters' registers and registration of foreigners. Registers may be a useful source of data, however stateless persons are usually not entitled to vote, and will often not appear in population or civil registration data sources because they have not been registered at birth and hold an irregular status. This means that in some situations this data source can be of limited use for information on stateless persons

- **Other administrative sources**

A number of different entities also compile administrative data, e.g. in school registers or log books from medical clinics or detention centres. Clearly, this data only includes persons who have actually had contact with education authorities, clinics, detention centres etc.

- **Population census**

A census is the process of obtaining information about every member of the population. Besides individual data it also gathers a set of relevant socio-economic information for every household. A population census is usually conducted by national governments in intervals of 10 years. This means that, unlike a register, a census provides only a "snapshot" of the population one a given date. As a result, census data can quickly become out of date, in particular where there has since been a major shift in circumstances or policy contributing to the creation or reduction of statelessness (e.g. State succession or a citizenship campaign).

Whether any of these data collection activities is a useful source of information on the stateless population(s) or groups at risk will of course depend on what data is recorded and how it is recorded. For example, population censuses usually include a question on nationality, but the possible responses sometimes do not include a category for persons who identify themselves as 'stateless'. Where such

a category is included, persons who self-identify as stateless may reply incorrectly. Indeed, there may be situations where people identify as stateless, not knowing that they possess a nationality, while in other cases, they may believe they are nationals of a State which in fact does not recognize them as its citizens. In situations where it is likely that the existing questions or response categories will not give an accurate picture of the statelessness situation, it may still be possible to ascertain which persons are stateless, or at risk of statelessness, through relevant proxy-questions. For instance, in States that were formerly part of the USSR, a question relating to identity documentation will flag a risk of statelessness for those persons who can only produce an expired Soviet Union identity document.⁶⁷

One should be aware that State authorities in some cases may use the data obtained through a census in order to implement discriminatory policies or to conduct human rights violations. If there is reason to assume such a risk, utmost care should be applied when approaching authorities on possible questions in a census. In addition, it must be borne in mind that stateless persons or persons at risk of statelessness might not wish their data to be recorded out of fear of possible negative consequences. This may for instance be the case when they are unlawfully in a country and risk being deported if their identity becomes known to the authorities. This is demonstrated in the media report below about how illegal migrants – among whom there are many stateless persons – reacted to the 2010 population census in Russia:

“Authorities have sought to assure students, migrant workers, and other resident foreigners that the census is not a witch hunt. Census-workers are prohibited from recording passport information, and embassy officials have been enlisted to encourage their citizens to step forward and be counted.

Such assurances, however, are unlikely to ease qualms among many migrant workers, particularly the more than 5 million people from neighboring CIS countries, who often enter the country illegally and prefer to stay as far off the radar as possible.”⁶⁸

5.3 Desk review and other data collection methods

When mapping a statelessness situation, it is useful to start with an overview of all existing information on the issue, i.e. to undertake a desk review. The first step is to establish a list of data sources, and subsequently to assess the reliability of the information collected.

A first method to determine the reliability of information is to find out more about factors such as who wrote a report and how information was collected (such “data about the data” is called meta-data). Sometimes the authors of a report may have an interest in playing-up or toning-down figures or concerns, depending on their underlying agenda. For instance, national authorities are a prime source of data for situation analysis but they sometimes have an interest to depict a situation as less grave than it really is. The assessment of a particular situation as “statelessness” may also be influenced in this way, as may the reporting of all sorts of additional information on the social and economic participation of the group or any protection concerns identified.

⁶⁷ For further discussion of identification of stateless persons using a population census, see “Measuring Statelessness through Population Census”, Note by the Secretariat of the United Nations High Commissioner for Refugees for the Joint UNECE/Eurostat Meeting on Population and Housing Censuses, ECE/CES/AC.6/2008/SP/5.

⁶⁸ “In Ethnically Diverse Russia, 2010 Census Presents Logistical, Political Headaches” by Daisy Sindelar, Radio Free Europe/Radio Liberty, 14 October 2010, available at http://www.rferl.org/content/In_Ethnically_Diverse_Russia_2010_Census_Presents_Logistical_Political_Headaches/2190862.html

Montenegro / At the age of seven, Adnan finally legally exists. Although the young boy was born in a hospital, he was until recently officially “invisible” in Montenegro, because his birth had never been registered. In 2009, UNHCR, in cooperation with UNICEF and with support from the European Commission, undertook a survey among the Roma minority in the country to determine how many people were at risk of statelessness because they lacked personal documentation. The survey results formed the basis for subsequent advocacy and programming. ►

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A second method to analyze the reliability of data is to compare different sources of information. If a single report contradicts information from several reliable sources, it is unlikely that its content is accurate. It may nevertheless be helpful to highlight this discrepancy and to attempt verifying it on the ground. This cross-referencing of information is also called *triangulation*.

Once all information is aggregated through the desk review and its reliability assessed, it will become clear where gaps in information exist and where further verification is necessary. Some data collection processes that may be considered include rapid population estimations, household surveys, registration, focus group discussions and key informant interviews. The choice of the most appropriate method would depend *inter alia* on the purpose of the data collection (e.g. to allow extrapolation of data or to facilitate individual follow-up?), access to populations concerned, and the time and resources available. For activities like surveys it will generally be necessary to rely on expert advice, e.g. to develop an appropriate sampling methodology and to evaluate the data collected. A mix of quantitative (e.g. surveys and registration) and qualitative (e.g. focus group discussions and key informant interviews) methodologies helps to verify and fine tune data.⁶⁹

If a desk review shows the existence of an information gap, conducting a survey may be one option to obtain more information on stateless persons. A combination of probability and non-probability sampling techniques can be used as a means of identifying stateless persons. Probability sampling is a technique whereby every individual member of a population has an equal chance of being selected as any other element in the population. Probability sampling method is often precise and lends itself for generalization of conclusions for a wider population. However, the application of this method requires an expert.

In contrast, non-probability sampling does not give all cases in the population an equal chance of falling into the sample. Non-random sampling is useful for identifying ‘hidden’ groups but this method presents problems of bias, and therefore cannot be used as easily, to generalize findings to the whole population.

A successful example of how **quantitative data collection methods** can be used to map statelessness stems from Serbia, where UNHCR worked with a local research company to carry out a probabilistic survey in 2010:

“Statelessness, or the risk of statelessness, was known to affect the Roma, Ashkali, and Egyptian (RAE) population in the country disproportionately. Due to marginalization and discrimination, as well as lack of information or familiarity with administrative procedures, the Roma do not always register their children’s births, or have other personal documentation. In addition, many have links to more than one country, sometimes making it unclear which country they are nationals of. In such circumstances, many are unable to prove their nationality.

⁶⁹ See for more information on techniques of supplementary data collection: UNHCR, Guidance document on measuring stateless populations, May 2011 (provisional release).



*The objectives of the UNHCR-funded survey were to establish the number of persons who are at risk of statelessness because they lack documentation; to identify locations where such persons reside; to assess the awareness among this population of the need for personal identification documents and a nationality; and to identify reasons why individuals do not have personal documents. A key advantage for this survey was that the Government of Serbia already had estimates of the size and location of the affected population. The survey was therefore able to rely on statistical sampling methodology to identify random households to approach with its questionnaire. Extrapolating from the results, the survey concluded that approximately 7 per cent of the RAE population in Serbia, or some 30,000 people, could be stateless or at risk of statelessness. This information has informed UNHCR planning and advocacy for civil documentation programmes to help to confirm nationality for this population.*⁷⁰

Registration of stateless persons is another way of obtaining more precise information but should mainly be used to gather detailed information, including bio-data, on stateless persons with a particular protection intervention or solution in mind. It would for instance be appropriate to register stateless persons when the government has indicated willingness to grant citizenship or a legal residence status following registration. This was the case in Turkmenistan, where the Government undertook two campaigns in 2007 and 2011 with support from UNHCR under which undocumented individuals were registered by mobile teams and assisted with applications for permanent residence and naturalization. By August 2011, some 20,000 individuals were estimated to have been registered in the two campaigns. Of these, 3,318 persons above the age of 18 were granted Turkmen citizenship by decree during 2011.

⁷⁰ UNHCR, *The State of the World's Refugees*, 2012.

These examples also clearly show how identification feeds into prevention and reduction of statelessness as they allow directly channelling people to nationality and documentation procedures. The existence of such procedures also enhances the chances of success for identification by giving a strong incentive for persons to come forward as they can trust that their situation will be resolved.

Engaging in consultation with the actors involved is a second key tool for mapping of statelessness situations and one which primarily draws on **qualitative data collection methods**. Consultation can be arranged through focus group discussions or bilateral dialogue with pre-selected individuals, which are also referred to as key informant interviews.⁷¹ It is particularly important to engage the affected population itself in this manner, since their protection concerns should be central to the response strategy and they can contribute their ideas and help identify local capacity to respond. Consultation with the State(s) authorities concerned and with partners is another vital component of strategic planning and response. An example of where Participatory Assessments have served to significantly enhance UNHCR's understanding of and response to protection concerns affecting stateless persons is Kyrgyzstan:

“Following a number of surveys conducted in 2007-2008, which identified over 13,000 stateless persons in the summer of 2009, UNHCR started engaging also stateless persons in Participatory Assessments (PA). The surveys had covered many questions related to the legal, social and economic situation of stateless persons, including their access to property rights, to the right of having a nationality and personal status, to employment, education, medical and other social services. The objective of the PAs was to review and deepen this understanding by engaging separate age, gender and ethnic groups of stateless persons into an inter-active dialogue on their particular situation and needs.

*All age, gender and ethnic groups considered the lack of valid identity documents as their main problem, because it prevents them from traveling and obtaining marriage or birth certificates. They also have no access to lawful employment and cannot register their immovable property such as land and houses. In addition, they are barred from participating in elections and their access to medical services is restricted. The PAs also revealed that especially women and children suffer from lacking citizenship or personal status, further increasing their vulnerability in their families and communities”.*⁷²

Stakeholder reviews⁷³ may be used as a tool for focusing desk review and consultation exercises specifically on the question of which partners can be mobilized in a response to statelessness. It should include all actors with an interest in the problem – and therefore potential partners.

⁷¹ Within UNHCR, the notion of a community-based approach where the people receiving assistance are placed at the centre of decision-making concerning their protection and well-being has been further developed into the tool of Participatory Assessment. This tool “*minimises the risk of exclusion of certain groups during the design and delivery of goods and services; Recognises the power relations among groups (political, social, economic, gender, etc) with control over resources and those without; Promotes greater respect for the rights of [...] women and gender equality; Promotes participation by children, particularly adolescents; Leads to improved accuracy of baseline data; Improves relations between UNHCR and partners in UNHCR's operations; Allows for a more holistic, comprehensive understanding and response*”. To read more about the tool of Participatory Assessment (and subsequent Participatory Planning), see “The UNHCR Tool for Participatory Assessment in Operations”, UNHCR, 2006.

⁷² UNHCR, Summary Results of Participatory Assessments with Stateless Persons in the Kyrgyz Republic July-August 2009,

⁷³ “The term ‘stakeholder’ refers to a person or group or organisation who have a strong interest in the success or failure of an endeavour. In the context of developing a strategy, operation or project, identifying stakeholders is an important part of the [situation] assessment process. Once stakeholders have been identified and their interests analysed, planners can make decisions about how best to take advantage of stakeholders who can positively contribute to success and how to influence and minimise the negative impact of stakeholders who may have a negative impact on the plan”. “Effective Planning Guidelines for UNHCR Teams”, UNHCR, 1999, page 73.

As there may be very few organizations and actors working directly on statelessness issues, creative thinking will be needed in order to forge relationships with other organizations and actors and gain access to their resources and knowledge. Alternatively, there may be numerous actors engaged in statelessness issues in which case it is essential to coordinate with them to prevent unnecessary overlap.

