UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

SCOPING PAPER: STATELESSNESS IN IRELAND

Background

The primary purpose of this paper is to examine the international and national legal framework relating to statelessness, to map out as much as possible the extent of statelessness in Ireland and to identify particular areas where issues involving statelessness arise. It will highlight that there are a number of areas where it is difficult or impossible for potentially stateless persons to avail of some procedures, and to realise certain rights in the absence of a determination procedure. It is hoped that the paper will demonstrate that statelessness is an issue that is directly relevant to a number of procedures and has already been the subject of a number determinations and findings by state agencies. In UNHCR's view, the establishment a formal statelessness determination procedure would ensure fairness, transparency and efficiency in how such cases are dealt with and improve consistency within the immigration and protection system.

UNHCR has engaged with the Irish authorities on the issue of statelessness and the need to establish a determination procedure in recent years. In 2008, the Office identified the proposed introduction of a single protection procedure via the Immigration, Residence and Protection Bill as an opportunity to address existing gaps pertaining to statelessness in a constructive and practical manner without creating parallel institutions. While this legislation has not advanced, the prospect of legislative reform has again returned quite recently.

In July 2009, a focal point arrangement was agreed with the Irish Naturalisation and Immigration Service (INIS) for liaison in relation to specific cases of possible statelessness that come to the attention of UNHCR. An *ad hoc* procedure was agreed, whereby if UNHCR identifies an individual who is potentially stateless, it will refer the case to INIS in order to facilitate finding a durable solution for that individual.

In 2011, an expert consultant with UNHCR's Statelessness Unit in Geneva met with INIS officials to advance discussions on statelessness and provide an update on the guidelines UNHCR was developing at that time. At the meeting, the lack of data in relation to statelessness in Ireland was highlighted and this paper aims, *inter alia,* to further progress our understanding of existing data sources and gaps. In July 2011, a representative of INIS attended the UNHCR Practitioner Seminar on Statelessness and National Procedures held in Brussels which provided further information on existing determination procedures in other countries.

In December 2011 UNHCR welcomed Ireland's statement to the Intergovernmental United Nations event on the occasion of the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness which provided:

> *"Ireland is fully committed to the implementation of its obligations as a party to both the 1954 and 1961 statelessness conventions. Our most recent legislation in this area, the Irish Nationality and Citizenship Act 2004, was*

designed to ensure continued consistency of Irish citizenship law with the State's international commitments"

In July 2012, UNHCR organised a series of events on statelessness. The Head of the UNHCR Statelessness Unit in Geneva came to Ireland and met with officials from INIS and the asylum determination bodies. A seminar was held with legal practitioners and key officials in partnership with the Irish Society of International Law. Attention was drawn to the UNHCR guidelines on the definition of statelessness and on statelessness procedures, published shortly before these events, and practical assistance and advice was offered in relation to the establishment of determination procedures. "Nowhere People: The World's Stateless", an exhibition of the work by award-winning photographer Greg Constantine was hosted for three weeks in the Department of Justice building at 51 St. Stephen's Green.[1]

In June 2013 statelessness experts from UNHCR met with officials and delivered training to around 40 officials from across the relevant State agencies.The training covered the legal framework, the definition of a stateless person, the causes and consequences of statelessness, statelessness determination procedures and the protection of stateless persons.

UNHCR has very recently published a Handbook on Protection of Stateless Persons. The Handbook[2] sets out guidance on interpretation and implementation of the provisions of the 1954 Convention relating to the Status of Stateless Persons. The Handbook is intended to guide government officials, judges and practitioners, as well as UNHCR staff and others involved in addressing statelessness.

The content of this Handbook was first published in 2012 in the form of three UNHCR Guidelines: (1) on the Definition of a Stateless Person, (2) on Statelessness Determination Procedures and (3) on the Status of Stateless Persons. In replacing these Guidelines, the text of the Handbook replicates their content with only minimal changes, principally to address minor gaps identified since publication of the Guidelines and to update references to other UNHCR publications.

The Handbook does not include guidance on prevention and reduction of statelessness; these are dealt with instead in separate Guidelines (Guidelines on Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness[3] and forthcoming Guidelines on loss and deprivation of nationality).

A Handbook for Parliamentarians on Nationality and Statelessness has also been published[4]. It was first issued in 2005, and was updated in August 2008; a new edition was launched in July 2014.

UNHCR's Handbooks and guidelines aim to provide a valuable resource for both stateless determination procedures and the development and implementation of law and

[1] http://www.nowherepeople.org/
[2] Available at http://www.refworld.org/docid/53b676aa4.html
[3] Available at: http://refworld.org/docid/50d460c72.html
[4] Available at: http://www.refworld.org/docid/436608b24.html

policies relating to the protection of stateless persons. They may equally constitute a useful reference point for on-going engagement with the Irish authorities on the issue of statelessness determination in Ireland.

UNHCR notes that in response to parliamentary question[5] the Minister for Justice and Equality stated:

> *"Ireland is not unusual in so far as it does not have a specific procedure for determining statelessness claims. Of the nearly eighty countries to have ratified the 1954 Convention Relating to the Status of Stateless Persons only a small fraction (including only four EU countries - Spain, Latvia, Hungary and UK) have put in place specific determination procedures for non-protection statelessness claims. While the position adopted by other jurisdictions clearly does not determine the actions that Ireland might take in this area, some caution is nonetheless necessary to avoid a situation where Ireland, as a small country, could become a destination for stateless persons seeking access to a determination process. I have no immediate plans to introduce a formal determination procedure but will keep the matter under review, having regard also to developments in other jurisdictions and the nature of their determination procedures."*

Together with the Immigrant Council of Ireland, UNHCR will host a National Conference on Statelessness in Ireland on 21 October 2014. At the event, international and national experts will provide an update on recent developments in relation to statelessness in Europe and discuss the current position in Ireland. Recommendations for addressing statelessness in Ireland will also be considered.

UNHCR notes that the recent Statement of Government priorities 2014-2016 includes a commitment to introduce a separate Protection Bill to establish a single application procedure for the investigation of all grounds for protection. The heads of bill are due to be published in the near future.[6] UNHCR would encourage the State to consider the possibility of using this opportunity or other opportunities arising in the context of the review of asylum procedures and policies being undertaken this year to address the lack of a statelessness determination procedure in Ireland.

1. What is statelessness?

UNHCR estimates that there are approximately 10 million stateless persons worldwide[7]. Statelessness occurs when an individual is not considered a national by any state under the operation of its law.[8] Statelessness can arise in a number of circumstances:

---

[5] http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2014061200062#WRR00375

[6] "I will have heads of the Bill to Government within two to three weeks and we will progress that legislation in the coming months. It will probably be Easter 2015 by the time we get to implement it. Effectively, this means new arrivals will be dealt with within a year or a year and a half at the maximum. That will make a significant difference.", PQ, 24 September 2014: http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014092400004?opendocument#B00450

[7] UNHCR Global Trends 2013: War's Human Cost, 20 June 2014, available at: http://www.refworld.org/docid/53a3df694.html [accessed 16 October 2014]

Break-up of states. In the early 1990s, more than half of the world's stateless lost their nationality because of the break-up of states. The turbulent dissolution of the Soviet Union and the Yugoslav Federation caused internal and external migration that left hundreds of thousands stateless throughout Eastern Europe and Central Asia. Twenty years later, tens of thousands of people in the region remain stateless or at risk of statelessness.

