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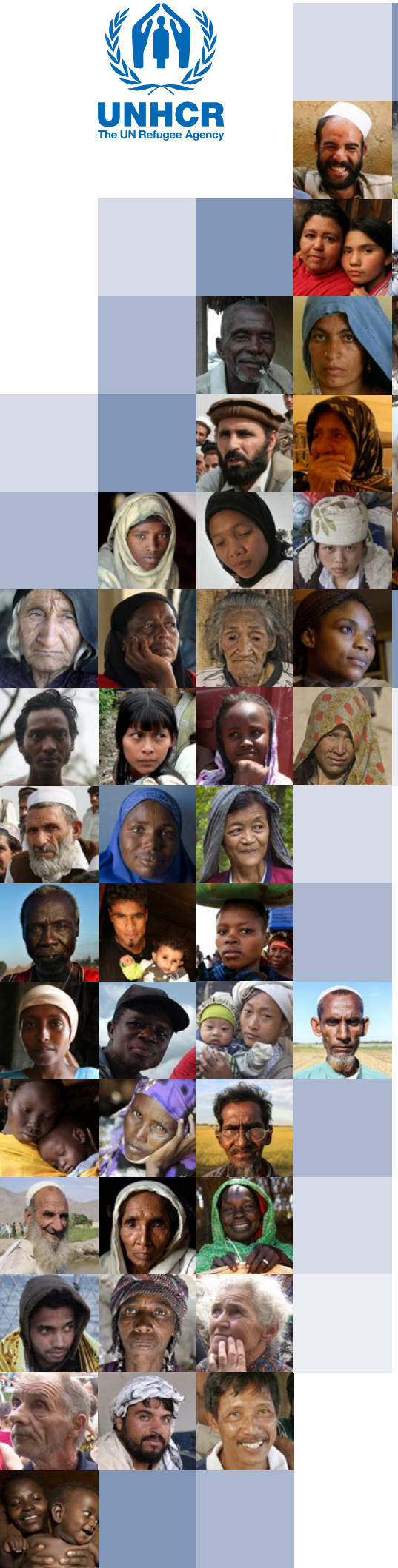

Mapping STATELESSNESS in Sweden

UNHCR Regional Representation for Northern Europe
Stockholm, 2nd edition, December 2016

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Contents

List of abbreviations

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of Discrimination Against Women
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECN	European Convention on Nationality
ECRI	European Commission against Racism and Intolerance
Guidelines	UNHCR Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness
Handbook	UNHCR Handbook on Protection of Stateless Persons
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-governmental organization
SMA	Swedish Migration Agency
UNMIK	United Nations Interim Administration in Kosovo
UNHCR RRNE	UNHCR Regional Representation for Northern Europe
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
1954 Convention	1954 Convention relating to the Status of Stateless Persons
1961 Convention	1961 Convention on the Reduction of Statelessness
Refugee Convention	1951 Convention relating to the Status of Refugees and its 1976 Protocol

1. Introduction

In November 2014, UNHCR launched a Global Campaign to End Statelessness in 10 Years. The strategy for the Campaign is set out in a Global Action Plan, which contains 10 actions that need to be taken to end statelessness. States are encouraged to adopt National Action Plans that include those actions necessary to end statelessness in their own national contexts. In preparation for the Campaign, the UNHCR Regional Representation for Northern Europe (UNHCR RRNE) has conducted statelessness mappings in each of the countries in the region.[1] The mapping in Sweden was conducted by an independent consultant, Ms Anne Laakko, working under the supervision of UNHCR RRNE. The methodology comprised desk research including review of individual decisions in asylum cases involving stateless persons, as well as consultations with governmental and non-governmental stakeholders.[2] UNHCR RRNE also shared a draft version of the mapping for expert vetting with Dr Hedvig Lokrantz Bernitz, lecturer in the Department of Law, at Stockholm University. In addition, the key national stakeholders in this area, namely the Ministry of Justice, the Swedish Migration Agency (SMA), the Swedish Tax Agency, and Statistics Sweden received an advance draft of the mapping for comments, which have been largely incorporated by UNHCR RRNE into this final report. UNHCR is very grateful for all the cooperation extended and for the valuable input, constructive feedback and comments provided by the stakeholders throughout the consultative process.

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

After an Introduction to statelessness across the globe and the international and regional legal framework for the prevention and reduction of statelessness, and protection of stateless persons, in Section 1, the mapping, in Section 2, provides an overview and analysis of the numbers and basic demographic profiles of the persons who fall within the definition of a stateless person, as set out in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons[3] ("the 1954 Convention") and which is part of customary international law. As the mapping had already begun in 2012, some of the statistics used for the

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1 UNHCR's Executive Committee *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006, "*Encourages* UNHCR to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem" in its para. (c), available at: http://www.refworld.org/docid/453497302.html.

2 Some of these consultations were carried out during meetings, by telephone and others by email, and are referenced accordingly in footnotes to this report.

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

analysis are derived from 2011 and 2012. Nonetheless, UNHCR RRNE has striven to include more recent statistical data wherever possible, in view of the timeframes and existing limitations. The qualitative aspect is based on a review of asylum cases that involved stateless persons and persons considered as of "unknown" nationality by the Swedish authorities. In Section 3, the mapping examines the legal and procedural framework for identifying stateless persons and determining their status, and their enjoyment of rights, vis-à-vis the standards set out in the 1954 Convention. The mapping thereafter, in Section 4, examines the measures in place to prevent statelessness from occurring in Sweden, and for reducing the stateless population, based on the standards set out in the 1961 Convention on the Reduction of Statelessness[4] ("the 1961 Convention"). Finally, Section 5 contains a summary of the main findings from the mapping of statelessness in Sweden, and UNHCR's overall recommendations on measures needed to bring the national legal framework, practice and administrative capacity in line with the standards set out in the 1954 and 1961 Conventions. The summary and recommendations in Section 5 are complemented by slightly more detailed conclusions and recommendations in Sections 2.4, 3.5 and 4.4 which, together with Section 5, can serve as an Executive Summary of the mapping.

The mapping highlights both positive efforts to prevent and reduce statelessness in Sweden and to protect stateless persons, as well as current gaps and challenges in these areas, and makes concrete recommendations designed to help bring Swedish law and practice further in line with the norms and standards reflected in the two UN Statelessness Conventions. UNHCR thus hopes that this mapping can assist the relevant national actors in their efforts to address statelessness, and remains ready to support these efforts.

1.1 Statelessness across the globe

Statelessness is a global phenomenon. UNHCR estimates that there are at least 10 million stateless persons worldwide. The following sections look at the definition of a "stateless person", the causes of statelessness, and the common consequences of being stateless.

1.1.1 Defining a "stateless person"

The definition of a "stateless person" is set forth in Article 1(1) of the 1954 Convention, which provides that a "stateless person" is "a person who is not considered as a national by any State under the operation of its law". The International Law Commission has concluded that the Article 1(1) definition of a "stateless person" is part of customary international law.[5] The present report focuses on persons coming under this definition.[6]

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

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

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

The term "national" within the meaning of Article 1(1) refers to a formal bond between a person and a State, but it need not be an "effective" or "genuine" link.[7] The term "law" within the meaning of Article 1(1) "encompass[es] not just legislation, but also ministerial decrees, regulations, orders, judicial case law...and, where appropriate, customary practice."[8] Establishing whether an individual is considered a national of a State requires an analysis of both the text of that State's laws, as well as their application to an individual's case.[9] The letter of the law, as well as the practice, must be examined, as some States may not precisely adhere to the letter of the law or might even "[go] so far as to ignore its substance."[10]

A person's nationality must be assessed at the time of determination of eligibility under the 1954 Convention, which is neither a historic nor a predictive exercise.[11] This means that, for the determination of whether a person is stateless, it is not relevant that the person is in the process of naturalizing or has the option to acquire the nationality of a given State. The question to be answered is whether, at the present moment in time, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process of acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention.[12] Similarly, if, at the time of the determination, the person is in the process of losing, being deprived of, or renouncing a nationality, the person is still a national.[13] Furthermore, the 1954 Convention does not permit States to exclude from protection persons who have voluntarily renounced their nationality.[14]

In the context of Sweden, the categories of persons registered as having an "unknown" nationality or a nationality "under investigation" are also relevant when examining approaches and challenges related to statelessness, as will be explained in detail in the following sections.

1.1.2 Causes of statelessness

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

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

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

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7 UNHCR, *Handbook*, para. 54 and fn. 38.

8 *Ibid.*, para. 22.

9 *Ibid.*, para. 23, and fn. 16 (citing Articles 1 and 2 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws).

10 *Ibid.*, para. 24.

11 *Ibid.*, para. 50.

12 *Ibid.*

13 *Ibid.*

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

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

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

Discrimination on the ground of gender can also be a cause of statelessness. In some nationality laws, women are not able to pass their nationality on to their children. Moreover, women may lose their nationality upon marriage or upon dissolution of the marriage. Women's inability to transmit their nationality to their children is especially problematic in cases where children are born out of wedlock or where the father is unknown, has passed away, has left, is stateless or is a foreigner who is unable to transmit his own nationality or unwilling to take the necessary administrative steps to do so. Today, 27 States still discriminate against women in their laws with regard to transmission of nationality to children, the majority of which can be found in Africa, Asia and the Middle East.[15] Further, laws that discriminate against children born out of wedlock, for example by making it more difficult for them to acquire their father's nationality, can also contribute to statelessness.

1.1.3 Consequences of statelessness

Most stateless persons encounter many difficulties in every aspect of daily life. Often, stateless persons do not enjoy their basic human rights. Even though the enjoyment of fundamental human rights is not formally dependent on citizenship status, many States extend human rights protection to their nationals only or to persons who reside lawfully in the country, which is not always the case of stateless persons.

Stateless persons may face obstacles accessing education or health care services, entering the labour market, travelling abroad, or owning land or other property. Stateless persons may not be able to register the birth of their child, obtain an identity document, open a bank account, inherit wealth, or get legally married. Being socially and economically excluded, stateless persons are vulnerable to abuse and destitution, and many stateless populations belong to the most marginalized and vulnerable groups worldwide.

Also, stateless persons may be detained for prolonged or repeated periods because they have no identity documents or because they are considered to be irregularly in the country, yet there is no country to which they can be returned.

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

1.2 The international and regional legal framework

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

The 1954 Convention is the primary international instrument that aims to regulate and improve the status of stateless persons and to ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination. The 1954 Convention entered into force in 1960 and currently has 88 States Parties.[16]

The 1961 Convention is the leading international instrument that provides rules for the conferral and withdrawal of citizenship to prevent cases of statelessness from arising. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to Article 15 of the Universal Declaration of Human Rights, which recognizes that "everyone has the right to a nationality." The 1961 Convention entered into force in 1975 and presently has 67 States Parties.[17]

In June 2014, UNHCR published the *Handbook on Protection of Stateless Persons* ("*Handbook*"),[18] which provides interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers, the judiciary, and others working on statelessness. The *Handbook* addresses the definition of a stateless person, procedures to determine who is stateless, and the legal status of stateless persons at the national level. UNHCR's *Guidelines on Statelessness No. 4* ("*Guidelines*")[19] address the prevention of statelessness at birth under the 1961 Convention. Developed on the basis of consultations with international experts and a broad range of stakeholders, the *Handbook* and the *Guidelines* will be used in the present report to elucidate the obligations and best practices flowing from the respective Conventions.

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

In addition to these instruments, the 1951 Convention Relating to the Status of Refugees expressly applies to stateless persons who otherwise meet the definition of a refugee, as does the 1967 Protocol Relating to the Status of Refugees (hereinafter collectively referred to as the "Refugee Convention") by implication.[20] Thus, a stateless person can meet the definition of a refugee and then benefit from the protection afforded to refugees by the Refugee Convention.

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16 As of July 2016. UN Treaty Collection database, available at: https://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&clang=_en.

17 As of July 2016. UN Treaty Collection database, available at: https://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&clang=_en.

18 UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, *("Handbook")*, available at: http: //www.refworld.org/docid/53b676aa4.html.

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

20 See 1951 Convention Relating to the Status of Refugees, Article 1(A)(2) ("Definition of the term 'refugee'"), available at: http://www.unhcr.org/3b66c2aa10.html.

At the European regional level, the Council of Europe has adopted two instruments of particular relevance to the question of statelessness. The European Convention on Nationality (ECN) entered into force in 2000 and currently has 20 States Parties.[21] In its Article 4, the ECN states that the rules on nationality of each State Party shall be based on, among other things, the principle that statelessness shall be avoided. While broader in scope, covering a range of questions relating to the acquisition and loss of nationality, this instrument contains safeguards similar to those found in the 1961 Convention. Article 6(2) of the ECN provides a safeguard against statelessness at birth similar, though not identical, to that of the 1961 Convention. Also, Article 6(1)(b) provides that foundlings are to acquire nationality if they would otherwise be stateless. In addition, Article 6(4)(g) determines that the State Party shall facilitate the acquisition of its nationality for stateless persons. Finally, Article 7 of the ECN, on the loss of nationality *ex lege* or at the initiative of a State Party, contains a safeguard against statelessness.

The European Convention on the Avoidance of Statelessness in Relation to the Succession of States entered into force in 2009 and currently has six States Parties.[22] It establishes rules for the acquisition of nationality with a view to preventing statelessness in the context of State succession. In addition to these two specific instruments, the European Convention on Human Rights and Fundamental Freedoms (ECHR) is also increasingly relevant to the prevention of statelessness and the protection of stateless persons. Although the ECHR does not explicitly protect the right to a nationality, the European Court of Human Rights has recognized in its jurisprudence that the impact of the denial of citizenship on a person's social identity brings it within the scope of Article 8 of the ECHR, which enshrines the right to respect for private and family life.[23] Furthermore, the ECHR sets out rights to be enjoyed by all persons within a State's jurisdiction, whether they are the State's own nationals, foreign nationals or stateless persons.

21 See Council of Europe's Treaty Office, available at: http://goo.gl/k7bvWl.

22 See Council of Europe's Treaty Office, available at: http://goo.gl/XaOevN.

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

2. The face of statelessness in Sweden

2.1 Introduction

Sweden is a party to both the 1954 Convention and the 1961 Convention, as well as the ECN. Furthermore, Sweden has made a political commitment to end statelessness globally. At the Ministerial Intergovernmental Event on Refugees and Stateless Persons convened by UNHCR in December 2011, Sweden was one of the countries that pledged to address statelessness through foreign policy initiatives, and remove its reservations to the 1954 Convention.[24]

To date, Sweden maintains reservations to Article 8 (exemption from exceptional measures), Article 12(1) (personal status), and Article 24(1)(b) which is accompanied by the following text: "Notwithstanding the rule concerning the treatment of stateless persons as nationals, Sweden will not be bound to accord to stateless persons the same treatment as is accorded to nationals in respect of the possibility of entitlement to a national pension under the provisions of the National Insurance Act; and likewise to the effect that, in so far as the right to a supplementary pension under the said Act and the computation of such pension in certain respects are concerned, the rules applicable to Swedish nationals shall be more favourable than those applied to other insured persons." Sweden also maintains its reservation to Article 24(3), and to Article 25(2) with the explanation that "Sweden does not consider itself obliged to cause a Swedish authority, in lieu of a foreign authority, to deliver certificates for the issuance of which there is insufficient documentation in Sweden."

According to the statistics published by the Swedish Population Register and the SMA, Sweden has a relatively large stateless population, consisting of persons who have migrated to Sweden to seek international protection or stay for other reasons, as well as persons born stateless in Sweden.

During the past five years, Sweden has received between 28,000 and 163,000 asylum applications per year,[25] out of which around 4 per cent to 13 per cent have been lodged by stateless persons (see Table 6 for a breakdown of numbers). Despite this, the issue of statelessness remains largely unknown and unexplored by the national authorities and Swedish civil society.

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24 UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons – Pledges 2011*, October 2012, available at: http://www.refworld.org/docid/50aca6112.html.

25 Asylum applications registered in Sweden 2009-2015: 2015: 162,887; 2014: 81,301; 2013: 54,259; 2012: 43,887; 2011: 29,648; 2010: 31,819; 2009: 24,194. See: http://www.migrationsverket.se/info/790.html.

2.1.1 Historical background

Until the 17th century, every person living in Sweden was automatically considered to be a Swedish national. Legislation defining Swedish nationality started developing during the 17th and 18th centuries. During this time, persons born in Sweden whose parents were Swedish, or aliens permanently residing in Sweden, were considered as Swedish nationals. From the 19th century on, formal naturalization of aliens was introduced. A provision on naturalization was contained in constitutional law for the first time in the mid-19th century, in the Instrument of Government of 1856-1857.[26] The provision was elaborated in the Royal Ordinance of 1858,[27] which was the first real nationality law of Sweden. However it had a rather limited scope and only provided for naturalization of foreign men. The Ordinance laid down the principle of single citizenship by stating that a person who applied for naturalization in Sweden had to prove that he no longer was a subject of a foreign State. Other forms of acquisition and loss of nationality were not regulated in the Ordinance and remained a matter of administrative practice.[28]

Nordic cooperation resulted in Sweden's enactment in 1894 of an Act on Acquisition and Loss of Right to Nationality.[29] The Act codified the *jus sanguinis* principle by providing that a child acquired Swedish nationality through the father if the parents were married and through the mother if the child was born out of wedlock. The Act introduced an automatic acquisition of nationality at the age of 22 years for persons of foreign origin who were born in Sweden, and had resided in the country since birth. A foreign woman who married a Swedish man automatically acquired Swedish nationality upon marriage. If a Swedish woman married a foreign man, she automatically lost her Swedish citizenship, regardless of whether she acquired a new nationality. Dual citizenship was not allowed and the acquisition of a new nationality automatically led to the loss of Swedish nationality.[30]

In 1924, a new Act on Acquisition and Loss of Swedish Nationality entered into force.[31] The new Act also contained provisions on naturalization, thus repealing the Royal Ordinance from 1858. In principle, a person who had reached the age of 21, who had resided in Sweden for the past five years and who was known to lead a respectable life and support his family, could be naturalized. One of the most significant changes in the Act was the provision on loss of Swedish nationality when the person acquired a new nationality. Previously, Swedish nationality was lost when a person acquired a new nationality, but according to the 1924 Act, Swedish nationality was no longer lost upon acquiring another nationality, if the person remained a resident in Sweden. However, with regard to naturalization, Swedish nationality could still only be acquired if proof of loss of the individual's other nationality was provided.[32]

In 1950, a new Act on Swedish Citizenship entered into force.[33] The law was based on three basic principles: the principle of *jus sanguinis,* the avoidance of dual nationality and the avoidance of statelessness. One of the main amendments concerned the position of married women and was a major step forward in terms of gender equality in the nationality legislation. Where the nationality of married women had previously been dependant on the nationality of the husband, the 1950 Act on Swedish Citizenship abolished the automatic acquisition and loss of Swedish nationality of women upon marriage. Instead, the Act provided for the possibility of acquisition of Swedish nationality for foreign women who married Swedish men. Further to this, Swedish women who married foreign men no longer automatically lost their Swedish nationality. The

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26 The Instrument of Government (*Regeringsformen*) is one of the constitutional laws of Sweden, see for further information at: http://www.riksdagen.se/en/how-the-riksdag-works/democracy/the-constitution.

27 *Kungliga förordning den 27 februari 1858 (nr 13) angående ordningen och villkoren för utländsk mans upptagande till svensk medborgare.*

28 EUDO Citizenship Observatory, *Country Report: Sweden*, Hedvig Lokrantz Bernitz, November 2009, revised October 2012 ("EUDO, *Country Report: Sweden*"), p. 2, available at: http://eudo-citizenship.eu/docs/CountryReports/Sweden.pdf.

29 *Lag den 1 oktober 1894 (nr 71) om förvärvande och förlust av medborgarerätt.*

30 EUDO, *Country Report, Sweden*, p. 3.

31 *Lag den 23 maj 1924 (nr 130) om förvärvande och förlust av svensk medborgarskap.*

32 EUDO, *Country Report, Sweden*, p. 3-4.

33 *Lag (1950: 382) om svenskt medborgarskap.*

principle of acquisition of nationality through a Swedish father remained, though the preparatory works of the Act mentioned the possibility of acquisition of Swedish nationality through the mother, as a primary principle. It was, however, deemed not to be possible to introduce this principle at that point in time, as most other countries still maintained the principle of acquisition of nationality from the father. Acquisition of the mother's nationality would therefore have led to cases of dual nationality, which at that time was considered undesirable.[34]

Another major change introduced by the 1950 Act on Swedish Citizenship was the re-acquisition of Swedish nationality for former Swedish nationals and acquisition of Swedish nationality for persons who were born and grew up in Sweden, through a notification[35] procedure. In both situations, re-acquisition or acquisition of nationality had previously been automatic, which meant that (re-)acquisition of nationality became more difficult with the introduction of a notification procedure.[36]

Over the years, the 1950 Act on Swedish Citizenship was subject to several major amendments. Among them, acquisition of Swedish nationality through the mother became the primary principle for the acquisition of nationality at birth in 1979, as a result of Nordic co-operation. Moreover, in 1969, as a result of Sweden's ratification of the 1961 Convention,[37] an amendment was introduced to the requirements for the acquisition of Swedish nationality for young persons who had grown up in Sweden. The required period of lawful residence was reduced and the requirement of birth in Sweden was abolished.[38]

A new Instrument of Government,[39] one of the four constitutional laws of Sweden, entered into force in 1974 and introduced a provision on the prohibition of deprivation of Swedish nationality. Chapter 2, Section 7 of the Instrument states that no Swedish national who lives or has lived in Sweden can be deprived of his or her Swedish nationality. It is, however, possible to prescribe that children under 18 years follow the nationality of their parents or parent and may consequently lose their Swedish nationality, although it would be possible for the child to reacquire Swedish citizenship by application.[40] Since then, the possibility of depriving a person of his or her Swedish nationality has been repeatedly discussed, but as of today, no such possibility exists, except for persons who are born abroad and have never lived in the country or have no other significant links to Sweden.[41]

A new Act on Swedish Citizenship entered into force in July 2001.[42] As 50 years had already passed since the enactment of the previous Act on Swedish Citizenship, during which time migration had significantly increased, modernization and adaptation of the nationality law was required. The principle of *jus sanguinis* and the prevention of statelessness remained guiding principles in the new nationality legislation, and the prohibition on dual nationality was removed. Furthermore, the CRC, as well as the ECN which Sweden ratified on 28 June 2001, formed important bases for the Government's proposal for the new Act, as indicated

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34 EUDO, *Country Report: Sweden*, p. 4-5.

35 The term used in the Act on Swedish Citizenship, including its Section 6 that will be discussed further below, particularly in Section 4.3.1.1 is "anmälan" and not "ansökan". The English term "notification" will therefore be used, instead of "application".

36 EUDO, *Country Report: Sweden*, p. 5.

37 SÖ 1969: 12.

38 EUDO, *Country Report: Sweden*, p. 5.

39 *Regeringsformen* (1974: 152), available at: http://goo.gl/6ejEFi.

40 This could in theory arise in a situation, pursuant to Section 14(3) of the Act on Swedish Citizenship, according to which: "A Swedish national loses his or her Swedish nationality when she or he turns 22 years if 1) he or she was born abroad, 2) has never been a habitual resident in Sweden 3) have neither been in Sweden in circumstances which indicate that he or she has links to the country. If an application is made before the Swedish national turns 22 years, grant of retention of the nationality can be granted. When someone loses his or her Swedish nationality in accordance with the first paragraph, even his or her children lose their Swedish nationality if the child has acquired Swedish nationality through the parent. The child however does not lose his or her nationality if the other parent retains his or her Swedish nationality and the child acquires Swedish nationality even from him or her. Deprivation of Swedish nationality shall not happen if the person as a result would become stateless."

41 EUDO, *Country Report: Sweden*, p. 6.

42 *Lag (2001: 82) om svenskt medborgarskap,* available at: http://goo.gl/Rb40jR. Also available in English at: http://goo.gl/3Xbsqq.

by the reference in the Government Bill on the Act on Swedish Citizenship.[43] However, it is noteworthy that the Government Bill on the Act on Swedish Citizenship, which provides important guidance on the interpretation and application of the provisions in the Act, does not contain any references to either the 1954 or the 1961 Convention, despite Sweden having been party to these conventions since 1965 and 1969, respectively. The new Act, for the first time, contained specific provisions for facilitating access to Swedish nationality for stateless children in Sweden, as will be explained in Section 4.3 below.

Another important change concerned the conferral of Swedish nationality on their children by Swedish men. The Act abolished the requirement of the parents to be married in order for a father to confer his Swedish nationality on his child. Instead, the Act provides for the automatic acquisition of Swedish nationality by children born to Swedish men in Sweden, regardless of whether the father is married to the mother or not, and for acquisition through application in respect of a child born abroad to a Swedish man who is not married to the mother of the child.