When looking at stakeholders, the following aspects should be analyzed. First, what are the stakeholder's role and capabilities? The answer to this question should also identify how the stakeholder can influence, positively or negatively, the statelessness situation. Second, the stakeholder's interests in statelessness must be identified, i.e. reasons why the stakeholder would want to help find a solution to the statelessness situation. This can relate to publicly stated interests or potential interests to which UNHCR and others could appeal in order to engage the stakeholder. Third and last, the stakeholder's concerns need to be identified. This reflects the opposite idea, namely reasons why the actor would not wish to work to find a solution to statelessness.

The findings can be summarized in a matrix such as the following, which will facilitate the assessment of the strengths and weaknesses of each potential partner in developing or implementing a response to statelessness:

Example of stakeholder matrix:

Organization	Role/Capabilities	Interests	Concerns
Ministry of Interior	Responsible for citizenship issues, immigration and documentation.	Reducing the number of persons whose stay in the country has not been regulated	Concerned about possible pull effect from granting legal status to stateless persons
UNICEF	Expertise on birth registration	Ensuring universal birth registration	Many other pressing child protection concerns, which means that birth registration is not a top priority
Network of Legal Aid Centres	Long experience carrying out legal aid services for asylum-seekers, including assistance with residence permits and civil registration.	Broadening focus to encompass stateless persons in order to address needs of clients who are not covered by existing programmes.	Lacking training and specific expertise on statelessness.

Finally, “once stakeholders have been identified and their interests analyzed, planners can make decisions about how best to take advantage of stakeholders who can positively contribute to success and how to influence and minimize the negative impact of stakeholders who may have a negative impact on the plan”.⁷⁴

⁷⁴ “Effective Planning Guidelines for UNHCR Teams”, UNHCR, 1999, page 73.



Chapter 6 PREVENTION OF STATELESSNESS

Addressing statelessness is not just about responding to situations as they arise, it is also about the prevention of new cases of statelessness. This fundamentally distinguishes UNHCR's statelessness mandate from the refugee mandate as UNHCR has no specific mandate to prevent persecution leading to refugee flows.

An understanding of the root causes and mechanisms of statelessness provides the essential foundation for a pro-active response. Prevention entails employing this knowledge to identify gaps in domestic laws and practices that may lead to the creation of statelessness. It also requires being able to recognize a change in the situation on the ground in a State that may bring with it a heightened risk of statelessness – for example, an impending break-up of the State. This chapter gives renewed consideration to each of the causes of statelessness, this time considering how different norms, tools and programmes can contribute to prevention.

“

Prevention is the best remedy*

The easiest and most effective way to deal with statelessness is to prevent it from occurring in the first place.

* Statement by UN High Commissioner for Refugees (António Guterres) and UN High Commissioner for Human Rights (Louise Arbour), “The hidden world of stateless people”, 28 November 2007.

6.1 General preventive measures

Developing an understanding of the applicable domestic legal framework(s) is absolutely fundamental to the prevention of statelessness because, ultimately, it is the content or implementation of domestic law that creates statelessness. Citizenship legislation is most important for this, but laws on issues such as immigration, family relations, birth registration and the treatment of victims of smuggling/trafficking may also be relevant. It is necessary to review the citizenship law, the constitution, decrees, regulations, jurisprudence and all other sources which might shed light on the State's law, as well as on the interpretation and implementation of the law. And finally, it may be necessary to refer to the legal framework of other States since legal provisions relating to nationality in a State cannot be viewed in isolation as the interplay of nationality laws of numerous States can create statelessness.

In mapping and analyzing the domestic legal framework, it is important to take a number of considerations into account. Firstly, in reviewing domestic laws, in particular those pertaining to citizenship, it should be borne in mind that the State should be consulted. States determine who are their citizens and States are responsible for the interpretation and implementation of the law. Where applicable, you should seek to work from a good translation of domestic laws and ensure that you have a correct understanding of the State's terminology in the national legislation (for example, in some States, the word "nationality" has a different meaning from citizenship of the State).

For a comprehensive picture of the situation, the *written law*, *interpretation* and *application* of the law must all be included in the analysis as there may be some discrepancies between these aspects. For example, Urdu-speakers ('Biharis') in Bangladesh, long-denied recognition as Bangladeshi citizens, were finally recognised by the Supreme Court of Bangladesh in 2008 as always having qualified as Bangladeshi citizens under Citizenship Act of 1951 and the Bangladesh Citizenship (Temporary Provisions) Order of 1972. Implementation of the Supreme Court's decision was swift, as the Electoral Commission issued a Nationality Identity Card, enabling voting and access to a range of other rights and services available to nationals, to any member of the Urdu-speaking community who applied and who met legal and administrative requirements.⁷⁵ In light of the 2008 Supreme Court decision and subsequent implementing measures taken by the Government of Bangladesh, the Urdu-speaking community can no longer be viewed as stateless, as they are considered to be nationals of Bangladesh.⁷⁶

Remember that national law and practice are not static, but are in a continual state of development. When getting started, check that the domestic legislation under review is the most recent version, including all amendments and modifications. The best way to ensure this is to confirm it with the State concerned, ideally with the State body responsible for the implementation of whichever provisions are at hand. Trends in domestic legislation, interpretation and practice must therefore be reviewed on a regular, consistent and methodical basis to ensure a correct and up-to-date analysis. Note however, that it may also be helpful to analyze older nationality legislation and amendments to see whether the combined effect of successive laws is a potential source of statelessness.

⁷⁵ See Shakhawat Liton, EC moves to make voters 1.6 lakh Urdu speakers, Daily Star, 24 July 2008. According to some sources, approximately 80 % of all adult Urdu speakers, or 184,000 persons, were subsequently registered; see United States Department of State, 2008 Country Reports on Human Rights Practices – Bangladesh, 25 February 2009.

⁷⁶ UNHCR, Note on the nationality status of the Urdu-speaking community in Bangladesh, 2009, available at: <http://www.unhcr.org/refworld/pdfid/4b2b90c32.pdf>

When analyzing whether there could be a statelessness problem in a country, it is helpful to start by considering whether the domestic legal framework is generally amenable to the avoidance of statelessness. In particular, there are a number of procedural safeguards that, if in place, can help to ensure that decisions on nationality attribution are fair and correct. These safeguards also provide an avenue for States to actively step in and prevent statelessness where potential cases arise. As indicated in a very useful Report of the Secretary General on Human Rights and the Arbitrary Deprivation of Nationality:

“States are expected to observe minimum procedural standards in order to ensure that decisions concerning the acquisition, deprivation or change of nationality do not contain any element of arbitrariness. In particular, States should ensure that a review process can be carried out by a competent jurisdiction of an administrative or judicial nature in conformity with the internal law of each State and the relevant international human rights standards.”⁷⁷

The European Convention on Nationality provides helpful guidelines on fair and appropriate procedures where it determines that applications or decisions relating to nationality must:

- *be processed within a reasonable time (article 10)*
- *contain reasons in writing (article 11)*
- *be subject to reasonable fees (article 13, paragraph 1)*
- *be open to an administrative or judicial review (article 12), the fee for which may not be an obstacle for applicants (article 13, paragraph 2).⁷⁸*

These procedural guarantees are designed to act as a safeguard against discriminatory, unlawful and unjust decisions and ensure that where a person has acquired a nationality according to the letter of the law, he or she is considered by the relevant authorities to have that status in practice. They also ensure that any loss or denial of nationality is carefully scrutinized as to its compatibility with the prohibition of arbitrary deprivation of nationality and the general principle on the avoidance of statelessness.

A further general measure that can contribute to this overall line of defence against statelessness is ensuring that the regulations on nationality and related issues, as well as the relevant procedural rules, are adequately publicized. The relevant information should be made widely available, including, if necessary, through specialized materials geared towards groups at risk – for example women or linguistic minorities.

⁷⁷ UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, 14 December 2009, A/HRC/13/34, available at: <http://www.unhcr.org/refworld/docid/4b83a9cb2.html>

⁷⁸ Note that while these particular procedural requirements are only binding for state parties to the European Convention on Nationality, they nevertheless provide excellent guidance as to suitable safeguards for the prevention of statelessness in any state.

6.2 Preventing statelessness in the context of discrimination and denationalization

As explained in chapter 2, the problem that underlies the great majority of cases of statelessness is discrimination. In extreme cases, this manifests itself in a policy of denationalization of a particular group. This was the case in the Democratic Republic of Congo (DRC, formerly Zaire), for instance, where the ruling authority enacted a decree in 1972 that granted nationality to all persons of Rwandan or Burundian origin who had settled in the country prior to 1960. Nine years later, the 1972 act was retroactively invalidated by the State's parliament, rendering many who had acquired nationality on the basis of the decree stateless.

From the point of view of preventing statelessness, one of the most important international norms is the principle of non-discrimination:

*“Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights”.*⁷⁹

The prohibition of racial discrimination is considered to be a customary norm that must be respected by all States. More generally, the human rights recognized in international law are to be enjoyed by all persons, without discrimination – a fact that is reaffirmed in the opening provisions of every major human rights convention.

Thus, for example, the right of every child to acquire a nationality and to be registered at birth, found in the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child* must be guaranteed to every child, equally, without discrimination based on race, gender, religion or even say the migratory status of the parents. Moreover, the *Convention on the Elimination of Racial Discrimination* (article 5) includes a specific provision outlawing racial discrimination in the enjoyment of the right to a nationality. This means that “deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of State Parties’ obligations” and States must also “ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization”.⁸⁰ The *Convention on the Elimination of All Forms of Discrimination against Women* (article 9) includes a prohibition of gender-based discrimination in the enjoyment of the right to a nationality, including with regard to the nationality of children. The *1961 Convention on the Reduction of Statelessness* (article 9) also prohibits deprivation of nationality, but only on racial, ethnic, religious or political grounds.

Numerous human rights instruments include a free-standing article on equality before the law and equal protection of the law. In the *International Covenant on Civil and Political Rights*, this is article 26, which prohibits discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in law or in fact and in any field regulated and protected by public authorities. Nationality attribution, as a matter that is by definition regulated by the State, is subject to this clause and should be regulated in a non-discriminatory manner. This general principle of equality before the law compounds the prohibition of discriminatory nationality regulations.

⁷⁹ “General Comment No. 18: Non-discrimination” by the UN Human Rights Committee, November 1989.

⁸⁰ “General Recommendation No. 30: Discrimination against non-citizens” by the Committee on the Elimination of Racial Discrimination, March 2004.

As regards the rights guaranteed under the International Covenant on Civil and Political Rights, the Human Rights Committee has observed “that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”.⁸¹ The following test can therefore be used to assess whether distinctions resulting from a nationality policy comply with the principles of equal treatment and non-discrimination:

*“To start, does the policy impose disproportionate burdens on members of particular racial or ethnic groups? If so, does the policy that generates disproportionate burdens nonetheless pursue a legitimate aim? And finally, if the aim is legitimate, does the policy bear a sufficiently close relationship to the aim as to warrant imposing the disproportionate impact? As in the field of non-discrimination, once a disparate impact is shown, the burden should in practice be on the government to demonstrate both a legitimate aim and a reasonable relationship of proportionality between the means employed and the aim pursued”.*⁸²

Another international legal tool in the fight to prevent statelessness in this context is the norm prohibiting *arbitrary deprivation* of nationality as found, for example, in article 15 of the Universal Declaration of Human Rights and article 20 of the American Convention on Human Rights and numerous resolutions of the UN Human Rights Commission and the Human Rights Council on the subject. As explained in detail in a 2009 report of the Secretary General,⁸³ deprivation must not only be in conformity with national law, but also comply with procedural and substantive standards. The European Convention on Nationality provides some illustration of what procedural standards may entail in this context as outlined above in section 6.1. In general terms, the most important substantive standard is the principle of proportionality. Where deprivation of nationality occurs in violation of the above norms on non-discrimination and equal treatment before the law, this act is by definition to be considered arbitrary as it does not pursue a legitimate purpose. Few considerations would justify deprivation of nationality where it results in statelessness. The major exception relates to fraudulent acquisition of nationality. The 1961 Convention also allows exceptions based on prolonged residence abroad or disloyalty to the State. However, in all of these instances, States must respect the principle of proportionality and in particular take into account the consequences of statelessness and the quality of the link between State and individual.