Abandonment after the post-colonial formation of a state is another cause of statelessness. Large populations have remained without citizenship as a result of such state-building processes for decades in Africa and Asia.

Complex laws. Although international law places limits on the powers of states to grant nationality, states do have the right to determine whom they consider to be a citizen. They have adopted a wide range of approaches. With this complex international maze of citizenship laws, many people find that they fall through the cracks. For instance, in some countries, citizenship is lost automatically after prolonged residence in another country.

Simple obstacles. Failure or inability to register children at birth, a pervasive problem in many developing countries, leaves many children without proof of where they were born, who their parents were or where their parents were from. Not having a birth certificate does not automatically indicate the lack of citizenship, but in many countries, and in today's increasingly mobile world of migrants, not having proof of birth, origins or legal identity increases the risk of statelessness.

Discrimination against women. While a number of countries in sub-Saharan and North Africa, the Middle East and Asia have started to reform legislation to address this, in at least 30 countries only men can pass their citizenship on to their children. The children of women from these countries who marry foreigners can end up stateless.

Racial and ethnic discrimination. An underlying theme of most situations of statelessness is ethnic and racial discrimination that leads to exclusion, where political will is often lacking to resolve the problem. Via decree, Iraq's former President Saddam Hussein stripped the Faili Kurds of their Iraqi citizenship in one day (in 1980). While most Roma and other minority groups do have citizenship of the countries where they live, thousands continue to be stateless in Europe. Since states gained independence or boundaries were established, groups such as the Muslim residents (Rohingya) of northern Rakhine state in Myanmar, some hill tribes in Thailand, the Bidoon in the Gulf States and various nomadic groups have been excluded from citizenship in the only countries they have lived in for generations.

Often, such groups have become so marginalised that even when legislation changes to grant access to citizenship, they encounter huge obstacles and bureaucratic red tape. Often, the cost of actually obtaining citizenship and related documentation is almost insurmountable.

Examples of populations that are typically characterised by statelessness include: the Rohingya from western Myanmar, the Bidoon from the Gulf region, Kurds from Syria, ethnic Nepalese persons from Bhutan, and "Russian speakers" from Estonia and Latvia.

[8] 1954 Convention relating to the Status of Stateless Persons, Article 1.

Consequences of statelessness

The consequences of being stateless are considerable. Nationality is an individual's basic right as it provides the legal connection between an individual and a state. Stateless persons, without nationality, are incapable of exercising their most fundamental rights. At a national level, stateless persons have no definite legal status, no clearly defined rights and are at the mercy of the administrative authorities. Stateless persons are often denied basic rights and access to employment, housing, education, health care and pensions. They may not be able to own property, open a bank account, get married legally or register the birth of a child. Some face long periods of detention, because they cannot prove who they are or where they are from.

UNHCR's mandate on statelessness

Through a series of resolutions beginning in 1994, the UN General Assembly gave UNHCR the formal mandate to prevent and reduce statelessness around the world, as well as to protect the rights of stateless persons. Twenty years earlier, the Assembly had asked UNHCR to provide assistance to individuals under the 1961 Convention on the Reduction of Statelessness.

UNHCR's governing Executive Committee provided guidance on how to implement this mandate in a "Conclusion on the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons" issued in 2006. This requires the agency to work with governments, other UN agencies and civil society to address the problem. UNHCR activities in the field are grouped into four categories.

- Identification: Gather information on statelessness, its scope, causes and consequences.
- Prevention: Address the causes of statelessness and promote accession to the 1961 Convention on the Reduction of Statelessness.
- Reduction: Support legislative changes and improvements to procedures to allow stateless persons to acquire a nationality and help individuals take advantage of these changes.
- Protection: Intervene to help stateless persons to exercise their rights and promote accession to the 1954 Convention relating to the Status of Stateless Persons.

2. The international legal framework relating to statelessness

Statelessness is an international phenomenon which is demonstrated by the fact that the issue is touched on in a number of international instruments. Three multilateral treaties (all of which have been ratified by Ireland) are of particular significance:

- The 1951 Convention on the Status of Refugees
- The 1954 Convention relating to the Status of Stateless Persons
- The 1961 Convention on the Reduction of Statelessness

(i) 1951 Convention on the Status of Refugees and the 1967 Protocol

Stateless persons falling within the definition of the term “Refugee” in the 1951 Convention are entitled to protection under the Convention as a refugee.

An issue that has caused considerable controversy is the extent to which stateless persons might rely on the protection of the 1951 Convention citing the denial of nationality/effective nationality alone. The approach that something more than denial of effective nationality is required to amount to persecution under the 1951 Convention appears to have found favour.[9]

Ireland is a state party to the 1951 Convention and its core provisions are implemented into national law by virtue of the Refugee Act 1996. Thus, under Irish law, a stateless person must demonstrate a well-founded fear of persecution in order to qualify for refugee status.

(ii) 1954 Convention relating to the Status of Stateless Persons

The 1954 Convention relating to the Status of Stateless Persons is the primary international instrument adopted to date to regulate and improve the legal status of stateless persons. The Convention sets the legal framework for the standard treatment of stateless persons. It was adopted to cover, *inter alia*, those stateless persons who are not refugees and who are not, therefore, covered by the 1951 Refugee Convention. The 1954 Convention contains provisions regarding stateless persons' rights and obligations pertaining to their legal status in the country of residence. The Convention further addresses a variety of matters that have an important effect on day-to-day life such as gainful employment, public education, public relief, labour legislation and social security. In ensuring that such basic rights and needs are met, the Convention provides the individual with stability and improves the quality of life of the stateless person. This, in turn, can prove to be of advantage to the state in which stateless persons live, since such persons can then contribute to society, enhancing national solidarity and stability. Moreover, the potential for migration or displacement of large population groups decreases, thus contributing to regional stability and peaceful co-existence.

The key provisions of the 1954 Convention may be summarised as follows:

- In Article 1 of the Convention, the definition of a stateless person is set out: "For the purpose of this Convention, the term 'stateless person' means a person who is not considered as a national by any state under the operation of its law".
- Article 3 of the Convention on non-discrimination states that "The contracting states shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin".
- Articles 12 to 24 provide that stateless persons shall be entitled to a certain standard of treatment in relation to various aspects relating to juridical status, gainful employment and welfare.
- Article 25 provides that a stateless person shall be afforded administrative assistance when the exercise of a right by that person would normally require the

[9] See in particular the decision of the Court of Appeal (England and Wales) in *Revenko v Secretary of State for the Home Department* [2001] 1 Q.B. 601. *Revenko* has been applied by the Irish courts: see for example the decision of Clark J in *M v Refugee Appeals Tribunal* [2009] IEHC 128. This issue is also currently the subject of an appeal to the Supreme Court in *T (D) v Refugee Appeals Tribunal & Min for Justice (No 2)* [2012] IEHC 562 (see below).

assistance of authorities of a foreign country to whom he/she cannot have recourse.

