

Typology of Stateless Persons in Japan

Study Group on
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The views expressed in this report are those of the authors and do not necessarily reflect those of UNHCR.

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FOREWORD

A stateless person is somebody who is not considered a national by any State. There are at least 10 million stateless people and persons at risk of statelessness worldwide. Without the formal legal bond of nationality, stateless people are often unable to enjoy basic human rights such as going to school, receiving healthcare, or registering birth or marriage. Many stateless persons cannot legally travel to and stay in another country. Some may even face detention.

UNHCR is mandated by the UN General Assembly to assist States to identify, prevent and reduce statelessness as well as to protect stateless persons. States and UNHCR have in recent years strengthened their efforts to address statelessness. Since the beginning of UNHCR's renewed accession campaign in 2010, the number of contracting States for the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness increased from 65 to 89 and 33 to 70 respectively. Furthermore, a number of States have made changes to their national legal frameworks or established statelessness determination procedures. Encouraged by these positive developments, UNHCR launched its #iBelong campaign in November 2014 to end statelessness within 10 years.

This report is the third study commissioned by UNHCR in Japan, and complements the two previous studies by Professor Kohki Abe entitled "Overview of Statelessness: International and Japanese Context" (2010) and Professor Osamu Arakaki entitled "Statelessness Conventions and Japanese Laws: Divergence and Convergence" (2015). These earlier studies had recommended that further research be carried out to help identify the number and circumstances of stateless persons in Japan and the realities they face.

The study provides useful insights on the various procedures in which administrative bodies assess a person's nationality status. It provides case studies of stateless persons and persons who are potentially stateless, categorized by the causes, and proposes measures to address the challenges identified through the case studies. The report will also help the government to more accurately quantify statelessness in Japan in the future.

This latest study reinforces the previous reports' recommendations to establish a statelessness determination procedure, to flexibly implement and strengthen the current Japanese nationality law provisions to address statelessness, as well as to accede to the two Statelessness Conventions. The authors also emphasize that the assessment of statelessness should be made in line with the guidance of the UNHCR Handbook on the Protection of Stateless Persons (2014).

The Study also demonstrates through examination of actual cases that increased awareness regarding nationality and statelessness issues among the relevant actors in Japan can help identifying and addressing (the risk of) statelessness. In this context, this Study can contribute to a more systematic identification of persons whose statelessness may not have come to the surface and provide practical hints to explore how to effectively respond to their plight.

UNHCR Japan hopes that this study will provide the basis for active discussions among the government, legal practitioners, civil society and stateless persons themselves about how the identified challenges can be addressed, including potential actions for the strengthening of the current legal framework and its implementation.

Dirk Hebecker
Representative
UNHCR Representation in Japan

PREFACE

The Study Group on Statelessness in Japan, to which the authors of this report belong to, is a voluntary group founded in 2014 by researchers, practitioners, and NGO staff interested in issues of statelessness in Japan. The same year in August, the group began conducting a study funded by the Japan Federation of Bar Associations Law Foundation, i.e. the Study No. 111 “Study on Statelessness in Japan: Understanding the situations of stateless persons and the legal framework relating to protection of stateless persons.”¹ It has also held its study session once every one to two months and has carried out overseas research by interested members in order to deepen the knowledge on statelessness issues in Japan.

Two studies on statelessness in Japan commissioned by UNHCR Tokyo have already been conducted. These are: Kohki Abe, “Overview of Statelessness: International and Japanese Context” (March 2010), and Osamu Arakaki, “Statelessness Conventions and Japanese Laws: Convergence and Divergence” (May 2015).² They both produced significant outcomes as studies examining statelessness in Japan in recent years.

In consolidating the research outcomes for the purposes of writing this report, the Study Group on Statelessness in Japan intends to characterize it as a third volume complementing the two previous studies and aiming to be read together with them to provide further insights into the phenomenon of statelessness in Japan.

Appreciation is hereby made with gratitude to Professor Kohki Abe who conducted one of the earlier studies, for his great support on this report.

We also would like to express our gratitude to the persons involved with each case which this report covers, their attorneys-at-law, supporting organizations, and embassies and consulates in Japan for providing information as well as advice.

Moreover, Professor Atsushi Kondo, other members of the Study Group on Statelessness in Japan, and UNHCR staff, especially Ms. Mai Kaneko and Ms. Radha Govil, provided us with many useful comments. The English translation of this report was

¹ Japan Law Foundation, *Kenkyu* [Study], at <https://www.jlf.or.jp/work/kenkyu.shtml>.

² Kohki Abe, *Mukokusekino Jyoukei: Kokusaihou no Shiza, Nihonno Kadai* [Overview of Statelessness: International and Japanese Context] (UNHCR, 2010), at <http://www.unhcr.org/4ce643ac9.html>. (Translator’s note: the English version is the following. Kohki Abe, *Overview of statelessness: International and Japanese Context* (UNHCR, 2010), at <http://www.refworld.org/docid/4c344c252.html>.)
Osamu Arakaki, *Mukokusekijyouyakuto Nihonno Kokunaihou: Sono Settento Hedatari* [Statelessness Conventions and Japanese Laws: Convergence and Divergence] (UNHCR, 2015), at http://www.unhcr.or.jp/html/protect/pdf/Statelessness_Conventions_and_Japanese_Law.pdf. (Translator’s note: the English version is the following. Osamu Arakaki, *Statelessness Conventions and Japanese Laws: Convergence and Divergence* (UNHCR, 2015), at http://www.unhcr.org/jp/wp-content/uploads/sites/34/protect/Statelessness_Conventions_and_Japanese_Laws_EN.pdf.)

prepared by Ms. Kaneko, Ms. Miki Arima and Mr. Christopher Cade Mosley. We would like to express our sincere gratitude to them as well.

Finally, we would like to express our respect to all the authors for their great work.

We hope this report will contribute to worldwide efforts to identify statelessness which would in turn help resolve the issues of statelessness.

Representing the Editors,
Ayane Odagawa
Sousuke Seki

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LEGEND

(1) Countries and Regions

Italy	Italian Republic
UK	United Kingdom of Great Britain and Northern Ireland
Ethiopia	Federal Democratic Republic of Ethiopia
Cameroon	Republic of Cameroon
ROK	Republic of Korea
DPRK	Democratic People’s Republic of Korea
Serbia	Republic of Serbia
Soviet Union	Union of Soviet Socialist Republics
Thailand	Kingdom of Thailand
Taiwan	Republic of China

China	People's Republic of China
Paraguay	Republic of Paraguay
Philippines	Republic of the Philippines
Brazil	Federative Republic of Brazil
Vietnam	Socialist Republic of Viet Nam
US	United States of America
Myanmar	Republic of the Union of Myanmar
Laos	Lao People's Democratic Republic

(2) Organizations

UNHCR	Office of the United Nations High Commissioner for Refugees
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(3) Treaties

The 1961 Convention	Convention on the Reduction of Statelessness (Adopted in 1961, Entered into force in 1975)
San Francisco Peace Treaty	Treaty of Peace with Japan (Entered into force on 28 April 1952)
ICCPR	International Covenant on Civil and Political Rights (Adopted in 1966, Entered into force in 1976)
The 1954 Convention	Convention Relating to the Status of Stateless Persons (Adopted in 1954, Entered into force in 1960)
The 1951 Refugee Convention	Convention Relating to the Status of Refugees (Adopted in 1951, Entered into force in 1954)

(4) Japanese Law

ICRRA	Immigration Control and Refugee Recognition Act
Special Act on Immigration Control	Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan

(5) Other

The Abe Report	Abe, Kohki. <i>Mukokusekino Jyoukei: Kokusaihouno Shiza, Nihonno Kadai</i> [Overview of Statelessness: International and Japanese Context] (UNHCR, 2010)
The Arakaki Report	Arakaki, Osamu. <i>Mukokusekijyouyakuto Nihonno Kokunaihou: Sono Settento Hedatari</i> [Statelessness Conventions and Japanese Laws: Convergence and Divergence] (UNHCR, 2015)
UNHCR Handbook	UNHCR. <i>Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons</i> (UNHCR, 2014)
<i>Minshuu</i>	<i>Saikou Saibansho Minji Hanreishuu</i> [Supreme Court Civil Caselaw Report]
<i>Shuumin</i>	<i>Saikou Saibansho Saibanshuu Minji</i> [Collection of Supreme Court Civil Cases]

INTRODUCTION

Where this report fits in

As mentioned in the preface, this report was designed as the third volume of the two earlier reports, Kohki Abe's "Overview of statelessness: International and Japanese Context" (hereinafter the Abe Report) and Osamu Arakaki's "Statelessness Conventions and Japanese laws: Convergence and Divergence" (hereinafter the Arakaki Report). This report is also meant to present the outcome of a study funded by Japan Law Foundation, Study No. 111: "Study on Statelessness in Japan: Understanding the situations of stateless persons and the legal framework relating to protection of stateless persons."

The 2010 Abe Report clarifies the definition of statelessness under international law, explains its causes and trends of statelessness, and provides an overview of statelessness and where it fits in within the context of Japan. It also analyses some groups of stateless (or possibly stateless) persons from the standpoint of prevention of statelessness and treatment of stateless persons.

The subsequent 2015 Arakaki Report analyses how Japan has historically handled issues of statelessness and discusses the consistency between the two statelessness conventions (the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, hereinafter “the 1954 Convention” and “the 1961 Convention”) and domestic laws as well as their practice in Japan, a State not yet a signatory to the two conventions. Particularly, the report points out that the lack of a definition of statelessness under Japan’s domestic legislation leads to a crucial gap between domestic law and the two statelessness conventions, revealing the legislative and policy challenges to be addressed for accession to the two statelessness conventions.

In order to build on these two earlier studies on statelessness issues in Japan, this report referred to groups of stateless or potentially stateless persons which the Abe Report examined, as well as the points raised in the Arakaki Report, as issues to be explored further in relation to Japanese law. The authors then conducted a new “mapping” in the sense that they re-identified general categories of stateless persons and persons at risk of statelessness in Japan as broadly as possible in order to gain an overview of the cases in Japan.

Trends related to statelessness around the world

As of 2010 when the Abe Report was released, UNHCR had estimated the number of stateless persons worldwide as 12 million;³ six years later at the end of 2016, the estimated number of stateless persons and persons at risk of statelessness was 10 million.⁴

³ UNHCR, UNHCR Global Trends 2010 (2011), at <http://www.unhcr.org/statistics/country/4dfa11499/unhcr-global-trends-2010.html>, p. 2. In the Preface of the Abe Report, Johan Cels, Representative of UNHCR Tokyo at the time, introduces the same estimates.

⁴ UNHCR, Global Trends: Forced Displacement in 2016 (2017), at <http://www.unhcr.org/5943e8a34>, p. 2.

On first glance at these statistics can indicate that the number of stateless persons has decreased over the years. However, in only the six years following 2010, an enormous number of refugees and displaced persons⁵ had fled from Syria, Afghanistan, Somalia, Iraq, and other areas of conflict. Particularly considering this situation, there are concerns that there may be many people who are in a vulnerable position not only due to displacement but also due to the uncertainty about their nationality, and that such people continue to be newly generated. In addition to this, the effects of the emergence of the Islamic State of Iraq and the Levant (ISIL), for example, also need to be examined also as a new factor destabilizing the systems related to nation State and nationality.

The Necessity of “mapping” activities

Under these difficult circumstances in the world, UNHCR has been courageously promoting the “I belong” campaign to achieve the goal of ending statelessness in 10 years by 2024.

In order to resolve statelessness, it is important to understand the actual state of the related issues as accurately as possible.⁶ Considering this, every country is keenly expected to make efforts to conduct “mapping” activities to “gain an overview” of the number of stateless persons and their actual situations, such as causes, predicaments faced, and possible solutions.

⁵ On the nexus between refugees and statelessness, see for example Institute of Statelessness and Inclusion, “Statelessness and Displacement: Scoping Paper”(2015), at http://www.institutesi.org/stateless_displacement.pdf.

⁶ Needless to say, under ideal circumstances, the establishment of a statelessness determination system in each country and statelessness determinations using unified criteria would contribute to an accurate grasp of stateless persons. However, the number of States that have established statelessness determination systems remains at just over ten at the time of writing, including France, Spain, Italy, Hungary, Latvia, UK, and the Philippines, although the number is on the rise. On each state’s statelessness determination procedure as of July 2016, see: UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons* (2016), at <http://www.refworld.org/docid/57836cff4.html>, pp. 2-3.

Responding to this expectation, many states—such as Hungary (October 2010),⁷ UK (November 2011),⁸ Holland (November 2011),⁹ Belgium (October 2012),¹⁰ Malta (August 2014),¹¹ Finland (November 2014),¹² Iceland (December 2014),¹³ and Norway (October 2015)¹⁴—have already released their results of their mapping activities, although in various forms and with various contents. On the other hand, however, a substantive number of countries have not yet done so.

“Mapping” activities in Japan

As mentioned above, Japan has not yet acceded to either the 1954 Convention or the 1961 Convention, and the government has not taken any concrete actions to do so. As the Arakaki Report points out, the Japanese legal system also does not yet provide for any statelessness determination system or a consistent definition of statelessness. It is undeniable that statelessness has not had gained much attention in Japan, and studies and practices relating to stateless cases have not been developed very actively because of this.¹⁵

Nevertheless, the Abe Report was released in 2010, providing an overview of statelessness in Japan and taking the first step towards conducting the mapping activities. With this having had a great impact, a number of developments has taken place in relation to statelessness.

⁷ Gábor Gyulai, *Statelessness in Hungary: The Protection of Stateless Persons and the Prevention and Reduction of Statelessness* (Hungarian Helsinki Committee, 2010), at http://helsinki.hu/wp-content/uploads/Statelessness_in_Hungary_2010.pdf

⁸ Lucy Gregg, Chris Nash and Nick Oakeshott, *Mapping Statelessness in the United Kingdom* (UNHCR/Asylum Aid, 2011), at <http://www.unhcr.org/protection/statelessness/4ecbc3c09/mapping-statelessness.html>

⁹ UNHCR, *Mapping Statelessness in the Netherlands* (UNHCR, 2011), at <http://www.refworld.org/docid/4eef65da2.html>

¹⁰ Carine Rustom and Quentin Schoonvaere, *Mapping Statelessness in Belgium* (UNHCR, 2012), at [http://www.unhcr.org/protection/statelessness/51110b1c9/unhcr-mapping-statelessness-belgium-october-2012.html?query=stateless mapping](http://www.unhcr.org/protection/statelessness/51110b1c9/unhcr-mapping-statelessness-belgium-october-2012.html?query=stateless%20mapping)

¹¹ UNHCR, *Mapping Statelessness in Malta* (UNHCR, 2014), at <http://www.unhcr.org/mt/news-and-views/press-releases/774>

¹² UNHCR, *Mapping Statelessness in Finland* (UNHCR, 2014), at <http://www.refworld.org/docid/546da8744.html>

¹³ UNHCR, *Mapping Statelessness in Iceland* (UNHCR, 2014), at <http://www.refworld.org/docid/54c775dd4.html>

¹⁴ UNHCR, *Mapping Statelessness in Norway* (UNHCR, 2015), at http://www.unhcr-northerneurope.org/fileadmin/user_upload/Documents/PDF/Statelessness/UNHCR-Statelessness_in_Norway-screen.pdf

¹⁵ In such a context, it is worth noting that Chen Tien Shi published *Mukokuseki* [Stateless] (Shinchosha, 2005) and played a role in making known the statelessness issues in Japan to a certain extent.

In 2011, a year after the Abe Report, Stateless Network,¹⁶ previously a volunteer group, was reorganized as an officially registered non-profit organization. In 2014, the Study Group of Statelessness in Japan, to which the authors of this report belong, was founded by researchers, practitioners, and NGO staff; and it initiated the study funded by Japan Federation of Bar Associations Law Foundation as mentioned above.

Also, many articles aimed at understanding and analyzing the current situation of statelessness in Japan have been published in recent years.¹⁷

Along with these movements, the Arakaki Report was published in 2015 and made great progress in analyzing and discussing statelessness in Japan, which had been lagging behind as compared to some other countries.

¹⁶ On Stateless Network, see: <http://statelessnetwork.sakura.ne.jp/wp/>.

¹⁷ For example,

a) *Imin Seisaku Kenkyuu* [Migration Policy Review] No. 5 (May 2013), which is a journal published by the Japan Association for Migration Policy Studies, contains the following articles: Chen Tien Shi, “*Nihonniokeru Mukokusekishano Ruikei* [Types of Stateless Persons in Japan]”; Ayane Odagawa, “*Kokuseki, Mukokuseki Ninteino Genjyouto Kadai – Kaisei Nyuukanhouwo Fumaete* [The Current Situation and Challenges of Determinations on Nationality or Statelessness]”; and Yue Fu, “*Mukokuseki Jyoyaku Kanyuuno Igito Nihonno Kadai* [Conventions Relating to Statelessness and Japan’s Challenges]”. For details, see: <http://iminseisaku.org/top/journal.html>.

b) *Houritsu Jihou* [Law Times] October 2014 issue on “*Kokusaiteki Hogo’ wo meguru Aratana Chouryuu – Nanmin, Mukokusekisha, Hokanteki Hogo* [New Trends in International Protection – Refugees, Stateless, and Complementary Protection]” contains the following articles: Osamu Arakaki, “*Mukokusekisha Chii Jyoyaku to Mukokuseki Sakugen Jyoyaku: Seiritsumadeno Keii to Gaiyou* [1954 Convention and 1961 Convention: Background and Overview]”; Mark Manley (translated by UNHCR Japan), “*Mukokuseki ni Torikumutameno UNHCR no Mandeeto oyobi Katsudou* [UNHCR’s Mandate and Activities to Address Statelessness]”, and Ayane Odagawa and Yue Fu, “*Nihonno Mukokuseki Mondaiwomeguru Genjyouto Kadai* [Current Situation and Challenges of Stateless Issues in Japan]”.

c) *Hougaku Seminaa* [Legal Studies Seminar] October 2014 issue on “*Mukokuseki toiu Hazama* [A Void Called Statelessness]” contains the following: Fumie Azukizawa, “*Mukokusekiwo Ikiru Hitobito – Houritsukaniyoru Shienno Genbakara* [Persons Living in Statelessness – from the Frontlines of Legal Aid]”; Chen Tien Shi, “*Mukokuseki Datta Watashi* [I Used to be Stateless]”; Tuan Sian Khai, “*Mukokusekiwo Ikiru Watashi* [I am Stateless]”; and Ayane Odagawa, “*Hon Kikaku no Shushi* [The Purpose of This Project]”, “*Miraini Mukeru Teigen* [Proposals toward the Future]”.

d) *Nanmin Kenkyu Jyanaru* [Refugee Studies Journal] No. 4 (December 2014) issue on “*Mukokuseki* [Statelessness]” contains the following: Osamu Arakaki, “*Mukokusekisha Chii Jyoyaku no Seiritsu to Tenkai* [Formation and Development of the 1954 Convention]”; Yue Fu, “*Firipinniokeru Mukokusekishano Hogoto Genjyou* [The Protection and Current Situation of Stateless Persons in the Philippines]”; Ayane Odagawa, “*Firipinno Nanmin, Mukokuseki Nintei Tetsuduki* [Refugee and Statelessness Determination Procedure in the Philippines]”; and Mai Kaneko, “*Mukokuseki ni Kansuru UNHCR Shin Handobukku, Gaidoraintou no Kaisetsu* [Commentary on UNHCR’s New Handbook and Guidelines Relating to Statelessness]”. For details, see:

<http://www.refugeestudies.jp/journal/2014/10/4.html>.

e) Yue Fu, “*Nihonde Umareta Kodomono Kokusekito Mukokuseki Nintei* [Nationality of Children Born in Japan and Statelessness Determination]” (Doctoral Thesis, University of Tsukuba, doctoral degree conferred in academic year 2015, No. 2783). For details, see:

https://tsukuba.repo.nii.ac.jp/?action=repository_uri&item_id=38434.

Taking this favorable opportunity, this report offers a comprehensive overview of the situation which Abe Report had previously described through the lens of “typology”, with an intention to further approach “mapping” in a real sense.

In order to have a comprehensive overview of the situation, this report particularly raises and re-identifies different categories of stateless persons as well as those at risk of statelessness in Japan. It also analyzes the causes and current situation of these and discusses and presents some recommendations towards solutions for each category.

EXECUTIVE SUMMARY

Below is a summary of the structure and contents of this report.

First, **Chapter 1** provides an overview of the legal system and practice related to statelessness in Japan.

There is no provision in Japanese domestic law that defines statelessness, and there is no specific procedure for statelessness determination. However, there is a considerable number of cases where a nationality or statelessness determination is required as a prerequisite for individual procedures under some laws, and it is recognized that nationality and statelessness determinations are conducted in practice. Such examples include the procedures under the Japanese Nationality Act Article 2(iii), which provides Japanese nationality at birth to a child if he or she is born in Japan and both of the parents are unknown or are “without nationality”, and Article 8(iv) which is a special provision for the facilitation of naturalization of persons born in Japan “not having any nationality”. The criteria for such determinations by administrative authorities are not made clear.

Chapter 1 further attempts to verify the numbers and realities of stateless persons from various existing statistics; however, it is found that it is difficult to have a comprehensive grasp of the situation under the current circumstances because the definition of statelessness has not been clarified or made uniform among various statistics.

Next, **Chapter 2** provides an analysis by “category”, which is the highlight of this report. Persons who are stateless or at risk of being stateless are categorized by the place where their nationality issues arose (in or outside Japan), their causes, and the reasons behind them. For each category, summarized versions of typical cases are provided. Also, based on available information, attempts are made to ascertain the number of potentially applicable persons as the “possible size” of each category. “Solutions” are then suggested for each category for prevention, protection, and reduction of statelessness.

First, **Chapter 2, Section 1** provides an analysis of the following categories of persons whose statelessness or risk of statelessness arose while in Japan.

- **Category A** [Conflict of Laws]: Persons who did not acquire by birth the nationality of their parents or the nationality of their country of birth due to conflict of laws, for

example, because the parents' country of origin adopts strict *jus solis* while Japan, the country of birth, adopts *jus sanguinis*

- **Category B** [State succession I]: Persons whose country of previous nationality has gone through State succession who cannot have their possession of the nationality of the successor State or the predecessor State confirmed
- **Category C** [Consulate denial I (Refugees)]: Persons unable to have their birth registered or a passport issued, etc., due to rejection by relevant consular authorities (or inability to pursue such assistance) for refugee related reasons, such as having applied for asylum or having been recognized as a refugee
- **Category D** [Consulate denial II (Persons similarly situated as refugees)]: Persons for whom the relevant consular authorities refuse assistance such as registration of birth or issuance of a passport for reasons related to their status being similar to refugees, such as those who have been granted permission to stay as “settled refugees” or on “humanitarian grounds” without recognition of refugee status under the 1951 Refugee Convention
- **Category E** [Change of personal status]: Persons who had acquired Japanese nationality at birth by having a parent with Japanese nationality based on the Nationality Act which adopts *jus sanguinis*, but who, due to the subsequent change of their legal parentage, “lost” their nationality retroactively going back to the time of birth making them illegal stayers in Japan
- **Category F** [Failure of naturalization and restoration of previous nationality]: Persons who renounced their previous nationality in the naturalization process, etc., at the request of relevant authorities in Japan which did not permit dual nationality, who nevertheless failed to acquire another nationality
- **Category G** [Unknown or stateless parents]: Persons whose parents are unknown or are stateless and who therefore would normally fall within the scope of Nationality Act Article 2(iii), which provides for acquisition of Japanese nationality at birth, who nevertheless became stateless by an inability to prove the fact that their parents are unknown or stateless
- **Category H** [Consulate denial III (Others)]: Persons understood to have acquired the nationality of the country concerned according to the text of the nationality law of that country, for whom nevertheless the relevant consular authorities refuse birth registration or the issuance of a passport for reasons such as being born out of wedlock

Chapter 2, Section 2 then provides an analysis of the categories of persons whose statelessness or risk of statelessness arose while overseas who subsequently came to Japan.

- **Category I** [Lack of proof]: Persons who cannot establish their nationality of the country of birth or of parents' nationality for lack of documentation of the relevant countries due to, for example, chain migration through several generations, who subsequently came to Japan
- **Category J** [State succession II]: Persons whose country of previous nationality has gone through State succession who cannot have the possession of the nationality of the successor State or the predecessor State confirmed, who subsequently came to Japan
- **Category K** [Persons denied nationality under the law of the country of origin]: Persons who cannot acquire nationality under the law of the relevant country, which excludes certain ethnic groups from acquiring nationality, who subsequently came to Japan

Chapter 2, Section 3 provides a theoretical analysis of unregistered persons (Category L), persons without a Japanese family register (Category M), and persons registered under the "Chosen/Korean" classification (Category N) as "Other categories of persons" in order to gain understanding of cases potentially at risk of being stateless based on the characteristics of the Japanese family register system and historical background.

Chapter 3, Section 1 considers the problems faced by stateless persons in cases where they are recognized as stateless by the Japanese authorities and in cases where they are considered as nationals of some other country. Furthermore, it is made clear that whether or not one possesses a status of residence makes a difference in the types of problems faced.

Overall, it is found that stateless persons without a status of residence have more serious troubles than those with a status of residence. The guidelines on special permission to stay by the Immigration Bureau do not list being stateless as one of the positive elements in favor of granting special permission; therefore, there is no guarantee that a status of residence would be granted to a stateless person. There is a risk that they would be

detained for a prolonged period of time in immigration detention centers with no prospect of deportation. Even if they were to obtain provisional release, they would be prohibited from working, ineligible for welfare, and would be forced to live under unstable circumstances. Depending on the local authorities, children without a status of residence may be denied school enrolment.

In cases where stateless persons are considered by Japanese administrative authorities to have the nationality of another state, they face a different set of problems. Children born from such parents would be treated as being outside the scope of the Nationality Act Article 2(iii), which provides for the acquisition of Japanese nationality at birth. They would also be considered to fall outside of the scope of facilitated naturalization under Article 8(iv). In conducting legal acts concerning personal status, the law of the concerned country becomes the governing law, leading to Japanese administrative authorities demanding documents, etc., from the concerned “country of nationality”, thereby slowing down the process. Many stateless persons do not realize that they are in fact stateless because they believe that they possess the “nationality” noted on their official identification documents issued by Japan (e.g., Foreigner Residence Card). This results in further delay in the resolution of nationality issues.

Chapter 3, Section 2, provides proposals to address these problems.

The table below summarizes the proposals for solutions for each category of persons who are stateless or at risk of being stateless. (A ✓ indicates applicability.)

Category	A	B	C	D	E	F	G	H	I	J	K
Creation of a legal provision providing a definition of statelessness and the establishment of a statelessness determination procedure	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Streamlining of the statistics relating to stateless persons	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Establishment of a system to protect stateless persons, such as by the grant of “long-term resident” status.	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Utilization of a refugee status determination procedure			✓	✓							

Expanded grants of special permission to stay for stateless persons without status of residence				✓		✓		✓	✓	✓	✓
Expanding the coverage of the grant of Japanese nationality at birth to all otherwise stateless persons	✓		✓	✓				✓			
Enhanced implementation of Article 2(iii) of the Nationality Act, which grants Japanese nationality to children born in Japan whose parents are unknown or stateless							✓				
Law reform to restrict losses of nationality by a change in legal parentage					✓						
Improvement related to the requirement for renunciation of the current nationality prior to naturalization						✓					
Improvement of implementation of Article 8(iv), which facilitates the naturalization of stateless persons and streamlining of the law to include stateless persons born outside Japan	✓	✓	✓	✓				✓	✓	✓	✓
Facilitation of naturalization for refugees			✓	✓							

The authors wish to request the readers to note the following points in reading the report:

- The names of states added for convenience in parentheses merely show those states involved in the sample cases introduced in each category. Thus, states other than those indicated in the parentheses can also well produce statelessness falling within that category.
- The summaries of cases introduced as typical cases in each category include the information necessary to explain the characteristics of each category, so they do not always lay out the facts comprehensively.
- Cases which do not have their sources specified are those which the authors of this report (attorneys) represented, for which they themselves have made summaries of the facts.
- A pseudonym in the form of an alphabetical character is assigned to each case in alphabetical order starting from A in each category to represent the case. The persons are not the same even if the same letter is used among different categories.

- This report calls the diplomatic offices of the relevant states in Japan “consulate”, “embassy” and so on for convenience’s sake even though their official titles are varied, such as “consulate”, “consulate-general”, “consulate department of the embassy” and so on. Thus, the descriptions in this report do not always match the official names of these entities.
- The views expressed in this report are those of the authors and do not represent the views of the organizations to which they belong or of UNHCR.

Chapter 1 : GENERAL INFORMATION

Section 1: Situations relating to statelessness in Japan

1. Japanese law and criteria for the determination of statelessness

There is no provision that defines statelessness in Japanese laws or regulations.¹⁸ Moreover, no independent procedure has been established for the protection of stateless persons.

However, determination of nationality is sometimes required as a precondition for conducting individual procedures under specific laws and regulations. In relation to such situations, provisions have been established with an the assumption that an individual may be stateless. Additionally, in the process of carrying out specific procedures, government agencies do consider whether or not an individual possesses a nationality, and if so, of which state. As a result, there are cases where the concerned individual is considered to be stateless.¹⁹

The various procedures relating to residence stipulated by the Immigration Control and Refugee Recognition Act (hereinafter referred to as “ICRRA”) are conducted under the jurisdiction of the Immigration Bureau of the Ministry of Justice; and the eight regional immigration bureaus under the command of the Immigration Bureau are responsible for handling individual applications. (See Act for Establishment of the Ministry of Justice, Article 21(1), Article 4(xxxii), (xxxiii)). In contrast, the procedures relating to the acquisition of nationality stipulated under the Japanese Nationality Act come under the jurisdiction of the Civil Affairs Bureau of the Ministry of Justice; and the eight legal affairs bureaus as well as the 42 district legal affairs bureaus located across Japan are responsible for handling individual applications. (See Act for Establishment of the Ministry of Justice, Article 18(1), Article 4(xxi).) In addition, procedures relating to the family register,²⁰ such as birth, marriage, divorce, and recognition of parentage, are under the jurisdiction of the heads of municipalities. (See Family Register Act, Article 1(1), Article 4.). Nevertheless, the head of the legal affairs bureau or the district legal affairs bureau which has the jurisdiction over the relevant municipality may, under certain circumstances, provide advice or instruction in relation to the processing of Japanese

¹⁸ Arakaki Report, p.34, *supra* note 2.

¹⁹ In addition to the Japanese Nationality Act, ICRRA, and Act on General Rules for Application of Laws which are mentioned below, Article 7 of the Diplomats Act, for example, makes stateless persons and persons of dual nationality ineligible to be a diplomat, by stipulating that, “... a person without nationality or with nationality of a foreign country cannot be a diplomat”.

²⁰ For explanation regarding *koseki* [family register], see Chapter 2, Category M [Persons without a Japanese family register] 1. (1).

family register-related cases. (See Article 3(2) of the same law.) Therefore, the Civil Affairs Bureau of the Ministry of Justice has the final jurisdiction over these procedures related to the family register.

The following sections will explore the various situations where statelessness is considered under the Nationality Act, ICRRA, and the Act on General Rules for Application of Laws as well as how the administrative and judicial authorities determine the statelessness of individuals.

(1) Japanese Nationality Act

The Japanese Nationality Act, which provides the requirements for acquiring Japanese citizenship, stipulates statelessness of the parents or the child as one of the requirements for the acquisition of nationality at birth and for naturalization. Article 2(iii) of the Nationality Act provides that, “A child shall be a Japanese citizen ... [i]f born in Japan and both of the parents are unknown or *are without nationality*” (italics by the author); and it is interpreted to mean that a child acquires Japanese nationality by birth not only when both of the parents are unknown or both of the parents are without nationality, but also when the father is unknown and the mother is without nationality, or when the mother is unknown and the father is without nationality.²¹ Moreover, Article 8(iv) provides that the Minister of Justice may permit naturalization of “A person born in Japan, *not having any nationality* since the time of birth, and continuously having a domicile in Japan for three years or more since that time” even if that person has not met the usual conditions for naturalization. Thus, the law specifies statelessness of the parents as one of the requirements for acquisition of Japanese nationality at birth, and statelessness of the child as one of the requirements for permission to apply for facilitated naturalization. Therefore, the decision by the authorities regarding the statelessness of a person has a significant impact on whether or not an individual acquires Japanese nationality.

The phrase “without nationality” in Article 2(iii), which provides for acquisition of Japanese nationality at birth in the Nationality Act, is interpreted to cover two situations: (i) where the parents do not have a nationality of any State and are therefore stateless and (ii) where the parents’ nationality is unknown, such as when it is not clear which state’s nationality they possess.²² However, no clear criteria is indicated for which cases an individual’s nationality is considered unknown by the administrative authorities.

The Civil Affairs Bureau of the Ministry of Justice, which is responsible for matters regarding the family register including birth registration, calls for careful consideration regarding statelessness in its circular. Specifically, there are cases where an individual has the nationality of a certain State but is registered as “stateless” under a (former) alien

²¹ Shoichi Kidana, *Chikujyou Chuukai Kokusekihō* [Commentary on the Nationality Act] (Nihon Kajo Shuppan, 2003), pp.212-213.

²² Shozo Sawada, “*Mukokusekishawo Chichitosuru Chakushutsushitouno Shusseitodokewo Jyurisurubaino Toriatsukaiwo Megutte* [Birth Registration of Children Born in Wedlock whose Father is a Stateless Person]”, *Koseki*, No. 454 (1982), pp.20-21.

registration, merely because he or she is unable to prove his or her nationality and is therefore considered to be of unknown nationality. In such cases, if the parents are determined as stateless based on the fact that they are registered as “stateless” under the (former) alien registration and birth registration of their child is processed as such, then the child will be erroneously processed as a Japanese national. Therefore, in the case of a birth registration of a child born in Japan from stateless parents or of a child born out of wedlock in Japan from a stateless mother, the head of the municipality is to request instruction from the head of the responsible legal affairs bureau, district legal affairs bureau, or its branch office regarding whether or not to accept such a birth registration.²³

According to this circular, even if an individual is considered stateless by the Immigration Bureau of the Ministry of Justice because he or she does not possess any documentary proof of nationality, there are cases where the Civil Affairs Bureau of the Ministry of Justice should consider the individual to have a nationality. In sum, there is a possibility that persons of unknown nationality, for whom “without nationality” is applicable, are subject to more narrow interpretation in family register procedures than in immigration procedures.

Also, in administrative practice, there is an interpretation that the phrase “without nationality” in Article 2(iii) of the Nationality Act does not apply to a person who is from a region which is not recognized as a state. Before this, persons from Palestine were interpreted to be “without nationality”, and children born in Japan from Palestinian parents acquired Japanese nationality based on Article 2(iii) of the Nationality Act. However, this practice was changed by a government notice dated 3 October 2007, which provides that people from Palestine are not to be treated as persons without nationality.²⁴

On the other hand, in the judiciary, there is a case regarding a claim for family registration in which a family court applied Article 2(iii) of the Nationality Act to a child born from a mother whose nationality was unknown.²⁵ In this particular case, the claim for family registration was allowed for the reason that the claimant had acquired

²³ Circular from the Director-General of Civil Affairs Bureau, Ministry of Justice, to directors of Legal Affairs Bureaus and District Legal Affairs Bureaus, 6 July 1982, Ministry of Justice, *Min No.2-4-265*. On the relations between the former Alien Registration System and the current Residency Management System, see Section 2(1) below.

²⁴ *Hosaka Nobuto Shuugiin Giin “Paresuchinajinno Kodomono Kokusekitounikansuru Shitsumon Shuisho” nitaisuru, 2007 (Heisei 19) nen 12 gatsu 11 nichiduke Seifu Toubensho (Naikaku Shuu Shitsu 168 Dai 280 Gou)* [Government Response on 11 December 2007 to the “Memorandum on Questions in the Diet concerning Nationality of Palestinian Children” submitted by Nobuto Hosaka, member of the House of Representatives (No.168-280, Questions in the House of Representatives, Cabinet)]. http://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b168280.htm

²⁵ Tokyo Family Court Tachikawa Division, unpublished adjudication on 5 December 2016. For details of the case, see Chapter 2, Category G, Case 14. On the family register, see the description in Chapter 2, Category M [Persons without a Japanese family register], 1 (1). On the creation of the family register, see footnote 168 below.

Japanese nationality by birth based on Article 2(iii) of the Nationality Act as a person born in Japan whose legal father was unknown and whose mother was “without nationality”. There was no evidence to prove that the mother had the nationality of a relevant state, and there were no means to contact family members outside of Japan; therefore, the child was assumed to be “without nationality”. In other words, the court recognized the mother as a person “without nationality” under the circumstances where her nationality was difficult to prove, and as a result it recognized the applicability of the Nationality Act Article 2(iii) to the child and granted permission for the creation of a family register.

(2) Immigration Control and Refugee Recognition Act (ICRRA)

ICRRA includes provisions regarding statelessness in the deportation procedure where the country of destination must be decided, and in the immigration procedure where a foreign resident requests permission to re-enter Japan. In addition, regardless of the existence of particular provisions such as these, the responsible immigration authorities make decisions on the nationality (or lack thereof) of individuals as a prerequisite for dispositions in procedures governed by the ICRRA.

Article 53(1) of ICRRA provides for deportation in principle to the country of nationality by stating that “Any person subject to deportation shall be deported to a country of which he or she is a national or citizen.” Alternatively, Article 53(2) states that if the person cannot be deported to the country of which he or she is a national or citizen, such person shall be deported “pursuant to his or her wishes” to any of the countries provided, such as the country of residence prior to entry into Japan or the country where his or her place of birth is located. Thus, deportation of stateless persons is based on Article 53(2) because there is no country of nationality for such persons and they cannot be deported to the country of nationality. The means deciding the country of destination for deportation is fundamentally different for a stateless person, as it is decided according to his or her wishes among countries provided under Article 53(2).

In cases of re-entry permission for a foreign national residing in Japan, Article 26(2) of ICRRA provides that, “The Minister of Justice shall ... have an immigration inspector ... issue a re-entry permit pursuant to the provisions of an ordinance of the Ministry of Justice if the foreign national does not have his or her passport and is unable to acquire one for reason of being without nationality or for any other reason.” This is a provision that makes it possible to issue a leaflet-style re-entry permit (Ordinance for Enforcement of ICRRA, Annex, Format No.42) to a person who does not possess a passport for reasons including being “without nationality” and for whom it is not possible to affix a seal of verification for re-entry in the passport, and who is not able to utilize the special re-entry permission.

Moreover, the Immigration Bureau of the Ministry of Justice requires foreign individuals to claim their nationality in various procedures in relation to residence, such as acquiring a residence permit, extending a period of stay, and changing a status of residence. The foreigner residence card issued to mid- to long-term residents shows the

country of nationality or the region of the individual according to the finding by the Immigration Bureau (ICRRA Article 19-4(1)(i)).

Thus, within the Immigration Bureau, the section responsible for entry and residence is different from the section responsible for deportation procedures, and there seems to be no unified criteria for the determination of statelessness across various procedures where the Immigration Bureau determines the nationality of individuals concerned.

In each procedure for entry and residence of foreign nationals, certain criteria are provided by internal guidelines. The Manual on the Essentials of Entry and Residency Examination, which provides internal criteria for the Immigration Bureau of the Ministry of Justice, states that, in issuing a foreigner residence card upon landing permission, “a person who is without nationality or who cannot prove to have nationality is to be shown as ‘stateless’.”²⁶

Also, in relation to the procedure for acquisition of status of residence, which is used by persons including those born in Japan those remaining beyond 60 days (ICRRA Article 22-2), the Manual on Essentials of Entry and Residency Examination states that the country of nationality or region of the child shall be determined according to the following criteria when the child does not possess a passport.²⁷

- i) The country of nationality or region shown on the father’s foreigner residence card is used if the father possesses a foreigner residence card. However, if the father is unknown and the mother possesses a foreigner residence card, the country of nationality or region shown on the mother’s foreigner residence card is used.
- ii) If it is apparent that the child is able to acquire the nationality of both father and mother, and the child wishes to acquire the mother’s nationality, it is all right to use the mother’s nationality notwithstanding i) above.
- iii) The determination will be stateless if it is apparent that the child will be stateless according to the country of nationality of the parents, and the provisions of that country’s nationality laws.

Thus, in considering the nationality of the child in the procedure for acquisition of status of residence, it appears that the nationality of the child is, in principle, understood to be the nationality of the father. Therefore, in case the country of nationality of the father does not apply the paternal *jus sanguinis* principle but instead follows the *jus soli* principle, there is a risk that a wrong nationality will be placed on the child’s foreigner residence card. Chapter 2 Section 1 will examine under each category the actual cases where the country of nationality or the region shown on the foreigner residence card was incorrect.

²⁶ Immigration Bureau, Ministry of Justice, *Nyuukoku, Zairyuu Shinsa Youryou* [Guidelines on Immigration and Residence Inspection] (Request for Disclosure of Administrative Documents. Date for Disclosure Decision: 4 December 2015. *Houmushou Kan Jyou Dai 2511 Gou* [No. 2511, *Kan Jyou*, Ministry of Justice]), Part 6 *Jouriku Shinsa* [Landing Inspection], p.58.

²⁷ *Id.*, Part 10 *Zairyuu Shinsa* [Residence Inspection], pp.14-15.

On the other hand, with regard to the deportation procedure, it seems that there is no document such as an internal guideline providing the criteria for determining statelessness. In practice, nationality is determined

based on the passport or other documents providing proof of identity if the suspect is in possession of such documents; and in other cases, based on the country of nationality of the parents, and the laws and regulations concerning nationality of the country of nationality of the parents; and, when it is not possible to confirm the fact that the suspect has a particular nationality, he or she is considered as stateless.²⁸

(3) Act on General Rules for Application of Laws

The Act on General Rules for Application of Laws, which provides the criteria for determining the applicable law in relation to juridical acts including those concerning personal status such as marriage and divorce, states that, “In cases where the national law of a party concerned shall govern, if the party has no nationality, the law of his or her habitual residence shall govern,” in Article 38(2). Therefore, for stateless persons, the applicable law regarding personal status such as marriage and divorce is the law of his or her habitual residence. In case a stateless person undertakes a juridical act relating to personal status in Japan, Japanese law shall be the governing law; therefore, determining whether or not a person is stateless is important.

Looking at relevant juridical cases, one regards a claim for special adoption, where the family court found a minor to be stateless even though the minor’s natural mother was of Chinese nationality, and the court was deciding the governing law for the person to be adopted in order to determine the requirements for interstate adoption (Article 31(1), Act on General Rules for Application of Laws).²⁹ The family court noted that, while

it can be said that the minor essentially has Chinese nationality according to Article 5 of the Nationality Act of the People’s Republic of China ... the circumstances of the case are such that the necessary procedure is not merely incomplete, but also, the birth registration has been rejected by the Chinese Embassy.

Based on the above, the court found that,

it is considered to be inappropriate to treat the minor as a Chinese national in this case, given the fact that whether or not the minor has Chinese nationality is a matter which is ultimately to be decided by China; therefore, the minor shall

²⁸ See Itokazu Keiko Sangiin Giin “Wagakunino Mukokusekishano Chii Oyobi Sono Toriatsukainikansuru Shitsumon Shuisho” nitaisuru, 2016 (Heisei 28) nen 12 gatsu 22 nichiduke Seifu Toubensho (Naikaku San Shitsu 192 Dai 59 Gou) [The Government Response on 22 December 2016 to the “Memorandum on Questions in the Diet concerning the Status of Stateless Persons and Their Treatment in Japan” Submitted by Keiko Itokazu, Member of the House of Councillors (No. 192-59, Questions in the House of Councillors, Cabinet)].