States must take all of the above standards into account when enacting and implementing their nationality regulations. UNHCR and other partners can offer technical support in the interpretation and application of these international standards, assisting States in the drafting of legislation. Moreover, in order to prevent the incorrect, improper or discriminatory application of domestic law in practice – by the authorities responsible for implementing nationality or related policy (such as on birth registration) – it may be necessary to promote a sufficient knowledge-base and conducive attitudes among relevant government officials. This may be achieved through seminars, workshops and training programmes. Tolerance and acceptance campaigns geared towards the general public may also contribute to an overall climate based on equality where discriminatory policies or practices find no support.

⁸¹ United Nations Human Rights Committee, General Comment No. 18 on Non-discrimination (Thirty-seventh session, 1989), at para. 13.

⁸² “Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens” by James Goldston in *Ethics & International Affairs*, Volume 20, No. 3, 2006.

⁸³ UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, 14 December 2009, A/HRC/13/34, available at: <http://www.unhcr.org/refworld/docid/4b83a9cb2.html>

6.3 Preventing statelessness at birth

Statelessness may arise at birth from either inadequate or conflicting nationality laws, or where other factors are present, from the lack of birth registration. However, international law clearly enunciates the right of every child to acquire a nationality and to be registered immediately after birth – for example in article 24 of the International Covenant on Civil and Political Rights and article 7 of the Convention on the Rights of the Child. In order to meet these commitments and prevent statelessness, States should build safeguards into their domestic regulations for the conferral of nationality at birth and make every effort to ensure that all children are registered.

While States are still free to choose whether to confer nationality on the basis of *jus soli* or *jus sanguinis* rules, it is important to realize that a number of international treaties compel States to put in place certain legal safeguards to prevent statelessness at birth:

*“In cases where a child does not acquire any other nationality and would otherwise be stateless, the state must ensure acquisition of its nationality. In this case, the phrase acquisition by birth should be completed to state that a child born on the state’s territory or born to a national of the state who would otherwise be stateless shall acquire the nationality of the state. This is an absolute minimum standard to protect the right to a nationality for children”.*⁸⁴

The 1961 *Convention on the Reduction of Statelessness* contains such a minimum standard by providing for the conferral of nationality *jus soli* or *jus sanguinis* upon a child who would otherwise be stateless. The Convention does however leave some margin of discretion to States in determining the exact conditions and procedures which govern conferral of nationality. As such, it does not provide a complete guarantee of prevention.⁸⁵

⁸⁴ “Transforming international legal principles into national law: the right to a nationality and the avoidance of statelessness” by Carol Batchelor in *Refugee Survey Quarterly*, 2006.

⁸⁵ Article 1 of the Convention provides for attribution of nationality by all state parties to a child born in the territory who would otherwise be stateless. Article 4 provides for the attribution of nationality to children born to a national of a State party abroad who cannot rely on the article 1 guarantee, because they are not born in the territory of one of the state parties, if they would otherwise be stateless. In both cases, States may choose to grant citizenship either automatically at birth, or later, upon the lodging of an application. The Convention also provides an exhaustive list of conditions which States may apply to the grant of nationality by application. Importantly, it stresses that “no such application may be rejected”, which means that the Convention does not deal with what conditions should apply to grant of nationality through discretionary naturalization procedures.

Brazil / Stateless since birth, Irina, who was born in Switzerland to a Brazilian mother, finally received Brazilian nationality in 2007. This was after an amendment to the Brazilian Constitution made it easier for children born abroad to nationals to acquire Brazilian nationality. In the past, these individuals could only become citizens if they returned to reside in Brazil. When the Constitution was amended, it became possible to complete the registration requirements through Brazilian consulates abroad, thereby reducing the risk of statelessness among Brazilian expatriates. The amendment was also given retroactive effect, thereby allowing Irina to become a citizen upon registration with the Brazilian consulate. ►

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In some cases, international law has gone one step further in determining how States are to prevent statelessness at birth: in particular, article 20 of the American Convention of Human Rights and Article 6 of the African Charter explicitly establish that children are to acquire the nationality of their country of birth if they would otherwise be stateless.⁸⁶ One can also argue that if the right to a nationality guaranteed under article 24(3) CCPR and article 7 CRC is to have a meaning, it must comprise the grant of nationality by States to children born on their territory who would otherwise be stateless, as States have an obligation to ensure the rights of all persons under their jurisdiction.⁸⁷ This prescription reflects the finding that “one of the surest methods [to prevent statelessness at birth] is to guarantee that individuals born on a State’s territory have the right to that nationality if they would not obtain any other (as opposed to restricting nationality to children born to established citizens)”.⁸⁸ This solution can indeed prevent statelessness arising from a conflict of laws, such as when a child is born to parents who are unable to confer their nationality to the child when it is born abroad. It also prevents statelessness to be passed on to children where their parents are stateless.

International law also addresses the question of discrimination between men and women as it relates to the conferral of nationality at birth, i.e. where women do not have an equal right to men to pass on nationality to their children. Both to reduce the risk of statelessness and to tackle gender discrimination as such, international law clearly determines that women are to be granted an equal right to men to transmit their nationality to their children. This can be found, for instance, in article 9 of the *Convention on the Elimination of All Forms of Discrimination against Women*. At the same time, the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child* establish that children are entitled to equal protection of their rights whether they are born in or out of wedlock. So, any restrictions imposed in relation to the right to acquire a nationality for children born out of wedlock would run counter to this standard. All of these international norms should help to shape domestic regulations on the attribution of nationality at birth and prevent statelessness.

As explained above, international law also established the right of every child to birth registration. This is an official act of recognition by the State of the basic facts surrounding the child’s existence – his or her *identity* – that not only helps to prevent statelessness but also to protect the child from many forms of rights violations and abuse. While the act of birth registration is itself important, it is also crucial that the registered child receives a birth certificate, since it provides “permanent, official and visible evidence of a State’s legal recognition of his or her existence as a member of society”.⁸⁹ It will establish both where the person is born and who the child’s parents are. As set out by UNHCR in 2010:

⁸⁶ UN High Commissioner for Refugees, *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: Summary Conclusions*, September 2011, para 24, available at: <http://www.unhcr.org/refworld/docid/4e8423a72.html>

⁸⁷ See for article 24(3) CCPR: Nowak, Manfred, *UN Covenant on Civil and Political Rights. CCPR Commentary* (2nd rev. ed.). Kehl am Rhein: Engel, 2005, at pp. 561, 562.

⁸⁸ Statement by UN High Commissioner for Refugees (António Guterres) and UN High Commissioner for Human Rights (Louise Arbour), “The hidden world of stateless people”, 28 November 2007.

⁸⁹ “Universal birth registration – A universal responsibility” by Nicola Sharp for Plan International, 2005.



Birth registration is also essential in ensuring the right of every child to acquire a nationality. However, it is important to distinguish between birth registration and the process by which individuals acquire nationality. At birth, acquisition of nationality under the law generally occurs automatically either by jus sanguinis (descent) or jus soli (birth on the territory). Birth registration establishes in legal terms the place of birth and parental affiliation, which in turn serves as documentary proof underpinning acquisition of the parents' nationality (jus sanguinis), or the nationality of the State based on where the child is born (jus soli). Thus, while nationality is normally acquired independently and birth registration in and of itself does not normally confer nationality upon the child concerned, birth registration does constitute a key form of proof of the link between an individual and a State and thereby serves to prevent statelessness.⁹⁰

It is therefore imperative that States provide for the registration of births and the issuance of birth certificates in their domestic law and that the procedures that are thereby established actually enable all children to access birth registration and certificates in practice.

As a key element, registration must be free of charge or subject to minimal fees only. A UNICEF study of the causes of non-registration of births established that “the most common reason cited in the greatest number of countries was that birth registration costs too much”. Moreover it found that while the late fees, fines or judicial procedures for late registration imposed by some countries “may encourage most parents to register in a timely manner, they also pose a barrier to those who find it difficult to register on time, such as families who live in remote areas poorly served by registration services or who cannot afford the cost of registration” and that “these penalties result in double discrimination against the family”.⁹¹ A particular challenge arises from unattended births as the State cannot rely on hospitals and midwives to ensure birth registration. Accessible procedures are even more important in these situations.

⁹⁰ UNHCR, Birth Registration: A Topic Proposed for an Executive Committee Conclusion on International Protection, 9 February 2010, EC/61/SC/CRP.5, available at: <http://www.unhcr.org/refworld/docid/4b97a3242.html>

⁹¹ “The ‘rights’ start to life – A statistical analysis of birth registration”, UNICEF, 2005.

Some helpful suggestions on the most effective government laws and structures for birth registration can be found in “A ticket to citizenship – Practices for improving birth registration”, the outcome document of a joint Plan International, UNICEF, NGO Committee on UNICEF and Civil Registrars Workshop:

“The conference [...] found that the best birth registration system is compulsory and flexible, free of charge or with a minor charge and makes it possible to be registered at any age without a fine. The system would also be simple and accessible (for example, needing the bare minimum of documents), particularly for the illiterate. There would be a minimum delay before a birth certificate is issued. Such a system allows the mother, father or other adult to register the child and is not prejudiced in terms of gender. It does not require a child to be registered in the town, community or village in which she or he was born. It would be able to register children who live in rural as well as urban areas, who are minorities or part of indigenous groups, and who have parents who are not of the same nationality. A law, or laws, that are clear and understood by all with the responsibility to implement them, would govern the system”.⁹²

Again, States can call upon the assistance of UNHCR as well as UNICEF and UNFPA and any of a host of civil society partners in setting up and implementing an efficient and comprehensive birth registration system.

6.4 Preventing statelessness upon a change of civil status

The prevention of statelessness in the context of a change in an individual’s civil status again requires foresight from States in the formulation of their rules on the attribution of nationality. International law lays down certain relevant obligations. States are free to provide for facilitated acquisition of nationality – through facilitated naturalization or a right of option – for spouses of nationals and children adopted by nationals. Change of nationality should not, however, occur automatically upon change of marriage. This has been laid down in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In particular international law recognizes that any change of nationality, including where this is related to a change in civil status, must be voluntary. As article 9 of the *Convention on the Elimination of All Forms of Discrimination against Women* provides:

“Neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband”.

Loss of nationality shall in particular not be effected upon change in civil status if it would result in statelessness.

The 1961 Convention on the Reduction of Statelessness contains a strong provision on this subject. Article 5 sets out that:

“If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality”.

If for whatever reason, adequate safeguards were not in place and an individual becomes stateless, for example upon divorce, then a fallback clause for the recovery or reacquisition of nationality will be an appropriate and effective way of nevertheless preventing (or later reducing) statelessness.

⁹² Plan International; UNICEF, “A ticket to citizenship – Practices for improving birth registration”, outcome document of joint Plan International, UNICEF, NGO Committee on UNICEF and Civil Registrars Workshop, June 2001.

6.5 Preventing statelessness upon a change of nationality

As a result of migration, people increasingly seek to acquire a new nationality, generally that of the State where they have taken up residence. Yet, many States do not allow their citizens to hold more than one nationality. The most straight-forward way of preventing statelessness in the context of a change of nationality is permitting the loss or renunciation of nationality only once an alternative nationality has been acquired. A number of States are keen to avoid dual nationality and therefore require an individual to renounce his or her original nationality prior to applying for the new nationality. This will always result in statelessness, at least temporarily. If the person fails to complete the procedure for the acquisition of the new nationality, they may be left stateless for a protracted period. However, dual nationality can also be avoided without creating a risk of statelessness. One way is to allow an individual to register his or her intent to renounce nationality or to accept proof that renunciation procedures have been initiated. Another way is to provisionally grant nationality, giving the individual sufficient time to renounce the previous nationality. On the other hand, States should not withdraw the nationality of citizens who apply for another nationality before they have at least obtained a guarantee that they will acquire the new nationality. Generally, States should not allow persons to renounce their nationality without acquiring a new one.⁹³

Bilateral and multilateral agreements between the States concerned can specify that loss and acquisition coincide so that a person not even becomes temporarily stateless. Such a strategy may be particularly beneficial where large groups are applying to change their nationality by option or naturalization, such as in the aftermath of State succession. For instance, this technique was used to great effect in a number of the republics to emerge from the break-up of the USSR: bilateral agreements on simplified procedures for the change of citizenship helped to prevent (and reduce) statelessness among Formerly Deported Persons (FDPs) returning to Ukraine. In addition, again illustrated by the case of Ukraine, creative solutions may be found to prevent statelessness in the context of a change of nationality, without forfeiting a policy prohibiting dual nationality. Thus, one of the main benefits of Ukraine's new citizenship law for returned FDPs was *“the possibility to provisionally obtain Ukrainian citizenship for up to one year during which previous citizenship should be renounced, thus preventing statelessness though acknowledging the constitutional ban on dual citizenship as well as its waiver of renunciation procedures, if the fees demanded for these by authorities of the state of previous citizenship would exceed a minimum monthly wage in Ukraine”*.⁹⁴

⁹³ Article 7, paragraphs 1 and 2 of the 1961 Convention on the Reduction of Statelessness.

