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Summary and recommendations:

STATELESSNESS in Switzerland

UNHCR Office for Switzerland and Liechtenstein
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“You did not just fall from the sky, you must belong to a country!”

> *We live in a world of nations. The first question is always: 'Where are you from?' If you are from nowhere, then you are nothing."*
>
> Nadia, Stateless Palestinian from Syria[1]

Most people take it for granted that they have a nationality. They belong to a specific country to which they are linked by mutual rights and obligations. This is different for people who have no nationality and are therefore stateless. The United Nations High Commissioner for Refugees (UNHCR) estimates that at least ten million people around the world are denied a nationality. Their access to basic rights – such as political participation, education and employment – is frequently denied or restricted. There are stateless persons in almost every country, also in Switzerland.

In the context of its #IBelong Campaign UNHCR carried out a study about statelessness in Switzerland in 2017 with the objective to provide detailed information on the extent, causes and consequences of statelessness in Switzerland, and to develop recommendations. In addition to desk research, UNHCR interviewed 136 government officials at national and cantonal level, civil society stakeholders and nine individuals who were either stateless or at risk of statelessness.

Below are the findings of the study and the resulting recommendations. The complete study is available at www.unhcr.ch.

Statelessness in Switzerland in figures

The Population Statistics of the Federal Statistical Office (FSO) and the Foreign Population as well as the Asylum Statistics of the State Secretariat for Migration (SEM) provide information on how the number of recognised stateless persons in Switzerland has evolved over the past few years. The different definitions on which the statistics are based, though, result in discrepancies. According to the SEM statistics, the number of recognised stateless persons rose, first steadily and then sharply, from a low three-digit figure at the end of 2008 to 592 persons at the end of 2017. An increasing number of stateless persons are also recognised as refugees.

However, it is not clear how many stateless persons actually live in Switzerland. This is due to the fact that stateless persons may also be recorded under other categories in addition to the category of "Stateless" which is used both by the FSO and the SEM. In the Foreign Population and the Asylum Statistics of the SEM, these are the categories "No nationality" and "Origin unknown". An additional 788 and 1493 persons, respectively, were recorded in these categories at the end of 2017. Statistically speaking, in comparison to the persons in the "Stateless" category, the residence status in particular of persons in the "No nationality" category is much more precarious. Furthermore, not all stateless persons are identified. There are several reasons for this: one is that the competent authorities and legal aid providers are not always sufficiently informed about statelessness. In addition, the information about the statelessness determination procedure available to stateless persons is difficult to understand. As a consequence, not all stateless persons may apply to be recognised as stateless. Furthermore, the definition of a stateless person is interpreted too narrowly in Switzerland, contrary to the 1954 Convention relating to the Status of Stateless Persons (1954

[1] All of the citations reproduced in this report are based on the statements of individuals interviewed as part of the UNHCR study on statelessness in Switzerland. Names have been anonymised to protect the privacy of respondents.

Convention), see also below Chapter "Application of the statelessness determination procedure and exclusion from the 1954 Convention". Finally, not all stateless persons are likely to be interested in applying for statelessness status.

The majority of stateless persons in Switzerland come from third countries, often seeking to apply for asylum, or they descend from parents who immigrated to Switzerland. Particularly due to the conflict in Syria many stateless persons from Syria came to Switzerland, especially Palestinians and Kurds. Other significant countries of origin include China, Russia and other States of the former Soviet Union, as well as of the former Yugoslavia, from which especially Roma apply to be recognised as stateless.

Most persons recognised as stateless are adult males. A considerable proportion lives in the cantons of Bern and Zurich, and on average one sixth of all persons recognised as stateless with a C or B permit were born in Switzerland. The majority of persons recognised as stateless have a so-called settlement permit, while most of those recorded as having "No nationality" only have a provisional admission. In comparison, the majority of persons who were registered under the "Origin unknown" category at least have a residence permit.