A major amendment was introduced in the Swedish nationality legislation in 2006,[44] when decisions made in accordance with the 2001 Act on Swedish Citizenship, as well as those made in accordance with the Aliens Act, became subject to judicial review. Since then, decisions can be appealed to the special Migration Courts and further to the Migration Appeal Court.

On 1 April 2015, further amendments to the Act on Swedish Citizenship entered into force. In its proposal to Parliament titled The Swedish Citizenship,[45] the Government argued that Swedish citizenship is a basis for Swedish democracy and represents a significant bond between the citizen and the State of Sweden. As such, the Government further held that citizenship is the most important legal relationship between the citizen and the State and shall be used as an incentive to promote integration in Sweden. The amendments consequently contain a preamble, which states that Swedish citizenship stands for belonging and ties with Sweden, and that citizenship consists of rights as well as responsibilities. Also, the amendments provide that a child born to one Swedish parent should always acquire Swedish citizenship automatically at birth, regardless of whether the child is born in Sweden or abroad, and further facilitate the acquisition of Swedish citizenship for stateless persons, including for children born in Sweden who would otherwise be stateless. In the Government's proposal on The Swedish Citizenship, as well as in the subsequent Government Bill titled A Citizenship Based on Affinity,[46] reference was made to the 1961 Convention, which shows that there was more awareness about Sweden's legal obligations under this Conventions in 2013-2014 than there was in 2000, when the Government Bill on the Act on Swedish Citizenship was published.

2.1.2 National legal framework

Sweden has a dualistic legal system and therefore, international treaties do not automatically become part of the Swedish legal system. International conventions have to become part of Swedish legislation in order for their provisions to be applicable for national authorities and courts. This can be done through incorporation or through transformation. Incorporation means that a Swedish law stipulates that a convention shall apply as Swedish law. So far, only the ECHR has been incorporated into Swedish law,[47] through there is a

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43 *Regeringens proposition, (1999/2000: 147),* Lag om svenskt medborgarskap, 8 June 2000, p. 16, available at: http://goo.gl/0rvK2m.

44 Amendment to the Act on Swedish Citizenship, *Lag (2005: 722) om ändring i lagen om svenskt (2001: 82) om svenskt medborgarskap.* The substantial changes were made through the Aliens Act *(Utlänningslag, (2005: 716))* in which Chapters 14 and 16 contain provisions on the appeal to the Migration Courts and to the Migration Appeal Court.

45 *Det svenska medborgarskapet,* Betänkande av Medborgarskapsutredningen, SOU 2013: 29, available at: http://goo.gl/gPdSjH.

46 *Regeringens Proposition (2013/14: 143) Ett medborgarskap som grundas på samhörighet,* available at: https://goo.gl/DXVZyS.

47 *Lag (1994: 1219) om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna.* The incorporation of the ECHR in Swedish legislation was done concurrently with other legislative amendments to one of the constitutional laws of Sweden. The Government expressed that the purpose of the incorporation of the European Convention would be to strengthen the legal protection of individuals in Sweden; see *Regeringens Proposition (1993/94: 117), Inkorporering av Europakonventionen och andra fri och rättighetsfrågor.*

proposal pending to also incorporate the CRC into national law.[48] Transformation, which is most commonly used, means that a convention, or provisions therein, are translated and transformed into Swedish legal text. However, no action is required, or taken, if the provisions in an international convention are already in compliance with Swedish law.

International obligations which have not been transposed into Swedish legislation cannot be invoked before a national court. However, courts and other judicial authorities shall interpret Swedish legislation in conformity with the international conventions by which Sweden is bound *(fördragskonform tolkning)*.[49]

The 2001 Act on Swedish Citizenship and the 2001 Decree on Swedish Citizenship[50], including the amendments adopted since then, together with the Instrument of Government of 1974[51] prohibiting the deprivation of Swedish nationality from nationals who live or have lived in Sweden, form the basis for the national legal framework on nationality. However, as will be illustrated in the sections below, all provisions in the 1954 and 1961 Conventions have not been transformed into the Swedish legislation even though it is not fully in line with these conventions.

2.2 A statistical overview of the stateless population in Sweden

2.2.1 Specifics of the data used

Administrative data on the stateless, or potentially stateless population in Sweden is available in two different public registers: the Swedish Population Register and the Register of the SMA. In both registers, individuals can be registered as "stateless", as having "unknown" nationality, or as having their nationality "under investigation".

In addition to collecting taxes, the Swedish Tax Agency is responsible for managing the civil registration of private individuals living in Sweden, contained in the Population Register. The Population Register contains information about each person registered, such as their age, place of birth, citizenship, marital status, children, date of taking up residence in Sweden and address, as regulated by the Population Registration Act.[52] It is through registration in the Population Register that a person obtains many of their rights, such as the child allowance. When registered in the Population Register for the first time, a person will receive their unique personal identity number, which is required in order to have full access to many of the State and private-sector services in Sweden.

Generally, a person is only registered in the Population Register if they have been granted a residence permit in Sweden. According to Section 4 of the Population Registration Act, an alien shall not be registered if he or she does not have the required residence permit and if there are no other particular reasons for registering

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48 The proposal, which is the result of a Government appointed inquiry into the feasibility of incorporating the CRC in national law, can be found on the Governments website, in Swedish available at: http://goo.gl/kknLFA.

49 Swedish Government webpage on human rights, brochure on human rights in Sweden, pp. 5-6, available at: http://goo.gl/VCFs6Z.

50 *Medborgarskapsförordning* (2001: 218), available at: https://goo.gl/CrM8j2.

51 The Instrument of Government is one of the four fundamental laws of Sweden and determines the way in which Sweden is governed. As such, it contains rules on "the realisation of democracy in Sweden and on the division of power between the Riksdag, Government, municipalities and county councils and courts. It also sets out the fundamental rights and freedoms enjoyed by the people of Sweden". Information about the Instrument of Government in English available at: http://goo.gl/sllHVp. The full text of the Constitution is available at: http://goo.gl/p1Hkdm.

52 *Folkbokföringslag* (1991: 481), available at: http://goo.gl/GeGsju.

the person. Such "particular reasons" are typically situations when the residence permit application is only considered a formality, with a high likelihood of it being granted. For example, children whose parents already reside in Sweden and who come to Sweden to reunite with their parents, as well as foreign children adopted in Sweden, can be registered before the residence permit has been granted.

Registration of children is provided for in Section 2 of the Population Registration Act. A child who is born alive in Sweden shall be registered in the Population Register if the child's mother is registered, or if the father is registered and is the legal guardian of the child. In practice, this means that the parents need to be married in order for a child born to a registered father but an unregistered mother to be registered in the Population Register.[53]

However, even if a new-born child's parents are not registered in the Population Register, for example because they are asylum-seekers who have not yet been granted a residence permit, there is an obligation to notify the Swedish Tax Agency of the birth of a child.[54] If the child is born in a hospital, the hospital is responsible for the notification. If the child is not born in a hospital, the parent or legal guardian of the child is responsible for the notification within one month of the birth. In such cases, when the parents of a child are not registered in the Population Register, the birth is recorded in the diary of the Population Register with details of the child's date of birth, sex, name, place of birth, the name of the mother and her nationality and, if the parents are married, the name of the father and, if known, his nationality.[55] As the birth of such a child is recorded but not registered in the actual Population Register, the information sent to the Swedish Tax Agency is not verified, but recorded as provided by the hospital or parent(s). Also, no assessment of the new-born child's nationality is undertaken at this point (though the mother's nationality, and, if available, the father's, is recorded). The Swedish Tax Agency has a possibility to print out an abstract from the diary as a confirmation of birth when required.[56]

Statistics Sweden is an administrative agency which is tasked to supply customers with statistics for decision making, debate and research, including based on data contained in the Population Register. The statistics in this report concerning persons registered as "stateless", as having "unknown" nationality or as having their nationality "under investigation" in the Population Register have been obtained from Statistics Sweden.

The Register of the SMA is regulated by the Aliens Data Act and the Aliens Data Decree.[57] According to its Sections 1 and 4, the Aliens Data Act applies to the automated handling of personal information by the SMA, the National Police Board, the Police, and by Swedish authorities abroad, in activities undertaken pursuant to the aliens and citizenship legislation. According to Section 2 of the Aliens Data Act, such activities encompass actions concerning an alien's stay in and removal from the country, an alien's right to work in Sweden, the reception of asylum-seekers, and other specific activities which relate to the assistance and support to aliens handled by the SMA. The Aliens Data Act contains safeguards for the protection of the privacy of aliens, but does not limit the types of information that the authorities encompassed by the Act may gather about an individual alien. An authority can collect and handle information that is necessary for the authority to carry out its duties pursuant to the aliens and citizenship legislation.[58] According to section

53 Email from the Swedish Tax Agency, 17 October 2016.

54 Section 1, paragraph 2 of the Population Registration Act provides that marriages, births and deaths shall be registered even if the person in question is not, or has not been registered.

55 Email from the Swedish Tax Agency, 17 October 2016.

56 Email from the Swedish Tax Agency, 4 October 2012.

57 *Utlänningsdatalag* (2016: 27), available at: https://goo.gl/yYGavg and *Utlänningsdataförodningen (2016:30)*, available at: https://goo.gl/EdI0f0.

58 In this regard, the authority is also subjected to the regulation in Section 9 of the Swedish Personal Data Act, which regulates what personal information may be collected and how it may be used by authorities; see *Personuppgiftslag (1998:204)*, available at: https://goo.gl/7XCg4t.

2 of the Aliens Data Decree information concerning an alien's name, date of birth, nationality, and other information that may be used to identify a person may be registered.[59]

Statistical data publicly available in the Register of the SMA did not at the time of the research include information about the country of birth or former habitual residence of an applicant (for asylum or another immigration permit) who is registered by the SMA as stateless or as having "unknown" nationality or nationality "under investigation". The consultant was therefore granted access to 24 decisions concerning asylum-seekers recorded as stateless or with "unknown" nationality by the SMA, in order to enhance UNHCR's understanding of the background of stateless persons seeking asylum in Sweden, and the manner in which their statelessness is assessed and taken into consideration in the asylum procedure.

In regard to the alignment of information registered in the Population Register and in the Register of the SMA, it should be noted that changes made to e.g. a person's nationality status is not automatically updated in the other registration system. For example, if the nationality of a person is changed from "unknown" to "stateless" in the Population Register, this change is not automatically made in the Register of the SMA, if the person is also registered therein, as having "unknown" nationality. The Swedish Tax Agency, which is responsible for updating the Population Register, only has access to information in the Register of the SMA which is necessary for the issuance of identity cards.[60] The Swedish Tax Agency does not have access to information regarding nationality. The absence of an automatic referral mechanism or system between the Register of the SMA and the Population Register can lead to a situation where the respective registers contain inconsistent information regarding a person's nationality status.

The absence in national legislation of a definition of a stateless person, coupled with the lack of common guidelines for assessing an individual's potential statelessness, can contribute to a risk of someone being registered as stateless in one of the registers, and, for example, as having an "unknown" nationality in the other.

A reason for the lack of an automated system for updating and aligning information in the respective registers could be the principle of independence governing the work of the Swedish authorities. The Swedish Instrument of Government holds, in Chapter 12, Section 2, that no public authority, not even the Parliament or Government, may decide how another administrative authority shall exercise its public authority in an individual case. This means that every administrative authority shall independently execute its responsibilities towards the public without being bound by decisions of other authorities. In addition, the Swedish Personal Data Act[61] and the Public Access to Information and Secrecy Act[62] prevent authorities from exchanging personal information concerning individuals. It follows from the Public Access to Information and Secrecy Act, Chapter 8, Section 1 that, as a general rule, the rules of confidentiality also apply between authorities. Permitted exceptions from the general rule are stated in the Act, or in regulations referred to in Chapter 10, Section 28 of the Act.

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59 Direct access to the Register of the SMA has been granted in accordance of Section 8 of the Aliens Data Decree to the Police, the Security Police, the Swedish authorities abroad, the Social Insurance Authority, the Pensions Authority, and the Tax Authority. The direct access is only granted to the extent that is necessary for conducting the work of the particular civil servant handling the matter.

60 Follows from Section 13 of the Aliens Data Decree, according to which the Swedish Tax Agency has direct access to the Register of the SMA in connection to their responsibility to issue identity documents to persons registered in the Population Register. However, access is limited to information necessary for the issuance of an identity card and does not include access to information regarding nationality.

61 *Personuppgiftslagen* (1998: 204), available at: http://goo.gl/OsUlrj.

62 *Offentlighets – och sekretesslagen* (2009: 400), available at: http://goo.gl/d8rbUo.

2.2.2 The target population

The majority of persons registered in Sweden as stateless were born abroad, though a considerable number of stateless persons were born in Sweden to foreign-born parents. As illustrated in the statistical overview below, the main channel through which stateless persons have entered Sweden is the asylum procedure. Smaller numbers of stateless persons have entered Sweden through other immigration procedures, most notably through the family reunification process.

Today, the largest group of persons registered as stateless in Sweden originate from Syria. Stateless persons of Palestinian origin constituted the largest group prior to the conflict in Syria, though a large number of the stateless persons residing in Sweden were born in Sweden (see Table 3 below).

At the end of 2015, 21,580 persons were registered in the Swedish Population Register as stateless, while 5,523 persons were registered as having "unknown" nationality, and a further 119 persons were registered as having their nationality "under investigation". 3,781 of the persons registered in the Swedish Population Register at the end of 2015 as stateless and residing in Sweden on the basis of a residence permit, were born in Sweden. In addition, 4,699 persons were registered in 2015 as having been born in Sweden and as having "unknown" nationality.

2.2.2.1 POPULATIONS COVERED BY ADMINISTRATIVE DATA

The overview below covers the following categories of persons:

1. Persons registered in the Population Register as "stateless", with "unknown" nationality or with nationality "under investigation", as provided by Statistics Sweden (Tables 1-5).

2. Applicants for asylum registered as "stateless", with "unknown" nationality, or with nationality "under investigation", as provided by the SMA (Table 6).

It should be noted that a person's nationality is recorded as "unknown" in the asylum procedure either where there is a genuine lack of knowledge and information about the person's nationality, or where the person's credibility is questioned in regard to his or her identity and/or country of nationality or former habitual residence. However, as no comprehensive determination of an applicant's potential statelessness takes place during the asylum procedure, it is possible that some of the asylum-seekers registered as having "unknown" nationality are in fact stateless.

At the beginning of the 1990s, around 9,000 persons were registered as stateless in the Swedish Population Register. The stateless population gradually decreased until 2003, when it started to increase again. Following the outbreak of the conflict in Syria and the large arrival of asylum-seekers originating from Syria, the number of persons registered as stateless in Sweden started to increase significantly; in 2012, the number was 9,596 and at the end of 2015, the total number of persons registered in the Population Register as stateless was 21,580. At the same time, another 7,771 persons with claims pending in the asylum procedure were registered by the SMA as stateless, bringing the total number of persons registered in Sweden as stateless at the end of 2015 to 29,351.

Table 1: Total number of persons with a residence permit in Sweden who were registered as "stateless", with "unknown" nationality or with nationality "under investigation" in the years 1991-2015[63]

Year	Stateless	Unknown	Under investigation	Total
1991	9,019	5,073	414	14,506
1992	9,069	5,336	1,221	15,626
1993	8,360	5,508	2,150	16,018
1994	7,408	5,361	2,676	15,445
1995	6,743	4,935	2,582	14,260
1996	6,383	4,754	2,510	13,647
1997	6,139	4,264	2,326	12,729
1998	5,554	2,762	1,650	9,966
1999	5,337	3,829	1,395	1,0561
2000	4,962	2,841	1,092	8,895
2001	4,642	3,221	0	7,863
2002	4,298	1,946	833	7,077
2003	4,746	1,806	714	7,266
2004	5,153	1,703	662	7,518
2005	5,299	1,559	580	7,438
2006	6,050	19,319	348	25,717
2007	6,239	16,378	307	22,924
2008	6,739	14,075	385	21,199
2009	7,758	11,996	422	20,176
2010	8,213	10,823	194	19,230
2011	8,659	8,892	113	17,664
2012	9,596	7,820	38	17,454
2013	13,020	7,430	40	20,490
2014	19,001	8,166	54	27,221
2015	21,580	5,523	119	27,222

Changes in the number of persons registered as having "unknown" nationality have been less consistent. Between the years 1991 to 2005, the numbers steadily decreased, to rise sharply in 2006 to 19,319 persons, after which the numbers started going down again. These changes can be explained by State succession and the registration practices related to such in Sweden.

In order to be registered in Sweden as a national of a certain State, it is required that the State exists; therefore, persons who have been nationals of a State which has ceased to exist are recorded as having "unknown" nationality until the Swedish Tax Agency is informed about a new nationality that the person has acquired, after which this is recorded in the Population Register. In the Swedish context, this has particularly concerned persons who were nationals of the State Union of Serbia and Montenegro and explains the sudden and significant increase of persons recorded as having "unknown" nationality in 2006, when Montenegro declared independence and Serbia became the legal successor of the union.[64] The decrease in the number of persons with "unknown" nationality since 2006 can, to a large extent, be explained by the fact that those who, before 2006, were registered as nationals of Serbia and Montenegro acquired a new nationality. In 2011, the number of persons recorded as having "unknown" nationality following the

63 Statistics Sweden, based on data from the Swedish Population Register, available at: http://www.statistikdatabasen.scb.se.

64 This background information is contained in a footnote to the population statistics on the website of Statistics Sweden.

dissolution of the State Union of Serbia and Montenegro was 7,058 persons, whereas others recorded as having "unknown" nationality was much lower, only 1,834 persons.[65]

Table 2: Number of persons with a residence permit in Sweden who were born outside of Sweden and registered as "stateless" or with "unknown" nationality, by age, as of 31 December 2015[66]

Born abroad		
Age	**Stateless**	**Unknown**
0-17	4,664	298
18>	13,135	4,204
Total	17,799	4,502

Table 2 above shows the number of persons with a residence permit in Sweden, who were born outside Sweden and registered as "stateless" or with "unknown" nationality, disaggregated by age, as of 2015. The statistics in tables 1 and 2 indicate that 82 per cent of the persons registered as stateless in the Population Register at the end of 2015 were born outside Sweden, while 18 per cent had been born in Sweden.

Table 3 below indeed shows that Sweden is the second country of birth of stateless persons registered in the Population Register.

Table 3: Countries of birth of persons with a residence permit who were registered as "stateless", as of 31 December 2015[67]

	Country of birth	Number of persons registered as "stateless"
1.	Syria	11,898
2.	Sweden	3,781
3.	Palestine	1,912
4.	Lebanon	894
5.	Iraq	710
6.	Libya	465
7.	Saudi Arabia	323
8.	Kuwait	312
9.	UAE	281
10.	Israel	175

As seen in Table 3, the majority of persons registered as stateless in Sweden were born in Syria, though the second highest number of persons registered as stateless were born in Sweden. As Sweden grants nationality to stateless children born in Sweden through a notification procedure rather than automatically at birth, it is possible that some of these cases are pending acquisition of citizenship by notification (notification procedure explained in Section 4.3.1 below).

65 Breakdown provided by Statistics Sweden in email, 15 October 2012. It is likely that many of these persons have since acquired Swedish citizenship or another nationality, though it is also possible that some have been found to be stateless.

66 Email from Statistics Sweden, 29 September 2016.

67 Email from Statistics Sweden, 2 March 2016.

Table 4: Countries of birth of persons with a residence permit who were registered as having "unknown" nationality as of 31 December 2015[68]

	Country of birth	Number of persons registered as having "unknown" nationality
1.	Sweden	4,699
2.	Unknown	105
3.	Somalia	91
4.	Syria	90
5.	Lebanon	70
6.	Russia	59
7.	Estonia	57
8.	Latvia	44
9.	Iraq	21
10.	Azerbaijan	17

Table 4 shows that the majority of persons registered in the Population Register with "unknown" nationality were born in Sweden. The category "unknown" is used in a variety of situations, as discussed in Section 3.3.2.1 below. In some cases, a person may be registered as having "unknown" nationality pending action by their foreign parents or guardians to undertake procedures so that the child acquires their nationality. In other cases, it is used when the determination of nationality is problematic. The second highest number of persons registered as having "unknown" nationality also have their country of birth indicated as "unknown".

Table 5: Countries of birth of persons with a residence permit who were registered as having their nationality "under investigation" as of 31 December 2015[69]

	Country of birth	Number of persons registered as having nationality "under investigation"
1.	Palestine	44
2.	Syria	25
3.	Sweden	20
4.	Lebanon	5
5.	Qatar	4
6.	Iraq	4
7.	Egypt	3
8.	Various[71]	2

As shown in Table 5, the majority of persons whose nationality, or lack thereof, is currently "under investigation" were born in Palestine, Syria or Sweden. The total number of persons with nationality "under investigation" is low compared to the number of persons registered as "stateless" or of "unknown" nationality.

68 Email from Statistics Sweden, 2 March 2016.

69 *Ibid.*

70 In the data published by Statistics Sweden, Cyprus, Israel, Kuwait, Libya, Saudi Arabia, the UAE, and "other" are each indicated as the country of birth in respect of two persons registered as having their nationality "under investigation".

Table 6: Asylum applications submitted by persons registered by the SMA as "stateless", as having "unknown" nationality, or as having their nationality "under investigation" during the years 2008 to 2015[71]

Year	Stateless	Unknown	Under investigation	Total number of asylum applicants during the year (all nationalities)
2008	1,051	115	341	24,353
2009	912	239	304	24,194
2010	1,033	330	405	31,819
2011	1,109	37	258	28,648
2012	2,289	684	276	43,887
2013	6,921	564	288	54,259
2014	7,863	507	281	81,301
2015	7,771	317	918	162,887

As seen in Table 6, the number of asylum applications lodged by persons registered by the SMA as stateless remained on almost the same level until 2012/2013, when an increasing number of persons originating from Syria started arriving in Sweden to apply for asylum; this increase has followed the general increase in the number of asylum applications filed in Sweden. In 2012, 5.2 per cent of the applicants for asylum were registered as stateless, whereas in 2013, the number rose significantly to 12.7 per cent, before it decreased to 9.7 per cent in 2014, and then further, to 4.8 per cent of the total number of applicants in 2015, probably due, at least partly, to the significant overall rise in the number of asylum applications registered over the past two years.

2.2.2.2 GROUPS NOT COVERED BY ADMINISTRATIVE DATA

As mentioned in Section 2.2.1 above, only persons holding a residence permit in Sweden are registered in the Population Register, which means that information about stateless persons living in Sweden illegally or as, for example, asylum-seekers is not captured in the administrative data. Hence, there could be stateless persons staying in Sweden amongst the victims of trafficking, and irregular migrants or rejected asylum-seekers. Children born to persons falling within these categories of persons living in Sweden without a residence permit could also be born stateless, either because their parents are stateless, or because their parents are unable to confer a nationality on the child. The Swedish Tax Agency would not even have a recording of the birth of such a child if the child had been born outside of a hospital or medical facility, and the child's parents or other legal guardian would not have notified the authorities, for example due to fear of being apprehended as staying illegally in Sweden. This could include children born stateless to a victim of human trafficking or to a rejected asylum-seeker who lacks the right to remain in Sweden and identity documents (often referred to as "paperless" – "papperslös" in Swedish). UNHCR has not, within the scope of this research, been able to find any exact data or estimations on the numbers and profiles of persons in these circumstances residing in Sweden.

One category of persons living in Sweden without a residence permit are those in respect of whom a return decision taken by the SMA has expired, but who still remain in the country. A return decision expires four years after it becomes legally valid, pursuant to Chapter 12, Section 22 of the Aliens Act.[72] There is no provision in Swedish law for an automatic re-determination of the initial application for asylum or other residence permit in such circumstances. It is, however, possible to lodge a new application with the SMA for a permit to stay (e.g. on asylum grounds). However, the fact that the previous return decision had not been implemented is not a basis for granting a residence permit. Whether a residence permit is granted on the

71 Statistics by SMA, available at: http://goo.gl/ztX5Kb.

72 *Utlänningslag* (2005:716), available at https://goo.gl/1QFZWD.

basis of the obstacles to return depends largely on the extent of the cooperation of the person concerned.[73] Thus, it is possible that the new application is also rejected and the person remains in Sweden for years, pending implementation of the return decision.

Some of these "unreturnable" individuals could be stateless, and statelessness could be the reason for their inability to return to their country of former habitual residence. The term "unreturnable" is used in this study to encompass persons who have not been granted leave to remain in Sweden, yet could not return or be returned to any country including, if known, their country of former habitual residence. This working definition was chosen to reflect the common characteristics that the group shares, in that they do not have the right to remain in Sweden while being unable to gain admittance to their country of citizenship or former habitual residence.[74] The reasons for these persons' precarious situation are often not known. It could be that they lack citizenship or a right to reside in the State to which they are to be deported, or that their State of citizenship refuses to readmit some of its citizens. This group falls within UNHCR's mandate relating to stateless persons because prolonged situations of "un-returnability" may be an indication that the person concerned is stateless, or may eventually lead to statelessness.[75]

Due to the absence in Sweden of a mechanism or procedure for determining if a person is stateless, it is not possible to say with certainty how many of the "unreturnable" rejected asylum-seekers, or irregular migrants, meet the international law definition of a stateless person.