⁹⁴ “Assisting the integration of formerly deported people in Crimea: ten years of UNHCR experiences” by Hans Schodder in *Beyond Borders*, Bulletin of UNHCR in Ukraine, 2005.

6.6 Preventing statelessness in the event of international migration and forced displacement

As discussed in chapter 2, the movement of people across international borders and the particular circumstance of *forced* displacement can substantially heighten the threat of statelessness. This is the case, not only because migration and displacement cause a greater intermingling of people and an increased likelihood of a conflict of laws arising, but also because long-term residence abroad may lead to the loss of nationality under the applicable legislation of the country of origin. In addition, displacement may contribute to, or result in, the inability to prove nationality – a problem which, unless addressed promptly, may lead to problems of statelessness for the individual him or herself as well as putting subsequent generations at risk.

Similarly to protecting individuals against the risks involved in premature renunciation of nationality in the context of a change of nationality, States should consider protecting individuals against the automatic loss of nationality in the context of residence abroad, *where the person has yet to acquire an alternative citizenship*.

If States legislate for the deprivation or automatic loss of nationality for emigrants, the rules and procedures that allow for the retention or recovery of nationality should be clear and well-publicized to provide individuals with every opportunity to comply and avoid losing their citizenship. States should inform citizens concerned of the impending loss of nationality and also allow for facilitated re-acquisition of nationality of former citizens if they have become stateless. These safeguards against loss of nationality following emigration that would result in statelessness can also be found in relevant international instruments.

The 1961 Convention on the Reduction of Statelessness prohibits the loss or deprivation of nationality in these circumstances where it would result in statelessness. The only exception admitted by the 1961 Convention is in the case of a *naturalized* citizen who resides abroad for a period *not less than seven consecutive years* and only if he or she also *fails to declare to the appropriate authority the intention to retain citizenship*.⁹⁵

It should also be noted that the European Convention on Nationality is stricter, prohibiting the loss or deprivation of nationality in the event of the “lack of a genuine link between the State Party and a national habitually residing abroad”, if this act would result in statelessness.⁹⁶ In addition, both of the aforementioned instruments call for due process in any decisions relating to the deprivation of nationality.

In respect of particular categories of displaced persons or migrants who are known to experience a heightened risk of statelessness because they are particularly vulnerable to seeing their identity documents lost, forfeited or destroyed, international law calls upon States to take specific action. In relation to smuggling and trafficking in persons, this is reflected in UNHCR Executive Committee Conclusion No. 106 in the segment on the prevention of statelessness. The Executive Committee

“encourages States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status”.

⁹⁵ Article 7, paragraph 4 and Article 8, paragraph 2 of the 1961 Convention on the Reduction of Statelessness.

⁹⁶ Article 7 of the European Convention on Nationality.

In fact, two instruments designed to address smuggling and trafficking – the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, both supplementing the *United Nations Convention against Transnational Organized Crime* – specifically call upon States to assist in verifying the nationality of the persons referred to them who have been smuggled or trafficked. If the States fail to do so, persons may find themselves without an effective nationality. This can be illustrated with the following example from Thailand:

*“Thai overseas missions assist victims who ‘could prove their Thai citizenship.’ If the victim has no ID papers, the process becomes more complicated. The Thai Embassy or Consulate-general, labour attaché office and the government security agency in the country will determine if there is probable cause to believe the victim had domicile or residence in Thailand and contact government agencies to verify the status. [...] Those without evidence of domicile face hurdles to reenter. [...] Trafficked victims without citizenship or evidence of legal domicile, therefore, face challenges to obtaining state protection and may be denied the right of re-entry”.*⁹⁷

The longer the situation goes unresolved, the more problematic it becomes to track down evidence of nationality or of the link between the individual and a state.

Another example of a problem that particularly affects migrants and the forcibly displaced and may lead to statelessness is the difficulty accessing birth registration – perhaps because the host state does not perceive a need or responsibility to register children born to non-nationals or because the individuals themselves are unaware of the procedure or lack the required documentation to complete an application. Lack of proof of the facts surrounding a person’s birth may lead to lack of ability to establish a claim to citizenship and these problems become greatly aggravated if left unresolved over several generations.

The international community has taken an active interest in the problems faced by non-nationals, particularly refugees and undocumented migrants, in registering births and has taken steps to clarify the responsibility of states in this regard. The Committee on the Rights of the Child, for instance, has repeatedly asserted that right to be registered immediately after birth is a right that *all* children enjoy, “including asylum-seeking, refugee or migrant children – irrespective of their nationality, immigration status or statelessness”.⁹⁸ States are therefore required to take measures to register every birth on their territory.

In addition, the Committee on the Rights of the Child has suggested that the country of nationality of the parents also bears a responsibility in ensuring that children born to their nationals abroad are registered at birth. Since birth registration processes and those relating to acquisition of nationality normally are separate, where being registered at birth does not lead to acquisition of nationality, the child cannot necessarily claim the nationality of the country that is obliged to register their birth. Coupled to the birth registration process, however, there must be a system in place that is designed to “fulfill his or her right to acquire [...] a nationality”.¹⁰⁰

⁹⁷ “Stateless and Vulnerable to Human Trafficking in Thailand”, Vital Voices, 2007, available at <http://www.vital-voices.org/files/docs/Vital%20Voices%20-%20Stateless%20and%20Vulnerable%20to%20Human%20Trafficking%20in%20Thailand.pdf>, at pp. 14-16, quoting the “Trafficking in Persons Report 2006” by the United States Department of State, 243, (June 2006).

⁹⁸ Committee on the Rights of the Child, General Comment no.6 “Treatment of unaccompanied and separated children outside their country of origin”, 2005, at paragraph 12. This viewpoint has been repeated in numerous responses of the committee to state practice in the context of the consideration of periodic state party reports.

⁹⁹ See, for instance, Committee on the Rights of the Child, *Concluding Observations: Philippines*, CRC/C/15/Add.258 (2005) at paragraphs 36 and 37; and *Concluding Observations: Bosnia and Herzegovina*, CRC/C/15/Add.259 (2005) at paragraph 33.

¹⁰⁰ United Nations General Assembly Resolution, “A world fit for children”, Twenty-Seventh Special Session of the GA, 11 October 2002, at paragraph 44 (1).

6.7 Preventing statelessness in the context of State succession

Carefully monitoring the environment – political, economic, social or otherwise – in the State can contribute to the early detection of a new risk of statelessness and can help to ensure that a *prevention* strategy is put in place in a timely fashion. A particularly noteworthy change in circumstances that may herald a challenge for the *prevention* of statelessness is State succession. Once State succession comes into play a number of issues must be considered:

“Review bilateral and multilateral agreements adopted in cases of State succession” and ask whether “links between the person concerned and the State, the habitual residence of the person concerned at the time of succession, the will of the person concerned, and the territorial origin of the person concerned [are] taken into consideration when determining whether nationality shall be granted to a national of the predecessor state?”¹⁰¹

State succession therefore presents a complex set of circumstances that must be taken into account in determining an effective and appropriate course for the attribution of nationality, such that statelessness is avoided.

Fortunately, this is an area in which detailed international legal standards offer important guidance in dealing with the questions that are raised in relation to nationality following state succession. To begin with, the 1961 Convention on the Reduction of Statelessness touches briefly upon state succession in its article 10, referring specifically to instances of transfer of territory. This article calls upon states to conclude international agreements that provide guarantees for the avoidance of statelessness. In addition, where no bilateral or multilateral solution has been agreed, the 1961 Convention on the Reduction of Statelessness points to the successor state as the country responsible for conferring nationality to prevent statelessness.¹⁰²

Three instruments that were drafted more recently offer further substantial guidance on the avoidance of statelessness in cases of state succession, expanding upon and supplementing the guarantees laid down in the 1961 Convention. The first is the *Articles on Nationality of Natural Persons in relation to the Succession of States* prepared by the International Law Commission which deal with all matters relating to the regulation of nationality following state succession, guided throughout by the principle that statelessness is to be avoided. The UN General Assembly has “emphasise[d] the value of the Articles in providing guidance” to States and has invited governments to them take into account when addressing situations of State succession.¹⁰³

The *European Convention on Nationality* sets out a series of standards. These are supplemented by the much more detailed *Council of Europe Convention for the Avoidance of Statelessness in Relation to State Succession*.¹⁰⁴ It entered into force on 1 May 2009 and focuses specifically on preventing new

¹⁰¹ “Nationality and statelessness – A handbook for parliamentarians” by UNHCR and IPU, 2005.

¹⁰² Article 10, paragraph 2 of the 1961 Convention on the Reduction of Statelessness.

¹⁰³ UN General Assembly, Nationality of natural persons in relation to the succession of States, A/RES/66/92 , 2011

cases of statelessness from arising in the context of state succession.¹⁰⁵ The following is an overview of the most important guarantees elaborated in these two instruments for the avoidance of statelessness:

- Where the predecessor State is still in existence following state succession, the predecessor state may not withdraw its citizenship until the nationality of a successor State is actually acquired, be it automatically or through voluntary act. This guarantee serves to avoid even temporary statelessness in cases of partial succession.
- The successor State must confer nationality to persons concerned who have their habitual residence in the transferred territory. In addition, where there are persons at risk of statelessness, the successor State shall also attribute nationality to those who are not habitually resident on the territory of (any of) the successor State(s) at the time of transfer if there is an *appropriate connection*. An appropriate connection is further defined as either a legal bond with the territorial unit of a predecessor State which has become territory of the successor State, birth on the territory which has become territory of the successor State or last habitual residence on the territory which has become territory of the successor State. These norms clearly determine obligations for the conferral of citizenship where there is a threat of statelessness.
- A rule has also been developed in order to pre-empt problems that may arise when an individual is eligible for several nationalities following State succession, under the rules described above – for instance, to prevent States concerned from withdrawing their offer of citizenship on the premise that the nationality of another successor State is also available. Thus, both instruments declare that if a person is found to have an *appropriate connection* to more than one successor State, the choice is to be left to the individual: there must be a real opportunity to exercise a right of option.
- To ensure that these guarantees are implemented successfully and to avoid statelessness, States concerned must exchange information and consult with one another. Moreover, the States concerned shall not only co-operate among themselves, they shall also co-operate with relevant international organizations. For example, article 14 of the Council of Europe Convention calls for co-operation with the Secretary General of the Council of Europe and UNHCR.
- Finally, States must provide certain procedural guarantees in the context of decisions relating to the withdrawal or conferral of nationality following State succession. In particular, States must provide sufficient information on rules and procedures to persons concerned; process relevant applications without delay; provide decisions, including reasons, in writing; provide an effective judicial review for decisions; and ensure that relevant fees are reasonable and not an obstacle to applicants.

These rules should guide all bilateral and multilateral agreements concluded in this context as well as the content of new or revised domestic nationality laws, such that statelessness is avoided. The earlier action is undertaken, raising these issues and discussing these norms when State succession is impending, the more effective the prevention of statelessness will be. Timely action allows for advocacy and the provision of technical assistance for the elaboration of suitable domestic legislation (and bilateral agreements) to prevent statelessness.