To further improve the statistical information on stateless persons in Switzerland, it is recommended:

- using the definition of the permanent foreign resident population and the category of "Stateless" in a uniform way in the Population Statistics of the FSO and the Foreign Population and the Asylum Statistics of the SEM to avoid discrepancies and associated ambiguities,
- avoiding the use of categories such as "No nationality" or "Origin unknown" for stateless persons by fully applying the definition of statelessness in accordance with the 1954 Convention (also see under application of the statelessness determination procedure),
- providing detailed statistical information about the groups of persons outside the category of the permanent foreign resident population, particularly asylum-seekers and persons who were provisionally admitted,
- collecting and providing more information about stateless children, especially those who were born in Switzerland.

The statelessness determination procedure

In Switzerland, statelessness is determined on the basis of a formal statelessness determination procedure which is conducted by the SEM. This procedure is governed by the Federal Administrative Procedure Act. This ensures that fundamental procedural safeguards are guaranteed, such as the right to appeal and the opportunity to obtain free legal assistance during the appeal procedure.

However, the fact that there are no provisions governing specifically the statelessness determination procedure leads to regulatory gaps. The Administrative Procedure Act does not sufficiently take into account the particular situation of stateless persons in Switzerland. Applicants have no right to an interview, nor to assistance with translation or interpretation if required. They have no access to free legal advice and legal assistance in first-instance proceedings, even though these procedural safeguards are guaranteed by the Federal Constitution. Moreover, there is no express provision granting applicants a right of residence for the duration of the procedure. Even if they are usually not removed during the procedure, the existence of a legal basis would nevertheless provide legal certainty and could also facilitate access to the procedure.

The applicable standard and burden of proof also do not sufficiently take into account the specific situation of the applicants. To be recognised as stateless, applicants must provide full proof that they are stateless. Despite a situation comparable to asylum-seekers, the burden of proof is neither shared between the SEM and the applicants (as in the asylum procedure), nor is the standard of proof of "credibly demonstrating" that the applicant is stateless applied.

Access to the procedure is not bound by time limits and there are also no formal requirements for an application. Children within the facilitated naturalisation procedure are expressly informed about the statelessness determination procedure.

The interviews conducted in the course of the study showed that the knowledge of statelessness in Switzerland varies, but overall it is not very well developed. It proved difficult to identify stateless persons and persons at risk of statelessness. Raising the awareness of cantonal authorities and other key stakeholders could ensure that the attention of persons who might be stateless is drawn to the statelessness determination procedure. For the applicants themselves, the information available about statelessness in the SEM handbook is difficult to understand. Here, too, action is needed to improve access to the procedure for stateless persons, and their identification.

If all employees of the Asylum Directorate at the SEM were to have at least basic knowledge about statelessness and about the statelessness determination procedure, they could consistently inform asylum-seekers who may be stateless about the possibility to initiate a statelessness determination procedure.

For reasons of legal certainty, it is important that when an applicant raises both a refugee and a statelessness claim, each claim is assessed and, where applicable, both types of status are recognised. UNHCR welcomes the fact that the statelessness determination procedure is no longer automatically suspended during an asylum procedure.

To ensure that stateless persons in Switzerland are better identified it is recommended:

- specifically regulating the statelessness determination procedure by law or internal SEM directives so that the particular situation of stateless persons is taken into account and applicants are guaranteed essential procedural safeguards, thus ensuring fairness and transparency. In particular, this includes:
  - granting a right of stay during the statelessness determination procedure,
  - the right to an interview,
  - assistance with translation or interpretation if required,
  - access to free legal assistance in first-instance proceedings,
  - a shared burden of proof between the SEM and the applicants, with the latter having a duty to be truthful, to provide as full an account of his or her position as possible and to submit all evidence reasonably available, and the SEM being required to obtain and present all relevant evidence which is reasonably available,
  - applying the standard of proof of "credibly demonstrating" analogous to Article 7 para. 2 of the Asylum Act.
- improving access to the statelessness determination procedure by:
  - providing easy to understand information to applicants in various languages,
  - using visits to the cantons for the SEM to raise the cantonal authorities' awareness of the subject of statelessness, and to encourage them to draw the attention of persons who might be stateless to available information material (UNHCR brochure on Statelessness in Switzerland and Liechtenstein, SEM website) and to the statelessness determination procedure,
  - training the staff of the Asylum Directorate on statelessness and the statelessness determination procedure, and instructing them to systematically inform asylum-seekers concerned of the possibility to initiate a statelessness determination procedure,
  - raising greater awareness of and providing training to other key stakeholders, such as legal aid providers and representatives in the new Federal Centres and in the cantons,
  - assessing refugee and statelessness claims in parallel and, if applicable, recognising both types of status.