2.3 Qualitative analysis of stateless persons

2.3.1 Introduction

While UNHCR would have liked to conduct participatory assessments[76] with stateless persons living in Sweden to enhance its understanding of the background and situation of this population, it was not possible within the scope of this research project. This was partly due to the fact that the stateless population in Sweden can neither be easily identified as a group, nor can their contact details be readily obtained in order to call individual stateless persons for interviews or focus group discussions, using UNHCR's participatory assessment methodology.

Instead, a number of NGOs working with asylum, immigration and human rights issues in Sweden, such as Amnesty International, the Swedish Refugee Advice Centre and a couple of church organizations, were contacted by the consultant, and asked to share their experiences from counselling or otherwise supporting stateless persons in Sweden. From the responses given by these NGOs to the consultant's questionnaire, and in follow-up meetings, it became clear that there is generally little awareness about the problem of statelessness and that the NGOs active in the aforementioned areas have not taken note of statelessness as an issue that may be affecting the situation of a client. There appears to be a similar lack of awareness

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73 In two decisions by the Migration Appeal Court, MIG 2007: 46 and MIG 2009: 13, it has been emphasized that it is in the first place the responsibility of the applicant, subsequent to a return decision, to leave the country, rather than the responsibility of the Swedish authorities to implement the return by force. The burden of proof rests on the applicant to prove that the return has not happened without a fault of hers or his. Furthermore, the responsibility to contribute to the implementation of the return requires the applicant not to remain passive with regard to the implementation of the return, in addition to the requirement that the applicant does not hide or otherwise avoid contact with the authorities.

74 This term was suggested by the authors of the UNHCR and Asylum Aid study *Mapping Statelessness in The United Kingdom*, 22 November 2011, available at: http://www.refworld.org/docid/4ecb6a192.html.

75 UNHCR, *Prato Conclusions*, p. 8.

76 UNHCR, *UNHCR Tool for Participatory Assessment in Operations*, May 2006, First edition, available at: http://www.refworld.org/docid/462df4232.html.

on the part of the authorities and the public at large about statelessness as a human rights issue, entailing specific legal obligations for the State.

Consequently, the only information readily available about the origin and background of persons registered as stateless is the information on country of birth in the Population Register. However, as mentioned in Section 2.2.1 above, only persons holding a residence permit in Sweden are registered in the Population Register.

As indicated in Table 3 in Section 2.2.2.1 above, the majority of persons registered as stateless in the Population Register were born in Syria, Sweden or Palestine, while the majority of persons registered with "unknown" nationality were born in Sweden, Somalia or Syria, in addition to those whose country of birth is also unknown.

What can also be deduced from publicly available statistics is that there are a significant number of stateless children amongst the stateless persons who enter Sweden each year. In 2015, 35 per cent of the stateless asylum-seekers were children. Tables 1 and Tables 2 show that 82 per cent of the persons registered as stateless in Sweden in 2015 were born abroad, out of whom 26 per cent are children. In addition, 18 per cent of the persons registered as stateless were born in Sweden, out of whom 96 per cent were under 18 years at the end of 2015 (see Table 9 in Section 4.3.1.1 below).

In order to get an understanding of the background of the asylum-seekers registered as stateless in the Register of the SMA, the consultant requested access to a representative sample of decisions made by the SMA in asylum cases involving applicants recorded as "stateless" or with "unknown" nationality. However, it needs to be recalled that the background of the stateless asylum-seekers arriving in Sweden has changed somewhat since 2012, when the decisions were selected and reviewed by the consultant. At that time, Palestinians constituted the largest group of stateless applicants for asylum, as shown in the section below, while persons originating from Syrian constitute the main one today. The SMA estimates that around 80 per cent of the stateless applicants for asylum in 2014 originated from Syria. Sweden's recognition of Palestine as a State has also changed the previous practice of registering all Palestinian applicants as stateless.

The SMA has adopted a Judicial Position on the migration-related consequences of Sweden's recognition of Palestine in March 2015,[77] which affirms that Palestine must be considered to have citizens, even though the State lacks citizenship legislation. However, as the citizenship has deficiencies, citizens, in certain situations, should be considered as *de facto* stateless. It further states that persons who can show it is probable that they are registered in the West Bank, Gaza or East Jerusalem can be registered as citizens of Palestine, and that children born to such persons shall also be registered as citizens of Palestine. Other Palestinians shall be considered stateless, be registered as such, and have their asylum claim assessed in relation to their former country of habitual residence.

2.3.2 Profile of stateless asylum-seekers

The SMA shared 24 decisions made during the first nine months of 2012 in respect of persons who had been considered as "stateless" or with "unknown" nationality. The selection was done by the SMA and comprised 12 decisions concerning stateless persons and 12 decisions concerning persons with "unknown" nationality. The majority (11) of the stateless persons were recorded as Palestinians, with Gaza, Jordan, Iraq and Algeria indicated as their country or region of former habitual residence, while one decision concerned a stateless Bidoon from Kuwait. In two of the cases from Jordan, the applicants claimed to be Palestinians from the West Bank and Syria, but these claims were found not to be credible. Based on the information presented and the investigation conducted, they were instead determined to have habitually resided in

[77] *Rättsligt ställningstagande angående de migrationsrättsliga konsekvenserna av Sveriges erkännande av Palestina, SR 11/2015*, available at: http://goo.gl/PoR4LZ.

Jordan. However, their Palestinian background was, as such, not questioned and they were recorded as stateless.

Only one of the decisions made in respect of persons recorded as having "unknown" nationality raised a question as to why the person's nationality had been indicated as "unknown" and whether there was a possibility that the person was actually stateless.[78] The decision concerned a child who was born in Sweden to a woman who was determined to *possibly* be of Somali nationality, and in any case of Somali origin. The decision mentioned that the child's father was a Somali national, but that he did not live in Sweden. It was, however, not mentioned if the mother and father were married. The asylum claim of the child was assessed with regard to Somalia, while the decision contained no specific explanation or assessment in regard to the child's nationality and why it was considered as "unknown". The child was granted asylum and refugee status in Sweden.

In the asylum decisions reviewed, the applicants' statelessness and country of former habitual residence was generally not questioned. In the cases concerning stateless applicants from places other than Gaza, i.e. Palestinians from Algeria, Iraq and Jordan and a Bidoon from Kuwait, their claims were directly related to the applicants' lack of a nationality and therefore their difficult situations and limited enjoyment of rights in the former countries of habitual residence. In all these cases, the SMA concluded that the fact that the person was stateless in his or her country of former habitual residence did not as such amount to persecution or constitute a ground for subsidiary protection or for another type of status. The extent of the assessment concerning the person's rights as stateless in the country of former habitual residence, including his or her possibility to acquire a nationality, varied. In some of the cases, the assessment was rather comprehensive, while in others, the limitations on access to rights because of the person's statelessness were not assessed at all.

In a decision from 2008, the Migration Court of Appeal assessed to what extent statelessness should be considered as a possible human rights violation and form a ground, or a cumulative ground, for persecution.[79] The applicant, a stateless Kurd from Syria, sought asylum in Sweden on the ground that she could not return to Syria because she would risk being subjected to torture and other degrading treatment, and because it would not be possible for her to return due to the fact that she was not a national of Syria. She had participated in a demonstration for the rights of Kurds, and been detained as a result. During the detention, she was harassed and assaulted. The asylum application was rejected by the SMA, which did not consider it likely that the applicant would face further persecution, and thus concluded that she would be able to return to Syria.

The applicant appealed the decision to the Migration Court. The SMA, in response to this, accepted the appeal to the extent that it considered that the applicant was likely to be a stateless Maktoum (Arabic for "unregistered") Kurd from Syria and that her membership of that group alone could form a ground for granting her refugee status. The Migration Court, however, rejected the appeal. The Migration Court agreed with the SMA's finding that it was likely that the applicant was a stateless Maktoum Kurd from Syria. The first question the Court addressed was whether the applicant, based solely on her membership of that group, was in need of international protection. The Court noted that in such an assessment, the assumption is that only in exceptional circumstances can an asylum-seeker be granted a residence permit based solely on his

78 In the majority of these cases, the uncertainty regarding the nationality was a result of information pointing towards two or more countries of which the person possibly could have been a national, due to conflicting information regarding the country of origin; due to a language test indicating a different country of nationality than claimed; or when two countries had been considered with regard to the refugee claim when the applicant claims to be a national of one country and the SMA considers another country as the possible or likely country of origin. In the cases where the claim was assessed with regard to two countries and where the asylum applications were rejected, the two countries were also determined as countries of return. In all of these cases it appeared relatively clear that the person had at least one nationality; none of the persons had claimed not to have a nationality at all.

79 MIG 2008: 21 ("Enbart den omständigheten att en person är statslös, tillhörande gruppen maktoumeen, innebär inte att personen ifråga kan anses vara flykting enligt 4 kap. 1 § utlänningslagen utan en individuell prövning i det enskilda fallet måste göras."), available at: https://lagen.nu/dom/mig/2008: 21.

or her membership of a certain group. The Court further referred to the discrimination faced by stateless Maktoum Kurds from Syria and noted that the question was if the alleged discrimination reached the level of persecution in accordance with refugee law. The Migration Court concluded that the discrimination faced by Maktoum Kurds as a group was not sufficient to qualify the applicant as a refugee, or as in need of subsidiary protection. The Migration Court further concluded that she had not shown individual reasons for fearing persecution or other forms of harm qualifying her for subsidiary protection. The appeal was therefore rejected.

The applicant appealed this decision to the Migration Court of Appeal. She argued that as a Maktoum Kurd from Syria she has no right to a nationality, to travel documents and to freedom of movement and that she lacked many other basic rights in Syria. In its response, the SMA accepted the appeal. The SMA first noted that cumulative discrimination can amount to persecution; whether discrimination against a certain group shall be considered to amount to persecution will depend on its intensity and extent, and whether the mere belonging to that group means that all members can be considered as facing an individual risk of persecution. The SMA concluded in its submission that the applicant should be considered a refugee as she, in her home country, is at risk of persecution for reasons of her belonging to the race, or alternatively, the nationality or social group Maktoum Kurds. In its reasoning, the SMA made references to Maktoum Kurds' statelessness. For example, the SMA noted that Maktoum Kurds from Syria do not have the possibility to naturalize as they lack recognition as persons before the law. It was further noted by the SMA that the Maktoum Kurds from Syria do not have the possibility to influence their situation since the statelessness is passed on to their children. The SMA also noted that, compared to many other groups of stateless persons, the exclusion faced by Maktoum Kurds from Syria is more serious.

The Migration Court of Appeal agreed with the Migration Court's view that the fact that the applicant was a Maktoum Kurd from Syria did not, as such, mean that she should be considered a refugee, as she did not, solely on this ground, risk sufficiently serious restrictions in her rights and persecution upon a return to Syria. The Migration Court of Appeal therefore proceeded to look into the applicant's individual circumstances. The Court concluded that the applicant's political activity, coupled with her particular vulnerability due to her membership of the group Maktoum Kurds, meant that she would be at risk of persecution and should be recognized as a refugee.

While the applicant's membership of the group Maktoum Kurds was considered relevant and important by the Migration Court of Appeal in its judgment, the Court did not seem to attach much weight to the restrictions in their access to and enjoyment of human rights that Maktoum Kurds face in Syria on account of their statelessness, even though this element had been highlighted by the SMA.

In the cases concerning Palestinians from Gaza and Jordan, where the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) provides assistance to Palestinians, no reference was made to UNRWA and whether the person had been registered with UNRWA or not. The general conditions in Gaza were not found to be a basis for international protection or for another type of residence permit. However, if the person was considered to be particularly vulnerable, the person's vulnerability, together with the generally challenging situation in Gaza, was considered as a sufficient ground for a residence permit based on particularly distressing circumstances, pursuant to Chapter 5, Section 6 of the Aliens Act. Refugee status was granted in one of the reviewed cases concerning a Palestinian from Gaza.

2.3.3 The human face of statelessness

As discussed above, most of the stateless persons in Sweden entered the country in a migratory context. Their experiences with judicial and administrative processes have mostly been in relation to an application for asylum or a residence permit on other grounds, or for naturalization. In none of these processes does their statelessness *per se* appear to have been given much attention.

Also, from the consultations held with national and non-governmental stakeholders, there appears to be limited awareness about the issue of statelessness generally, and the situation of stateless persons in Sweden and their rights under the 1954 and 1961 Conventions, specifically. The NGOs consulted indeed confirmed that the possible protection concerns of stateless persons outside the asylum context are not well known or prioritised by organizations working on behalf of vulnerable populations.

2.4 Conclusions and recommendations

Awareness of statelessness as a distinct human rights issue, which has consequences for the individuals concerned, and for States like Sweden which are Parties to the 1954 and 1961 Conventions, is generally low among government authorities, NGOs, and the public at large. This is not least evidenced through the absence of any reference to the 1954 or the 1961 Conventions in the Government Bill on the Act on Swedish Citizenship. There is a corresponding lack of research on the situation of stateless persons in Sweden, as well as a lack of targeted assistance aimed at this group. For these reasons, coupled with the lack of information about the origins of stateless applicants for asylum in the Register of the SMA, it was difficult to get a comprehensive picture of the origins, backgrounds, and profiles of stateless persons in Sweden. Unfortunately, the scope of this research project did not allow UNHCR to conduct participatory assessments with stateless persons in Sweden, which would have been valuable to learn more about stateless persons' profiles and situation. UNHCR would therefore recommend that such a participatory study be undertaken, as it would shed light on the situation of stateless persons in Sweden and how their statelessness affects their situation in Sweden.

Individuals holding a residence permit in Sweden are registered by the Swedish Tax Agency in the Population Register, which *inter alia* holds information about the individual's nationality status, including if he or she is stateless, or of "unknown" nationality, or if his or her nationality is "under investigation". The SMA maintains a separate Register of individuals being processed pursuant to the national aliens or citizenship legislation, including persons seeking international protection or stay in Sweden on other grounds. While an individual's nationality status, including his or her statelessness, is registered and publicly available in the Register of the SMA, there is no readily available information about the countries of birth or former habitual residence of persons registered as stateless, or as having "unknown" nationality or "under investigation" while undergoing these procedures. This limits the accessibility to information concerning the origins and backgrounds of the persons registered as stateless, as having "unknown" nationality or as having their nationality "under investigation" by the SMA. UNHCR therefore recommends exploring the possibility of recording such persons' country or place of former habitual residence in the Register of the SMA in a manner which enables the generation of statistical reports containing this data.

As indicated above, the Swedish Tax Agency and the SMA use the same categories when registering persons who are stateless, or potentially stateless, namely "stateless", "unknown" nationality, and nationality "under investigation", which is positive. Inconsistencies in the actual registration of an individual's citizenship status in the respective registers could nonetheless arise due to the lack of a legal definition of a stateless person in the national legislation, the absence of common guidelines on how to interpret and apply the aforementioned categories, and the lack of an automated system for updating and aligning information in the two registers.

According to statistical information published by Statistics Sweden, the following number of individuals were registered in the Population Register as "stateless", as having "unknown" nationality or as having their nationality "under investigation" at the end of 2015:

- 21,580 stateless persons;
- 5,523 persons with "unknown" nationality; and
- 119 with their nationality "under investigation".

Furthermore, the following number of asylum-seekers were registered in the Register of the SMA as stateless, or as having "unknown" nationality or "under investigation" at the end of 2015:

- 7,771 stateless asylum-seekers;
- 317 asylum-seekers with "unknown" nationality; and
- 918 asylum-seekers with their nationality "under investigation".

In addition, 382 stateless persons and 165 persons with "unknown" nationality were pending return at the end of 2015 (see Section 3.4.1.2 below).

This brings the total number of stateless person known to the authorities to be on Swedish territory, by the end of 2015, to 29,733; while the number of persons with "unknown" nationality was 6,005; and the number of persons with nationality "under investigation" was 1,037. Around 18 per cent of the stateless persons holding a residence permit were born in Sweden.

In view of the above, UNHCR would recommend incorporating the definition of a stateless person in the national legislation and developing common guidelines for the authorities involved in the assessment of an individual's citizenship status and potential statelessness. As elaborated in further detail below, in Section 3, UNHCR moreover recommends establishing a procedure within which an individual's status as stateless is consistently determined based on set definitions and clear guidelines. Even before such a procedure is established, it will be important to undertake activities aimed at raising the awareness of government officials and, in particular SMA and Swedish Tax Agency staff, about the international standards pertaining to the identification and determination of statelessness, and Sweden's obligations in this regard. UNHCR also recommends that a system be devised to enable the automated, or systematic, updating and alignment of information in the Population Register and Register of the SMA, to avoid inconsistencies.

3. Determination of statelessness and rights attached to the status

3.1 Introduction

As noted in Chapter 1.1.1, a stateless person is defined in Article 1(1) of the 1954 Convention as "a person who is not considered as a national by any State under the operation of its law." This definition identifies the persons who are entitled to the core protections of the 1954 Convention, with additional Convention rights depending on the individual's residence status, as discussed below. While ultimately, only the acquisition of a nationality will end a person's statelessness, in situations where this is not yet possible, it is necessary to protect stateless persons. A formal statelessness determination procedure makes it possible to identify those persons who are entitled to the protection regime of the 1954 Convention.

For a statelessness determination procedure to be fair and efficient, a number of procedural safeguards must be taken into consideration. The procedure must be accessible for stateless persons,[80] including "unreturnable" persons in detention, which also entails an obligation to provide information about the availability of the procedure. During the procedure, applicants should be entitled to certain rights.[81] For example, they may not, in principle, be detained for reasons relating to their statelessness, and in situations where they are nevertheless detained, it must be a measure of last resort and the person may not be held with convicted criminals or individuals awaiting trial.[82] Moreover, pending the outcome of the procedure, the applicant may not be expelled from the State where the procedure is ongoing.[83]

The 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, based on their degree of attachment to the State, with some protections applicable to all stateless persons, and others dependent on the precise legal status of the individual.[84] Some provisions depend on whether the person is

80 UNHCR, *Handbook*, paras. 68-70.

81 *Ibid.*, paras. 144-146.

82 *Ibid.*, paras. 112-115.

83 *Ibid.*, paras. 72 and 145.

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

"lawfully in,"[85] "lawfully staying in,"[86] or "habitually resident" in a territory.[87] Other provisions, however, are applicable to any individual concerned who is either subject to the jurisdiction of a State Party or present in its territory.

Those rights in the 1954 Convention which are triggered when an individual is subject to the jurisdiction of a State Party include personal status (Article 12), property (Article 13), access to courts (Article 16(1)), rationing (Article 20), public education (Article 22), administrative assistance (Article 25) and facilitated naturalization (Article 32). Additional rights that accrue to individuals when they are physically present in a State Party's territory are freedom of religion (Article 4) and the right to identity papers (Article 27).[88]

Additionally, the vast majority of human rights apply to all persons on a State's territory or subject to its jurisdiction irrespective of nationality or immigration status, including to stateless persons. Moreover, the principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status. International human rights law thus supplements the protection regime set out in the 1954 Convention. Whilst a number of provisions of international human rights law replicate rights found in the 1954 Convention, others provide for a higher standard of treatment or for rights not found in the Convention at all.[89] Examples of important human rights standards in this area are found in the CEDAW, which provides that States Parties shall grant women equal rights with men to acquire, change or retain their nationality, while the CRC and the ICCPR both provide for the right of every child to acquire a nationality.

The following sections examine the existing administrative procedures within which statelessness may be identified in Sweden and the rights that may be granted to stateless persons based on their immigration status and residence permit received, comparing them to the standards set forth by the 1954 Convention, primarily.

3.2 National legal framework

As mentioned in Section 2.1, Sweden acceded to the 1954 Convention on 2 April 1965,[90] with a number of reservations.[91] While both the Act on Swedish Citizenship[92] and the Decree on Swedish Citizenship[93] contain references to statelessness and stateless persons, neither of them contain a definition of who is to be classified as a "stateless person"; in other words, the definition of a stateless person set out in Article 1(1) of the 1954 Convention has not been transformed into Swedish law. The Government Bill on the Act on

85 For a discussion of the "lawfully in" rights, see UNHCR, *Handbook*, para. 134.

86 See UNHCR, *Handbook*, para. 137, noting, "The 'lawfully staying' requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorized by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category. It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be 'lawfully staying.' Individuals recognized as stateless following a determination procedure but to whom no residence permit has been issued will generally be 'lawfully staying' in a State party by virtue of the length of time already spent in the country awaiting a determination." See also Laura van Waas, *Nationality Matters: Statelessness under International Law*, Intersentia, 2008, pp. 325-327.

87 For a comprehensive discussion on the proper interpretation of these terms, see UNHCR *Handbook*, paras. 147-152 (*inter alia*, making specific recommendations as to the granting of a residence permit; noting that the recognition of an individual as stateless "triggers the 'lawfully staying' rights"; discussing "habitual residence"), paras. 136-139 (discussing the "lawfully staying" rights as well as "habitually resident" provisions).

88 *Ibid.*, para. 133.

89 *Ibid.* paras. 140-141. Also, for an overview see UNHCR, *Extracts relating to nationality and statelessness from selected universal and regional human rights instruments*, November 2009, available at: http://www.refworld.org/docid/4c29aec02.html.

90 SÖ 1965: 54.

91 See http://goo.gl/vXzFaE.

92 *Lag (2001: 82) om svenskt medborgarskap*, available in Swedish at: http://goo.gl/DISA6r, and in English at: http://goo.gl/UHaVWa.

93 *Medborgarskapsförordning* (2001: 218), available at: http://goo.gl/HS6Gz7.

Swedish Citizenship does provide some guidance, however. It states that, in accordance with the proposal of the Council on Legislation (*Lagrådet*), the term "stateless" is used in the Government Bill instead of the term "involuntarily stateless". The Bill then explains that, "stateless" refers to a person who is "involuntarily stateless" and who has not, him or herself, taken any measures to become stateless. A person's potential possibilities of becoming a citizen in another country do not affect the assessment of whether the individual shall be considered as stateless.[94] Section 1 of the Aliens Act contains the refugee definition in the Refugee Convention and consequently also refers to stateless persons as possible refugees.[95]

There is no specific status provided for stateless persons under Swedish law, and no dedicated statelessness determination procedure is in place. However, as statelessness in Sweden mostly arises in a migratory context, persons can be identified as stateless when applying for asylum, an immigration permit, naturalization, or when registering children born to stateless or foreign nationals in Sweden. Relevant provisions regarding these procedures and the rights of stateless persons are found *inter alia* in the Aliens Act,[96] the Aliens Decree,[97] the Act on Swedish Citizenship, the Decree on Swedish Citizenship, the Administrative Procedure Act,[98] and in the Population Registration Act.[99]

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

Sweden does not have a specific statelessness determination procedure. Therefore it is necessary to look into the asylum, and other immigration, registration and naturalization procedures as it is through these that nationality, or lack thereof, can be identified to some degree.

The majority of stateless persons enter Sweden through the asylum procedure, although it should be noted that a significant number of stateless persons in Sweden were born in the country, as indicated in Table 3 in Section 2.2.2.1.

In the asylum procedure, the Asylum Unit of the SMA assesses an asylum-seeker's nationality, or the lack thereof, within the context of establishing the applicant's identity. When a foreigner applies for a residence permit outside of the asylum procedure, the Residence Permit Unit of the SMA assesses the nationality, or lack thereof, of the applicant as part of the establishment of the applicant's identity within the procedure. Statelessness can also be identified in connection with a registration in the Swedish Population Register of an immigrant who has obtained a residence permit in Sweden, and in the context of registering the birth of a child in Sweden born to a registered parent. Finally, the Citizenship Unit of the SMA can make an assessment of nationality or statelessness when a notification or application for naturalization is made.

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94 *Regeringens proposition* (1999/2000: 147), Lag om svenskt medborgarskap, p. 77.

95 Other references to statelessness in the Aliens Act can be found in Chapter 4, in the sections that refer to persons in need of other forms of international protection (Sections 2 and 2a), to cessation of refugee status (Section 5) and to travel documents (Section 4).

96 *Utlänningslag* (2005: 716), available at: https://goo.gl/Y8p9JZ.

97 *Utlänningsförordning* (2006: 97), available at: https://goo.gl/GpVPvx.

98 *Förvaltningsprocesslag* (1971: 291), available at: http://goo.gl/2K0sFc.

99 *Folkbokföringslag* (1991: 481), available at: http://goo.gl/plOaeJ.

3.3.1 Competent authority

The decision-making authority in asylum matters and in applications for residence permits on other ground is the SMA.[100] The SMA is also the decision-making authority in nationality matters, except those concerning nationality-related notifications made by nationals of the Nordic countries, which are decided upon by the County Administrative Boards.[101] Within the notification and naturalization procedures, the Citizenship Unit of the SMA conducts an assessment of the applicant's statelessness, to determine if he or she is eligible for citizenship.