²⁹ For details of the case, see Chapter 2, Category H, Case 15 below.

be treated as stateless, and whether or not the requirements for protection are met shall be considered based on Japanese law, which is the law of the country of habitual residence of the minor.³⁰

(4) Inconsistent Criteria for Determination of “Statelessness”

As describe above, there are instances where the determination of whether or not an individual is stateless is made under the Nationality Act, ICRRA, and the Act on General Rules for Application of Laws; and under the current situation, the criteria for such determination differ depending on the procedure, the responsible agency, and the content of the provisions under each law. Therefore, sometimes there are gaps. For example, the Immigration Bureau considers a person from Tibet as “stateless” in entry and residence procedures for the reason that the person does not possess a document to prove Chinese nationality on the one hand; and on the other hand, the Civil Affairs Bureau of the Ministry of Justice appears to have a view that, in applying Article 2(iii) of the Nationality Act which allows a child born in Japan from a stateless mother to acquire Japanese nationality, a Tibetan person’s nationality should be recognized as “Chinese” unless the person has in fact lost his or her Chinese nationality.³¹ Similarly, in deciding the governing law for marriage, the nationality of such a person should be determined as “Chinese” unless the person’s Chinese nationality has been lost.³²

Also, since the establishment of diplomatic relations between Japan and China in 1972, Japan has recognized the People’s Republic of China as the only government of China and does not recognize Taiwan as a state; however, the administrative treatment of a Taiwanese person’s “nationality” differs depending on the procedural situation. First, in deciding the governing law under the Act on General Rules for Application of Laws, the civil code of Taiwan is applied, with the understanding that the individual’s “country of origin” (i.e., nationality) is Taiwan, which is not recognized as a state.³³ On the other hand, in a case where the determination of nationality was in question with regard to a child born out of wedlock by a Taiwanese woman, the Nationality Law of China was applied,

³⁰ Sendai Family Court, unpublished adjudication on 24 June 2016. The adjudication was made available by the goodwill of Tazuru Ogawa, Representative of the Board of Directors, Across Japan, which is a general incorporated association.

³¹ *Koseki Jihou*, No.349 (1987), pp.62-67. In a commentary on nationality matters by the staff of the Civil Affairs Fifth Division, Civil Affairs Bureau, Ministry of Justice, it is stated that Japan has never recognized Tibet as an independent State and that Tibet is considered to have become part of Chinese territory according to Chinese documents.

³² Hiroyuki Ishii, legal specialist, Civil Affairs First Division, Civil Affairs Bureau, Ministry of Justice, “*Koseki, Kokuseki Jimuwomeguru Saikinno Shomondai (1)* [Recent Issues concerning Family Register and Nationality Matters (1)]”, *Koseki*, No. 854 (2001), pp.9-10.

³³ Yasuhiro Okuda, *Kokusekihō to Kokusai Oyakohō* [Nationality Law and International Parent-Child Law] (Yuhikaku, 2004), pp. 82-83; *Koseki* No. 373 (1975), p.69.

as “the nationality of an individual is determined by laws of a state recognized by Japan.”³⁴ Since the ICRRRA was amended in 1998, passports issued by the Taiwanese authorities are considered as “passports” under the ICRRRA, and the “country of nationality or region” of a person in possession of a passport issued by the Taiwanese authorities is understood as “Taiwan”.³⁵ Nevertheless, in practice, it has been reported that persons who had a “nationality permit” issued by internal Taiwanese authorities prior to the establishment of diplomatic relations between Japan and China used to be allowed to change their “nationality” shown on the (former) alien registration certificate from “China” to “stateless” as persons who had lost their Chinese nationality.³⁶ Thus, the treatment of nationality of persons from Taiwan has complex aspects.³⁷

On this issue, the Japanese government denies the necessity of unifying the criteria for the determination of statelessness. In other words, the government indicates its understanding that, because the procedure relating to the entry and residence of foreign nationals, on the one hand, and the procedure of acquisition of Japanese nationality under the Nationality Act, on the other, have the differing objectives of immigration control and the acquisition of Japanese nationality, respectively, they are different in nature. Thus, the criteria for the determination of statelessness could be different in each procedure, and it is not necessary to establish unified criteria for determination of statelessness.³⁸

³⁴ *Koseki Jihou* No. 741 (2016), pp.78-79; *Koseki Jihou* No. 579 (2005), pp.57-58. The staff of the Civil Affairs First Division, Civil Affairs Bureau, Ministry of Justice, provides commentary on nationality matters.

³⁵ It is because Taiwan has been designated as a “region as provided for by Cabinet Order” in ICRRRA’s Article 2(v)(b).

³⁶ Masako Aizawa, “736 *Gaikokujin Touroku Shoumeishoni ‘Mukokuseki’ to Kisaisareteiru Baaino Kokusekino Ninteinitsuite* [736, Nationality Determination When ‘Stateless’ is Indicated on the Alien Registration Certificate]”, *Koseki* No. 772 (2005), pp.47-48.

³⁷ Practitioners in the administration explain that those who had obtained a certificate for loss of nationality issued by the Government of Taiwan prior to the normalization of diplomatic relations between Japan and China used to be treated as stateless. However, since 29 September 1972, the certificates for loss of nationality issued by the Taiwanese authorities have no validity as documentary proof regarding nationality; therefore, such persons should be recognized as still having Chinese nationality. Ministry of Justice, Civil Affairs Bureau, Fifth Division, *Kokuseki Jitsumu Kenkyuukai* [Study Group on Nationality Practice], *Kokuseki, Kika no Jitsumusoudan* [Practical Consultation on Nationality and Naturalization] (Nihon Kajo Shuppan, 1993), p.178. It was indeed during this time of confusion when the diplomatic relations between Japan and Taiwan was severed as a result of the normalization of diplomatic relations between Japan and China, that Chen Tien Shi, the author of *Mukokuseki* [Stateless] and her family obtained Taiwanese certificates for loss of nationality and the nationality column on her alien registration certificate in Japan was reportedly changed to “stateless”. Chen, *supra* note 15, *Mukokuseki*, pp.35-39.

³⁸ *Fukushima Mizuho Sangiin Gin “Mukokuseki Mondainikansuru Shitsumon Shuisho” Nitaisuru 2014 (Heisei 26) Nen 6 Gatsu 20 Nichiduke Seifu Toubensho (Naikaku San Shitsu 186 Dai 127 Gou)* [The Government Response on 20 June 2014 to the “Memorandum on Questions in the Diet concerning Statelessness Issues” Submitted by Mizuho Fukushima, Member of the House of Councillors (No.186-127, Questions

2. Existing statistics relating to statelessness

How many stateless people live in Japan? It is difficult to answer this question based on the existing statistics. As discussed above, this is because the definition of a stateless person is not clear and the relevance of the statelessness definition under international law is not clearly recognised. Even though the Ministry of Justice, particularly the Immigration Bureau, considers certain persons as stateless, it is not clear whether the same persons could also fulfill the statelessness definition under international law which this report covers. At the same time, a person could be stateless under international law even though that person would not be recognized as stateless by the Japanese authorities. For these reasons, it is difficult to directly clarify the number of stateless persons under international law residing in the country based on the existing statistics in Japan.

The nationality and the number of foreigners staying in Japan is still publicly accessible via various official statistics, and some of the statistics include a reference to the category of “stateless persons”. This indicates that the Japanese government is officially aware of the existence of certain “stateless persons”, although “statelessness” within these statistics may not necessary be assessed in line with its definition in international law.

This section attempts to list and analyze official statistics where the number of “stateless (persons)” is indicated. It was, however, concluded that the total number of stateless persons could not be estimated from the official statistics since they lack consistency in terms of the definition of statelessness, and the possibility of duplication within the ranges of various statistics is unknown.

(1) Statistics on Foreign National Residents

The Statistics on the Number of Resident Foreigners reports the number of foreigners in Japan and is based on a database established to record the nationality and region of origin written on foreigner residence cards or special permanent resident certificates issued under Article 7 of the Special Act on Immigration Control.³⁹

In the House of Councillors, Cabinet)], at <http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/186/touh/t186127.htm>.

³⁹ Arakaki Report, *supra* note 2, p.23. Since July 2012, the Resident Record has become available for foreign residents (mid- to long-term residents); the nationality noted on the Residence Record is the same as that on Foreigner Residence Card. Director-General, Local Administration Bureau, Ministry of Internal Affairs and Communications, “*Juumin Kihon Daichou Jimushori Youryouno Ichibu Kaiseinitsuite (Tsuuchi)* [Partial Amendment of the Guidelines on Basic Resident Registration (Notice)]”, 4 June 2012, *Sou Gyou Juu* No.46. Based on materials provided by the Office for Basic Resident Registration for Foreigners, Resident System Division, Local Administration Bureau, Ministry of Internal Affairs and Communications (March 2016).

According to these statistics, as of December 2016, 594 people among the “resident foreigners”⁴⁰ and 626 people among the “total number of resident foreigners”⁴¹ were registered as “stateless” persons.⁴² (As of December 2015, 573 people among resident foreigners and 603 among the total number of foreigners,⁴³ and as of December 2014, 598 people among resident foreigners and 631 among the total number of resident foreigners were registered as stateless persons.⁴⁴)

The Statistics on Foreign National Residents, however, entails two issues. Firstly, the statistics count only foreigners with residence permits. Before July 2012, Alien Registration certificates were issued to all foreigners staying in Japan for over 90 days regardless of whether they had residence permits or not, and the statistics on all registered foreigners was being published.⁴⁵ However, the Law for Partial Amendment to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, Persons who have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan entered into force on 1 July 2012. The Alien Registration Act was abolished and the system of foreigner residence cards and special permanent resident certificates was introduced. This resulted in the number of stateless persons without residency permits not being reflected in official statistics. The second problem is that the determination of nationality is conducted in an equivocal manner. It

⁴⁰ This is the total of mid- to long-term residents and special permanent residents. “Mid- to long-term residents” are foreign nationals (i.e., persons without Japanese nationality) residing with a status of residence in Japan with the exception of the following: (i) a person who has been granted a period of stay of not more than 3 months, (ii) a person who has been granted the status of residence of “Temporary Visitor”, (iii) a person who has been granted the status of residence of “Diplomat” or “Official”, (iv) a person provided for by an Ordinance of the Ministry of Justice as equivalent to a person listed in any of the preceding three items (i.e., staff members of the Japanese office of the Association of East Asian Relations or the Permanent General Mission of the Palestine in Japan, or family members thereof, who have been granted the status of residence of “Designated Activities”, and (v) special permanent residents (see ICRRRA, Article 19-3).

⁴¹ The total number of *zairyugaikokujin* (resident foreigners) and (i) to (iv) in the footnote 40.

⁴² Ministry of Justice, “*Zairyuu Gaikokujin Toukei* [Statistics on Foreign National Residents], December 2016” (published in March 2017), at

<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001177523>. Among the 626 foreign national residents registered as stateless on the December 2016 Statistics on Foreign National Residents, almost 20% (107) have the status of residence of “special permanent residents”, which is for persons who originate from former colonial regions such as Taiwan and the Korean Peninsula and their descendants.

⁴³ Ministry of Justice, “*Zairyuu Gaikokujin Toukei* [Statistics on Foreign National Residents], December 2015” (published in April 2016), at

<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001177523>.

⁴⁴ Ministry of Justice, “*Zairyuu Gaikokujin Toukei* [Statistics on Foreign National Residents], December 2014” (April 2015), at

<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001133760>

⁴⁵ 1,100 persons were registered as stateless in the last Statistics on Registered Foreign Nationals before the system was abolished. Statistics Bureau, Ministry of Internal Affairs and Communications, “*Touroku Gaikokujin Toukei 2011 Nen Nenpou* [Annual Statistics on Registered Foreign Nationals 2011]” (November 2012), at

<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001111183>.

has been pointed out that there are cases where nationality in a real sense is not shown on the foreigner residence cards and special permanent resident certificates on which the Statistics on Foreign National Residents is based.⁴⁶ This report also contains some cases in the next chapter where the equivocality of nationality determination is inferred.

(2) National Census

One can refer to the national census to identify the number of stateless persons without a residency permit. The census takes place every five years, based on Article 2(4) and (6), and Article 5(1) and (2) of the Statistics Act, enumerating “all the people living in Japan”⁴⁷ including all the foreigners “habitually living” in Japan.⁴⁸ Seventeen topics are surveyed including “nationality”,⁴⁹ which indicates that stateless persons living in Japan without Residence Permit are also counted in the census. This can lead to an identification of the number of stateless persons in Japan regardless of whether or not they have residence permit. The 2010 Population Census of Japan, in particular the results of the supplementary tabulation, lists 174,821 people as “stateless or unknown”.⁵⁰

⁴⁶ Ayane Odagawa, “Kokuseki, Mukokusekininteino Genjyouto Kadai: Kaisei Nyuukanhouwo Fumaete [The Current Situation and Challenges of Determinations on Nationality and Statelessness: Under the Amended ICRR]”. *Imin Seisaku Kenkyuu* [Migration Policy Review], No. 5 (May 2013), p.30.

⁴⁷ Statistics Bureau, Ministry of Internal Affairs and Communications, “Heisei 27 Nen Kokuseichousanikansuru Q&A (Kaitou) [Q&A regarding the 2015 National Census (Answers)] at <http://www.stat.go.jp/data/kokusei/qa-1.htm>.

⁴⁸ However, members of diplomatic missions and consular authorities of foreign governments and family members thereof, as well as military personnel and civilian employees of foreign armed forces and family members thereof, are not included. Statistics Bureau, Ministry of Internal Affairs and Communications, “Heisei 27 Nen Kokuseichousano Gaiyou [Summary of the 2015 National Census], at <http://www.stat.go.jp/data/kokusei/2015/gaiyou.htm>.

⁴⁹ *Ibid.*

⁵⁰ Statistics Bureau, Ministry of Internal Affairs and Communications, “Kokuseichousa Heisei 22 Nen [National Census 2010]” (January 2013), at <http://www.e-stat.go.jp/SG1/estat/List.do?bid=000001044522&cycode=0>.

These statistics were published as a result of additional compilation. Unlike regular compilation which is planned in advance, additional compilation is made according to newly identified needs. With regard to the National Census, additional compilation was made for the first time in 2010 and published in January 2013. Statistics Bureau, Ministry of Internal Affairs and Communications, “Chousa Kekkano Shuukei Taikeito Kouhyou Jiki [Compilation System and Release Schedule of Survey Results]”, at <http://www.stat.go.jp/data/kokusei/2010/users-g/taikei.htm>. Statistics Bureau, Ministry of Internal Affairs and Communications, “Heisei 22 Nen Kokuseichousa [2010 National Census]”, at <http://www.stat.go.jp/data/kokusei/2010/index.htm>.

In the regular compilation which is planned in advance, ROK, DPRK, China, Philippines, Thailand, Indonesia, Vietnam, UK, US, Brazil, and Peru were listed in the number of foreign nationals, and 302,116 were counted as Other, which includes stateless persons and persons with “unknown” nationality. Statistics Bureau, Ministry of Internal Affairs and Communications, “Heisei 22 Nen Kokuseichousa, Jinkoutou Kihon Shuukei (Danjo/Nenrei/Haiguukankei, Setaino Kousei, Juukyono Joutainado) Zenkoku Kekka [2010 National Census, Basic Compilation of Population Data (by Sex/Age/Marital Status, Household Structure, Status of Domicile, etc.), National Results]” (October 2011), at <http://www.e-stat.go.jp/SG1/estat/List.do?bid=000001034991&cycode=0>.

It is difficult, however, to count the actual number of stateless persons from these statistics. The nationality survey in the national census is conducted by a method whereby the respondent first selects Japanese or other nationality on a questionnaire. If the respondent selects “other”, the respondent is asked to write down the country of nationality.⁵¹ This method may make a judgment difficult as to whether a particular answer, depending on how it is written, intends to mean stateless.⁵² Moreover, since the national census is conducted based on self-reporting, it is not certain whether a person who claims to be “stateless” fulfills the definition under international law. Additionally, the category “stateless and not reported” is combined to form one category in the national census statistics, and no statistics sheet seems to make a distinction between them.⁵³ Therefore, it is impossible to know whether the 174,821 people shown in the census are stateless, people whose nationality is undetermined, or people whose answer on the questionnaire is simply not provided or clear.

(3) Specified Report of Vital Statistics

The Specified Report of Vital Statistics is also relevant to the identification of statelessness. It reports the number of infants born in Japan by their parents’ nationality. The report does not directly indicate the nationality of these infants; however, they could allow us to identify infants with the possibility of being stateless by examining the nationality law of their parents’ country of nationality.

However, these statistics have only nine categories for parents’ country of nationality besides Japan: “ROK/DPRK”, “China”, “Philippines”, “Thailand”, “United States of America”, “United Kingdom”, “Brazil”, “Peru”, and “Other Countries”.⁵⁴ The questionnaire

⁵¹ The questionnaire for the National Census conducted in 2010 can be found below. Statistics Bureau, Ministry of Internal Affairs and Communications, “*Kokusei Chousa Chousahyou* [National Census Questionnaire]”, at <http://www.stat.go.jp/data/kokusei/2010/pdf/chouhyou.pdf>.

⁵² The National Census is conducted in languages other than Japanese; however, it is not clear if persons in need of questionnaires in other languages are provided with appropriate questionnaires, and therefore it is unclear if persons who consider themselves as stateless are in a position to indicate themselves as “Stateless”.

⁵³ Based on an inquiry to the Statistics Bureau, Ministry of Internal Affairs and Communications (26 November 2015).

⁵⁴ 4,230 mothers and 5,776 fathers of Other Countries have been confirmed. Ministry of Health, Labour and Welfare, “*Heisei 27 Nendo Jinkou Doutai Toukei Tokushu Houkoku 'Nihonniokeru Jinkou Doutai - Gaikokujinwofukumu Jinkou Doutai Toukei' no Gaikyou* [Year 2014 Summary of Vital Statistics Specified Report ‘Vital Statistics in Japan – Vital Statistics including Foreign Nationals’]” (January 2015), at <http://www.mhlw.go.jp/toukei/saikin/hw/jinkou/tokusyu/gaikoku14/dl/gaikyo.pdf>.

adopts the method of respondents selecting a nationality from the options above,⁵⁵ and it is impossible to estimate the number of stateless parents from the statistical results of “Other Countries”.

(4) Immigration Control Statistics

The Immigration Control Statistics count foreigners entering or departing from Japan by nationality and region. According to these statistics, in 2015, 967 foreigners who entered Japan were stateless.⁵⁶ Likewise, the same number, 967 foreigners, who departed from Japan were stateless. In 2014, 800 stateless persons entered Japan and 801 stateless persons departed from Japan.⁵⁷

The Statistics Relating to the Deportation and Departure Order System also officially indicate the number of stateless persons who illegally stay in the country. These statistics show that in 2015, detention orders (Article 39 of ICRA) were issued to 11 stateless persons while a deportation order (Article 51 of Immigration Control Act) was not issued

⁵⁵ Based on an inquiry to the Ministry of Health, Labour and Welfare (26 November 2015). See below for the report format. Ministry of Health, Labour and Welfare, “*Jinkou Doutai Chousa Shusshouhyou* [Vital Statistics Report]”, at http://www.mhlw.go.jp/toukei/chousahyo/0006661_h26_01.pdf

Vital Statistics are compiled based on data from reports made by heads of municipalities when they receive notification of birth/death/still birth/marriage/divorce. Ministry of Health, Labour and Welfare, “*Jinkou Doutai Chousa* [Vital Statistics]”, at <http://www.mhlw.go.jp/toukei/list/81-1b.html>.

Registration of Birth has a column for Registered Domicile where foreign nationals indicate their nationality; by checking this column, it may be possible to confirm the number of stateless persons. However, statistics based on registration of birth, instead of Vital Statistics reports, do not seem to exist. For a sample Registration of Birth, see Ministry of Justice, “*Shusshou Todoke* [Registration of Birth]”, at <http://www.moj.go.jp/content/000011715.pdf>.

⁵⁶ Statistics Bureau, Ministry of Internal Affairs and Communications, “*Shutsunyukoku Kanri Toukei 2015 Nen Nenpou, Shutsunyuu (ki) kokushasuu* [Immigration Statistics, 2015 Annual Report, Number of Departure and Entry (Return)]” (June 2016), at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001153767>.

⁵⁷ Statistics Bureau, Ministry of Internal Affairs and Communications, “*Shutsunyukoku Kanri Toukei 2014 Nen Nenpou, Shutsunyuu (ki) kokushasuu* [Immigration Statistics, 2014 Annual Report, Number of Departure and Entry (Return)]” (June 2015), at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001135406>.

These statistics show that, to the extent that the Immigration Bureau is aware, the number of stateless person entering Japan from other countries has not changed much. However, it does not necessarily indicate that the number of stateless persons staying in Japan has not increased. That is because stateless persons might be born in Japan or staying in Japan irregularly, such as by landing without landing permission or by landing as a person with nationality under a different name.

to any stateless person.⁵⁸ In 2014, detention orders were issued to 13 stateless persons and deportation orders to 2 stateless persons.⁵⁹

(5) Re-entry Permit to Japan

As mentioned above, the Re-entry Permit to Japan is the document which indicates that a foreigner with a residency permit is admitted to re-enter to Japan when the person cannot acquire a passport.⁶⁰ If a person is a citizen of a country, the person can usually acquire a passport issued from the country of nationality. This means that when a foreigner cannot be issued a passport from the purported country of nationality, the person is or may be stateless. Therefore, some of the people who have been issued a re-entry permit are stateless. Although the number of re-entry permits issued is not publicly released, 1,851 permits were issued in 2014 and 1,741 permits in 2015 according to 2016 government's response to questions presented by Keiko Itokazu, a member of the House of Representatives⁶¹.

However, a re-entry permit is not issued to a stateless person unless he or she applies for one, and not all people who are issued the permit are stateless. Stateless persons who have no intention to depart from Japan would not apply for a re-entry permit, since it is issued for the purpose of leaving Japan. For these reasons, it is not appropriate to equate the number of re-entry permits issued to that of stateless persons staying in Japan.

(6) Other statistics

Although the scope addressed is limited, the following statistics also refer to the number of stateless persons in Japan.⁶²

⁵⁸ Statistics Bureau, Ministry of Internal Affairs and Communications, "Shutsunyukoku Kanri Toukei 2015 Nen Nenpou, Nyuukoku Shinsa, Zairyusshikaku Shinsa, Taikyo Kyousei Tetsudukitou [Immigration Statistics, 2015 Annual Report, Immigration Inspection, Residence Inspection, Deportation Procedures, etc.]" (June 2016) at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001153786>.

⁵⁹ Statistics Bureau, Ministry of Internal Affairs and Communications, "Shutsunyukoku Kanri Toukei 2014 Nen Nenpou, Nyuukoku Shinsa, Zairyusshikaku Shinsa, Taikyo Kyousei Tetsudukitou [Immigration Statistics, 2014 Annual Report, Immigration Inspection, Residence Inspection, Deportation Procedures, etc.]" (June 2015) at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001135476>.

A Detention Order is issued when there are reasonable grounds to believe that a suspect is subject to deportation (ICRRA, Article 39).

A Deportation Order is issued when, in accordance with the deportation procedures, a suspect is found to be subject to deportation (ICRRA, Article 24) (and when Special Permission to Stay as in note 122 below is not granted). Included in these statistics are persons who had been granted a status of residence at the time of landing but later became (or there were reasonable grounds to believe that they had become) subject to deportation by some reason during their stay.

⁶⁰ See Chapter 1, Section 1, 1(2) in the current report.

⁶¹ Government Response on 22 December 2016 to questions by Councillor Itokazu, *supra* note 28.

⁶² Although it is not directly related to the number of stateless persons, the *Japan Patent Office Annual Report: Statistics and Materials* publishes the number of patent applications by nationality. According to this report, in 2014, 293 patent applications were made by persons categorized as "Stateless, Other". Japan Patent Office, "Tokyo Gyousei Nenji Houkokusho 2015 Nenban - 130 Nenno Sangyou Hattenwo

Items	The number of stateless persons
Crime Statistics (National Police Agency Criminal Affairs Bureau Director for Criminal Intelligence Support 2016) ⁶³	
Foreign visitors arrested for index serious and larceny offenses by nationality compared to the previous year ⁶⁴	0
Prosecution Statistics (Ministry of Justice 2015) ⁶⁵	
[The number of criminal cases involving suspects who are foreigners, by jurisdictions among the Supreme Court, High Court, and District Public Prosecutors Offices, by the nationality of the concerned foreigners [Receipt and processing status of criminal cases involving foreigners]	8
[Receipt and processing status of criminal cases involving foreign suspects] The number of received criminal cases involving foreigners and the number of persons processed and pending (total number)	10
[Receipt and processing status of criminal cases involving foreign suspects] The number of criminal cases by foreign suspects by type of charges and nationality (General)	8
[Receipt and processing status of criminal cases involving foreign suspects] The number of criminal cases that were indicted or had the indictment suspended, by criminal charge and nationality	2

Sasaetekita Sangyou Zaisanken Seido [Japan Patent Office Annual Report, 2015: Industrial Property Rights Supporting 130 Years of Industrial Development]" (2015), at <https://www.jpo.go.jp/shiryou/toushin/nenji/nenpou2015/toukei/4-2-1.pdf>, p.142.

⁶³ National Police Agency, Criminal Affairs Bureau, Director for Criminal Intelligence Support. "Hanzai Toukei Shiryou Heisei 28 Nen 1 Gatsu - 12 Gatsubun (Kakuteichi) [Crime Statistics, January - December 2016 (definitive figures)]" (February 2017)

<http://www.e-stat.go.jp/SG1/estat/List.do?bid=000001083858&cycode=0>

There appear to be no guidelines regarding nationality determination, although reportedly the agency has a policy on determining nationality based on passport, residence card or special permanent resident certificate. Interview with National Police Agency (29 March 2016).

⁶⁴ Although it says "Tai Zennen Hikaku [Comparison with the Previous Year]", it shows the number of arrests in 2016.

⁶⁵ Statistics Bureau, Ministry of Internal Affairs and Communications, "Kensatsu Toukei 2015 Nen Nenpou [Prosecution Statistics, 2015 Annual Report]" (August 2016), at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001157683>.

The numbers here are reported using information provided by the Prosecutor's Office. Hearing from the Statistics Office, Judicial System Division, Judicial System Department, Minister's Secretariat, Ministry of Justice (29 March 2016).

[Receipt and processing status of criminal cases involving foreign suspects] The number of criminal cases involving foreign visitors by jurisdiction between the Supreme Court, High Court and District Court Public Prosecutors Office and by nationality of the foreigners involved	4
[Receipt and processing status of criminal cases involving foreign suspects] The number of cases received, processed, and pending (total) by criminal charge and nationality	6
[Receipt and processing status of criminal cases involving foreigners] The number of criminal cases received involving foreign visitors by criminal charge and nationality	4
[Receipt and processing status of criminal cases by foreigners] The number of criminal cases involving foreign visitors by criminal charge and nationality (Total number of indicted cases)	1
Statistics relating to Corrective Measures (Ministry of Justice 2015)⁶⁶	
[Detainees] Nationality of foreign detainees at the end of the year (Total)	1
[Detainees] Nationality of foreign detainees at the end of the year (Foreign visitors & General)	0
[Detainees] Nationality of foreign detainees at the end of the year by facility (Total)	1
[Detainees] Nationality of foreign detainees at the end of the year by facility (Foreign visitors)	0
[New prisoners serving sentence] Nationality of new prisoners under sentence by criminal charge (total)	1
[New Prisoners serving sentence] Nationality of new prisoners serving sentence by charge (Foreign visitors)	0
Statistics on Probation (Ministry of Justice 2015) ⁶⁷	

⁶⁶ Statistics Bureau, Ministry of Internal Affairs and Communications, "Kyousei Toukei 2015 Nen Nenpou [Statistics relating to Corrective Measures, 2015 Annual Report]" (July 2016), at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001155287>.

The statistics are based on information from detention centers under the jurisdiction of the Correction Bureau, Ministry of Justice. Inquiry to the Statistics Office, Judicial System Division, Judicial System Department, Minister's Secretariat, Ministry of Justice (29 March 2016). The information is transferred from the identification book of a detainee that has been made before the detainee comes under the jurisdiction of the Correction Bureau; the Correction Bureau does not make nationality determinations on its own. Inquiry to the Correction Bureau, Ministry of Justice (30 March 2016).

⁶⁷ Statistics Bureau, Ministry of Internal Affairs and Communications, "Hogo Toukei, Chihou Kousei Hogo linkai, 2015 Nen Nenpou [Statistics on Probation, Regional Parole Board, 2015 Annual Report]" (July 2016), at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001155224>.

The statistics are based on information from Probation Offices, etc., under the jurisdiction of the Rehabilitation Bureau, Ministry of Justice. Inquiry to the Statistics Office, Judicial System Division, Judicial System Department, Minister's Secretariat, Ministry of Justice (29 March 2016). The Rehabilitation Bureau makes nationality determinations based on judgments from the court and reports

Parole proceedings by nationality and reasons for conclusion (Regional Rehabilitation Committee) (unknown included)	1
[Probation] Number of persons starting probation by nationality and type of probation (Probation Office)	3
Basic Survey on Schools (Ministry of Education, Culture, Sports, Science and Technology 2016) ⁶⁸	
Foreign Students by Nationality, Region of Origin, and Field of Study (University) (Including Unidentified Nationality)	16
Foreign Students by Nationality, Region of Origin, and Field of Study (Graduate School) (Including Unidentified Nationality)	1
Foreign Students by Nationality, Region of Origin, and Field of Study (Upper Secondary School) (Including Unidentified Nationality)	3

from the Correction Bureau summarizing information from detention centers, and if there is any doubt based on an interview by the Regional Parole Board while under detention in a penal institution. Inquiry to the Rehabilitation Bureau, Ministry of Justice (12 April 2016).

⁶⁸ Statistics Bureau, Ministry of Internal Affairs and Communications, “*Gakkou Kihon Chousa, Heisei 28 Nendo* [Basic Survey on Schools, Year 2016]” (December 2016), at <http://www.e-stat.go.jp/SG1/estat/NewList.do?tid=000001011528>.

Nationality is determined based on the passport, Alien Registration Certificate, or Foreigner Residence Card. Ministry of Education, Culture, Sports, Science and Technology, “*Heisei 28 Nendo Gakkou Kihon Chousa no Tebiki* [Guide to Year 2016 Basic Survey on Schools]”, at http://www.mext.go.jp/component/b_menu/other/_icsFiles/afieldfile/2016/04/05/1355976_1_1.pdf, p.27.

Section 2: The definition of statelessness in international law

1. Definition and legal requirements of statelessness in the 1954 Convention

(1) Overview

As already mentioned, there is no provision that defines a stateless person in Japanese laws or regulations. However, the United Nations International Law Commission has concluded that the definition of a stateless person provided by the 1954 Convention has acquired the nature of customary law.⁶⁹ Japan has not acceded to the 1954 Convention, but it is required to observe customary international law in the same way as national law based on Article 98(2) of the Japanese Constitution. Therefore, this report bases its analysis on the definition of a stateless person provided by Article 1(1) of the 1954 Convention, i.e., “a person who is not considered as a national by any State under the operation of its law.” In the case analysis in Chapter 2, whether or not a concerned individual is a stateless person is to be determined by applying the 1954 Convention definition.

Regarding the criteria for interpreting the definition of a “stateless person”, UNHCR, which has been designated as the international agency with a mandate to assist stateless persons, published in 2014 the *Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons* (hereinafter referred to as the “Handbook”).⁷⁰ The Handbook was completed based on the three guidelines on statelessness released by UNHCR in 2012. While there has been some accumulation of practice and judicial decisions relating to refugee status determination, there are not enough examples of case assessments relating to statelessness determinations in the international community. Therefore, regarding the standards for interpretation of the definition of statelessness, the UNHCR Handbook, which has a mandate for the protection of stateless persons, provides the foundation.

In earlier discourse relating to stateless persons, the terms “*de jure* stateless persons” and “*de facto* stateless persons” were often used, with an interpretation that “*de facto* stateless persons” do not fall within the scope of the 1954 Convention. However, the term “*de jure* stateless persons” is not used within the 1954 Convention, and the line between “*de facto* stateless persons” and “*de jure* stateless persons” is not necessarily clear. Therefore, care must be taken so that the concept of “*de facto* stateless persons” is

⁶⁹ International Law Commission, *Draft Article on Diplomatic Protection with Commentaries* (2006), at http://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf, p. 49.

⁷⁰ UNHCR, *Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons* (UNHCR, 2014), at <http://www.unhcr.org/53b698ab9.html>. (On the contents, see Kaneko, *supra* note 17d, “Commentary on UNHCR’s New Handbook and Guidelines Relating to Statelessness”.)

not thoughtlessly expanded, resulting in the scope of the protection under the 1954 Convention being inappropriately narrowed.⁷¹

In the case analysis in Chapter 2, the following may arise as interpretational issues, in considering whether or not the individual concerned falls within the definition of the 1954 Convention.

(2) “by any State”

“Any State” does not mean all the states in the world but is limited to the states with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, adoption or habitual residence.⁷² Because it is common to have nationality granted based on such factors, normally it is deemed adequate to limit the investigation to that extent in considering nationality.

Regarding the definition of “State”, the criteria set forth in the 1933 Montevideo Convention on the Rights and Duties of States are adopted.⁷³ According to this convention, a State is constituted when an entity has a permanent population, defined territory, government, and capacity to enter into relations with other States. For an entity to be a “State” for the purposes of Article 1(1) of the 1954 Convention, it is not necessary for it to have received universal or widespread recognition of its statehood by other States or to have become a member State of the United Nations.⁷⁴

(3) “not considered as a national... under the operation of its law”

Who is a national is normally defined by each State by its law. Therefore, it is necessary to consider the law of the State in question in order to determine whether or not an individual is its national. The “law” in Article 1(1) of the 1954 Convention encompasses not just legislation enacted by the parliament, but also ministerial decrees, regulations, orders, judicial case law in countries with a tradition of precedential jurisprudence and, where appropriate, customary practice.⁷⁵

Depending on how the laws are operated, there are cases in which an individual is not treated as a national even though he or she meets the criteria for acquiring nationality provided by a country’s laws and should have acquired its nationality. Since the 1954 Convention defines a stateless person as someone “not considered as a national... under the operation of its law”, it is necessary in statelessness determination to consider not just the country’s law but the “operation of its law” as well.

To determine which cases actually fall under the definition of “not considered as a national... under the operation of its law”, it is necessary to identify which institution(s)

⁷¹ *Id.*, para. 7. On the changes in the concept of “*de facto* statelessness”, see Kaneko, *supra* note 17d, “Commentary on UNHCR’s New Handbook and Guidelines Relating to Statelessness”, pp. 47-48.

⁷² *Id.*, para. 18.

⁷³ *Id.*, para. 19.

⁷⁴ *Id.*, para. 20.

⁷⁵ *Id.*, para. 22.

is/are the competent authority(ies) for nationality matters, and the position of such authorities.

For example, when the law of the relevant State provides for automatic acquisition of nationality, the fact that an individual is not registered by the State does not necessarily mean that he or she is stateless. Nevertheless, an individual becomes recognized to the State only through registration. If there is no registration, there is a possibility that the individual may not be able to enjoy treatment by the State as its national. When the national authorities refuse to accept the registration of an individual without legal grounds even though such registration should normally be accepted, it is inferred that such an individual is not treated or considered as a national.

Thus, it is necessary to carefully examine whether the “competent authorities” responsible for handling nationality matters are operating the legal provisions in an appropriate manner. The Handbook states that,

Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country’s laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national. This scenario frequently arises where discrimination against a particular group is widespread in government departments or where, in practice, the law governing automatic acquisition at birth is systematically ignored and individuals are required to prove additional ties to a State.⁷⁶

The “competent authority” for nationality matters need not be a central State body but could also be a local administrative body or a consular office, and there may exist several such authorities.⁷⁷

In particular, when confirming the nationality or lack thereof of a foreign person staying in Japan, it is useful to confirm the position of the consular office of the country with which the individual has a relevant link. A consulate can be a “competent authority” as the consul is normally requested to express a view on an individual’s nationality within the scope of consular protection, in case an individual wishes to extend his or her passport or to confirm his or her nationality.

There may be cases where an individual has never come into contact with a state’s competent authorities; in such cases, it is important to assess the state’s general attitude in terms of the nationality status of persons who are similarly situated. If identification documents issued only to nationals are routinely denied to a group to which an individual belongs, this may indicate that he or she is not considered as a national by the State.⁷⁸

⁷⁶ *Ibid*, para. 37.

⁷⁷ *Ibid*, para. 28.

⁷⁸ *Id*, para. 38.

In the case analysis in Chapter 2, when an individual appears to have automatically acquired the nationality of a State according to its nationality laws but is denied birth registration or an issuance or renewal of a passport by the consulate in spite of the individual having taken actions normally expected in such a case, the individual would be “not considered as a national... under the operation of its law” and therefore would be stateless. In considering the “actions normally expected”, the provisions for acquisition of nationality in the nationality laws of the relevant State would be the basis, and the rationality of any requirements requested by the authorities in addition to such provisions must be assessed. Specifically, an individual would be considered a stateless person in cases where birth registration and passport issuance or renewal was denied for reasons unrelated to provisions in the nationality law, such as ongoing or past asylum applications by the individual or his or her parents, non-payment of tax by the parents, being a child born out of wedlock, or originating from an area which has become independent from the concerned state.

Also, in cases where an individual is not in possession of official documents issued by a relevant State which are necessary as proof of meeting the requirements for acquisition of the state’s nationality, and where it is objectively clear that it is difficult to obtain such documents in reality, the individual would be considered stateless by meeting the definition “not considered as a national... under the operation of its law.”

2. Burden of proof in establishing statelessness

Even with the understanding of statelessness offered by the definition and requirements as described in the preceding section, there remains the practical issue of establishing the extent to which an individual should prove his or her claim that he or she meets the criteria within the statelessness definition and relevant requirements in specific procedures.

With regard to the burden of proof in statelessness determination procedures, the Handbook states that the burden of proof is in principle shared in that both the applicant and examiner must cooperate to obtain evidence and to establish the facts.⁷⁹ Considering the difficulties inherent in proving statelessness, a high standard of proof should not be required, and it is advised to adopt the same standard of proof as that required in refugee status determination, namely, “to a reasonable degree.”⁸⁰

It is usually very difficult for an individual to research and provide proof on the nationality laws and practice. Therefore, the determination authority is also required to obtain and present evidence relating to the law and its operation.

⁷⁹ *Id.*, para. 89.

⁸⁰ *Ibid.*

In determination of statelessness in the case analysis which follows in Chapter 2, the nationality laws and regulations of a country with which an individual has a relevant link were researched using documentary evidence as well as the search engine on nationality laws and so on operated by UNHCR. The assessment of the operation or implementation of the law is based on media reports and hearings from relevant parties, supporters, and authorities.

Chapter 2: SAMPLE CASE ANALYSIS

Section 1: Categories of persons whose statelessness or risk of statelessness arose while in Japan

Category A [Conflict of laws] Persons who did not acquire by birth the nationality of their parents or the nationality of their country of birth due to conflict of laws (Sample cases from Paraguay and Myanmar)

Category A is statelessness that is caused by the fact that the nationality law of the country of nationality of the parents adopts a strict *jus soli* principle or a paternal and maternal *jus sanguinis* principle.

< Case 1 > Paraguay is a State which adopts a strict *jus soli* principle; therefore, a child born in Japan from Paraguayan parents cannot obtain Paraguayan nationality by birth. On the other hand, the child cannot obtain Japanese nationality by birth either, and there are cases where such children become stateless.

< Case 2 > Myanmar adopts a strict paternal and maternal *jus sanguinis* principle; a child cannot obtain Myanmar nationality by birth if only one of the parents is a Myanmar national. At the same time, the child cannot obtain Japanese nationality by birth either, and there are cases where such children become stateless.

1. < Case 1 > Children born in Japan from parents with Paraguayan nationality

(1) Case summary

A was born in 2001 and B was born in 2003, both in Japan from second-generation Japanese parents with Paraguayan nationality.⁸¹ A, B, and their parents live in Japan with the status of permanent residents.

The (former) alien registration certificates of A and B, who were born in Japan, showed “Paraguay” as their nationality; when the alien registration certificates were replaced by foreigner residence cards,⁸² they also showed “Paraguay” as their nationality. However, A and B had not acquired Paraguayan nationality by birth under Paraguayan law and were thus stateless.

⁸¹ The facts of Case 1 are based on a hearing of A and B’s parents and their counsel on 22 March 2016. A and B’s grandparents are Japanese nationals who migrated from Japan to Paraguay with A and B’s great-grandfather and others after World War II.

⁸² On the relations between the former Alien Registration System and the current Residency Management System, see Chapter 1, Section 2, 2(1) of this report.

When A was in the seventh grade, A wished to go to Australia for language training but had to give up because a passport could not be obtained.

According to the statistics on residence provided by the Ministry of Justice, there were 1,976 people who had “Paraguay” on their foreigner residence cards at the end of December 2016.⁸³ However, according to the Embassy of Paraguay in Japan, 44 children born in Japan were found to be stateless by a survey of Paraguayan residents in Japan conducted in October 2011. Also, based on the 2011 survey results, the Embassy double-checked the birth registrations in March 2015, and found that 72 people were expected to be stateless.⁸⁴ Among these individuals expected to be stateless, a significant number had “Paraguay” shown on their alien registration certificates and foreigner residence cards. The Embassy of Paraguay provides notices on its website that a child born in Japan from parents with Paraguayan nationality does not acquire Paraguayan nationality by birth in order to provide accurate information and to avoid misunderstandings in relation to a child’s acquisition of Paraguayan nationality.⁸⁵

(2) Background

The Constitution of Paraguay adopts the *jus soli* principle. A child born outside of Paraguay with a father or mother with Paraguayan nationality cannot become a Paraguayan national unless he or she becomes a permanent resident of Paraguay (Constitution of Paraguay, Article 146(3)).

In order to acquire Paraguayan nationality, A and B must submit an application to the court of first instance in civil and commercial affairs in the jurisdiction of their residence in Paraguay and go through the procedure for acquiring nationality (Law No. 582/95, Articles 2 and 3). The court procedure usually takes six months to one year.⁸⁶ The parents of A and B have a job and family life in Japan and have no plans to permanently reside in Paraguay. A and B therefore have no plans to permanently reside in Paraguay and cannot obtain Paraguayan nationality.

At the time of A and B’s birth, Paraguayan law allowed the mother’s passport to provide the children’s identity information along with their photographs. The mother and the

⁸³ The number of total foreign national residents, Statistics on Foreign National Residents, *supra* note 42. Among the 1,976 persons, the total number of persons with the status of residence of “Long-term resident”, such as spouses of Japanese nationals and permanent residents is 1,863; many of them are surmised to have Japanese origin.

⁸⁴ Inquiry to the Consular Section, Embassy of the Republic of Paraguay in Japan (“Inquiry to Paraguay Embassy in Japan”), 31 March 2015. It is not known if there is any overlap between the “44” and “72” persons.

⁸⁵ On the website of the Embassy of the Republic of Paraguay in Japan, the following statement is found in Japanese as well on acquisition of nationality: “It is not possible to acquire Paraguayan nationality for a child born outside of Paraguay from a father and/or mother with Paraguayan nationality, by submitting to this Embassy a registration of birth. (See the Constitution and Law No. 582/85 on Nationality)”. The Embassy of the Republic of Paraguay in Japan, “*Miseinennitsuite* [Regarding Minors]”, at <http://www.embapar.jp/ja/sc/menores/#>.

⁸⁶ Inquiry to Paraguay Embassy in Japan, *supra* note 81.

children were able to leave Japan using this passport and return to Paraguay. However, the practice of providing children's information on the mother's passport was abolished at the end of March 2015. As a result, the identity information of the children was no longer shown on the mother's passport, and it became impossible for the children to travel abroad using the mother's passport.

The Constitution of Japan adopts the *jus sanguinis* principle. As both of the parents of A and B have Paraguayan nationality, Article 2(iii) of the Japanese Nationality Act, which provides for acquisition of Japanese nationality by birth, does not apply to A and B. Therefore, A and B are stateless persons, as they did not acquire the nationality of any State by birth, and they are not considered as a national by any State.

(3) Acquisition of nationality

If A and B live permanently in Paraguay and apply for and are granted nationality by a court in Paraguay, there is a possibility that they acquire Paraguayan nationality. However, A and B have been stateless since birth and have been residing in Japan for more than three years. Therefore, they applied for naturalization in January 2016 based on Article 8(iv) of the Japanese Nationality Act; their applications were granted; and they acquired Japanese nationality in January 2017.