- In Articles 27 and 28 the issue of identity papers and travel documents for stateless persons is addressed. An individual recognised as a stateless person under the terms of the Convention should generally be issued an identity and travel document by the state party.
- Article 29 provides for equal treatment of state party nationals and stateless persons in respect of fiscal charges and taxes.
- Article 31 states that stateless persons are not to be expelled save on grounds of national security or public order. Expulsions are, in principle, subject to due process of law. The Final Act of the Convention indicates that non-refoulement in relation to danger of persecution is a generally accepted principle. The drafters, therefore, did not feel it necessary to enshrine this in the articles of a Convention geared toward regulating the status of stateless persons.
- Article 32 of the Convention regulates the issue of naturalisation. The state party shall as far as possible facilitate the assimilation and naturalisation of stateless persons. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.
- The Final Act of the Convention recommends that each state party, when it recognises as valid the reasons for which a person has renounced the protection of the state of which he/she is a national, consider sympathetically the possibility of according to the person the treatment which the Convention accords to stateless persons. This recommendation was included on behalf of *de facto* stateless persons who, technically, still held a nationality but did not receive any of the benefits generally associated with nationality, such as national protection.

Ireland has ratified the 1954 Convention but has yet to implement many of its obligations arising thereunder. Ireland has made one reservation to the Convention, which reads as follows:

> "With regard to article 29(1), the Government of Ireland do not undertake to accord to stateless persons treatment more favourable than that accorded to aliens generally with respect to
>
> (a) The stamp duty chargeable in Ireland in connection with conveyances, transfers and leases of lands, tenements and hereditaments, and
>
> (b) Income tax (including sur-tax)."

(iii) 1961 Convention on the Reduction of Statelessness

The 1961 Convention on the Reduction of Statelessness is the primary international legal instrument adopted to date to deal with the means of avoiding statelessness. The Convention provides for acquisition of nationality for those who would otherwise be stateless and who have an appropriate link with the state through factors of birth or descent. The issues of retention of nationality once acquired and transfer of territory are also addressed. The 1961 Convention does not address nationality issues within the jurisdiction of a state only, but also offers solutions to nationality problems which might

arise between states. To this end, the principles outlined in the Convention have served as an effective framework within which to resolve conflicts concerning nationality.

The key provisions of the 1961 Convention may be summarised as follows:

- Articles 1-4 outline principles for the granting of nationality at birth to avoid future cases of statelessness.
- Articles 5-7 include regulation on the loss or renunciation of nationality and stipulate that loss/renunciation should be conditional upon the prior possession or assurance of acquiring another nationality. Articles 5 and 6 include principles of family unity in the light of avoidance of statelessness. In particular, Article 6 contains a provision of non-discrimination against family members as to the loss of nationality.
- The issue of deprivation of nationality is dealt with in Articles 8-9. The basic principle is that no deprivation should take place if it will result in statelessness. Article 9 states that "A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds." Loss or deprivation of nationality may take place only in accordance with law and accompanied by full procedural guarantees, such as the right to a fair hearing by a court or other independent body.
- The issue of transfer of territory is addressed in Article 10. It follows from this provision that treaties shall ensure that statelessness does not occur as a result of transfer of territory. Where no treaty is signed, the state shall confer its nationality on those who would otherwise become stateless as a result of the transfer or acquisition of territory.
- Article 11 of the Convention was elaborated for the establishment, within the framework of the United Nations, of a body to which a person claiming the benefit of the Convention may apply for the examination of his/her claim and for the assistance in presenting it to the appropriate authority. UNHCR has been requested, by the United Nations General Assembly, to fulfill this function.
- The Final Act of the Convention delineates definitions of words used in the Convention, as well as duties of the state parties. It recommends that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality.

Ireland has ratified the 1961 Convention and would appear to have broadly implemented its obligations thereunder via nationality and citizenship legislation (discussed further below). Ireland has made one reservation to the Convention, which reads as follows:

> "In accordance with paragraph 3 of article 8 of the Convention Ireland retains the right to deprive a naturalised Irish citizen of his citizenship pursuant to section 19(1)(b) of the Irish Nationality and Citizenship Act, 1956, on grounds specified in the aforesaid paragraph."

3. The domestic legal framework relating to statelessness

Irish Nationality and Citizenship Act 1956 (as amended)

Under section 6(3) of the 1956 Act, a person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country. Section 10 of the Act deals with foundlings, providing that every deserted new-born child first found in the State shall, unless the contrary is proved, be deemed to have been born in the island of Ireland to parents at least one of whom is an Irish citizen.

Section 16 of the 1956 Act states that the Minister may, "in his absolute discretion", grant an application for a certificate of naturalisation although not all of the conditions for naturalisation are complied with in the case of refugees and of stateless persons within the meaning of the 1954 Convention. In practice this section generally operates as a waiver in relation to the length of reckonable residence required (normally 5 years). INIS have stated, "Applicants are generally expected to have at least 3 years residency even where it is appropriate to consider applications under the provisions of Section 16."[10]

The administrative fee for obtaining a certificate of naturalisation – in most cases €950 - is not applicable to stateless persons by virtue of Regulation 13(2) of the Irish Nationality and Citizenship Regulations 2011 (S.I. 569 of 2011). It is also noted that Regulation 13(1)(a) of the 2011 Regulations introduced a new application fee of €175 for naturalisation applications from which refugees and stateless persons are not exempt.

The various provisions in the 1956 Act concerned with renunciation, loss and revocation of citizenship are broadly in line with the relevant requirements of the 1961 Convention. Sections 6(3) and 10 constitute an effective implementation of the principles contained in the 1961 Convention on the Reduction of Statelessness for the granting of nationality at birth to avoid future cases of statelessness. There remains scope for the introduction of greater safeguards, however, and UNHCR would advocate, in particular, for the introduction of a provision preventing the revocation of citizenship where this would render a person statelessness.

Section 16 of the 1956 Act and the fees Regulations seek to give effect to Article 32 of the 1954 Convention, which requires States to facilitate, as far as possible, the naturalisation of stateless persons and to make every effort to expedite naturalisation proceedings and to reduce, as far as possible, the charges and costs of such proceedings.

The provisions of the 1956 Act which relate to stateless persons are quite clear in their import. However, there are significant practical obstacles to relying on them in the absence of a stateless determination procedure (with the exception of the operation of a presumption in the case of foundlings).

UNHCR is aware, for example, of an application by a potentially stateless person for citizenship after three years of reckonable residency to which no substantive decision issued after two years. This person now has the five years reckonable residency required to apply under the normal procedure, but the issue of his nationality persists. In applying for naturalisation it is necessary to list the applicant's nationality; additionally, a different fee is applicable to stateless applicants. The applicant now been asked to provide a

[10] http://www.inis.gov.ie/en/INIS/Pages/WP11000014

declaration of statelessness but in the absence of a statelessness determination procedure, it is unclear how the applicant is to meet this request.