Asylum claims submitted by stateless persons may be assessed by any asylum caseworker, as there are no staff specialized in dealing with claims of asylum-seekers who are, or might be, stateless. All case workers are expected to be able to apply the relevant legal provisions in cases of stateless asylum-seekers, and be able to define who is a stateless person.[102] While there are internal Judicial Guidelines on certain asylum matters issued by the Legal Director of the SMA (so-called "Rättsliga ställningstaganden"), no such guidelines have been issued regarding how to determine an applicant's statelessness and/or how to assess the consequences of an applicant's statelessness from an international protection perspective. Therefore, the only domestic guidance available to the caseworkers of the Asylum Unit, to support their determination of asylum claims from stateless persons, are the general criteria for international protection in the Aliens Act, as well as general guidance on, for example, credibility assessments and the situation in specific countries. While it was not possible to determine, with certainty, the extent to which UNHCR's *Handbook* and *Guidelines* on statelessness are used by the caseworkers, it appears that they are generally not known or used by the caseworkers responsible for assessing whether an asylum applicant is in fact stateless.

The Population Register is managed by the Swedish Tax Agency, which is the decision-making authority on registration of Swedish residents and children born in Sweden.[103]

3.3.2 Procedural aspects

3.3.2.1 INITIATING THE PROCEDURE

Nationality or the lack thereof has some importance in asylum assessments. The nationality of an asylum-seeker is considered as an element of the applicant's identity, and establishing identity is one of the main elements of the asylum assessment.[104] However, while it is considered important to determine the applicant's country of origin in the determination of his or her asylum claim, the assessment of whether the applicant is a national of that country, or stateless, does not seem to be of significant importance. The assessment of an asylum-seeker's potential statelessness is generally very brief, and little attention and weight appears to be given to statelessness on its own.[105] Instead, the determination is focused on assessing whether the applicant has a well-founded fear of persecution, with regard to his or her former country of habitual residence, or "regular place of residence" (*vanliga vistelseort* in Swedish), according to an SMA Judicial Position.[106] In respect of asylum-seekers with a nationality, the Judicial Position refers to the

100 In accordance with Chapter 4, Section 6 and Chapter 5, Section 20 of the Aliens Act respectively.

101 In accordance with Section 22 of the Act on Swedish Citizenship.

102 Meeting with the SMA, 6 September 2012, and telephone conversation with the SMA, 7 September 2012.

103 In accordance with Section 1 of the Population Registration Act, *Folkbokföringslag* (1991: 481).

104 Telephone conversation with the SMA, 7 September 2012.

105 Based on the consultant's review of selected asylum decisions concerning stateless asylum-seekers.

106 *Rättsligt ställningstagande angående utredning och prövning av identitet och medborgarskap samt hemvist och vanlig vistelseort i asylärenden, RCI 07/2016*, 24 March 2016, available at: http://goo.gl/LNHEOb.

concept of *hemvist*, which best translates as "lawful and habitual residence",[107] as the basis for determining which country the well-founded fear or future risk assessment should be made against. While the Aliens Act, Chapter 4, Section 1 differentiates between a refugee and a stateless refugee and refers to country of nationality and country of former habitual residence respectively, such distinctions did not seem to be made in the asylum assessments and decisions prior to the adoption of the aforementioned Judicial Position, in March 2016. Hence, the decisions reviewed within the scope of this research referred to *hemvist* and home country, regardless of whether the applicant in question was a national of the country or not.[108]

The only decision that bears any legal effect in the asylum procedure is the one to grant a residence permit or not. Therefore, even if an asylum applicant has been assessed to be stateless in the context of establishing his or her identity, and this is mentioned in the definition, that assessment does not mean that the person has been legally determined to be a stateless person. The only decisions with regard to nationality which are declaratory and legally binding are those made on Swedish nationality.

As a general rule, applications for residence permits other than asylum shall be submitted outside of Sweden and granted before the person concerned enters the country, in accordance with the Aliens Act Chapter 5, Section 18. A requirement for a residence permit to be granted is that the applicant is in possession of a valid travel document, normally a national passport; persons who do not have a valid travel document cannot be considered for a residence permit in Sweden.[109] As the grant of a residence permit depends on whether the person fulfils the prescribed requirements, the nationality or home country of the applicant is not relevant in the assessment of the application. If the travel document of the applicant indicates that the person is stateless, he or she is normally accepted and recorded as stateless.[110] Therefore, the need for determining a person's possible statelessness in the other immigration procedures is minimal.

When a child is born in Sweden to immigrant parents, the parents need to apply for a residence permit for the child. In such cases, an assessment of the child's nationality is conducted, to a certain extent, by the SMA. It is not an extensive determination because the child's nationality is not relevant for granting the residence permit. The relevant factors are whether the parent(s) have a residence permit in Sweden and if the child actually is their child. The SMA obtains information about the child recorded by the Swedish Tax Agency in the Population Register. In cases where the SMA comes to a different conclusion than the Swedish Tax Agency regarding the child's nationality, the SMA cannot change the nationality indicated in the Population Register; therefore, the two registers may contain different information on the child's nationality, or lack thereof.

The SMA's determination of nationality, if different from the Swedish Tax Agency's, is only explained in the decision regarding the residence permit. Whether a change is made in the Population Register by the Swedish Tax Agency, based on the determination of nationality by the SMA, depends on whether the applicants share the SMA decision with the Swedish Tax Agency, and whether the Swedish Tax Agency decides to register it accordingly.[111]

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107 The term "hemvist" in the context of the nationality legislation means habitual residence in Sweden with the intention to remain in the longer term. It does not require registration in the Population Register or a minimum number of years of residence, though the residence must be lawful. The focus is on the intention to stay in Sweden. See *Proposition (1997/98: 178) Medborgarskap och identitet*, p. 9, MIG 2008: 17 and MIG 2013: 22.

108 Conclusion drawn by the consultant based on her review of 24 asylum decisions made by the SMA during the first nine months of 2012 in respect of stateless asylum-seekers and applicants of "unknown" nationality.

109 However, some exceptions are made in respect of children and parents who can prove their kinship through DNA testing, if the applicant is a national or habitual resident of country where it is impossible to obtain a travel document accepted by Sweden; this practice is primarily applied in respect of applicants from Somalia.

110 Telephone conversation with the SMA, 28 September 2012.

111 *Ibid.* See also Section 2.2.1 which refers to the lack of an automated system for harmonization of information contained in the respective registers.

Determining a child's nationality is normally without complications when the child automatically acquires nationality from a mother or father who are registered in the Population Register, in accordance with the nationality law of their country of nationality. A child of a Swedish national will always obtain Swedish citizenship, regardless of whether it is the mother or the father who is a Swedish national. If the parents are unmarried, and it is the father who is the Swedish citizen, the paternity must first be established before the child can registered as a Swedish national; see further below.

In situations where the acquisition of nationality requires the parent(s) to take action, such as registering the child at the Embassy of their country of nationality, the child is first registered as stateless or with "unknown" nationality (depending on the country in question). The information is then updated when the Swedish Tax Agency receives evidence of the acquisition of nationality from the parent(s).[112]

However, the Swedish Tax Agency considers the determination of nationality as more challenging in certain situations. Firstly, if the mother is not married and the child's father is not registered in the Swedish Population Register, the child is registered as having "unknown" nationality, if the mother is prevented by the nationality law of her country of nationality to confer her nationality to her child, or if the mother is herself stateless.

Secondly, in situations where the parents are married, but the father is not registered in the Population Register and the mother is unable to confer her nationality to her child, the child's nationality is registered as "unknown", unless the father's nationality can be established and conferred to the child (based on his country's domestic legislation); in such a case, the child will be registered as the nationality of the father.

In situations where the parents are not married and only the father is registered in the Population Register, the child will not, according to Section 3, paragraph 3 of the Population Registration Act, be registered in the Population Register. As mentioned in Section 2.2.1 above, a child who is not registered in the Population Register at the time of his or her birth will nonetheless have the birth recorded by the Swedish Tax Agency. The child's nationality will not be assessed in connection with the recording, though the mother's nationality will be indicated, as well as the father's, if known. If the child at a later stage obtains a residence permit and is to be registered in the Population Register, an assessment will then be made of the child's nationality. It will be determined with regard to the mother's nationality only if her nationality can be established, otherwise the child will be registered as having acquired the father's nationality, provided the domestic legislation of his country of nationality permits. However, it is required that the paternity of the father to the child is first established, and that his fatherhood is recognized by his country of nationality in order for the child to be considered as having acquired the father's nationality.[113]

The Swedish Tax Agency is responsible for informing the Board of Social Welfare when the paternity of a child who has been registered is unknown, or when the paternity of a child whose birth has been recorded is unknown. It is the Board of Social Welfare in the municipality where the child is registered, or, in the case of recording, where the child is born, which is informed.[114] In accordance with the Children and Parents Code[115], Chapter 2, the Board of Social Welfare has the responsibility to try to clarify who the father is and have the paternity established with regard to a child who is a resident in Sweden. When the Swedish Tax Agency receives confirmation of the paternity, a new assessment is conducted concerning the child's nationality. However, the paternity may remain unestablished and, in cases where the child cannot acquire the mother's nationality, the child's nationality may also remain unclear to the Swedish Tax Agency; in such cases, it would normally be registered as "unknown".[116]

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112 Telephone conversation with the SMA, 28 September 2012.

113 Telephone conversation with the Swedish Tax Agency, 10 September 2012 and emails, 20 and 26 September 2012.

114 Follows from Section 7 of the *Decree (2001:589) concerning the Handling of Personal Data in the Tax Agency's Activities' Related to Population Registration*. See *Förordning (2001:589) om behandling av personuppgifter i Skatteverkets folkbokföringsverksamhet*, available at: http://goo.gl/2W0VlX.

115 *Föräldrabalk* (1949:381), available at: https://goo.gl/FYVl25.

116 Telephone conversation with the Swedish Tax Agency, 10 September, and email, 20 September 2012.

3.3.2.2 QUESTIONS OF PROOF

Although the 1954 Convention does not articulate a standard of proof, States are encouraged to make a finding of statelessness where it is established to a "reasonable degree" that an individual is not considered as a national by any State under the operation of its law.[117] Given the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Moreover, statelessness, by its very nature, cannot normally be proved. Rather, it is an individual's nationality that can be proved. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence.[118]

As there is no specific statelessness determination procedure in Sweden, the burden and standard of proof applied when assessing an individual's potential statelessness will depend on the procedural standards and guidelines governing such assessments in the procedure in question, for example the asylum or naturalization procedure.

Establishing identity, including citizenship status, for the purpose of the asylum procedure

An assessment of whether an asylum applicant is stateless, or of "unknown" nationality, is part of establishing his or her identity, for the purpose of, thereafter, determining whether he or she is in need of international protection. The SMA has adopted a Judicial Position on establishing an applicant's identity in asylum claims, which provides guidance to SMA case workers and decision makers.[119] The Judicial Position notes that Swedish legislation does not contain a definition of "identity", but that, according to the preparatory works and judicial practice, an individual's identity comprises name, date of birth and, as a general rule, citizenship.[120] It also asserts that a precondition for an individual assessment of the asylum claim is that the applicant has made his or her identity "probable" (*sannolik*). In comparison, the *Handbook* encourages States to make a finding of statelessness where it is established to a "reasonable degree" that an individual is not considered as a national by any State under the operation of its law. The aforementioned Judicial Position explains the importance of the SMA case worker encouraging the asylum-seeker to play an active role in establishing his or her identity, or making it probable. The best way for a person to establish his or her identity is to present an original passport or ID document. If the applicant cannot show any documentary proof of his or her identity, he or she should be given an opportunity to explain why such documentary proof is not available. The Judicial Position further affirms that it is possible to determine an asylum-seeker's identity solely based on his or her oral account, and that other methods, such as knowledge and language tests, may be used to establish the applicant's identity in the absence of a passport or ID document.

While the aforementioned Judicial Position does not contain any direct references to the particular difficulties stateless applicants may have in presenting a national passport or ID document as proof of their identity, it can be noted that the Government Bill on Citizenship and Identity of 1998, which introduced an exemption from the general requirement to prove one's identity in order to be eligible for nationalization,

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117 UNHCR, *Handbook*, para. 91.

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

119 SMA Judicial Position on probable identity in asylum cases, *Rättsligt ställningstagande angående sannolik identitet i asylärenden,* RCI 08/2013, available at: http://goo.gl/4IfEIH.

120 *Proposition (1997/98: 178) Medborgarskap och identitet*, p. 8, available at: https://goo.gl/8DisFY; MIG 2010: 17, MIG 2011: 11 and MIG 2012: 1.

refers to stateless persons as one of the groups which may have limited possibilities of obtaining documents to prove their identity.[121]

In March 2016, the SMA adopted a Judicial Position on the examination and determination of identity and citizenship, as well as country of habitual residence or regular place of residence in asylum cases.[122] This Judicial Position provides guidance on the various forms of evidence and methodologies that can be used to establish an applicant's identity and citizenship, or in the case of stateless applicants, their regular place of residence. Furthermore, in June 2016, the SMA adopted a Judicial Position on the notion of regular place of residence (*vanlig vistelseort*),[123] which provides guidance to case workers and decision makers on how to determine against which country, or countries, a determination of a stateless asylum applicant's claim should be made. This Judicial Position reaffirms that "The one who claims to be stateless must make this probable."

Establishing identity, including citizenship status, of a child born in Sweden for the purpose of registration in the Population Register

As mentioned in Section 3.3.2.1 above, when a child is born in Sweden to an alien with a residence permit in Sweden, the Swedish Tax Agency is the first authority to conduct a determination of the child's nationality in the context of the child's registration in the Population Register. When determining the child's nationality, the Swedish Tax Agency primarily uses the SMA's assessment of the parents' nationality(ies), undertaken in the context of their asylum or other residence permit applications; information regarding the parents' nationality, or lack thereof, is stated on their respective residence permits. The Swedish Tax Agency may also rely on other available personal and identity documents.

The Swedish Tax Agency relies on its own information regarding the nationality legislation of different countries,[124] and information obtained from the parents of the child, when assessing whether the child can acquire the nationality of one of his or her parents. In cases where the nationality law does not provide for acquisition of nationality automatically at birth through the parents, or where nationality is not acquired through a simple formality such as a formal registration at an authority of the country of nationality, further evidence is required on the acquisition of the parents' or one of the parent's nationalities; otherwise the child is registered as being stateless or with "unknown" nationality (depending on the country in question).[125]

When the nationality law does not provide for the acquisition of nationality by the child through the mother and the parents are not married but the father is registered in the Population Register, further information regarding paternity and acquisition of nationality through the father is required, otherwise the child is registered as stateless or with "unknown" nationality. In these cases, the burden of proof rests on the parents who need to prove that the child has a nationality, or that they have taken the appropriate steps to ensure the child has acquired one. The Swedish Tax Agency bases their overall assessments of a child's ability to acquire nationality from one of his or her parents on their administrative practice.

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121 *Ibid.* The text reads, in Swedish: "Många av de personer som kommer till Sverige utan godtagbara identitetshandlingar är flyktingar och personer som kommer från länder, vilka saknar en fungerande statlig administration. Problem avseende kravet på styrkt identitet förekommer emellertid om än i mer begränsad omfattning även beträffande vissa andra grupper än de nu nämnda. Det kan t.ex. röra sig om statslösa personer eller personer som kommer från något land vars identitetshandlingar är av så enkel beskaffenhet att de i princip inte godtas av svenska myndigheter."

122 *Rättsligt ställningstagande angående utredning och prövning av identitet och medborgarskap samt hemvist och vanlig vistelseort i asylärenden, RCI 07/2016*, 24 March 2016, available at: http://goo.gl/rxqR8f.

123 *SMA Rättsligt ställningstagande angående begreppet vanlig vistelseort, RCI 14/2016*, 8 June 2016, available at: http://goo.gl/DSEysV.

124 The Legal Department (*Rättsavdelningen*) of the Swedish Tax Agency has issued a country information document, *Länderinformation*, which is regularly updated and which contains information on names and nationality and some general information about different countries.

125 Information from the Swedish Tax Agency, 30 June 2015.

In regard to the practice of registering a child as having "unknown" nationality, UNHCR would like to note that its *Guidelines* recommend that when a State finds a child to be of undetermined nationality, the State should seek to determine whether the child is otherwise stateless as soon as possible so as not to prolong the child's status of undetermined nationality.[126]

Establishing statelessness of a child for the purpose of acquiring Swedish citizenship by notification

In cases where a notification is made to the SMA on acquisition of Swedish nationality for a stateless child born in Sweden pursuant to Section 6 of the Act on Swedish Citizenship, or in respect of a stateless child who has been lawfully and habitually residing in Sweden for the past two years, in accordance with Section 7 of the Act (see further below in Section 4.3.1.1), an assessment of the child's statelessness is conducted by the Citizenship Unit of the SMA, independently from previous assessments undertaken by the other units of the SMA and the Swedish Tax Agency. The Citizenship Unit may however occasionally consult the Swedish Tax Agency regarding the grounds of their determination.[127]

The Government Bill on the Act on Swedish Citizenship[128] states that it is not required that the child's identity has been fully established in order to consider a child as stateless and therefore entitled to acquire Swedish citizenship through notification pursuant to Sections 6 or 7 of the Act; this is different from the strict requirement to establish identity in naturalization proceedings. As long as the information about the child's identity is sufficiently clear and it can be established that the child is stateless, the child should be able acquire Swedish nationality, even if the identity of the parents remains unclear to a certain extent. Furthermore, it is stated that even though registering the child with incorrect information may have a negative impact from the point of view of private and family law, the benefit of being able to acquire Swedish nationality and not remaining stateless would outweigh these potential difficulties.[129] Nonetheless, the Government Bill specified that the provisions concerning stateless children should only be applicable if it has been confirmed that the child is stateless. The provisions concerning stateless children should not cover children whose nationality has not been established.[130]

In practice, the Citizenship Unit determines the nationality, or the lack thereof, of a child based solely on whether the child automatically, acquires a nationality at birth by operation of law. If the nationality laws of the parents' country(ies) of nationality require the parents to take any action, by way of an application or a simple measure such as registering the child with the authorities of the country for the child to acquire a nationality, and the parents have not done so, the child is not considered to have acquired any nationality. Such a child is thereby considered stateless and, if meeting the other criteria, acquires Swedish nationality. It is not taken into account that the child may have a right to acquire another nationality, as the determining factor is the lack of automatic acquisition of nationality at birth.[131] This practice of considering as nationals of another country only those children who acquired nationality *ex lege* at birth has its basis in the Government Bill on the Act on Swedish Citizenship, which states that the more beneficial provisions for the naturalization of stateless persons are reserved only for those who have not themselves taken any measures to become stateless.[132]

Nonetheless, the standard of proof is high in order for Sections 6 and 7 of the Act on Swedish Citizenship on the acquisition of Swedish nationality through notification for stateless children to be applicable. This is because in both cases it has to be clear that the child is stateless. If the matter remains unclear to any extent,

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126 UNHCR, *Guidelines*, para. 22.

127 Telephone conversation with the SMA, 21 September 2012.

128 *Regeringens proposition* (1999/2000: 147) Lag om svenskt medborgarskap, available at: http://goo.gl/gqXQwE.

129 *Ibid.*, pp. 38-39.

130 *Ibid.*, p. 39.

131 *Ibid.*, pp. 38-39 and email from SMA, 12 October 2016.

132 *Ibid.*, p. 46, and confirmed by the SMA in email, 12 October 2016.

the nationality of the child will be considered as "unknown" and not as "stateless", and the child will not benefit from facilitated access to Swedish citizenship as a stateless person.[133]

In cases where a child does not acquire nationality from the mother, the Citizenship Unit looks into the acquisition of nationality from the father. Contrary to the determination made by the Swedish Tax Agency, the Citizenship Unit does not consider it relevant whether paternity has been established or not. In all situations, whether the parents are married or not, whether the father resides lawfully in Sweden and whether paternity has been established, the assessment is based on information concerning the presumed father's nationality and on whether the father can transfer his nationality in accordance with the nationality law of his country of nationality. Therefore, information given by the mother on the father's nationality is seen as sufficient to assess the child's nationality, and lack of established paternity does not lead to a conclusion that the child is stateless. If the child automatically acquires at birth the nationality of the assumed or claimed father, the child does not acquire Swedish nationality. This practice could lead to a situation where a child is incorrectly considered to have acquired the presumed father's nationality, when the child in fact is stateless; such a child would then miss his or her possibility to acquire Swedish citizenship by notification.

The differences in approach of the Swedish Tax Agency and the SMA in assessing the statelessness of a child are evident from a judgment of the Migration Court.[134] In this case, a child was born in Sweden to a mother of Somali nationality who was not, at the time of the birth of the child, married. The child's father was also a national of Somalia. The Swedish Tax Agency had not registered the child as a national of Somalia as the parents were not married and, according to their information, a child born to Somali nationals only acquires Somali citizenship if the parents are married. The parents then made an application to the SMA for the child to acquire Swedish citizenship, as the boy would otherwise remain stateless. The SMA, however, considered that the child had acquired Somali nationality at birth, and consequently was not stateless and could therefore not acquire Swedish nationality by notification in accordance with Section 6 of the Act on Swedish Citizenship. In the SMA's opinion, a child of a man who is a national of Somalia always acquires Somali citizenship.

The Migration Court referred to the Government Bill on the Act on Swedish Citizenship, which states that in cases where a child's nationality has not been established, Section 6 shall not be applied. Only if the statelessness of a child has been established, can the child acquire Swedish nationality. The Court concluded that it was unclear whether the child had obtained Somali nationality, and that it had therefore not been established that the child had been stateless since birth. Consequently, the child could not acquire Swedish nationality by notification in accordance with Section 6.

The Court referred to the Government Bill on the Act on Swedish Citizenship as a justification for its decision that Swedish citizenship should not be granted by notification.

According to NGOs interviewed by the consultant as well as several of the authorities consulted, these types of cases are not uncommon and often concern children born to women of Somali nationality who are not married to the child's father, or where the father does not reside in Sweden.[135]

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133 *Regeringens proposition* (1999/2000: 147) Lag om svenskt medborgarskap, p. 39, which reads "Barn vars medborgarskap inte kunnat fastställas bör därför, enligt regeringens mening, inte omfattas av bestämmelsen om statslösa barns möjligheter till förvärv av svenskt medborgarskap. Dessa barn bör i stället omfattas av den föreslagna ordningen för barn med utländskt medborgarskap", and telephone conversation with the SMA, 21 September 2012.

134 *Förvaltningsrätten*, Administrative Court in Malmö, UM 4636-11 E, 16 February 2012.

135 Telephone conversation with the Swedish Tax Agency, 10 September 2012; telephone conversation with the SMA, 21 September 2012; meeting with the Swedish Refugee Advice Centre on 19 September 2012; meeting with the NGO Sociala Missionen on 27 September 2012.

Naturalization

To naturalize, an applicant is required to prove his or her identity according to the Act on Swedish Citizenship, Section 11, and the Government Bill on Citizenship and Identity.[136] The residency requirement has been reduced for stateless applicants for naturalization, to four years (from five years, which is the rule for other non-Nordic nationals). According to the Government Bill on the Act on Swedish Citizenship,[137] this preferential treatment of stateless applicants shall only apply to those who have not themselves taken steps to become stateless, while stateless persons who would be able to acquire the citizenship of another country shall fall within the scope.

The Citizenship Unit of the SMA places the burden of proof mainly on the applicant and is not bound by previous assessments of nationality, or lack thereof, undertaken by other units of the SMA or by the Swedish Tax Agency.

The applicant for naturalization, or the parents of a child applying for notification, bear the main responsibility for providing information, and proving their statelessness when applicable. In this regard, it should be noted that the 1954 Convention requires a negative to be proven – that an individual is not considered as a national by any State under the operation of its law. While individuals are obliged to cooperate in establishing relevant facts, they will often face challenges accessing the relevant evidence and documentation needed to prove their absence of nationality. They should thus not bear sole responsibility for establishing relevant facts. Sharing the burden of proof will also recognize the role of the State in obtaining more reliable information from the competent authorities of other States.

The Citizenship Unit does not follow any specific guidelines when determining statelessness but each caseworker is expected to be able to make the determination based on the available information regarding the applicant and the nationality laws of relevant countries.

Identity may be proven by showing an original national passport or an original identity document. The passport or identity document must have been issued by a public authority in the country of origin, be of good quality and not be too rudimentary. There must be a photograph of the individual on the document, and the SMA must be able to easily see that it is the applicant on the photograph. There must be no doubt that the document is genuine and has been officially issued, and the person in question must have applied for the document and/or collected it in person from the issuing authority. If the applicant has many documents, which do not individually fulfil the requirement, the SMA may decide whether they can jointly prove the identity.