(4) Administrative response by Japan

The parents of A and B were confused by the discrepancies in nationality, as A and B were considered as non-nationals by the Embassy of Paraguay, but their foreigner residence cards in Japan showed "Paraguay" in the "Nationality/area of origin" column. The mother of A and B consulted the legal affairs bureau located in the Kanto region on several occasions regarding naturalization, but she was never informed that it was possible to apply for naturalization under the assumption that Article 8(iv) (the so-called "simplified naturalization") would be applied, which eases the normal requirements for naturalization for stateless persons born in Japan. It was only when she consulted an attorney-at-law that she learned that her children would be able to make such applications, and she proceeded to go through the procedure.

First, she made an application to the regional immigration bureau located in the Kanto region to correct the information shown on her children's foreigner residence cards, i.e., to change their nationality from "Paraguay" to "Stateless"; however, she was told that the regional immigration bureau was not in a position to make a determination, and the correction was made only after more than four months had passed.

In addition, C, who is the cousin of A and B on their father's side, was also stateless; C's (former) alien registration certificate as well as foreigner residence card showed "Stateless" in the "Nationality/area of origin" column.⁸⁷ C's mother also consulted a

⁸⁷ The facts of Case 2 are based on a hearing from the parents and their counsel (28 August 2015). C applied for naturalization in August 2015 and was granted Japanese nationality in May 2017.

different legal affairs bureau located in the Kanto region on her own regarding naturalization and C's acquisition of nationality. However, the official in charge did not explain facilitated naturalization and gave a misleading explanation giving the impression that stateless persons could not be naturalized at all.

Later, the legal representative of A, B, and C contacted each legal affairs bureau by phone to make an appointment for consultation regarding naturalization. However, the attorney was told that naturalization of the minors could not be processed and that for each legal affairs bureau, it was necessary for the lawyer to indicate the provision in Article 8(iv) of the Nationality Act and the stateless status of the concerned child under the law of Paraguay in order to make an appointment. In one legal affairs bureau, it took several days of internal confirmation before an appointment for consultation was accepted.

2. < Case 2 > A child whose mother is from Myanmar and father is unknown

D, a Myanmar national who was studying in Japan, gave birth to E in Japan in 2015. D had had relations with more than one man at the time she became pregnant with E, and it was not clear who was E's (biological) father was. According to Article 7 of the 1982 Citizenship Law of Myanmar, a child cannot acquire Myanmar nationality by birth unless both of the parents are Myanmar nationals.⁸⁸ E was not able to acquire Myanmar nationality because E did not meet the criteria of having parents who are both Myanmar nationals, with the father being unknown. In fact, after E's birth when a staff member of the general incorporated association Across Japan, which assisted E's special adoption, accompanied D on her visit to the Embassy of Myanmar in Japan and tried to register E's birth, the officer in charge demonstrated discriminatory conduct for the woman having had a child out of wedlock; and the birth registration was denied.

The Nationality Act of Japan adopts the principle of *jus sanguinis*, and because the nationality of the mother D is Myanmar, there was no room for E to acquire Japanese nationality by birth. Therefore, E was a stateless person who did not acquire the nationality of any State by birth and was not considered as a national by any State.

The mother D was young and financially unstable and had no wish to raise a child. D consulted the general incorporated association Across Japan about adoption. Since the seventeenth day after birth, E has been raised by an American and Japanese married couple. When E applied for residential status at a local immigration bureau located in the Kanto region, E's nationality was determined as "Stateless" and E was granted the status of short-term resident. Later, when their request for special adoption (Civil Code Article 817-2 and below)⁸⁹ was granted by the family court, the court also determined E's

⁸⁸ Burma Citizenship Law (15 October 1982). Reference was made to the following English translation: <http://www.refworld.org/docid/3ae6b4f71b.html>.

⁸⁹ "Special Adoption is a form of adoption established by a ruling of a family court, by which the legal relationship between a child and his or her natural relatives is extinguished, and a stable relationship is established between the child and his or her adoptive parent similar to that between a real parent and

nationality as stateless.⁹⁰ E is currently an adopted child of a Japanese national. In the future, E plans to apply for naturalization to obtain Japanese nationality based on Article 8(ii) of the Nationality Act (simplified naturalization), which simplifies the normal requirements for naturalization for an adopted child of a Japanese citizen when the child has had a domicile in Japan for one year or more.⁹¹

3. Possible Size of Category A

(1) Possible cases of conflict of nationality laws

Cases One and Two show a traditional pattern of statelessness where there is a clash of provisions for the acquisition of nationality by birth. For example, in the past when the Nationality Act of Japan followed paternal *jus sanguinis*, the so-called Amerasian children, who were born in Japan from a Japanese mother married to an American soldier, were stateless.⁹² Also, as Brazil followed the *jus solis* principle in the past, children born in Japan from parents with Brazilian nationality sometimes became stateless.⁹³

The granting of Japanese nationality by birth, according to the Nationality Act, is based primarily on *jus sanguinis*, but it also follows *jus solis* to complement it, thereby preventing statelessness to some extent. However, in addition to the cases mentioned above, a child born in Japan may become stateless by a clash of laws regarding the acquisition of nationality by birth. The following four general patterns can be found in such cases, namely, for the acquisition of nationality, the country concerned requires: (a) residency, (b) that the parents are nationals of the country, (c) registration in case of births outside of the country, or (d) paternal lineage following the *jus sanguinis* principle.

Below, the 36 main countries concerning which a child born in Japan may not be able to acquire the nationality of the parent are categorized into patterns (a) through (d), and the states are listed in the order of the number of residents in Japan, with the first one having the greatest number of residents.

child, when there is a special need for the welfare of the minor, in principle below the age of 6. For this purpose, the person to be an adoptive parent, needs to have a spouse, be 25 years old or above in principle, and the couple must jointly make the adoption. Also, divorce is prohibited in principle." Homepage of the Courts, at http://www.courts.go.jp/saiban/syurui_kazi/kazi_06_09.

⁹⁰ Yokohama Family Court, Yokosuka Division, adjudication on 10 November 2015 (Heisei 27 Nen (Ka) No. 203), unpublished. It was kindly made available by Tazuru Ogawa, Representative of the Board of Directors, Across Japan, which is a general incorporated association.

⁹¹ Asahi Shimbun, 9 January 2016 evening edition, "Mukokusekino Akachan Sukueru: Youshiengumi Sureba Nihon Kokusekini Michi [Stateless Baby Can Be Saved: Road to Japanese Nationality Through Adoption]" (reported by Eri Goto), at <http://www.asahi.com/articles/ASHDV4W4JHDVUHMCO02.html>.

It was widely reported that there is a way for a stateless child to acquire Japanese nationality at an early stage through Special Adoption, and it drew much attention.

⁹² Also see *supra* note 2, Abe Report, p.32.

⁹³ Also see *supra* note 2, Arakaki Report, p.56.

(a) The main states that have residency requirements, etc.

As described in Case 1, when the country of nationality of the parents requires residency in the country, including travel to such country, a child will not be able to acquire the nationality of the parents if the child has never left Japan. When the parents are citizens of such a country, it is necessary to confirm if the necessary residency requirements have been met for the child to acquire the nationality of the parents.

- US⁹⁴
- UK⁹⁵
- Paraguay⁹⁶
- Republic of Ecuador⁹⁷
- Oriental Republic of Uruguay⁹⁸

(b) The main states that require the parents to be their citizens

As described in Case 2, among the states that have adopted the *jus sanguinis* principle, some require both of the parents to be their citizens in order for the child to acquire their nationality. If a child is born from a national of such a state, under a complete dual-lineage *jus sanguinis* as it were, and if the other parent is not its citizen, then the child is not able to acquire the nationality of the country.

- Myanmar⁹⁹

(c) Main states that require registration in case of birth outside of the state

A child born in Japan from parents with the following nationalities can acquire the nationality of the parents if he or she is registered at the country's consulate, etc. However, if the child is not registered with the country of the parents' nationality, then the child cannot acquire the nationality of the parents. Thus, a child will become stateless if the parents are citizens of the following states and the child is not registered with either of the states of nationality of the parents or if one of the parents is a national of one of the following states and the child is not registered and the child is unable to acquire the

⁹⁴ U.S. Embassy in Japan, "Shushouniyoru Beikokusekino Shutoku [Acquisition of American Citizenship at Birth]", at

<https://jp.usembassy.gov/ja/u-s-citizen-services-ja/citizenship-services-ja/acquisition-american-citizenship-ja/>.

⁹⁵ British Nationality Act, Article 2.

⁹⁶ Embassy of the Republic of Paraguay in Japan, "Paraguayan Nationality", at <http://www.embapar.jp/ja/sc/menores/nacionalidad-paraguaya/>

⁹⁷ Continuous Reports System on International Migration in the Americas, "Ecuador - Nationality and citizenship" <http://www.migracionoea.org/index.php/en/sicremi-en/273-ecuador-2-3-nacionalidad-y-ciudadani-a-2.html>

⁹⁸ Continuous Reports System on International Migration in the Americas, "Uruguay - Nationality and citizenship" <http://www.migracionoea.org/index.php/en/sicremi-en/310-uruguay-2-2-nacionalidad-y-ciudadani-a-2.html>

⁹⁹ Burma Citizenship Law, Article 7. Reference was made to the English translation available at: <http://www.refworld.org/docid/3ae6b4f71b.html>.

nationality of the other parent. This risk is greater in cases of children of refugees or asylum seekers. As many of the refugees and asylum seekers have a risk of being persecuted by their country of origin, it is difficult in practice for them to contact their national authorities for birth registrations. (See Category C [Consulate denial I (Refugees)] and Category D [Consulate denial II (Persons similarly situated as refugees)]).

- Peru¹⁰⁰ (registration before reaching majority)
- India¹⁰¹ (birth registration at a consulate within a certain period after birth)
- Sri Lanka¹⁰² (registration within one year after birth)
- Commonwealth of Australia¹⁰³ (registration within 25 years after birth)
- Russia (registration at a consulate, in case one of the parents is a foreign national)¹⁰⁴

(d) Main states that have adopted the paternal *jus sanguinis* principle¹⁰⁵

If a child with a mother who is a national of a State that has adopted paternal *jus sanguinis*¹⁰⁶ cannot acquire the nationality of the father,¹⁰⁷ then the child may become

¹⁰⁰ Oliver Vonk, *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*. (Leiden and Boston: Brill Nijhoff, 2014). p. 304.

¹⁰¹ Government of India, "Ministry of Home Affairs, Foreigners Division", at <http://indiancitizenshiponline.nic.in/citizenshipact1.htm>.

¹⁰² Department of Immigration and Emigration, Sri Lanka, "Citizenship Registration of Children Born Outside of Sri Lanka", at http://www.immigration.gov.lk/web/index.php?option=com_content&id=149&Itemid=188.

¹⁰³ Australian Embassy Tokyo, "Citizenship by Descent", at http://japan.embassy.gov.au/tkyo/citizen_descent.html.

¹⁰⁴ Federal Law on Russian Federation Citizenship, Article 14 (6)(a). See this link for an English translation:

<http://www.legislationline.org/documents/action/popup/id/4189>.

¹⁰⁵ This is based mainly on the following document published in March 2017: UNHCR "Background Note on Gender Equality, Nationality Laws and Statelessness 2017", available at <http://www.refworld.org/docid/58aff4d94.html>.

¹⁰⁶ Many of the States that adopt the paternal *jus sanguinis* principle make exceptions in certain circumstances, for example enabling acquisition of the mother's nationality in the case of a child born out of wedlock or in case the father is unknown (or in the case the child is born in the State with a foreign father, although the number of States making exceptions in such cases is low). UNHCR, "Background Note on Gender Equality, Nationality Laws and Statelessness 2017", 8 March 2017, <http://www.refworld.org/docid/58aff4d94.html>, p3. Nevertheless, in many States, the provisions for exceptions are not implemented or it is not clear if they are implemented. Betsy Fisher, 'Why Non-Marital Children in the MENA Region Face a Risk of Statelessness', Harvard Human Rights Journal Online (January 2015) http://harvardhrj.com/wp-content/uploads/2015/01/Fisher_HRJ_01-05-15.pdf, p4.

¹⁰⁷ Cases when a child "cannot acquire the nationality of the father" would include, for example: where the father is stateless; where the laws of the father's State do not permit conferral of nationality in certain circumstances (such as when the child is born abroad); where the father is unknown or not married to the mother at the time of birth; where the father has not recognized a child born out of wedlock; where the father's recognition of a child born out of wedlock is not linked to acquisition of nationality; or where the father is unable or unwilling to undertake the necessary procedures to confer his nationality or acquire proof or confirmation of nationality for his child. Also see UNHCR,

stateless in Japan. Also included below are states whose nationality cannot be passed onto the child through the father unless the father meets certain requirements. Even if the father is a national of one of the states below, the child cannot acquire the father's nationality unless the father or the child meets certain requirements; in such cases, if the child cannot acquire the mother's nationality either, he or she becomes stateless.

- Nepal
- Malaysia
- Iran
- Saudi Arabia
- Syria¹⁰⁸
- Sudan¹⁰⁹
- Jordan¹¹⁰
- Iraq¹¹¹
- Lebanon¹¹²
- Brunei
- United Arab Emirates¹¹³
- Libya¹¹⁴
- Kuwait¹¹⁵
- Qatar
- Oman
- Togo
- Liberia
- Bahrain¹¹⁶
- Barbados
- Mauritania
- Burundi
- The Bahamas
- Somalia
- Kiribati
- Swaziland

"Background Note on Gender Equality, Nationality Laws and Statelessness 2017", 8 March 2017, at <http://www.refworld.org/docid/58aff4d94.html>, p1.

¹⁰⁸ <http://syrianationality.org/nationality-documentation-and-statelessness-in-syria/syrias-nationality-law>.

¹⁰⁹ For English translation of relevant laws, see <http://www.refworld.org/pdfid/502cc1b92.pdf>.

¹¹⁰ For English translation of relevant laws, see <http://www.refworld.org/docid/3ae6b4ea13.html>.

¹¹¹ For English translation of relevant laws, see <http://www.refworld.org/docid/4b1e364c2.html>.

¹¹² For English translation of relevant laws, see <http://www.refworld.org/docid/44a24c6c4.html>.

¹¹³ For English translation of relevant laws, see <http://www.refworld.org/docid/3fba182d0.html>.

¹¹⁴ For English translation of relevant laws, see <http://www.refworld.org/pdfid/4e2d8bf52.pdf>.

¹¹⁵ For English translation of relevant laws, see <http://www.refworld.org/docid/3ae6b4ef1c.html>.

¹¹⁶ For English translation of relevant laws, see <http://www.refworld.org/docid/3fb9f34f4.html>.

(2) Possible Size of Category A

The number of “total foreign residents in Japan”¹¹⁷ with a nationality among the 36 countries under (a) to (d) above is 386,543 as of the end of December 2016.¹¹⁸ There is no apparent way to grasp accurately how many children are born in Japan from these people and what percentage of such children encounter conflict of nationality laws. However, given the fact that there should be a significant number of marriages and birth involving citizens of the 36 states above, there should be a considerable amount of risk of producing statelessness being produced and various ways in which statelessness arises under Category A.

4. Solutions for Category A

(1) Prevention

One way to prevent statelessness arising from conflicts of laws regarding the acquisition of nationality may be to adopt internationally uniform criteria for the granting of nationality, but it would not be possible in practice. Moreover, in cases One and Two, it became clear that it is difficult in practice to persuade Paraguay or Myanmar to amend their laws regarding the granting of nationality. Japan cannot neglect taking measures within Japan in the expectation that other states would revise their laws.¹¹⁹

From the perspective of preventing statelessness, for example, it might be possible to introduce a new provision as Article 2(iv) of the Nationality Act: “if a person is born in

¹¹⁷ For definition, see *supra* note 41.

¹¹⁸ Total number of foreign national residents in the “Statistics on Foreign National Residents” (December 2016), *supra* note 42.

¹¹⁹ The number of signatories to the 1961 Convention, which requires States Parties to prevent statelessness, has also sharply increased in recent years, reaching 70 as of 21 September 2017.

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en

Also, the European Convention on Nationality, which was adopted by the Council of Europe in 1997, calls on States Parties to provide internal law for nationality under the principle that statelessness shall be avoided (Article 4b); however, states are allowed to choose how to grant nationality in its law (Article 6(2) ab), and the legal obligation only applies to States Parties. Yasuhiro Okuda and Akiko Tateda, “The 1997 European Convention on Nationality”, *Hokudai Hougakuronshuu* [Hokkaido University Legal Studies Journal], 50(5), pp. 93-131, available at [http://eprints.lib.hokudai.ac.jp/dspace/bitstream/2115/14986/1/50\(5\)_p93-131.pdf](http://eprints.lib.hokudai.ac.jp/dspace/bitstream/2115/14986/1/50(5)_p93-131.pdf).

Moreover, the number of States Parties to the 1961 Convention requiring prevention of statelessness remains at 70 as of 21 September 2017. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en.

Japan and does not acquire the nationality¹²⁰ of his or her father or mother's country of nationality."¹²¹

(2) Protection

Under the current framework, there is no system for the protection of the rights of stateless persons. Therefore, from the perspective of protection of stateless persons, a system for statelessness determination and protection should be introduced; and if an individual is recognized as a stateless person after an appropriate assessment in accordance with the definition in the 1954 Convention, he or she should be granted a residential status and a travel certificate. In each case above, the child was able to obtain a stable residential status thanks to the existence of a natural or adoptive parents. However, had the special adoption with a Japanese national not taken place in Case 2, the child might have become an irregular resident without any legal status. Upon recognition as a refugee, he or she is granted the status of "long-term resident". Similarly, it would be desirable to have a system under which a stateless person is granted the status of "long-term resident" upon recognition as such.

As an interim measure until a system is in place for statelessness determinations and protection, "He or she is without nationality", for example, should be included under ICRR Article 50(1) as a ground for granting special permission to stay,¹²² or at the least, "being without nationality" should be included in the Guidelines as a positive factor for granting special permission to stay.¹²³

In addition to the above, needless to say, it is important to provide access to experts with sufficient knowledge of statelessness for rapid and effective protection.

¹²⁰ This is meant to include cases where the child cannot acquire nationality or confirm his or her nationality under the letter or implementation of the provisions of the nationality law, even though the parents do possess nationality.

¹²¹ In France, Italy and Spain, "cases where the child does not acquire nationality according to the nationality act of the country of nationality of the parents are listed as cases where the child acquires nationality by complementary jus solis." Okuda, *supra* note 33, p.136.

¹²² Article 50(1) of ICRR provides that, even in case an individual is subject to deportation, the Minister of Justice "may grant... special permission to stay in Japan" if the Minister finds grounds to grant permission to stay; and provides the following as such grounds: "(i) He or she has obtained permission for permanent residence; (ii) He or she has had a registered domicile in Japan as a Japanese national in the past; (iii) He or she resides in Japan under the control of another due to trafficking in persons; and (iv) The Minister of Justice finds grounds to grant special permission to stay, other than the previous items." With regard to asylum applicants, similar decisions are made within the refugee status determination procedure (ICRR, Article 61-2-2 (2)). Further, in recent years, the guidelines specifying the criteria for granting special permission to stay have been made public. Ministry of Justice, "Zairyuu Tokubetsu Kyokani Kakawaru Gaidorain [Guidelines on Special Permission to Stay in Japan]", at http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan85.html.

¹²³ Under the present circumstances, there may be cases where continued residence in Japan is considered on humanitarian grounds, if the individual is stateless and has effectively lost his or her country of origin and it is difficult to establish domicile outside of Japan; however, it is not sufficient as a criterion for protection, as such decisions appear to be made with consideration of various other circumstances and not based solely on the fact that the individual is stateless. Arakaki, *supra* note 2, p.72.

(3) Reduction

Under the current framework, statelessness arising in Category A is not being prevented; therefore, from the perspective of reducing statelessness, providing Japanese nationality through application for naturalization would be a solution. Specifically, it is important to ensure that Article 8(iv) of the Nationality Act is appropriately implemented.

Nevertheless, under the current circumstances as described in Case 1, it is possible that the understanding of officials in charge of receiving applications for naturalization is not necessarily adequate and that an eligible individual is unable to apply for simplified naturalization under Article 8(iv) in a smooth manner. Therefore, legal affairs bureaus should collect accurate information on the nationality laws and practice of various states, deepen their understanding of such information, and establish and maintain a system under which simplified naturalization is applied in an appropriate and consistent manner.

Category B [State succession] Persons whose country of previous nationality has gone through State succession who cannot have their possession of the nationality of the successor State or the predecessor State confirmed (Sample cases from Ethiopia and Eritrea)

Category B is statelessness arising when the country of nationality goes through State succession.

The individual in < Case 3 > is from an area which is part of Eritrea's territory today. Eritrea was annexed by Ethiopia when he was young, and later became independent. In the process, he fell into a situation where he is not considered as a national by either Eritrea or Ethiopia.

1. < Case 3 > Case summary

A is a man who was born in 1961 in Asmara, a city in a territory of Eritrea, which at the time formed a federation with Ethiopia. Eritrea was annexed by Ethiopia in 1962, but after a referendum in April 1993 on the secession and independence of Eritrea, it became independent in May 1993.

After the annexation by Ethiopia, A moved from Asmara to Addis Ababa, the capital of Ethiopia, when he was about eight. The aforementioned referendum took place when A was in his 30s, but A did not vote because he did not support Eritrea's independence.

Later, A arrived in Japan in 1996 with an Ethiopian passport, and a border dispute arose between Eritrea and Ethiopia in 1998 during his stay in Japan. In 2000, A thought about returning and applied to renew his passport at the Embassy of Ethiopia, but his application was denied. A applied for refugee status in 2001, and while he was not recognized as a refugee, he was given special permission to stay (under then ICRRRA Article 50). Today, he resides in Japan with wife and children with the status of "permanent resident".¹²⁴

A has a sense of belonging to Ethiopia, and he requested the Embassy of Ethiopia to confirm that he is a national of Ethiopia. However, his application for passport renewal was again rejected in 2015 for the reason that he was born in Eritrea. Today, A does not possess any document showing that he is a national of Ethiopia or that he is a national of Eritrea. He is not considered as a national by any state.

2. The possibility of acquiring nationality of the relevant states

(1) Ethiopia

A's parents are also from Asmara in Eritrea's territory. As a prerequisite for determining whether or not A still has Ethiopian nationality, it is necessary to consider the contents

¹²⁴ The facts of Case 3 are based on a hearing from A and A's counsel on 17 November 2015. On Special Permission to Stay, see *supra* note 122.

of the provisions and practices in implementing the nationality laws of Ethiopia and Eritrea, as well as the background to Eritrea becoming a State.

Eritrea was annexed by Ethiopia in 1962, and all the people residing within Eritrean territory became Ethiopian citizens, with the exception of those who had foreign nationality.¹²⁵ Therefore, A became an Ethiopian citizen one year after his birth. However, there was a referendum on the secession and independence of Eritrea in April 1993, and as a result, Eritrea became independent in May 1993.

With Eritrea's referendum and its subsequent official independence, there arose the issue of the nationality of Ethiopians with Eritrean descent who were staying in Ethiopia, such as A.

The 1992 Eritrean Nationality Proclamation adopts the *jus sanguinis* principle.¹²⁶ However, the new Constitution of Ethiopia, which was promulgated in 1995, also adopts the *jus sanguinis* principle and prohibits deprivations of nationality.¹²⁷ Ethiopians with Eritrean descent were considered to have the nationality of both countries, and it appeared that the two governments attempted to solve the issue of nationality through each individual's choice.

However, when a border dispute occurred between Eritrea and Ethiopia in 1998, the Ethiopian authorities forcibly expelled approximately 75,000 Ethiopians with Eritrean descent from Ethiopia into Eritrea. The government of Ethiopia announced that the subjects to be expelled were those who became Eritrean citizens by way of voting for Eritrean independence in the referendum. Later, in December 2003, the Ethiopian authorities announced the Proclamation on Ethiopian Nationality, which states that any Ethiopian who voluntarily acquires another nationality shall be deemed to have voluntarily renounced his or her Ethiopian nationality with certain exceptions. Also, in January 2004, the Ministry of Foreign Affairs of Ethiopia issued an order regarding decisions on the residency eligibility of Eritrean nationals residing in Ethiopia.¹²⁸ According to this order, people with Eritrean descent who had not selected Eritrean nationality by that time were deemed to have decided to maintain Ethiopian nationality, and their Ethiopian nationality was to be guaranteed.

¹²⁵ Human Rights Watch, *Eritrea & Ethiopia The Horn of Africa War: Mass Expulsions and the Nationality Issue* (June 1998 - April 2002) (2003), at <https://www.hrw.org/reports/2003/ethioerit0103/ethioerit0103.pdf>, p. 12.

¹²⁶ *Id.*, p. 15.

¹²⁷ Constitution of the Federal Democratic Republic of Ethiopia (21 August 1995). Reference has been made to the following: <http://www.refworld.org/docid/3ae6b5a84.html>.

¹²⁸ Ministry of Foreign Affairs in Ethiopia, "Directive Issued to Determine the Residence Status of Eritrean Nationals Residing in Ethiopia" (January 2004), at <http://www.refworld.org/docid/48abd56c0.html>.

According to this Directive, a person having an Eritrean passport or any document conferring Eritrean nationality or a person serving the Eritrean Government in a sector reserved exclusively for Eritrean nationals is considered to have Eritrean nationality.

Based on such treatment regarding nationality, it appears that A acquired Ethiopian nationality after birth and maintains Ethiopian nationality because he did not participate in the referendum on Eritrean independence and has not selected Eritrean nationality to this day.

Nevertheless, as described earlier, when A, who had been staying in Japan since 1996, thought about returning, he went to the Embassy of Ethiopia in 2000 for renewal of his passport, filled out a passport application, paid the fee, and submitted the application along with his expired passport; the application form and his old passport were then later mailed back to his home.

Furthermore, in November 2015, A again visited the Embassy of Ethiopia with a legal representative and requested a passport renewal, but he was told that his passport could not be renewed because he was born in Asmara, and his renewal application was not accepted. He also asked about the possibility of being issued a travel document for one-time use to go to Ethiopia, but he was told that it could be issued only to a “national”, and his application for a travel document was not accepted either.

(2) Eritrea

According to the 1992 Eritrean Nationality Proclamation, people who were residing in the Eritrean region in 1933 are of Eritrean descent, and those born from parents of Eritrean descent are Eritrean citizens. The 1997 Constitution of Eritrea also provides that any person born of an Eritrean father or mother is an Eritrean by birth.¹²⁹

It is reported that on 27 January 2004, the UK Home Office received a letter from the Eritrean Embassy in London which stated that a person who has an Eritrean father or mother would be eligible for Eritrean nationality as long as the person provides three witnesses.¹³⁰ A British fact-finding mission report published on 29 April 2003 contains details about the acquisition of nationality with three witnesses.¹³¹ While it is not necessarily clear whether the ‘three witnesses’ method is a condition for the acquisition of nationality or merely a procedure to confirm nationality already acquired, the Eritrean government treats a person as an Eritrean national with verification by three witnesses.

A has his parents and six siblings, but their whereabouts are unknown except one younger sister. Also, A himself and his parents do not possess any Eritrean identification documents showing them to be of Eritrean origin, and they do not have any

¹²⁹ Constitution of Eritrea (23 May 1997). Rereference has been made to the following: <http://www.refworld.org/docid/3dd8aa904.html>.

¹³⁰ United Kingdom Home Office, *Country of Origin Information Report - Eritrea* (2010), at <http://www.refworld.org/docid/4c286cfa2.html>, p. 106.

¹³¹ *Id.* An applicant can choose any three Eritreans in the world as long as he or she knows them personally and call on them to verify that the applicant is an Eritrean national. If the person is abroad, he or she must go to the Eritrean embassy of that State in order to answer questions. The three witnesses must be Eritreans who hold an Eritrean identification card or passport. Although every adult is supposed to have a national ID card, and anyone holding an Eritrean passport would be in possession of that card, identity records are not centralized.

acquaintances who could serve as three witnesses for their Eritrean nationality. Thus, it would be difficult for A to acquire Eritrean nationality with three witnesses.

(3) Japan

A procedure for the acquisition of Japanese nationality is an application for naturalization. The Nationality Act does not prescribe Japanese language proficiency as a condition for naturalization; however, in practice, a certain level of Japanese language proficiency is required. It is highly likely that A would not be granted naturalization even if he applied because he does not meet this part of the criteria.

(4) Statelessness

Based on the above, in consideration of A's nationality, first, it is established that A acquired Ethiopian nationality in 1962. Although Eritrea became independent in 1993, A was issued a passport from the Ethiopian government in 1996, and it is confirmed that A had Ethiopian nationality at least until the time of his departure. After the border conflict, according to the Constitution of Ethiopia and its nationality laws, it appears that those who have not selected Eritrean nationality maintain their Ethiopian nationality. According to these laws, A seems to maintain his Ethiopian nationality because he has not selected Eritrean nationality and does not possess any documentary proof of Eritrean nationality.

However, the Embassy of Ethiopia rejected A's application for passport renewal on several occasions. In 2015, the embassy staff told him that his passport could not be renewed because he was from Asmara, and it did not issue a travel document which was a one-way ticket to Ethiopia. Such a treatment is understood to demonstrate that A is not considered as a national under the operation of the law and that he is not considered as a national by the Ethiopian authorities.

With regard to Eritrean nationality, while A seems to meet the eligibility criteria for the acquisition of nationality, there is no document to indicate his Eritrean nationality. Regarding the 'three witnesses' method, A is unable to provide three witnesses and is thus not considered as a national by the Eritrean authorities.

Therefore, A is a stateless person who is not considered as a national by any State under the operation of its law.

3. Administrative and Other Responses by Japan

A's foreigner residence card shows "Ethiopia" in the "Nationality/area of origin" column, and the Immigration Bureau of the Ministry of Justice considers him to be of Ethiopian nationality. However, there is no sign that the nationality possession in a real sense was specifically considered in detail in preparing the card.

Also, although it is not limited only to stateless persons, it is common for stateless persons to have problems with the date of birth shown on their foreigner residence cards. For example, A's foreigner residence card lists "Year 1961 Month 00 Day 00" as the date of birth. This seems to be due to the fact that the expired passport only states 1961,

which is unrelated to the unique circumstances of A's actual nationality. However, A has faced various difficulties in daily life due to the fact that such a date, which does not exist in reality, has been listed on his foreigner residence card. For example, A was unable to open a bank account, and he was not hired by a company at the last minute for the reason that the company could not process someone without a date of birth. A has faced considerable hardships in his public life, with the date of birth causing problems in his application for national health insurance, his request for city housing, his application for a nursery school for his children, etc.

Also, A considered travelling to Italy in order to meet his or her younger sister who was later found to be residing in Italy; however, A does not possess a passport of any state, and only possesses a re-entry permit¹³² issued by the government of Japan. Because Italy does not allow issuance of a visa for travel using a re-entry permit, A is not able to travel to Italy and meet the sister.

4. Possible size of Category B

(1) Cases of possible loss of nationality due to the division or collapse of states

Case 3 is a case where nationality was lost due to a division or collapse of a State, and is similar to Category J [State succession II] below. A became unable to renew the passport of his pre-independence nationality because he had been born within the territory of a newly independent state. Having no means to prove that he was a national of the newly independent state, he is an example of someone who lost his original nationality and is unable to acquire a new nationality due to changes in the form of the state. There is often some tension between the original State and the newly independent state, and various issues are likely to arise in relation to nationality which determines the membership of the nation. A may appear to maintain Ethiopian nationality according to its laws, but he is stateless because he is not considered as a national in the practice of the authorities.

In addition to such cases where nationality is not recognized by the pre-independence State due to discriminatory application of its law, there are often cases of statelessness arising from the fact that certain groups of people are explicitly excluded from "citizens" under the law of the new State at the time of the division or collapse of a state. In particular, it is said that many stateless people were produced when the former Soviet Union collapsed. For example, in the newly born nation of Latvia, people of Russian descent who had migrated from today's Russia to Latvia under the Soviet Union were unable to acquire Latvian nationality because they were excluded from Latvian citizenship. As a result, in Latvia there is a group of stateless people who do not have the nationality of any State and who have the legal status of "non-citizen".¹³³

¹³² See Chapter 1, Section 1, Sub-section 2(5) of this report.

¹³³ Whereas UNHCR recognises non-citizens as stateless, the Government of Latvia has clarified its position that it does not regard them as stateless because the status of non-citizen is temporary. Also, although non-citizens were expected to acquire Latvian nationality by naturalization, not many have actually done so. This issue was raised in Mārtiņš Mits' report entitled "Stateless People and Non-citizens

When considering matters of nationality related to the division or collapse of a state, it is necessary to grasp the history of the relevant country and clarify its relations with other states. Below is a list of states which have become independent since around 1990; when there are issues of nationality for persons originating from these territories in particular, it is necessary to research firstly the provisions of the laws of the relevant state, secondly to research the practice of how these laws are operated, and then to clarify whether such persons possess the nationality of the new State and the former State before independence.¹³⁴

- Eastern European countries (gaining independence from the former Soviet Union)
- Georgia (gaining independence from the former Soviet Union)
- East Timor (gaining independence from the Republic of Indonesia)
- Serbia (gaining independence from the Federal Republic of Yugoslavia)
- Montenegro (gaining independence from Serbia)
- Republic of Kosovo (gaining independence from Serbia)
- Republic of South Sudan (gaining independence from Republic of the Sudan)

(2) Possible size of Category B

With the recent destabilization of international affairs, one cannot deny the possibility that there may be a new collapse of states in the future; in such a case, there will be even more relevant countries and regions included in this category.

There are 460 “total number of foreign residents” in Japan with the nationality of the six states starting with Georgia in the list above. In addition, there are 448 foreign residents with the nationalities of Eastern European states that became independent from the former Soviet Union (Lithuania, Latvia, Estonia, Ukraine, Azerbaijan, Armenia, Kazakhstan, Belarus, and Moldova).¹³⁵

5. Solutions for Category B

(1) Prevention

In order to prevent statelessness arising from division or collapse of a state, one must be able to either maintain the nationality of the predecessor State or to newly acquire the nationality of the successor state. However, there has not been global agreement with regard to prevention of statelessness arising from State succession, and it is probably not possible to completely prevent statelessness accompanying State succession.¹³⁶

in Latvia”, in an international symposium on “Stateless People and Non-Citizens: Dialogue with Latvia” held in Tokyo on 23 May 2015.

¹³⁴ By July 2016, Japan has recognized as States all the countries listed here which have become independent since around 1990.

¹³⁵ Total number of foreign national residents in “Statistics on Foreign National Residents” (December 2016), *supra* note 42.

¹³⁶ In 2006, the “Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession” was adopted with a provision for prevention of statelessness. It provides that the State concerned shall take all appropriate measures to prevent persons, who at the time of the State

(2) Protection

The current situation is similar to Category A [conflict of laws], in the sense that there is no system for the protection of the rights of stateless persons, a system for statelessness determination and protection should be introduced, and stateless persons upon recognition should be granted residential status and travel documents. In the case introduced above, the individual was granted permission to stay on humanitarian grounds as a result of his application for refugee status; however, there is a possibility that he might have become an irregular stayer depending on the circumstances. Upon a person's recognition as a refugee, he or she is granted the status of "long-term resident". Similarly, it would be desirable to have a system under which a stateless person is granted the status of "long-term resident" upon recognition as such.

As in Category A, there should be a policy to routinely consider "without nationality" as a ground for granting special permission to stay as an interim measure until a system is in place for statelessness determination and protection.

(3) Reduction

From the perspective of reducing statelessness in this category, one solution is to have the stateless persons acquire Japanese nationality through application for naturalization in case they cannot acquire the nationality of any other relevant state.

However, it is not necessarily possible to acquire Japanese nationality because, in practice, a certain level of Japanese language proficiency is required in addition to the conditions for naturalization specified in law (Article 5 of the Nationality Act), and the Minister of Justice has wide discretion. Article 8(iv) of the Nationality Act, which simplifies the conditions for naturalization, limits its application to stateless persons born in Japan.

At the least, statelessness can be reduced further by amending this provision so that whether or not an individual was born in Japan would not be an issue. For example, the provision can be amended to read, "A person not having any nationality and continuously having a domicile in Japan for three years or more."

succession had the nationality of the predecessor State, from becoming stateless as a result of the succession (Article 3); however, only the States Parties to the Convention bear legal obligations. Kozue Niwa and Kaoru Obata, "Kokka Shoukeini Kansuru Mukokusekino Boushini Kansuru Yooroppa Hyougikai Jyouyaku Oyobi Setsumeihoukokusho [Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession and Explanatory Report]", *Nagoya Daigaku Housei Ronshuu* [Nagoya University Journal of Law and Politics], v.218, 2007, pp.267-283, at <http://ir.nul.nagoya-u.ac.jp/jspui/bitstream/2237/8962/1/267-283.pdf>.

The 1961 Convention also provides that "Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer" (Article 10(1)); however, as mentioned in *supra* note 119, the number of States Parties to the Convention is 70. Further, International Law Commission's Articles on Nationality of Natural Persons in relation to the Succession of States have not been adopted.

Category C [Consulate denial I (Refugees)] Persons unable to have their birth registered or a passport issued, etc., due to rejection by relevant consular authorities (or inability to pursue such assistance) for refugee related reasons (Sample cases from Myanmar, Cameroon, and China)

Category C of statelessness or the risk of statelessness is caused or demonstrated when an individual, who is a refugee under the 1951 Refugee Convention, is unable to have his or her birth registered or passport issued, etc., by the authorities of his or her country of origin such as at the consulate located in Japan.

< Case 4 > considers Myanmar refugees who, under the Myamarese government's policy regarding the loss of nationality, are unable to register their nationality or obtain passports even after the change of circumstances in Myanmar.

In < Case 5 >, an asylum seeker from Cameroon requested the Consulate Section of the Embassy of Cameroon in Japan to reissue her passport due to the loss of her previous one. Her request was denied for the reason that she was applying for asylum, and furthermore the birth registration of her child was also denied.

In < Case 6 >, an asylum seeker from China applied for renewal of his passport, which was about to expire, at the Consulate Section of the Embassy of China in Japan. The passport was invalidated immediately on site.

1. Introduction

According to the Refugee Convention, a refugee is a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country."

As apparent from the definition above, refugees and asylum seekers are generally highly unlikely to be able to avail themselves of diplomatic and consular protection as nationals, even though they are nationals of their respective countries of origin. Even if refugees and asylum seekers, after fleeing from their country of origin, give birth to children in the country of asylum, they might be likely to hesitate to voluntarily get in touch with the embassy or consulate of their country of origin for fear of the risk of persecution. As a result, such children remain unregistered at birth with their country of origin and may, depending on the circumstances of individual cases, be at risk of becoming stateless. Moreover, even at a point when refugees and asylum seekers recognize the situation in their country of origin to have improved, there are cases where they have been denied the issuance of passports or birth registrations of children, upon visiting the embassy or consulate in Japan and applying for such procedures.

2. < Case 4 > Refugees with Myanmar nationality and their children

(1) The Myanmar government's approach

It has been known to the authors that from 1982 to 2016, the number of people from Myanmar who applied for asylum in Japan was 6,856, and among them, 329 were recognized as refugees.¹³⁷ In addition, there are greater numbers of people who are not recognized as refugees but are given protection on humanitarian grounds.¹³⁸

Article 16 of the 1982 Citizenship Law of Myanmar provides that a citizen who leaves the State permanently, or who acquires the citizenship of or registers himself as a citizen of another country, or who is issued with a passport or a similar certificate of another country ceases to be a citizen. It was reported in the media that in June 2013, the Director General of the Bureau of Immigration and National Registration of Myanmar stated that, people who had previously obtained a certificate of registration (citizenship scrutiny card) and whose passports have expired while overseas, and those without passports, and those who possess foreign passports, automatically lose their status as a national of Myanmar and their previous certificate of registration is null even if they do not possess another nationality.

It was then announced that they must make an application at the Bureau of Immigration and National Registration in order to reinstate their status as nationals.¹³⁹ However, the details are not clear.

If this media report is true, many of the recognized refugees from Myanmar would be likely to be treated as having lost their nationality under the above-mentioned policy of the Myanmar government and would have difficulty in regaining their nationality unless they return to Myanmar and undertake certain procedures.

In fact, many of the Myanmar refugees who have been recognized in Japan so far have avoided contact with the Embassy of Myanmar. Therefore, it would be difficult for them to take the necessary procedures for regaining nationality. Moreover, many of their children born in Japan have not been registered with the Embassy of Myanmar.

With the recent significant changes in the situation in Myanmar, there are new developments since 2012 among Myanmar refugees in Japan, such as that some of them have obtained "social visas" (which are issued to foreigners who had previously possessed

¹³⁷ *Zenkoku Nanmin Bengodan Renraku Kaigi* [Japan Lawyers Network for Refugees], "Nanmin Nintei Shinseisuu Oyobi Ninteino Suii, Chiiki Betsu/Shusshinkoku Betsu [Applications and Recognition of Refugee Status by Region and Country of Origin]", at http://www.jlnr.jp/stat/2014/rsd_stat_japan_2014_02.pdf; Ministry of Justice, "Heisei 28 Nenniokeru Nanmin Ninteishasuutounitsuite, Beppyou 1, Kokuseki Betsu Nanmin Nintei Shinseisuuno Suii [Refugee Recognition in 2016, Table 1, Applications for Refugee Status by Nationality]", at <http://www.moj.go.jp/content/001221345.pdf>

¹³⁸ People from Myanmar constitute the largest group of refugees in Japan since the 1990s.

¹³⁹ Myanmar Daily Post, "Kokusekiwo Futatabi Shinseishita Mononouchi 10 Meini Hajimete Kyokagaderu [Ten Obtain Permission for the First Time among Those Who Have Re-applied for Nationality]" (original in Myanmar, 27 December 2013).

Myamarese nationality) and returned to Myanmar, even on a temporary basis. Nevertheless, it is assumed that a significant number of Myanmar refugees remain in Japan without having taken the procedure for “regaining their nationality.”

It is no surprise that individuals who have been recognized as refugees for being at risk of persecution from the government authorities of their country of origin avoid contact with such authorities or are unwilling to return to their country of origin. In light of the above, in light of the Myanmar government’s reported practice with regard to the loss of nationality, there is a possibility that a significant number of Myanamese refugees become stateless “who are not considered as a national under the operation of the law.”

(2) Administrative response by Japan

Most Myanmar refugees are considered by the Japanese authorities to have Myanmar nationality, with “Myanmar” shown in the “Nationality/area of origin” column on their (former) alien registration certificates and foreigner residence cards. With regard to legal actions relating to the personal status of refugees in Japan, such as marriage or filiation, the applicable law is Japanese law (see Article 12 of the Refugee Convention), and the difficulties in obtaining various documents from the country of origin are reduced. On the other hand, Myanmar law is applied to those who are not recognized as refugees but are given legal status based merely on humanitarian grounds, and they must submit certificates issued by the Myanmar government.

Under Category D [Persons similarly situated as refugees] it is explained that, in the naturalization procedure, the Civil Affairs Bureau of the Japanese Ministry of Justice considers a child born in Japan from a Vietnamese refugee to be of Vietnamese nationality. Similarly, it is understood that the nationality of a child born in Japan from a Myanmar refugee will be considered to be Myanmar unless there are other exceptional circumstances. As a result, it has been found that a child born in Japan from a Myanmar refugee will be considered not to be “stateless” since from the time of his or her birth, and thus the child will fall outside the application of Article 8 (iv) (simplified naturalization) of the Japanese Nationality Act and will not be able to obtain Japanese nationality unless the regular conditions for naturalization are met.

3. < Case 5 > Asylum seeker from Cameroon and her child

(1) Response from the Embassy of Cameroon

A, who is a national of Cameroon, applied for asylum in Japan in 2009 for reasons related to her religion. She claimed that the agent of persecution was not the State itself, but there was a lack of protection by the State of origin.¹⁴⁰ In the same year, A had her passport stolen in Japan, so she went to the Embassy of Cameroon in Japan and asked to have her passport reissued. However, she was later denied the reissuance of passport by an embassy official, for the reason that she had applied for refugee status.

¹⁴⁰ The facts of Case 5 are based on a hearing from A on 25 September 2015 and 17 March 2017.

Still later in Japan, in 2015, A gave birth to child B, whose father was a Cameroonian who was not in marital relationship with A. The Cameroon Nationality Code provides, in Section 6 (b), that Cameroon nationality is acquired by an illegitimate child whose natural (biological) parents are both Cameroonians.¹⁴¹ In the same year, A went to the Embassy of Cameroon in Japan in order to register B's birth. A received the application form, filled it out and mailed it to the embassy. However, at a later date, she was told by an embassy official that B's birth registration as well as A's passport reissuance would not be permitted because she was applying for asylum. B remains unregistered to this day, and does not possess any document to prove Cameroonian nationality.