¹⁰⁴ For a discussion, see “The Council of Europe and the reduction of statelessness” by Roland Schärer in *Refugee Survey Quarterly*, 2006.

¹⁰⁵ For a full discussion of this instrument, see “The Council of Europe and the reduction of statelessness” by Roland Schärer in *Refugee Survey Quarterly*, 2006.



Chapter 7 REDUCTION OF STATELESSNESS

The reality in today's world is that statelessness persists, on a substantial scale, across the globe. More worryingly, many situations of statelessness have become **protracted**, leaving people in this type of limbo for years or decades. This is why activities geared towards the reduction of statelessness are a fundamental component of a comprehensive response. *Reduction* basically involves finding a durable solution for “reducing” existing cases of statelessness. As the quote above suggests, this is no easy task, yet there is a growing number of States that – often with UNHCR’s assistance – have resolved statelessness situations. From these success stories, valuable lessons can be extracted for devising effective reduction strategies. It is important to realize that the reduction of statelessness has two complimentary and mutually reinforcing dimensions: formal, legal integration in the State through the confirmation or attribution of nationality and increased social and economic participation. Understanding the

“

The challenge of reduction*

The only solution to statelessness is for stateless people to acquire a nationality. In many situations it is most appropriate to allow stateless people to acquire the citizenship of the State where they reside, particularly in protracted statelessness situations. In other contexts, citizenship opportunities in other countries may also be considered for individuals, including in their countries of birth, former residence, or where their parents held citizenship.

* UNHCR Global Report 2011, at page 46.

- ◀ Sri Lanka / Children of tea plantation workers attend school on Chrystler tea plantation. In Sri Lanka, the descendants of South Indians brought to work on plantations in the 19th century were left stateless for decades after independence from Britain. In 2003, the Sri Lankan parliament adopted legislation to grant citizenship to this population, known as the Hill Tamils. UNHCR supported the government to conduct a massive citizenship campaign to resolve the situation.

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opportunities for and interplay between these two aspects can be helpful in devising reduction strategies and determining what steps to take, in what order. A third and separate mechanism for reduction that can be considered for stateless persons in particularly precarious and protracted situations is resettlement.

7.1 The legal aspect of reduction: Acquisition and Confirmation of nationality¹⁰⁶

In working towards reduction of statelessness, two sets of international standards should be considered. In the first place, the complete spectrum of instruments and norms that relate to the right to a nationality is relevant. These include the principles set out in the 1961 Convention and international human rights law to *prevent statelessness* and which were dealt with in the previous chapter. These standards can be used to identify the State with which, according to international law, the persons enjoy a relevant link that should be reflected in the formal bond of nationality.

In most protracted situations, the stateless population has lived in a territory for generations and their country of residence is the centre of their family and social lives, their livelihoods and their broader interests. The most effective means to resolving such situations will therefore include recognizing the links of the population to the State through birth or long-term residence. As set out in the conclusions of UNHCR's 2010 Expert Meeting on Statelessness Determination Procedures:

*For stateless individuals within their own country, as opposed to those who are in a migration context, the appropriate status would be one which reflects the degree of attachment to that country, namely, nationality.*¹⁰⁷

A simple technique for the reduction of statelessness is thus the modification of the domestic legal framework to bring it into line with relevant international standards for the prevention of statelessness and applying these changes with retroactive effect. This method was employed for instance in Algeria, where nationality legislation initially prevented women from transmitting their nationality to their children. New legislation in 2005 established that nationality was acquired by birth to an Algerian mother or father, without restricting application of the provision only to children born after the law came into effect, thus resolving existing cases of statelessness. Other countries in the region, for example Egypt, opted to allow acquisition of nationality by application during a transitional period.

¹⁰⁶ Promoting the respect of standards of treatment for stateless persons facilitates their integration and is thus a helpful step towards reduction of statelessness. These standards relate to the protection of stateless persons and are therefore addressed in the next chapter.

¹⁰⁷ UN High Commissioner for Refugees, Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions), December 2010, para 24, available at: <http://www.unhcr.org/refworld/docid/4d9022762.html>

Secondly, there are a number of international norms that relate specifically to the legal integration of non-nationals which contribute to the *reduction* of statelessness. Naturalization is an important means of achieving legal integration and reducing statelessness and there are several treaty norms that deal specifically with the opportunity for stateless people to access facilitated naturalization procedures. Under article 32 of the 1954 Convention relating to the Status of Stateless Persons, “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.” In Europe, the European Convention on Nationality (article 6) and Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (article 9) also contain provisions on naturalization. The European Convention on Nationality determines that generally, whether or not a person is stateless, States may not require more than ten years residence as a pre-condition to naturalization.¹⁰⁸ For the stateless, who are to enjoy *facilitated* naturalization on the basis of the convention, States must ensure that there are “favourable conditions” in place, which may include “a reduction of the length of required residence, less stringent language requirements, an easier procedure and lower procedural fees”.¹⁰⁹

The UN Committee on the Elimination of Racial Discrimination has, in its General Recommendation 30 on discrimination against non-citizens, called upon States to:

“Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents [and] take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention’s anti-discrimination principles”.

States’ naturalization policies are therefore not beyond the influence of international law – in particular the principle of non-discrimination.¹¹⁰ Under article 3 of the 1954 Convention, States must apply provisions of the Convention, and therefore also article 32 on naturalization, without discrimination between stateless persons. UNHCR’s Executive Committee “encourages States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons [...] to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation”.¹¹¹ In addition, the UN Human Rights Commission has determined that, generally speaking, States should not maintain “unreasonable impediments”¹¹² to gaining citizenship through naturalization. This is a standard to keep in mind when considering the possibility of access to naturalization for stateless persons, since the interpretation of what amounts to “unreasonable” must take into account statelessness status.

¹⁰⁸ Article 6, paragraph 3 of the European Convention on Nationality.

¹⁰⁹ This is a list of examples of “favourable conditions” from the *Explanatory Report to the European Convention on Nationality* (article 6 paragraph 4 (g)). It should not be considered exhaustive.

¹¹⁰ See also Inter-American Court on Human Rights, *Advisory Opinion on the Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica*, OC-4/84, 19 January 1984 and UN Human Rights Committee, *Individual complaint of Capena v. Canada*, case number 558/1993, A/52/40, vol. II, 3 April 1997.

¹¹¹ UNHCR ExCom Conclusion 106 (2006), paragraph u.

¹¹² Human Rights Committee, *Individual complaint of Capena v. Canada*, case number 558/1993, A/52/40, vol. II, Geneva, 3 April 1997, paragraph 11.3.

With these international standards in mind, an analysis of the domestic normative setting can help to ascertain what opportunities exist for the reduction of statelessness and whether this is in line with the State's international commitments. In fact, a review of the domestic legal framework may uncover laws that potentially block the reduction of statelessness through legal (re)integration. Consider the example of Bhutan where one of the mechanisms underlying statelessness of the refugees from Bhutan in Nepal, was their forfeiture of citizenship upon departure from Bhutan:

*“Upon their departure the government forced many to sign “voluntary migration forms” [...] under threats of fines or imprisonment. These forms stated that the signatory had sold his or her land and left the country of his or her own free will, causing the Lhotsampa to lose their citizenship if the government had not already stripped them of it”.*¹¹³

The same provision upon which the Bhutanese authorities based the denationalization includes a clause that stands in the way of *reduction* by reacquisition of nationality:

*“A foreigner who has been granted Bhutanese Citizenship may apply to the Royal Government for permission to emigrate with his or her family. Permission will be granted after an investigation of the circumstances relating to such a request. After grant of permission to emigrate, **the same person may not re-apply for Bhutanese citizenship**”.*¹¹⁴

Equally, an assessment of the normative framework may uncover laws, court decisions or shifts in policy or practice that enable the reduction of statelessness by offering the opportunity of acquisition of nationality. Nationality may be granted on the basis of long-term residence. In Sri Lanka, the Grant of Citizenship to Persons of Indian Origin Act (Act No. 35) was enacted in 2003 as the basis for the reduction of statelessness in the country:

*“This Act granted citizenship to persons of Indian origin residing in Sri Lanka since October 1964 and their descendants. It effectively solved the problem of statelessness among Hill Tamils in Sri Lanka. Those de facto stateless persons who held Indian passports [...] but remained in Sri Lanka, were required to sign a ‘special declaration’ stating their intention to voluntarily acquire Sri Lankan citizenship and thus rescind their right to Indian citizenship (as no dual nationality is permitted). In cases of de jure statelessness, where individuals possessed neither an Indian nor a Sri Lankan passport, no written declaration was required”.*¹¹⁵

In Nepal, a similar approach was adopted whereby the interim Constitution adopted in 2006 granted nationality on the basis of birth on the territory before mid-April 1990. In the latter case, however, the individuals concerned had a two-year window of opportunity to apply for nationality. This meant that even though around 2.6 million people benefitted from the provision, more than 800,000 remained without Nepalese citizenship documents at the end of the two-year period.

¹¹³ Ruiz, Hiram and Berg, Michelle: *Unending Limbo: Warehousing Bhutanese Refugees in Nepal*, in: U.S. Committee for Refugees and Immigrants: World Refugee Survey 2004, at pp. 98-105.

¹¹⁴ Emphasis added, article Nga 2 of the 1977 Citizenship Act of Bhutan.

¹¹⁵ “Statelessness in Sri Lanka”, specially devoted UNHCR webpage <http://www.unhcr.lk/protection/statelessness/>.

Kyrgyzstan / A new citizenship law adopted in Kyrgyzstan in 2007 recognized as citizens all stateless former Soviet citizens who had resided permanently in Kyrgyzstan for at least five years. Since then, UNHCR has worked with the Kyrgyz government to enable thousands of persons to confirm their new nationality and obtain identity documents. ►

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Even in the absence of such major law reforms and campaigns, a review of the domestic legal framework will provide an insight into the 'regular' possibilities for the acquisition of nationality, such as by naturalization. One major question to be answered is whether the existing procedures and practices offer a real possibility for stateless persons to obtain citizenship. What conditions have been set and to what extent does or can the stateless population fulfill these requirements? Is the naturalization of stateless persons facilitated in any way, for example through shorter residence requirements, simplified procedures or reduced fees? Look out for conditions such as a prolonged periods of residence, language proficiency or excessive documentary requirements and consider how these impact the chances that stateless people could successfully apply for citizenship.

Consider also whether the procedures are likely to be fair and objective. For example, how much discretion do the authorities have in approving or rejecting an application, with whom does this discretion rest and is there an opportunity to appeal a decision? Developing a thorough understanding of the regulations and procedures relating to naturalization is an important step towards assisting stateless persons in seeking naturalization – people who are often unfamiliar with the intricacies of nationality procedures. Where an opportunity is identified that would benefit a large segment of the population, registration campaigns can be an efficient tool to reach out to many people at once. In Turkmenistan, for example, UNHCR supported two registration exercises through which some 20,000 people of undetermined nationality were able to apply for permanent residence or naturalization. Of those, 3,318 had been granted Turkmen citizenship by the end of 2011.

An important question is how well publicized the opportunities are for acquisition of nationality. UNHCR's Executive Committee "encourages States to actively disseminate information regarding access to citizenship, including naturalization procedures, through the organization of citizenship information campaigns with the support of UNHCR, as appropriate".

Awareness-raising is thus a further vital component of a reduction strategy. For instance, in Kyrgyzstan, UNHCR worked together with three national NGOs to disseminate information on nationality procedures as well as to provide legal assistance to individuals applying for citizenship and documentation. Between 2009 and 2011, more than 28,000 persons were able to replace old USSR passports and some 2,000 were granted citizenship by decree, many of whom with the assistance of these NGOs and UNHCR. Such assistance can be critical to help stateless persons navigate through procedures for acquisition of nationality. In Iraq, Faili Kurds who had been denationalized through decree 666 in 1980, need to prove that they were registered in the 1957 national census in order to have their Iraqi citizenship reinstated. This can be an arduous task in a country where many population records were destroyed during the armed conflict. UNHCR thus supported legal aid centres assisting stateless Faili Kurds to complete the relevant procedures. Similarly, in the Russian Federation, the NGO Memorial counsels people on the acquisition of citizenship as part of its legal assistance programme. These and other positive examples have encouraged UNHCR to expand its legal aid activities aimed at addressing statelessness to further countries and situations.