Application of the statelessness determination procedure and exclusion from the 1954 Convention

The legal basis for determining whether a person is stateless is the definition of a stateless person as set out in Article 1 of the 1954 Convention. However, this provision is not fully applied in the Swiss statelessness determination procedure and in consequence not all stateless persons are recognised as such and statelessness is not comprehensively identified. The following practices are of concern in this regard:

The statelessness determination procedure in Switzerland is conducted on the basis of the German translation of the 1954 Convention. The German translation is non-binding and in parts narrower than the binding French and English versions. For example, in Article 1 para. 1, the phrase "*under the operation of its law*" is translated in the German version as "*auf Grund seiner Gesetzgebung*" (based on its legislation). This does not guarantee that the reference to "law" is read broadly, including an analysis of how the written law of possible countries of origin is applied in practice, as part of the statelessness determination procedure.

Furthermore, Switzerland distinguishes between *de jure* and *de facto* statelessness. According to the practice of the SEM and the Federal Administrative Court, *de jure* stateless persons ("legal" statelessness) are those who no country considers as its nationals based on its legislation. In contrast, *de facto* stateless persons are those who formally have a nationality but whose country of origin actually no longer considers them as its nationals and refuses to grant protection. Some other countries also distinguish between *de jure* and *de facto* stateless persons. However, the definition of *de facto* statelessness is applied very broadly in Switzerland and also includes persons who fulfil the requirements set out in Article 1 para. 1 of the 1954 Convention. To ensure that stateless persons have access to the protection guaranteed under the 1954 Convention, it is important that all individuals who fulfil the requirements of Article 1 para. 1 of the 1954 Convention are recognised as stateless and are not referred to as *de facto* stateless persons. In addition, *de facto* statelessness is not defined in any international instrument and there is no treaty regime specific to this category of persons.

Moreover, stateless persons are excluded from the protection of the 1954 Convention if they have voluntarily renounced their nationality and have not done everything in their power to (re)acquire a nationality. In contrast, the only relevant factor when determining eligibility for recognition as stateless under the 1954 Convention is whether or not a person is in fact considered as a national by the relevant countries. The concerns about abuse which inform the Swiss practice could be addressed differently. For example, authorities could refrain from issuing a permit if it has been determined in a specific individual case that the individual could safely return to the country of former habitual residence.

The now discontinued practice of excluding refugees who have been granted asylum in Switzerland from obtaining recognition as stateless persons based on Article 1 para. 2 (ii) of the 1954 Convention (exclusion from the 1954 Convention owing to the same rights and obligations as nationals) is also not in line with the 1954 Convention. This has also been clarified by the Federal Administrative Court (F-6147/2015, 5 January 2017).

An "interest worthy of protection" is required for an application for recognition of statelessness to be admissible. For recognised refugees such an interest is dependent on whether the recognition as a stateless person, in addition to the recognition as a refugee, leads to an improved legal status under national law. In contrast, in UNHCR's view, the establishment of a status as defined by an international treaty constitutes an interest worthy of protection in itself.

Given the shared drafting history of the 1951 Convention relating to the Status of Refugees (1951 Convention) and the 1954 Convention, the exclusion clauses are formulated almost identically in both international treaties. Nevertheless, they are interpreted differently in Switzerland. This also leads to a restriction of the application of the 1954 Convention which is difficult to understand from the perspective of international law.