A and her child B ostensibly should have obtained Cameroonian nationality under the Cameroon Nationality Code. However, under the treatment of the Embassy of Cameroon in Japan, they remain unable to have a passport issued or birth registered. It may be possible for them to have a passport issued or birth registered if there were a change in the embassy's position, but the possibility for such change is not clear at this moment.

Thus, A and B are considered to possess Cameroonian nationality according to the law, but they might not be treated as nationals under the implementation of the law by the embassy. It is possible that they might not be considered as nationals by any State under the operation of its law, and are at risk of statelessness.

(2) Administrative response by Japan

A and B's foreigner residence cards display "Cameroon" in the "Nationality/area of origin" column, indicating that the Immigration Bureau of the Japanese Ministry of Justice recognizes them as persons possessing Cameroonian nationality.

4. < Case 6 > Asylum seeker with Chinese nationality

C, who is a well-known pro-democracy activist with Chinese nationality, was in Japan as a student when the Tiananmen Square incident occurred in 1989. He played a central role in pro-democracy activities in Japan in protest of the incident and applied for asylum. In December 1997, C attempted to renew his passport (which was to expire in January 1998) at the Consular Section of the Embassy of China in Japan; an official of the Consular Section invalidated C's valid Chinese passport immediately on site by cutting off the passport's right-hand corner and applying a cancellation mark.¹⁴²

¹⁴¹ Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code (15 July 1968). Reference was made to the following:
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3ae6b4db1c&skip=0&query=nationality%20code&coi=CMR>.

¹⁴² Later, C was recognized as a refugee by Japan in December 2001. For details of Case 6, see Sousuke Seki, "Chounan Jiken [Shao Nan Case]", *Ito Kazuo Bengoshi Zaishoku 50 Shuunen Shukuga Ronbunshuu: Nihonniokeru Nanmin Soshouno Hattento Genzai* [Collection of Papers in Celebration of Attorney Kazuo

The country with which C has relations is China; however, by invalidating C's passport, the Embassy of China in effect made it impossible for C to return to China. The official invalidation of the passport of a national who is overseas and the prohibition of his return means that the right to return to one's country of origin, which is a core right of a national, is denied, and it can be interpreted that the authorities made it clear that they do not treat C as a national in practice. Therefore, it is possible that C became stateless, not being considered as a national by any State under the operation of its law.

On the other hand, the Japanese government had considered C as a Chinese national even after his passport was cancelled, and it has placed China as his nationality on his (former) Alien Registration Certificate and in various procedures.

5. Possible size of Category C

(1) Current State of Japan' Refugee Status Determination System

As stated above, refugees and asylum seekers may, depending on the circumstances of individual cases, be at risk of not being treated as nationals by their State of origin and having their nationality lost arbitrarily.

Even so, if recognized as a refugee in Japan, one can benefit from various advantages (protection) such as the following: (a) in principle, the status of a "long term resident" (valid for five years and renewable, according to recent practice) is granted; (b) a refugee travel document is issued (Refugee Convention Article 28, ICRR Article 61-2-12); (c) the conditions for a permanent residence permit are relaxed;¹⁴³ (d) an assistance program including Japanese language education is offered at a facility for supporting long-term residents;¹⁴⁴ and (e) various difficulties are reduced in public life as a result of having Japanese law as the law applicable to the personal status of refugees.

However, the number of refugee recognitions in Japan has remained at a quite low level for many years, varying from a few per year to some tens per year.¹⁴⁵ Since the refugee

Ito's 50 Years of Work: Development of Asylum Litigation in Japan and Where We Are Today] (*Gendai Jinbunsha*, 2010), pp.51-62.

¹⁴³ For recognized refugees, the requirement for the period of residence is eased, and the requirement for ability to support oneself is waived. Ministry of Justice, "Eijuu Kyokanikansuru Gaidorain [Guidelines on Permission for Permanent Residence]", available at:

http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan50.html

¹⁴⁴ See Agency for Cultural Affairs, "Nanminni Taisuru Nihongo Kyouiku [Japanese Language Education for Refugees]", available at: http://www.bunka.go.jp/seisaku/kokugo_nihongo/kyoiku/nanmin_nihongokyoiku/.

¹⁴⁵ The total annual number of recognition, including first instance and appeal, was 46 in 2005, 34 in 2006, 41 in 2007, 57 in 2008, 30 in 2009, 39 in 2010, 21 in 2011, 18 in 2012, 6 in 2013, 11 in 2014, 35 in 2015, and 28 in 2016 (based on press releases from the Ministry of Justice in each year, as well as *Ishibashi Michihiro Sangiin Giin "Wagakuniniokeru Nanmin Ninteino Jyoukyounikansuru Shitsumon Shuisho" Nitaisuru 2015 Nen 8 Gatsu 18 Nichiduke Seifu Toubensho (Naikaku San Shitsu 189 Dai 233 Gou)* [Government Response on 18 August 2015 to the "Memorandum on Questions in the Diet concerning Recognition of Refugee Status in Japan" Submitted by Michihiro Ishibashi, Member of the House of Councillors (No. 189-233, Questions in the House of Councillors, Cabinet)].

status determination system was established in 1982, for 35 years up to the end of 2016, 41,046 people applied for asylum and 699 were recognized¹⁴⁶ (557 in the first instance and 131 on appeal).¹⁴⁷ Compared to those recognized as refugees under the 1951 Refugee Convention, those permitted to stay in Japan with a residential permit on humanitarian grounds are relatively greater in number; the reality is that there is a considerable number of people who are not able to enjoy the above-mentioned benefits available to recognized refugees.

The political situation in a refugee's country of origin can change with the passage of time. There are cases where the political situation in a country that had once produced refugees has improved, and the government encourages refugees who had fled overseas to return and reconfirms their status as nationals (or has their status reinstated if denationalized). However, changes in political circumstances take a long time, and one cannot deny the fact that especially the children born in Japan during such a period are placed in situations where their nationality status remains unclear for a long period of time. Similar to Category D [Persons similarly situated as refugees], second-generation children born in Japan from refugee parents are normally understood by Japanese administrative authorities to be foreign nationals on the assumption that they have inherited the nationality of their parents, but they do not receive the treatment as nationals of that State.

(2) Possible size of Category C

As stated in Section (1) above, the number of persons recognized as refugees remains at 688 (557 in the first instance and 131 on appeal), over the 35 years since the introduction of the refugee status determination system. Moreover, even though the number is 688, there exist no statistics that have accurately followed their situation after their recognition. There is no clear data about, for example, how many among the 688 above still remain in Japan, how many have obtained the nationality of Japan or another country, or how many have given birth, etc.

On the other hand, if we were to include asylum seekers into this category, the number of applicants has risen sharply in the few years leading up to 2016.¹⁴⁸ With the rise in applications, the number of pending cases (i.e., the number of individuals who have the status of applicants) has become more than 10,000.¹⁴⁹

¹⁴⁶ Immigration Bureau, Ministry of Justice, "*Heisei 28 Nenniokeru Nanmin Ninteishasuutounitsuite, Beppyou 3, Wagakuniniokeru Nanmin Higono Jyoukyoutou* [Refugee Recognition in 2016, Table 3, Situation of Asylum in Japan]", at <http://www.moj.go.jp/content/001221347.pdf>.

¹⁴⁷ Also, as described in Category D below, Japan has been accepting not only Convention refugees through refugee status determination but also refugees through resettlement and Indochinese refugees as "*teijuu nanmin* [settled refugees]".

¹⁴⁸ The number of applications for refugee status (in the first instance) is sharply on the rise, with 384 in 2005, 954 in 2006, 816 in 2007, 1,599 in 2008, 1,388 in 2009, 1,202 in 2010, 1,867 in 2011, 2,545 in 2012, 3,260 in 2013, 5,000 in 2014, 7,586 in 2015, and 10,901 in 2016. (See *supra* note 146).

¹⁴⁹ As of the end of June 2015, the number of pending applications for refugee status was 4,590 in the first instance and 6,240 on appeal, the total being 10,830 (*Kyodo Tsushin*, 19 February 2016, "*Nanmin*

Therefore, if we were to include asylum seekers, the number of those who would fall under Category C would be sharply on the rise.

Given the instability of the global situation, one cannot deny the possibility that the number of persons who come to Japan for asylum will continue to increase further for the time being.

6. Solutions for Category C

(1) Prevention

First, for recognized refugees regardless of whether or not they have a nationality, naturalization procedures should be put in place and implemented in accordance with Article 34 of the 1951 Refugee Convention (“The Contracting States shall as far as possible facilitate the... naturalization of refugees”). If the easy and rapid acquisition of Japanese nationality can be secured for the first-generation refugees, then the prevention of statelessness for the subsequent generations born in Japan can be achieved as well.

In cases where refugee parents are still stateless at the time of the birth of their children in Japan, the children should acquire Japanese nationality by the application of Article 2(iii) of the Nationality Act. Furthermore, similar to Category A [Conflict of laws], in response to cases that cannot be covered by Article 2(iii), it is possible to newly create a provision i.e. Article 2(iv) which provides Japanese nationality when a person, for example, is “born in Japan and does not acquire the nationality of the country of nationality of the parents”.¹⁵⁰ (In this regard, see also Category G [Unknown or stateless parents].)

(2) Protection

First of all, if Japan pursues the further stabilization of the status of asylum seekers and enhances the specific protection policies after recognition as refugees in line with the

Shinsa Machi, Ichimannin Koe Saitani Shinseiga Kyuuzou, 15 Nen 6 Gatsu Matsu [Over 10,000 Waiting for Refugee Status Determination, Highest Number with Sharp Increase in Applications, End June 2015]).

¹⁵⁰ In addition, as recommended by the UNHCR Guidelines on Statelessness No.4, from the perspective of preventing statelessness, it would be effective to introduce legislation to enable children born in Japan from refugee parents to acquire Japanese nationality - depending on the concerned individuals' choices - even in cases where they should have normally acquired the parents' nationality under the text of the applicable law, in light of the fact that they would normally be unable or unwilling to avail themselves of the protection of the parents' country and would presumably become long-term residents in Japan in the future. See 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), II f) “Special Position of Refugee Children”, para. 28, at <http://www.refworld.org/docid/50d460c72.html> (in English), and <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=548996e74> (in Japanese).

Also, for the latest discussions relating to nationality and the statelessness of refugee children, see Gabor Gyulai (for European Council on Refugees and Exiles), *The right to a nationality of refugee children born in the EU* (February 2017), at <https://www.ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf>.

object and purpose of the 1951 Refugee Convention, stateless refugee persons falling under Category C would naturally be protected.

Furthermore, from the perspective of the protection of stateless persons, introducing a statelessness determination and protection system would ensure that such persons would be protected to some extent even if they are not recognized as refugees. (Refer to the proposals under Category A in terms of the desirable contents of a statelessness determination and protection system, as well as of relevant systems relating to residential status and special permission to stay.)

(3) Reduction

As mentioned in (1) above, first, facilitated naturalization procedures should be put in place and implemented in accordance with Article 34 of the 1951 Refugee Convention for refugee parents.

Also, under the current circumstances where the addition of Article 2(iv) to the Nationality Act is not yet materialized, if facilitated and rapid acquisition of Japanese nationality is made possible based on Article 8(iv) for stateless refugees born in Japan, then a steady reduction of statelessness would be possible.

Moreover, in parallel with the above, from the perspective of actively reducing statelessness, the introduction of legislation to facilitate the naturalization of stateless persons regardless of their place of birth would open the way for first-generation refugees to acquire Japanese nationality and further reduce statelessness, as explained under Category B [State succession I].

Category D [Consulate denial II (Persons similarly situated as refugees)] Persons unable to have their birth registered or a passport issued, etc., due to rejection by relevant consular authorities (or inability to pursue such assistance) for reasons related to their status being similar to refugees (Sample cases from Vietnam and Myanmar)

Category D covers statelessness or risk of statelessness which is caused or demonstrated when persons who are not recognized as refugees under the 1951 Refugee Convention but are accepted in Japan as “settled refugees” or on “humanitarian grounds” cannot have their birth registered or passport issued, etc., by the consular authorities of the country of origin.

< Case 7 > involves a second-generation Indochinese refugee who has remained unable to register herself as a national with the Vietnamese embassy in Japan, as her parents may possibly have lost their Vietnamese nationality and are without documents to prove their nationality.

< Case 8 > involves a second-generation Myanmar refugee who was born in Japan after his or her parents arrived in Japan through third country resettlement but is highly likely to be refused birth registration with the Myanmar embassy due to the fact that his or her parents are without a valid Myanmar passport.

1. Introduction

In addition to refugees who have been recognized as such under the 1951 Refugee Convention, Japan has admitted so-called “settled refugees (*teijuu nanmin*)”. Before and after the end of the 1975 Vietnamese war, a mass-exodus of people occurred from the three Indochinese countries, i.e. Vietnam, Laos, and Cambodia. Japan also started to receive so-called “boat people” and admitted 11,319 Indochinese refugees from the abovementioned three countries between 1978 and 2005.¹⁵¹

Thirty years later, Japan introduced what is now referred to as a third country resettlement program to admit persons staying temporarily in places like refugee camps outside Japan. In the seven years between 2010 to 2016, Japan admitted a total of 123 refugees from Myanmar staying in refugee camps in Thailand or in Malaysia as “resettled

¹⁵¹ Ministry of Foreign Affairs, “*Kokunainiokeru Nanminno Ukeire [Acceptance of Refugees into Japan]*” (October 2016), at <http://www.mofa.go.jp/mofaj/gaiko/nanmin/main3.html>.

refugees", by accepting some dozens consisting of several families every year.¹⁵² The number of persons who have been given special permission for residency on humanitarian grounds, while not being recognized as refugees under the 1951 Refugee Convention, amounted to 2,543 persons between 1991 to 2016.¹⁵³

These *teijuu nanmin*, such as Indochinese or resettled refugees, are granted residency permits like those of long-term residents, but they would not be granted refugee status under the 1951 Refugee Convention unless they separately apply for refugee status and are subsequently recognized as such. Persons granted humanitarian status are granted residency permits either for long-term residency or for "designated activities", but they do not hold a formal status as refugees.

Children who are born to these "settled refugees" may be, depending on the circumstances of individual cases, at risk of becoming stateless, for reasons including that their parents, seeking refuge in Japan and fleeing their country of origin, generally do not register their birth at the consular authorities in Japan. (This may include cases where they avoid visits to the consulate or they lack documents proving their identity or nationality of the parents.)

2. < Case 7 > Indochinese refugees

A was born in Japan in 1981 of parents who are (supposed to be) Vietnamese nationals. A's parents and sisters came to Japan in 1982 via a refugee camp in the Philippines, fleeing persecution after their area of residence in South Vietnam had fallen under the control of the Socialist regime.¹⁵⁴ A's parents did not have any documents proving their nationality, and they did not register A's birth with the embassy of Vietnam in Japan (translator's note: It was clarified with the authors that A's birth was registered with the Japanese authorities).

¹⁵² Ministry of Foreign Affairs, "*Daisangoku Teijuu Nanmin (Dai 7 Jin) Nitaisuru Teijuu Shien Puroguramuno Kaishi* [Settlement Assistance Programme Begins for Resettled Refugees (7th Group)]" (October 2016), at

http://www.mofa.go.jp/mofaj/press/release/press4_003777.html.

¹⁵³ Immigration Bureau, Ministry of Justice, *supra* note 146.

¹⁵⁴ See below for the details of Case 7. Nguyen Thi Hong Hao, "*Mukokuseki Jyoutaitoshite Ikirukoto - Kojinno Keikenkara* [Living in Statelessness: From a Personal Experience]", Tien Shi Chen, ed., *Sekainiokeru Mukokusekishano Jinkento Shien - Nihonno Kadai - Kokusai Kenkyuu Shuukai Kiroku* [Human Rights and Assistance to Stateless People in the World - Challenges in Japan - Record of International Workshop] (*Kokuritsu Minzoku Hakubutsukan Chousa Houkoku* [National Museum of Ethnology Research Report] 118, 2014), pp.97-99.

(1) Laws and regulations of Vietnam

The Decree No. 53/SL on Vietnamese citizenship, signed on 20 October 1945 by the then president, provided for the acquisition of nationality by *jus sanguinis* from paternal descent only.¹⁵⁵ Article 7 of the Decree provided that Vietnamese nationals will lose their nationality if: they have been naturalized in foreign countries; they decline to resign from positions they have held overseas even though they have been warned by the Government; or they have committed acts infringing upon the independence and the democratic republican regime of Vietnam.

A's father is a Vietnamese national, and according to the 1945 Decree, A had acquired Vietnamese nationality at the time of birth unless the father had lost his Vietnamese nationality by the time A was born. It is not necessarily clear whether the fact that persons, including A's father, which had fled Vietnam after the socialist regime's takeover of the area of origin was considered to fall within the ground for nationality loss under 1945 Nationality Law, i.e., that they "committed acts infringing upon the independence and the democratic republican regime of Vietnam," and whether the Vietnamese authorities had implemented the law to have these refugees lose their nationality.

(2) Responses of Vietnamese embassy

Nevertheless, at the age of 15, A travelled to Vietnam as a non-national by obtaining a visa through a visa application agency in order to visit relatives with family members, with the visa issued on the re-entry permit which was issued by the Japanese government (and which could be used in lieu of a passport).¹⁵⁶ Furthermore, at the age of 17, A again visited Vietnam as a foreigner by obtaining a visa with which A was able to stay for three months for language study purposes. In the 1990s, some Vietnamese refugees and children wished to return even temporarily to Vietnam, with the understanding that the circumstances had changed in the country of origin. However, even if they went to the Vietnamese Embassy in Japan and claimed to be nationals, they could not have passports issued. All they could obtain were visas, and there were actual cases who returned with such visas. According to A, in the 2000s when A traveled to Vietnam, it was common knowledge within the Vietnamese community in Japan that refugees could not have their children registered at the embassy and that neither the parent nor the child could obtain a passport.¹⁵⁷

As for the reasons for not registering birth or not issuing a passport, there was an understanding that some Vietnamese refugees in Japan had been told that it was

¹⁵⁵ Nguyen Thi Ngoc Lam, "A History of Vietnam's Citizenship Laws" (1 July 2009), at <http://vietnamlawmagazine.vn/a-history-of-vietnams-citizenship-laws-4519.html>.

¹⁵⁶ Based on a hearing from A, on 17 September 2016. A's re-entry permit (see Chapter 1, Section 1, Sub-section 1(2) of this report) with a Vietnamese visa attached was verified.

¹⁵⁷ *Id.*

“because there were no documents to prove Vietnamese nationality (of the parents)”. Therefore, A gave up on the birth registration and passport without ever visiting the embassy, as A did not have any documents to indicate Vietnamese nationality of the parents.¹⁵⁸

Thus, A does not have any documents proving the parents’ nationality, has not undertaken any procedure to register with the embassy of Vietnam, and is unable to prove the possession of Vietnamese nationality. Therefore, A may possibly have been a stateless person who was not considered a national by any State under the operation of its law.

(3) Administrative response by Japan

The “nationality or area of origin” column of A’s previously-issued alien registration certificate or the subsequently-issued foreigner residence card stated “Vietnam”. Furthermore, when A visited a legal affairs bureau in the Kansai area to consult it about a naturalization application, A emphasized to the officer in charge of the case that the Japanese Nationality Act contained a provision to facilitate naturalization of a stateless person born in Japan. However, the officer in charge of A’s case judged A to be Vietnamese and not stateless. While A was a graduate student at that time, the officer refused to receive A’s naturalization application, stating that A was not qualified to apply for naturalization as A lacked financial stability, which is required for normal naturalization applications.

As demonstrated in this case, children of Vietnamese refugees in Japan, while they have not been registered with the Vietnamese authorities and have not received treatment as nationals, they have nevertheless been treated by the Japanese authorities as Vietnamese nationals.

(4) Nationality acquisition

A subsequently gained employment with a private company and applied for naturalization at a legal affairs bureau in the Kanto area. A was exempted from submitting the normally-required certificate of having lost Vietnamese nationality by providing instead a written statement explaining the reasons why A cannot acquire such a certificate from the Vietnamese authorities. A’s naturalization was granted in 2014.¹⁵⁹

3. < Case 8 > Refugee admitted through resettlement

¹⁵⁸ Based on a hearing of A by Ms. Mai Kaneko (16 April 2013).

¹⁵⁹ Since A’s birth was not registered with the Vietnamese authorities and A was unable to confirm her nationality, the prerequisites might have been missing for acquiring a certificate for loss of nationality. Considering the fact that A had submitted a certificate of residence record (teijukeireki shomeisho) issued by Refugee Assistance Headquarters, which is affiliated with the Ministry of Foreign Affairs, and had provided evidence about her inability to obtain proof of nationality, it would have been excessive to demand A to produce a certificate for loss of nationality.

All refugees admitted through third country resettlement to Japan so far are originally from Myanmar. The birthplace of such admitted refugees can be Myanmar or a refugee camp in Thailand. Some families have had their children born in Japan after being admitted to Japan. For example, a married couple, *B* and *C*, admitted to Japan through resettlement had a child born in 2012, hereinafter referred to as *D*.

(1) Acquisition of Myanmar nationality

D, however, has never been registered with the embassy of Myanmar. *B* and *C* were born in Myanmar but were previously in a refugee camp in Thailand, and they came to Japan with a travel document issued by the Japanese authorities. *B* and *C* do not possess a Myanmar passport.

Under the 1982 Citizenship Act of Myanmar, a child of parents who are both Myanmar nationals is supposed to acquire Myanmar nationality by birth. However, the embassy of Myanmar in Japan has certain requirements such as the submission of the parents' valid Myanmar passports in order for the children's birth to be registered. *B* and *C*, as stated above, do not have a valid passport. Furthermore, as they have been admitted to Japan as refugees fearing persecution in Myanmar, they are afraid of approaching the embassy of Myanmar. *B* and *C* have not gone to the embassy and *D* has not been able to be registered as a Myanmar national.

In light of the above circumstances, *D* is at risk of becoming a stateless person who is not considered as a national by any State under the operation of its law.

(2) Administrative response by Japan

The Japanese authorities consider them all—including *B*, *C*, and their children born in a refugee camp in Thailand and in Japan, including *D*—to be equally of Myanmar nationality. The “nationality etc.” column of their alien registration certificate (issued before the law reform relating to alien registration) and the “nationality/area of origin” column of their foreigner residence card (issued after the law amendment) both list “Myanmar”.

4. Possible size of Category D

(1) Circumstances of the persons who have not been (able to be) recognized formally as refugees

The above cases 7 and 8 are not treated as 1951 Convention refugees because they have not having formally been recognized as refugees by the Japanese authorities.¹⁶⁰ They represent those who, in reality and substantively, have (or used to have) qualifications as Convention refugees at least to a certain extent, and for this refugee-related reason, they may possibly not be recognized as nationals by the State of which

¹⁶⁰ There are some Indochinese refugees who applied for and were granted refugee status, although the number is small.

they are supposed to have nationality. Persons within this category are in principle unable to have Japanese law applied in their legal actions affecting their civil status, as Article 12 of the 1951 Refugee Convention, which provides that “The personal status of a refugee shall be governed by the law of the country of his domicile (or residence)”, is not considered to apply to them.¹⁶¹ Thus, persons falling within Category D are similar to those falling within Category C [Consulate denial I (Refugees)] in the sense that they are possibly not recognized as nationals by the purported countries of nationality, but they differ in the sense that the former cannot benefit from the application of Article 12 of the 1951 Refugee Convention designating the law of the country of residence for refugees’ personal status.

Thus, persons falling within Category D often face difficulties in procedures related to their legal actions changing their personal status such as marriage or recognition of their children as they are requested to submit certificates issued by their countries of purported nationality. This category of persons may have an easier time with the municipal offices in the areas where settled refugees are concentrated, which may accept documents such as written statements that the persons concerned are settled refugees. However, when it comes to municipal offices without experiences of dealing with this category of persons, they may be simply denied processing of their applications for lack of the required documents.

Furthermore, as under the current implementation of the relevant legal provision, persons in this category are not considered able to benefit from facilitated naturalization. In order to acquire Japanese nationality, they must fulfill the normal naturalization requirements; i.e., they cannot naturalize unless they turn 20 and qualify themselves as financially stable, and so on.

(2) Possible size of category D

This category includes (i) so-called “settled refugees” (i.e., Indochinese refugees), (ii) persons granted special permission for residency on humanitarian grounds,¹⁶² and (iii) persons who arrived in Japan via third country resettlement.

“Settled refugees” under (i) above cumulatively amount to 11,319 persons, as stated in sub-section (1) above.¹⁶³ Persons who have been granted special permission for residency on humanitarian grounds under (ii), as stated in sub-section (1), number 2,543

¹⁶¹ However, there are some cases including divorce cases, where the law of Japan, the place of habitual residence, was recognized as the applicable law, providing that the family court should give considerations similar to Convention refugees when deciding on the applicable law.

¹⁶² “Persons granted special permission for residency on humanitarian grounds” are persons whose application for refugee status was rejected (including on appeal) but who were granted the status of mid to long-term resident on humanitarian grounds; they include individuals with Special Permission to Stay, and change of residential status to “Long-term Resident”, “Designated Activities”, etc.

¹⁶³ The total number of Indochinese refugees accepted into Japan from 1978 to the end of 2005 was 11,319 (Ministry of Foreign Affairs, 19 October 2016, “*Kokunainiokeru Nanmin Ukeire* [Refugee Acceptance in Japan]”, at <http://www.mofa.go.jp/mofaj/gaiko/nanmin/main3.html>)

persons. The number of persons who arrived in Japan through third country resettlement under (iii) above is 123, as also stated in sub-section (1).¹⁶⁴ This category of persons can be considered, depending on their individual circumstance, to be at risk of statelessness.

However, as in Category C it is unknown how many persons falling within (i), (ii) and (iii) still reside in Japan. It cannot be known how many persons among them have acquired Japanese or another nationality or how many have given birth to how many children. (Nevertheless, for Indochinese refugees under (i), a certain number of them applied for refugee status after their arrival in Japan and were subsequently recognized, and thus a certain number of them has moved from Category D to Category C.)

5. Solutions for category D

(1) Prevention

Measures to prevent statelessness of persons falling within Category D, consisting of persons similarly situated as refugees, are in principle the same as those proposed for Category C [Refugees] above.

(3) Protection

It is essential that refugee status determination procedures are conducted in accordance with the object and purpose of the 1951 Refugee Convention and that persons who qualify as refugees are duly recognized as such and are protected. This would result in persons recognized as refugees currently falling within Category D being “transferred” to Category C and benefitting from protection as Convention refugees.

It is desirable that persons remaining within Category D be given protection as close as that for 1951 Convention refugees, considering that their status and circumstances are similar to refugees, including by applying Chapter 2 of the 1951 Refugee Convention by analogy wherever possible.

Apart from the above, the establishment of a system to determine statelessness statuses and to protect stateless persons will ensure protection to some extent irrespective of the person’s status as a refugee. (C.f., Category A on how exactly the statelessness determination/protection system or the relevant systems related to residency status or special permission for residency should be.)

(3) Reduction

From the point of view of reducing statelessness, reforming the law to facilitate naturalization of stateless persons regardless of their place of birth will enable this category of persons to acquire Japanese nationality ending their statelessness. This proposal is common with Categories B and C.

¹⁶⁴ Ministry of Foreign Affairs, website; *ibid*. A total of 123 Myanamaese refugees (31 families) have been resettled from camps in Thailand over seven years, including the pilot period.

Furthermore, as in (2) above (Protection), recognizing that this category of persons should be treated in the same or similar manner as refugees, the application of Article 34 of the 1951 Refugee Convention by analogy (facilitated naturalization) should be positively considered.

Category E [Change of personal status] Persons who had acquired Japanese nationality at birth but due to a subsequent change in legal parentage “lost” such nationality retroactively going back to the time of birth (Sample cases from ROK/Japan, China/Japan)

Category E consists of persons who had acquired Japanese nationality, the nationality of a parent at birth following the *jus sanguinis* principle, but due to a subsequent court decision denying their parentage, were denied Japanese nationality retroactively going back to the time of their birth, consequently making them stateless.

< Case 9 > was born in Japan to a female of ROK nationality married to a Japanese male and acquired Japanese nationality at birth. After attaining the age of majority, his father under the family register filed a lawsuit denying his legal paternity for not being the biological father, and he was considered to have lost his Japanese nationality retroactively going back to the time of birth and was removed from the family register, thereby becoming stateless.

< Case 10 > had been a foundling found in China and was subsequently registered as a biological child of a married couple of Japanese and Chinese nationals. The family subsequently came to Japan. After coming to Japan, his parentage was denied through litigation to confirm the non-existence of a parent-child relationship, and he was considered to have lost his Japanese nationality going back to the time of birth and was rendered stateless.

1. < Case 9 > A person born in Japan who acquired Japanese nationality at birth, but subsequently was denied Japanese nationality going back to the time of birth as a result of litigation denying the parent-child relationship

(1) Case summary

A is a male born in the late 1970s in Japan. The mother who gave birth to A (referred to as B, who was of ROK nationality at that time) had been living with C, a male of Japanese nationality since before A was born. B, however, had previously registered her marriage with D, another male of Japanese nationality. Thus, A was registered under the

family register with *D* listed on the top of it, with the presumption that¹⁶⁵ he had acquired Japanese nationality by birth as a legitimate child of *D* and *B*.¹⁶⁶ (*A*'s family name is the family name of *D*.)

A had thus been, in reality, raised by *C* and *B* as the couple's child while carrying *D*'s family name since birth. On a separate note *B*, the mother, acquired Japanese nationality by naturalization after *A*'s birth. *A* graduated from elementary/junior high/high school and university near Tokyo as a "Japanese national". During his university studies, *A* obtained various national licenses, and he even visited several foreign countries with a passport under *D*'s family name. *A* also studied abroad, including in ROK as a Japanese student.

In the late 2000s, after *A* had turned 30, a lawsuit to confirm the non-existence of a parent-child relationship was filed against *D* in order to reflect the actual father-child relationship between *A* and *C* while also reflecting *C* and *B*'s wish. When *A* was in his early 30s, the court decision to deny his current paternal descent from *D* was finalized. However, against the expectations of *A* and others involved, *A* was considered to have never possessed Japanese nationality going back retroactively to the time of birth, as the prerequisite for acquiring Japanese nationality based on Article 2(i) of the pre-amendment Japanese Nationality Act was lost due to the severed father-child relationship with *D*. *A* was deleted from *D*'s family register.

C recognized his paternity over *A* as soon as the court decision to deny *D*'s paternity over *A* was finalized. However, *A*'s Japanese nationality was not recovered even with another Japanese male's recognition of paternity over him, in accordance with Supreme Court case law ruling that recognition of paternity does not have a retroactive effect¹⁶⁷ in relation to the acquisition of nationality.

¹⁶⁵ Article 2 (i) (paternal *jus sanguinis*) of the Nationality Act, before the 1984 amendment (which came into force in 1985).

¹⁶⁶ On the family register (*koseki*), see the description in Category M: Persons without a Japanese family registry, 1. (1). On children born in wedlock, see note 180; on the creation of the family register, see note 168; and on the procedure for confirmation of the non-existence of a parent-child relationship, see note 181 below.

¹⁶⁷ "Article 2 (i) of the [Nationality] Act adopts both a paternal and maternal *jus sanguinis* principle in relation to the acquisition of Japanese nationality at birth; it does not mean that the blood line, which merely shows the biological origin of a human being, is held in absolute view; *the provision aims to grant nationality when there is a legal parent-child relationship between the child and a Japanese father or mother at the time of birth, for it means that the child has a close link with Japan*. And, whereas it is desirable to make a definite decision on the acquisition of nationality as much as possible at the time of birth, and whether or not the child would later be recognized by the father is unconfirmed at the time of birth, *there would be reasonable grounds for Article 2 (i) not to retroactively recognize legal father-child relationship at the time of birth based on a later recognition by a Japanese father, and not to recognize acquisition of Japanese nationality at birth through a later recognition by the father alone*" [italics added by the author]. The Supreme Court (Petty Bench II), Judgment, 22 November 2002 (*Heisei 14 Nen*), *Shuumin* Vol. 208, p. 495.

As a result, A suddenly started to be treated as an “illegally staying foreigner” and not as a Japanese national as soon the court decision to deny his previous paternal descent was finalized.

A filed a lawsuit arguing that such an unfair treatment cannot be accepted and began litigation with the Tokyo District Court to confirm his possession of Japanese nationality, and he simultaneously filed a petition with the Tokyo Family Court to be newly registered under the family register.¹⁶⁸ At the same time, to cover all the bases, A approached the Tokyo Immigration Bureau and explained his situation but the Bureau then started to process A under the deportation procedure, considering him to be a so-called “illegally staying” foreigner.

At the end of the deportation procedure, the Minister of Justice, while recognizing the fact that A had indeed “illegally stayed” in Japan, decided to grant Special Permission to Stay (Article 50, ICRRA). With this decision, A became a “regularly staying alien”. A immediately applied for naturalization with the Tokyo Legal Affairs Bureau, and the Minister of Justice permitted his naturalization by processing his case faster than normal cases. A became a Japanese national once again by naturalization.

Meanwhile, A’s petition to the family court for registration under the family register was dismissed, and this result did not change when he appealed to the Tokyo High Court and the Supreme Court. With regard to the litigation to confirm A’s possession of Japanese nationality, it had to be withdrawn from the District Court due to A’s compelling personal circumstances.¹⁶⁹

(2) Possibility to acquire the nationality of a relevant country

a) Japan

Article 2(i) of the pre-1984 amendment (which came into force in 1985) provides that a child acquires Japanese nationality at the time of birth “When, at the time of its birth, the father is a Japanese national.” The “father” here, in practice, is understood to refer to the child’s legal father (and not the biological father). It is interpreted that the acquisition of Japanese nationality by birth under article 2(i) cannot be confirmed retroactively just because a child was recognized by a Japanese male (father) after birth.¹⁷⁰

¹⁶⁸ Family Register Act, Article 110(1). It is a procedure to request the family court to make an entry into the family register in case the concerned individual is not listed in the family register even though he or she has Japanese nationality. “The court procedure for the permission of creation of a family register is a procedure to create a registered domicile for someone who does not have one, and to make an entry in the family register, by permission of the family court.” “The family court grants permission for creation of a family register, if it is found through the court proceedings that the concerned person without a family register is a Japanese national, and that he or she is found to be “a person who has no registered domicile” as provided in Article 110 (1) of the Family Register Act. See the website of the Ministry of Justice, “*Mukosekino Kataga Mizukarawo Kosekini Kisaisurutameno Tetsudukitounitsuite* [Procedures to Register Oneself on Family Register]”, at http://www.moj.go.jp/MINJI/minji04_00047.html#q3-6.

¹⁶⁹ None of them has been published.

¹⁷⁰ See *supra* note 168; Supreme Court judgment, 22 November 2002.

As stated above, A had been treated as having had acquired Japanese nationality under Article 2(i) of the Nationality Act by birth with his legal father being D. This was because A's mother (who was of ROK nationality at the time of delivery) was legally married to D (a Japanese national) at the time of A's birth and the presumption of legitimacy had once been effective for some time.¹⁷¹ However, 30 years later, the court decision denying the father-child relationship between A and D had been made and finalized. The fact that A did not have a legal father at the time of birth was confirmed.

It is noted that A was recognized after birth by C (a Japanese national); however, as stated above, the current interpretation of the law is that recognition of parentage cannot have retroactive effect so as to enable the acquisition of Japanese nationality by birth under Article 2(i). A thus could not acquire Japanese nationality based on his established legal descent from C.¹⁷²

As a result, A was subjected to quite severe treatment by being considered to have retroactively lost his Japanese nationality at the time of his birth and being processed as an illegally staying foreigner as stated above.

b) ROK

B, the mother who gave birth to A, was of ROK nationality at the time of delivery. ROK's nationality law before the amendment coming into force on 14 June 1998 adopted the paternal *jus soli* principle, as with Article 2(i) of the pre-amendment Japanese Nationality Law. One did not acquire ROK nationality just because he or she was born to a mother of ROK nationality.

Thus, A did not acquire ROK nationality by birth under the law of ROK.¹⁷³

In practice also, even if A—who had been living as a Japanese national for more than 30 years—suddenly claimed that he “has been of ROK nationality retroactively since the time of birth”, it could not at all be expected that the ROK authorities would affirm such a claim. Indeed, A himself approached ROK authorities in the process of his aforementioned deportation procedures with the Immigration Bureau, but A states he

¹⁷¹ On presumption of birth in wedlock and its denial, see note 180 below.

¹⁷² By the 2008 amendment of the Nationality Act Article 3 (i), it became possible for a child who has been recognized by a Japanese father before the age of 20 to acquire Japanese nationality even if the parents are not married. However, A in Case 9 would not have been saved even after the amendment because A was already in his 30s at the time of recognition by C.

¹⁷³ According to Article 2 (iii) of the Korean Nationality Act effective at the time of A's birth, “when the father is unknown... a person whose mother is a national of the Republic of Korea” acquires Korean nationality. However, A, at the time of birth, had a legal father who was a Japanese national, although this legal father-child relationship was later denied, A was recognized by C, who is the natural father, and therefore already has a legal father. Based on the fact that recognition of a child has a retroactive effect under the Japanese Civil Code, A would have had a legal father-child relationship with C since the time of birth. Also, A's mother naturalized in Japan shortly after A's birth and no longer has Korean nationality. Under such circumstances and after more than 30 years had passed, there would have been very little possibility that A would have been treated as having had acquired Korean nationality at birth based on Article 2 (iii) of the Korean Nationality Act.

was simply not taken seriously. Thus, the ROK authorities have never treated A as a national.

Based on the above, it is clear that A was treated by the Japanese authorities as an illegally staying foreigner (ROK national or stateless), and was not recognized as a ROK national by the ROK authorities. Thus, it should be concluded that A became stateless when the court decision to affirm the non-existence of a father-child relationship was finalized.

(3) Administrative response by Japan

As stated above, C immediately submitted the notification to recognize his paternity over A as soon as the court decision to affirm the non-existence of a father-child relationship between A and D was finalized. A appears to have expected that he would be transferred from D's family register to C's family register. However, the officers in charge of family registers in the relevant municipality office within Tokyo removed A from D's family register and denied A's request to be registered under C's family register, while considering A to have retroactively lost his Japanese nationality.

The Tokyo Immigration Bureau, as if echoing the position of the other agencies, treated A as an illegally staying foreigner and subjected him to deportation procedures. Nevertheless, it is apparent that the Immigration Bureau was attentive to some extent¹⁷⁴ to the very unique circumstances in which A was placed, demonstrated by the Bureau's attempt to substantively remedy his situation by speeding up the processing of A's case while providing a provisional release permit¹⁷⁵ without actually detaining him (Article 39 of ICRRA), as well as by granting him special permission to stay.¹⁷⁶

Furthermore, A's naturalization application that A filed at the Tokyo Legal Affairs Bureau after being granted special permission for residency was rapidly approved after an expedited processing as compared to normal cases.

The usual practice is that when a foreigner with a history of illegally staying applies for naturalization, the application is not granted unless ten years or so have passed after the regularization of his or her stay. In contrast, A was granted naturalization within one year of being regularized; i.e., A was granted special permission to stay. The Legal Affairs Bureau also appears to have paid particular attention to the severe circumstances into which A fell.

¹⁷⁴ The Immigration Bureau seems to have undertaken the deportation procedure for A as a Korean national; it is not clear why A was determined as a national of the Republic of Korea and not stateless.

¹⁷⁵ ICRRA Article 54. It is a system provided by ICRRA for temporary release, for an individual who has been issued a Detention Order or Deportation Order; it is similar to bail in the criminal procedure. It is necessary to appear once every 1-3 month(s) at the Immigration Bureau and obtain confirmation of appearance (in case of provisional release under Detention Order) or renewal of permission (in case of provisional release under Deportation Order). In immigration practice, strict prohibition of work has become apparent recently, in addition to limiting the area of movement to within a prefecture. Meanwhile, the welfare system does not apply to a person under provisional release.

¹⁷⁶ ICRRA Article 50 (1). On Special Permission to Stay, see *supra* note 122.

Notwithstanding the above, within the series of administrative procedures there was no trace of the administrative bodies showing any doubt as to the substantive and fundamental point of view of treating a person who has been living as a Japanese national for 30 some years since birth as an illegally staying foreigner by considering him to have suddenly and retroactively “lost” his nationality and thus unilaterally removing him from his Japanese family register.

Furthermore, as stated above, A eventually re-acquired Japanese nationality by naturalization, but it was an acquisition starting from the time of the naturalization grant. Thus, this acquisition does not change the government’s legal position that A has never possessed Japanese nationality (and has always been a foreign national or a stateless person) from the time of birth until the naturalization grant.

Consequently, a serious question arises as to how to reconcile such a legal position with the series of facts, including that A has been exercising his right to vote in national elections ever since he turned 20 years old, has visited foreign countries dozens of times using his Japanese passport, and has acquired various national licenses under the presumption that he was a Japanese national. However, the view of the Japanese administrative authorities on this matter is unknown.

2. < Case 10> A person born in Japan who acquired Japanese nationality by birth but was denied his or her nationality retroactively going back to the time of birth after a court decision denying the existence of a parent-child relationship

Case 9 above involved an individual born in Japan. Case 10 introduces, in summary, a person born outside Japan who has gone through similar experiences as the person in Case 9. In this case, *E*, a husband of Japanese nationality, and *F*, a wife of Chinese nationality, whose residence was in Japan were not blessed with children. *E* and *F* registered *G*, who had been found as a foundling near *F*’s family home in China, and they had registered *G*’s birth in China falsely claiming that *G* was their biological child, subsequently undertaking the process of “reserving” his Japanese nationality at the Japanese embassy in China (as Chinese nationality law does not allow dual citizenship; the moment one “reserves” Japanese nationality he or she loses the Chinese nationality). As a result, *G* arrived in Japan as a Japanese national, and had since then been living as a child of *E* and *F*.

However, at the time when *F* underwent a renewal procedure of her residency permit in Japan, it was revealed that *F* was in Japan during the very time when *G* was born. *E* and *F* confessed that *G* was not their biological child. *E* and *F* subsequently had to file a lawsuit to confirm the non-existence of the parent-child relationship between *G* and themselves with *G* being the defendant. The decision to confirm the non-existence of *G*’s descent from *E* and *F* was finalized. *G* was no longer a child of *E* and *F*, and consequently not a child of a Japanese national. As in Case 9, *G* was considered to have lost his Japanese nationality retroactively and was rendered stateless.

The Chinese Nationality Act contains a provision which enables a foundling found in China to acquire Chinese nationality.¹⁷⁷ However, in practice, it would be extremely difficult for G to undertake any procedure to confirm his Chinese nationality, such as by proving that he had previously been a foundling abandoned in China, as G had already been living in Japan.

In this case, E and F had a desire to have G become a Japanese national again and continue to live in Japan as their child. E and F filed a petition with a family court to adopt G through the special adoption process¹⁷⁸ and obtained the court's approval, and G was subsequently granted special permission to stay by the Immigration Bureau. G, being an adopted child of a Japanese national, applied for facilitated naturalization (Article 8(ii), Japanese Nationality Act) and acquired Japanese nationality once again.

3. Possible size of Category E

(1) The risk of retroactively losing Japanese nationality due to a change in personal status

Cases 9 and 10 both “lost” the Japanese nationality that they were considered to have previously possessed (i.e., they were deemed to have never possessed Japanese nationality since birth) because of having been denied such nationality retroactively due to a change in their personal status. In this sort of case, if a person has not acquired Japanese nationality, he or she can be rendered stateless. Even if the person is considered to possibly or theoretically possess another nationality, statelessness can arise due to a retroactive loss of Japanese nationality in cases, for example, where the person concerned has been based in Japan, and he or she has not contacted the authorities or the consulate of the relevant foreign country for many years.¹⁷⁹

Furthermore, Case 9 poses two additional questions.