Refugee Act 1996 (as amended)

Stateless persons who qualify as refugees as defined in Section 2 of the 1996 Act are entitled to refugee protection in Ireland. However, as previously noted, statelessness in itself is not sufficient to qualify for refugee status and such individuals must demonstrate a well-founded fear of persecution. Thus, the number of stateless persons who can avail of the protection of the 1996 Act is limited.

European Communities (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)

To qualify for subsidiary protection (SP), an applicant must demonstrate that he/she on return to his/her country of origin will suffer "serious harm", which is defined as: (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment, or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict.

Regulation 2 defines "country of origin" in relation to stateless persons as, country or countries of former habitual residence. Although certain stateless applicants may be able to show that they are at risk of "serious harm", many will not.

Where subsidiary protection status is granted, beneficiaries do not have the same rights in all respects as refugees. Regulation 24 sets out new conditions in relation to the issuance of travel documents which states that they will only be granted where "the Minister is satisfied that the person concerned is unable to obtain a travel document from the relevant authority of the country of his or her … former habitual residence, and serious humanitarian reasons exist that require the person's presence in another state." Accordingly stateless beneficiaries of subsidiary protection status will only be eligible for a travel document under these regulations if they meet these strict criteria. Such persons, therefore, are likely to wish to apply for a stateless travel document instead to which they would more easily meet the eligibility requirements but in the absence of clear procedures may be unable to do so.

4. How potentially stateless irregular migrants are dealt with in Ireland

The issue of statelessness can affect migrants in any number of ways in the Irish immigration or protection system; in the absence of a formal determination procedure they may be prevented from effectively realising their rights under the 1954 Convention. Stateless persons without an immigration permission, but who do not meet the qualifying criteria for refugee or subsidiary protection status, frequently apply to the Minister for Justice and Equality for leave to remain (LTR) in the State pursuant to section 3 of the Immigration Act 1999. The relevant legislation makes no specific reference to stateless persons but rather refers to more general humanitarian considerations or other compelling grounds. A LTR application can only be made when the Minster is considering issuing a deportation order, and in the case of a negative determination, a deportation order of indefinite duration will issue. Where persons in that position have

family members in Ireland they would thus face considerable obstacles in returning to visit them thereafter.

Outside of the protection system in Ireland, there is a general discretion under immigration legislation (and most likely also as part of the inherent executive power of the State) to grant permission to persons "to be" in the State. Section 4 of the Immigration Act, 2004 states:

> *"an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State".*

This is a provision of general jurisdiction and there can be practical difficulties in applying to the Minister or to an immigration officer to act in accordance with such powers. The immigration system in Ireland is structured for the most part by way of administrative schemes and in the recent past the Minister has argued in the Supreme Court that he does not retain such a jurisdiction - this was, however, rejected by the Court.[11]

Similarly, where a person already has an immigration permission that they wish to renew, under S.4(7) of the Immigration Act :

> *"A permission under this section may be renewed or varied by the Minister, or by an immigration officer on his or her behalf, on application therefor by the non-national concerned."*

Again there have been instances in the past where the immigration authorities have declined to entertain an application made in reliance on such a power.[12] Accordingly, attempts to rely on such powers may involve resort to legal action at some point. More generally, migrants who qualify for an immigration status under other legislative provisions or administrative schemes, for example spouses of EU citizens, may equally experience practical obstacles in advancing such applications as it will be necessary to state one's nationality and to produce a national identity card or passport or equivalent document.

Where an immigration permission is granted under any of the above general provisions, it is at the discretion of the Minister as to what rights are to be granted and for what period of time. Such conditionality may not afford stateless persons all of the rights guaranteed under the 1954 Convention. Such a grant in any case may not explicitly

---

[11] See further *Sulaimon (an infant) v Min for Justice* [2012] IESC 63 *para 15*:

"Accordingly it follows that the Act contemplates a separate power in the Minister to grant this permission other than through the agency of the immigration officer. It is not necessary here to discuss the interesting question of whether that power is derived directly from the Executive power of the State or is now statutory since it is sufficient for present purposes that the Act at least clearly recognises the existence of a power in the Minister whatever its legal basis."

[12] See further *O'Leary & Lemiere v Min for Justice* [2012] IEHC 80 *para 24*:

"even if it is true that there is no tailor-made application procedure for the particular circumstances of a case such as this, it is manifestly the case that under s. 4, the Minister has power in his discretion to extend any permission to be in the State granted to a non national and to prescribe a condition as regards duration which justly and reasonably meets the exigencies of the case."

declare its underlying rationale and does not, as a matter of practice, include any kind of formal declaration of statelessness. Once a permission is granted for a given period, it remains at the discretion of the Minister as to whether that permission is to be renewed and on what terms.

5. Registration requirements

Where an immigration permission is granted, stateless persons may continue to experience difficulties registering with the Garda National Immigration Bureau (GNIB) due to a lack of identity papers or other relevant documentation.

Section 9 of the Immigration Act 2004 creates an obligation in respect of all non-Irish nationals over the age of 16 residing in the state to register with GNIB. In so doing they must "unless he or she gives a satisfactory explanation of the circumstances which prevent his or her doing so, produce to the registration officer a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality."

Stateless persons without a passport or equivalent document may experience considerable difficulty registering with GNIB. Furthermore, letters granting leave to remain frequently state that the permission is conditional upon registration; without a GNIB card they may accordingly not be able to provide evidence of their right to be in the State or to work legally. They may equally face obstacles in obtaining a travel document (see below) to use for the purposes of registration and thus face a catch 22 situation where they cannot regularise their status in the state due to administrative obstacles, despite being granted an immigration permission by the Minister in a letter.

Under the Immigration Act 2004 (Registration Certificate Fee) Regulations 2012[13] persons must pay €300 when they register with GNIB. This fee is waived in the case of refugees and a number of other persons but not in the case of stateless persons.

6. Travel documents for Stateless persons

UNHCR welcomes the fact that as of November 2011, INIS has begun accepting applications for a new format travel document issued in accordance with Article 28 of the 1954 Convention relating to the Status of Stateless Persons. According to the INIS guidance notes for applicants, the document "will only be issued to those who have been declared stateless in accordance with the [1954 Convention relating to the Status of Stateless Persons]." How a stateless person can acquire such a declaration in the absence of a statelessness determination procedure is not clear.

Stateless persons, in the absence of a declaration, sometimes apply in a similar way to other persons with leave to remain who do not hold a national passport. Under INIS guidance, a Temporary Travel Document may issue to such persons "in exceptional circumstances only… The Irish Naturalisation and Immigration Service (INIS) is not obliged to issue travel documents in such instances."

[13] S.I. No. 444/2012

From a practical point of view it is very difficult for stateless persons to provide the documentation necessary to substantiate such an application – it requires seeking written evidence of the national authority that is unable or unwilling to recognise him/her as a national:

> *"You should instead seek the assistance of your nearest consular service.*
>
> *If your national authorities are unable or unwilling to issue you with a national passport, they must provide you with written confirmation of this, which you must submit with your application. The letter from your Embassy /High Commission must be on official headed paper, with contact details for the office, and stamped with their official stamp."*

Under the Immigration Act 2004 (Travel Document Fee) Regulations 2011 a fee of €80 is prescribed for travel document applications. Under 19(7) of the Act of 2004 this excludes a refugee travel document but not a stateless one.