If an applicant for naturalization does not have an original passport or national identity document meeting the standards described above, the applicant's husband or wife or a close relative (parents, adult children or siblings) may attest the individual's identity. In such cases, the relative attesting the identity must have become a Swedish citizen him or herself, and have proven his or her own identity through a passport or an accepted identity document from the country of origin. Also, the applicant and his or her relative must have submitted consistent information regarding the identity, relationship, background, family circumstances, etc. in previous applications or documentation within administrative procedures. In order for an applicant's husband or wife to attest to the applicant's identity, the couple must have lived together before coming to Sweden for such a period that the spouse has knowledge of the applicant's background and life story, so that the partner's identity can be attested to without doubt.

However, an applicant for naturalization who cannot prove his or her identity, but is able to make the claimed identity "probable", can acquire citizenship through naturalization after eight years of residence in Sweden pursuant to the Act on Swedish Citizenship, Section 12. As mentioned above, the Government Bill refers to stateless persons as one group who may have difficulties in proving their identity through passports or ID documents.

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136 *Proposition (1997/98: 178) Medborgarskap och identitet*, available at: https://goo.gl/XFAodT.

137 *Regeringens proposition* (1999/2000: 147) Lag om svenskt medborgarskap.

The exception from the requirement to prove one's identity applies to applicants who have provided credible information about their identity, and who lack the possibility to obtain acceptable documents proving their identity. An individual's identity is considered credible if the applicant has lived in Sweden for an uninterrupted period of at least eight years, and has had the same identity throughout this period. If the applicant has changed his or her identity during the time in Sweden, it is more difficult to make an exception to the proof of identity requirements. Time spent in Sweden with an incorrect identity cannot be counted towards the period of residence.

Special requirements in regard to establishing the identity of applicants from certain countries

Special requirements relating to identity issues currently exist for (i) Afghans, where passports issued after April 1992 and identity books (*tazkira*) are not considered to fulfil the security aspects; (ii) Iraqis, in regard to whom G and A passports are accepted under certain circumstances, S passports are not accepted, older passports might be accepted, Proof of Identity Certificates from the Iraqi Embassy in Stockholm are not accepted, Iraqi ID cards and Iraqi citizenship certificates are not accepted, and an Iraqi military book might be accepted; (iii) Kosovars, for whom ID cards issued by the United Nations Interim Administration in Kosovo (UNMIK) after 1 December 2004 are not accepted unless the person in question can provide more information; (iv) Somalis, for whom passports issued after January 1991 and Somali ID documents do not fulfil the security requirements; (v) Eritreans, in regard to whom ID cards issued by the temporary government from 1993 and onwards are not accepted.

For Palestinians, travel documents issued by Lebanon, Iraq, Syria or Egypt are accepted by the SMA as proof of identity. Passports or ID cards from other countries are not accepted unless the person is well known by the authorities of the issuing country. Documents that are not accepted include travel documents from the Palestinian Authority that have been issued for a person who is residing outside the Palestinian Territories (so called 00 passports), and certificates from the Palestinian Delegation in Stockholm.

Further to the Judicial Position on the migration-related consequences of Sweden's recognition of Palestine in March 2015,[138] persons who can make it probable that they are registered in the West Bank, Gaza or East Jerusalem can be registered as citizens of Palestine, and children born to such persons shall also be registered as citizens of Palestine. Other Palestinians shall be considered stateless, be registered as such, and have their asylum claim assessed in relation to their former country of habitual residence.

3.3.2.3 ACCESS TO COURTS

Decisions made by the SMA in individual cases on asylum, residence permits, refusal of entry and expulsion can be appealed to a Migration Court, pursuant to Chapter 14 of the Aliens Act. Decisions of the SMA in cases concerning the granting of Swedish citizenship can also be appealed to a Migration Court, in accordance with Section 26 of the Act on Swedish Citizenship. Decisions adopted by the Migration Courts can be appealed to the Migration Court of Appeal, in accordance with Chapter 16, Section 9 of the Aliens Act (to which Section 26 of the Act on Swedish Citizenship also refers). However, as the SMA does not take decisions on an individual's statelessness as such, there is no possibility of separately appealing an assessment made by the SMA regarding an applicant's citizenship status within the context of an individual application for asylum.

The possibility of appealing decisions made by the SMA to special Migration Courts has only existed since 2006, and the case law on nationality related issues is therefore quite limited.

Decisions made by the Swedish Tax Agency in accordance with the Population Registration Act, can be appealed to an Administrative Court pursuant to Section 38 of the Population Registration Act. The Swedish Tax Agency's determination and registration of a person's nationality, or lack thereof, can therefore be appealed.[139]

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138 *Rättsligt ställningstagande angående de migrationsrättsliga konsekvenserna av Sveriges erkännande av Palestina, SR 11/2015*, available at: http://goo.gl/m81dLx.

139 Confirmed in an email from the Swedish Tax Agency, 25 September 2012.

3.4 Rights of applicants and recognized stateless persons

As Sweden has not established a dedicated statelessness determination procedure which can lead to the recognition of a person as stateless, there is no status of a stateless person provided for in the national law. An assessment of a person as stateless within the context of one procedure, operated by one authority, is not legally binding in other procedures and on other authorities. Also, most of the rights granted to stateless persons in Sweden are not based on their statelessness *per se*, but on the immigration and residence permit granted in other procedures.

3.4.1 Rights of applicants during the statelessness determination procedure

Applicants for statelessness status who enter into a determination procedure are considered to be "lawfully in" the territory of a State Party. By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not "lawfully in" the country.[140]

The 1954 Convention foresees that stateless persons who are "lawfully in" (in French "*se trouvant régulièrement*") a State Party are entitled to an additional set of rights, including the right to engage in self-employment (Article 18), freedom of movement within a State (Article 26) and protection from expulsion (Article 31).[141] For stateless persons to be "lawfully in" a State Party, their presence in the country needs to be authorized by the State. The concept encompasses both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all personal circumstances of the individual. The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention, applicants for statelessness status who enter a determination procedure are therefore "lawfully in" the territory of a State Party.

As Sweden has not established a statelessness determination procedure, there are no provisions in Swedish law governing the rights of persons applying for the status of stateless. Instead, the rights enjoyed by stateless persons applying for asylum, a residence permit on other grounds or naturalization depend on the nature of the procedure in question. The most relevant procedure in the context at hand is the asylum procedure, within which the nationality or statelessness of an applicant is assessed, as part of the establishment of the asylum-seeker's identity. Stateless asylum-seekers are entitled to the same set of rights as other applicants for asylum. Therefore, the rights outlined below are those granted to asylum-seekers and some other groups of immigrants who may find themselves in administrative procedures where a person's statelessness is identified.

3.4.1.1 DETENTION

Under international law, there is a prohibition on the detention of stateless persons on the ground of their statelessness. Article 9 of the ICCPR guarantees the right to liberty and security of person, and prohibits unlawful as well as arbitrary detention. For detention to be lawful, it must be regulated by domestic law, preferably with maximum limits set on such detention, and subject to periodic and judicial review. For detention not to be arbitrary, it must be necessary in each individual case, reasonable in all the circumstances,

140 UNHCR, *Handbook*, para. 135.

141 *Ibid.*, para. 134.

proportionate and non-discriminatory. Indefinite as well as mandatory forms of detention are arbitrary *per se*.[142]

Hence, routine detention of persons seeking protection on the ground of their statelessness is considered arbitrary detention.[143] Where such persons are detained, it must be a measure of last resort, and such persons shall not be held with convicted criminals or individuals awaiting trial.[144]

Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for the detention of such persons.

In Sweden, the detention of asylum-seekers and other aliens is regulated in Chapter 10 of the Aliens Act. In accordance with Section 1, an alien who has turned 18 years may be detained if his or her identity is unclear at the time of entry into Sweden, or when the person applies for a residence permit. An alien who has turned 18 years may also be detained if it is deemed necessary in order to determine the person's right to stay in Sweden, and it is likely that the person will be refused entry or be expelled pursuant to Chapter 8 of the Aliens Act; in such a situation, the detention is aimed at facilitating the execution of the expulsion decision. However, in these situations, a person can only be detained if there is a risk that he or she will engage in criminal activities in Sweden, abscond, hide or in any other way prevent the execution of the decision on refusal of entry or expulsion.[145]

According to the SMA, it is not a common practice to detain asylum-seekers or other aliens because of unclear identity. In most cases, detention is used in order to facilitate the implementation of decisions on refusal of entry or expulsion, and to prevent absconding. The detention of stateless asylum-seekers is not considered to be more common than that of asylum-seekers generally.[146]

3.4.1.2 EXPULSION

Article 31 of the 1954 Convention provides certain guarantees against the expulsion of a stateless person from a territory. Article 31(1) provides, "The Contracting States shall not expel a stateless person lawfully in their territories save on grounds of national security or public order."[147] Moreover, other international human

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142 See the UN Human Rights Committee's decisions in *van Alpen v. Netherlands*, Communication No. 305/1988, 23 July 1990, http://www.refworld.org/docid/525414304.html para. 5.8; *A v Australia*, CCPR/C/59/D/560/1993, 30 April 1997, http://www.refworld.org/docid/3ae6b71a0.html para. 9.4; and *Danyal Shafiq v Australia*, CCPR/C/88/D/1324/2004, 13 November 2006, http://www.refworld.org/docid/47975af921.html para. 7.3. In the context of refugees, *UNHCR Executive Committee Conclusion 44 (XXXVII) of 1986 on detention of refugees and asylum-seekers*, available at: http://www.refworld.org/docid/3ae68c43c0.html, states that detention of asylum-seekers should normally be avoided but if necessary should only occur on grounds prescribed by law in order to determine the identity of the individual; in order to obtain the basic facts of the case; where an individual has purposely destroyed documentation or presented fraudulent documentation in order to mislead the authorities; and/or where there are national security or public order concerns. See also UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, http://www.unhcr.org/505b10ee9.html.

143 UNHCR, *Handbook*, para. 112 (citing, *inter alia*, the UN Working Group on Arbitrary Detention, *Report to the Human Rights Council*, A/HRC/13/30, 18 January 2010).

144 *Ibid.*, paras. 112-115.

145 "Refusal of entry" is used when a person's asylum or other residence permit has been rejected, while "expulsion" refers to a situation where a person has previously had a valid residence permit but no longer has one.

146 Meeting with the SMA, 6 September 2012.

147 See also Article 31(2) (providing, *inter alia*, that expulsion "shall be only in pursuance of a decision reached in accordance with due process of law") and Article 31(3) requiring that a "stateless person [be allowed] a reasonable period within which to seek legal admission into another country."

rights instruments are relevant to the expulsion of stateless persons from a territory.[148] Like other provisions of the 1954 Convention, Article 31 must be read in light of UNHCR's interpretations of the "lawfully staying" and related provisions, discussed above.

In Sweden, the grounds for the expulsion of aliens, including stateless persons, are set out in Chapter 8 of the Aliens Act. A decision on refusal of entry of a rejected asylum-seeker can be implemented immediately, without suspensive effect of appeal, if the asylum application has been determined to be manifestly unfounded and there are no other reasons for granting a residence permit (Section 6). In accordance with Chapter 8, Section 18 of the Aliens Act, a decision on refusal of entry or expulsion shall indicate the country of return. If there are specific reasons for it, more than one country may be indicated in the decision. This reference to the country of return has no legal effect in itself, but only defines the country or countries to which the person is considered to have a possibility to return.[149]

Chapter 12, Section 1 of the Aliens Act states that return of a person can never be implemented to a country where there are reasons to believe that the person would be at risk of the death penalty, corporal punishment, torture or other inhuman or degrading treatment or punishment. This provision also protects a person from being returned to a country from which he or she could be sent further, to a country in which the person would be subjected to such ill-treatment (chain-*refoulement*). In this context, it is noteworthy that Sweden implements decisions on expulsion of rejected Palestinian asylum-seekers whose habitual residence is considered to be Gaza, through Egypt, provided the person concerned is granted a transit visa for Egypt.[150] However, no assessment is made regarding potential protection problems such Palestinians may face while in transit in Egypt, such as arbitrary detention.[151]

One of the decisions reviewed by the consultant concerns the return of a stateless Palestinian from Jordan who had been refused asylum in Sweden. The individual had initially not presented identity documents and, according to the SMA, had not cooperated in the implementation of the return decision. Therefore, the decision could not be implemented. Two years after the return decision was made, the person presented a Palestinian passport issued by the Jordanian authorities; shortly thereafter, he was returned to Jordan with his consent and without an escort. However, he was not admitted into Jordan, and therefore returned to Sweden.[152] The Swedish Embassy in Jordan subsequently informed the SMA that the person had a temporary Jordanian passport, but was not a Jordanian national and did not have a permit to enter the country. It was considered that after the person presented his Palestinian passport, he had cooperated with the authorities in order to implement the return decision. As the SMA determined that the obstacle for the implementation of the return would persist, the person was granted a permanent residence permit on the grounds of particularly distressing circumstances, pursuant to Chapter 5, Section 6 of the Aliens Act.[153]

Table 7 below provides an overview of the number of stateless persons who returned voluntarily, or with the use of force, during 2015.

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148 See, e.g., UNHCR, *Handbook*, noting that "protection against expulsion for persons 'lawfully in' the territory is confined under Article 13 of the ICCPR to procedural safeguards, whereas Article 31 of the 1954 Convention also limits the substantive grounds on which expulsion can be justified."

149 Chapter 12, Section 4 of the Aliens Act.

150 Telephone conversation with the SMA, 7 September 2012; see also Migrationsverket, Lifos. Center för landinformation och landanalys inom migrationsområdet, *Temarapport: Gränsövergången i Rafah – status, kriterier och proceduren vid passage till och från Egypten, (Thematic report about the functioning of the border crossing point at Rafah),* 20 February 2015.

151 Meeting with Amnesty International, 25 September 2012, and with the Swedish Refugee Advice Centre, 19 September 2012, which also confirmed the continued accuracy of the statement during a telephone conversation, 19 April 2016.

152 The decision does not mention whether the person was returned by Jordan or whether the person returned by himself.

153 Chapter 5, Section 6 of the Aliens Act states that if a residence permit cannot be granted on other grounds, a permit can be granted if in the total assessment of the alien's situation there are such particular compassionate circumstances that he or she should be permitted to stay in Sweden. In the assessment particular account is taken of the alien's health, adaptation to Sweden and the situation in the home country.

Table 7: Voluntary and forcible returns of stateless persons between 1 January - 31 December 2015[154]

Destination Country	Voluntarily		By force*	Total
	Home country/Third country**	Not known/not registered	Home country/Third country**	
Algeria			1	1
Austria	8			8
Belgium	2			2
Bulgaria	1			1
Czech Republic	4			4
Denmark	28		6	34
Egypt	4			4
Estonia			1	1
Finland	1			1
France	6		3	9
Germany	23		3	26
Greece	3		1	4
Hungary	5		2	7
Iraq	3			3
Israel	3			3
Italy	27		9	36
Jordan	13		9	22
Kosovo	1			1
Latvia	1		2	3
Lebanon	20		4	24
Netherlands	4			4
Norway	7		2	9
Palestine	5		2	7
Qatar	3			3
Romania	1			1
Saudi Arabia	2			2
Slovakia	1			1
Spain	20		6	26
Switzerland	1			1
Turkey	14		1	15
UAE	1			1
Ukraine	8			8
Unknown/not registered		20		20
USA	1			1
TOTAL	221	20	52	293

* According to the SMA (email 20 September 2012), these are the cases that the police have reported to the SMA as "return implemented". The reporting of returns by the police does not happen in 100 per cent of cases, however, and this figure therefore represents a minimum number of implemented returns by force. In all these cases, the return has not necessarily been implemented by force either; the figure includes persons who the SMA has handed over to the police for return by force under the impression that the person has absconded and it later turns out that this was not the case. But as the case has already been handed over to the police they deal with it regardless of the nature of the return.

** The SMA cannot differentiate between return to the home country or to a third country.

154 Email from the SMA, 30 September 2016.

The table above does not provide a breakdown between returns of rejected asylum-seekers, and returns of persons whose previous residence permits have expired and not been renewed. However, according to the estimation of the SMA, the majority of the returns indicated in the table concern rejected asylum-seekers.

Also, Table 7 above does not specify which returns were implemented pursuant to the Dublin III Regulation, though it can be assumed that this was the case for the majority of returns that took place to the European countries party to the Regulation.

Apart from returns to Dublin countries, the majority of returns of stateless persons during 2015 took place to Lebanon (24 voluntary and 4 forcibly), followed by Jordan (13 voluntary and 9 forcibly), Turkey (14 voluntary and 1 forcibly), Palestine (5 voluntary and 2 forcibly), and Ukraine (8 voluntary).

Table 7 above uses "home country/third country" as the heading for the columns listing the countries to which the returns have taken place, even though, in the case of stateless persons, the third country may be the person's country of former habitual residence or another country he or she has links to. While this heading makes sense in statistical overviews concerning the return of persons with a nationality, this is not always the case in regard to stateless persons. In this context, it should be noted that in asylum decisions, the country of habitual residence of a stateless person used to be referred to as a home country.[155] However, through Judicial Positions adopted by the SMA in 2016,[156] it has been clarified how to determine which country, or countries, against which a stateless applicant's protection needs should be assessed. This development should probably lead to a corresponding change in the statistical reporting on the return of stateless persons.

Moreover, as of 31 December 2015, there were 382 stateless persons and 165 persons with "unknown" nationality who were pending return; out of these, 113 were pending return under the Dublin III Regulation, while the other 434 were pending return to various destinations.[157]

According to the SMA, voluntary return of Palestinians to Lebanon and to the Palestinian Territories generally functions well in practice. Challenges often relate to long processing times to obtain travel documents; however, if identity documents are available, then travel documents are usually issued by the embassy or consulate of the country of return. On the other hand, both voluntary return and return by force to other countries in the Middle East, North Africa and the Gulf States are difficult to implement. Difficulties are related to these countries' unwillingness to re-admit persons and to issue travel documents, regardless of what kind of identity documents the individual holds. In addition to a valid travel document, an entry or residence permit is often also required. Particular challenges are experienced in regard to the return of stateless Bidoons from Kuwait, as Kuwait does not recognize them as nationals and is therefore unwilling to re-admit, regardless of whether the individual holds a valid identity documents and proof that he or she has resided in Kuwait for a long time.[158]

Due to the absence of a statelessness determination procedure, to which "unreturnable" persons, including rejected asylum-seekers, could be referred, there is a risk that among those returned, or awaiting return, are individuals qualifying for the status of stateless persons.

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155 Based on the discussions with the SMA and the review of selected asylum decisions concerning stateless persons.

156 *Rättsligt ställningstagande angående utredning och prövning av identitet och medborgarskap samt hemvist och vanlig vistelseort i asylärenden, RCI 07/2016*, 24 March 2016, available at: http://goo.gl/WZOtVZ, and *Rättsligt ställningstagande angående begreppet vanlig vistelseort, RCI 14/2016*, 8 June 2016, available at: http://goo.gl/uGq1Gt.

157 Email from SMA, 30 September 2016. However, it was not possible for the SMA statistical unit to provide information about the countries to which these individuals were awaiting return.

158 Email from the SMA, 20 September 2012.

3.4.2 Rights of persons recognized as stateless

As mentioned above, the 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, with some protections applicable to all stateless persons, and others dependent on the legal status or stay of the individual. Individuals recognized as stateless following a determination procedure, but to whom no residence permit has been issued, will generally be "lawfully staying" in a State Party by virtue of the length of time already spent in the country awaiting a determination. However, the "lawfully staying" requirement need not take the form of permanent residence. Stateless persons who have been granted a residence permit, including a temporary permission to stay for more than a few months, would fall within this category.[159] A person whose status as a stateless person has been determined is entitled to a right of residence; even though this not explicitly set forth in the 1954 Convention, it follows from its object and purpose.[160]

The "lawfully staying" rights in the 1954 Convention include the right of association (Article 15), right to work (Article 17), practice of liberal professions (Article 19), access to public housing (Article 21), right to public relief (Article 23), labour and social security rights (Article 24), and travel documents (Article 28). In addition, "lawfully staying" stateless persons are of course entitled to the rights afforded to individuals subject to the jurisdiction of a State Party and stateless persons "lawfully in" a State Party (see Section 3.4.1 above).

A final set of rights foreseen by the 1954 Convention are those to be accorded to stateless persons who are "habitually resident" or "residing" in a State Party. The condition that a stateless person be "habitually resident" or "residing" indicates that the person resides in a State Party on an on-going and stable basis. "Habitual residence" is to be understood as stable, factual residence. This covers those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of continuing residence there. The rights accruing to those who are "habitually resident" are protection of artistic rights and intellectual property (Article 14) and rights pertaining to access to the courts, including legal assistance and assistance in posting bond or paying security for legal costs (Article 16(2)).[161]

The rights stateless persons in Sweden enjoy are not linked to their statelessness. Instead, their rights depend on the immigration status and/or residence permit granted in Sweden. Specific provisions for stateless persons are only made with regard to travel documents.

3.4.2.1 THE RIGHT OF RESIDENCE

The UNHCR *Handbook* provides:

> Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.[162]

It is therefore recommended that States grant persons recognized as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interest

159 UNHCR, *Handbook*, para. 137.

160 *Ibid.*, para. 147.

161 *Ibid.*, paras. 138-139.

162 *Ibid.*, para. 147. For a comprehensive discussion of the right to reside and related rights, see also paras. 148-157.

of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.[163]

In certain limited circumstances, a State might have discretion to provide a residence status that is more transitional in nature, where the person in question is able to acquire or reacquire a different nationality through a simple, rapid, and non-discretionary procedure that is a mere formality or where the person enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.[164]

Following from the lack of a statelessness determination procedure in Sweden and of a status as stateless, there exists no right of residence on the basis of being a stateless person. In other words, statelessness as such is not a ground for granting a residence permit.

Stateless individuals who are granted international protection as refugees or beneficiaries of subsidiary protection are entitled to the residence permits attached to the respective status. The UNHCR *Handbook* emphasizes that,

> When an applicant raises both a refugee and a statelessness claim, it is important that each claim is assessed and that both types of status are explicitly recognised. This is because protection under the 1951 Refugee Convention generally gives rise to a greater set of rights at the national level than that under the 1954 Convention.[165]

In sum, a stateless person will only be granted a residence permit in Sweden if he or she meets the conditions for granting a residence permit on one of the grounds provided for in the Aliens Act.

163 UNHCR, *Handbook,* para. 148.

164 *Ibid.,* para. 154. For more detail, see *ibid.* paras. 153-157.

165 *Ibid.,* para. 78.

Table 8: Residence permits granted in 2015[166]

Permit Category	Stateless	Unknown Nationality	Nationality under Investigation	All Nationalities
Adoption	2	1		155
Subsidiary protection (alternativt skyddsbehövande, Aliens Act 4: 2)	802	13	25	18,461
Labour market – Family reunification	54	28		10,023
Refugee – Family reunification	1,913	4	11	16,251
Students – Family reunification	2	13		1,348
Others – Family reunification	236	25	5	15,637
Children born in Sweden to parents with a permanent residence permit	617	999	2	5,241
Labour market	26	1	1	16,975
EU/EEA	33	12	1	2,791
Students	7	4		9,410
Convention refugee (Aliens Act 4: 1)	2,148	12	3	13,552
Quota refugees	174			1,880
Particularly distressing circumstances	159	10	12	1,588
Temporary permits	82			183
Impediments to enforcement	32	45	26	752
Persons otherwise in need of protection (Aliens Act 4: 2a)	172			229
TOTAL	6,459	1,167	86	114,476

In 2015 alone, a total of 6,459 residence permits were granted to stateless persons, which amounted to 5.6 per cent of the total number of residence permits granted.

The largest number of residence permits issued to stateless persons in 2015 were granted on grounds relating to international protection. For example, 16 per cent of the persons granted Convention refugee status and 4 per cent of those granted subsidiary protection under Section 4(2) of the Aliens Act were stateless. A notable number of permits were also granted for the purpose of family reunification. Residence permits for stateless persons were moreover granted for study and work purposes, though the numbers were relatively small.

The number of residence permits granted to persons with "unknown" nationality was significantly lower than the number of permits granted to stateless persons.

3.4.2.2 THE RIGHT TO WORK

As noted in Section 3.4.1, stateless persons who are "lawfully in" a State Party are entitled to engage in self-employment (Article 18), while , according to Section 3.4.2, "lawfully staying" stateless persons should also enjoy the right to work (Article 17), practice of a liberal profession (Article 19), and labour and social security rights (Article 24).