The first regards the appropriateness of having Japanese nationality “lost” retroactively for a person who has been living as a Japanese until reaching the age of majority. In this case, a person who had been living as a Japanese national for more than 30 years was retroactively denied his Japanese nationality due to a change in his personal status, and he “lost” his nationality. A person being denied his or her nationality that he or she had been holding after reaching adulthood has serious effects not only against the person concerned, but also against society itself, causing especially significant confusion in relation to one's right to vote, to run for election, or to assume the position of a public servant. Furthermore, if the person concerned has already been married and has had

¹⁷⁷ Article 6 of the Nationality Law of the People's Republic of China provides that, “Any person born in China whose parents are stateless or of uncertain nationality and have settled in China shall have Chinese nationality”. “Nationality Law of the People's Republic of China”, in *Nihon Kajo Shuppan Hourei Hensanshitsu*, ed., *Koseki Jitsumu Roppou (Heisei 29 Nenban)* [Laws for Family Register Practice (2017 edition)].

¹⁷⁸ On Special Adoption, see *supra* note 89.

¹⁷⁹ For a case that has fallen under similar circumstances, see note 202 below, Yokohama Family Court Adjudication, 18 September 2003, which is analyzed in Category G [Unknown or Stateless Parents].

children or grandchildren, then it can be predicted that his loss of nationality will affect these offspring's nationality by a "domino effect" under the *jus sanguinis* principle.

Second, it is problematic that recognition of parentage is currently interpreted so as not to have a retroactive effect in relation to nationality. In this particular case, the parent-child relationship forming the basis for A's nationality acquisition was denied retroactively at birth, and thus his or her Japanese nationality was retroactively denied. A's biological father immediately recognized him or her. However, while recognition of parentage indeed has a retroactive effect under the Civil Code (Article 784 of Civil Code), his or her Japanese nationality was still denied due to the official interpretation denying a retroactive effect in relation to the acquisition of nationality.

(2) Possible size of Category E

There are no statistics that directly show the number of persons who retroactively lose Japanese nationality due to a change in personal status.

Thus, an attempt is to be made to identify the number based on the number of cases which have undertaken a procedure to change personal status (such as a denial of paternity) possibly causing a loss of nationality.

Realistically, the typical scenario where this category of stateless persons arises is where a person acquires Japanese nationality through his or her father by birth via *jus soli*, but then such a father-child relationship is subsequently denied and the Japanese nationality that he or she (is supposed to have) received from the father is retroactively lost. The legal procedures which may cause such situation include: (i) denial of legitimate child status,¹⁸⁰ (ii) confirmation of the non-existence of a parent-child relationship,¹⁸¹

¹⁸⁰ Civil Code, Article 772: "A child conceived by a wife during marriage shall be presumed to be a child of her husband. A child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage shall be presumed to have been conceived during marriage".

"A child born during marriage or within 300 days of divorce is presumed to have been conceived during marriage (a child born in wedlock); therefore, even if the father of the child is another man, upon submission of the birth report, the child is registered in the family register as a child of the mother and her husband. In order to deny this presumption that the child is fathered by the husband, the husband must make a claim to the family court for mediation for denial of birth in wedlock, which denies the fact that the child is his own." "In this mediation, when both parties agree that the child is not a child of the husband, and when such agreement is deemed just by the family court having conducted the necessary research on the facts, then the court will make an adjudication in accordance with the agreement." Court website, "Chakushutsu Hinin Choutei [Mediation for Denial of Birth in Wedlock]", http://www.courts.go.jp/saiban/syurui_kazi/kazi_07_15/.

¹⁸¹ "Even in case a child is born during marriage or within 300 days of divorce, if it is objectively clear that the wife has no possibility of becoming pregnant with a child of her husband, for example when the husband did not have any sexual relationship with the mother of the child due to long-term absence on an overseas mission, imprisonment, separation, etc.; in such cases, it is possible to make a claim to the family court for mediation to confirm the non-existence of parent-child relationship." Court website, "Oyako Kankei Fusonzai Kakunin Choutei [Mediation to Confirm Non-existence of Parent-child Relationship]", at http://www.courts.go.jp/saiban/syurui_kazi/kazi_07_16/.

and (iii) a petition for recognition of parentage.¹⁸² Among the cases where the petitions (i), (ii), or (iii) are approved, the cases where statelessness can arise are limited to scenarios in which, e.g., the mother is stateless or the mother's country of nationality adopts a strict *jus soli* principle. However, it is extremely difficult to speculate about the ratio of such cases among all the cases above.

Next, an attempt is made to identify the possible number of cases where this category of statelessness arises by looking at the number of deletions among family registers, an action which necessarily follows the retroactive loss of Japanese nationality.

Within the statistics relating to family registers, approximately 700-900 cases have been reported every year in recent years related to Family Register Act Article 103 (notification of loss of nationality) and Article 105 (reports of nationality loss when it comes to the attention of a public office).¹⁸³

It is unknown how many among the above cases are those for whom the loss of Japanese nationality is highly likely to result in statelessness (such as when the mother is stateless or her country of nationality adopts a strict *jus soli* principle). However, these statistics indeed give some indications.

4. Solutions for Category E

(1) Prevention

From a prevention point of view, it is necessary to have changes in legislation and implementation of the current law which take into account, as a priority, the principles to avoid statelessness and to ensure legal certainty with regard to nationality,¹⁸⁴ which are fundamental values unique to nationality law. Article 5(1) of the 1961 Convention on the Reduction of Statelessness provides that 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, shall be conditional upon the possession or acquisition of another nationality. Such a "change in personal status" includes situations e.g., where the family relationship which constituted the basis of a child's acquisition of nationality was registered erroneously.¹⁸⁵ Thus, a new legal provision should be created or the current law should be implemented such that the change in a person's legal descent

¹⁸² In recent practice, when certain conditions are met, it is common to file a claim for mediation or a lawsuit to seek child recognition with the biological father being the other party, and to have a determination within such procedure denying the parent-child relationship between the child and the father listed in the family register, instead of filing a lawsuit against the legal father to confirm the non-existence of a parent-child relationship. Court website, "Ninchi Choutei [Mediation for Child Recognition]", at http://www.courts.go.jp/saiban/syurui_kazi/kazi_07_18/.

¹⁸³ 711 in 2012, 767 in 2013, 899 in 2014, 921 in 2015, and 1,058 in 2016. Ministry of Justice website, "Kako 5 Nenkanno Kokueki Soushitsuhasuuno Suii [5 Year Trends in Number of People Losing Nationality]", at http://www.moj.go.jp/MINJI/toukei_t_minj03.html.

¹⁸⁴ See *supra* note 168, the Supreme Court judgment on 22 November 2002. ("The call for prevention of uncertainty making it desirable for nationality acquisition to be decided as definitely as possible...")

¹⁸⁵ See *supra* note 2, Arakaki, p.58.

from a father or mother of Japanese nationality will not result in the him or her losing his or her Japanese nationality if such a loss consequently leads to statelessness.

Furthermore, even if it does not lead to statelessness, the loss of nationality should be subject to certain restrictions. While there may be room for discussions as to what should be the point in time beyond which the loss is restricted, it is reasonable to prevent a loss of nationality at the least after a person has reached the age of majority. (To make the age of majority, 20 years of age, the time limit in legislation is consistent with the fact that acquisition of Japanese nationality under Article 3 of the Nationality Act is limited to persons less than 20 years of age. Restricting nationality “loss”¹⁸⁶ for adults is also consistent with laws of many other States.)¹⁸⁷ Alternatively, if the avoidance of a disadvantage to the person concerned is to be emphasized, the age for restricting nationality loss should be lowered even further. From the point of view of these considerations paragraph (2), for example, should be added to the current Article 2 of the Nationality Act to perhaps state “persons who have acquired Japanese nationality under each item of the previous paragraph of this article shall retain such nationality if it becomes clear, after he or she has reached 20 years of age, that he or she does not fulfill the requirements under the abovementioned items” or something to that effect.

A solution from a different point of view than the above includes giving retroactive effect to the recognition of parentage in relation to the acquisition of nationality if a person’s descent from a parent which formed the basis for his or her acquiring Japanese nationality is denied and such denial has retroactive effects. This would require a change in Supreme Court jurisprudence or new legislation, but this proposal is also significant in terms of ensuring a consistent interpretation of the effects that parentage recognition have. However, this change would only be effective in situations like the abovementioned case where the biological father (who recognized the person concerned) is also of Japanese nationality, where Japanese nationality is temporarily lost and retroactively re-acquired. In cases where, e.g., the biological parent of the person who has lost Japanese nationality is unknown, the person will remain without a Japanese nationality. Thus, this measure is not sufficient as a preventative measure.

¹⁸⁶ This kind of loss of nationality which is not specified by law is called “quasi-loss”, and it has been discussed internationally in recent years. That it should not lead to statelessness goes without saying; the retention of nationality should be continued in accordance with the principle of the prohibition of arbitrary deprivations of nationality, legitimate expectations, and the principle of proportionality. At the least, the loss should not be given a retroactive effect. Gerard- René de Groot and Patrick Wautelet, Chapter 4, “Reflections on quasi-loss of nationality from comparative, international and European perspectives”, in Sergio Carrera Nuñez and Gerard- René de Groot eds., *European Citizenship at the Crossroads: The Role of the European Union on Loss and Acquisition of Nationality* (Wolf Legal Publishers, 2015).

¹⁸⁷ According to the European Convention on Nationality Article 7(1)(f) as well, a person’s nationality is not lost after reaching majority (18 years of age in many countries) even in cases where the preconditions for the automatic acquisition of nationality are no longer fulfilled. This is reflected in the internal law of many Contracting States. (Some countries designate a period even shorter than 18 years.)

(2) Protection

As is clear from the sample cases in Category E, if a retroactive loss of nationality occurs due to a change in a person's personal status, the person concerned would be in practice treated as an illegally staying foreigner in a retroactive manner. However, this treatment is highly unreasonable and harsh in light of the fact that the person concerned has been living as a Japanese national up to that point of time. At least the person's status as a regular stayer should be ensured by changing the Immigration Bureau's practice so as to allow the person to acquire¹⁸⁸ residency status (as a foreigner) if he or she is within 30 days of a loss of Japanese nationality.

Separately, the same recommendations are applied as in Category A, B, C, D in terms of the need to ensure a certain level of protection by establishing a statelessness determination/protection system or streamlining the system relating to residency permits/special permission for residency.

(3) Reduction

In the sample cases of Category E, the persons concerned were rapidly granted naturalization.

However, this favorable treatment is not based on a legal provision. It is unclear whether the same treatment is generally guaranteed for similar cases.

Until changes in legislation or case law such as those proposed in (1) above actually materialize, treatment reflecting the spirit of Article 32 of the 1954 Convention upon a person's naturalization application should be ensured for persons who retroactively lose their Japanese nationality due to changes in their personal status.

¹⁸⁸ It is an issue of interpretation of the starting point in ICRR Article 22-2 (2), which provides that "[a foreign national] ... shall apply to the Minister of Justice for the acquisition of a status of residence in accordance with the procedures pursuant to the provisions of an Ordinance of the Ministry of Justice within 30 days, on and after the date of his or her renouncement of Japanese nationality, birth, or other cause". For example, if the timing of the final court decision on non-existence of parent-child relationship (by which Japanese nationality is treated as having been lost retroactively) is interpreted as the "date of other cause", then it would be possible to acquire a status of residence by application within 30 days from that date.

On the other hand, in immigration practice, sometimes a status of residence is granted even after the 30 days by "special acceptance", without undergoing the deportation procedures; a flexible approach including "special acceptance" would be most desirable. Concerning this issue, a case was reported in the 25th Statelessness Workshop held on 16 June 2017 at Yotsuya Hoken Center (Tokyo), in which the Immigration Bureau in the 1980s granted a status of residence by special acceptance to an individual whose Japanese nationality had been denied at age 22 with retroactive effect going back to the time of birth.

Category F [Failure of naturalization and restoration of previous nationality] Persons who renounced their previous nationality in the naturalization or nationality restoration process who nevertheless failed to acquire another nationality (Sample cases from Pakistan, China/Bolivia)

Category F is statelessness that arises from situations where persons apply for naturalization or nationality restoration and in the process renounce their previous nationality with the expectation that their application would be accepted, but nevertheless they fail to acquire another nationality.

In < Case 11 >, a couple and their child with Pakistani nationality applied for naturalization in Japan and renounced their Pakistani nationality based on an instruction by a legal affairs bureau at the time when their grant of naturalization had been informally decided. However, immediately thereafter, it became apparent that the husband had a history of having been deported from Japan and that his (re-)entry to Japan and naturalization application were made under a false name; consequently, the entire family had their naturalization application denied and became stateless.

In < Case 12 >, an individual who had Chinese nationality acquired Bolivian nationality through naturalization and renounced his Chinese nationality in his 40s, but later he had a change of mind and wished to restore his Chinese nationality. He renounced his Bolivian nationality during a short-term stay in Japan according to an instruction by the Consular Section of the Chinese Embassy in Japan; however, his application for restoration of Chinese nationality was not granted later and he became stateless.

1. < Case 11 > A person who, after renouncing the original nationality, was not granted the expected Japanese nationality by naturalization

A, who has Pakistani nationality, came to Japan in the late 1990s as a student. However, A quit school and continued to stay in Japan despite the fact that his residence permit as a student had expired; he was deported to Pakistan.

In the 2000s, A re-entered Japan with a false passport under a false name and was staying in Japan with the status of a long-term resident. Later, his wife also came to Japan, and they had a child in Japan. In 2001, in the process of applying for naturalization, A and his family renounced their Pakistani nationality and became stateless, as they were instructed to submit a certificate of renunciation of Pakistani nationality.

Subsequently, A's period of stay in Japan expired, but he thought it was unnecessary to extend his period of stay because his naturalization procedure was underway. Without the extension of the period of stay, he became a so-called over stayer. When this fact was pointed out by the legal affairs bureau, A appeared at an immigration bureau. When

the regional immigration bureau checked A's background for an assessment of residential status, it came to light that he had been deported in the mid-1990s and that the passport he used to re-enter Japan had been forged. With these facts, the legal affairs bureau explained to A that his application for naturalization was not likely to be granted and advised him to withdraw his application.

Under these circumstances, A renounced his Pakistani nationality, withdrew his application for naturalization, and had no prospect of acquiring Japanese nationality. However, A was given special permission to stay, and he and his family were allowed to continue their stay in Japan.

A's wife and child do not have Pakistani nationality because they have renounced it. They do not have Japanese nationality either because they had withdrawn their application for naturalization. There is no other State whose nationality they might have acquired; they have become stateless.

However, A's renunciation of nationality made under a false name may be invalid, and therefore he may have not lost his Pakistani nationality. Even so, in order to confirm his nationality under his real name, he will need to explain in his home country that he left the country using a false passport and has renounced his nationality under a false name. There is a legal issue of the Pakistani government's interpretation about who the actor is for the purposes of the renunciation of nationality. It is not clear if A was later able to confirm his Pakistani nationality, and it is possible that he has become stateless.

2. < Case 12 > A person who renounced his or her Bolivian nationality while staying in Japan and failed to restore his or her Chinese nationality

B was born in China in 1952 and had Chinese nationality. B renounced his Chinese nationality and acquired Bolivian nationality by naturalization in 1993 because the Chinese government had the policy of preferential treatment for foreign investors and because it would be easy to travel abroad. However, the validity of a Bolivian passport was for one year, and it was necessary to renew it in Bolivia; feeling this inconvenient, B thought about restoring his Chinese nationality. In 1995, while B was in Japan with the status of a short-term stayer, B went to the Chinese Embassy in Japan and applied for restoration of Chinese nationality. As China does not recognize multiple nationalities, it was necessary for B to renounce his Bolivian nationality; based on instructions by the Chinese Embassy, he renounced his Bolivian nationality in advance. However, later, B was told by the Chinese Embassy that his application for restoration of nationality was denied by the authorities in China for the reason that he did not have the residential status of a long-term resident in Japan. Thus, B became a stateless person without a

nationality of any State.¹⁸⁹ While waiting for contact from the Chinese Embassy, *B*'s period of stay in Japan also expired.

B was overstaying for more than 10 years but voluntarily appeared at a regional immigration bureau in 2007 and requested special permission to stay. In 2010, *B* was granted special permission to stay with nationality noted as "Stateless". After obtaining the permission to stay in Japan, *B* proceeded to restore *B*'s nationality at the Embassy of China, and *B* currently holds Chinese nationality.

When *B* became stateless in Japan, having already lost residential status, *B* could not receive any social welfare benefits including health insurance and was not allowed to work.¹⁹⁰ *B* was in a predicament with the tightened immigration control of irregular stayers under the "Five year plan to reduce irregular stayers by half", which began in 2004 with the Immigration Bureau and the Police Agency.

Before obtaining permission to stay in Japan and restoring Chinese nationality, *B* tried to open a bank account at a local bank by showing *B*'s (former) Alien Registration Certificate; however, *B* was unable to open an account because *B*'s Alien Registration Certificate, which showed "Stateless" in the nationality section, was regarded with suspicion.

3. Possible size of Category F

(1) The risk of statelessness in undertaking procedures to change (renounce) nationality

Category F covers statelessness that arises temporarily or lasts for a long-term when a person renounces his or her previous nationality for the purpose of naturalization or a nationality recovery process which then fails and the person cannot acquire a new nationality immediately. Case 11 (hereinafter referred to as "naturalization failure case" in this section) is a typical case in terms of naturalization-related ones. It occurs for example when a person applies for naturalization to country α which does not allow dual nationality, he or she is requested to renounce the nationality of country β , and when he or she renounces country β 's nationality, naturalization permission is suspended or disapproved for circumstances that arose or are revealed before the formal grant of naturalization.

Under the current naturalization related practice in Japan, applicants are urged through the relevant legal affairs bureau to acquire a certificate of having renounced their current nationality when their naturalization is about to be approved, i.e. has "informally" been approved. They are requested to submit this document by the formal notification of approval of naturalization.

This practice has long been in place. This means that potentially there arises a risk of statelessness for all cases where naturalization is about to be approved. Even if the

¹⁸⁹ On details about how *B* became stateless, see the case of Lee Man-Biu below. Chen Tien Shi, *Wasurerareta Hitobito, Nihonno "Mukokuseki" Sha* [Forgotten People: "Stateless" in Japan] (Akashi Shoten, 2010), pp. 74-77.

¹⁹⁰ In reality, however, the control of irregular stayers from the late 1990s to early 2000s was not as strict as it is today, and *B* was able to make a living by running his own business.

previous country of nationality allows for cancellation of the loss of nationality or for recovery of nationality, statelessness would arise at least temporarily. On the other hand, as in Case 12 (hereinafter “failed restoration of nationality” type in this section), there can be cases where persons concerned believe that their previous nationality β can be restored or that they still possess country β 's nationality, and at their own will they renounce their current nationality α ; but against their expectation they fail to have β 's nationality recovered and fall into statelessness.

(2) Possible size of Category F

Despite this, it is quite difficult to identify the number of cases where this these sort of “naturalization failure” or “nationality restoration failure” cases occur. While it is assumed that the majority of “naturalization failure” cases are those who fail to naturalize as Japanese persons, these should not be exhaustive of the category. Even if the focus is put on the cases arising from naturalization as Japanese nationals, it is not possible to identify how many cases of persons who have been “informally approved” for naturalization indeed get rejected at the end, as the statistics relating to the cases that have been “informally approved” is not publicly available.

Furthermore, the number cannot be estimated based on the number of cases of rejected naturalizations.¹⁹¹ This is because the number of rejections may not cover all cases of “failed naturalization” as it also happens that applicants are requested by the official in charge to withdraw their application upon having their informal naturalization approval cancelled.

Additionally, with regard to the “nationality restoration failure” cases, it is unknown how these cases arise in relation to which cases. It is quite difficult thus to estimate the number of cases falling within this category.

5. Solutions for Category F

(1) Prevention

First, in order to prevent statelessness from arising out of cases involving “naturalization failure”, it is most crucial to rectify the current practice of requesting naturalization applicants to renounce their current nationality before naturalization is formally approved.

This issue comes down to, in the end, whether to prioritize the prevention of multiple nationalities (even temporarily) or the prevention of statelessness. For the persons concerned, the disadvantage of statelessness occurring is more serious, and so its prevention should be prioritized.

¹⁹¹ As a reference, the number of rejected applications for naturalization was 332 in 2013, 509 in 2014, 603 in 2015, and 607 in 2016; the number of applications for naturalization was 10,119 in 2013, 11,377 in 2014, 12,442 in 2015, and 11,477 in 2016. Ministry of Justice, “*Kika Kyoka Shinseishasuu, Kika Kyokasha, Oyobi Kika Fukyokashano Suii* [Number of Applications, Grants and Rejections on Naturalization]” (12 May 2017, corrected version), at <http://www.moj.go.jp/content/001180510.pdf>.

In this context, the Japanese Nationality Act requires, as a condition for naturalization, that an applicant “has no nationality, or the acquisition of Japanese nationality will result in the loss of foreign nationality” (Article 5(1)(v)). Thus, renunciation of nationality prior to naturalization is not a requirement. Rather, it is acceptable under the law that the person loses his or her current nationality by acquisition of Japanese nationality. There is no legal basis for requesting applicants to renounce their present nationality.

In this regard, there was a case where a child was born after the parents renounced their previous nationality for the purpose of naturalization, and before their naturalization was granted. In this case, the government acknowledged the acquisition of Japanese nationality for the child by birth under Article 2(iii) of the Japanese Nationality Act, recognizing that the parents were stateless.¹⁹² While the case is indeed remedied, this issue would not have to have arisen if the parents had not become stateless.

(2) Protection

As apparent from cases 11 and 12, when statelessness cases arise out of “naturalization failure” or “nationality restoration failure” the Immigration Bureau should allow the affected persons to acquire residency permits,¹⁹³ at least during the 30 days of loss of nationality, and ensure at least the lawful stay. This is a common recommendation, as it is in Category E [Change of personal status].

Apart from this, as for the other categories, streamlining the systems to determine statelessness and to protect stateless persons would be useful.

(3) Reduction

Especially with regard to “nationality restoration failure” cases, as stated in relation to Category B [State succession I], it is desirable to utilize humanitarian considerations to resolve statelessness in a rapid manner by facilitating the naturalization of stateless persons regardless of their birth in or outside Japan.

¹⁹² Osamu Akiba, “*Nihoneno Kikano Kyokawo Shinseishi, Kikano Jyoukenwo Sonaerutameni Jyuuzenno Kokusekiwo Houkishita Kotoniyori Mukokusekishato Natteiru Gaikokujin Fuufunitsuki, Kikaga Kyokasareru Maeni Koga Shusseishita Baainiokeru Shushou Todokeno Shori Oyobi Tougaishiwo Kika Kyokagono Fuufuo Kosekini Douseki Saserutameno Tetsudukinitsuite* [Procedures regarding the birth report of a child born to a foreign couple who have become stateless due to the fact that they applied for naturalization in Japan and renounced their former nationality as a precondition for naturalization, before the parents’ naturalization was permitted; and the procedure to enter the child into the family register of the couple after the permission of the parents’ naturalization]”, *Koseki*, No. 923 (2016), pp. 11-13.

¹⁹³ ICRRRA Article 22-2. See *supra* note 189.

Category G [Unknown or stateless parents] Persons whose parents are unknown or are stateless (Sample cases from Philippines, Thailand/China)

Category G covers statelessness of children that could arise when their parents are unknown or stateless and they cannot acquire the nationality of their parent(s) (and their acquisition of Japanese nationality by birth is not recognized by the Japanese authorities).

< Case 13 > is a person born in Japan out of wedlock to a woman who appears to be Filipino and who ended up in statelessness as the woman/the biological mother disappeared after delivery and he or she cannot establish his or her legal descent from the woman.

< Case 14 > is about a person who was born in Japan to a woman of unknown nationality who was rendered stateless as he or she could not have his or her biological father of Japanese nationality recognize his paternity over him or her before turning 20 years old, and the nationality of his or her mother remained unknown.

1. Case summary

(1) < Case 13 > A Child born in Japan whose parents cannot be identified

A was born in Japan out of wedlock to a woman who appeared to be Filipino, but the mother disappeared when he or she was small, and A had been under the care of a friend of his or her mother. Subsequently, A came under the care of a child welfare institution through the Child Custody Centre, and has been living there since then. A had been living without a resident permit, but at age 17 A appeared at an immigration bureau and received special permission to stay,¹⁹⁴ with the nationality indicated by the bureau being “Filipino”. However, it is almost impossible to definitively identify A’s biological mother, who is likely Filipino at this point in time; thus, A cannot confirm his or her Filipino nationality at the Filipino embassy and remains stateless.

(2) < Case 14 > A person born in Japan whose legal father is unknown and mother’s nationality is unknown

B was born in Japan to C, the father of Japanese nationality, and D, the mother whose nationality is unknown. C and D were not legally married, and C had not formally recognized his paternity over B.

D, B’s mother, has heard from her parents that she was born in Yunnan province in China and migrated to the north-east area of Thailand when she was small. However, the family had no documents whatsoever to prove the Chinese nationality of D’s parents or D herself. D’s family had been living as foreigners in Thailand with a temporary permit to stay. D arrived in Japan with a forged passport in early 1990, met C, and gave birth to B in Japan. However, C at that time was married to another woman, and as D was irregularly

¹⁹⁴ ICRRRA Article 50 (1). On Special Permission to Stay, see *supra* note 122.

staying and did not have any document to prove her identity. The notification of *B*'s birth was also not submitted to a Japanese municipality office. *B* was raised by *C* and *D*, but grew up not going to an elementary school or junior high school. The family fell into poverty upon *C* losing his job and was even temporarily homeless. The family subsequently started to receive assistance from the local government.

B is biologically a child of a Japanese national. However, as *C* is not his or her legal father, *B* could not acquire Japanese nationality *jus sanguinis* (Article 2(i), Japanese Nationality Act).

Furthermore, as *D*'s nationality is unknown, *B* is also unable to acquire nationality in a real sense from his or her mother. *B*'s legal representative/attorney sought acceptance of the notification of *B*'s birth, with the nationality of the mother being stateless, but the municipality office refused to accept it. *B* thus filed a petition with a family court in 2016 requesting its permission to have his or her family register created based on having acquired Japanese nationality by birth under Article 2(iii), as *B* was born in Japan, the legal father was unknown, and the mother does not have a nationality.¹⁹⁵

In this case, whether the mother, *D*, possessed Chinese or Thai nationality was disputed. Based on the facts, including that the consulate section of the Chinese embassy in Japan responded to *D* that "there was nothing that the embassy can do for you," the Tachikawa Branch of the Tokyo Family Court ruled that: "there is no document certifying the claimant's mother's possession of Chinese or Thai nationality. The details of the place where the claimant's mother had been living in Thailand with her family are unknown, and there is no means for her to contact her family." The court determined the mother's nationality status to be stateless, and it issued an authorization for *B*'s family register to be created, stating that *B* has acquired Japanese nationality by birth under Article 2(iii).¹⁹⁶ Later, in November 2017, the mother *D* was granted Special Permission to Stay (ICRRA Article 50(1)), given a status of residence as "spouse of Japanese national, etc.," and her foreigner residence card issued at the time lists "Stateless" in the nationality/area of origin column.

2. Significance of Article 2(iii) of the Nationality Act

When a father and mother are stateless or unknown, a child born in Japan would be stateless had there been no specific legislative measure, in light of the Japanese nationality law framework adopting the *jus sanguinis* principle. For this purpose, the Japanese Nationality Act allows for the acquisition of Japanese nationality by birth for the purpose of preventing statelessness. This is Article 2(iii), which provides that "If born in Japan and both of the parents are unknown or without nationality", a child acquires Japanese nationality by birth.

¹⁹⁵ Family Register Act Article 110 (1). See *supra* note 169.

¹⁹⁶ Tokyo Family Court Tachikawa Branch, unpublished adjudication on 5 December 2016.

Under the case law, administrative practice, and authoritative academic theory, “father” in Article 2(iii) is understood to refer to the “legal father” and not the factual (biological) father of the child. (This means that which country’s “law” should be considered in this regard varies by individual. Under Japanese law, for example, while the legal mother-child relationship is considered to have been automatically established by the mere fact of delivery,¹⁹⁷ the legal father-child relationship is to be only established with the completion of the legal action, i.e., the parents’ marriage and, with regard to a child born out of wedlock, the father recognizing his paternity.)

Thus, even if the biological father is known, as long as there is no legal parent-child relationship between that father and the child, and the mother is also unknown or is stateless, the person born in Japan can acquire Japanese nationality under this provision.

3. Developments in the application of Article 2(iii) of the Nationality Act

(1) Trends in the application of Article 2(iii)

With regard to family court adjudications up to around the 1970s, there are several cases where a person who has been raised by a third person as a result of being separated from his or her biological parents due to the war or other reasons petitioned for the creation of his or her family register after reaching the age of majority, where even his or her memory as to the identity and place of birth of his or her biological mother and father was uncertain.¹⁹⁸ In such cases, the courts used to previously authorize the creation of the family register after examining the facts—such as the concerned person’s appearance, the fact that he or she only speaks Japanese, and the credibility of the person’s statement with regard to how he or she has been raised—and concluding that the persons concerned were “born in Japan of unknown parents.”

However, subsequently, Japan started to receive a larger number of foreigners, which resulted in the increase of persons who stay in Japan irregularly after their residency permit expires. The number of incidents increased where a biological mother who appears to be a foreigner leaves behind her child at a hospital or other places. Even in this sort of case, if it is a typical case of a foundling where the parents’ whereabouts are completely unknown, he or she will be granted Japanese nationality under Article 2(iii). However, the issue is when there is fragmentary and inaccurate information available about the mother. In this regard, the so-called “Baby Andrew”¹⁹⁹ case is one which clarified the way to measure how “unknown” parents are, as well as the burden of proof to establish it.

(2) So-called “Baby Andrew” case

¹⁹⁷ The Supreme Court, Judgment, 27 April 1962 (*Showa 37 Nen*), *Minshu* Vol.16, No. 7, p. 1247.

¹⁹⁸ Okuda, *supra* note 33, pp.121-125.

¹⁹⁹ The Supreme Court, Judgment, 27 January 1995 (*Heise 7 Nen*), *Minshu* Vol.49, No.1, p. 56. See also the Abe Report, *supra* note 2, pp. 36-37.

Baby Andrew's (hereinafter *E*) mother disappeared after giving birth to *E* at a hospital in Nagano prefecture in January 1991 without submitting the notification of birth to the municipality office. The hospital personnel had an impression that *E*'s mother was a Filipino based on the hospital record carrying information such as the mother's family/given name and date of birth. *E*'s notification of birth was initially accepted with the "country of nationality: Philippines."

However, the Philippine embassy in Japan responded to an inquiry that "as long as the mother is missing, *E*'s Filipino nationality cannot be recognized." *E* was subsequently registered as a foreigner whose nationality status was "stateless". *F* and *G*, who adopted *E* and became his adoptive parents, filed a suit to confirm *E*'s Japanese nationality due to the fact his "parents are unknown." While the court of first instance affirmed *E*'s petition, the high court overturned the district court's decision.

The Supreme Court in this case stated the following in light of the object and purpose of Article 2(iii), which is to prevent statelessness:

This requirement ('both of the parents are unknown' in Article 2(iii)) should be considered to be satisfied where, even if a particular person is highly likely to be the father or mother, it is not sufficient to definitively identify the father or mother. This is because, even if there is a high possibility that a person is the child's father or mother, the nationality of the child cannot be determined on the basis of such a person's nationality, and it is not until that person is definitively identified that the child's nationality can be determined on the basis of his or her nationality.

Furthermore, the court confirmed *E*'s nationality stating that

even if the Party disputing the child's acquisition of a Japanese nationality proves the existence of "circumstances indicating the high probability that a specific person is the claimant's father or mother," as long as it is not sufficient to "definitively identify that the person is indeed the father or the mother of the claimant," it cannot overturn the court's determination that "both of the parents are unknown."

(3) The trends in practice after the Baby Andrew case

It once appeared that this Supreme Court decision opened the path for children of unknown parents to acquire Japanese nationality. However, in practice, even after this case, the practice is to determine the mother's nationality and other details based on a hearing from the persons concerned or the entry/exit record held by the Immigration

Bureau.²⁰⁰ There is a concern that the mother is being deemed to be known even if the information cannot be cross-checked with the mother herself, merely based on the existence of information relating to the mother on paper. In fact, there have been reports that the application of Article 2(iii) has been denied in cases similar to Andrew's.²⁰¹

(4) 2003 Adjudication by the Yokohama Family Court

It is notable that the Yokohama Family Court actually authorized the creation of a family register by ruling that “both parents are unknown” in a case where the mother disappeared after having submitted a notification of her child’s birth to a municipal office.²⁰² Details of the case are as follows:

H was born in Japan as the eldest son of *I*, a mother who appeared to be Filipino and *J*, a Japanese father. *I* and *J* were legally married. *I* submitted the notification of birth, and *H* entered into *J*'s family register. The column on the personal status in the family register carried the record of the marriage and divorce between the father *J* and the Filipino woman *I* and the fact that *I* was given custody upon divorce.

However, the mother *I* disappeared after asking her acquaintance to take care of *H*. *H* grew up in a child welfare institution. Meanwhile, after the divorce of *J* and *I*, the father *J* filed a lawsuit, with *H* being the defendant, to deny his paternity over *H*.²⁰³ A decision ruling that *H* is not the child of *J* was finalized. As a result, *H* was completely removed from the family register. *I*'s whereabouts were meanwhile still unknown, and it was impossible to obtain *I*'s national passport or birth certificate. Therefore, *H* was unable to prove that his or her mother was a Filipino national, and *H* could not acquire Filipino nationality. *H* filed a petition with a family court seeking a creation of a family register asserting that he or she was “born in Japan” of “unknown parents.”

The family court approved the creation of *H*'s family register stating that *H* had acquired Japanese nationality by birth under Article 2(iii) upon a comprehensive assessment of the facts, such as that *H*'s mother's nationality cannot be confirmed and that his or her father cannot be identified.

In sum, *H* “lost” Japanese nationality retroactively and became stateless due to the denial of legitimate child status by the father (as he was no longer a child of a Japanese national).²⁰⁴ The Filipino nationality law adopts a paternal/maternal *jus sanguinis* principle as Japan does. If *H*'s descent from his mother *I* and *I*'s Filipino nationality could be proven, *H* would have been able to acquire Filipino nationality in a real sense. However,

²⁰⁰ Masao Ohno, “Kokusekihou Dai 2 Jyou 3 Gouno Kiteini Motodoku Shushshouniyoru Nihon Kokusekino Shutokunitsuite [Acquisition of Japanese Nationality at Birth under Article 2 (iii) of the Nationality Act]”, *Koseki*, No. 730 (2002), pp.9-10.

²⁰¹ Okuda, see *supra* note 33, p.8.

²⁰² Yokohama Family Court, Adjudication, 18 September 2003 (*Heisei 15 Nen*), *Katei Saiban Geppou* [Monthly Bulletin on Family Courts], Vol.56, No.3, p.68.

²⁰³ On presumption of children in wedlock and denial of legitimacy, see *supra* note 181.

²⁰⁴ On issues relating to “loss”, see Category E, 3. (1).

the mother *I*'s whereabouts were unknown, and *H* could not obtain any documents proving *I*'s possession of Filipino nationality. Thus, the court decided to authorize the creation of *H*'s Japanese family register considering that, while the information relating to *H*'s mother was available to some extent, the case still met the requirement that “both of the parents are unknown.”²⁰⁵

4. Possible size of Category G

(1) Breakdown of cases to which Article 2(iii) of the Japanese Nationality Act has been applied

No statistics are available relating to the cases where Article 2(iii) of the Nationality Act has been applied. With regard to how a family register is created when one acquires Japanese nationality at birth under Article 2(iii), the possible avenues are: (i) submission of a notification after the adjudication by a family court authorizing the creation of the person's family register (Article 110(1) of Family Register Act) and (ii) submission of a notification of birth (Article 49 of the same Act). While there are no legal provisions as to which avenue should be used in what circumstances, it appears to be the practice that when there are persons present who are legally obliged to submit a notification of the birth of the person concerned, avenue (ii) is to be taken, and in other cases (i) is to be taken.²⁰⁶

(2) Possible size of Category G

This means that the number of cases where article 2(iii) of the Nationality Act is applied can be calculated by totaling: (i) the number of cases where Article 2(iii) of the Nationality Act has been applied among the number of adjudications approving the creation of a family register and (ii) the number of cases where the Nationality Act Article 2(iii) has been applied among the number of notifications of birth submitted. With regard to (i), it is known that the number of family court decisions approving the creation of a family register is approximately 100 cases a year.²⁰⁷ It is unknown how many cases there have been among these in which Article 2(iii) has been applied. With regard to (ii), it is practically impossible

²⁰⁵ Regarding this adjudication, some criticize that the application of the Article should have been denied, because *inter alia*, unlike the *Andere Case*, the mother had submitted a birth report before disappearance and the Japanese authorities had made a determination on nationality, and because whether or not the child would acquire Filipino nationality was unrelated to the interpretation of the Article. Okuda, *supra* note 33, pp. 136-141.

²⁰⁶ Ministry of Justice, *Koseki Seidoni Kansuru Kenkyuukai* [Study Group on Family Register System], 6th Meeting (12 March 2015), distributed material 6, p.6, available at: http://www.moj.go.jp/MINJI/minji04_00042.html.

²⁰⁷ According to Statistics Bureau, Ministry of Internal Affairs and Communications, “*Shihou Toukei Nempou, Kaji Hen, Dai 3 Hyou, Kaji Shinpan Jikeno Juri, Kisai, Misai Tetsuduki Betsu Kensuu, Zen Katei Saibansho* [Judicial Statistics Annual Report, Family Relations, Table No.3, Number of Adjudication Cases on Family Relations: Received, Decided, and Undecided Cases”, the number of decided cases for the creation of family registers was 166 in 2015, including 94 approvals. See: <http://www.courts.go.jp/app/files/toukei/697/008697.pdf>.

to identify the number of cases where Article 2(iii) has been applied among all the notifications of birth, which amount to 1 million a year.

4. Solutions for Category G

(1) Prevention

As stated earlier, a child is to acquire Japanese nationality by birth under Article 2(iii) of the Japanese Nationality Act if he or she is born in Japan and his or her parents are unknown or stateless.

However, the guidance provided in the Supreme Court's Baby Andrew case or the Yokohama Family Court adjudication is not systematically implemented in practice. There have been continuous reports of cases where infants have been registered as "foreigners" based on inaccurate information (of the parents). The causes for this may include the fact that officials in charge in the relevant administrative bodies do not have sufficient knowledge about statelessness, and the stateless persons themselves are not aware of the fact that they (or their parents) are stateless. As a result, unfairness arises where only persons who have the means to receive adequate assistance from experts and to resort to litigations in courts of law manage to find remedies.

It is necessary to systematically disseminate the standards contained in the Supreme Court ruling on the Baby Andrew case in relation to the interpretation of the phrase "both of the parents are unknown" under Article 2(iii) of the Nationality Act, and to ensure that practice is in line with these standards.

That being said, the criteria have not been fully established as to what kind of circumstances relating to the father and mother need to be established in order for the person to qualify under the phrase "both of the parents... are without nationality" in Article 2(iii).

Thus, attention is called for so that the scope of "statelessness" is not narrowly interpreted in an arbitrary manner in each administrative procedure.

If the above is implemented systematically, this category of statelessness should be prevented to a significant extent.

(2) Protection and reduction

As stated in (1), with regard to this category, there is an established legal provision, i.e., Article 2(iii) of the Nationality Act. If this is adequately implemented, this category of statelessness will be resolved to a significant extent.

However, it is expected that there may be cases that fall outside the application of Article 2(iii) even if the provision is properly implemented. For example, in cases in which information about the father or mother's identity is sufficiently available but they are both missing, the child cannot go through the procedure to acquire (confirm) nationality of the parent(s) with the relevant country.

Thus, even if these cases are considered to extend beyond the coverage of Article 2(iii), if such persons cannot be treated as nationals by the relevant countries, measures should be taken to provide them with protection by recognizing them as stateless persons and to

reduce statelessness in the future. (As for how protection and reduction should be implemented, see Category A [Conflict of laws]).

Furthermore, in some cases, a certain period of investigation is necessary to determine that Article 2(iii) is to be applied, even for an eligible case. Efforts need to be made so that social welfare measures are adequately administered for the persons concerned during such period to ensure their receipt of assistance, such as mother-child health care.

Category H [Consulate denial III (Others)] Persons understood to have acquired the nationality of the country concerned according to the text of the nationality law of that country, for whom nevertheless the relevant consular authorities refuse birth registration or the issuance of a passport (Sample cases from China, Myanmar)

Category H covers statelessness or risks of statelessness that could arise for persons understood to have acquired the nationality of the country concerned according to the text of the nationality law of that country, for whom nevertheless the relevant consular authorities refuse birth registration or the issuance of a passport.

< Case 15 > involves a person born in Japan out of wedlock to a woman of Chinese nationality while the man of Chinese nationality considered to be the biological father went missing. The person requested the Consular Section of the Chinese Embassy in Japan for birth registration and the issuance of a passport. While under the text of Chinese law he or she is considered to have acquired Chinese nationality at birth, the person concerned was denied both services due to being an illegitimate child, which put him or her in the situation of statelessness.

< Case 16 > involves a person born in Japan out of wedlock to a female of Myanmar nationality whose biological father of Myanmar nationality went missing after the person's birth. The person concerned approached the Embassy of Myanmar to register him or herself as a national of Myanmar. Even though under Myanmar law the person concerned is understood to have acquired Myanmar nationality by *jus sanguinis*, he or she was denied registration due to the fact that the abovementioned male, i.e., her biological father, had not completed his payment of tax during his stay in Japan. As such, the person can be understood to be stateless.

1. < Case 15 > A person born out of wedlock to a mother of Chinese nationality who has been denied birth registration by the Embassy of China in Japan²⁰⁸

A was born in 2015 in Japan to a mother B of Chinese nationality out of wedlock. B considered the male of Chinese nationality with whom she was in a relationship at the time she got pregnant to be A's (biological) father. B then lost touch with the man, who disappeared after she told him of her pregnancy. B consulted the Chinese Embassy in Japan but "was told that in such cases where a child is born in Japan without the parents being married, the Chinese government can grant neither Chinese nationality nor a passport." Furthermore, when asked by a staff member of Across Japan, a general incorporated association which facilitated A's adoption through a special adoption

²⁰⁸ This is the same case as the one introduced in Chapter 1, Section 1, Sub-section 1(3) of this report.

process, the embassy “responded that the Chinese government would not receive the notification of the minor’s birth.”²⁰⁹

Chinese Nationality Law allows both the father and mother to pass on Chinese nationality. Article 5 states “Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.”

In accordance with this text of the law, it can be understood that A has indeed acquired Chinese nationality, which is the nationality of B, A’s mother. However, the embassy (consulate section) clearly refused to receive A’s birth registration. This likely means that the embassy, which is the competent authority on nationality matters, applies the law in such a way that a child born out of wedlock is not to be considered a national by refusing to register his or her birth registration. A is thus considered to be stateless.

A was put under the care of a Japanese couple soon after his or her birth, and the decision was made for A to be adopted by the couple through a special adoption process. Indeed, A’s nationality status was assessed as “stateless” by the relevant regional immigration bureau when an application for A’s residency permit in Japan was made after the decision for A to be adopted.

Furthermore, the relevant family court, in considering whether the legal requirements for adoption were met in the context of the petition to confirm the adoption arrangement through the special adoption procedure, determined A to be stateless, and it decided that Japanese law, which is the law of A’s habitual residence, was the relevant law to A’s personal status.²¹⁰ The family court concluded so by taking into consideration facts such as that A’s birth registration was denied by the embassy of China and that “the possession/non-possession of Chinese nationality of the minor (A) is a matter essentially to be determined by the Chinese authorities.” A, by being adopted by Japanese nationals, is eligible for facilitated naturalization as long as A meets the residency requirement of one year in Japan (Article 8 (ii) of the Nationality Act).

2. < Case 16 > A child born out of wedlock from a father and mother of Myanmar nationality who could not have his or her birth registered by the Myanmar embassy in Japan

(1) Case summary

D came to Japan in 2007 with a student visa and began overstaying from 2008. D was temporarily co-habiting with E of Myanmar nationality while they were not legally married. D gave birth to C, a child from D’s relationship with E.

²⁰⁹ Sendai Family Court, Adjudication, 24 June 2016 (*Heisei 28 Nen*), *supra* note 30.