7.2 Social and economic inclusion¹¹⁶

Acquisition of nationality does not immediately guarantee the full and effective alleviation of statelessness:

“Any attempt to eliminate statelessness would only be fruitful if it resulted in ‘not only the attribution of a nationality to individuals, but also an improvement in their status’.”¹¹⁷

An effective strategy for the *reduction* of statelessness should look beyond the problem of formal nationality attribution and ensure that persons who were formerly stateless become *fully participating* members of society, enjoying all the rights and opportunities of citizenship on an equal basis with other nationals.

With this in mind, UNHCR’s Executive Committee has commented on the importance of promoting social and economic participation of stateless persons as an element of the reduction of statelessness. The Committee

*“encourages States [...] to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies”.*¹¹⁸

¹¹⁶ Social and economic integration before acquisition of nationality facilitates reduction activities. It relates to the protection of stateless persons and will therefore be addressed in the next chapter.

¹¹⁷ “Stateless Persons: Some Gaps in International Protection” by Carol Batchelor, 1995 (citing, in part, the work of Manley O. Hudson, rapporteur of the International Law Commission).

¹¹⁸ UNHCR ExCom Conclusion 106 (2006), paragraph p.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
لَا إِلَهَ إِلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ
إِنَّ اللَّهَ بَرُّعَ الْعَالَمِينَ



Such activities cannot be seen as a replacement for conferral or confirmation of citizenship. It must be understood that “no matter how extensive the rights granted to a stateless person may be, they are not the equivalent of acquiring citizenship”.¹¹⁹ Thus, while the promotion of social and economic participation undeniably is crucial to improving the lives of the stateless, efforts to *reduce* the problem will remain incomplete until legal integration is also realized.

The promotion of social and economic participation and the realization of legal integration must go hand in hand. This was the approach, for instance, in Ukraine, where Crimean Tatars who had been deported to Central Asia under Stalin, began returning to Ukraine around the time of the dissolution of the USSR and were either stateless or at risk of becoming stateless. The legal resolution of statelessness issues was accompanied by a programme devised to “*foster sustainable human development in a manner that contributes to the maintenance of peace and stability in Crimea through initiatives aimed at preventing interethnic conflicts and enhancing integration among different ethnic groups*” including through promoting “*economic development, income and employment generation [and] sustainable access to basic infrastructure and services*”.¹²⁰ Over a 4 year period UNHCR invested 1.1 million USD in “*various infrastructure, health, education, income generation, tolerance and community development programmes*” in Crimea, making up a shortfall in government capacity to offer material assistance. Another 2 million USD was spent on shelter. Although this can be seen as a *protection* effort, it was actually carried out in the context of a programme to prevent and reduce statelessness. The approach adopted in Crimea brought long-term social and economic integration not only through a combination of legal and material assistance but also through “*address[ing] the needs of the communities that received returnees, to foster mutual understanding and tolerance*”.¹²¹

◀ Bangladesh / In an historic decision by the Bangladesh High Court in 2008, the Urdu-speakers, or Biharis, were recognized as citizens of the country where they had lived as stateless persons since the independence of Bangladesh in 1971. The decision resolved the statelessness situation of an estimated 250,000-300,000 individuals and allowed them to participate for the first time in a national election in December 2008.

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¹¹⁹ “Nationality and Statelessness – A handbook for parliamentarians” published by UNHCR and IPU, 2005.

¹²⁰ “The UNDP Crimea integration and development programme” in *International Migration Law – Developing Paradigms and Key Challenges*, 2007.

¹²¹ “Assisting the integration of formerly deported people in Crimea: ten years of UNHCR experiences” by Hans Schodder in *Beyond Borders*, Bulletin of UNHCR in Ukraine, 2005.



Chapter 8 PROTECTION OF STATELESS PERSONS

Just as international law now restricts the freedom of States to confer or withdraw nationality, so too does it set certain parameters for the way in which States may treat people generally. A traditional perspective of nationality and one that is still often repeated is that it is the “right to have rights” – i.e. that it is the basis for the enjoyment of all other rights and privileges. In fact this statement is no longer accurate, thanks to developments in the field of international law. Today, *“no longer can protection be considered as exclusively incidental to nationality; instead, it is a function that attaches directly to the inherent dignity and integrity of the human personality, the totality of which is the province of the community of nations”*.¹²² The protection of stateless persons – of their fundamental rights and freedoms – is a matter for which international law now provides firm groundwork. This chapter looks at some protection concerns common to stateless people and provides practical suggestions for addressing them, based on the relevant international legal standards.¹²³

“

Possession of nationality often serves as key to enjoying many other rights, such as education, health care, employment and equality before the law. As a result, people who are not considered to be nationals by any state – stateless persons – are some of the world’s most vulnerable in the world.

The State of the World’s Refugees: In Search of Solidarity, 2012, pg 91

¹²² G. Goodwin-Gill, “The rights of refugees and stateless persons” in K.P. Saksena (ed.) *Human rights perspectives and challenges (in 1900’s and beyond)*, Lancers Books, New Delhi, 1994.

¹²³ For a broader treatment of the human rights of (different categories of) non-nationals, please refer to UNHCR Self-Study Module 5, Vol. II on Human Rights and Refugee Protection or OHCHR, “The Rights of Non-citizens”, 2006.

- ◀ Ukraine / This stateless ethnic Korean man moved from Uzbekistan to Ukraine in 1993. He has been living with a Ukrainian woman for a decade, but has not been able to register their union without valid documents. He has applied for citizenship, as without Uzbek citizenship and unrecognized as a stateless person in Ukraine, he is at risk of deportation. “I’ve lost all hope to get my passport. My only problem is that I cannot move because I cannot go beyond this town. Even in this region I can be arrested. That’s why I almost never leave my house.”
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Protection problems are most evident when stateless persons stay outside their country of habitual residence. However, most stateless persons live in the country of their birth and the protection problems they face may not be apparent at first, as in many ways these persons are invisible among the larger population.

8.1 “Stateless person” status determination

Recognition of status as a “stateless person” is a key mechanism for accessing protection under the *1954 Convention relating to the Status of Stateless Persons*. Ensuring that stateless persons are granted a legal status is also vital in States that are not yet party to the 1954 Convention, in particular where the enjoyment of rights and access to basic services depend on lawful residence. To this end, UNHCR’s Executive Committee “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”.¹²⁴

However, neither the 1954 Convention nor any other international instrument establishes precisely *how* this is to be accomplished. UNHCR thus organized an expert meeting in 2010, which resulted in a set of summary conclusions and two separate UNHCR guidelines on *procedures for determining whether an individual is a stateless person and on the status of stateless persons at the national level*.¹²⁵ The Expert Meeting concluded that, generally, the establishment of statelessness determination procedures will be most appropriate where stateless persons find themselves in a migratory context. In many situations, however, stateless persons remain “in their own country”, i.e. in a country with which they have long-established ties on the basis of habitual residence or residence at the time of State succession. For such populations, their long-established connection with the State should be recognized through grant or confirmation of citizenship, rather than through the grant of a status as stateless persons.

The following are some of the key recommendations from the Expert Meeting relating to statelessness determination procedures:

- *The 1954 Convention requires proving a negative: establishing that an individual is not considered as a national by any State under the operation of its law. Because of the challenges individuals will often face in discharging this burden, including access to evidence and documentation, they should not bear sole responsibility for establishing the relevant facts. [...] It is incumbent on individuals to cooperate to establish relevant facts. If an individual can demonstrate, on the basis of all reasonably available evidence, that he or she is evidently not a national, then the burden should shift to the State to prove that the individual is a national of a State.*

¹²⁴ UNHCR ExCom Conclusion 106 (2006), paragraph (t).

¹²⁵ UNHCR, Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions), December 2010, available at: <http://www.unhcr.org/refworld/docid/4d9022762.html>

- *The evidentiary requirements should not be so onerous as to defeat the object and purpose of the 1954 Convention by preventing stateless persons from being recognized. It is only necessary to consider nationality in relation to States with which an individual applicant has relevant links (in particular by birth on the territory, descent, marriage or habitual residence).*
- *In order to ensure fairness and efficiency, statelessness determination procedures must ensure basic due process guarantees, including the right to an effective remedy where an application is rejected. States should facilitate to the extent possible access to legal aid for statelessness claims. Any administrative fees levied on statelessness applications should be reasonable and not act as a deterrent to stateless persons seeking protection.*
- *Where an individual has an application pending in a statelessness determination procedure, any removal/deportation proceedings must be suspended until his or her application has been finally decided upon.*
- *Information provided by foreign authorities is sometimes of central importance for determinations on statelessness. However, contact with such authorities does not need to be sought in every case, in particular where there are already adequate elements of proof. Under no circumstances should contact be made with authorities of a State against which an individual alleges a well-founded fear of persecution unless it has definitively been concluded that he or she is not a refugee or entitled to a complementary form of protection.¹²⁶*

Currently, only a minority of States have a dedicated procedure in place for statelessness determination. An example of such a **procedure** can be found in Spain, where it is regulated by Royal Decree No. 865/2001:

*“The implementing decree foresees that applicants must approach police stations, Offices for Foreigners, or the Office for Asylum and Refuge (OAR), or that the OAR may initiate the procedure ex officio when it has knowledge, facts or information indicating that a particular foreigner is stateless. The OAR carries out the procedure, during which the applicant must fully cooperate by providing documentary and oral evidence. The OAR may request reports from other governmental or international bodies. Upon conclusion of the investigation phase, the OAR forwards its reasoned proposal for recognition or non-recognition through the General Directorate for Aliens’ and Immigration Issues to the Minister of the Interior. Rejections can be appealed, while a positive resolution results in the granting of the status of stateless person under the terms foreseen in the 1954 Convention. The recognition also includes the right to permanent residence and to seek employment”.*¹²⁷

In this example, the State has elaborated a clear procedure for the determination of stateless person status (including the possibility of appeal), established which authority is competent to make such a determination and set out how evidence of statelessness is to be collected. Importantly, the consequences or benefits of recognition as a stateless person are also delineated – not only protection under the terms of the 1954 Convention relating to the Status of Stateless Persons, but also a right to permanent residence.

As for what role UNHCR should have in determining whether individuals are stateless – similar to mandate refugee status determination – the above-mentioned Expert Meeting recommended that: *“Under its*

¹²⁶ UNHCR, Summary Conclusions from Expert Meeting on Statelessness Determination Procedures and the Status of Stateless Persons, December 2010.

¹²⁷ UNHCR, The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation, October 2003, available at: <http://www.unhcr.org/refworld/docid/415c3cfb4.html>

mandate for statelessness UNHCR can assist States which do not have the capacity or resources to put in place statelessness determination procedures, by conducting determinations itself if necessary and as a measure of last resort. It can also play an advisory role in developing or supporting State procedures". Individual registration of stateless persons by UNHCR may be appropriate where the country of residence lacks the capacity and/or will to protect and assist the individuals concerned and where UNHCR wants to keep track of protection interventions carried out on behalf of the individuals concerned.¹²⁸

8.2 Documentation

Closely connected to the question of stateless person status determination is the problem of access to personal documentation. This is the case both for documentation as a "stateless person" and documentation of other basic legal facts. This matter is absolutely key:

"The need for some form of personal documentation is a constant of daily life in most modern societies [...] Establishing one's identity may be essential for a wide range of activities, including the registration of births and deaths, contracting marriages, obtaining employment, housing, hospital care or rations, qualifying for social benefits, entering educational institutions, or requesting the issuance of official documents and permits".¹²⁹

Documentation is therefore often crucial to the enjoyment of all rights and benefits, be they related to a person's status as a stateless person or since it provides evidence of a person's legal identity.¹³⁰ It also helps to protect stateless people from harassment and exploitation by authorities or individuals who may seek to exploit their vulnerability.