7. First Declarations of Statelessness

In March 2014, the Irish authorities issued a declaration of statelessness to a stateless person in Ireland. This is the first such declaration that UNHCR is aware of and UNHCR welcomes this step as a very positive development. The individual concerned is of Russian ethnicity from the territory of Estonia and is married to an EU citizen. He came to Ireland in 2002 and was unable to acquire lawful residence status as a stateless person because of the lack of a procedure in this State. He remained in Ireland since, and was unable to travel after his "aliens passport" expired. He was also unable to regularise his status under the EU treaty rights procedure as a valid identity document was required by the State authorities. He sought recognition as a stateless person by the Irish authorities and, when this did not result in a solution, he issued High Court proceedings The proceedings were settled in March 2014, and he was issued with a declaration formally declaring him stateless. The declaration lists all of the rights attaching to that status, including the right to apply for a statelessness travel document.

A second declaration of statelessness issued in May 2014. The recipient of the declaration in this case had traveled to Ireland as a citizen of Lithuania. Almost three years after arriving here, he was informed that his citizenship was being revoked in the mistaken belief that he was a citizen of the Republic of Azerbaijan, a country which did not exist as an independent state when he was born in the old USSR in 1966 and when he left his hometown to move to the Lithuanian part of the USSR in the 80s. When legal proceedings in Lithuania failed to resolve the issue, the Irish immigration service granted him a residence permit. He later engaged a solicitor to pursue his application for a declaration of statelessness. Subsequently, a statelessness declaration issued from the Irish authorities.The declaration was in the same format as the first declaration; in addition it stated that the declaration may be produced in support of an application for citizenship. At the time that he received the declaration he had a citizenship application pending which was subsequently successful and he was granted a certificate of naturalisation in Sept 2014.

Both of these statelessness declarations are positive developments. They mark the first time formal declarations have issued recognising the applicants' status as a stateless person and setting out the rights they are entitled too as a result. Such declarations should facilitate subsequent applications for a statelessness travel document, naturalisation or other measure/procedure.

8. The extent of statelessness in Ireland – data from the protection system

(i) Resettled or "programme" refugees

Ireland joined the UNHCR (UN Refugee Agency) led Resettlement Programme following a Government Decision in November 1998. The legal framework for the Resettlement programme is set down in Section 24 of the Refugee Act 1996 (as amended). Between 2000 and 2014 a total number of 1157 refugees have been brought to Ireland under this programme[14]. Of those figures, three are recorded as stateless. A further 82 are recorded as being Burma-Rohinga, an ethnic group who would frequently be considered to be stateless refugees.

(ii) Applications to ORAC by "stateless" persons

Another potential indicator of the number of stateless persons in Ireland arises in the asylum context. Since 2000, the year that the Office of the Refugee Applications Commissioner (ORAC) became operational, 167 applications for refugee status were recorded as being made by persons categorised at "stateless".[15] Most of these applications were made between 2001 and 2003, when there were 146, with very low levels of applications since then. There were just 6 in total from 2004 to 2010. In 2011 there were 10 applications recorded under the category of stateless; in 2012 and 2013 there were none. The reason for the fall in numbers after 2003 is unclear, although UNHCR's research (explained further below) would suggest that stateless or potentially stateless persons were still applying for asylum after 2003 but were not necessarily recorded as such for statistical purposes.

[14] http://integration.ie/website/omi/omiwebv6.nsf/page/resettlement-overviewresettlementprogrammes2000-2011-en

[15] Based on ORAC statistics provided to UNHCR

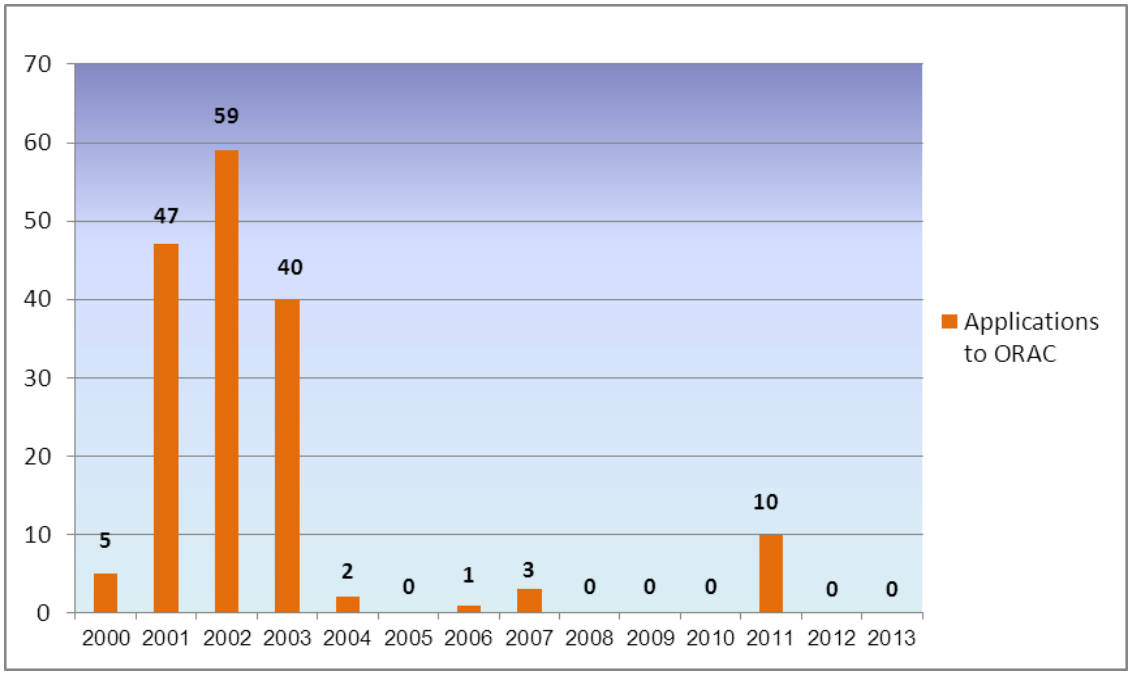

Table 1: Applications to ORAC by "stateless" persons, 2000-2013

(iii) Analysis of refugee status granted to persons recorded as "stateless"

A rise in grants of refugee status from roughly 2002-2005 was followed by a complete drop off whereby no "stateless" person has received a positive recommendation at either ORAC or the Refugee Appeals Tribunal (RAT) since 2005. This reflects the low number of applications recorded as being made by "stateless" persons for most of that period. In 2009 there was one grant of Subsidiary Protection (SP) to a stateless person and one grant of LTR to a potentially stateless person, and from 2010 to 2012 there was one grant of LTR each year to potentially stateless persons. Table 2 below illustrates grants of refugee status during the period 2000-2013 from the information available to UNHCR.