²¹⁰ *Ibid.*

C was born in Japan in 2011, but as her mother D was not able to support her financially, C lived in an infant care institution from shortly after birth and was later transferred to a child care institution. After C's birth, E started to live separately from D, and D lost touch with him. C's mother D had not yet registered C's birth with the Embassy of Myanmar at that time. In 2013, D was detained at a regional immigration bureau and a deportation order was issued to both D and C, with "Myanmar" listed as their "country of nationality" and "the destination country for deportation".

(2) Administrative response by Japan

The relevant regional immigration bureau detained D, and in July 2014 it shared with D a one-page document in Japanese language carrying information about the documents and other items required for one to be registered as a national, which was verified with the Embassy of Myanmar in Japan (hereinafter referred to as the "document on national registration"). The regional immigration bureau instructed D to carry out the process to register C as a national with the embassy of Myanmar in Japan upon the grant of a provisional release permit²¹¹ to D.²¹²

The abovementioned document carried information about the documents to be submitted²¹³ and the need to pay tax, and it also stated "registration as a national can be done even if the parents are unmarried." With regard to tax, the document stated: "all Myanmar nationals are required to pay tax for the duration they are away from Myanmar. The tax amount is 10,000 Japanese yen per month from the time when they leave Myanmar until the end of 2011."²¹⁴

As stated above, D had lost contact with E, and D did not even have a copy of E's passport. However, D was provided by the staff of the regional immigration bureau with documents such as a photocopy of E's passport and E's facial photo.²¹⁵

²¹¹ ICRR Article 54. See *supra* note 176.

²¹² The letter stated "This is to notify about documents required for national registration, as confirmed by the Embassy of the Republic of the Union of Myanmar in July 2014" and was provided by Nobuya Takai, the attorney who was the legal representative for this case.

²¹³ The following is listed as requirements: parents' passports (even if expired), parents' ID cards or their colored copy, a letter from parents to the Ambassador of Myanmar stating under oath that they are the parents of the child, a facial photograph of the parents and child, certified translation of the birth certificate in Japan, tax payment by the mother, and a visit to the Embassy by the child and one of the parents. It is noted that if it is difficult to submit the father's passport, it would be acceptable to submit the mother's passport, a colored copy of the father's passport, and a colored copy of the father's ID card.

²¹⁴ As for tax reduction, it is stated as follows: "In case there are circumstances during the period subject to taxation such as being a student, illness, having a family, paying national health insurance in Japan, etc., and if documents can be submitted to prove such circumstances, the tax might be reduced or exempted. It is possible to pay tax upon return to Myanmar, but the amount of tax must be calculated before return."

²¹⁵ Hearing from Nobuya Takai, attorney-at-law, on 24 May 2016.

(3) The response of Myanmar embassy

D, the mother of *C*, tracked down the whereabouts of *E* through her attorney/legal representative and sought his cooperation in completing the required paperwork. *D*, after her provisional release was granted, visited the Embassy of Myanmar several times with her legal representative and other persons and attempted to register *C* as a national of Myanmar by furnishing the embassy with the amount of tax *D* was requested to pay as well as the requested documents. However, the Embassy of Myanmar asserted that the “payment of tax by the father” was also necessary, which they did not initially mention to *D* and which was also not written on the abovementioned document relating to national registration. *C*’s registration as a Myanmar national could thus not be achieved. *E*’s unpaid tax amounted to 530,000 Japanese yen, which *E* refused to pay due to his financial inability. *D* has been an irregular stayer without a permission to work, and it is difficult for her to raise such a high amount, i.e., 530,000 Japanese yen. Thus, *C* has been unable to be registered as a national up to today.

(4) Statelessness

Article 7 of the 1982 Nationality Law of Myanmar states that persons born of parents, both of whom are citizens, are Myanmar citizens. The text of the abovementioned law does not clarify whether the parents need to be legally married or not. The Embassy of Myanmar, in fact, has stated to the Japanese Immigration Bureau that unmarried parents can register their child as a national and that the submission of a written statement by the biological parents declaring themselves to be the parents of the child suffices for this purpose. Thus, *C* is supposed to have acquired Myanmar nationality under the law by birth as she is born of parents, although unmarried, who are both Myanmar nationals.

However, the Embassy of Myanmar refused *C*’s registration as a national by asserting that the biological father’s payment of tax was required, without which *C* cannot be registered as a national, which is separate from the requirements for national registration about which they had previously informed the relevant regional immigration bureau. As a consequence, *C* has not been able to register as a national of Myanmar. This manner of treatment by the embassy may possibly be considered an “operation of law” by the competent authorities on nationality matters, indicating that they do not recognize *C* as a national, and *C* could thus be considered to be stateless.

On the other hand, the Immigration Bureau of the Ministry of Justice, as stated above, designated *C*’s country of nationality under the deportation order as well as the destination country of deportation to be “Myanmar.” However, in reality, *C* is neither registered as a national of Myanmar or issued with a Myanmar national passport. As a logical consequence, the execution of a deportation order (forcible deportation to Myanmar) cannot be achieved. *C* has been in a situation of irregular stay for a prolonged period of time.

3. Possible size of Category H

(1) Where this category fits within the whole context

This category covers persons born in Japan who are supposed to have acquired the nationality of a relevant country under the text of the law of that country, who however do not appear to be considered nationals by the demonstrated treatment of the relevant consular authorities. In particular, this category specifically covers persons whose treatment by the consulate/embassy may be influenced by their discrimination against children born out of wedlock. Categories B, C and D [State succession I, Consulate denial I (Refugees), and Consulate denial II (Persons similarly situated as refugees)] have common characteristics with Category H, as the treatment by the consulate or embassy either indicates the statelessness of the persons concerned, or it has led or is leading to their statelessness.

When the person concerned is outside the territory of the purported country of nationality, how he or she is treated by the consulate/embassy of that country becomes crucially important. If the relevant consulate/embassy denies the person's registration as a national, the person ends up without any measures to confirm his or her possession of that nationality. Thus, the treatment of the person concerned by the consulate/embassy can be considered an "operation of law" by the competent authorities, and if it demonstrates that the person is not considered a national, he or she may possibly be considered to meet the statelessness definition.

(2) The possible size of category H

This category of persons covers cases which are demonstrated or caused by the responses of the relevant consulate/embassy in Japan. In order to identify the number accurately, it is necessary to grasp how many cases of similar treatment occur by all consulates and embassies in Japan. However, in reality, it is difficult to obtain an overview of all embassies' responses.

In Case 15, the abovementioned treatment by the Chinese embassy (presumably the consulate section) was accepted as a fact within the context of the family court adjudication. Some points remain unclear such as whether all six Chinese consulates throughout Japan other than the Consulate Section of the Embassy of China in Tokyo takes the same approach in the same scenario.

Furthermore, in relation to cases from Myanmar as exemplified by Case 16, it is still unclear what type of taxation is imposed under what sorts of criteria, and how systematic the tax collection is actually enforced. It also depends on the particular individual's financial ability as to how much of the tax amount can be considered to be the threshold, beyond which the payment is considered practically impossible or extremely difficult.

In light of the above, it is difficult to identify how many cases exist in Japan of persons who can be considered stateless under the "operation of law" where Chinese, Myanmar, or other countries' consulates/embassies' treat the individuals concerned in the same or similar manner as above.

4. Solutions for Category H

(1) Prevention

As stated above, as this category of statelessness or risk of statelessness is related to the treatment of the embassies/consulates of different countries, it is difficult for the government of Japan to make requests to these embassies/consulates to make improvements and so on. Thus, it is not easy to prevent statelessness under Category H from arising.

(2) Protection and reduction

The responses by the immigration authorities differ in relation to Case 15 and Case 16.

Neither of the persons involved in these cases have had their births registered with the relevant embassy or consulate. However, the person in Case 15 has been determined to be “stateless” in the Immigration Bureau’s examination of his or her stay, and the person in Case 16 has been determined to be of “Myanmar” within the deportation procedure. The difference is that the person in Case 15 had assistance from experts or an assistance organization from the time of birth, and the denial of the birth registration by the embassy had already been clear at the time of the relevant procedure. In contrast, in Case 16, the legal representative/attorney was contacted by the mother concerned only after she had already been detained and issued with a deportation order, and thus by that time the nationality determination by the Immigration Bureau had already been accomplished. What followed afterwards also differed significantly. In Case 15, the person concerned had been adopted by a Japanese couple through the special adoption procedure and had access to Japanese nationality. However, the person in Case 16 was not cared for by his or her mother and had been living in a child care institution. Furthermore, the fact that the Japanese administrative bodies deem him or her to be of Myanmar nationality while he or she does not appear to be recognized as a national by any country makes his position all the more vulnerable.

As seen above, it is important from a protection point of view to establish a system where the persons concerned can rapidly and easily access assistance by legal professionals or aid organizations. This is because of the reality that the outcome of the cases can significantly differ depending on the point in the process at which aid organizations or experts become involved.

Additionally, as written in relation to Category A [Conflict of Laws], it is important to establish a statelessness determination and protection system and to streamline the systems relating to residency permits and special permission for residency.

Moreover, from a reduction point of view, it is necessary, as in Category A, to establish and maintain a system where Article 8(iv) of the Japanese Nationality Act is adequately and systematically implemented. Furthermore, as a prerequisite for this, the continued gathering of accurate information by relevant Japanese administrative bodies, starting with

legal affairs bureaus, on the treatment by consulates/embassies of different States is also needed, as in Category A.

Section 2: Categories of persons whose statelessness or risk of statelessness arose while overseas and who subsequently came to Japan

Category I [Lack of proof] Persons who cannot establish their nationality of the country of birth or of parents' nationality (Sample case from Thailand/Vietnam)

Category I is statelessness which arises due to an inability to prove the nationality of the country of purported nationality or the parents' nationality.

< Case 17 > involves a person whose parents are from Vietnam who subsequently fled to Thailand via Laos. The concerned person was born in Thailand. He or she came to Japan subsequently with a forged passport, and when he or she was subject to a deportation procedure, the deportation could not be enforced as he or she could not produce any documents to prove the country of origin or the parents' nationality.

1. <Case 17> _ Case summary²¹⁶

A's father and mother fled Vietnam to Thailand during the First Indochinese War and settled in Thailand as refugees. A's father and mother met in Thailand, and A was born in 1957. Vietnamese refugees including A and her family were only "persons tolerated temporarily to stay" in Thailand and were subject to various kinds of discriminations including the restrictions on their areas of residence and on their choice of profession.

A arrived in Japan in 1991 by using a forged passport under the name of a Thai national. A was arrested in 2007 on suspicion of illegal entry and was transferred into an Immigration Bureau detention after being convicted by the court and given a suspended sentence.

A stated that he or she "wanted to return to Thailand" as A thought he or she "would be able to go back to Thailand as I was born in Thailand." However, it was revealed during the court proceedings that the Immigration Bureau had determined A's nationality to be Vietnamese, and it designated "Vietnam" as the destination country to be deported.

At any rate, A was not actually deported to Vietnam, and instead A was given provisional release (ICRRA Article 54) nine months after the arrest. As A was investigated with assistance from a legal representative/attorney, it was revealed that Vietnamese refugees from Thailand who came to Japan, including A, had had their temporary stay permits in Thailand cancelled for departing without acquiring permission from the Thai authorities, and they were unable to return to Thailand. Not being able to return to Thailand and wishing thus to stay in Japan, A filed a suit against the State to cancel the deportation order issued against him or her.²¹⁷

²¹⁶ Regarding this case, see Abe, pp. 45-46, and Arakaki, p. 49, *supra* note 2.

²¹⁷ Tokyo District Court, Judgment, 19 February 2010 (Heisei 22 Nen), *Hanrei Times*, No.1356, p.146.

The Tokyo District Court affirmed the cancellation of the deportation order issued to A, acknowledging that there were procedural errors as A did not understand the deportation procedures that designated Vietnam as the destination country of deportation. After the positive decision by the District Court and after A's expression of his or her wish once again to stay in Japan, the Minister of Justice issued A special permission to stay²¹⁸ and granted a long-term residency permit. A still resides in Japan to date.

2. Possibility of acquiring the nationality of a relevant State

(1) Vietnam

The 1945 Nationality Act of Vietnam adopted the paternal *jus sanguinis* principle, but after the end of the Vietnam War and the change of the political regime, the country enabled both fathers and mothers to pass on Vietnamese nationality to children by *jus sanguinis*.

Article 15 of the current nationality law also states that "a child born inside or outside the Vietnamese territory whose parents, at the time of his or her birth, are both Vietnamese citizens has Vietnamese nationality." Thus, based on A's statement that his or her parents are Vietnamese nationals, A can be considered to possess Vietnamese nationality as far as the text of the Vietnamese law is concerned.

However, when A's legal representative/attorney visited the Vietnamese embassy in Japan and inquired on the possibility that A has acquired Vietnamese nationality, he or she was told that

with regard to Vietnamese refugees or second-generation persons who have previously stayed in Thailand, unless the person concerned or his or her parents have a birth certificate or other official documents issued by the Vietnamese authorities, we are unable to accept him or her as our national. Furthermore, even if the person can produce such a document, the negotiation for admission to Vietnam is to be done through the Vietnamese embassy in Thailand.

With regards to this, A's parents had already passed away and A did not hold any official documents issued by the Vietnamese government to them. Furthermore, by the time the Vietnamese embassy was contacted, A had already been illegally staying and had no prospect of being re-admitted to Thailand, and it was practically impossible for A to confirm his or her Vietnamese nationality in Thailand.

At any rate, A has indeed not visited Vietnam even once since A's birth, and A has no family or acquaintances who can be contacted in Vietnam and does not speak the Vietnamese language. A has never thought him or herself to be a Vietnamese national and his or her substantive bond with Vietnam had become quite remote.

²¹⁸ ICRR Article 50(1). See *supra* note 122.

Based on the above, there are no measures that can be taken for A to be recognized as a national by the Vietnamese authorities, and A is likely to be a person who is not considered a national under the operation of Vietnamese law.

In this regard, even the abovementioned Tokyo District Court decision states that the court has “doubts” about the Immigration Bureau’s determination of A’s nationality as Vietnamese, and that if the Immigration Bureau was to consider deporting A again, the destination country for deportation needs to be carefully considered.

(2) Thailand

Thailand has long adopted a *jus soli* principle along with a *jus sanguinis* principle with regard to the acquisition of nationality. There have been several nationality law reforms, but in principle the country has adopted the policy of having children born of foreign parents lawfully staying in Thailand acquire Thai nationality by birth. However, such a policy was fundamentally overturned by the Thailand Revolutionary Council Proclamation No.337, issued on 13 December 1972.

With the complications of the Vietnam War as the background, the then Thai government cancelled the Thai nationality which the second- and third-generation Vietnamese refugees had previously acquired based on the prevailing nationality law at the time of their birth. The Proclamation also declared the government’s decision not to grant Thai nationality to descendants of Vietnamese refugees born in Thailand from that time onwards. However, the Thai government’s policy on Vietnamese refugees has again changed through the developments in international relations during the 1980s.

By means of the 1992 nationality law reform, it became possible for second- and third-generation refugees born in Thailand to be granted Thai nationality at the discretion of the Minister of Internal Affairs. Moreover, in 2008, the Thai nationality law was amended in light of the heightened awareness of statelessness issues within Thailand, and the opportunities for second- and third-generation persons to acquire Thai nationality became further expanded.²¹⁹

As discussed above, while the status of Vietnamese refugees in Thailand has been affected by the changes in international relations and the legal policies of the government interrelated to such changes, second- and third-generation refugees born in Thailand have become able to access Thai nationality. In fact, A’s brothers and sisters residing in Thailand managed to acquire Thai nationality. However, A was residing in Japan during this period and thus was unable to go through the procedure to acquire Thai nationality.

For one to acquire Thai nationality, “residence in Thailand based on residency registration in Thailand” is a legal requirement. Thus, for A to acquire Thai nationality, A would need to return to Thailand and reside there. In fact, there has been a case where

²¹⁹ On the issue of stateless people and the Nationality Act of Thailand, see Yuu Ohtomo, “*Tai Kokusekihouno Ichibu Kaisei – Tai Kokusekihouno Hensento Mukokusekisha Mondai* [Partial Amendment of the Nationality Act of Thailand: Changes in Thai Nationality Act and Issues of Statelessness]” *Gaikokuno Rippou* [Foreign Legislation], No. 249 (2011), pp.111-118.

a person similarly situated as A managed to return to Thailand and naturalized as a Thai national by fulfilling the abovementioned condition. However, there is no guarantee that A would acquire Thai nationality (even if return was possible) as the naturalization depends on the Thai government's discretion.

(3) Japan

Application for naturalization is a possible measure to acquire Japanese nationality. However, even if A applies for naturalization, it is likely that the application would not be granted considering the facts that A has been convicted for illegal entry, A's financial situation is not necessarily stable, and A does not read or write Japanese language.

3. Administrative response by Japan

Japan's response for many years had been to arrest Vietnamese refugees from Thailand as illegal entrants/stayers, grant provisional release after detaining them for a long term, and subsequently leave them as they were (under provisional release), being unable to forcibly remove them from Japan. Some have previously been detained for more than 2.5 years.

However, after A won the litigation, Vietnamese refugees from Thailand similarly situated as A started to be granted special permission to stay along with long-term residency permits. It appears that the policy within the Immigration Bureau, Ministry of Justice has shifted. As a result, it has become possible for the above individuals to legally work and obtain national health insurance, and their living conditions in Japan have drastically been improved. They have also been issued a re-entry permits (ICRRA Article 26(2)) in lieu of a passports, and they have become able to visit Thailand on a short-term basis as "foreigners."

The attorney who represented A in his or her suit states that she is aware of at least 30 second-generation refugees from Thailand who are in a similar situation as A. The "nationality/areas of origin" column of the foreigner residency card for these 30 persons carries either "stateless" or "Vietnam". As far as the author (attorney) is aware, apart from these 30 persons, there are at least five persons who arrived in Japan from Thailand who nevertheless do not possess Thai nationality. It can be said that these persons are likely to be stateless due to not being considered nationals by any State under the operation of its law, including because they have difficulties establishing the facts based on which an assessment of nationality can be made.

4. Possible size of Category I

(1) Unique nature of the category

This sample case was about a person who was unable to have him or herself registered with the authorities of the country with which he had a relevant link (Vietnam) while in the country of birth, as the official documents containing his parents' identity information either did not exist or were unavailable and could not be produced. The second-

generation person subsequently moved to a third country, as a result of which confirmation of the person's nationality became practically impossible. While Categories C and D [Consulate denial I (Refugees) and II (Persons similarly situated as refugees)] cover descendants of refugees and persons similarly situated who are born in Japan, this category covers persons born outside Japan who subsequently moved to Japan and who may be refugees or persons similarly situated as refugees or migrants. These persons in many cases have been without registration with the country of birth or country of origin, and they tend to be compelled to use a forged passport to come to Japan.

On a separate note, it is notable that Thailand has taken a series of policy actions to address statelessness as the country has borders with many States, and it has many persons of undetermined nationality and stateless persons residing within the country.²²⁰

(2) Possible size of Category I

As stated in (1) above, persons falling within this category I tend to be found among persons who arrived in Japan using a forged passport. However, it is unknown what percentage of persons who arrive in Japan with a forged passport (Article 3(1)(i), Article 24(1) of ICRRRA)²²¹ fall within this category. It is thus difficult to identify the overall number of persons falling within this category.

5. Solutions for Category I

(1) Prevention

Statelessness under this category has already occurred outside Japan. It is difficult for the Japanese government to prevent it from happening on its own, apart from extending its support to the countries of origin in relation to streamlining their system of nationality acquisition or generally stabilizing the international relations.

(2) Protection and reduction

It is difficult to envisage any measures that the government of Japan can take on its own to protect persons within or to reduce this category of statelessness.

From a protection point of view, it would be useful to streamline the systems for statelessness determinations or for the protection of stateless persons, or the systems

²²⁰ Yukari Oda, "Tainiokeru Higouhou Nyuukokusha Shisonto Mukokusekishaeno Kokuseki Fuyonotameno Seisaku: 1992 Nenno Kokusekijou Kaiseito 2000 Nen Ikouno Shusseichi Shugi Tekiyou Youken Kanwawo Chuushinni [Policy to Grant Nationality to Stateless People and Descendants of Illegal Entrants in Thailand: with a Focus on the 1992 Amendment of Nationality Act and Easing of Requirements for Application of *Jus Solis* after 2000]" *Nihon Joshi Daigaku Ningen Shakai Kenkyuuka Kiyou* [Japan Women's University Integrated Arts and Social Sciences Bulletin], No.22 (2016), pp.45-62.

²²¹ The number of detention orders issued for reasons under ICRRRA Article 24 (i) (illegal entry) was 954 in 2013, 756 in 2014, and 696 in 2015; Table 41 in each respective year's "Shutsunyukoku Kanri Toukei [Immigration Control Statistics]", available at: http://www.moj.go.jp/housei/toukei/toukei_ichiran_nyukan.html.

related to residency permits or special permission for residency. These recommendations are similar to the ones for Category A [Conflict of laws].

Furthermore, even if residency permits are not granted and deportation orders are to be issued, affected persons should not be “assigned” a nationality by the immigration or other authorities that they do not actually possess. Simply designating a specific country as the “country of nationality” or “destination country for deportation” (Article 53 ICRRA) based on the passport held by the person concerned or the country from which the person originally comes, which criteria do not reflect reality, would result in situations where the executions of deportation orders are either impossible or difficult. This may cause the persons concerned to incur tremendous disadvantages, such as being detained in an immigration facility for a long period (see Article 52(5) ICRRA and other provisions). This sort of situation needs to be avoided. Thus, if the country of destination for deportation cannot be identified, efforts need to be made to address the plight of the persons concerned through measures such as special permission for residency (Article 50(1) of ICRRA) in a rapid manner. It is hoped that the Immigration Bureau’s practice of avoiding long-term detentions due to the inability or difficulties in deporting persons needs to be systematic and consistent.

From a reduction point of view, as stated in Category B [State succession I] , it is necessary to establish a system which allows facilitated naturalization for stateless persons in general, regardless of whether they are born in Japan or not. Furthermore, as a prerequisite for this, continued and accurate information gathering would be required by Japanese administrative bodies, starting with the Civil Affairs Bureau, on the system and practice relating to acquisition of nationality in the countries of origin of the persons concerned.

Category J [State succession II]: Persons whose country of previous nationality has gone through State succession who cannot have the possession of the nationality of the successor State or the predecessor State confirmed (Sample cases from the Soviet Union/Georgia)

Category J covers statelessness that arises when the previous country of nationality has gone through State succession. While Category B covers persons whose statelessness arose while the persons concerned were in Japan, this category covers persons whose statelessness occurred while outside Japan and who subsequently came to Japan.

< Case 18 > involves a person who is an ethnic minority born in the former USSR (the territory currently forming part of Georgia) who crossed the border by walking during the turmoil after the break-up of the USSR. He came to Japan with a forged passport and was put under the deportation procedure. His nationality status was determined by the Japanese Immigration Bureau to be “stateless.” However, the destination country for the deportation order issued by the Immigration Bureau was designated as “Georgia,” the execution of which is difficult.

1. < Case 18 > Case summary

A was born in the 1960s in Georgia, which was part of the USSR at that time, and was a national of the USSR. Since around 1989, xenophobic movements towards non-Georgian ethnic minorities started to gain support with the rise of anti-USSR and Georgian patriotism.²²² In 1991, this movement declared the independence of Georgia from the USSR, and soon after the USSR dissolved. Georgia fell into a state of internal war between the regime, promoting ethnic-Georgian centralizing policies, and opposing forces.

While the security situation in Georgia worsened and the turmoil was still ongoing, A, an ethnic minority, felt his or her security threatened, and A left Georgia by walking across the border with Russia. A went to Europe from there, and after staying in different countries A came to Japan with a forged passport and applied for asylum. A was not recognized as a refugee and was issued with a deportation order with his country of nationality written as “Stateless” and the destination country for deportation “Georgia.” A however did not wish to be deported to Georgia. Furthermore, the relevant regional immigration bureau had decided on the deportation to Georgia without checking with the Georgian authorities on the possibility of his re-admission. A filed a suit with the Tokyo District Court, seeking the cancellation of the decision not to recognize him as a

²²² Hiroki Maeda, *Gurujia Gendaishi* [Modern History of Georgia], Eurasia Booklet No.131 (Touyou Shoten, 2009), pp.12-14.

refugee as well as the issuance of the deportation order with Georgia as the country of destination.²²³

2. Possibility to acquire the nationality of a country with which the person concerned has a relevant link

Georgia's 2014 nationality law, in particular Article 30 of Chapter 5 on the provisional measures, states the following:²²⁴

1. Other than persons who have acquired or will acquire Georgian citizenship under this Law, the following shall be deemed Georgian citizens:
 - a) persons born before 31 March 1975, who have resided in Georgia for a combined period of at least five years, who were in the territory of Georgia on 31 March 1993, and have not acquired citizenship of another country;
 - b) persons born after 31 March 1975, who resided in Georgia on 31 March 1993 and have not acquired foreign citizenship;
 - c) persons born in the territory of Georgia who have left the territory of Georgia after 21 December 1991, and thus do not meet the requirements of subparagraphs (a) and (b) of this article, unless they have acquired foreign citizenship.

It appears that in order to acquire Georgian nationality based on this provision, the person concerned has to submit an application to the relevant authority to establish his or her nationality, attaching evidence to be examined.²²⁵

A was born before 31 March 1975 in the territory of Georgia and continuously lived there at least five years. A's memory relating to the time of departure from Georgia is uncertain. Furthermore, as A crossed the border on foot, A does not have any documents which can objectively prove the date of departure. It appears A can acquire Georgian nationality if A meets the criteria in Article 30(1)(a) or (c) of the Organic Law of Georgia on Georgian citizenship of 2014. However, in practice, A is unable to prove either of the

²²³ Tokyo District Court, 2015 (*Heisei 27 Nen*) *Gyou U* No.302. As of 14 July 2017, oral argument has been made 11 times and the trial is still ongoing.

²²⁴ Legislative Herald of Georgia, the Organic Law of 2014 on Georgian Citizenship [Georgia], 30 April 2014. Reference was made to the following English translation:
<https://matsne.gov.ge/ka/document/view/2342552?impose=translateEn>.

²²⁵ Nationality Act of Georgia, Article 30 (2).

required facts that he or she was in Georgian territory on 31 March 1993 or that he or she left Georgia after 21 December 1991. Thus, it is highly unlikely that A would be able to acquire Georgian nationality as A is unable to establish the fulfilment of either Article 30(1)(a) or (c) of the Organic Law of Georgia on Georgian citizenship of 2014.

As stated above, A has not acquired Georgian nationality and has not been recognised by the Georgian government as its national. A has not acquired the nationality of any other State and is very unlikely to acquire Georgian nationality as stated above, and thus A is a stateless person not considered a national by any country.

3. Response by Japan

A does not have a residency permit and thus does not possess a foreigner residency card with mid- or long-term resident status. A has been granted a provisional release permit and now goes to the relevant regional immigration bureau almost every month in order to have his or her place of residence confirmed and to have the provisional release permit renewed. A is unable to engage in gainful employment or to enroll him or herself in the social insurance system. A sustains a living by receiving a small amount of livelihood assistance for asylum-seekers for having applied for refugee status once again and simultaneously filing a suit.²²⁶

It is noted however that the financial aid he currently receives will be terminated as soon as the litigation comes to an end. Indeed, A previously fell into extreme poverty for five months after the rejection at the appeal instance for his first refugee status application until the on-going litigation was filed, having to rely on some charity organizations' assistance.

In terms of the country of destination for deportation, the relevant law provides that when a stateless person is to be deported from Japan, the deportation is enforced to countries such as the country in which he or she had lived immediately prior to entering Japan "pursuant to his or her wishes" as he or she does not have country of nationality.²²⁷

²²⁶ Under a programme commissioned by the Ministry of Foreign Affairs, the Refugee Assistance Headquarters (RHQ) of the Foundation for the Welfare and Education of the Asian People provides financial assistance, etc., to asylum applicants. (However, the amount is significantly lower than the criteria for public assistance.) See <http://www.rhq.gr.jp/japanese/profile/business.htm>.

²²⁷ ICRRA Article 53 (1): "Any person subject to deportation shall be deported to a country of which he or she is a national or citizen"; (2): "If the person cannot be deported to such country as set forth in the preceding paragraph, such person shall be deported to any of the following countries pursuant to his or her wishes: (i) A country in which he or she had been residing immediately prior to his or her entry into Japan; (ii) A country in which he or she once resided before his or her entry into Japan; (iii) A country containing the port or airport where he or she boarded the vessel or aircraft departing for Japan; (iv) A country where his or her place of birth is located; (v) A country which contained his or her birthplace at the time of his or her birth; (vi) Any country other than those prescribed in the preceding items."

This means the destination of deportation needs to be determined after verifying the concerned person's wish and taking it into consideration. However, while A wished to be deported to a country other than Georgia, the relevant regional immigration bureau had designated Georgia to be the destination country.

At any rate, deportation of a stateless person is not enforceable unless the designated country of destination is willing to accept such a stateless person. In such a case, the stateless person concerned is highly likely to either remain in detention indefinitely or left without financial means to sustain his or her living while under a provisional release permit. In particular, currently gainful employment of illegal stayers is being rigorously cracked down. Those who employ illegal stayers are highly likely to be punished, which makes it difficult to find any employment in reality.²²⁸

4. Possible size of Category J

(1) Unique nature of this category

Case 18 represents persons whose previous country of nationality disintegrated, and who could not acquire the nationality of the successor State. The cause of statelessness is similar to that of Category B [State succession I]. While the statelessness of the person involved in the case under Category B arose while he was in Japan, the situation of persons under this category differs in the sense that they arrived in Japan after becoming stateless abroad. Furthermore, there is a significant difference between persons under Category B and this category in terms of their legal status upon entry into Japan. In the case under Category B, the person involved arrived in Japan with an actual nationality and a valid passport. In the case introduced for Category J, the person entered Japan with a forged passport while already stateless. This difference can be attributed to the fact that stateless persons face great difficulties in legally crossing the border.

Even a stateless person can be granted protection like other foreign nationals if recognized as a refugee or granted special permission for residency on humanitarian grounds. If this is not the case, a stateless person cannot receive effective protection in Japan. A refugee status application was made in both cases under Categories B and J. Unlike the person involved in the case under B, which had been granted certain kinds of protection, the person in the case under J was not granted such protection. The person in Category J's case also represents the reality that even if a stateless person without a residency permit is issued with a deportation order, its enforcement tends to be difficult and he or she is compelled to live in a precarious situation including poverty. Along with Category H [Consulate denial III (others)], this case demonstrates the need to establish a system to protect persons for their statelessness.

²²⁸ In the lawsuit, the issues examined together with the legality of the rejection of refugee status were the legality of issuing a deportation order designating a country clearly against the wishes of the individual as the country of destination, and whether or not issuance of a deportation order designating a country with no possibility of deportation would qualify as a degrading treatment under ICCPR Article 7 and thereby be illegal.

(2) Possible size of Category J

As stated above in (1), Category J is represented by a case where the disintegration of the country of nationality arose before the person entered Japan. The States that have in recent years gone through State succession which may possibly give rise to statelessness are enumerated under Category B. As in Category B, it is difficult to accurately identify persons falling within Category J. (See Chapter 1, Section 1,2.)

5. Solutions for Category J

(1) Prevention

This category represents statelessness that arises while affected persons are outside Japan. As stated in relation to Category I [Lack of proof], apart from measures such as extending technical cooperation in preventing statelessness due to State succession, Japan cannot take any action on its own to prevent this sort of statelessness.

(2) Protection and reduction

From a protection point of view, it would be useful to streamline the system for statelessness determinations or protection of stateless persons or the systems related to residency permits or special permission for residency. These recommendations are similar to the ones for Category A [Conflict of laws].

Furthermore, even if a deportation order was to be issued, as under Category I [Lack of proof], the person should not be “assigned” a nationality that he or she does not actually possess by the immigration or other authorities.

From a reduction point of view, as stated in relation to Category B, it is necessary to establish a system where facilitated naturalization under Article 8(iv) of the Nationality Act is available for all stateless persons regardless of whether they were born inside or outside of Japan. As the prerequisite for this, continued gathering of accurate information on State succession and subsequent implementation of the law relating to nationality by the relevant Japanese administrative bodies, starting with the legal affairs bureau, would be required.

Category K [Persons denied nationality under the law of the country of origin] Persons who cannot acquire nationality under the law of the relevant country (Sample cases from Myanmar)

Category K is statelessness caused by the fact that nationality is denied by the law of the relevant country.

The individuals in < Case 19 > are Rohingya from Myanmar; they are in a stateless situation because Rohingya are not included as citizens according to the definition of citizenship provided by the nationality law of Myanmar.

1. < Case 19 > Case summary

Rohingya is an ethnic group of Muslims residing in Myanmar, and they mostly reside in the three regions (Maungdaw, Buthidaung, and Rathedaung) in the north of Arakan State along the border with Bangladesh. It is estimated that, in 2014, there were more than one million Rohingyas within Arakan State.²²⁹ Because of historical and other issues, Rohingyas have been subjected to extremely serious violations of human rights within Myanmar. It is said that they routinely face various human rights violations such as forced labor, confiscation of property, arbitrary taxation, limitations on marriage, and limitations on movement.

A, B and C are adult Rohingya men who have been born and raised in Maungdaw in Arakan State. All three of them were routinely subjected to forced labor, looting of property, or inappropriate financial demands by Nasaka (the border security force)²³⁰ and security forces.

A fled to Bangladesh because he was arrested and tortured as a result of protesting the destruction of religious facilities by Nasaka in Maungdaw. He arrived in Japan in 2006 and applied for refugee status. B fled to Thailand by sea because he was arrested and subjected to violence including punching and kicking due to his political activities in Maungdaw. After moving around in various countries in Asia, he arrived in Japan in 2006 and applied for refugee status. C fled to Bangladesh by crossing a river because he feared revenge from soldiers after he begged them to stop abducting a girl who was his classmate in Maungdaw. He arrived in Japan in 2006 and applied for refugee status.²³¹

2. Possibility of acquiring the nationality of relevant States

The country with which A, B and C have a possibility of acquiring nationality is Myanmar. The 1982 Citizenship Law states, in Article 3, Chapter 2 "Citizenship", "Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period prior to 1185 B.E., 1823 A.D. are citizens of Myanmar."²³²

²²⁹ Equal Rights Trust in Partnership with the Institute of Human Rights and Peace Studies, Mahidol University, *Equal Only in Name: The Human Rights of Stateless Rohingya in Thailand* (October, 2014), at <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf>.

²³⁰ Nasaka consists of the police, military intelligence (MI), the *lon htein* (internal security or riot police), customs officials, and the Immigration and Manpower Department (IMPD). Amnesty International, *Biruma (Myanmar) Shousuuminzoku Rohingya: Kihonteki Jinkenno Hitei* [Myanmar, The Rohingya Minority: Fundamental Rights Denied], translated by Amnesty International Japan Burma (Myanmar) Coordination Team, 2004, available at http://www.amnesty.or.jp/library/report/pdf/the_rohingya_minority_fundamental_rights_denied.pdf.

²³¹ Based on submissions during trial, Tokyo District Court, 2007 (*Heisei 19 Nen*), *Gyou U* No.472 and others: A's statement, evidence *Kou I* -1; B's statement, evidence *Kou Ri* -1, C's statement, evidence *Kou Ru* -1.

²³² Burma Citizenship Law (15 October 1982).

The government of Myanmar considers Rohingyas as illegal migrants who entered Myanmar after the Anglo-Burmese War of 1824,²³³ and it does not consider them as nationals for the reason that they do not meet the above definition.

The government of Myanmar has made its position clear that Rohingyas cannot acquire Myanmar nationality in the implementation of the above-mentioned Citizenship Law. In 1998, General Khin Nyunt, First Secretary, told the UN High Commissioner for Refugees regarding the Rohingya issue: “the issue is essentially one of migration... These people are not originally from Myanmar but have illegally migrated to Myanmar because of population pressures in their own country.”²³⁴ Also, in 2004, the State Peace and Development Council, which was the government authority of Myanmar at the time, responded to the Committee on the Rights of the Child by stating that “The Republic of the Union of Myanmar consists of 135 nation states, and there is no ethnic group named Rohingya.” It publicly denies that Rohingyas are citizens of Myanmar.²³⁵

In fact, in the process of implementing the 1982 Citizenship Law, it cannot be confirmed whether the government of Myanmar has officially issued identification documents or passports to Rohingyas (as Rohingyas). For Rohingya people to obtain these official documents, they must pay a large bribe sum at the risk of being punished for false representation under the Citizenship Law (Article 18). Even in such cases, they would not be noted as “Rohingya” but would be noted as “Bengali” or “Muslim”.

As described above, based on the Citizenship Law and its interpretation and practice in Myanmar, Rohingya people cannot expect to acquire nationality as Rohingyas at this point in time.

3. Response by Japan

(1) Nationality determinations by administrative procedure

A, B and C were not recognized as refugees and were not granted residence permits on humanitarian grounds. Therefore, deportation orders were issued to them. Whereas “nationality” is to be noted on a deportation order under the ICRRA (Article 51), “Myanmar” was noted as the nationality of A, B and C. Certainly, A, B and C claimed Myanmar as their country of nationality. However, A and B have never been issued a Myanmar passport or national registration certificate (translator’s note: The original text reads *kokumin torokusho*. It was clarified with the author that *kokumintorokusho* in this context refers to both of the two types of Myanmar ID documents which are often referred to as “national registration card [NRC]” and “citizenship [or nationality] scrutiny card [CSC]” in English). B had family registration, but it noted all of his family members with the ethnicity of “Bengali” and the nationality section was left blank. B’s parents had

²³³ Amnesty International, *supra* note 231, p.3.

²³⁴ International Federation for Human Rights Leagues, *International Mission of Inquiry Burma: Repression, Discrimination and Ethnic Cleansing in Arakan* (2000), at <https://www.fidh.org/IMG/pdf/arakbirm.pdf>, p. 19.

²³⁵ Amnesty International, *supra* note 231, pp.3-4.

the “Union of Myanmar Certification Card” (the so-called Green Card) issued in 1955. B’s family registration had a section to note the national registration number, but it was empty for B; and the nationality section was left blank for all members of the family. C also has never been issued a Myanmar passport or national registration certificate and only has a provisional identification document (the so-called White Card) which clearly states that it is not a proof of nationality. In the ethnicity section on the provisional identification document, he is noted as “Muslim”.

Thus, A, B and C do not possess a passport, national registration certificate, or any other document clearly showing their nationality. Nevertheless, their nationality was noted as “Myanmar” in the deportation procedure. That Rohingyas were denied nationality and subjected to grave violations of human rights was a widely known fact; however, there is no sign that, in the administrative procedure, the nationality of A, B and C was examined and determined carefully with such awareness.

(2) Nationality determinations by the judiciary

A, B and C, along with 18 other persons similarly situated, filed a lawsuit in 2007 to demand the cancellation of the rejection of their refugee status.

The Tokyo District Court, which is the court of first instance, affirmed refugee status for A and B. In its judgment, the court pointed out that “Rohingyas are not recognized as Myanmar citizens under the 1982 Citizenship Law”, and it found with regard to A and B that, “the plaintiffs are not considered as having Myanmar nationality even though they had domicile in Myanmar in light of the fact that most Rohingyas are not granted Myanmar nationality in Myanmar”; and, stating that they are both “stateless persons outside of Myanmar where they had domicile”, it recognized them as refugees.²³⁶

On the other hand, the court denied refugee status to the other Rohingya plaintiffs including C without mention of their nationality, even though they did not possess Myanmar passports or national registration certificates, and some of them did not even have family registration.

At the appeal instance, where whether the 18 appellants including C had Myanmar nationality was an issue, the Tokyo High Court affirmed their Myanmar nationality. The court said, “It is found that the appellants consider themselves as having Myanmar nationality, that they have continuously lived in Myanmar since birth in Myanmar, and that their relatives also reside peacefully within Myanmar; there is no sufficient evidence to recognize that the appellants and their parents have illegally entered Myanmar from Bangladesh, that the appellants were denied nationality or deported by the government of Myanmar; they were residing in Myanmar legally under the approval of the

²³⁶ Tokyo District Court, Judgment, 29 October 2010 (*Heisei 22 Nen*), *Shoumu Geppou*, Vol.57, No.1, p.1.

government of Myanmar,” and “it is appropriate to recognize the appellants as having Myanmar nationality under the citizenship law of Myanmar.”²³⁷

The three of them who were recognized by the court as refugees (including A and B) were officially recognized as refugees later by the Minister of Justice upon conclusion of the court proceedings. However, they were not recognized as stateless at the time of their recognition as refugees (their refugee recognition certificates note “Nationality Myanmar”). The legitimacy of this treatment by the administrative authorities should be in question in relation to the holding of the final judgment by the court.

4. Possible size of Category K

(1) Characteristics of this category

Case 19 is part of a category in which concerned individuals cannot acquire the nationality of the State of birth because of a discriminatory nationality system or its operation in the country, and they arrive in Japan already in such a situation. Rohingyas from Myanmar are representative examples in this Category K.

Despite the fact that most Rohingyas cannot enjoy the status of citizens, a considerable number of them have been treated as Myanmar nationals in Japan by immigration and other authorities. Moreover, in the appeal court judgment mentioned above, they are recognized as having Myanmar nationality based on reasons such as their own recognition, birth, and residence, etc.

(2) Possible size of Category K

At this point, individuals belonging to this category having a certain number and recognized as a group are the Rohingyas of Myanmar. There are no accurate statistics about the Rohingyas residing in Japan, but it is estimated that there are several hundred people at the least.²³⁸ Groups other than Rohingya that are treated by the country of origin in such a way that they fall under this category are not known in particular, and it is difficult to grasp the extent of this category.

5. Solutions for Category K

(1) Prevention

In this category, statelessness arises outside of Japan; so, as in Category I [Lack of proof] and Category J [State succession II], it would be difficult for the Japanese government to take measures for prevention, except from the viewpoint of working with the international community.

²³⁷ Tokyo High Court, Judgment, 12 September 2012 (*Heisei 24 Nen*), *Shoumu Geppou*, Vol.59, No.6, p.1654.

²³⁸ For example, it is reported that approximately 200 Rohingyas are residing in and around Tatebayashi City, Gunma Prefecture. Asahi Shimbun, “*Rohingya Zoku, Gunmani 200 Nin, Nihonni Ikiru Mukokusekishatachi* [Rohingya People, 200 in Gunma, Stateless People Living in Japan]”, Asahi Shimbun Digital SELECT, Kindle version, June 2015.

In relation to the children of Rohingyas born in Japan, it is possible that they fall under Category G. If the parents are duly recognized as “stateless” and the children acquire Japanese nationality at birth under Article 2(iii) of the Nationality Act, their statelessness would be prevented.

(2) Protection and reduction

From the perspective of protection, first, providing protection as refugees can be considered. In case individuals cannot be recognized as refugees, they could be protected by the introduction of a statelessness determination and protection system, and adjustments of relevant systems for residential status and special permission to stay; in this sense, the situation is similar to Category A [conflict of laws] and other categories.

Also, as in Category I and J, in case a deportation order is to be issued, the notation of nationality as “Myanmar” should be avoided as it is not a nationality in a real sense.

On the other hand, from the perspective of reduction, it is desirable to establish a system under which the application of simplified naturalization, provided in Article 8(iv) of the Nationality Act, is not limited to stateless persons born in Japan, as described in Category B [State succession I]. Also, the Legal Affairs Bureau and other government authorities of Japan are expected, as a presumption, to make continuous efforts to collect accurate information on the treatment of the nationality of Rohingyas in Myanmar.

Section 3: Other categories of persons

Category L Unregistered persons

Category L examines cases of persons who are not registered as nationals of a country who may be considered to be stateless.

1. Introduction

It tends to be misunderstood that persons who are “not registered” as a national of a State are equivalent to being “stateless”. However, being “unregistered” in itself does not mean he or she is stateless. However, it cannot be denied that being unregistered or undocumented can lead to statelessness. Thus, this issue is explored as Category L.