With regard to the quality of decisions in general, it is to be noted that the SEM's internal quality assurance for decisions basically consists in a review of the decisions by the respective head of section. Here, it might be advisable to introduce further quality assurance mechanisms.

To ensure that stateless persons in Switzerland are better identified it is recommended:

- interpreting and applying the term "stateless person" in line with the 1954 Convention. In particular, it is recommended:
  - not excluding stateless persons from the 1954 Convention because they have already been recognised as refugees. The recognition of statelessness itself constitutes an interest worthy of protection,
  - not excluding stateless persons from the 1954 Convention because they have voluntarily renounced their nationality and have not done everything in their power to (re)acquire a nationality. Such behaviour could instead be sanctioned in terms of their right of residence,
  - interpreting the term "law" more broadly and discontinuing the distinction between *de jure* and *de facto* statelessness,
  - interpreting the exclusion clauses as set out in Article 1 para. 2 (i) of the 1954 Convention and in Article 1D para. 1 of the 1951 Convention in a uniform way and in accordance with the interpretative guidance provided by UNHCR, such as the UNHCR Handbook on Protection of Stateless Persons and other UNHCR guidelines and recommendations. Palestinians should not be sweepingly excluded from the protection of the 1954 Convention on the grounds that they receive protection from UNRWA.
- introducing quality assurance mechanisms, including regular sessions, in cooperation with UNHCR, to provide further training for SEM staff and facilitate the exchange of information.

The status of stateless persons in Switzerland

Persons recognised as stateless in Switzerland enjoy many of the rights which States party to the 1954 Convention are obliged to grant at a minimum. The fact that stateless persons are entitled to a residence permit once they are recognised, is in line with the object and purpose of the 1954 Convention to ensure that stateless persons enjoy the widest possible exercise of their human rights. Access to wage-earning and self-employment is also granted to recognised stateless persons, as provided for in the 1954 Convention. This also applies to freedom of movement and the right to choose a place of residence within Switzerland. Furthermore, recognised stateless persons are accorded the same treatment with respect to public relief and assistance as Swiss nationals. Expulsion of recognised stateless persons is only possible for reasons of national security or public order as provided for in the 1954 Convention.

However, there are deficiencies when it comes to the protection of family life. Here, the same rules as to foreigners in general also apply to stateless persons. However, unlike foreigners in general, depending on the circumstances of the individual case, stateless persons do not always have another country in which they can legally reside and live with their family. It is therefore important that this specific situation is taken into account for family reunification applications in line with Switzerland's human rights obligations.

Furthermore, recognised stateless persons do not receive a Convention travel document for stateless persons, but rather a green "passport for aliens", which is not well known internationally and can therefore make travel difficult. In terms of expulsion, it also remains unclear whether the procedural safeguards enshrined in the 1954 Convention are fully guaranteed.

Moreover, contrary to the obligations under the 1954 Convention, Switzerland only facilitates the naturalisation of stateless children, not stateless adults. The acquisition of Swiss citizenship by recognised stateless adults is therefore governed by the relevant cantonal laws, which set out a diverse range of requirements for naturalisation.

To even better guarantee the rights set out in the 1954 Convention, it is recommended:

- ensuring that family members of stateless persons with a right of residence in Switzerland can be brought to Switzerland in line with human rights obligations,
- introducing a Convention travel document in accordance with the recommendations of the ICAO and UNHCR Guide ("Guide for Issuing Machine Readable Convention Travel Documents for Refugees and Stateless Persons"), and ensuring that such a travel document is only denied to recognised stateless persons for compelling reasons of national security or public order in line with Article 28 of the 1954 Convention,
- explicitly enshrining the procedural safeguards provided for in Article 31 paras. 2 and 3 of the 1954 Convention in expulsion procedures, either by law or in internal SEM directives,
- amending the Federal Constitution to allow for the facilitated naturalisation of stateless adults in line with the obligation set out in Article 32 of the 1954 Convention.