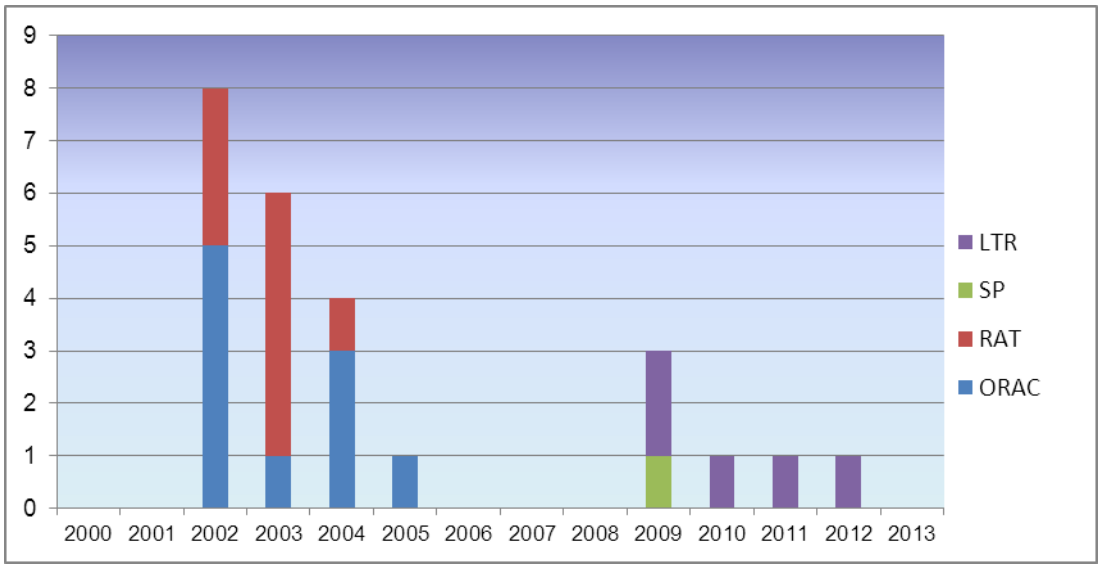

Table 2: Number of grants of refugee status/SP/LTR by the various Irish authorities to persons recorded as "stateless", 2000-2013.

(iv) Ireland's "stateless" refugee population

Every year UNHCR prepares an Annual Statistical Report, which compiles refugee figures provided by the various Irish authorities. The refugee population figures equate to the number of persons recognised in the State as refugees minus any revocations or naturalisations that have taken place[16]. It should be noted, however, that population figures available before 2013 were approximate only. In general, industrialised countries cannot provide a reliable estimate of their refugee population and until 2013 Ireland was no different. However, the 2013 UNHCR Annual Statistical Report includes, for the first time, a reliable estimate of the refugee population figure, as provided by INIS. According to INIS figures provided for the purposes of the 2013 report, a total of 17 people recorded as stateless have been granted refugee status in Ireland since processing of asylum applications began. This indicates a discrepancy of 2 with the detailed recognition statistics UNHCR received separately in relation to ORAC and the RAT; we cannot say with certainty which is the more accurate figure.

As illustrated in Table 3 below, Ireland's current population of refugees recorded as "stateless" stands at 8, but stood as high as 25 in 2010.[17] However, in reality it is likely that the stateless refugee population is larger, particularly when one considers intakes of program refugees referred to above. From the statistics available from the authorities, it would seem that there have been very few grants of naturalisation to refugees recorded as "stateless" over the years. UNHCR will liaise further with the authorities to seek clarification on these statistics.

[16] Figures for deaths or emigration are not available to adjust the figure further
[17] Source, UNHCR Ireland Annual Statistical Report, 2013.

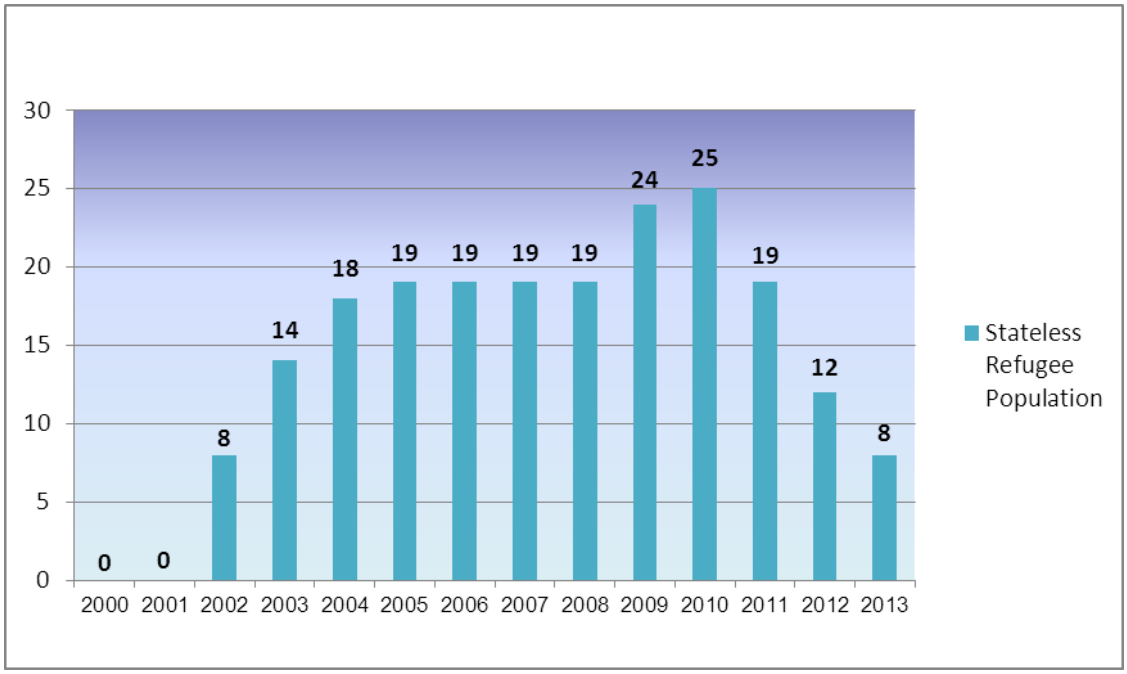

Table 3: Total "stateless" refugee population, 2000-2013

(v) Refugee Appeals Tribunal (RAT) decisions database

Section 2 of the Refugee Act 1996 sets out the following refugee definition (emphasis added):

> "In this Act 'a refugee' means a person who, owing to a 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 or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; **or who, not having a nationality and being outside the country of his or her former habitual residence**, is unable or, owing to such fear, is unwilling to return to it…"

Also of note is section 8(2) which provides as follows:

> "An interview under subsection (1) shall, in relation to the person the subject of the interview, seek to establish *inter alia*—
>
> (*a*) whether the person wishes to make an application for a declaration and, if he or she does so wish, the general grounds upon which the application is based,
>
> (*b*) the identity of the person,
>
> **(*c*) the nationality and country of origin of the person**…"

Thus, the 1996 Act provides that refugee status determination bodies must seek to establish the nationality and country of origin of a person. A fact finding exercise as to whether a person does or does not have a nationality falls clearly within the remit of

ORAC and the RAT in respect of the refugee status determination procedure. Such an exercise is essential at the outset because a decision-maker must determine in relation to which country an application for refugee status is to be determined.