For example, three Categories under Section 1 cover cases where being unregistered may lead to statelessness. Category C [Consulate denial I (Refugees)] and Category D [Persons similarly situated as refugees] include cases where the persons concerned or their children are not registered with the countries of origin through the consulates for reasons such as that the persons concerned are refugees or asylum-seekers. Furthermore, Category H [Consulate denial III (others)] covers cases where the persons cannot be registered with the countries of origin of their parents due to the implementation of the law by the consulates. In these sorts of cases where registration cannot be completed due to refugee status or discriminatory implementation of the law, there is a possibility of these persons being stateless.

Category L will thus explore the situation of “unregistered persons” in the Japanese context²³⁹ by examining the possibility of certain persons being considered stateless after giving an overview of why they are “unregistered”.

2. Relationship between “lack of registration” and “statelessness”

For the purpose of this report, “not being registered” refers to the situation where the person concerned is not registered as a national of a certain State whose nationality the person appears to possess. This refers to the situation where the person is unable to prove his or her possession of the nationality of a particular State, as he or she is not known to that State at the same time he or she appears to have automatically acquired nationality as soon as fulfilling the legal requirements (such as that his or her parent is a national) as, according to the text of the relevant State’s nationality law, registration is not a requirement for the acquisition of nationality.

In this context, simply being “unregistered” is not sufficient to recognize the person to be a “person who is not considered to be a national by any State under the operation of

²³⁹ However, those without a Japanese family register, many of whom probably have Japanese nationality, are excluded here because they would be considered under Category M.

its law” which is the definition of a stateless person. The reasons for being without registration needs to be verified, which differ significantly case to case.

Among all the “unregistered” cases whose causes or situations differ, it can be said that the possibility of the persons being recognized as stateless is higher, at least in cases in which the persons themselves or other concerned persons have taken actions which are normally expected to be taken by persons in their situation, but registration cannot be achieved.

3. Unregistered persons in Japan and their reasons for being “unregistered”

It is likely that the majority of “unregistered persons” are children born in Japan who are not registered with the State whose nationality they appear to have acquired (hereinafter “the relevant State”). For persons who came to Japan after having been born outside Japan, the majority of cases should have some sort of documents produced upon their entry into Japan indicating their nationality. Furthermore, it is generally difficult for a person who is a national of a certain State who nevertheless is without any documents proving such possession of nationality to go to another State.

Below, an examination is made by dividing unregistered persons born in Japan into, first, persons whose procedure with the Japanese authorities to submit “notification of birth” (*shussho/shussei todoke*) has not been completed, and second, persons whose birth registration has not been done with the consulate of the relevant State in Japan.

(1) In cases where “notification of birth” has not been submitted to a municipal government office

When a child is born in Japan, regardless of nationality, a notification of birth needs to be submitted within 14 days of birth.²⁴⁰ In principle, the father or mother of the person is obliged to submit the notification of birth.²⁴¹ When the notification of birth is accepted by a municipal government office, confirming the fact that the child concerned has acquired Japanese nationality, he or she will be registered under a family register.

However, there are some cases where the persons’ birth is not registered with a municipality office. The reasons for this include the following.

First, it happens when the person has not been issued with a “certificate of birth” (*shussho/shussei shomeisho*) produced by a doctor or a midwife. In principle, a notification of birth needs to be submitted with a “certificate of birth” attached to it if persons such as a doctor or midwife were present.²⁴² However, some women give birth at home or

²⁴⁰ Family Register Act Article 49 (1) and Response from Director-General, Civil Affairs Bureau, Agency for Legal Affairs (translator’s note: the government agency preceding the current Ministry of Justice), 23 March 1949, *Minji Kou* No.3961.

²⁴¹ Family Register Act Article 52.

²⁴² Family Register Act, Article 49 (3). The current format for notification of birth is combined with the certificate of birth. Circular, Director-General, Civil Affairs Bureau, Ministry of Justice, 25 June 2012 (*Heisei 24 Nen*), *Min Ichi* No.1551.

outside without a doctor or a midwife being present. In particular, in cases where the mothers are of young age and have an unwanted pregnancy, are in poverty, have been abused in complicated family relationships (so-called “specific pregnant women [*tokutei ninpu*]”²⁴³), or are foreigners without residency permits, delivery outside a medical institution tends to occur.

In case there is no birth certificate produced by a doctor or midwife, the person concerned would need to go through a significantly complicated procedure for the child’s birth notification to be accepted, being required to submit different documents to prove that a delivery by the mother has occurred.

In some cases, a “birth certificate” produced by a doctor or midwife may be issued, while a notification of birth to a Japanese municipality is not. Possible reasons for this include that: (a) parents are unaware of the need to submit a notification of birth to a Japanese municipal office, (b) parents are irregularly staying foreigners and thus are afraid of being revealed by approaching a Japanese administrative body, (c) the mother wishes to avoid having her child be registered as a child of her previous husband due to the issues related to the rules of paternity presumption within 300 days post-divorce,²⁴⁴ and (d) the biological mother has disappeared or died.²⁴⁵

(2) In cases where the birth has not been registered with the consulate in Japan

The reasons why some parents do not register their children’s birth with the consulates in Japan include the following: (i) parents are unaware of the need to register their children’s birth also with their consulate, (ii) parents approach the consulate only when there is a benefit for doing so, such as when their children’s passports need to be obtained, or (iii) parents are irregularly staying foreigners and the consulates concerned do not register births of children whose parents are without residency status in Japan, (iv) there are direct or indirect requirements for registering births of children, (v) documentary proof for the parents’ identity is insufficient, (vi) a birth certificate issued in Japan or a certificate issued by a municipality office of with the content of a birth notification submitted is required as a prerequisite for registering the birth with the consulate, and parents do not possess them.

With regard to (iv) above, examples include situations where parents’ payment of tax is required to register the birth of a child. With regard to (v), as the acquisition of nationality is based on the parent-child relationship, documents proving that a child’s mother or father is a national of the State concerned is required.

²⁴³ A “*tokutei ninpu* [specific pregnant woman]” is defined as follows in Article 6-3 (5), Child Welfare Act: “a pregnant woman for whom assistance is deemed necessary in particular with regard to child rearing, prior to birth”.

²⁴⁴ The issue of “300 days after divorce” and cases in which a child becomes unregistered due to this provision are discussed in detail in Category M: Persons without Japanese family register.

²⁴⁵ In case of (d), the child would acquire Japanese nationality if “both of the parents are unknown”, as in Article 2 (iii) of the Japanese Nationality Act. See Category G: Unknown or stateless parents.

At any rate, as long as the notification of a person's birth has not been submitted to a consulate in Japan, the fact that the person is not registered with the relevant State remains unchanged.

4. Examination of "actions reasonably expected to be taken by persons similarly situated"

As stated above, persons are unable to prove which nationality they possess as long as they remain "unregistered" with relevant States. At the same time, they cannot be determined to be stateless either. It can be said that only after the persons themselves or others concerned take actions reasonably expected to be taken, depending on the particular facts of the case, that the persons concerned can be confirmed to be nationals of a particular State or stateless.

In this regard, even among "unregistered" persons, the causes of their lack of registration and their situations differ case to case. What constitutes "actions reasonably expected to be taken" that are required from the persons themselves or other concerned persons also requires individual assessments.

For example, in cases (a), (i) and (ii) above, where parents' ignorance or negligence results in their children's lack of registration, if there is substantial possibility that the registration as nationals would have been done by the parents simply having submitted the notification/application for registration, then it is hard to say the persons are stateless as the "reasonably expected actions" have not actually been taken by the persons concerned in such cases.

In contrast, for persons who approach relevant consulates in Japan and attempt to go through the procedure to have their children registered as nationals of those countries, or who apply for their children's passports, but who have been denied registration for reasons such as (iv) and (v) above, the children concerned will not only be "unregistered persons", but also possibly stateless, as it can be said that the lack of registration has not been resolved after taking the "reasonably expected actions".

Furthermore, in cases where the persons concerned do not have any official documents to demonstrate the possession of nationality of the relevant country, and it is objectively apparent that it is practically difficult to acquire such documents, it is likely that in many cases the persons concerned and their children will be recognized as stateless (without requiring actions beyond approaching the consulate and so on).

Category M Persons without a family register

Category M will examine cases of persons who may be possibly considered stateless among “persons without a family register” (*mukosekisha*), which tend to refer to Japanese nationals who are nevertheless not registered under a family register.

1. Definition of persons without a family register and the causes and the disadvantages incurred

(1) Definition of persons without a family register and the coverage of this category

A “person without a family register” (*mukosekisha*) is generally understood to refer to a “person who is presumed to possess Japanese nationality” but for some reasons is not registered under any family register.²⁴⁶ Issues related to a lack of family register have, since 2007, attracted society’s attention after the issues relating to the presumption of paternity within 300 days of divorce were highlighted.

A family register is an official document which chronologically documents the personal status of a Japanese national from his or her birth to death.²⁴⁷ The creation of a person’s family register leads to the recognition by the State of the existence of the person, resident registration, protection of the rights of the person, and provision of administrative services.

Furthermore, as the family register only registers Japanese nationals, nationality and family registers are closely related. If a person possesses Japanese nationality, it is normally the case that he or she is duly registered under the family register. While registration under the family register does not definitively prove the person’s possession of Japanese nationality, “the fact that notification of birth was submitted as a Japanese national and he or she is registered under a family register results in a presumption of being a Japanese national, as the family register registers Japanese nationals.”²⁴⁸

Based on this premise, previous discourse on the “lack of family register” (*mukoseki*) and on “statelessness” (*mukokuseki*) have tended to discuss each issue separately. The issue of persons without a family register has been handled as a procedural issue, where a child’s birth notification cannot be submitted and a family register cannot be created due to for example the issues with the paternity presumption within 300 days of divorce. In this context, persons without a family register have been generally considered to refer

²⁴⁶ The number of persons within Japan without a family register (minors under 20 without a family register and adult persons without a family register) varies widely depending on the reporting agency, and it is very difficult to grasp the total number. Regarding this issue, it is reported that “1,403 were confirmed according to a research by the Ministry of Justice in and/or after 2014”, and “701 still remained without family register” with “132 among them being adults” as of 10 July 2017. *Shuukan Houritsu Shinbun*, 1 September 2017. On the creation of family registers, see *supra* note 169.

²⁴⁷ Tomohei Taniguchi, *Kosekihō (Shinpan)* [Family Register Act, newly edited version] (Yuuhikaku, 1983), p.44.

²⁴⁸ *Id.*, p.116.

to persons who possess Japanese nationality automatically by birth under Article 2(i) of the Japanese Nationality Act. As a result, it can be said that the previous discourse did not even envisage the possible nexus between the lack of family registers and statelessness.

However, while possession of Japanese nationality is the premise for persons without a family register, if the person concerned cannot “prove” his or her possession of Japanese nationality, he or she is not only a person without a family register but also comes close to being a stateless person.

In this Category M, first, section (2) provides an overview of the issue of lack of family registers. Second, section (3) discusses the relationship between persons without family registers and the Nationality Act, i.e., the possibility of that persons may become without a family register and stateless at the same time in relation to Article 2(i) and (iii) of the Act. In section (4), it will be explained how, in such cases, the “proof” of possession of nationality becomes an issue.

(2) Cause of the lack of a family register

There are a number of causes that lead to situations where persons lack family registers. It is reported that among them, the most frequent cause is a legal one where, for example, Article 772 of the Civil Code is a hurdle, which article presumes that children have a legitimate status, often referred to as the “300 days after divorce” issue.²⁴⁹ As detailed later in section (3), at the time of writing, this issue has been improved to a certain extent. However, it is still useful to review these cases as they are the most known among all persons without family registers.

The “300 days after divorce” issue refers to the issue where a child is treated as the child of one’s previous husband, although he is not the biological father of the child, under the family register due to Article 772 of the Civil Code presuming that the child is legitimate,²⁵⁰ or the issue where the child is left without a family register because the mother does not submit a notification of birth of her child to avoid the *de facto* establishment of a legal parent-child relationship between the previous husband and the child born within 300 days of divorce.

²⁴⁹ In addition, there could be the following cases. See Masae Ido, *Mukosekino Nihonjin* [Japanese People without Family Register] (Shueisha, 2016), p.52 and below.

- 1) Cases in which the parents do not think of filing a notification of birth or purposely avoid registration, due to circumstances such as poverty or unstable domicile;
- 2) Cases in which the parents refuse to submit a notification of birth because “they are against the family register system itself”;
- 3) Cases in which a person who originally had a family register becomes unable to use it for some reason such as memory loss, etc., and
- 4) Case of the Emperor and the imperial family.

²⁵⁰ See *supra* note 181.

Under the Family Registration Law, it is the rule that a husband, wife, and their children are to be registered under the same family register with a common family name.²⁵¹ In the current Japanese society, the vast majority of married couples decide that the wife goes into the husband's family register.²⁵² As a result, their children also get registered under the husband's family register. As a result, even after the husband and wife divorce, if a child is born within the period within which the presumption of legitimacy is effective, and the notification of his or her birth is submitted, then the child will be registered automatically onto the now ex-husband's family register. Thus, women who used to be subjected to domestic violence by their previous husbands end up refraining from submitting the notification of the child's birth.

Article 772 of the Civil Code was written with the viewpoint of child protection with the thought that it would be in the child's interest that his or her parents are legally established as soon as the child is born and that he or she will be raised under the protection of such parents. However, in practice, this very provision functions to "determine" the father-child relationship, which, once established, can only be overturned by completing the legal procedures, such as the procedures for the husband to deny the child's legitimacy, the confirmation of the non-existence of a parent-child relationship,²⁵³ as well as the forcible recognition of paternity. As a result, the provision has caused some children to incur the great disadvantage of being left out of a family register.

(3) The disadvantages experienced by persons outside of a family register

Persons without a family register whose existence is not recognized by the State have previously been enduring a variety of disadvantages.²⁵⁴ Their plight is similar to that of

²⁵¹ Family Register Act Article 6, Article 14 (1), Article 26 (1) and (2).

²⁵² According to the 2015 Vital Statistics by the Ministry of Health, Labour and Welfare, in 609,756 cases among the total of 635,156 marriages, the wife chose the surname of the husband and entered in the husband's family register; this amounts to 96%. Statistics Bureau, Ministry of Internal Affairs and Communications, "Konin Kensuu, Ottono Uji, Tsumano Uji, Todoufuku Betsu - Heisei 27 Nenni Kekkon Seikatsuni Hairi Todokedetamono [Number of Marriages, by Surname of Husband/Wife and by Prefecture: Marriages Entered and Notified in 2015]", Vital Statistics, available at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001157970>.

²⁵³ On procedures for denial of legitimacy, see *supra* note 181. On procedures for confirmation of non-existence of parent-child relationship, see *supra* note 182.

²⁵⁴ For example, there are following cases (Ido, *supra* note 250, p.19 and below):

- 1) One's name is not listed in the Resident Record;
- 2) Access to compulsory education becomes difficult. The notice for entrance into the school system is not mailed to a person without family register;
- 3) Medical expenses must be fully borne by the person, because he or she cannot have a health insurance certificate. It is not possible to receive necessary medical services, such as infant and child medical care and mother and child health care;
- 4) He or she is unable to exercise the right to vote;
- 5) It is not possible to open a bank account or have a contract for a mobile phone, because he or she does not have identification documents;

stateless persons, who are the focus of this report. However, after 2007 when the “300 days after divorce” issue had received heightened attention and the existence of persons without family register had been recognized as a social problem, there have been a number of measures taken to rectify the disadvantages that such persons have to endure. As a result, many of the disadvantages that the persons without family registers face due to the “300 days after divorce” issue are being resolved.

The severity and the type of disadvantages that persons without family registers face differ person to person. It should be noted that some persons continue to face disadvantages due to being unable to benefit from the measures taken by the administrative bodies to remedy their plight. For example, a person without a family register can even be issued a Japanese national passport by fulfilling “certain conditions”. However, the “conditions” include the agreement to be issued a passport under the family name under which he or she is supposed to be registered, in accordance with Article 790 of the Civil Code. Some persons without family registers give up applying for their Japanese passport due to the practical/psychological hurdles that this causes (as a matter of their identity and so on).²⁵⁵

2. Persons who can be both without family registers and stateless: Relationship with Article 2(i) and Article 2(iii) of the Nationality Act

As the Japanese Nationality Act adopts a paternal and maternal *jus sanguinis* principle, children acquire Japanese nationality at the time of their birth if their mother or father possesses Japanese nationality at that time (Article 2(i)). This is the case in situations where a father of Japanese nationality passes away before the child’s birth, and the mother is a foreign national (Article 2(ii)).

As a result, the discourse up to today regarding cases of persons who are without family registers due to the “300 days after divorce” issue presupposes that most of them have acquired Japanese nationality at the time of birth under Article 2(i). This is to say that the issue is examined with a limited focus, with an understanding that the persons already possess Japanese nationality, and the issue is only limited to procedural hurdles in registering the person onto the family register. Adjudications by courts to permit

6) It is not possible to obtain a passport;

7) It is difficult to get a job with a descent employer; and

8) Other: there are cases where non-existence of a family register became an obstacle for marriage and/or birth.

²⁵⁵ There is a person without a family register who cannot obtain a passport for she feels that her personality is being denied by the fact that a passport cannot be issued under the surname she currently uses, which is the surname of her natural father, because she was born before the dissolution of the marriage between her mother and her former husband, who had subjected her mother to severe domestic violence. See the case of “Ms. Kumi Sakagami”, introduced in Chika Akiyama, *Kosekino Nai Nihonjin* [Japanese without Family Register] (Futabasha, 2015).

registration in family registers are also issued with the same understanding, with the premise that persons without family registers possess Japanese nationality.²⁵⁶

In this context, it needs to be noted that the Nationality Act, while adopting the paternal and maternal *jus sanguinis* principle, exceptionally adopts a *jus soli* principle to prevent statelessness under Article 2(iii), and it allows acquisition of Japanese nationality by birth by persons born in Japan of “unknown parents” or stateless parents. The nexus between this provision and the issue of persons without family registers has not been pointed out, as the former has always been considered as an issue of whether one meets the legal requirements under Article 2(iii), and the consequences for not being recognized to fulfill the requirements, i.e. the possibility that situation of the lack of a family register or *mukoseki* would arise there has not been pointed out. However, it needs to be noted that even if a child has acquired Japanese nationality under Article 2(iii), if the parents do not submit notification of birth and/or a family register is not created, the person will be rendered without a family register.

The Baby Andrew case introduced under Category G [parents unknown/stateless] and Case 14 [a child born of unknown nationality in Japan] can be considered as cases where Article 2(iii) and the issue of a lack of a family register come together. In both cases, eventually with court decisions, the respective persons’ acquisition of Japanese nationality was confirmed by birth under Article 2(iii), and a family register was created. However, the persons in these cases had not previously been registered as Japanese nationals until that time. This is to say that the above persons were “persons without a family register” in the sense that while they had always possessed Japanese nationality since birth, no family register had been created. However, these cases had rarely been discussed in the discourse relating to “persons without family register”.

In this sense also, renewed and sufficient attention should be paid to the fact that the lack of a family register occurs not only in relation to Article 2(i) with the typical scenario of the “300 days after divorce” issue, but also on the basis of Article 2(iii).

3. Nexus between a lack of a family register and statelessness from the point of view of “proof”

As stated above, persons without family registers, unlike stateless persons in general, have been understood to refer to persons who have acquired Japanese nationality by birth. In relation to the lack of a family register, the discussion tended to revolve around the fact that the person, while having acquired Japanese nationality, has not been registered under a family register.

However, the fact that a birth notification has not been submitted and a family register has not been created means that the person concerned lacks the grounds to “prove” his or her possession of Japanese nationality. This is to say that, as long as registration under

²⁵⁶ Okayama District Court, Judgment, 14 January 2010 (*Heisei 22 Nen*), *Katei Saiban Geppou*, Vol.64, No.5, p.78; *Hanrei Jihou*, No.2081, p.99. On creation of family registers, see *supra* note 169.

a family register is hindered, the person cannot, at a high standard of proof, “prove” his or her possession of Japanese nationality unless he or she can do so through other means, even if he or she has acquired Japanese nationality under Article 2(i) or (iii).

Looking at the issue of a lack of a family register by focusing on the “proof” of nationality possession, it becomes apparent that some of those who are referred to as “persons lacking a family register” as they are considered likely to have acquired Japanese nationality may in fact face substantively similar issues as stateless persons in general. Persons who can sufficiently prove their possession of Japanese nationality to qualify for the “presumption” are highly unlikely to be stateless, and their issues do not go beyond the lack of a family register as generally known. On the other hand, if the person concerned has limited means to prove or faces difficulties in proving his or her possession of Japanese nationality, the possibility rises that the persons concerned are stateless.

In this context, in relation to the cases arising out of the “300 days after divorce” issue, the practice which is becoming systematic nowadays is to register the person under the resident record (*jyuuminhyou*) without waiting for the resolution of their lack of a family register, under certain conditions. These conditions are that the person’s descent from a Japanese mother is established, thus that the person’s Japanese nationality is clear, that his or her birth notification cannot be submitted due to Article 772 of the Civil Code, and that the person is pursuing litigation or mediation which makes it likely that the person’s family register will eventually be created.²⁵⁷ For this reason, in relation to persons whose residence records are created in accordance with this procedure, it can be considered that a municipal government has recognized the Japanese nationality of persons concerned without family registers, and that the possibility of such persons qualifying as stateless persons is substantively and comparatively low.

On the other hand, even for cases related to the “300 days after divorce” issue, in cases such as where a person without a family register is also without a residence registration and whose mother has not received his or her birth certificate, has not submitted the notification of his or her birth for many years, and who disappears after that, it would possibly become tremendously difficult to establish his or her nationality, as it would be difficult for the person to establish his or her descent from the mother and her previous husband who is purportedly his or her legal father. As a result, the possibility that this sort of person qualifies as stateless is higher compared to persons whose residence registration can be created.

4. Summary

²⁵⁷ These are based on the following notices: Ministry of Internal Affairs and Communications, Local Administration Bureau, Director of Municipalities, “*Shussei Todokeno Teishutsuni Itaranai Konikakaru Jyuuminhyouno Kisainitsuite (Tsuuchi)* [(Notice) on Entry into Resident Record Concerning Children whose Notification of Birth Is Not Submitted]”, 7 July 2008 (*Heisei 20 Nen*), *Sou Gyou Shi* No. 143. *Mainichi Shinbun*, Social Section, “*Rikongo 300 Nichi Mondai, Mukosekijiwo Sukue!* [Issue of 300 Days after Divorce, Save Children without Family Register!]” (Akashi Shoten, 2008), pp.183-186.

Cases of persons without a family register represented by the “300 days after divorce” issue have previously been understood as a procedural matter where hurdles exist in registering persons under family registers, with the implicit premise that the persons possess Japanese nationality. This view has hindered the correct understanding that persons who can be “presumed” to have acquired Japanese nationality under Article 2(iii) of the Japanese Nationality Act can well be “persons without a family register,” apart from persons who are “presumed” to have acquired Japanese nationality under Article 2(i).

It should not be forgotten that “persons without family register” or “*mukosekisha*” also arise on the basis of Article 2(iii) which provides for the acquisition of Japanese nationality under the Nationality Act. The fact that the lack of a family register on the basis of Article 2(iii) is not recognized as a problem is apparent from the fact that the current measures taken to rectify the disadvantages experienced by persons without family registers focus on the cases related to the “300 days after divorce” issue.

The issues of lacking family registers (*mukosekimondai*) and statelessness issues (*mukokusekimondai*) have common features as they both rise out of State systems, and they overlap to some extent with the varied causes for the lack of family registers. Proper recognition of the nexus between the two issues leads to an accurate understanding of both the issues of the lack of family registers and nationality. This would in turn lead to proper remedies to the cases where the lack of family registers and nationality overlap from a holistic perspective covering the two legal frameworks relating to family registers and nationality.

Category N Persons registered under the “Chosen/Korean” classification (ROK/DPKR)

Category N will explore the nationality status of persons from areas previously colonized by Japan and their descendants whose “region of origin” is written as “Chosen” under the Statistics on Foreign National Residents.

1. Issues related to nationality for resident Koreans registered to be from “Chosen”

Among the persons who have resided since before the war from the formerly colonized area and their descendants, the nationality status of those who are registered to be from “Chosen” has some complex issues due to its historical background.²⁵⁸ As of December 2016, the number of persons who are registered under the designation “Chosen” are 32,461.²⁵⁹ The responses to these people, such as in the sample cases, vary, and as the risk of statelessness cannot be eliminated, this category is to be discussed as Category N.

While under Japan’s colonization, persons originating from the colonies including from the Korean peninsula had no choice but to be granted Japanese nationality as “*nihon-shinmin*”.²⁶⁰ Thus, a significant number of these persons who were “*nihon-shinmin*” continued to live in Japan even after the war. However, the Japanese government, based on the San Francisco Treaty,²⁶¹ took the position that their Japanese nationality was lost as of 28 April 1952, the date when the Treaty came into effect, via a Government Circular.²⁶² Based on this Circular, approximately 52,000 Koreans (from the Korean peninsula) and 17,000 Taiwanese (from Taiwan) were made to lose their Japanese

²⁵⁸ Please refer to the following material with regard to the origin of the designation “Chosen”. Chong Yong-hwan, “Zainichi Chosenjinno ‘Kokuseki’ to Chosen Sensou (1947-1952 Nen) – ‘Chosenseki’ wa Ikanishite Umaretaka [‘Nationality’ of Zainichi Koreans and the Korean War (1947-1952): How ‘Chosen Nationality’ Was Born]”, PRIME No.40 (*Meiji Gakuin Daigaku Kokusai Heiwa Kenkyuujō* [International Peace Research Institute, Meiji Gakuin University, 2017]).

²⁵⁹ *Supra* note 42, “Statistics on Foreign National Residents, December 2016 (published in March 2017), at <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001161643>.

²⁶⁰ However, those originating from the colonized areas were registered under an “External area” family register, and they had a different legal status than Japanese nationals (“in-land”/mainland nationals) who had been living in mainland Japan.

²⁶¹ Article 2 of San Francisco Peace Treaty provides that Korea and Taiwan shall be severed from Japanese territory on the day the treaty enters into force.

²⁶² Ministry of Justice Circular by Director-General, Civil Affairs Bureau, “*Heiwa Jyōuyakuno Hakkouni Tomonau Chosenjin, Taiwanjintounikansuru Kokuseki Oyobi Kosekijimuno Shori* [Family Register and Nationality of the Chosen and Taiwan People upon the Adoption of Peace Treaty]”, 19 April 1952 (*Showa 27 Nen*), *Minji Kou* No.438. However, there is an argument that this Circular No.438 is null, because it stipulated nationality through a document not amounting to law in violation of Article 10 of the Japanese Constitution. Yasuaki Ohnuma, *Zainichi Kankoku, Chosenjinno Kokusekito Jinken* [Nationality and Human Rights of Koreans Residents] (Toushindo, 2004), pp.312-313.

nationality.²⁶³ These people and their descendants are the persons who would subsequently be referred to as “*zainichi*”. Among them, for *zainichi* Taiwan persons, it is understood that their nationality of “Republic of China” was recovered via the Law relating to the Treatment of Nationality of Overseas Taiwanese that was issued by the government of Taiwan in June 1946.²⁶⁴

On the other hand, person from the Korean peninsula, who are referred to as “*zainichi*” Koreans, had their country of origin, Chosen, divided into South and North since 1948. Both governments of the South and North asserted their legitimacy and stated that the areas and persons governed by each other were their territory and their citizens. Japan, while it recognized ROK as a State, did not recognize DPRK as a State.

The column “*kokuseki-toh*” (nationality and others) on the (former) Alien Registration Certificate issued by the government of Japan held by “*zainichi*” Koreans either lists a reference to “ROK” or “Chosen” [Translator’s note: the Korean/Japanese term referring to Korea in general]. With regard to *zainichi* Koreans registered under “ROK”, it can be assumed that they are registered by the government of ROK as overseas nationals.²⁶⁵ However, those persons registered under the designation “Chosen” are not registered with the ROK as overseas nationals, but they may not be identified as nationals of DPRK either. The government of Japan’s treatment of these persons also differs depending on the case.

2. Acquisition of nationality of relevant countries

(1) ROK

According to Article 5 of the provisional regulation relating to nationality on 11 May 1948, “persons who have been removed from the Japanese family register [translator note: Registering Japanese nationals] are considered to have recovered Korean (*Chosen*) nationality before 9 August 1945.”²⁶⁶

²⁶³ Immigration Bureau, Ministry of Justice, “*Shutsunyuukoku Kanrito Sono Jittai, Showa 34 Nen* [Immigration Control and Its Actual Situation, 1959]” (Immigration Bureau, Ministry of Justice, 1959), pp. 21-22.

²⁶⁴ *Id.*, p.20. Nevertheless, Taiwan was not recognized as a State upon the recovery of diplomatic relations between Japan and People’s Republic of China in 1972.

²⁶⁵ As of 1947, when the Ordinance for Alien Registration was implemented, all *zainichi* Koreans had a “Chosen” reference on their alien registration certificates. Upon ROK government’s request, since 1950, registration under the designation ROK has been permitted according to the wishes of the concerned individual. *Id.*, pp.16-17. The Agreement between Japan and the Republic of Korea Concerning the Legal Status and Treatment of the People of the Republic of Korea Residing in Japan, which was adopted in 1965, refers to the “People of the Republic of Korea Residing in Japan”; Japan and ROK treat those registered under ROK as ROK nationals. Ohnuma, *supra* note 263, p. 364. However, there are few persons who are not registered with the ROK embassy while their foreigner residence card carries a designation of ROK.

²⁶⁶ It is noted that term “Chosen” was used in the Temporary Regulations on Nationality because it was before the establishment of ROK government. Sok Dong-hyun and Koo Bon-Joon, (translation by Kim Moonsook), *Saishin Daikanminkoku Kokusekihou-Chikujyou Kaisetsuto Unyou Jitsumujyouno Kaishaku*

Those persons can be considered to have acquired ROK nationality upon the publication of the ROK constitution on 17 July in 1948. Their descendants from the second-generation on are understood to have acquired ROK nationality by *jus sanguinis* under the relevant national legislation.²⁶⁷ It is noted that for *zainichi* Koreans registered under the designation “Chosen”, even if these persons have acquired DPRK nationality and moreover are issued with a certificate of overseas national from DPRK, it is understood that they still maintain their ROK nationality.²⁶⁸

(2) DPRK

The DPRK constitution was promulgated on 8 September 1948. The establishment of DPRK was declared on 9 September 1948. However, the Constitution itself does not define its nationals. According to the Nationality Act of 9 October 1963, persons who used to possess Korean nationality before the establishment of DPRK, who did not renounce such nationality, are DPRK nationals (Article 1). As the DPRK Nationality Act adopts a *jus sanguinis* principle, descendants of DPRK nationals acquire DPRK nationality. On 23 March 1995 a new Nationality Act was adopted, but the acquisition of nationality by birth remains the same as the previous Nationality Act 1963.²⁶⁹ Thus, resident *zainichi* Koreans from the Korean peninsula are considered to have acquired DPRK and ROK nationality simultaneously.

3. Treatment of “Chosen” *zainichi* resident Koreans by relevant countries

(1) ROK

[ROK’s Latest Nationality Law: Commentary and Interpretation for Practice], (Nihon Kajo Shuppan, 2011), pp.36-37.

²⁶⁷ Reference was made to the excerpts of the Seoul Administrative Court judgment on 19 June 2014 on confirmation of nationality of a Sakhalin Korean, as mentioned in the handouts distributed at the 20th session of the Study Group on Statelessness in Japan (held in Tokyo on 22 April 2016) for a report by Attorney Kim Cholmin.

²⁶⁸ See the 8 December 1995 ruling of the Seoul High Court, on a case concerning a plaintiff who was born in 1937 in an area currently belonging to ROK, who resided in an area belonging to DPRK after the war, moved to China around 1960, and then entered ROK with a husband in 1992. The High Court stated, “The DPRK areas are part of the Korean Peninsula which belongs to the ROK territory, where ROK exercises its sovereignty and where any national entity or sovereignty in conflict with the ROK’s sovereignty cannot be recognized by law. Therefore, even if the plaintiff has acquired the DPRK nationality by the DPRK Constitution and has been issued with DPRK’s certificate for citizens abroad, such circumstances have no effect on the fact that the plaintiff has acquired and maintains ROK nationality.” On 12 November 1996, the ROK’s Supreme Court upheld the High Court’s ruling. Yasuhiro Okuda, Katsuhiko Oka, and Masataka Kyou, *Kankoku Kokusekihouno Chikujyou Kaisetsu* [Commentary on ROK’s Nationality Law] (Akashi Shoten, 2014), pp.155-156.

²⁶⁹ Article 2(1), 1995 Nationality Act. See the DPRK Nationality Act in the Documents section in Shouichi Kidana and “*Teijyuu Gaikokujinto Kazokuhou* [Foreign Residents and Family Law]” Study Group, ed., *Dai 3 pan Zainichino Kazokuhou Q&A* [3rd Edition, Family Law for *Zainichi*, Q&A], Nihon Hyouronsha (2012), p.411 and below.

As stated earlier, “Chosen” *zainichi* Koreans are considered to have acquired the nationality of both ROK and DPRK according to the Nationality Act of each State. However, they face difficulties in their attempt to travel to or stay in ROK as they are not registered as ROK nationals.

As “Chosen” resident Koreans are not issued a national passport by the ROK government, they travel to ROK by being issued with a “certificate for travel” by the ROK embassy in Japan. However, after the change of government, the number of “certificates of travel” issued since 2009 has drastically been reduced. The entry of resident Koreans registered as “Chosen” into ROK has been restricted²⁷⁰. In 2009, a suit was filed in Seoul, Korea, against the decision not to issue a “certificate of travel” by the ROK embassy in Japan.²⁷¹ A, a scholar of *zainichi* Korean history was invited to participate in an international symposium on the history of *zainichi* Koreans. He thus applied for a “certificate for travel” at the embassy of Korea in Osaka. However, when he was asked whether he “has a plan to acquire ROK nationality (to register as a ROK national)”²⁷² on the application form for the “certificate of travel”, A stated that he did not have such a plan. He was subsequently asked to share detailed information on the purpose of his travel to ROK, the background for such travel, family relationships, and his employment. He was subsequently rejected issuance of a “certificate of travel” for the reason that his “identity could not be verified with the Police Agency”.²⁷³ While the nationality status of *Chosen* resident Koreans was not the focus of this suit, the ROK government’s discretion over issuance of an ROK certificate of travel to “Chosen” resident Koreans in Japan (who, without such a certificate cannot travel to ROK) was disputed. The first instance court²⁷⁴

²⁷⁰ The issuance rate vis-à-vis applications for a certificate of travel under the Roh Moo-hyun regime in 2005-2008 was 99%-100%, with 2,000-3,000 applications; however, after 2009 when Lee Myung-bak came to power, the issuance rate and the number of applications decreased sharply. In 2009, there were 1497 applications and 1,218 certificates were issued (issuance rate at 81.3%); in 2011, there were 64 applications and 25 certificates issued (issuance rate 39%); in 2016 under the Park Geun-hye regime, there were 26 applications and 9 certificates issued (34.6%), the lowest in 12 years. Touitsu News, “Chosensekino Zainichi Korian, Kankokuenu Nyuukoku Shouninritsu 35% Nisugizu [Zainichi Koreans with Chosen Nationality, Entry into ROK, Approval Rate Only 35%]”, available at: <http://japanese.yonhapnews.co.kr/relation/2016/09/26/0400000000AJP20160926004900882.HT ML>

<http://www.tongilnews.com/news/articleView.html?idxno=118265> (in Korean).

²⁷¹ Chong Yong-hwan, “Chosenseki Zainichi Chosenjinno Kankoku Nyuukoku Mondai [Issues related to Entry into ROK by Zainichi Chosen People with Chosen Nationality]”, Korea NGO Center, *News Letter*, No.24 (November 2010), pp. 28-30.

²⁷² If the ROK authorities’ position is that “Chosen” nationals have ROK nationality as a matter of course under the ROK Nationality Act, it would probably not be accurate to refer to “acquisition of nationality” in the guidance regarding the overseas national registration; however, at the ROK Consulate-General in Japan, the overseas national registration procedure requiring a change from “Chosen nationality” to “ROK nationality” is referred to as acquisition (change) of nationality.

²⁷³ Chong, *supra* note 272, p.28.

²⁷⁴ The Decision on the petition to cancel the denial of issuance of certificate of travel (2009 ku-go-34891) 31 December 2009, Seoul Administrative Court 14th Division (Japanese translation), made available by the goodwill of Chong Yong-hwan.

referred to A as a “stateless overseas compatriot” and stated that the rejection of the issuance of a “certificate of travel” was illegal because A was “not considered to pose any concerns to the national security, order, or public welfare.” However, the second instance court,²⁷⁵ while also referring to A as a “stateless overseas compatriot”, concluded that the non-issuance of a “certificate of travel” itself is not illegal as the embassy has a wide discretion over the decision to issue one. The second instance court also stated that they did not see the link between the non-issuance and the fact that A did not have a will to “change his nationality” to ROK. Furthermore, the Supreme Court did not particularly refer to A as stateless.²⁷⁶ The Supreme Court stated that “compatriots registered under the *Chosen* designation in Japan”, while they can only travel to ROK with the “certificate of travel” under ROK law, decided that the second instance court decision was justified.

On the other hand, there has been a decision by the ROK National Human Rights Commission which referred to “*Chosen*” resident Koreans as stateless. In that case, B, a resident *zainichi* Korean registered with the Japanese authorities as “*Chosen*” requested a “certificate of travel” from the ROK embassy in Osaka to study overseas in ROK. He complained to the Human Rights Commission stating that he was rejected a certificate of travel, and the ROK embassy forcefully insisted that he acquire ROK nationality (to register as a ROK national) in order to obtain one, which in his view amounted to human rights violation. The Human Rights Commission stated that “to consider resident Koreans registered as ‘*Chosen*’ in Japan, such as B, meets the definition of as stateless person under Article 1 of the 1954 Convention on the Status of Stateless Persons reflects the reality of our society.”²⁷⁷ Further to this, the Human Rights Commission stated that “based on the special historical background that resident Koreans have gone through, B has not opted for either ROK or North Korean (DKPK) nationality.” The Commission concluded that, in light of the aforementioned circumstances, “to refuse the issuance of a certificate for travel to B, or to require B to acquire ROK nationality as the condition for issuing him with a certificate of travel” is equivalent to an act which infringes upon the human rights and liberty guaranteed under the Constitution of ROK.

However, there has also been a ROK Ministry of Justice’s administrative decision on “*Chosen*” resident Koreans who reside in ROK (having moved from Japan) which presupposed that these resident Koreans possessed ROK nationality. This case involved C, a resident Korean registered under the “*Chosen*” designation with the Japanese authorities, who entered ROK with a certificate of travel. Upon her application for a

²⁷⁵ The Decision on the petition to cancel the denial of issuance of certificate of travel (2010 nu-35361) 28 September 2010, Seoul High Court 1st Division (Japanese translation), made available by the goodwill of Chong Yong-hwan.

²⁷⁶ The Decision on the Petition to cancel the denial of issuance of certificate of travel (2010 tou-22610), 12 December 2013, Supreme Court Third Division (Japanese translation.), made available by the goodwill of Chong Yong-hwan.

²⁷⁷ National Human Rights Committee, Infringement Relief Second Committee, decision on 1 December 2009 (Japanese translation), made available by the goodwill of Chong Yong-hwan.

resident permit as a “spouse of a Korean national” as a foreigner, the Ministry of Justice stated that under the Korean Nationality Act “resident Koreans in Japan are considered to have ROK nationality” and “It is clear that, under the 1963 Nationality Act prevailing at the time of birth (1963), the applicant became a ROK national as soon as she was born, being a child of a resident Korean father.” The Ministry of Justice responded that C cannot apply for a resident permit as a foreigner.²⁷⁸ As discussed till now, the assessment of “Chosen” resident Koreans’ nationality status has been varied even among the ROK authorities. At the same time, it can be said that under the current circumstances, “Chosen” resident Koreans without registration with ROK as overseas nationals are unable to enjoy the right to return to their own country, which is important as a right of a national of any country.

The reasons for “Chosen” resident Koreans not to register with ROK as overseas nationals vary. There are those who simply retain the “Chosen” designation, having not faced any particular challenges in living in Japan. There are those who identify themselves as of DPRK nationality and have reservations against registering themselves of DPRK nationality. Some take the position that they would not want to opt for registration as either “ROK” or “DPRK” nationality until the two Koreas become united. This shows that nationality is not simply a measure to access rights, but it is also connected closely to one’s identity.

(2) DPRK

There are reports that DPRK was carrying out registration of nationals by the issuance of “*koumin-sho*” (national certificates) after the colonization by Japan was over. However, there appears no evidence that “overseas compatriots” were registered as such.²⁷⁹ On the other hand, DPRK welcomed the “repatriation” of resident Koreans to DPRK.²⁸⁰ As of today, when “Chosen” resident Koreans in Japan wish to travel to DPRK, they are granted a national passport of DPRK. While the issuance of a national passport can be considered to be an expression of the DPRK’s will to treat the resident Koreans as their nationals, much unclarity remains with regard to the DPRK’s implementation of its nationality law and how they consider resident Koreans as their nationals.

(3) Japan

It is clear that “Chosen” resident Koreans are treated as foreigners. However, the administrative bodies’ treatment of their nationality is not unified either.

²⁷⁸ Kim, *supra* note 268.

²⁷⁹ Cho Kyung Jae, “Zainichi” no Kokusai Kazokuhouto Sono Hongokuhouwo Kangaeru [Resident Koreans’ International Family Law and Applicable Law], *Nihon Kajo Shuppan* (2015), pp.113-124.

²⁸⁰ DPRK stated that DPRK “welcomes returnees from Japan and will assist them with employment, housing and education”. Asahi Shimbun, “Umi Watatta Nihonjinzuma 1800 Nin, Kitachousenkara Hatsuno Satogaeri, Rekishiwo Kenshou [1800 Japanese Wives Who Crossed the Sea, Return from DPRK for the First Time: Verification of History]”, 15 October 1997 morning edition special.

First, the term “*Chosen*” designated on their foreigner resident registration cards refers to “*Chosen* people who came to Japan from the Korean peninsula, which was once Japan’s colony, and it does not signify any particular nationality.”²⁸¹ On the other hand, the designation “ROK” on the foreign resident registration card is understood to refer to a particular nationality (of ROK).

According to the Japanese Act on General Rules for Application of Laws [translator’s note: Private international law legislation relating to the choice of law], when determining which State’s law is applicable in certain cases [translator’s note: involving a foreign national in Japan], varying theories exist as to whether ROK law or DPRK law is applicable. Under the current administrative practice, unless the person concerned himself does not particularly state that “I am not a ROK national,” it appears that the Japanese authorities process the case by applying ROK law.²⁸² In terms of case law, there is a decision of a family law case which involved a resident Korean family including an individual registered as “*Chosen*”, which designated both DPRK and ROK law. In the past, there was one case where a resident Korean was processed in a similar manner as a stateless person, and applied the law of Japan was applied, which is the law of the State of habitual residence.²⁸³

4. Summary

As discussed up to now, resident Koreans under the “*Chosen*” designation on their foreigner residence cards in Japan, which arose from the colonization and post-war responses, may have acquired both ROK and DPRK nationality under the nationality laws of both States. However, in terms of the actual implementation of the law, the responses and treatment by ROK authorities have varied. It is also necessary to consider further which of the above is the “position” of the “competent authorities for nationality issues” per the UNHCR Handbook on Protection of Stateless Persons.²⁸⁴

A “State” under the statelessness definition under Article 1 of the 1954 Convention include States that are not recognized as a State by the country concerned.²⁸⁵ In such cases, a resident Korean is only recognized as a stateless person when he or she is not considered a national under the operation of the laws of two “States”, i.e., ROK or DPRK.

In this regard, it can be said that not many *Chosen* resident Koreans are faced with situations where they need to formally confirm their status as nationals vis-à-vis ROK and DPRK. In fact, the authors are not aware of any case where a particular individual was clearly declared as being “not a national” by both ROK and DPRK authorities.

²⁸¹ See the Ministry of Justice 26 October 1965 Circular “*Gaikokujin Tourokujyouno Kokusekiranno ‘Kankoku’ aruiwa ‘Chosen’ no Kisainitsuite* [Designation of ‘ROK’ or ‘Chosen’ under the Nationality Column in Alien Registration]”.