166 SMA statistics, available at: http://goo.gl/Wbu7ZU and email from the SMA, 30 September 2016.

Article 17 provides in its entirety:

> Wage-earning employment
>
> 1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances,[167] as regards the right to engage in wage-earning employment.
>
> 2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Although the Convention does not define the term "wage-earning employment," it should be interpreted in the broadest sense of the term.[168]

International human rights law also contains provisions regarding the right to work, in particular Article 6(1) of the ICESCR which provides for "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts." The rights in the ICESCR and ICCPR apply to everyone, including non-nationals such as refugees, asylum-seekers, stateless persons and migrant workers, regardless of legal status and documentation,[169] though some distinctions against non-citizens or discrimination based on nationality would be permissible if the discrimination is based upon objective and reasonable justifications.[170]

The right to work in Sweden is based on a work permit. However, several exceptions exist to this general rule. For example, a permanent residence permit always includes the right to work, regardless of the grounds on which the permit is granted.[171] In general, permanent residence permits are issued to persons granted international protection[172] and generally in situations where residence is considered as continuous in nature, i.e. where there are no special reasons for issuing a temporary residence permit. There are no special provisions made for stateless persons with regard to their right to work, and there are no indications that stateless persons with residence permits in Sweden face more obstacles than other foreigners in accessing work in Sweden.

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167 Article 6, the term "in the same circumstances" provides: For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

168 Nehemiah Robinson, *Convention Relating to the Status of Stateless Persons, Its History and Interpretation, A Commentary*, World Jewish Congress, 1955 ("*Robinson Commentary to the 1954 Convention*"), p. 62.

169 UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights* (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, at para. 30, available at: http://www.refworld.org/docid/4a60961f2.html.

170 See UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: http://www.refworld.org/docid/453883fa8.html, para. 13. See also Executive Summary and para. 23 of UN Sub-Commission on the Promotion and Protection of Human Rights, *rights of non-citizens; Final report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decision 2000/103, Commission resolution 2000/104 and Economic and Social Council decision 2000/283, Addendum, Examples of practices in regard to non-citizens*, 26 May 2003, E/CN.4/Sub.2/2003/23/Add.3, available at: http://www.refworld.org/docid/3f461536c.html.

171 In accordance with Chapter 2, Section 8 of the Aliens Act.

172 Note, however, that this general practice was temporarily changed in July 2016, when the Law on temporary restrictions regarding the possibility of obtaining a residence permit in Sweden (*Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige (2016: 752)*) entered into force, available at: https://goo.gl/tsZ4GV.

3.4.2.3 THE RIGHT TO PUBLIC RELIEF

Article 23 of the 1954 Convention provides: "The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals." It is thus identical in wording to Article 23 of the Refugee Convention. When the Ad Hoc Committee for the Refugee Convention drafted this article, the Committee expressed its understanding that refugees should not be required to meet any conditions of local residence or affiliation which might be required of citizens. Therefore, a similar understanding should apply to stateless persons.[173]

The right to social security set forth in Article 24 is also a "lawfully staying" right. Like Article 23, Article 24 requires that States treat stateless persons "lawfully staying" in the territory in the same manner in which nationals are treated with respect to certain labour and social security provisions, as detailed in Article 24.

In terms of the content of "public relief and assistance", the commentary on the Refugee Convention indicates that it "includes hospital treatment, emergency relief, relief for the blind and also the unemployed, where social security benefits are not applicable."[174]

The main regulations regarding social security are found in the Act on Social Security.[175] In accordance with Chapter 4, Section 2 of the Act on Social Security, there are three different types of social security benefits: benefits based on residence in Sweden; benefits based on work in Sweden; and benefits which are based on circumstances other than residence and work in Sweden, such as military or civil service.[176] The most common type of social security enjoyed by stateless persons in Sweden is that based on residence.

According to Chapter 5, Section 3 of the Act on Social Security, a person who is assumed to have resided in Sweden for longer than one year shall be considered as residing in the country, and thus falling within the scope of the Act.

The residence based social security benefits can only, in principle, be granted to the foreigner eligible in accordance with the Aliens Act after the residence permit has been granted.[177]

The residence based social security benefits include a wide range of benefits related to family, sickness and work injury compensation, disability, pension, support to surviving family members and accommodation.[178]

An alien who is required to have a work permit or another type of residence permit which allows him or her to work in Sweden, can only apply for the related social security benefits once such a residence permit has been obtained.[179] The work based benefits cover a wide range of benefits related to family, sickness and work injury compensation, pension, and surviving family members.[180]

No special provisions are made with regard to stateless persons in the legislation. They are regarded like any other persons residing or working in Sweden, and thus have the right to social security benefits under the same conditions.

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173 *Robinson Commentary to the 1954 Convention*, paras. 43-44.

174 UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*, 1990, para. 125, available at: http://www.refworld.org/docid/53e1dd114.html.

175 *Socialförsäkringsbalk* (2010: 110), available at: http://goo.gl/Exk6z4.

176 Chapter 7 of the Act on Social Security.

177 Chapter 5, Section 12 of the Act on Social Security.

178 Chapter 5, Section 9 of the Act on Social Security.

179 Chapter 6, Section 14 of the Act on Social Security.

180 Chapter 6, Section 6 of the Act on Social Security.

3.4.2.4 IDENTIFICATION AND TRAVEL DOCUMENTS

Article 27 of the 1954 Convention provides in its entirety: "The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document." Therefore, identity papers should be granted to all stateless persons physically present in the territory of the State and irrespective of their right to reside. These "identity papers" can be temporary or final, and the issuance of an identity paper does not result in an obligation on the State to keep the stateless person within its borders.[181] Compared to "travel documents" referred to in Article 28 of the 1954 Convention, "identity papers" act as a "certificate of identity" or "domestic passport" showing the identity of the stateless person; they are not for journeys abroad.[182]

Stateless persons present in Sweden, whether legally or illegally, are not entitled to any specific identity papers.

Asylum-seekers in Sweden, including those who are stateless, are issued with an identity document called an "LMA card" by the SMA, in accordance with a regulation of the SMA.[183] According to the same regulation, immediately upon the lodging of an asylum application, asylum-seekers are issued with a receipt confirming their submission of an application; this serves as temporary proof of a pending asylum application until the LMA card is issued (within 14 days from lodging the application).

An identity card can be issued to persons who are registered in the Population Register and who have turned 13 years, in accordance with the Act on Identity Cards for persons registered in the Swedish Population Register.[184] Identity cards are issued by the Swedish Tax Agency. A requirement for issuing an identity card is that a person's identity has been established. If a person has a residence permit in Sweden, his or her identity is considered established if the information provided in the identity card application is consistent with the information registered in connection to the residence permit. For this purpose, the Swedish Tax Agency has direct access to the Register of the SMA concerning personal information, which is relevant for the issuance of the identity card.[185]

Article 28 provides in its entirety:

> The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Chapter 4, Section 4 of the Aliens Act provides for the issuance of a specific passport for travel outside of Sweden (travel document) for refugees and stateless persons. Furthermore, Chapter 2, Section 7 of the Aliens Decree refers directly to the 1954 Convention, stating that a travel document shall be issued in

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181 *Robinson Commentary to the 1954 Convention*, para. 50.

182 *Ibid.*

183 *Migrationsverkets föreskrifter om Tillfälligt LMA-kort för utlänning i Sverige och dokument som intygar att innehavaren är asylsökande*, MIGRFS, 08/2015, 16 November 2015, available at: http://goo.gl/gac0B3.

184 *Lag (2015: 899) om identitetskort för folkbokförda i Sverige*, available at: http://goo.gl/g4Mcq2.

185 Decree on handling of personal information in the activities in accordance with the aliens and citizenship legislation, *Förordning (2001: 720) om behandling av personuppgifter i verksamhet enligt utlännings – och medborgarskapslagstiftningen*, available at: http://goo.gl/hcAOW4. Section 6 of the Decree contains a provision on direct access of the Swedish Tax Agency to the register of the SMA. The access is limited to information that is required for the issuance of an identity card by the Swedish Tax Agency.

circumstances that have been provided for in the 1954 Convention. If the person's identity has not been established, this may be indicated in the travel document (Chapter 2, Section 8).

It has been confirmed in Swedish case law that when a person is both a refugee and stateless, the person is entitled to a travel document in accordance with the Refugee Convention instead of a travel document in accordance with the 1954 Convention, as the travel document issued pursuant to the Refugee Convention is more beneficial.[186] The provisions on travel documents in these two Conventions are to a large extent identical, though there are certain differences. A travel document issued in accordance with the 1954 Convention is valid for at least three months whereas the travel document issued in accordance with the Refugee Convention shall be valid for at least one year, pursuant to paragraph 5 of the schedules to both Conventions.[187]

3.5 Conclusions and recommendations

The situation in which stateless persons may find themselves, and the protections to which they are entitled, have received relatively little attention in Sweden. Although Sweden has been a State Party to the 1954 Convention since 1965, numerous provisions in the Convention have not been transformed into the Swedish legislation, or applied in practice.

The definition of a stateless person set out in Article 1(1) of the 1954 Convention has not been transformed into the national legislation, though statelessness is referred to in several legal acts and in relevant Government Bills. While an individual can be recorded or registered as stateless by the SMA in its Register, and by the Swedish Tax Agency in the Population Register, the lack of a definition of a stateless person in national law, coupled with the lack of common guidelines with criteria and procedural standards for its application, leads to a risk that an individual's citizenship status is assessed differently by the respective authorities. It can also lead to a situation where a child's or adult's statelessness is not properly identified and determined, and the individual consequently loses his or her ability to acquire Swedish citizenship by notification or naturalization, at a certain point in time or indefinitely; considering the relatively high number of children born in Sweden who are registered as having an "unknown" nationality (see Table 9 in Section 4.3.1.1 below), this is a concern and a factor that hampers the affected individuals' ability to enjoy rights under the statelessness Conventions. UNHCR therefore recommends that the definition of a stateless person set out in the 1954 Convention, and which is part of customary international law, is transformed into national law, and that guidelines be developed to ensure a consistent application of the definition by the SMA and Swedish Tax Agency, respectively. The same recommendation is made in respect of the category persons with "unknown" nationality. This would help ensure that, where assessment of an individual's statelessness is taking place as part of establishing an individual's identity during immigration and civil, including birth registration processes, the criteria for considering someone as stateless or of "unknown" nationality, and the application of these, are harmonized, known and consistently applied across the different authorities involved.

UNHCR also recommends exploring the possibility of establishing a system which enables a synchronization of recordings and updates relating to a person's citizenship status in the respective registers, to ensure that an update in, for example, the Register of the SMA, is reflected in the Population Register.

Furthermore, the assessments of the potential statelessness of an applicant for an asylum or immigration permit, or citizenship, that are conducted today are not legally binding and have no independent legal

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186 Migration Appeal Court, MIG 2009: 6, 9 March 2009.

187 UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*, 1990, available at: http://www.refworld.org/docid/53e1dd114.html and UN High Commissioner for Refugees, *Convention relating to the Status of Stateless Persons. Its History and Interpretation*, 1997, available at: http://www.refworld.org/docid/4785f03d2.html.

weight; they can therefore not be appealed. In particular, they do not lead to a recognition of the individual as a stateless person and thus do not constitute an independent ground for legal protection. Today, stateless persons in Sweden are only entitled to the rights granted in connection with the particular residence permit they hold, such as a temporary or permanent residence permit issued on the basis of a refugee or subsidiary protection status. UNHCR therefore recommends the establishment of a statelessness determination procedure within which those persons who are entitled to the protection regime of the 1954 Convention can be identified, and be granted a legal status as a stateless person. UNHCR's *Handbook* provides guidance as to the form and procedural safeguards of statelessness determination procedures, including in regard to the burden and the standard of proof of a reasonable degree. It is recommended that the guidelines referred to above are based on the standards and guidance set out in the *Handbook* and used in the statelessness determination procedure.

"Unreturnable" persons and others who might have a statelessness claim who today do not have the possibility to have their status as stateless assessed, should have access to the recommended determination procedure.

It is moreover recommended that persons determined by Sweden to be stateless are granted a residence permit on the ground of their statelessness, and ensured the rights to which they are entitled under the 1954 Convention, including identity papers and travel documents.

The *Handbook* notes that States may establish statelessness determination procedures within the framework of already existing asylum or immigration procedures, by building on the competence and experience that already exists in regard to establishing a person's identity and nationality or the lack of it.[188] In the context of Sweden, it may therefore be beneficial to establish the statelessness determination procedure within the Citizenship Unit of the SMA.

188 UNHCR, *Handbook*, paras. 64-66.

4. Reduction and prevention of statelessness

4.1 Introduction

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

By adopting the 1961 Convention safeguards that prevent statelessness, States contribute to the reduction of statelessness over time. The Convention seeks to balance the rights of individuals with the interests of States by establishing general rules for the prevention of statelessness, while simultaneously allowing some exceptions to those rules.

A central focus of the Convention is the prevention of statelessness at birth by requiring States to grant citizenship to persons born on their territory, or born to their nationals abroad, who would otherwise be stateless. To prevent statelessness in such cases, States may either grant nationality to children automatically at birth or subsequently upon application. States must also ensure that foundlings and persons born stateless on a ship or aircraft acquire a nationality. The UNHCR *Guidelines* provide interpretative legal guidance on the application of these articles in the 1961 Convention.[189]

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

The safeguards of the 1961 Convention are triggered only where statelessness would otherwise arise and for individuals who have a link with the Contracting State.

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

189 UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: http://refworld.org/docid/50d460c72.html.

these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."[190]

In addition to the 1961 Convention, the 1954 Convention includes provisions relating to the reduction of statelessness, based on the understanding that the ultimate solution for stateless persons is the acquisition of a nationality. Namely, Article 32 of the 1954 Convention provides, "The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings." Article 34 of the 1951 Refugees Convention similarly obliges States Parties to facilitate the naturalization of refugees, including those who are stateless; "in particular, costs should be reduced and the naturalization procedures expedited."

Article 34 of the Refugee Convention and Article 32 of the 1954 Convention together encourage other, non-specified measures to facilitate naturalization. These might include easing the conditions for naturalization, for example by reducing the period of residence required or by not requiring proof of release from a former nationality.[191] The aim of these provisions was expressed by the drafters of the Refugee Convention as follows: "The position of a *de jure* or *de facto* stateless refugee is abnormal and should not be regarded as permanent."[192]

Regional instruments, such as the ECN and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession, are also relevant for the prevention and reduction of statelessness.

These measures to prevent and reduce statelessness are discussed below in more detail, where provisions in Swedish law are assessed against the relevant international standards.

4.2 National legal framework

Sweden acceded to the 1961 Convention in 1969 without reservations,[193] and ratified the ENC in 2001 without reservations.[194] In 1952, Sweden became party to the ECHR, in 1971 to the ICCPR, [195] in 1980 to the CEDAW,[196] and in 1990 to the CRC.[197] Sweden is not a party to the 2006 European Convention on the Avoidance of Statelessness in Relation to State Succession, but has expressed an intention to accede to that Convention.[198]

Provisions on the acquisition and loss of nationality are found in the Act and Decree on Swedish Citizenship and in the Instrument of Government.

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190 UNHCR, *Guidelines* para. 10.

191 Council of Europe, *Recommendation 564 (1969) on the Acquisition by Refugees of the Nationality of Their Country of Residence*, 30 September 1969, 564 (1969), available at: http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b38178.

192 See Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951, Articles 2-11, 13-37*, 1963, republished by UNHCR, Division of International Protection, Geneva, 1997, p. 245.

193 SÖ 1969: 12.

194 SÖ 2001: 20.

195 SÖ 1971: 42.

196 SÖ 1980: 8.

197 SÖ 1990: 20.

198 *Lagrådsremiss, Ett medborgarskap som grundas på samhörighet,* 6 February 2014 pp. 47-48, available at: http://goo.gl/0idJER.

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

The acquisition of Swedish nationality is regulated in the Act on Swedish Citizenship and is, to a large extent, based on the principle of *jus sanguinis*, complemented by a few provisions reflecting the principle of *jus soli.*

4.3.1 Avoidance of statelessness at birth

4.3.1.1 BIRTH ON THE STATE'S TERRITORY

Article 1(1) of the 1961 Convention provides: "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless." Importantly, the test is not whether the parents are stateless, but whether the person born in its territory is stateless. A child can be otherwise stateless even if both parents have a citizenship but cannot transmit it to the child. Such situations could arise, for example, when children cannot acquire the nationality of their mother because of gender discriminatory laws of her country of nationality, or where a country that adheres to a *jus soli* citizenship framework does not guarantee transmission of citizenship to children born abroad. These are but two examples of situations in which a child might have parents with a citizenship but that child might himself or herself become stateless.

Article 1(1) allows a Contracting State to provide for the grant of its nationality to such a person either a) "at birth, by operation of law," or b) by way of an application procedure.[199] Where Contracting States opt to grant nationality upon application pursuant to Article 1(1)(b) of the 1961 Convention, it is permissible for them to do so subject to the fulfilment of one or more of four conditions. Permissible conditions are set out in the exhaustive list in Article 1(2) of the 1961 Convention. The four conditions are: a fixed period for application within certain rules, set forth by Article 1(2)(a); a requirement of habitual residence within the rules, set forth by Article 1(2)(b); exceptions for certain criminal offences, pursuant to Article 1(2)(c); and that the person concerned has always been stateless, pursuant to Article 1(2)(d).

A Contracting State may apply a combination of these alternatives by providing different modes of acquisition based on the level of attachment of an individual to that State. For example, a Contracting State might provide for automatic acquisition of its nationality by children born in its territory who would otherwise be stateless whose parents are permanent or legal residents in the State, whereas it might require an application procedure for those whose parents are not legal residents.[200]

As agreed by experts convened in 2011 by UNHCR, if a Contracting State is to grant its nationality to a stateless person born in its territory pursuant to an application, as contemplated by Article 1(1)(b) of the 1961 Convention – rather than by operation of law – the State is obligated to grant the applicant nationality, provided that he or she meets the conditions permitted to be imposed pursuant to Article 1(2).

> The use of the mandatory "shall" ("Such nationality shall be granted…"), indicates that a Contracting State must grant its nationality to otherwise stateless children born in their territory where the conditions set forth in Article 1(2) and incorporated in their application procedure are

199 Article 1(1)(b) provides for the grant of nationality "upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected." Article 1(1)(b) also allows Contracting States that opt to grant nationality upon application pursuant to Article 1(1)(b) to provide for the automatic grant of nationality to children born in their territory who would otherwise be stateless at an age determined by domestic law.

200 UNHCR, *Guidelines*, para. 33.

> met. The exhaustive nature of the list of possible requirements means that States cannot establish conditions for the grant of nationality additional to those stipulated in the Convention. As a result, providing for a discretionary naturalization procedure for otherwise stateless children is not permissible under the 1961 Convention. A State may choose not to apply any of the permitted conditions and simply grant nationality upon submission of an application.[201]

The 1961 Convention does not permit States Parties to impose any requirement on an otherwise stateless child born within its territory relating to the child's *parent(s)'* period of residency. Article 1(2)(b) permits a State to require that "*a person concerned* has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all" (emphasis added). Hence, the habitual residence exception can only be imposed on the person concerned, i.e. on the otherwise stateless applicant seeking citizenship.

Article 1(2)(a) permits a State Party to set a fixed period for application for citizenship by otherwise stateless children born within its territory. According to this article, a State can require:

> that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so.[202]

Hence, a State that opts for an application procedure pursuant to Article 1(1)(b) must allow an otherwise stateless child born in its territory to apply for citizenship beginning no later than his or her 18th birthday. In other words, it is preferable that such a child be allowed to apply before attaining the age of 18, but in no circumstances may he or she be prevented from applying once the person has attained that age. Moreover, the application period must not end prior to the individual's attaining the age of 21.

In countries where the age of majority is 18, this means that there must be a three-year window of opportunity in which to apply. The clause providing that "the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so" should be understood to take account of States that have a higher age of majority or certain situations where the law has recently changed and left certain age groups unintentionally unprotected.

Where States change their laws or practice to provide a path to citizenship for otherwise stateless persons born in their territory, UNHCR recommends that the changes be retroactive.[203]

The importance of a child's obtaining a nationality is reiterated by Article 7 of the CRC and Article 24 of the ICCPR, the latter of which has been described in the UN Human Rights Committee General Comment No. 17 as follows: "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born."[204] It follows from these articles, and Article 3 of the CRC, which sets out the principle of the best interests of the child, that a child may not be left stateless for an extended period of time.[205] Specifically, when read with Article 1 of the 1961

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201 UNHCR, *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children* (*"Dakar Conclusions"*), September 2011, para. 26, available at: http://www.refworld.org/docid/4e8423a72.html.

202 Article 1(2)(a) of the 1961 Convention.

203 *See, e.g.,* Comments by the UNHCR Regional Representation for Northern Europe on the draft Law Proposal amending the Estonian Citizenship Act, para. 22 (May 2014) ("UNHCR recommends that provisions granting Estonian citizenship by birth to children born in Estonia would be applicable retroactively"), available at: http://goo.gl/ZV5mKH. The same recommendation is made in comments by UNHCR to the Legislative Proposal amending the Citizenship Law (Nr. 52/Lp11) in Latvia, p. 2, available at: http://www.refworld.org/docid/57ed07954.html.

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

205 UNHCR, *Guidelines*, para. 11.

Convention, the right of every child to acquire a nationality (Article 7 of the CRC) and the principle of the best interests of the child (Article 3 of the CRC) require that States grant nationality to children born in their territory who would otherwise be stateless either (i) automatically at birth or (ii) upon application shortly after birth. States which apply an application procedure and require a certain period of habitual residence are therefore encouraged to provide for a period as short as possible.[206] UNHCR considers that the right of every child to acquire a nationality and the principle of the best interests of the child together create a presumption that States need to provide for the automatic acquisition of their nationality at birth by an otherwise stateless child born in their territory, in accordance with Article 1(a) of the 1961 Convention.[207] However, if the State imposes conditions for an application, as allowed for under Article 1(2) of the 1961 Convention, this must not have the effect of leaving the child stateless for a considerable period of time.[208]

The 1961 Convention does not define the term "stateless" for the purposes of Article 1; instead, the definition set out in Article 1 of the 1954 Convention, which is also part of customary international law, is relevant for determining the scope of application of the term "would otherwise be stateless" under the 1961 Convention.[209]

The Government Bill on the Act on Swedish Citizenship emphasizes that the avoidance of statelessness is an important starting point for Swedish legislation and practice in the area of citizenship, and that this is also the foundation of several international conventions to which Sweden is a Party.[210]

In accordance with Section 2 of the Act on Swedish Citizenship, Swedish nationality is acquired at birth if one of the child's parents is a Swedish national. The child acquires Swedish nationality at birth even if the parent of Swedish nationality is deceased at the time of the birth of the child.

A same-sex partner of the mother of the child may transfer her nationality in accordance with Chapter I of the Swedish Children and Parents Code. Section 9 of this Code states that if the insemination or fertilization of the mother has been done with the consent of the woman who is the spouse, registered partner or spousal co-habitant and if, taking into consideration any other circumstances, it is likely that the child is the result of the insemination or fertilization, the one who has given her consent is considered the child's parent. Thus, a child can also acquire Swedish nationality from a Swedish woman who is a partner of the child's mother.

As of 1 April 2015, a child born stateless in Sweden will acquire Swedish citizenship by notification[211] (*anmälan*) by the child's legal guardian(s), if the child has a permanent residence permit, and is lawfully and habitually residing in Sweden, in accordance with Section 6 in the Act on Swedish Citizenship. If the child has more than one legal guardian, the other legal guardian must also sign the application. The notification has to be made before the child turns 18 years.[212] Previously, such a notification had to be made before the child turned five years.

Pursuant to Section 7 of the Act on Swedish Citizenship, a stateless child born outside Sweden acquires Swedish citizenship by notification by the legal guardian(s) if the child has a permanent residence permit in Sweden, and has been lawfully and habitually residing for two years. The notification needs to be made

206 *Ibid*, para. 40.

207 Comments by UNHCR to the Legislative Proposal amending the Citizenship Law (Nr. 52/Lp11) in Latvia, p. 2, available at: http://www.refworld.org/docid/57ed07954.html.

208 UNHCR, *Guidelines*, para. 34.

209 *Ibid.*, para. 16.

210 *Regeringens proposition (1999/2000: 147)* Lag om svenskt medborgarskap, p. 35.

211 The term used in Section 6 of the Act on Swedish Citizenship is "anmälan" as opposed to "ansökan", which translates as "application". The English term "notification" is therefore used, even though a formal application needs to be submitted, for example using the online application at: https://goo.gl/tm5UWU; the child's eligibility for Swedish citizenship is then assessed by the SMA vis-à-vis the criteria in Section 6.

212 Information about the notification procedure and form available from the SMA, at: http://goo.gl/2EPNi3.

before the child turns 18 years. Prior to 1 April 2015, such a stateless child was required to have three years of lawful and habitual residence in Sweden in order to be eligible for citizenship under this provision.

Another important amendment introduced to the Act on Swedish Citizenship in 2015 is contained in Section 8, which provides that a stateless person who has turned 18 years but is not yet 21, has permanent residence, and has been lawfully and habitually residing in Sweden since the age of 15, can acquire Swedish citizenship through notification. This provision does not only apply to children born stateless in Sweden, but also to young stateless persons who have lived in Sweden at least since the age of 15; it thus goes further than Article 1(2) of the 1961 Convention, which is commendable. On the other hand, it includes a requirement of permanent residence, which is not in line with Article 1(2)(b), stipulating habitual residence, as mentioned above.