In Myanmar, for example, the issuance of documents to the Muslim population of Northern Rakhine State should ensure better *protection*, for example freer movement and access to healthcare and education. One day the documents issued may also contribute towards the full resolution of their plight:

"What is clear is that government documents reign supreme in northern Rakhine state, where a vast number of written and unwritten discriminatory rules govern the lives of Muslim residents. The region's Muslims must apply for written permission to travel out of their home villages, and another permission document to sleep overnight in another village. Marrying without permission – and permission is often denied or delayed – can bring hefty fines and prison sentences and turns children of such 'illegal' marriages into stateless non-persons. For the poverty-stricken Muslims of Rakhine state, complying with the myriad restrictions requires an onerous and mostly unofficial payment every step of the way. The Temporary Registration Certificate – a document issued under the citizenship law – will help the Muslims of at least eight village tracts (where the first TRCs are being issued) comply with regulations. 'We hope this is a first step towards mainstreaming the area's residents into Myanmar society,' said Durieux [UNHCR representative in Yangon]".¹³¹

¹²⁸ UNHCR, Registration Handbook, 2012 (forthcoming).

¹²⁹ UNHCR, "Identity documents for refugees", EC/SCP/33, 20 July 1984.

¹³⁰ Note that the right to be recognised as a person before the law is guaranteed to everyone, regardless of nationality or statelessness and is non-derogable. See article 16 and article 4, paragraph 2 of the *International Covenant on Civil and Political Rights*.

¹³¹ From UNHCR's news item "Myanmar: UNHCR promotes first significant steps towards citizenship for disenfranchised minority" of 23 July 2007.

South Africa / Undocumented and stateless, welder Jabulani Sibanda sits with pride in the car he has worked hard to buy, adamant that his status will not deter him from living as productively as possible. Jabulani arrived in South Africa at the age of seven, when he and his mother crossed the border illegally from Zimbabwe, where he was born. Of Malawian descent, he has had no luck obtaining a birth certificate from Zimbabwe or proof that he is a Zimbabwean citizen since he came to South Africa. ►

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Just like the 1951 Convention relating to the Status of Refugees for refugees, the 1954 Convention relating to the Status of Stateless Persons provides for the issuance of identity and travel documents to recognized stateless persons. According to its article 27, **identity documents** must be issued by State parties to “any stateless person in their territory who does not possess a valid travel document”. Such papers should establish both basic facts relating to the person concerned and vouch for his or her legal status as a “stateless person”.

Article 28 provides that contracting States shall also issue **travel documents** to any stateless person who is *lawfully staying* on their territory. For such individuals, travel documents can only be refused on the basis of “compelling reasons of national security or public order”. As the word “compelling” indicates, only reasons of a very serious character related to national security or public order may justify a refusal of a travel document.¹³² Meanwhile, State parties are also asked to consider offering travel documents to stateless persons who are not *lawfully staying*, at their own discretion. The Convention Travel Document issued under this provision facilitates international travel for stateless persons but may also serve the purpose of identifying the person and vouching for his or her statelessness. It is therefore particularly important to stateless persons for “facilitating travel to other countries for study, employment, healthcare or resettlement”.¹³³ Freedom of movement, expulsion and (re)admission will be discussed in greater detail in the next section, but it is important to note here that the Convention Travel Document will allow the stateless person to re-enter the country that issued the document.¹³⁴ This is a crucial guarantee because the country to which the stateless persons seek entry can be certain that the individual can be returned and will therefore be more amenable to permitting admission onto its territory.

On the basis of the 1954 Convention relating to the Status of Stateless Persons, stateless people are thus entitled to at least basic identity documents and under certain conditions also travel documents. Every State party to the convention must recognize the validity of such documents when issued by another contracting State. But even countries that have not yet acceded to the 1954 Statelessness Convention may be required to offer some personal documentation to stateless persons or respect the papers issued by another State. A right to acquire travel documents, for example, is encapsulated in the right to leave any country, including one’s own, protected in numerous human rights instruments: “the right to leave a country must include the right to obtain the necessary travel documents”.¹³⁵ Although generally acknowledged to be a task of the State of nationality, the Human Rights Committee has stated that it may also fall upon the State of residence of a person to offer travel documents to ensure a person’s right to leave, which is essential for stateless persons, who by definition do not have a State of nationality.¹³⁶

¹³² See also UN High Commissioner for Refugees, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10,

¹³³ “Nationality and Statelessness – A handbook for parliamentarians” published by UNHCR and IPU, 2005, page 24.

¹³⁴ According to paragraph 13 of the Schedule to the 1954 Convention relating to the Status of Stateless Persons, a stateless person may re-enter the country which issued the Convention Travel Document for as long as it is valid, unless the document contains an explicit statement to the contrary.

¹³⁵ Human Rights Committee, *General Comment No. 27: Freedom of Movement*, 2 November 1999, paragraph 9.

¹³⁶ See for further information “Nationality matters: Statelessness under International Law”, Laura van Waas, Intersentia, 2008, at pages 376-378.



The 1954 Convention relating to the Status of Stateless Persons also provides an avenue for stateless persons to acquire other forms of documentation, such as the certification of civil status (birth, marriage, adoption, death, or divorce) or of professional or education expertise. Its article 25 provides for “administrative assistance” for stateless persons, which includes the issuance of a range of documents that would ordinarily be offered by the juridical, administrative or consular authorities of a person’s country of nationality. Human rights law also requires States to ensure that everyone can receive a birth certificate and marriage certificate as appropriate.¹³⁷

8.3 Freedom of movement, expulsion, (re)admission and detention

Within the borders of a State, *lawfully present* stateless persons have the right to move freely and to choose their own place of residence. This is guaranteed under the 1954 Convention relating to the Status of Stateless Persons (article 26) as well as under human rights law – for example in article 12, paragraph 3 of the International Covenant on Civil and Political Rights. The difficulty for stateless persons lies in securing *lawful* presence in the territory of a State to begin with.

Generally speaking, States are only required to guarantee their own nationals an automatic and unqualified right to enter or remain on State territory. In contrast, unless international law determines otherwise, States have a right to control the entry, residence and expulsion of non-nationals. As a result, stateless persons often find themselves with an uncertain or even unlawful immigration status – even if in the country in which they have always lived.

¹³⁷ For the right to birth registration see, for example, article 24 of the *International Covenant on Civil and Political Rights* and article 7 of the *Convention on the Rights of the Child*. For the registration of marriages, see article 16 of the *Convention on the Elimination of All Forms of Discrimination against Women* and article 3 the *Convention on consent to marriage, minimum age for marriage and registration of marriages*, 1962.

The 1954 Convention relating to the Status of Stateless Persons does not provide stateless persons with a **right to enter or reside** in any particular State.¹³⁸ So, although in the example of Spain, cited above in section 8.1, the recognition of stateless person status is accompanied by the right to permanent residence, this is certainly not the case in all countries. Nevertheless, in the absence of any feasible alternative, States may find that admitting the stateless person is the only feasible option:

*While the 1954 Convention does not explicitly prescribe a right of residence to be accorded upon a person's recognition as stateless, granting such a right is reflected in current State practice to enable stateless individuals to live with dignity and in security. Participants agreed that this approach is the best means of ensuring protection of stateless persons and upholding the 1954 Convention. Without such status, many stateless persons may be deprived of the protection of the Convention. Nonetheless, it was also discussed whether in a limited set of circumstances it may not be necessary to provide for residence upon recognition.*¹³⁹

Human rights law also offers more guidance in determining when and where a stateless person may be able to claim a right to enter or remain a State in spite of the absence of the formal bond of nationality. Of particular importance in this respect is the elaboration of the right to enter or return to – and thus also to remain in – a person's "own country" as found, for example, in article 12 of the International Covenant on Civil and Political Rights and article 5 of the Convention on the Elimination of All Forms of Racial Discrimination. Recall the interpretation of this norm put forward by the Human Rights Committee, already quoted in chapter 4:

*"The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language [...] moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence".*¹⁴⁰

At the same time, there are a number of other international norms that may play a part in securing entry into or, more often, protection from expulsion from a State for stateless persons. These include the overall prohibition of discrimination, the principle of *non-refoulement*, the right to family life and standards relating to the protection of non-nationals from arbitrary expulsion:¹⁴¹

¹³⁸ It is only in the event that a contracting state provides a stateless person with a Convention Travel Document that there is an accompanying guarantee that the individual will be allowed to re-enter the state. However, for a stateless person to receive such a document, he or she must in principle have already attained lawful stay in the country.

¹³⁹ UNHCR, Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions), December 2010, para 27, available at: <http://www.unhcr.org/refworld/docid/4d9022762.html>

¹⁴⁰ Human Rights Committee, *General Comment No. 27: Freedom of movement*, 2 November 1999, paragraph 20.

¹⁴¹ According to the Human Rights Committee, "in certain circumstances an alien may enjoy the protection of the [International Covenant on Civil and Political Rights] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise". Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, 11 April 1986, paragraph 5.

- The prohibition of **discrimination** and corresponding principle of equal treatment oblige States to maintain a non-discriminatory immigration policy. Under the terms of the Convention on the Elimination of All Forms of Racial Discrimination, this means that States must “ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin”.¹⁴² In fact, wherever States make an unjustifiable distinction between different persons or groups – for example on the grounds of race or gender – in determining eligibility for entry into or (continued) residence in their territory, this may violate their human rights obligations. Differentiating between stateless persons and other non-nationals may also amount to an unreasonable distinction.
- Where a stateless person is also a refugee under the terms of the 1951 Convention relating to the Status of Refugees, he or she is entitled to the full protection of that instrument, including in respect of **non-refoulement**. Similarly, stateless persons may also benefit from the *non-refoulement* obligations elaborated under human rights law.¹⁴³
- The right to **family life** and the prohibition of arbitrary or unlawful interference with the family can be found, for instance, in articles 17 and 23 of the International Covenant on Civil and Political Rights and article 9 of the Convention on the Rights of the Child. These norms will, in certain cases, provide an avenue for gaining or retaining access to a State’s territory. In particular, “the right to found a family implies, in principle, the right to procreate and live together [and] the possibility to live together implies the adoption of appropriate measures, both at the internal level and as *the case may be, in cooperation with other States, to ensure the unity or reunification of families*”.¹⁴⁴ The Human Rights Committee has, for example, ruled in favour of the non-expulsion of stateless parents on the basis of the protection of the family life they enjoy with their child who is a national of the State.¹⁴⁵ At the regional level, the various human rights supervisory mechanisms have made similar findings. For instance, the European Court of Human Rights has defined the right of non-citizens – including stateless persons – to avoid deportation in order to protect family unity and, to a lesser extent, their right to enter a State for the purposes of family reunification – all on the basis of article 8 of the European Convention on Human Rights.
- The human rights standards that seek to prevent the arbitrary **expulsion** of non-nationals including by providing for the prohibition of collective or mass expulsion. This is set out in a number of regional instruments, including in article 22 of the American Convention on Human Rights, but also in article 13 of the International Covenant on Civil and Political Rights. These provisions require that, when threatened with deportation, every non-national is entitled to a decision on his or her individual case. In the context of such individual expulsion proceedings, a range of procedural safeguards must be upheld. These procedural standards are applicable to all cases involving the

¹⁴² Committee on the Elimination of Racial Discrimination, *General Recommendation 30: Discrimination against non-citizens*, 1 October 2004, paragraph 9.

¹⁴³ For a full discussion of the principle of non-refoulement and its scope of application, please refer to chapter 9 of the UNHCR Self-Study Module on “Human Rights and Refugee Protection”, number 5, volume II.

¹⁴⁴ Emphasis added. Human Rights Committee, *General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses*, 27 July 1990, paragraph 5.

¹⁴⁵ Human Rights Committee, *Case of Winata and Lan Li v. Australia*, 2001.