In conducting such fact finding exercises both ORAC and the RAT have, on occasion, found persons to be stateless and, at the same time, meeting the criteria of the refugee definition – we have provided some figures above in relation to those persons. There would, however, appear to be a dearth of information in relation to the number of persons found to be stateless for the purposes of the refugee status determination procedure but not meeting the criteria of the refugee definition.

For this reason, UNHCR undertook an analysis of the RAT decisions database[18] to identify any cases where the RAT found a person to be stateless, for the purposes of the refugee status determination procedure, but not a refugee. We would sound a note of caution in relation to these findings: All findings of fact made by the refugee status determination bodies relate to the refugee status determination process only – they legally pertain only to the proper enquiries of ORAC and RAT under the terms of the 1996 Act. However, findings of fact as to nationality by RAT and ORAC are of value in terms of seeking to ascertain what the possible incidence of statelessness might be in Ireland.

UNHCR identified 213 cases in the RAT database where statelessness was examined as an issue. The top five countries of birth were Bhutan (57), Kuwait (35), Palestine (20), Burma/Myanmar (11), and Syria (9). As will be seen from a consideration of the case law below, it is frequently a matter of controversy whether a potentially stateless person is in fact stateless, and if they are, whether their country of former habitual residency is their original country of birth or some other country they have lived in during an intervening period.

[18] https://decisions.refappeal.ie/

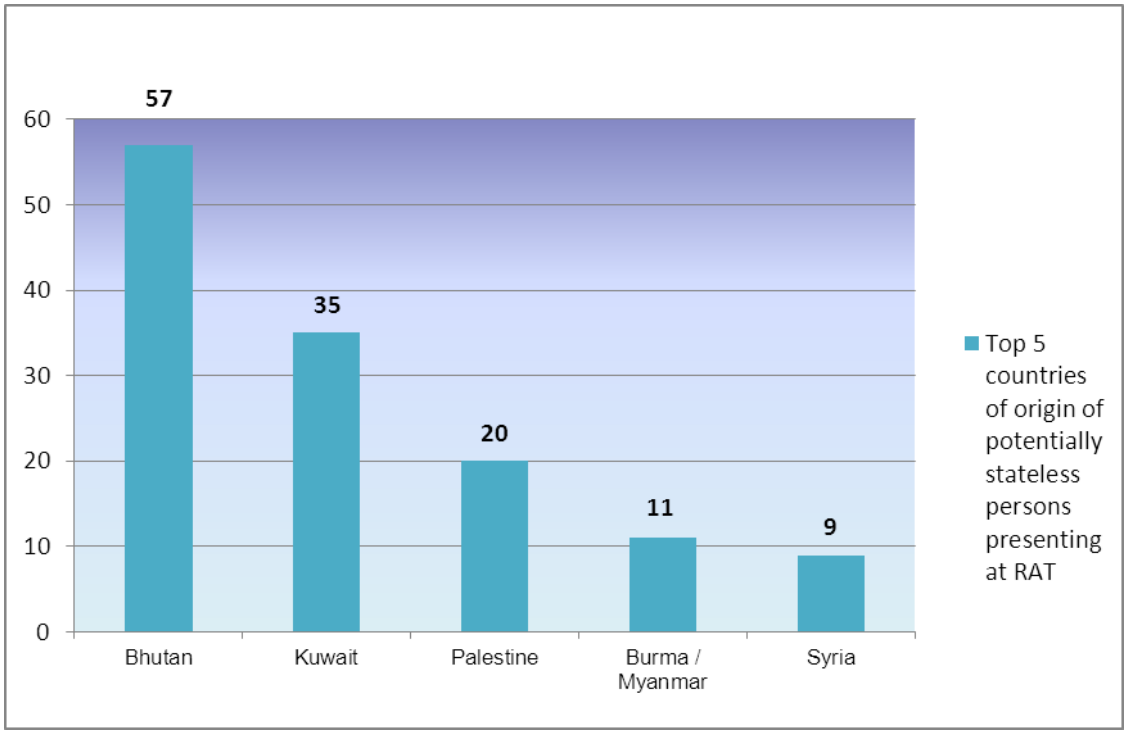

Table 4: Top 5 countries of birth/origin of potentially stateless persons presenting at the RAT

A finding of statelessness was made by the presiding Tribunal Member in 100 of the 213 cases identified. In another 50 cases, the Tribunal Member indicated that the applicant may be stateless. In the remaining 63 cases, either no finding on statelessness was made or the Tribunal Member expressly found that the applicant was not stateless.

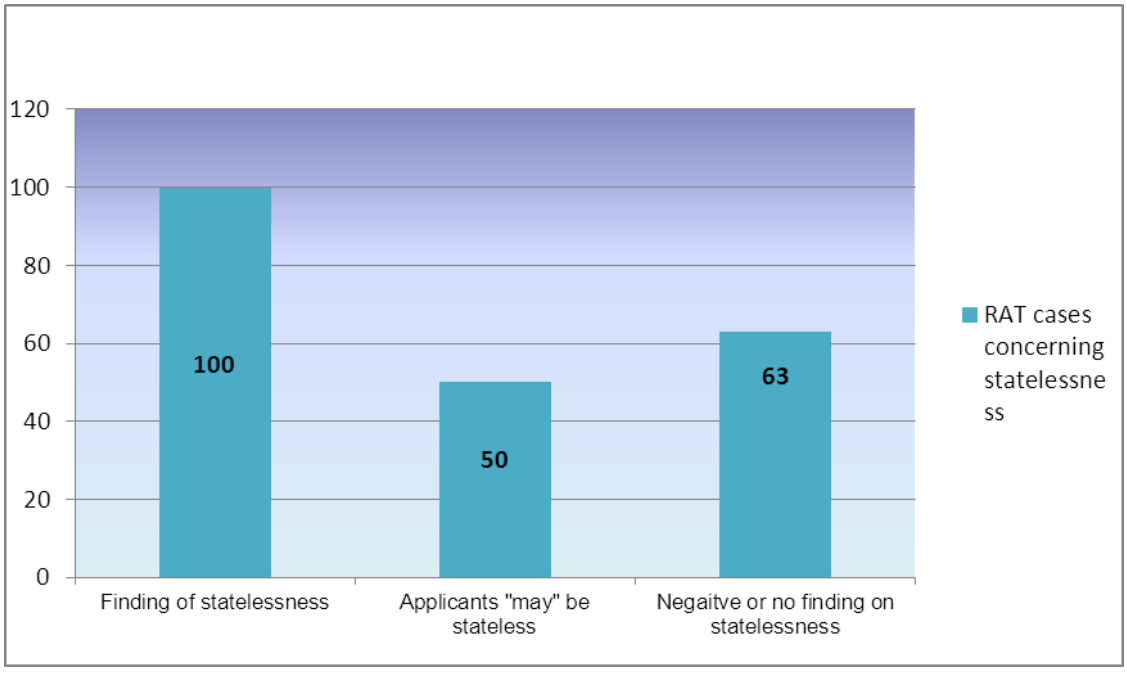

Table 5: Findings in RAT cases concerning statelessness

2009 was by some distance the year when the most stateless cases were identified by the Tribunal. There were 79 cases where statelessness was in issue. Of these, in 47 cases a finding of statelessness was made and in 17 cases the Tribunal Member

indicated that the applicant may be stateless. The vast majority of the 79 cases from 2009 carry "69" reference numbers dating from 2006, 2007 and 2008. This reveals the disconnect with the ORAC statistics, according to which a total of just 4 applicants were recorded as "stateless" over that period.