A child of a person who becomes a Swedish citizen by notification pursuant to Sections 6, 7, 8 or 9 of the Act on Swedish Citizenship will also acquire Swedish citizenship, provided the child has been lawfully and habitually residing in Sweden. [213]

Through these amendments, the protection of children against statelessness has been further strengthened, which is commendable. While the Swedish legislation does not incorporate the provision in Article 1(1) of the 1961 Convention, by which a child who would otherwise be stateless acquires citizenship automatically, by operation of law (*ex lege*), it does contain fewer requirements than those permissible in application procedures pursuant to Article 1(2) of the 1961 Convention.

However, UNHCR has consistently recommended States to provide for the automatic acquisition of citizenship at birth of children born on the territory who would otherwise be stateless,[214] as constituting the best way to prevent childhood statelessness and ensure full compliance with Article 1 of the 1961 Convention, read in conjunction with Articles 3 and 7 of the CRC. The Government Bill on the Act on Swedish Citizenship reached the same conclusion, stating that the clearest way for Sweden to live up to its international obligations to prevent childhood statelessness, would be to grant such children citizenship automatically at birth. The Government Bill then continues to state that such a system would, however, have certain disadvantages, the main one being that an automatic acquisition of citizenship at birth would not always correspond to the parents' wishes; according to the Government Bill, these disadvantages are of such significance that they make a system of automatic acquisition inappropriate.[215]

In this context, UNHCR would like to note that by placing a responsibility on the parent(s) to submit a notification for his or her child's acquisition of Swedish citizenship, there is a risk that parents who do not fully appreciate the importance of submitting such a notification, and the impact it will have on their child's ability to acquire citizenship, unintentionally contribute to perpetuating their child's statelessness.[216]

The requirement of permanent residence of the child set out in Section 6 (and Section 8, in respect of those between 18 and 21 years) of the Act on Swedish Citizenship is not fully in line with the requirement in Article 1(2)(b) of the 1961 Convention, referring to "habitual residence". In this context, "habitual residence" should

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213 Section 10 of the Act on Swedish Citizenship.

214 See for example UNHCR, *Mapping Statelessness in Norway*, October 2015, p. 51, available at: http://www.refworld.org/docid/5653140d4.html; UNHCR, *Mapping Statelessness in Iceland*, December 2014, available at: http://www.refworld.org/docid/54c775dd4.html and UNHCR, *Comments by the United Nations High Commissioner for Refugees (UNHCR) to the Legislative Proposal amending the Citizenship Law (Nr.52/ Lp11)*, August 2012, available at: http://www.refworld.org/docid/57ed07954.html.

215 *Regeringens proposition (1999/2000: 147)* Lag om svenskt medborgarskap, p. 36, available at: http://goo.gl/omYDSi.

216 UNHCR has conveyed the same view in respect of Latvia, where the Citizenship Law requires at least one of the child's parents to register the child as a Latvian citizenship at birth; comments available at: http://goo.gl/vf1M3H. While the majority of parents have done so, since the simplified procedure came into force on 1 October 2013, the percentage of children born to non-citizens who remain stateless is 17.7 per cent. In its submission to the 2016 Universal Periodic Review, the Government of Latvia affirmed that: Since the amendments to the Citizenship Law entered into force in 2013, the number of new-borns (whose parents are both non-citizens) that are registered as Latvia's citizens has risen from 52 per cent to 82.3 per cent.

be understood as stable, factual residence, and the 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon *lawful* residence.[217] In light of the recent, albeit temporary, restrictions introduced on the granting of permanent residence permits to persons granted asylum in Sweden,[218] coupled with the increase in the number of stateless persons seeking asylum in Sweden over the past year and the corresponding increase in the number of stateless persons with temporary residence permits registered, the requirement of permanent residence is likely to affect a considerable number of children born stateless in Sweden each year.

Hence, Sections 6, 7 and 8, when considered together, meet most of the requirements of Article 1(2) of the 1961 Convention. However, the requirement pertaining to a permanent residence permit remains problematic as this will exclude children born stateless in Sweden from acquiring Swedish citizenship at birth or soon after birth, especially after the previous rule of generally granting both Convention refugees and beneficiaries of subsidiary protection permanent residence has been temporarily changed as of 20 July 2016. UNHCR would thus recommend reviewing how the recent changes will affect the ability of children born on the territory, who would otherwise be stateless, to avail themselves of their right to a nationality pursuant to the 1961 Convention and the CRC.

The following tables show the number of persons who were born in Sweden and registered in the Population Register as stateless, or with "unknown" nationality, during the years 2011 to 2015.

Table 9: Number of stateless persons and persons of "unknown" nationality registered in the Population Register during the years 2011-2015 as born in Sweden, by age[219]

2011		
Age	**Stateless**	**Unknown**
0-4	2,172	1,105
5-11	396	65
12-17	151	27
18-19	45	11
20-39	125	12
40>	5	4
Total	2,894	1,224

2012		
Age	**Stateless**	**Unknown**
0-4	2,546	1,503
5-11	458	330
12-17	116	104
18-19	44	43
20-39	122	162
40>	5	63
Total	3,291	2,205

2013		
Age	**Stateless**	**Unknown**
0-4	3,159	1,732
5-11	484	295
12-17	113	99
18-19	18	16
20-39	134	182
40>	6	63
Total	3,914	2,387

2014		
Age	**Stateless**	**Unknown**
0-4	3,389	2,817
5-11	561	277
12-17	97	96
18-19	19	16
20-39	124	181
40>	6	63
Total	4,196	3,450

217 UNHCR, *Guidelines*, para. 41.

218 *Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige (2016: 752)*, which entered into force on 20 July 2016, available at: https://goo.gl/r347QJ.

219 Data from Statistics Sweden, 3 October 2012, email from Statistics Sweden, 29 September 2016 and 30 September 2016.

2015		
Age	**Stateless**	**Unknown**
0-4	2,953	4,385
5-11	598	379
12-17	86	94
18-19	24	12
20-39	114	163
40>	6	66
Total	3,781	5,099

In addition, the SMA has informed that 119 children were born stateless to asylum-seeking parents with claims pending in the procedure (and thus not registered in the Population Register) during 2015. By comparison, in 2014, 85 children were born stateless to asylum-seeking parents and in 2013, 66 children were born stateless to asylum-seeking parents.[220]

While most of the individuals counted in the tables above from 2011 to 2015 are obviously the same, it is interesting to note that the number of stateless children between 0 and 4 years of age steadily increased between 2011 and 2014, and then dropped in 2015. Nonetheless, 78.1 per cent of the stateless persons born in Sweden who were registered in the Population Register in 2015 were in the age group 0-4 year olds.

The rise in 2013 and 2014 could at least partly be linked to the increase in the number of stateless asylum-seekers arriving in Sweden during the years 2013 and 2015, and their recognition. While the drop in the number of stateless 0-4 year olds in 2015 could partly have been due to the amendments introduced to Section 6 of the Act on Swedish Citizenship in April 2015, which make it easier for a child born stateless in Sweden to acquire citizenship by notification, this does not seem to be the only reason judging by the figures in Table 10 below. Hence, as UNHCR has not been able to further analyse the causes behind this development, it would be interesting to study the reasons closer in order to, *inter alia,* assess to what extent the notification procedure is known and used, as further discussed below.

Another noteworthy development is that the number of children aged 0-4 years registered in the Population Register as having "unknown" nationality also continued to rise in 2015, when the number peaked at 4,385. It would similarly be of interest to investigate the reasons for this development further, including if a reason behind the high number of children registered with "unknown" nationality could be linked to a limited capacity to assess their citizenship status. In this respect, UNHCR would like to recall that its *Guidelines* recommend that when a State finds a child to be of undetermined nationality, the State should seek to determine whether the child is otherwise stateless as soon as possible so as not to prolong the child's status of undetermined nationality.[221] A direct consequence for the child of being registered as having an "unknown" nationality instead of being stateless, is that the child cannot avail him or herself of the right in Section 6 of the Act on Swedish Citizenship acquire Swedish nationality by notification.

The fact that in 2015, 3,781 stateless persons born in Sweden, most of whom are still under 18 years, were registered in the Population Register and had not acquired Swedish nationality by notification is concerning, especially in light of the fact that children who are born stateless in Sweden, have a permanent residence permit, and are lawfully and habitually residing have, since 1 July 2001, been able to acquire citizenship by notification. Between 1 July 2001 and 1 April 2015, the notification had to be made before the child turned five years, while since then it has been possible to submit the notification up until the age of 21 (pursuant to Section 8).

220 Email from the SMA, 4 October 2016; email from the SMA, 12 October 2016.

221 UNHCR, *Guidelines* para. 22.

While the requirement to hold a permanent residence permit would constitute an obstacle for some of these children, it should be recalled that, until July 2016 when the Temporary Law entered into force,[222] persons granted refugee status or subsidiary protection were, as a general rule, granted permanent residence permits. As indicated in Table 8 above, most stateless persons granted residence permits in 2015 were so granted on refugee or subsidiary protection grounds.

It is also interesting to note that the number of stateless children born in Sweden drops so drastically from the age group 0-4 years to the age group 5-11 years, at the same time as the number of notifications of children below 5 years (which was the rule prior to the amendment that entered into force in April 2015) pursuant to Section 6 have remained relatively low over the years.

Table 10 shows the number of notifications submitted pursuant to Section 6 of the Act on Swedish Citizenship in respect of children born stateless in Sweden, during the years 2009 to 2015.

Table 10: Acquisition of Swedish nationality by stateless children, by notification pursuant to Section 6 of the Act on Swedish Citizenship, during the years 2009 to 2015[223]

Notifications, Section 6				
Year	**Notifications**	**Decisions**	**Grants**	**Grant percentage**
2009	195	197	110	56
2010	232	228	177	78
2011	267	209	135	65
2012	232	218	122	56
2013	198	263	155	59
2014	389	334	218	65
2015	588	541	275	51

Between the years 2009 to 2013, the number of notifications submitted under Section 6 remained steady, varying between 195 and 267, though the percentage of grants differed. In 2014, the number of notifications submitted rose significantly, and then rose again sharply in 2015. The reason could have been due to the increase of the number of children born stateless in Sweden in 2013-2015, as seen in Table 9. Nonetheless, the number of notifications submitted remains relatively low, compared to the number of children born stateless in Sweden. For example, in 2011, 2,172 children between 0-4 years were registered as stateless, while only 267 notifications for acquisition of citizenship were submitted that year. In 2014, when the number of notifications submitted increased sharply, to 389, the number of children between 0-4 years registered as stateless had also increased, to 3,389. Last year, in 2015, 2,953 children between 0-4 years were registered as stateless, while 588 notifications were submitted, and 275 granted citizenship. The proportion of notifications leading to the granting of nationality for these children has ranged between 56 and 78 per cent.

UNHCR has not been able, within the scope of this research, to gather any information on the most common grounds for rejection of notifications.

222 *Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige (2016: 752)*, entered into force 20 July 2017, available at: https://goo.gl/4F4PpA.

223 Data received from SMA, 21 December 2016.

Table 11: Acquisition of Swedish nationality by stateless children, by notification pursuant to Section 7 of the Act on Swedish Citizenship, during the years 2009 to 2015[224]

Notifications, Section 7				
Year	**Notifications**	**Decisions**	**Grants**	**Grants percentage**
2009	164	161	141	88
2010	165	149	108	72
2011	273	211	161	76
2012	285	250	207	83
2013	236	338	264	78
2014	287	276	207	75
2015	2,357	2,049	1,795	88

The number of notifications made each year by stateless children pursuant to Section 7 of the Act on Swedish Citizenship has been similar in numbers to those made in accordance with Section 6. However, the numbers have been relatively small, until 2015 when a marked increase was noted, when 4,664 children were registered as stateless according to Table 2 in Section 2.2.2.1, while notifications were submitted in respect of 2,357 stateless children. Between 72-88 per cent of the notifications have led to granting of citizenship. UNHCR has not, within the scope of this research, examined closer the proportion of stateless children born outside of Sweden and the number of these children who acquire Swedish citizenship through notification pursuant to Section 7 of the Act on Swedish Citizenship. Nor has UNHCR investigated the reasons for rejections of applications. UNHCR considers that it would be interesting if further research was conducted into the proportion of children born stateless outside of Sweden who utilize the possibility to obtain citizenship through notification.

UNHCR recommends examining the reasons behind the high number of children, as well as adults, registered as stateless and born in Sweden, to assess whether, for example, there is a limited awareness about the notification procedure or if there are other reasons for the comparatively low number of acquisitions of citizenship by notification. As the responsibility under Article 1(1) of the 1961 Convention to grant its nationality to a person born on the territory who would otherwise be stateless, is non-discretionary, it is important to understand why so many persons concerned have not benefitted from this right. Already in 2005, the European Commission against Racism and Intolerance (ECRI) highlighted this issue in its third report on Sweden, and made a recommendation for investigation of the matter.[225] Since then, the SMA has enhanced its efforts to inform immigrants of this possibility, as noted by ECRI in its fourth report on Sweden in September 2012.[226] In that report, ECRI noted that "According to the authorities, the relatively low number of notifications may be explained by the fact that parents opt for naturalization at the same time to ensure that the whole family has the same nationality (or nationalities)."

However, another reason for the high number of persons remaining stateless could be the different approaches of the Swedish Tax Agency and the SMA in regard to the assessment of nationality, or lack thereof. The fact that a high number of young children born in Sweden are registered with "unknown" nationality (see Table 9, especially for the year 2015) is noted in this regard. As mentioned in Section 3.3.2.2 above, under the heading *Establishing statelessness of a child for the purpose of acquiring Swedish citizenship by notification,* the SMA conducts an independent assessment of a child's statelessness when a notification for acquisition of

224 *Ibid.*

225 European Commission against Racism and Intolerance, Third Report on Sweden, CRI(2005)26, 17 December 2004, recommendation no. 14 stated "ECRI encourages the Swedish authorities to continue their efforts to inform non-citizens about the requirements for gaining Swedish citizenship and to investigate the reasons why few children who fulfil the residency requirements take up Swedish citizenship." Report available at: http://goo.gl/cqIE32.

226 European Commission against Racism and Intolerance, Fourth Report on Sweden, CRI(2012)46, 25 September 2012, para. 22, available at: https://goo.gl/iGcCuk.

citizenship is submitted, instead of relying on the one done by the Swedish Tax Agency in the context of the registration of the child in the Population Register. It has not been possible, within the scope of this research, to analyse to what extent the SMA reaches a different conclusion than the Swedish Tax Agency. For example, it appears that the SMA Citizenship Unit normally concludes that a child has acquired the nationality of a presumed father, even when his paternity has not been established, provided he is a national of a country which allows fathers to transmit their nationality to their children. The Swedish Tax Agency, on the other hand, requires the paternity to be established, before investigating whether the father could transmit his nationality to the child. Hence, as mentioned in Section 3.5 above, UNHCR recommends that the definition of a stateless person be transformed into national law, that a common definition of "unknown" nationality be adopted, and that procedural guidelines be developed for a consistent determination of whether an individual is stateless.

4.3.1.2 BIRTH OUTSIDE THE STATE'S TERRITORY

Article 4 of the 1961 Convention provides that a Contracting State shall "grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State." Read in light of developments in international human rights law, Article 4 requires Contracting States to the 1961 Convention to provide for automatic acquisition of their nationality at birth by a child who would otherwise be stateless and is born abroad to a national or, for States which have an application procedure, to grant nationality shortly after birth.[227]

Since 1 April 2015, when the most recent amendments to the Act on Swedish Citizenship entered into force, a child acquires Swedish citizenship if one of his or her parents is a Swedish national, regardless of whether the child is born in Sweden or abroad, pursuant to Section 2 of the Act. Prior to this, a child born outside the territory of Sweden to a Swedish mother would automatically acquire Swedish citizenship, while a child born abroad to a non-Swedish mother and Swedish father would only acquire Swedish citizenship if the parents married, or through an application by the father.

Section 2 of the Act on Swedish Citizenship is thus in full compliance with Article 4 of the 1961 Convention.

4.3.1.3 FOUNDLINGS

Article 2 of the 1961 Convention provides that "a foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State." At a minimum, the safeguard for Contracting States to grant nationality to foundlings is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality. A contrary interpretation would leave some children stateless.[228]

According to Section 3 of the Act on Swedish Citizenship, a foundling is considered to be a Swedish national until any indication to the contrary becomes known. This provision is in compliance with Article 2 of the 1961 Convention.

4.3.1.4 BIRTH ON A SHIP OR AIRCRAFT

Article 3 of the 1961 Convention provides that "a birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be". This provision should be interpreted as referring to all vessels

227 UNHCR, *Guidelines*, para. 52.

228 *Ibid.*, paras. 57-61.

registered in the State.[229] The extension of the territory of a Contracting State to ships flying the flag of that State and to aircraft registered in that State also applies when ships are within the territorial waters or a harbour of another State or to aircraft at an airport of another State.[230]

The Swedish law is silent on whether birth on a ship or aircraft is considered as birth on Swedish territory. The Swedish authorities have not confirmed whether birth on a ship or aircraft is considered as birth on Swedish territory as per established practice. It would therefore be important to look into this issue, in order to assess whether Swedish legislation and practice is compliant with Article 3 of the 1961 Convention.

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

Article 5(1) of the 1961 Convention provides "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."

Article 6 of the 1961 Convention reads in its entirety: "If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality." Put simply, Article 6 disallows a State Party from punishing a spouse or child for the other spouse/parent's loss of nationality.

Article 8 of the 1961 Convention governs deprivation of nationality. Article 8(1) provides, "A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless." Articles 8(2) through 8(4) contain certain enumerated exceptions, as well as important procedural safeguards.

The Instrument of Government of 1974 provides in Chapter 2, Section 7 that "no Swedish citizen who is domiciled in the Realm or who has previously been domiciled in the Realm may be deprived of his or her citizenship."[231] Nonetheless, a person can under certain restrictive conditions be deprived of his or her Swedish nationality, pursuant to Section 14 of the Act on Swedish Citizenship. Namely, a Swedish citizen will lose their citizenship when they turn 22 years if they have been born abroad, never been domiciled in Sweden, and not been in Sweden under circumstances which indicate ties with the country. Such a person can nevertheless submit an application to the SMA, before turning 22 years, to retain his or her Swedish nationality. The purpose of the provision is to prevent persons residing outside of Sweden from being able to retain their Swedish nationality for generations, despite having lost their links to the country. Children who have acquired their Swedish citizenship from a person who is being deprived of their Swedish citizenship pursuant to Section 14 will also be deprived of their citizenship, unless they also acquired Swedish nationality from the other parent who retains his or her Swedish nationality. Importantly, Section 14 contains a clause protecting against statelessness in the case of deprivation; the clause states that deprivation of Swedish citizenship shall not take place if it would lead to statelessness.

The fact that Swedish nationality cannot be lost in any other situation was confirmed in a decision by the Supreme Administrative Court in 2006.[232] A child had acquired Swedish nationality from his Swedish father to whom his mother, a citizen of the United Kingdom, was married. The child was born in 1984, the parents

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229 *Ibid.*, para. 62.

230 *Ibid.*, para. 63. See also UNHCR, *Dakar Conclusions*, paras. 48-49.

231 The same article provides that "It may however be prescribed that children under the age of eighteen shall have the same nationality as their parents or as one parent." See English text of Instrument of Government, at: http://goo.gl/cY14ir.

232 *Högsta Förvaltningsdomstolen*, previously *Regeringsrätten*, 6419-04, 8 November 2006.

divorced in 1993 and in 2000, the paternity of the Swedish father of the child was annulled by a District Court. The Swedish Tax Agency had concluded that the child had acquired British nationality from the mother in accordance with UK nationality law (a child who is born outside the UK acquires British nationality if the mother is a British national and was born in the UK). Consequently, the Swedish Tax Agency changed the nationality of the child to "British" in the Population Register in 2002.

The mother of the child appealed the decision of the Swedish Tax Agency to the County Administrative Court. The County Administrative Court ruled that when Swedish nationality is acquired from a Swedish father who is married to the child's mother (according to Section 1(3) of the Act on Swedish Citizenship valid at that time) and when the paternity is annulled later on, the annulment has a retroactive effect, meaning that the child had not in fact acquired Swedish nationality in accordance with Section 1 of the Act on Swedish Citizenship. The appeal was therefore rejected.

The mother appealed the decision further to the Administrative Court of Appeal, arguing that the child had grown up in Sweden and that the paternity dispute between the parents should not lead to the loss of the child's nationality. The Swedish Tax Agency disputed the appeal, stating that the child had never acquired Swedish nationality. The Administrative Court of Appeal rejected the appeal and reminded the applicant that the child could acquire Swedish nationality through notification or application.

The mother appealed the decision to the Supreme Administrative Court, requesting the registration of the child's nationality in the Population Register to be changed back to Swedish. The Swedish Tax Agency disputed the appeal again, pointing out *inter alia* that the registration in the Population Register of Swedish nationality is not a decision about nationality and does not mean, if the registration was based on incorrect assessment, acquisition of nationality. If the paternity of a father through whom the child has acquired Swedish nationality is annulled, the child is considered afterwards as never having acquired Swedish nationality. The Swedish Tax Agency argued that changes in this application of law should happen through legislation and not through a judgment in a Population Registration case.

The Supreme Administrative Court stated that the question in the case was whether the change of the registration of the child's nationality from Swedish to British by the Swedish Tax Agency was correct or not. The Court referred to Chapter 2, Section 7 of the Instrument of Government and to Section 14 of the Act on Swedish Citizenship, which regulates the situations in which Swedish nationality can be lost (as discussed above). The Court stated that Section 14 does not apply in the present case and that the national legislation does not provide a direct answer to the question. The Court therefore also referred to the ECN and its provisions on deprivation of nationality and concluded that deprivation of nationality due to annulment of paternity, which had been the basis of acquisition of nationality, was not in violation of the provisions of the Convention unless the child were to become stateless as a consequence of the loss of nationality (Article 7 (1)(f) in combination with Article 7(3) of the ECN).

The Court concluded that in the absence of specific legal regulations regarding the matter, the question needed to be solved in light of the general principles of law and in particular in light of Chapter 2, Section 7 of the Instrument of Government. It stated that the Instrument of Government excludes, in principle, any form of deprivation of nationality other than the one provided for in law. This means that for instance a decision on nationality cannot be revoked if it has been based on incorrect information because this ground is not mentioned in Swedish law as a ground for loss or deprivation of nationality. In accordance with the Instrument of Government, it is not possible for Swedish nationality to be lost on the basis of an argument that the nationality was never acquired. The Court therefore concluded that the paternity annulment decision did not mean that the child lost his Swedish nationality and that consequently, the Swedish Tax Agency's change of the registration of the child's nationality was incorrect.

Article 7(1) of the 1961 Convention generally prevents States Parties from permitting renunciation of nationality "unless the person concerned possesses or acquires another nationality." Article 7(2) contains a similar safeguard against statelessness, applicable in situations where the person concerned is seeking naturalization in a foreign country, and Article 7(3) prohibits loss of nationality if the person would become

stateless on account of residence abroad. Article 7(4) contains an exception to the prohibition of Article 7(3) as it allows loss of nationality by naturalized citizens on account of residence abroad of at least seven consecutive years. Article 7(4) is the only provision of the Convention which allows for differential treatment of naturalized citizens as compared to citizens by birth.

According to Section 15 of the Act on Swedish Citizenship, a person who wishes to renounce his or her Swedish nationality can be released from that nationality upon application. Release from the citizenship shall be granted if the person does not have a lawful residence in Sweden, and may be denied to a person who is lawfully residing in Sweden only if special grounds exist. In accordance with the Government Bill on the Act on Swedish Citizenship, such special grounds may arise in a situation where the person, through release of Swedish nationality, would gain undue benefits from the Swedish State; this could, for example, be the case when a person suspected of a crime would make his or her extradition to Sweden difficult or impossible by renouncing the Swedish nationality. If an applicant for renunciation is not already a national of another country, the release is conditional on the person's acquisition of citizenship of another country within a certain period of time. This provision means that a person cannot be released from his or her Swedish nationality if that would render the person stateless. Section 15 therefore contains a safeguard against statelessness in the case of renunciation, in line with Article 7 of the 1961 Convention.

Section 9 of the Act on Swedish Citizenship contains a provision on the re-acquisition of nationality through application in cases where persons have lost or been released from their Swedish nationality, if the person has turned 18 years, has a permanent residence permit in Sweden, has been a lawful resident in Sweden for a total of ten years, and been lawfully and habitually residing in Sweden for the past two years.

4.3.3 Reduction of statelessness

4.3.3.1 NATURALIZATION

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

One of the main purposes of the Government Bill on A Citizenship Based on Affinity,[233] which was published in March 2014, was to strengthen the role and value of Swedish citizenship in the integration process. The Bill refers to citizenship as a symbolic expression of belonging and ties with Sweden,[234] and introduces an obligation on every municipality in Sweden to, at least once per year, organize a citizenship ceremony for all inhabitants who have newly acquired citizenship.