Preventing statelessness in Switzerland

To prevent statelessness at birth and later in life, the international community drafted the 1961 Convention on the Reduction of Statelessness (1961 Convention). In Europe, the provisions of the 1961 Convention are supplemented, among others, by the 1997 European Convention on Nationality (1997 European Convention). Switzerland has not yet acceded to either of these two conventions. The aim of these instruments is to prevent statelessness, especially among children. Since the possibility of acceding to these conventions has already been discussed by the National Council, the study examined the extent to which the new Swiss Citizenship Act (nSCA, in force since 1 January 2018) is in line with the provisions of these conventions.

The provisions in Swiss law intended to prevent childhood statelessness only partially comply with one (or both) of the above-mentioned conventions. The provisions for the acquisition of Swiss citizenship through descent are, in principle, in line with the 1961 Convention and the 1997 European Convention. However, children of Swiss nationals who are not married to the child's foreign mother, can find themselves stateless until the child's filiation with the father is recognised if the child does not acquire the nationality of the mother.

Stateless children, regardless of whether they were born in Switzerland or abroad and subsequently came to Switzerland, can apply for facilitated naturalisation. However, it is at the discretion of the SEM as to whether such an application is approved or not. The requirements which the applicants for this form of naturalisation have to fulfil are much more far-reaching, though, than those provided for in the two conventions mentioned above.

In the case of foundlings, Swiss citizenship law provides protection against statelessness in accordance with the two above-mentioned conventions. This also applies to adopted children with regard to the 1997 European Convention (the 1961 Convention does not contain a specific provision to prevent statelessness among adopted children). However, the legal status of adopted children during the year of care is not regulated sufficiently, which creates a risk of statelessness.

The provisions in Swiss citizenship law that govern both the loss and the deprivation of citizenship are mostly in line with the 1961 Convention. However, the loss of citizenship for dual nationals born abroad as set out in Article 7 para. 2 nSCA extends to their children, regardless of whether this will render the latter stateless. Furthermore, this provision is not in line with the 1997 European Convention. The same applies to other provisions of Swiss citizenship law.

For instance, the termination of filiation with the parent who has conferred Swiss citizenship on the child leads to the child losing their Swiss citizenship (Article 5 nSCA), irrespective of age. According to the 1997 European Convention, this is only possible until the children reach majority (Article 7 para. 1 (f)).

To better prevent childhood statelessness and statelessness later in life, it is recommended:

- acceding to the 1961 Convention and the 1997 European Convention,
- amending Swiss law in accordance with the obligation under Article 7 of the Convention on the Rights of the Child so that children born in Switzerland who would otherwise be stateless have the right to acquire Swiss citizenship,
- making legislative changes in preparation for possible accessions to the 1961 Convention and the 1997 European Convention so that:
  - Article 1 para. 2 nSCA provides for the acquisition of Swiss citizenship of a minor child with a Swiss father already upon receipt of the application for acknowledgement of paternity at the registry office, conditional on its legal validity,
  - loss of citizenship by law owing to the parent being born abroad (Article 7 nSCA) does not extend to their children if this renders the children stateless,
  - it is ensured that children adopted from abroad are not stateless during the period between their arrival in Switzerland and their adoption,
  - a child can only lose Swiss citizenship up to majority if the child's filiation with the parent who has conferred Swiss citizenship on them is terminated (Article 5 nSCA).