Côte d'Ivoire / Hundreds of people of Burkinabé origin in the village of Tenkodogo, have no documentation. Many are at risk of statelessness because they cannot show a documented link to Côte d'Ivoire or to their country of ancestral origin, Burkina Faso. Even those with birth certificates are not seen as citizens of Côte d'Ivoire because birth certificates are not proof of nationality.
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proposed expulsion of a *lawfully present* non-national as well as in the event that the legality of the non-national's entry or stay is in dispute. The safeguards include the opportunity "to answer and to submit evidence concerning any accusation, to be represented by a legal counsel, and to be granted the right of appeal".¹⁴⁶ Moreover, the 1954 Convention relating to the Status of Stateless Persons (article 31) determines that a stateless person who is lawfully present on the territory of a State party can only be expelled in the interests of national security or public order. These grounds for expulsion of lawfully present stateless persons can only be invoked in "exceptional circumstances".¹⁴⁷ Article 31 also specifies that expulsion orders must be reached in accordance with due process of law and that a stateless person must be allowed to submit evidence to clear himself or herself.

Closely linked to the international standards on freedom of movement, expulsion and (re)admission of non-nationals are the norms that address **detention**. Detention is one of the most serious protection problems faced by stateless persons and is exacerbated by the problem of securing lawful (re)admission to a State. While many cases go identified, the problem is widespread. It often occurs that the authorities of a country detain a stateless person with a view to preventing entry into or realizing expulsion from the State's territory, yet there may be no other country willing to accept the stateless person. As a result, detention may become prolonged or even indefinite.

Subject to the conditions referred to in the following paragraph, human rights law admits that the deprivation of liberty is a legitimate tool of State control for the purposes of preventing his or her unlawful entry into the country or effecting deportation. In fact, this is one of the grounds explicitly listed in article 5 of the European Convention on Human Rights upon which detention is authorized.¹⁴⁸ Moreover, the 1954 Convention relating to the Status of Stateless Persons does not limit the freedom of contracting States to detain stateless persons on the grounds of unlawful entry or present on their territory – in contrast to the 1951 Convention relating to the Status of Refugees, which provides for the non-penalization of unlawful entry.

Nevertheless, international law does prohibit *arbitrary* detention which means that stateless persons benefit from certain procedural and substantive safeguards. Domestic law may also contain relevant safeguards. In particular, States are required to ensure that the legality of detention is subject to continuous review by a court or competent administrative body. One objective of such a review is to ensure that detention does not "continue beyond the period for which the State can provide appropriate justification".¹⁴⁹ Where a stateless person is deprived of his or her liberty even though there is (no longer) any real prospect of expelling him or her, this will amount to a breach of human rights law.¹⁵⁰ In reality, the resolution of cases of stateless persons trapped in detention is best served through practical steps to

¹⁴⁶ "Nationality and Statelessness – A handbook for parliamentarians" published by UNHCR and IPU, 2005.

¹⁴⁷ UNHCR Executive Committee, *Conclusion No. 7: Expulsion*, 1977, paragraph (a), on article 32 para. 1 of the 1951 Convention relating to the Status of Refugees, the wording of which is the same as of article 31 para. 1 of the 1954 Convention. See for additional guidance the following UNHCR internal guidance: "Note on Expulsion of Refugees and Stateless Persons under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the 1954 Convention relating to the Status of Stateless Persons", UN High Commissioner for Refugees, July 2009.

¹⁴⁸ This is the only international standard that provides an exhaustive list of situations in which deprivation of liberty is permissible. However, the legitimacy of detention in these circumstances has also been recognised in the context of the application of other provisions that address the right to liberty and the freedom from arbitrary detention, such as article 9 of the *International Covenant on Civil and Political Rights*.

¹⁴⁹ Human Rights Committee, *Case of A. v. Australia*, 3 April 1997, paragraph 9.4.

¹⁵⁰ Human Rights Committee, *Case of Jalloh v. The Netherlands*, 23 March 2002, paragraph 8.

identify and confirm the individual's nationality status where possible and, where no local solution is available, through negotiations with the former country of habitual residence for re-admittance where appropriate. Resettlement may also be considered as an option in particularly difficult or protracted cases.¹⁵¹ In the meantime, if detention is justified and deemed to be necessary – if there is no suitable non-custodial alternative¹⁵² – human rights law provides for a range of guarantees relating to the conditions of such detention, for example in article 10 of the International Covenant on Civil and Political Rights and through the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

8.4 An adequate standard of living

Stateless people often do not enjoy an adequate standard of living. Due to problems relating to immigration status, lack of documentation or the simple fact of statelessness, stateless persons often have difficulties accessing education, work, healthcare, housing and more. As a result, their formal exclusion results in economic, social and cultural marginalization. Yet ensuring economic, social and cultural participation of stateless persons is a core objective within the context of both the protection of stateless persons and the reduction of statelessness.¹⁵³

The 1954 Convention relating to the Status of Stateless Persons and human rights law deal in some detail with the right to an adequate standard of living in the broadest possible sense. Since the 1954 Convention relating to the Status of Stateless Persons offers protection that is largely comparable to its sister convention, the 1951 Convention relating to the Status of Refugees, for a comprehensive discussion of these guarantees and the corresponding protection offered under human rights law, please refer to UNHCR Self Study Module 5 on “Human Rights and Refugee Protection”, volume II. Review in particular chapters 12, 17, 19 and 20.

¹⁵¹ Resettlement was discussed in chapter 7.3.

¹⁵² See for further information on alternatives for detention: “*Alternatives to Detention of Asylum Seekers and Refugees*”, UN High Commissioner for Refugees, April 2006, POLAS/2006/03, available at: <http://www.unhcr.org/refworld/docid/4472e8b84.html>.

¹⁵³ See also chapter 7.2.

8.5 Sexual and Gender-Based Violence and trafficking

In chapter 3, it was mentioned how statelessness can increase the vulnerability to Sexual and Gender-Based Violence (SGBV). Stateless people may easier fall victim to such violence because they live on the margins of society – often lacking a residence status and documentation. As a result of lack of access to the formal job market and other economic opportunities, it is for example known that some stateless persons in Thailand have resorted to engaging in prostitution or ended up being trafficked (see below). In Côte d’Ivoire, stateless women and girls – because they lacked documentation – were particularly vulnerable to harassment from law enforcement agents at check-points. Furthermore, due to their marginalized status, authorities will not necessarily pursue investigations involving stateless persons with the same effort as for other persons. As such, stateless women and men, boys and girls, are all vulnerable to SGBV.

Stateless persons are often excluded from mechanisms existing in the country where they reside that would protect them from domestic violence, rape, sexual exploitation or forced marriage, or that would assist them in such a situation.

Sometimes, stateless persons therefore seek marriage as a protective measure to secure them the recognition of or access to nationality – or at least some basic legal status. Such a relationship is marked by dependence on the part of the stateless individual, trapping him or her in the relationship while rendering her vulnerable to violence and exploitation. For example:

“Thousands of poor Vietnamese women who have married Taiwanese (or other foreign) men over the last 10 years have seen their dreams of a good life crumble. Some tell tales of alcoholic, abusive husbands, cruel mothers-in-law, linguistic confusion, cramped living quarters, deprivation, abuse and economic exploitation. When they arrive back to seek refuge in the land of their birth, they find that they – and often their children too – have become stateless.”¹⁵⁴

The lack of personal documentation, difficulty in realizing an adequate standard of living and widespread dependency on others all contribute to making stateless persons a ready target for traffickers. Part of the international legal regime that has been put in place for tackling trafficking was already mentioned in chapter 6: the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, both supplementing the *United Nations Convention against Transnational Organized Crime*. In addition, the *Convention on the Elimination of All Forms of Discrimination against Women* obliges States to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.¹⁵⁵ Moreover, the *Convention on the Rights of the Child* and its *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* set out further legal standards for addressing trafficking and related issues.¹⁵⁶

¹⁵⁴ Kitty McKinsey. “Lose a Husband, Lose a Country: The Stateless Brides of Viet Nam” in *Refugees Magazine*, Number 147 (3), 2007, page 26.

¹⁵⁵ Article 6 of the *Convention on the Elimination of All Forms of Discrimination against Women*.

¹⁵⁶ Article 35 of the *Convention on the Rights of the Child*.



Dominican Republic / A health worker checks the blood pressure of a Haitian woman in a bateye community as part of the Gateway project – A UNHCR-funded initiative by partner agency ASCALA. The project runs health and literacy workshops for adults.

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The prevention of statelessness thus helps to reduce vulnerabilities preventing persons from falling victim to trafficking. As was already outlined in chapter 6, the prevention of trafficking also helps to avoid documentation problems survivors of trafficking face in the receiving country or their country of origin. Prevention of statelessness and prevention of trafficking are therefore mutually reinforcing.

In some cases, the identification of a concrete link between citizenship issues and an increased incidence of trafficking has opened opportunities to address both problems concurrently. For example, the absence of recognition or documentation of nationality of members of Thailand's Hill Tribes was discovered to be a contributing factor in their high vulnerability to trafficking. In response, organizations such as UNESCO and UNICEF teamed up to facilitate a birth registration and documentation campaign designed to prevent and reduce statelessness, protect stateless children and ward off the risk of trafficking. The programme included awareness-raising efforts through the development of such projects as a video entitled "A Right to Belong" that explored the issue of citizenship for Hill Tribe people in their own words. This is further evidence of the importance of tackling issues of statelessness in conjunction with efforts to address underlying or resulting human rights abuses.

Law enforcement officials are often not being sensitised to the issue of statelessness or have a negative perception of stateless persons who are victims of SGBV and for instance work as sex workers. They may therefore refuse to ensure their protection. Moreover, stateless persons may also become the victims of violence or exploitation at the hands of State officials, due to the same problem of dependence for access to rights, documents or legal status.

8.6 Resettlement

Finally, it is important to consider the question of what to do if it becomes clear from an analysis of the situation that the State involved have evidently neither the willingness nor the capacity to address the problem – and the position of the affected individuals is highly precarious. In such cases resettlement is an option that may be pursued.

Resettlement is now recognized as a tool to address the situation of stateless persons with acute protection needs, even if the stateless persons in question do not also qualify as refugees under the 1951 Refugee Convention. In its Conclusion 95 (2003), UNHCR's ExCom:

“Encourages States to co-operate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person's situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious”.

UNHCR's Resettlement Handbook (2011) explains when resettlement could be envisaged for non-refugee stateless:

“[...] in some situations, despite repeated efforts made by the international community, it is clear that neither the present State of residence nor any former State of residence or of nationality will grant its nationality or a stable residence status in the foreseeable future. This leaves a stateless individual without the enjoyment of basic rights. In such circumstances, acute protection needs may arise, in particular where individuals are outside of a State with which they have links, and cannot return to that State.

Based on the foregoing, resettlement may be considered for cases where the individual:

- does not have in the current or a former State of habitual residence a secure, lawful residence status which brings with it a minimum standard of treatment equivalent to that set out in the 1954 Convention relating to the Status of Stateless Persons; and
- has no reasonable prospect of acquiring such a residence status or nationality; and
- has acute protection needs which cannot be addressed inside the country of current or former habitual residence.”

The handbook further suggests that “Field offices considering resettlement of non-refugee stateless persons in these circumstances should consult the Resettlement Service prior to submission”. In addition, the ultimate goals of reduction of statelessness – social and economic participation and formal possession of a nationality – are clearly reflected in the way in which resettlement is to be organized: “Ideally, States should give similar status to resettled non-refugee stateless persons as that given to resettled refugees. Namely, a status that provides the person in question and their accompanying dependants the enjoyment of civil, economic, social and cultural rights similar to those enjoyed by nationals and the opportunity to eventually become a naturalized citizen of the resettlement country. At the very minimum, the resettled individuals should be granted status as stateless persons under the 1954 Convention relating to the Status of Stateless Persons, encompassing rights and obligations enshrined in this instrument”. Most States have not yet included stateless persons in their resettlement programmes and almost all stateless persons who are resettled are at the same time refugees. More efforts need to be undertaken to promote resettlement as a solution for stateless persons in precarious situations without the prospect of a solution.