Naturalization of stateless persons is provided for in Sections 11, 12 and 13 of the Act on Swedish Citizenship, and complements the aforementioned modes of acquisition for children, set out in Sections 6 and 7, and for young adults between 18 and 21 years, set out in Section 8 of the Act on Swedish Citizenship.

According to Section 11, a person can be granted Swedish nationality on application if he or she has established his or her identity and has turned 18 years of age. It is required that the person has a permanent residence permit in Sweden and that the person has been lawfully and habitually residing (*hemvist*)[235] in

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233 *Regeringens Proposition (2013/14: 143) Ett medborgarskap som grundas på samhörighet*, available at: https://goo.gl/AW31Gg.

234 *Ibid.*, p. 9 for example provides, in Swedish "Medborgarskapet är viktigt för känslan av delaktighet i det som händer i samhället och för känslan av gemenskap med andra i Sverige. Det är ett viktigt steg i integrationsprocessen att nya svenska medborgare upplever att de är en del av den svenska gemenskapen."

235 The term "hemvist" in the context of the nationality legislation means habitual residence in Sweden with the intention to remain in the longer term. It does not require registration in the Population Register or a minimum number of years of residence, though the residence must be lawful. The focus is on the intention to stay in Sweden. See *Proposition (1997/98: 178) Medborgarskap och identitet*, p. 9, MIG 2008: 17 and MIG 2013: 22.

Sweden for four years (in case of refugees and stateless persons), or five years (in case of other aliens).[236] Finally, the person is expected to have "led and can be expected to lead a respectable life".[237] It is noteworthy that the Swedish legislation and practice does not include any requirements regarding Swedish language skills as a condition for naturalization.

In the Government Bill on the Act on Swedish Citizenship, it is debated whether the law should specify that the four year residence requirement is only applicable to persons who are stateless involuntarily. It was concluded that whereas this specification was not necessary in the law itself, the already existing (unwritten) practice of applying the more beneficial provisions for stateless persons in naturalization matters would continue to be reserved only for those who have not themselves taken any measures in order to become stateless. On the other hand, the fact that a person could acquire a nationality of another State should not have an impact on whether the person is considered as stateless or not.[238]

Section 12 provides some exceptions to the requirements of Section 11. Even if the conditions of Section 11 are not met, a person can be naturalized if he or she has previously been a Swedish national; if he or she is married to (or living together as if married to) a Swedish national; or if there are other special reasons for naturalization. An important exception is also made to the requirement to establish one's identity in Section 11(1): a person who cannot establish his or her identity can be naturalized if he or she has resided in the country for at least eight years and has made it probable that the presented identity is correct (see Section 3.3.2.2 above on questions of proof).

Finally, Section 13 provides that "in a decision concerning naturalization it shall also be decided whether the applicant's unmarried children under the age of eighteen shall acquire Swedish citizenship". As such, the naturalization of children does not occur automatically upon naturalization of the parents. Neither the Act on Swedish Citizenship nor the Government Bill provides specific information on when children would not follow their parents' naturalization. However, given the more beneficial provisions for children and young adults in Sections 6, 7 and 8, it should not be a problem for children to obtain citizenship (through notification as opposed to through naturalization).

According to Section 11 of the Decree on Swedish Nationality, stateless persons are exempted from application fees for naturalization, which is in line with the recommendations of Article 32 of the 1954 Convention. Article 32 of the 1954 Convention also urges states to "make every effort to expedite naturalization proceedings". This has not been explicitly translated into Swedish law or procedure, but in practice applications lodged by stateless persons are processed "expeditiously".[239] The procedure and the positive exceptions are in line with Article 32 of the 1954 Convention, which requires Contracting States to facilitate the naturalization of stateless persons.

Table 13 below presents the number of stateless individuals, or individuals with "unknown" nationality or nationality "under investigation" who have been granted Swedish citizenship through naturalization between the years 2000 to 2015.

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236 For nationals of other Nordic Countries only two years of lawful and habitual residence in Sweden are required.

237 The Act on Swedish Citizenship, Section 11(5). Guidance as to the content of this "good conduct" obligation can be found on the SMA website, at: http://goo.gl/XXWZtq.

238 *Regeringens proposition (1999/2000)*, Lag om svenskt medborgarskap, p. 46.

239 Email from the SMA, 25 October 2012.

Table 13: Naturalizations (2000-2015)[240]

Year	Stateless	Unknown	Under investigation	Total, all nationalities
2000	979	890	361	43,474
2001	941	717		36,399
2002	814	532		37,392
2003	655	1,270		33,222
2004	639	281		28,893
2005	788	314		39,573
2006	1,171	636		51,239
2007	1,156	2,517		33,629
2008	1,131	2,248		30,461
2009	963	2,071		29,525
2010	1,133	1,492		32,457
2011	1,517	2,258		36,634
2012	1,450	1,427		50,179
2013	2,005	720		50,167
2014	1,711	491		43,510
2015	3,264	797		48,249
Total	17,053	17,864	361	576,754

During the years 2000 to 2015, a total of 576,754 persons were naturalized, out of whom 3 per cent were formerly stateless. Interestingly, a slightly larger number (3.1 per cent) consists of persons of formerly "unknown" nationality, despite the requirement to make one's claimed identity probable. Since the year 2000, no persons whose previous nationality had been recorded as being "under investigation" have been granted Swedish nationality. With regard to stateless persons, the figures have remained on the level of around 800 to 1,200 persons per year in most years, except for a decrease in 2003-2005 and a gradual increase from 2010 to 2015, when a record number of 3,264 stateless persons naturalized. It would be interesting to examine if this increase was due to the amendments that entered into force in April 2015, namely the provisions emphasizing the symbolic value of citizenship and the introduction of ceremonies for those who have recently acquired Swedish citizenship.

The number of naturalizations of persons with "unknown" nationality has varied from 281 in 2004 to 2,517 in 2007. While the number of naturalizations of persons with "unknown" nationality generally remained under 1,000 per year until 2006, 2007 to 2012 saw a large increase in the number of persons with "unknown" nationality being naturalised. Since then numbers have been decreasing. This peak is probably related to the sharp increase of persons with "unknown" nationality recorded as residing in Sweden in 2006, as indicated in Table 1 in Section 2.2.2.1 above, as a result of the dissolution of the State Union of Serbia and Montenegro.

Comparing the data in Table 1 in Section 2.2.2.1 and Table 13 above shows that between 9 and 20 per cent of the stateless persons registered in Sweden obtained citizenship through naturalization during the years 2000 to 2015. While this calculation is not exact, as the changes in Table 1 can also be due to other factors, such as citizenship by notification, departures from the country and deaths, it is a rough estimate. Given the State's emphasis on Swedish citizenship as a symbol of belonging and ties with Sweden, and the commitment expressed in several Government Bills to prevent statelessness among children, it is recommended to analyse further the reasons behind the relatively low number of acquisitions of Swedish citizenship in relation to the number of stateless persons residing on the territory of Sweden. In this context, it is recommended to also review the implications on notifications and naturalizations of the changes recently introduced to the duration of residence permits granted to beneficiaries of international protection.

[240] Statistics Sweden, 2016, available at: www.statistikdatabasen.scb.se, and email from Statistics Sweden, 29 September 2016.

4.4 Conclusions and recommendations

The Act on Swedish Citizenship generally has strong protections against childhood statelessness, and against statelessness in the context of renunciation, loss or deprivation of nationality.

Section 6 of the Act on Swedish Citizenship provides for the acquisition of Swedish citizenship by notification of a stateless child born in Sweden, provided the child has a permanent residence permit and is lawfully and habitually resident, and the notification is made before the child turns 18 years. This would thus apply to all children born stateless in Sweden to parents who are permanent residents and lawfully and habitually residing in Sweden. Section 8 provides that a stateless person between 18 and 21 years can acquire Swedish citizenship by notification if he or she has a permanent residence permit in Sweden and has been lawfully and habitually residing in the country since at least 15 years of age. This provision thus closes the gap between 18 and 21 years, as required by Article 1(2)(a) of the 1961 Convention. However, the requirement of permanent residence, as opposed to habitual residence set out in Article 1(2)(b) of the 1961 Convention is problematic, not least in view of the recent changes introduced regarding the duration of residence permits granted to beneficiaries of international protection.[241]

Based on a reading of Article 1(1) of the 1961 Convention in conjunction with Article 7 of the CRC on the right of every child to acquire a nationality, and Article 3 of the CRC on the principle of the best interests of the child, UNHCR considers that these provisions, together, create a presumption that States need to provide for the automatic acquisition of their nationality at birth by an otherwise stateless child born in their territory. UNHCR would therefore recommend Sweden to consider introducing a right for children born on the territory, who would otherwise be stateless, to acquire Swedish citizenship automatically at birth, by operation of law *(ex lege)*. Closing the gap between the non-discretionary right in Article 1 (1) of the 1961 Convention and the requirement of permanent residence in Sections 6 and 8 of the Act on Swedish Citizenship is particularly important at this point in time, when the previous rule of granting beneficiaries of international protection permanent residence permits has been temporarily changed.

The Act on Swedish Citizenship further provides, in Section 7, that children born stateless abroad, who have permanent residence and have been lawfully and habitually residing in Sweden for the last two years, can acquire citizenship by notification. This provision is commendable, as it is clearly aimed at preventing childhood statelessness, in line with the spirit of the 1961 Convention and the CRC.

However, despite these quite strong protections in Swedish citizenship legislation, it is concerning that only a relatively small percentage of the stateless children in Sweden, both those born in the territory and those born abroad, seem to use the notification procedure. UNHCR therefore recommends further research into the reasons for this, to assess whether it is, for example, due to a general low awareness about the notification procedure, parent(s)' reluctance to see their children acquire Swedish citizenship or as a result of challenges in establishing the statelessness of a child due to the lack of common procedural guidelines.

The Swedish legislation is fully compliant with the 1961 Convention in regard to the prevention of statelessness in the case of birth outside the State's territory and foundlings, while the situation of births on board a Swedish ship or aircraft has not been specifically regulated and would need to be further examined.

The national legislation is also fully compliant with the 1961 Convention in regard to its protections against statelessness in the case of renunciation, loss or deprivation of Swedish citizenship.

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241 *Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige (2016: 752)*, which entered into force on 20 July 2016, available at: https://goo.gl/ch7q25.

The Act on Swedish Citizenship contains, since April 2015, a preambular paragraph which emphasizes the role of Swedish citizenship as something which unites all citizens and symbolizes belonging and ties with Sweden. The Act also contains several provisions which aim to facilitate the naturalization of stateless persons, namely by reducing the required period of permanent residency from the normal five to four years, and by waiving the application fees. In view of the State's recognition of the role citizenship plays in the integration process, and of the importance of preventing childhood statelessness, UNHCR would recommend undertaking a review of how the recently introduced restrictions on the granting of permanent residence permits will affect stateless persons' ability to acquire Swedish citizenship.

5. Concluding remarks and recommendations

Awareness of statelessness as a distinct human rights issue, which has consequences for the individuals concerned, and for States like Sweden which are Parties to the 1954 and 1961 Conventions, is generally low among government authorities, NGOs, and the public at large. There is a corresponding lack of research on the situation of stateless persons in Sweden, as well as a lack of targeted assistance aimed at this group. Although Sweden has been a State Party to the 1954 Convention since 1965, numerous provisions in the Convention have not been transformed into the Swedish legislation, or applied in practice. Similarly, the national legislation has not been fully aligned with the standards set out in the 1961 Convention, to which Sweden has been a State Party since 1969. In addition, Sweden maintains several reservations to the 1954 Convention despite the commitment expressed at the Ministerial Intergovernmental Event on Refugees and Stateless Persons convened by UNHCR in December 2011, to address statelessness through foreign policy initiatives, and remove its reservations to the 1954 Convention.

Individuals holding a residence permit in Sweden are registered by the Swedish Tax Agency in the Population Register, which *inter alia* holds information about the individual's nationality status, including if he or she is stateless, or of "unknown" nationality, or if his or her nationality is "under investigation". The SMA maintains a separate Register of individuals being processed pursuant to the national aliens or citizenship legislation, including persons seeking international protection or stay in Sweden on other grounds. While an individual's nationality status, including his or her statelessness, is registered and publicly available in the Register of the SMA, there is no readily available information about the countries of birth or former habitual residence of persons registered as stateless, or as having "unknown" nationality or "under investigation" while undergoing these procedures. This limits the accessibility to comprehensive information concerning the origins and backgrounds of the persons registered in Sweden as stateless, as having "unknown" nationality or as having their nationality "under investigation" by the SMA.

According to statistical information published by Statistics Sweden, the following number of individuals were registered in the Population Register as "stateless", as having "unknown" nationality or as having their nationality "under investigation" at the end of 2015:

- 21,580 stateless persons;
- 5,523 persons with "unknown" nationality; and
- 119 with their nationality "under investigation".

Furthermore, the following number of asylum-seekers were registered in the Register of the SMA as stateless, or as having "unknown" nationality or nationality "under investigation" at the end of 2015:

- 7,771 stateless asylum-seekers;
- 317 asylum-seekers with "unknown" nationality; and
- 918 asylum-seekers with their nationality "under investigation".

In addition, 382 stateless persons and 165 persons with "unknown" nationality were awaiting return at the end of 2015.

This brings the total number of stateless person known to the authorities to be on Swedish territory, by the end of 2015, to 29,733; while the number of persons with "unknown" nationality was 6,005; and the number of persons with nationality "under investigation" was 1,037. Around 18 per cent of the stateless persons holding a residence permit were born in Sweden.

The research has revealed that the Swedish Tax Agency and the SMA, as the national authorities which can register a person as stateless, as having "unknown" nationality or nationality "under investigation", do not have common guidelines with guidance on how to assess if an individual falls within these categories, including the burden and standard of proof to apply, at their disposal. One consequence is that the standard of proof applied for establishing if an individual is stateless appears to be higher than the one recommended by UNHCR in its *Handbook on Protection of Stateless Persons*. The absence of procedural guidelines, coupled with the fact that the definition of a stateless person set out in Article 1(1) of the 1954 Convention has not been transformed into the national legislation, which also lacks a definition of a person with "unknown" nationality, leads to certain inconsistencies in the administrative practice and a large number of individuals, including children, being registered as having an "unknown" nationality. This, in turn, prevents children born stateless in Sweden from availing themselves of their right to acquire Swedish citizenship through notification.

In addition, there is no automated system for updating and reconciling information in the Population Register and Register of the SMA, which can lead to a situation where an individual is registered as stateless in one register, and as having an "unknown" nationality in the other.

Pursuant to the 1954 Convention, the determination of whether an individual is statelessness or not, based on clear definitions and subject to procedural safeguards, should take place within a dedicated statelessness determination procedure. Such a procedure does not exist in Sweden today; therefore, the only determination of an individual's potential statelessness that takes place is the one conducted by the Swedish Tax Agency for the purpose of registering an individual in the Population Register, and by the SMA, for the purpose of establishing the identity of an asylum-seeker or applicant for another immigration permit, or for determining if an applicant for citizenship by notification or naturalization is stateless. The assessments of potential statelessness of an applicant for an asylum or immigration permit, or citizenship, that are conducted today are not legally binding and have no independent legal weight; they can therefore not be appealed. The lack of a statelessness determination procedure, which can lead to the granting of a status as stateless and a corresponding residence permit, means that persons, including "unreturnable" persons who may have a claim as stateless, are not able to exercise the right to seek this status in Sweden. Another consequence of the lack of such a procedure and status is that stateless persons in Sweden are only entitled to the rights granted in connection with the particular residence permit they hold, such as a temporary or permanent residence permit issued on the basis of a refugee or subsidiary protection status.

In terms of prevention and reduction of statelessness, the Act on Swedish Citizenship generally has strong protections against childhood statelessness, and against statelessness in the context of renunciation, loss or deprivation of nationality.

Section 6 of the Act on Swedish Citizenship provides for the acquisition of Swedish citizenship by notification of a stateless child born in Sweden, provided the child has a permanent residence permit and is lawfully and habitually resident, and the notification is made before the child turns 18 years. Section 8 provides that a stateless person between 18 and 21 years can acquire Swedish citizenship by notification is he or she has a permanent residence permit in Sweden and has been lawfully and habitually residing in the country since at least 15 years of age. This provision thus closes the gap between 18 and 21 years, as required by Article 1(2)(a) of the 1961 Convention. However, the requirement of permanent residence, as opposed to habitual residence set out in Article 1(2)(b) of the 1961 Convention is problematic, not least in view of the recent changes introduced regarding the duration of residence permits granted to beneficiaries of international protection. Closing the gap between the non-discretionary right in Article 1(1) of the 1961 Convention and the requirement of permanent residence in Sections 6 and 8 of the Act on Swedish Citizenship is particularly

important at this point in time, when the previous rule of granting beneficiaries of international protection permanent residence permits has been temporarily changed.

The Act on Swedish Citizenship further provides, in Section 7, that children born stateless abroad, who have permanent residence and have been lawfully and habitually residing in Sweden for the last two years, can acquire citizenship by notification. This provision is commendable and clearly aimed at preventing childhood statelessness, in line with the spirit of the 1961 Convention and the CRC.

However, despite these quite strong protections in the Swedish citizenship legislation, it is concerning that only a relatively small number of stateless children in Sweden, both those born in the territory and those born abroad, seem to use the notification procedure.

Swedish legislation is fully compliant with the 1961 Convention in regard to the prevention of statelessness in the case of birth outside the State's territory and foundlings, while the situation of births on board a Swedish ship or aircraft has not been specifically regulated and would need to be further examined.

The national legislation is also fully compliant with the 1961 Convention in regard to its protections against statelessness in the case of renunciation, loss or deprivation of Swedish citizenship.

The Act on Swedish Citizenship contains, since April 2015, a preambular paragraph which emphasizes the role of Swedish citizenship as something which unites all citizens and symbolizes belonging and ties with Sweden. The Act also contains provisions which aim to facilitate the naturalization of stateless persons, namely by reducing the required period of permanent residency from the normal five to four years, and by waiving the application fees.

In light of the above, UNHCR presents the following summary recommendations aimed at bringing the Swedish legal framework, practice and administrative capacity fully in line with the standards set out in the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness:

Identification and registration of statelessness

IT IS RECOMMENDED THAT THE DEFINITION OF A STATELESS PERSON SET OUT IN ARTICLE 1(1) OF THE 1954 CONVENTION IS TRANSFORMED INTO THE NATIONAL LEGISLATION to ensure a consistent identification, determination and registration, by the responsible authorities, of a person as stateless. It is also recommended to clearly define the criteria for identifying and registering a person as having "unknown" nationality.

IT IS RECOMMENDED THAT STEPS BE TAKEN TO REMOVE THE REMAINING RESERVATIONS TO THE 1954 CONVENTION in line with the commitment expressed by Sweden at the Ministerial Intergovernmental Event on Refugees and Stateless Persons convened by UNHCR in December 2011.

IT IS RECOMMENDED THAT COMMON GUIDELINES BE DEVELOPED FOR THE RESPONSIBLE AUTHORITIES ON HOW TO DETERMINE AND/OR REGISTER A PERSON AS STATELESS or as having "unknown" nationality in the context of establishing an applicant's identity within asylum and other immigration procedures, as well as for the purpose of birth and civil registration and assessment of statelessness for the purpose of acquiring Swedish citizenship by notification or naturalization. Such guidelines should, *inter alia,* ensure that the respective authorities apply the same criteria and burden and standard of proof.

IT IS RECOMMENDED THAT A MECHANISM BE ESTABLISHED FOR UPDATING AND HARMONIZING INFORMATION ON INDIVIDUALS' NATIONALITY STATUS in the Population Register and Register of the SMA, to avoid inconsistencies in the data.

IT IS RECOMMENDED TO IMPROVE QUANTITATIVE AND QUALITATIVE DATA ON STATELESS PERSONS IN SWEDEN, to ensure that all stateless persons are consistently recorded and reflected in the statistics. In this context, UNHCR recommends exploring the possibility of recording stateless applicants' country or place of former habitual residence in the Register of the SMA in a manner which enables the generation of statistical reports containing this data. UNHCR also recommends undertaking a participatory study of the stateless population in Sweden, to improve the understanding of how statelessness affects these individuals' situation in Sweden, and why so few use the possibility to acquire Swedish citizenship by notification, as well as by naturalization.

Determination of stateless persons and the rights attached to the status

IT IS RECOMMENDED THAT A STATELESSNESS DETERMINATION PROCEDURE BE ESTABLISHED to identify which persons on Swedish territory, including among the "unreturnable" persons, are stateless and entitled to the protections of the 1954 Convention and a residence permit. The procedural standards and safeguards that should govern fair and efficient statelessness determination procedures are set out in the UNHCR *Handbook on Protection of Stateless Persons.* The UNHCR *Good Practices Paper on Establishing Statelessness Determination Procedures to Protect Stateless Persons*[242] provides useful guidance and examples of how such procedures can be established and managed in practice.

IT IS RECOMMENDED THAT CHILDREN, AS WELL AS ADULTS, IDENTIFIED AS HAVING "UNKNOWN" NATIONALITY HAVE THEIR NATIONALITY STATUS DETERMINED AS SOON AS POSSIBLE in order not to prolong their undetermined status and consequent access to citizenship and relevant rights.

IT IS RECOMMENDED TO REVIEW THE BURDEN AND STANDARD OF PROOF APPLIED IN PROCEDURES WITHIN WHICH AN INDIVIDUAL CAN BE ASSESSED AND/OR REGISTERED AS STATELESS to ensure it follows the procedural standards set out in the UNHCR *Handbook on Protection of Stateless Persons,* including the standard of proof of a reasonable degree.

IT IS RECOMMENDED TO INTRODUCE PROVISIONS GUARANTEEING APPLICANTS, AS WELL AS PERSONS RECOGNIZED AS STATELESS, THE RESPECTIVE RIGHTS TO WHICH THEY ARE ENTITLED UNDER THE 1954 CONVENTION. The UNHCR *Handbook on Protection of Stateless Persons* outlines which rights all stateless persons on a State's territory are entitled to, which are applicable to persons seeking the status as stateless, and which are reserved for persons determined to be stateless.

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

[242] UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: http://www.refworld.org/docid/57836cff4.html.

IT IS RECOMMENDED THAT SPECIALIZED TRAINING ON INTERNATIONAL AND REGIONAL STANDARDS ON THE PREVENTION AND REDUCTION OF STATELESSNESS, AND PROTECTION OF STATELESS PERSONS, BE PROVIDED to officials responsible for identifying, determining and/or registering stateless persons, as well as to policy makers responsible for ensuring that the national legal framework complies with Sweden's obligations under the 1954 and 1961 Conventions.

Prevention and reduction of statelessness

IT IS RECOMMENDED THAT THE ACT ON SWEDISH CITIZENSHIP BE ALIGNED WITH THE REQUIREMENTS IN ARTICLE 1(1) OF THE 1961 CONVENTION AND THE CRC, TO PREVENT CHILDREN FROM BEING BORN INTO STATELESSNESS by providing for the automatic grant of Swedish nationality at birth to persons born in the territory who would otherwise be stateless, in accordance with Article 1(1)(a) of the 1961 Convention or, alternatively, that nationality be granted by application pursuant to Article 1(1)(b). Importantly, if Sweden opts to continue granting such children citizenship by notification/application, as opposed to by operation of law, it is strongly recommended that the requirement of permanent residence be changed to habitual residence. Pursuant to Article 1(1)(a) of the 1961 Convention, and Articles 7 and 3 of the CRC, UNHCR recommends Sweden to grant children born on the territory who would otherwise be stateless citizenship at birth, by operation of law.

IT IS RECOMMENDED TO UNDERTAKE RESEARCH INTO THE REASONS FOR THE RELATIVELY LOW NUMBER OF NOTIFICATIONS OF STATELESS CHILDREN BORN ON THE TERRITORY to assess whether, *inter alia,* there is a general low awareness about the notification procedure, if parents are reluctant to see their children acquire Swedish citizenship and/or if challenges in establishing the statelessness of a child, due to the lack of common procedural guidelines, are among the causes.

IT IS RECOMMENDED THAT THE ACT ON SWEDISH CITIZENSHIP BE INTERPRETED SUCH THAT BIRTHS ABOARD A SWEDISH AIRCRAFT OR SHIP be deemed to have occurred on Swedish territory.

IT IS RECOMMENDED TO UNDERTAKE A REVIEW OF HOW THE RECENTLY INTRODUCED RESTRICTIONS ON THE GRANTING OF PERMANENT RESIDENCE PERMITS WILL AFFECT STATELESS PERSONS' ABILITY TO ACQUIRE SWEDISH CITIZENSHIP by naturalization in view of the State's recognition of the role citizenship plays in the integration process.

STATELESSNESS

UNHCR Regional Representation
for Northern Europe
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