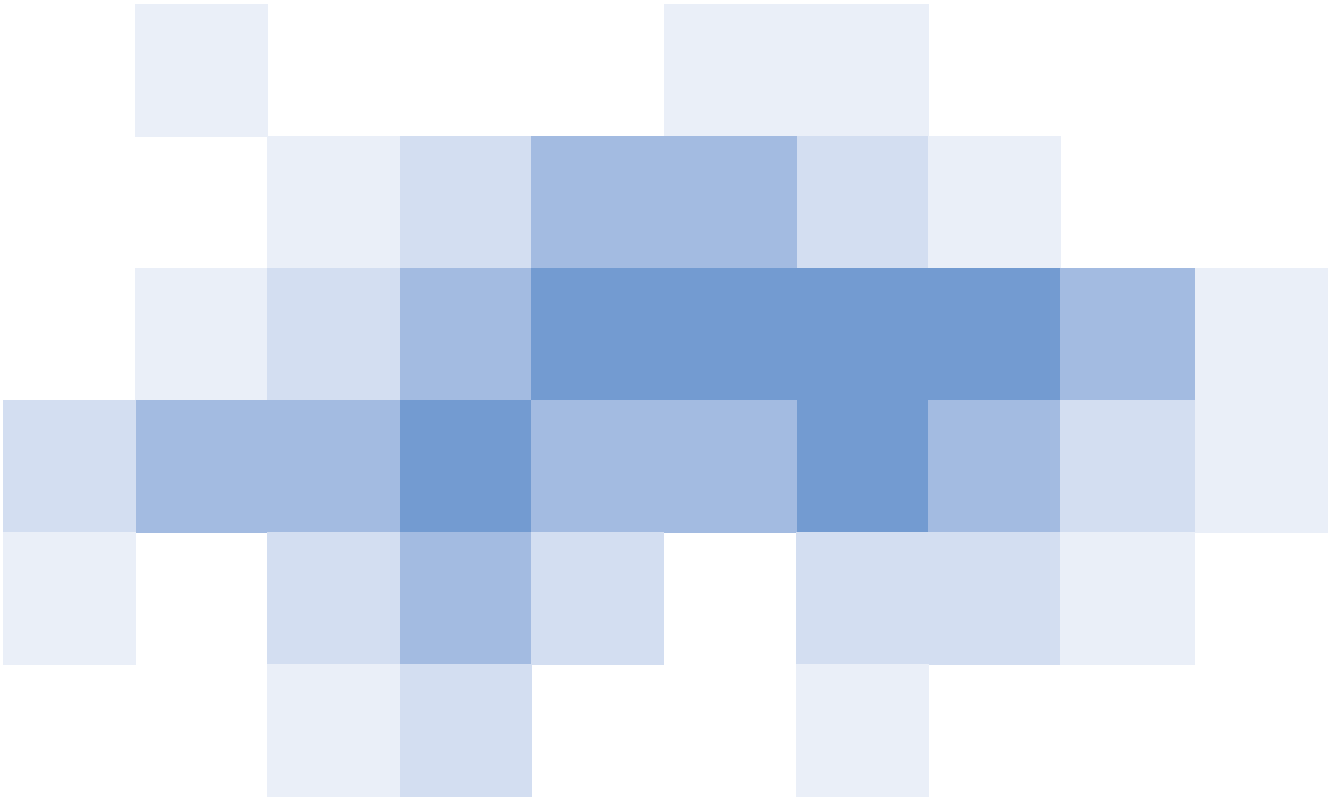
Concluding remarks

As part of its global mandate to protect stateless persons and prevent statelessness conferred by the United Nations General Assembly, UNHCR launched the #IBelong Campaign in November 2014 with the aim of supporting governments around the world to end statelessness within ten years in collaboration with civil society stakeholders and stateless persons.

An important condition for achieving this goal is gaining clarity about gaps in existing systems designed to protect stateless persons and reduce statelessness. To this end, UNHCR has carried out studies on the situation of stateless persons in various countries. The present study on the situation of stateless persons in Switzerland forms part of these efforts.

UNHCR hopes that the findings of this study and the resulting recommendations will encourage a more in-depth exchange among all stakeholders in Switzerland about how to address the existing protection and regulatory gaps in Switzerland and improve the existing protection system.

The international conference planned for October 2019 in Geneva as part of the #IBelong Campaign provides an opportunity to present achieved or planned improvements and thus, in the context of international discussions, set an important example for the implementation of the international conventions and the commitment to end statelessness around the world.



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