²⁸² Kidana et al., *supra* note 270, p.5.

²⁸³ Cho Kyung Jae, “*Zainichi Kankoku, Chousenjinno Zokujinhou Nikansuru Ronsou* [Issues related to the Applicable Law for Resident Koreans]”, *Ritsumeikan Hougaku* [Ritsumeikan Law Review], 2007, No.2 (No.312), pp.294-303.

²⁸⁴ UNHCR Handbook, *supra* note 69, para. 27-30 and para. 37.

²⁸⁵ *Id.*, para. 19, 20.

However, the ROK government's decision not to issue a certificate for travel, and thereby not allow the abovementioned A (who was not registered as an overseas national with the ROK embassy and who said he did not have any plan to do so), to travel to his "own country" could be interpreted as an expression of not considering him as a national.

Chapter 3: OVERALL ANALYSIS

Chapter 2 has categorized persons who are or may be stateless based on the actual cases available to the authors. This chapter will provide an overall and general analysis in light of the categories provided in Chapter 2.

Section 1: Issues faced by stateless persons in Japan

As discussed up to now, for persons residing in Japan who are stateless or may be stateless, there are those who are classified by Japanese authorities as stateless and those classified as nationals of a particular State. Depending on how the relevant Japanese administrative bodies classify persons, the challenges faced by a stateless person or a person who may be stateless differs. From here on, an analysis will be made by distinguishing those classified as stateless and those classified as nationals of a particular country by the Japanese authorities.

1. Persons classified as stateless

(1) Persons with residency permits

Even if the Japanese authorities classify a person as a stateless person, the situation of the person differs significantly depending on the possession of residency permits. In cases where a stateless person has a mid- or long-term residency permit such as a “long-term resident” or “permanent resident”, their rights and obligations do not differ significantly from persons with nationality with the same residency status.

In terms of social welfare, (1) social insurance (health insurance or pension), (2) social allowances (such as child allowances for child-raising), (3) social welfare (allowances to persons with disabilities), and (4) housing assistance (such as allowances for housing) are generally applicable to foreigners (stateless persons or nationals of a foreign State), while the provision of some services may be limited depending on the type of residency status held by the person concerned.²⁸⁶ Nevertheless, with regard to the livelihood protection

²⁸⁶ For details, please refer to the Japan Federation of Bar Associations (JFBA)'s publication entitled “*Dai 47 Kai Jinken Yougo Taikai Symposium Dai 1 Bunkakai Kichou Houkokusho, ‘Taminzoku, Tabunkano Kyouseisuru Shakaiwo Mezashite – Gaikokujinno Jinken Kihonhouwo Seitei Shiyou’* [47th General Meeting on Human Rights Protection, Symposium, First Sub-committee, Keynote Report, ‘Toward a Multiethnic and Multicultural Society: Let Us Make a Basic Law on the Human Rights of Foreigners’]” (2004), pp.306-321,

http://www.nichibenren.or.jp/library/ja/opinion/hr_res/data/sympo_keynote_report041007.pdf

Also, on the differences in practice in implementation of various social welfare systems based on the status of residence of foreigners, see Sousuke Seki, “*Hiseiki Taizaishano Kenri* [Rights of Irregular Stayers]”, in *Gaikokujinno Jinkenno Apuroochi* [Approaches to the Human Rights of Foreigners], ed. Atsuchi Kondo. Akashi Shoten, 2015, pp.166-167.

allowance (*seikatsuhogo*), the Public Assistance Act covers “nationals”,²⁸⁷ and thus it is understood that foreigners are unable to receive allowances as a right and that such allowances are only provided as a matter of administrative measures.²⁸⁸

Furthermore, a stateless person with residency status, being a foreigner, is generally restricted from participating in elections, running for elections, or serving in public positions. Also, stateless persons in general are not issued with a national passport from any State, and thus they encounter difficulties travelling abroad.²⁸⁹ While they can be issued with a “Re-entry Permit” (Article 26(2), ICRRA), there are actually States where those holding a re-entry permit cannot be admitted. The number of States where they can travel to are thus restricted.

Moreover, even when the person concerned has a residency permit, if he or she has been issued with a deportation order for falling within the grounds for deportation (as specified under Article 24 of ICRRA), there is always a possibility that the person is placed into a quite vulnerable position and the person’s removal (deportation) becomes practically difficult or impossible. Furthermore, even if the person’s deportation is non-executable, that fact itself does not lead to the right to stay in Japan²⁹⁰ or right not to be expelled under the current system.

Even if the person concerned has a mid-term or long-term residency permit, he or she may face challenges related to his or her statelessness. For example, stateless persons whose date of birth is unknown may have a foreigner residency card carrying the date of birth 00/00, as previously discussed. There has been a report where this way of displaying the date of birth (compounded by the designation “stateless”) on a foreigner residence card made a person subject to a police investigation for “being of unknown

²⁸⁷ Public Assistance Act, Article 1: “The purpose of this Act is for the State to guarantee a minimum standard of living as well as to promote self-support for all citizens who are in living in poverty by providing the necessary public assistance according to the level of poverty, based on the principles prescribed in Article 25 of the Constitution of Japan.”

²⁸⁸ The Supreme Court, Second Petty Bench, Judgment, 18 July 2014 (*Heisei 26 Nen*), *Hanrei Chihoujichi*, No.386, p.78.

²⁸⁹ Although there are situations such as in Latvia where stateless persons—not possessing nationality of any State—referred to as “non-citizens” are issued with a special passport from the Latvian government and have a special legal status that allows them to access consulate protection, stateless persons who are granted this sort of status are rather exceptional internationally.

²⁹⁰ Article 52(6) of the ICRRA provides for special release (so-called *tokubetsu homen*) with certain conditions when it becomes apparent that the person concerned cannot be deported; however, the statistics on the number of those granted special release, unlike the number of those granted provisional release under Article 54, are not released, and it can be assumed that this provision is rarely applied in practice. Nevertheless, there is a record of a parliamentary session which carries a reference to a case in which one stateless person, after having been detained for six years, was granted a special release. *Dai 61 Kai Kokkai Shuugiin Naikaku linkai Kaigiroku* [Record of Cabinet Affairs Committee, House of Representatives, 61th Session of the Diet], (24 April 1969), available at: <http://kokkai.ndl.go.jp/SENTAKU/syugiin/061/0020/06104240020019.pdf>.

identity”,²⁹¹ and the person faced difficulties such as in concluding a contract with a cell phone company, opening a bank account, using a credit card, finding employment, receiving coverage of national health insurance, and in applying for municipal government-run residency and nursery enrollment.²⁹²

(2) Persons without residency permits

Stateless persons who do not have residency permits face more serious challenges.

The Immigration Bureau will initiate deportation procedures. If the person concerned is stateless, then the destination State for removal is to be determined “pursuant to his or her wishes” (Article 53(2) of ICRRRA); but the Immigration Bureau’s current practice appears to be that they do not necessarily confirm the (re-)admissibility of the person concerned with the State concerned before designating that State as the destination. In such a case, even if the person concerned has been issued with a deportation order, the person can be left in a situation where removal is not executed for a long period. The fact that the person is stateless or there is no prospect for removal to another State, by itself, has not been included in the Immigration Bureau’s relevant guidelines²⁹³ as a positive element for granting special permission for residency (Article 50(1) of ICRRRA).

Detentions under the issuance of the deportation order is *de facto* indefinite; thus, the person concerned can be detained for a long period of time.²⁹⁴ Even if the person has been granted a provisional release permit,²⁹⁵ the person would have to report to the Immigration Bureau regularly to have the permit renewed. A person with a provisional release permit is not allowed to work gainfully. He or she is unable to receive any public assistance even in precarious living conditions, and no social insurance is provided. In recent years, the crack-down on engagements in gainful employment by persons granted provisional release in general has become strict, and a significant number of persons who worked illegally have had their provisional release permits revoked and have been detained.

On the other hand, children, even if they are without residency permits, can receive education free of charge at a public school as far as the mandatory education at elementary and junior high schools is concerned, as children of Japanese nationality

²⁹¹ Interview with a person whose nationality is recorded as “stateless” and date of birth is recorded as “00/00” on his foreigner residence card. This individual was questioned by a police officer on a street in Yokohama City in November 2016, and upon production of his foreigner residence card was further investigated for more than 30 minutes on the street with the suspicion that the card may have been forged.

²⁹² See the experiences of A under Category B: State succession type I.

²⁹³ On Special Permission to Stay (ICRRRA Article 50(1) and Article 61-2-2 (2)), see *supra* note 122.

²⁹⁴ ICRRRA Article 52(5): “(...) if the foreign national cannot be deported immediately, the immigration control officer may detain him or her in an immigration detention center, detention house, or any other place designated by the Minister of Justice or by the supervising immigration inspector commissioned by the Minister of Justice until such time as deportation becomes possible.”

²⁹⁵ On provisional release (Article 54 of ICRRRA), see *supra* note 175.

do.²⁹⁶ Municipal governments, upon being informed by regional immigration bureaus of the existence of children of school age with provisional release permits, are to facilitate their enrollment in school as necessary.²⁹⁷ However, depending on the municipality, it cannot be denied that there is a risk that they deny school enrollment to children without residence permits.

Persons under this category are in principle not entitled to livelihood protection allowance. Thus, stateless persons without residency permits will fall in precarious living conditions without being able to leave Japan to any country.

As an asylum applicant is able to receive a certain amount of livelihood assistance during the administrative procedure under certain conditions, it can be said that some stateless persons who are without eligibility for refugee status are put in a situation where they are compelled to apply for refugee status.²⁹⁸

2. Persons classified as nationals of a foreign State

The differences in treatment that arise depending on a person's possession of residence permit have been discussed above. However, stateless persons who are nevertheless classified by the Japanese authorities as possessing a particular nationality face another problem of not being able to benefit from the legal effect that arises for being a stateless person.

First, persons born of stateless parents born in Japan acquire Japanese nationality under Article 2(iii) of the Nationality Act at the time of birth. However, with the parents being classified as nationals of a particular country, their children would not be able to benefit from the same article. Furthermore, persons born in Japan who have been stateless from the time of birth are able to benefit from facilitated naturalization for certain conditions, such as the residency duration requirement being relaxed under Article 8(iv). However, if the child is classified as having a nationality, he or she will not be able to have this provision applied to him or her.

As apparent from Case 17 under Category I, in the context of deportation, stateless persons who are classified as having a particular nationality will have the "country of nationality" as the State of destination. However, if the State concerned does not

²⁹⁶ Abe Tomoko Shuugiin Giin "Kokusaitekina Jinken Shojoyouyakuno Teiketsu Oyobi Jisshi, Narabini Gaikokujinno Nenkinnya Kyouikutounikansuru Shitsumon Shuisho" Nitaisuru, 2011 (Heisei 23) Nen 12 Gatsu 16 Nichiduke Seifu Toubensho (Naikaku Shuu Shitsu 179 Dai 121 Gou) [Government Response on 16 December 2011 to the "Memorandum on Questions in the Diet concerning the Conclusion and Implementation of International Human Rights Treaties, as well as Pensions and Education of Foreigners" Submitted by Tomoko Abe, Member of the House of Representatives (No.179-121, Questions in the House of Representatives, Cabinet)].

²⁹⁷ Circular by Director-General, Elementary and Secondary Education Bureau, Ministry of Education, Culture, Sports, Science and Technology, "Gaikokujinno Kodomono Shuugaku Kikaino Kakuhoniatatteno Ryuuitennitsuite [Issues in Securing School Enrolment Opportunity for Foreign Children]", 5 July 2012 (Heisei 24 Nen), 24 Monka Sho No.388, at http://www.mext.go.jp/a_menu/shotou/clarinet/004/1323374.htm.

²⁹⁸ See *supra* note 226, on financial assistance (*hogohi*) provided by RHQ.

(re-)admit the person, the person would remain in limbo without any State to accept him or her. Furthermore, for stateless persons the destination State will be decided “pursuant to his or her wishes”. If the person is classified as a national of a particular State, such choice is not provided (Article 53(1)).

If a stateless person is to engage in a legal act to change some personal status, and he or she is classified by the Japanese authorities as a national of a foreign State, then the applicable law will be the law of the State designated as the country of nationality. The stateless person concerned would, as a consequence, be required to produce a document such as a certificate from the State designated by the Japanese authorities to be the country of nationality proving that he or she fulfills the requirement for taking such a legal act under the law of that State. However, the State concerned, not considering the person as their national, may refuse issuance of such a certificate, which would raise obstacles for the person to proceed with the procedure in Japan to change personal status relationships such as marriage or recognition of parentage.

Furthermore, stateless persons may, first of all, not realize that they are indeed stateless due to the fact that their official personal identification documents issued by the government of Japan state that they are nationals of foreign countries. Because of this, it sometimes happens that persons realize that they are stateless only after they attempt to apply for the issuance of a passport at the consulate of the State considered by the Japanese government to be their country of nationality. They may also face psychological difficulties in establishing their identity when they are not considered as a national by the country of nationality that their personal identification certificate lists.

Section 2: Proposals to address the current issues

In order to protect stateless persons and to prevent and reduce statelessness, as already pointed out in the Arakaki Report (UNHCR 2015), amendments to the relevant laws and regulations and consideration of accession to the 1954 Convention and 1961 Convention is needed. The necessary amendments include: insertion of the statelessness definition into the relevant legislation, arrangements to allow for extension of coverage of livelihood protection allowance to stateless persons or issuance of personal identification documents for stateless persons, extension of facilitated naturalization coverage to stateless persons born outside Japan, arrangements to grant nationality to children born in the territory who would otherwise be stateless, and to consider foundlings found in the territory as children of nationals, a person born on a ship or airplane flying the Japanese flag to have been born in the Japanese territory, or the insertion of a provision to prevent statelessness from arising from changes of personal status.²⁹⁹

²⁹⁹ Arakaki, *supra* note 2, pp.70-71,.

Below, while some overlap with the recommendations in the Arakaki Study, we will make overall proposals to address the issues in light of the case analysis done in Chapter 2.

1. Identification

(1) Establishment of a statelessness definition and statelessness determination procedure

It is essential to identify stateless persons as such in order to protect them. While stateless persons exist in Japanese society, the overall picture is not necessary clear. The causes for this appear to be that, first of all, there is no provision defining a stateless person under domestic law; second, there is no common criteria for identifying stateless persons; and different administrative bodies determine, as necessary, a person's nationality independent from other administrative agencies. This results in situations where a wrong nationality is assigned on foreign residence cards or a person is deemed to have the nationality of a particular country while he or she should be identified as stateless instead. This leads to situations where the overview of statelessness in Japan becomes unclear, which needs to be known in order to appropriately protect stateless persons and to prevent and reduce statelessness.

Thus, the definition of a stateless person needs to be included in domestic law, and a procedure to determine who is stateless under a unified definition should be established. It is desirable to adopt the definition of a stateless person under Article 1 of the 1954 Convention which is considered customary international law, and, in interpreting and applying that definition, to take into sufficient consideration the guidance in the UNHCR Handbook on Protection of Stateless Persons.

(2) Streamlining of the statistics relating to stateless persons

It would be effective to streamline the statistics on stateless persons to clarify the situation of stateless persons in Japan. In order to accurately identify the number of stateless persons, the establishment of a statelessness determination procedure is necessary, as stated above.

However, there are measures that can be taken in order to identify, a little more accurately, the number of stateless persons within the current framework.

First is to conduct nationality determinations accurately. As pointed out repeatedly in this report, there are cases where the person concerned is assigned by Japanese authorities a nationality of which he or she is not in possession under the text of the relevant law or under the actual implementation of such law. It is necessary to avoid a situation where a person is determined to possess a nationality which is unsubstantiated. For this purpose, it is necessary that the Ministry of Justice carry out nationality determinations of persons after having sufficiently researched the nationality laws and their actual implementation of the relevant countries.

Furthermore, efforts need to be made to streamline the statistics currently taken in order to better identify the actual number of stateless persons.

For example, with regard to the Immigration Control Statistics regarding deportation, the number of stateless persons without legal status subject to deportation procedures is included. While the Statistics on the Number of Resident Foreigners and the General Foreigners' Statistics only carry the number of stateless persons with residency permits, referencing the abovementioned Immigration Control Statistics may possibly give a figure closer to the actual number of stateless persons. The statistics on the number of persons issued a re-entry permit is also useful. Persons who are considered to have a certain nationality by the government of Japan who are still issued with a re-entry permit (functioning as a travel document, Article 26(2) of ICRRA) may include persons who are not considered nationals of such a country, having been denied issuance of a national passport while having taken the reasonably expected actions, or having been unable to establish the possession of such nationality. If the reasons for issuance of a re-entry permit can be disclosed, the number of persons who are actually stateless can possibly be identified.

It is hoped thus that the government more accurately identifies the number of stateless persons by making efforts to do so within the existing framework, as well as by establishing a statelessness determination procedure.

2. Protection

(1) Establishment of statelessness determination procedure to protect stateless persons

Under the current framework, even if a person is stateless, there are no measures in place to protect him or her by issuing him or her with residency permit or travel document for the reason of not having a nationality.

Even if a stateless person without residency permit is issued with a deportation order, if there is no removal prospect to another State, he or she will be left in a vulnerable situation for a long period in Japan and end up in precarious living conditions. In order to resolve this situation, the establishment of a determination procedure to protect stateless persons is needed.

On the other hand, stateless persons with residency permits would be restricted from travelling abroad due to not having passports. Persons recognized as refugees are issued with a Convention travel document. However, if not recognized as a refugee, one would have to use a Re-entry Permit (ICRRA Article 26(2)), but the number of States where a holder of a Japanese Re-entry Permit is limited.³⁰⁰ If the stateless person can be issued

³⁰⁰ Furthermore, the current practice of writing information such as a person's nationality in Japanese language and not in the Roman alphabet on re-entry permits tends to lead to troubles at the entry examination counters in other States.

with a travel document provided under the 1954 Convention, he or she becomes able to at least visit the State parties to that convention. As of September 2017, the number of State parties to the 1954 Convention is 89,³⁰¹ and the impact for stateless persons to be able to acquire a stateless person travel document is significant.

Based on the above, the establishment of a system to protect stateless persons is necessary, which provides residency permits of long-term residents or travel documents to stateless persons currently in Japan. It would be desirable that the guidance contained in the UNHCR Statelessness Handbook is sufficiently taken into consideration when designing such a system.

(2) Enhanced grant of special permission to stay

Under the current legal system where a proper arrangement is not made for protection of stateless persons, for a stateless person without a residency permit to have his or her stay regularized, he or she must either: be granted special permission to stay after having gone through the deportation procedure (Article 50(1) of ICRRA), be granted refugee status and an accompanying residency permit after applying for refugee status (Article 61-2-2(1) and (2) of ICRRA), or be granted special permission to stay on humanitarian grounds while not recognized as a refugee (Article 61-2-2(2)). As there are persons who are stateless but are not refugees, the efforts towards the protection of stateless persons in essence can only be made, under the current system, through flexible implementation of special permission for residency.

However, the Immigration Bureau's "Guidelines on Special Permission to Stay in Japan" does not contain a reference to being stateless as one of the positive grounds for granting such permission.³⁰² While there have been cases where statelessness or lack of (re-)admission prospect was presumably one of the reasons for being granted special permission for residency, there is no guarantee that statelessness will lead to the grant of such permission.

Thus, it can be asserted that either Article 50(1) should be amended to include "not having a nationality" as one of the grounds for granting special permission for residency, or, at the least, the "Guidelines on Special Permission to Stay" by the Ministry of Justice needs to be amended to include "not having a nationality" as one of the grounds to positively consider the special permission.

(3) Utilization of the refugee status determination procedure

There are stateless persons with eligibility for refugee status. Persons with qualification as refugees under the 1951 Refugee Convention can access protection by being recognized as refugees and granted stable residency permits with long-term

³⁰¹ United Nations Treaty Collection, "Convention relating to the Status of Stateless Persons", at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en.

³⁰² See Special Permission to Stay and the Guidelines, *supra* note 122..

resident status, as well as Convention refugee travel documents through the existing refugee status determination procedure. For these persons, the applicable law in engaging legal acts to change personal status would be the law of the State of habitual residency. Thus, Japanese law will be applicable. There would be no requirement for them to produce documents issued by the State of origin. However, the number of persons granted protection as refugees is limited as the number of refugees recognized by Japan has remained at a very low level for many years, from a few persons to some tens of persons per year.³⁰³ Stateless persons who are also refugees should be protected through the refugee determination procedure by ensuring that refugees are recognized as “refugees”.

3. Prevention

(1) Streamlining of the law to prevent statelessness

While the current Nationality Act has certain exceptions to the *jus sanguinis* rule to prevent statelessness, they are not sufficient as a system to fully prevent statelessness. Article 24(3) of ICCPR, to which Japan is a party, provides that “Every child has the right to acquire a nationality.” Article 7(1) of the CRC, to which Japan is also a party, provides that “The child shall have (...) the right to acquire a nationality,” and Article 7(2) states “States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.” Article 2(1) of ICRRRA states “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.” Article 2(1) of CRC provides that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.” The State parties to these Conventions are required to ensure the rights enshrined in them.

Furthermore, Article 1(1) of the 1961 Convention, to which Japan is not a State party, provides “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless” to oblige States to prevent (and reduce) statelessness.

In this context, if the law of the relevant foreign country is amended, it could lead to prevention of statelessness under the current legal system in Japan with the *jus sanguinis* as the norm. However, the streamlining of the Japanese system should not be neglected with an expectation of other States’ laws and regulations being amended.³⁰⁴

³⁰³ See Category C [Consulate denial I (Refugees)], 5.(1).

³⁰⁴ In addition, as recommended by the UNHCR Guidelines on Statelessness No.4, from the perspective of preventing statelessness, it would be effective to introduce legislation to enable children born in Japan from refugee parents to acquire Japanese nationality - depending on the concerned individuals’ choices - even in cases where they should have normally acquired the parents’ nationality under the text of the applicable law, in light of the fact that they would normally be unable or unwilling to avail

In order to more effectively prevent statelessness, an additional clause could possibly be inserted into Article 2(iv), stating “a person born in Japan who does not acquire the nationality of his or her father or mother’s country of nationality.”

(2) Enhancement of the implementation of Article 2(iii) of the Nationality Act regarding the acquisition of nationality by birth

The current administrative practice is that the identity and nationality of the mother can be determined by interviewing the person concerned or investigating the Immigration Bureau’s record of entry and exit, even if the mother herself is missing and cannot be cross-checked with such information. Furthermore, the mother’s nationality can be determined based on statements by the mother herself without objective evidence to substantiate her identity or her country of origin.

On the other hand, courts sometimes apply the nationality law in an inclusive manner to reflect the reality of a situation.³⁰⁵ The determination of whether a particular case falls within the criteria that “both parents are unknown or stateless” should be made taking into consideration the perspective of whether the child can indeed acquire the nationality of the father or mother, and whether he or she can actually be treated as a national by that State. This is in consideration of the object and purpose of Article 2(iii) to ensure prevention of statelessness.³⁰⁶ Implementing Article 2(iii) based on this sort of interpretation is expected to prevent statelessness from being passed from generation to generation.

As discussed under Category G, Case 14, there are sometimes cases where the municipal government erroneously rejects acceptance of a birth registration application designating the parent(s)’s nationality as “stateless”. If the birth registration application cannot be accepted, the person cannot have the acquisition of Japanese nationality under Article 2(3) confirmed. It is necessary to ensure that the officials at the forefront are aware of the appropriate interpretation and application of Article 2(3) and to avoid the erroneous response of not accepting an application based on the personal opinion of the officials.

themselves of the protection of the parents’ country and would presumably become long-term residents in Japan in the future. See 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), II f) “Special Position of Refugee Children”, para. 28, at <http://www.refworld.org/docid/50d460c72.html> (in English), and <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=548996e74> (in Japanese).

³⁰⁵ See Category G: Unknown or stateless parents, Case 14 (Tokyo Family Court Tachikawa Branch Adjudication, 5 December 2016), and Yokohama Family Court Adjudication, 18 September 2003, described in Category G, 3. (4).

³⁰⁶ Kidana, *supra* note 21, p.108.

(3) Streamlining of the law to prevent, as far as possible, the loss of nationality pursuant to changes in personal status

As seen in Category E, it could be understood that the retroactive and automatic loss of Japanese nationality due to changes of personal status is not avoidable under the current legal system. This is because the basis for acquiring nationality by *jus sanguinis* is lost if one's descent from a Japanese national is subsequently denied.

However, loss of nationality due to a change (denial) of parentage after a significant period has passed can lead to statelessness of the child if, for example, he or she cannot acquire the nationality of the other parent. As discussed in detail in the recommendations under Category E, statelessness arising from the loss of nationality due to changes of personal status must be avoided, including where there is an erroneous registration of family relationship which provides the basis for acquisition of nationality for the child, in light of Article 5(1) of the 1961 Convention. Furthermore, even if the loss of nationality due to changes of parentage does not result in statelessness, at least after a certain period has passed, retroactive losses going back to the time of birth should be avoided. Retroactive losses of nationality should be restricted by ensuring that nationality laws especially value a principle of certainty with regards to nationality.

In order to restrict changes (losses) of nationality after reaching a certain age, including in cases of changes of personal status, a new paragraph (para 2) should be added to Article 2, for example, to read: "concerning persons who acquire Japanese nationality under the previous paragraph and clauses, when the person's non-fulfillment of the said paragraph and clauses becomes clear after the person reaches X years of age, he or she is to retain Japanese nationality."³⁰⁷

It is to be noted that, under the current practice of the Immigration Bureau, persons who lose Japanese nationality retroactively for reasons such as changes of parentage are treated as having been "illegal foreigners" going back to the time birth and are subjected to deportation procedures. However, these individuals never had a chance to initiate any immigration procedure as foreigners because they were Japanese nationals at the time of birth. Thus, treating them as having been illegal stayers since the time of birth is quite unreasonable. At the least, such persons should be allowed to acquire residency permits upon application within 30 days of the finalization of the changes (denials) of legal descent (Article 22-2(1) and (2) of ICRRRA).³⁰⁸

³⁰⁷ Nationality Act, Article 2:

A child shall be a Japanese national in the following cases:

- (i) If the father or mother is a Japanese citizen at the time of birth;
- (ii) If the father died before the child's birth and was a Japanese citizen at the time of death;
- (iii) If born in Japan and both parents are unknown or are without nationality.

³⁰⁸ On the relation of this with acquisition of status of residence (ICRRRA Article 22-2), see *supra* note 188 and Category E: Change of personal status, 4. (2).

4. Reduction

(1) Improvement of the practice to request prior renunciation of the current nationality upon naturalization in Japan

The current Nationality Act requires that the person concerned “has no nationality, or the acquisition of Japanese nationality will result in the loss of foreign nationality” (Article 5(1)(v) of the Nationality Act). Based on this provision, persons wishing to naturalize are not required to renounce their original nationality prior to acquiring Japanese nationality. However, the current practice related to naturalization is to request renunciation of the current nationality before naturalization to be a Japanese national can be officially permitted. This sort of implementation causes statelessness however short such a period of time may be.

Such implementation does not reflect the text of the current Nationality Act and lacks legal basis. Renunciation of nationality before naturalization should be avoided as there would be no guarantee that the person’s previous nationality which is now lost will be restored upon failure to naturalize to be a Japanese national.³⁰⁹ Renunciation of Japanese nationality should be conditional on the acquisition of Japanese nationality in accordance with the letter of the current Nationality Act. The requirement of prior renunciation before permission should be rectified.

(2) Improvement of implementation of the naturalization provision under Article 8(iv) and the streamlining of the law

Under the current Nationality Act, Article 8(iv) provides for facilitated naturalization for stateless persons to reduce statelessness.

However, it sometimes happens that a person is *de facto* prevented access to this provision in practice due to the lack of understanding of the individual officials implementing the naturalization procedure at legal affairs bureaus.

It also appears that Article 8(iv)’s requirement of “not having a nationality” is restrictively interpreted and applied in practice in a similar manner as for Article 2(iii) of the Nationality Act, as discussed in 3(2) in this section.

Furthermore, Article 8(iv) currently limits its coverage to stateless persons born in Japan and excludes persons born outside Japan, causing inequality.

It would be useful to go back to the object and purpose of this provision, which is to reduce statelessness as much as possible.³¹⁰

It would then be necessary to, for example, conduct training for officials involved in naturalization on the easing of requirements for stateless persons, such as that a stateless person can apply for naturalization even if he or she is under 20. Second, the required

³⁰⁹ See paragraph 45 of the UNHCR, Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (“Tunis Conclusions”) (March 2014), at <http://www.refworld.org/docid/533a754b4.html>.

³¹⁰ See Kidana, *supra* note 21, p. 323.

documents for naturalization should be the minimum sufficient to prove the fulfillment of naturalization. Third, the assessment of statelessness under Article 8(iv) should be done in light of the definition under Article 1(1) of the 1954 Convention, which is part of customary international law. Fourth, in order to reflect the object and purpose of the provision to reduce statelessness as much as possible and to respect the principle of non-discrimination provided for in Article 3 of the 1954 Convention, the provision should not be restricted to persons born in Japan leading to discriminatory treatment depending on the place of birth.

(3) Facilitation of naturalization for refugees

If refugees were to be able to benefit from facilitated naturalization as provided under Article 34 of the 1951 Convention, this would contribute to a reduction of statelessness. Such facilitated naturalization for refugees should be fully utilized.

The following chart lays out the overall picture of how each proposal made in this section would help resolve the challenges faced by each Category introduced in Chapter 2. (The same chart can be found in the Summary.)

Category	A	B	C	D	E	F	G	H	I	J	K
Creation of a legal provision providing a statelessness definition and the establishment of a statelessness determination procedure	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Streamlining of the statistics relating to stateless persons	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Establishment of a system to protect stateless persons, such as by grant of "long-term resident" status.	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Utilization of a refugee status determination procedure			✓	✓							
Enhanced grant of special permission to stay for stateless persons without status of residence				✓		✓		✓	✓	✓	✓
Expanding the coverage of the grant of Japanese nationality at birth to all otherwise stateless persons	✓		✓	✓				✓			
Enhanced implementation of Article 2(iii) of Nationality Act, which grants Japanese							✓				

nationality to children born in Japan whose parents are unknown or stateless											
Law reform to restrict losses of nationality through changes in legal parentage.					✓						
Improvement related to the requirement for renunciations of current nationality prior to naturalization						✓					
Improvement of implementation of Article 8(iv) which facilitates naturalization of stateless persons, and streamlining of the law to include stateless persons born outside Japan	✓	✓	✓	✓				✓	✓	✓	✓
Facilitation of naturalization for refugees			✓	✓							

FINAL REMARKS

This report had set as its goal to highlight various cases of stateless persons and persons who may be stateless who exist and live in Japan and to propose solutions after illustrating their situations and the challenges they face. The report classified cases into 14 categories from A to N, and even a glance at this categorization clearly shows that the causes of statelessness significantly vary.

The case analyses by category not only uncover the typical cases of statelessness from conflicts of nationality law provisions of each state, but they also show cases where persons become stateless by authorities' failure to apply the law in practice. They also find that the historical backgrounds and political situations at times change the State's handling and assessment of nationality, which affects individuals. The report also articulates that the legal status of stateless persons is varied, and that they face different legal issues depending on such statuses.

Under the present circumstances, a uniform procedure of statelessness determination to protect stateless persons has not implemented. It is thus not possible to examine the appropriateness of the "determination of statelessness" by the authorities. This report, however, has tried to investigate and examine the laws and their application by relevant States over persons concerned in each case on every possible point, and to examine whether a person is a stateless person or not based on the definition in the 1954 Convention. In other words, the report has examined the points that would normally be considered had there been a statelessness determination procedure.

To be honest, interpretation of nationality laws, their operation, and the application of the statelessness definition were extremely difficult.

At first, there was the problem of understanding and interpreting the nationality laws of each State. We had no choice but to rely on the English or Japanese translations of the laws of each state because it was hardly possible to read them in the original versions. So there was always a possible problem with the accuracy of translations. It was difficult to understand laws of foreign countries unless one understood the historical background and culture in addition to the legal system of the State in the first place. The laws relating to the nationality also are constantly revised. It was necessary to acquire a broad knowledge and understanding about the laws related to the nationality because we looked at the latest

nationality laws, as well as the laws prevailing at the time of birth of the persons in our case studies to examine their nationality.

Next, there was a challenge in understanding and interpreting “the operation of the law” in each state. The expression of the views by the consulates, etc., of the relevant State is significant when one assesses the nationality of persons staying in Japan. However, one cannot always get a clear expression of the view that “the person concerned is not a national” along with the reasons for such a view from the authorities. For this reason, how to evaluate the actions taken by the consulates, etc., led to constant discussions among the authors. However, eventually, the authors decided to assess and judge the cases from the viewpoint of whether the actions normally expected to be taken have indeed been taken by the persons themselves or others concerned in order to acquire nationality.

In this way, it needs to be emphasized here that it is necessary to know the laws relating to the nationality of the related States and their implementation in order to assess whether persons are stateless or not, and it is essential that the authorities which determine statelessness also have knowledge of the law and specialized expertise on its issues.

This report proposes to grant stateless persons nationality or have those persons with nationality maintain their nationality as the solution for the legal issues by streamlining the legislation on nationality grants at birth and on restrictions on the loss of nationality, in addition to determinations of statelessness and protection of stateless persons. However, one cannot forget that nationality is deeply connected with the identity of persons. In fact, persons normally have no choice but to be granted a certain nationality. However, there are cases when, for example, the nationality unilaterally granted as a result of State systems having been shaken does not match with the person’s identity. Needless to say, it is important and desirable to build a society where the human rights of stateless persons are protected and respected even if they remain stateless.

Many stateless persons and people whose nationality is ambiguous or unclear do not themselves realize their issues, and they spend their days without understanding their problems. The cases in this report are likely just a tip of an iceberg of stateless persons in Japan. We hope the personnel in the relevant institutions which have opportunities to meet with such people (immigration bureaus, legal affairs bureaus, municipal offices, child welfare institutions, etc.), social workers in hospitals and aid groups, legal practitioners such

as attorneys, and members of parliament who engage in creating legislation recognize the existence of stateless persons as well as the challenges they face via this report.

We would be delighted if this report is able to help stateless persons who have fallen into the gaps between States.

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(ROK, by date)

- National Human Rights Committee, Infringement Relief Second Committee, Decision, 1 December 2009.
- Seoul Administrative Court, Judgment, 31 December 2009, petition to cancel the denial of issuance of certificate of travel (2009 ku-go-34891).
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ANNEX: Japanese Nationality Act

Retrieved from Japanese Law Translation Database System, at
<http://www.japaneselawtranslation.go.jp/law/detail/?id=1857&vm=02&re=01&new=1>
Act. No. 147 of 4 May 1950

Coming into effect on 1 July 1950

Amendments: Act No. 268 of 31 July 1952

Act No. 45 of 25 May 1984

Act No. 89 of 12 November 1993

Act No. 147 of 1 December 2004

Act No. 88 of 12 December 2008

(Purpose of This Act)

Article 1 The requirements of Japanese citizenship shall be governed by the provisions of this Act.

(Acquisition of Nationality by Birth)

Article 2 A child shall be a Japanese citizen in the following cases:

- (i) If the father or mother is a Japanese citizen at the time of birth;
- (ii) If the father died before the child's birth and was a Japanese citizen at the time of death; or
- (iii) If born in Japan and both of the parents are unknown or are without nationality.

(Acquisition of Nationality by Acknowledged Children)

Article 3 (1) In cases where a child acknowledged by the father or mother is under twenty years of age (excluding a child who was once a Japanese citizen) and the acknowledging father or mother was a Japanese citizen at the time of the birth of the child, Japanese nationality may be acquired through notification to the Minister of Justice if that father or mother is currently a Japanese citizen or was so at the time of death.

- (2) The person making notification provided for in the provision set forth in the preceding paragraph shall acquire Japanese nationality at the time of the notification.

(Naturalization)

- Article 4 (1) A person who is not a Japanese citizen (hereinafter referred to as "foreign national") may acquire Japanese nationality through naturalization.
- (2) To undergo naturalization, permission of the Minister of Justice shall be obtained.

- Article 5 (1) The Minister of Justice may not permit naturalization for a foreign national who has not met the following conditions:
- (i) Having continuously had a domicile in Japan for five years or more;
 - (ii) Being twenty years of age or more and having the capacity to act according to his or her national law;
 - (iii) Being a person of good conduct;
 - (iv) Being able to make a living through his or her own assets or abilities, or through those of a spouse or of another relative his or her making a living;
 - (v) Not having a nationality or having to give up his or her nationality due to the acquisition of Japanese nationality; and
 - (vi) On or after the date of promulgation of the Constitution of Japan, not having planned or advocated the destruction of the Constitution of Japan or the government established thereunder with force, and not having formed or joined a political party or other organization planning or advocating the same.
- (2) In cases where despite the foreign national's intention, he or she is unable to give up his or her nationality, the Minister of Justice may permit naturalization if special circumstances are found concerning a familial relationship or circumstances with a Japanese citizen even if that foreign national has not met the conditions listed in the preceding paragraph, item (v).

Article 6 The Minister of Justice may permit naturalization for a foreign national currently having a domicile in Japan who falls under one of the following items even if that person has not met the conditions listed in the preceding Article, paragraph (1), item (i):

- (i) A child (excluding an adopted child) of a Japanese citizen, the former continuously having a domicile or residence in Japan for three years or more;
- (ii) A person born in Japan, and continuously having a domicile or residence in Japan for three years or more or whose father or mother (excluding an adoptive parent) was born in Japan;
- (iii) A person having a residence in Japan continuously for ten years or more.

Article 7 The Minister of Justice may permit naturalization of a foreign national with a spouse who is a Japanese citizen, said foreign national continuously having a domicile or residence in Japan for three years or more and who currently has a residence in Japan even if that person does not meet the conditions of Article 5, paragraph (1), item (i) and item (ii). The same shall apply to a foreign national with a spouse who is a Japanese citizen, for whom three years have elapsed since the date of their marriage, which foreign national has continuously maintained a domicile in Japan for one year or more.

Article 8 The Minister of Justice may permit naturalization of a foreign national who falls under one of the following items even if that person has not met the conditions listed in Article 5, paragraph (1), item (i), item (ii) and item (iv):

- (i) A child (excluding an adopted child) of a Japanese citizen, said child having a domicile in Japan;
- (ii) An adopted child of a Japanese citizen, said child continuously having a domicile in Japan for one year or more, and having been a minor according to his or her national law at the time of adoption;
- (iii) A person having lost his or her Japanese nationality (excluding a person who lost his or her Japanese nationality after naturalization in Japan) having a domicile in Japan; or

- (iv) A person born in Japan, not having any nationality since the time of birth, and continuously having a domicile in Japan for three years or more since that time.

Article 9 The Minister of Justice may obtain approval from the Diet and permit naturalization of a foreign national having provided a special distinguished service in Japan notwithstanding the provision of Article 5, paragraph (1).

Article 10 (1) When permitting naturalization, the Minister of Justice shall provide public notice thereof in the official gazette.

- (2) Naturalization shall have effect from the date of the public notice set forth in the preceding paragraph.

(Loss of Nationality)

Article 11 (1) If a Japanese citizen acquires the nationality of a foreign country at his or her choice, he or she loses Japanese nationality.

- (2) A Japanese citizen having the nationality of a foreign country loses Japanese nationality when he or she selects the nationality of that foreign country according to the laws and regulations thereof.

Article 12 A Japanese citizen who acquired the nationality of a foreign country through birth and who was born abroad shall retroactively lose Japanese nationality to the time of birth unless he or she indicates an intention to reserve Japanese nationality pursuant to the provision of the Family Register Act (Act No. 224 of 1947).

Article 13 (1) A Japanese citizen having foreign nationality may renounce Japanese nationality by notification to the Minister of Justice.

- (2) The person making the notification provided for in the provisions set forth in the preceding paragraph shall lose Japanese nationality at the time of the notification.

(Selection of Nationality)

Article 14 (1) A Japanese citizen having a foreign nationality shall select one of the nationalities, where he or she obtains foreign and Japanese nationalities prior to his or her becoming twenty years old, before his or her reaching twenty-two years old, and where that time when he or she obtained foreign and Japanese nationalities comes after his or her reaching twenty years old, within two years from that time.

(2) In addition to renouncement of the foreign nationality, the selection of Japanese nationality may be accomplished through selecting Japanese nationality and declaring the renunciation of the foreign nationality (hereinafter referred to as "selection declaration") pursuant to the provisions of the Family Register Act.

Article 15 (1) The Minister of Justice may provide written notice that nationality must be selected to any Japanese citizen having a foreign nationality who has not selected Japanese nationality within the assigned time as provided for in the preceding Article, paragraph (1).

(2) In the unavoidable event that the whereabouts of the intended recipient of the notice prescribed in the preceding paragraph may not be ascertained or notice in writing is otherwise not possible, the notice may be published in the official gazette. In such cases, the notice shall be deemed to have arrived on the day after publication in the official gazette.

(3) The person receiving the notice provided for in the provision of the preceding two paragraphs shall lose Japanese nationality when the period has elapsed if the selection of Japanese nationality is not made within one month of receiving the notice; provided, however, that this shall not apply in cases where the person is unable to select Japanese nationality within the period due to a natural disaster or some other cause not attributable to that person, and the selection is made within two weeks of the time when the selection may be made.

Article 16 (1) A Japanese citizen who makes the selection declaration shall endeavor to renounce his or her foreign nationality.

- (2) In cases where a Japanese citizen having made the selection declaration and not having lost foreign nationality appoints the post of a public officer (with the exception of a post that may be appointed by a person not having the nationality of that country) at his or her own discretion, the Minister of Justice may pronounce a judgment of loss of Japanese nationality if it is found that the appointment of the post is markedly contrary to the purpose of the selection of Japanese nationality.
- (3) The proceedings on the date of the hearing pertaining to the pronouncement of judgment set forth in the preceding paragraph shall be conducted open to the public.
- (4) The judgment pronouncement of paragraph (2) shall be placed in a public notice in the official gazette.
- (5) The person receiving the pronouncement of judgment of paragraph (2) shall lose Japanese nationality on the day of the public notice set forth in the preceding paragraph.

(Reacquisition of Nationality)

- Article 17 (1) A person who loses Japanese nationality pursuant to the provisions of Article 12 and is under twenty years of age may acquire Japanese nationality, if he or she has a Japanese domicile, through notification to the Minister of Justice.
- (2) A person who receives the notice pursuant to the provisions of Article 15, paragraph (2) and loses Japanese nationality pursuant to the provisions of that same Article, paragraph (3) may acquire Japanese nationality if he or she meets the conditions listed in Article 5, paragraph (1), item (v) through notification to the Minister of Justice within one year from the date of knowing of the loss of Japanese nationality; provided, however, that if notification cannot be made within that period due to a natural disaster or some other cause not attributable to that person, that period shall be one month from the time when the notification can be made.

- (3) The person making notification provided for in the provisions of the preceding two paragraphs shall acquire Japanese nationality at the time of the notification.

(Notification, etc. by a Statutory Agent)

Article 18 The notification of acquisition of nationality provided for in the provision in Article 3, paragraph (1) or the preceding Article, paragraph (1), application for permission to naturalize, selection declaration, or notification of nationality renouncement shall be made by a statutory agent if the person desiring nationality acquisition, selection, or renouncement is under fifteen years of age.

(Delegation to Ordinances of the Ministry)

Article 19 Procedures relating to acquisition and renouncement of nationality as well as other required matters relating to the enforcement of this Act not provided herein shall be prescribed by Ordinance of the Ministry of Justice.

(Penal Provisions)

Article 20 (1) In cases of notification provided for in the provisions of Article 3, paragraph (1), a person making a false notification shall be punished by not more than one year of imprisonment with work or a fine of not more than two hundred thousand yen.

(2) The violation set forth in the preceding paragraph shall be governed by the Penal Code (Act No. 45 of 1907), Article 2.

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A voluntary organization established in April 2014 by researchers, practitioners, and other members of the civil society (Representative: Osamu Arakaki). Study sessions have been held in Tokyo once every one to two months. For two years from August 2014 to July 2016, it conducted the “Study on Statelessness in Japan: Understanding the situations of stateless persons and the legal framework relating to protection of stateless persons” (Study No. 111) with a research grant from Japan Law Foundation, and concluded this report as a product of the study.

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Typology of Stateless Person in Japan

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