Crucially, of the total 100 cases where a positive finding of statelessness was made, only 18 applicants received a positive recommendation for refugee status. For the remaining 82 no formal statelessness determination process exists, leaving them identified by one State institution as stateless or possibly stateless (for the purposes of the refugee status determination procedure) but without an appropriate statelessness determination procedure to access their rights under domestic legislation or the 1954 Convention.

(vi) The absence of reliable data on statelessness

Having considered the available data sources and having consulted with the various authorities as to how such data is compiled, it would appear reasonable to conclude that there is an absence of reliable data on potential cases of statelessness such that the extent of incidences of statelessness in Ireland cannot be identified accurately.

ORAC statistics are broken down by nationality. In certain instances an applicant's nationality is recorded as "stateless". According to ORAC, the practice is that details of nationality (including statelessness) are recorded from the statements as to nationality as provided by the applicants in their asylum application form and at their section 8 interview. However, it would appear that practice in this regard may be inconsistent and the fluctuating statistics illustrated in Table 1 would seem to support this conclusion. UNHCR Ireland has come across a number of instances where applicants for refugee status have claimed to be stateless but have not been recorded as such. One example is a Bidoon whose nationality was recorded as Kuwaiti.

The practice of the RAT is to record an applicant's nationality, although this would appear to be exclusively based on ORAC's previously designated nationality. Thus, in the example of the Bidoon referred to above, the individual was recorded by the RAT as a Kuwaiti national. INIS and the MDU would appear also to rely on the initial ORAC designation for recording purposes.

Inconsistency in the recording of statelessness within the asylum process and a lack of other data sources with the capacity to indicate statelessness mean that the true extent of statelessness in Ireland is uncertain.

9. The extent of statelessness in Ireland – data from other sources

2011 Census

Ireland's most recent census in 2011 included a question: "What is your nationality?". The space to answer allowed for three possibilities:

1. Irish (tick box);

2. Other Nationality, (write in);

3. No nationality (tick box).

Approximately 1,200 people ticked "No nationality" or wrote "stateless".

UNHCR queried this figure with the Central Statistics Office (CSO) and INIS and concluded that this figure should be discounted as unsound. No explanatory text accompanied the option of “No Nationality” and it is likely that a large proportion did not fully understand what the term stateless means. Also, it did not accord with the information available to INIS in relation to likely numbers of stateless persons.

A national census will again be held in Ireland in 2016. The CSO inform us that the questions put in the census cannot be changed but they may be open to considering of the addition of instructions for people filling in this section.

GNIB registrations

As outlined above, GNIB currently have primary responsibility for the registration of non-Irish nationals living in Ireland for longer than 3 months. In June 2013, UNHCR was informed that 33 were persons registered as stateless in their database. It is thought that this figure may not be reliable as currently the administration of the registration process is not centralised. With the exception of the Dublin Metropolitan Region, where all registration takes place in a specialised GNIB office, registration takes place in local Garda Síochána District Headquarter stations.

That system is likely to change in the very near future. The Employment Permits (Amendment) Act 2014 has legislated for the creation of a number of regional registration districts and in September this year, the Minister for Justice and Equality announced a programme to civilianise immigration functions currently undertaken by members of An Garda Síochána. This may provide opportunities to consolidate statistics and record keeping between the registration database and the immigration system more generally.

Litigation cases that UNHCR is aware of

Legal practitioners have indicated to UNHCR a number of cases involving issues of statelessness where the persons in question were not initially applicants for international protection in the State. UNHCR understands that three such cases are currently before the High Court. UNHCR would encourage legal practitioners and NGOs to inform UNHCR of any such cases for the purposes on informing UNHCR’s on-going scoping exercise.

8. Outline synopsis of recent High Court jurisprudence

An outline synopsis of recent High Court jurisprudence relating to statelessness is included here to give an indication of the kind of cases that have arisen as well as a flavour of the jurisprudence that has been evolving in relation to statelessness.

M v Refugee Appeals Tribunal [2009] IEHC 128 (Clark J)

- The applicant was born in Libya and of Palestinian ethnicity. She indicated no fear of returning to Libya., However, she asserted that she was stateless and had no right to return to either Libya or Palestine.
- ORAC accepted that the applicant was stateless in its section 13 report.
- This case illustrates how statelessness cases can inappropriately end up in the asylum process when individuals perhaps feel they do not have access to any more suitable procedure.

B v Linehan (Sitting as the Refugee Appeals Tribunal) [2009] IEHC 270 (Feeney J)

- The applicant was born in Bhutan and of Nepalese ethnicity.
- Both ORAC and RAT found that the applicant was stateless. The applicant's claim was therefore assessed in relation to his country of former habitual residence, Nepal.
- This case illustrates that although an ethnic Nepalese from Bhutan may be recognised as stateless by the authorities, there may be no solution for them in the asylum process.

K v Lenihan (Acting as the Refugee Appeals Tribunal) [2010] IEHC 438 (Cooke J)

- The applicant was born in Bhutan and of Nepalese ethnicity.
- Both ORAC and RAT accepted that the applicant may be stateless and thus assessed his claim on the basis of his former habitual residency, Nepal.
- The RAT took the view that the applicant would not be persecuted if returned to Nepal.
- Cooke J Court refused judicial review on grounds that the Tribunal member explicitly considered all submissions relating to nationality before reaching a conclusion that the applicant was a stateless persons whose country of former habitual residency was Nepal
- This case again illustrates that an individual may be found to be stateless in the asylum process and have this finding upheld by the High Court and yet still fail to secure any form of durable solution.

D v Refugee Appeals Tribunal [2009] IEHC 326, [2010] 1 IR 213 (McMahon J)

- The applicant was a Bidoon from Kuwait and had resided in Kuwait all his life.
- The RAT accepted that the applicant was not returnable to Kuwait. However, it held that the applicant could not be a refugee because he could not have a well-founded fear of persecution in Kuwait where the admission back to that country was not a possibility.
- The court went on, however, to hold that the Tribunal should have considered that the reason he is outside Kuwait is because he is being refused entry for a Convention reason, and this refusal itself amounts to "persecution".

- Following the grant of leave on this point the Applicant was subsequently successful in having the decision quashed by the High Court (Clark J.) on the 20th April 2010.

Spila v Min for Justice & Ors [2012] IEHC 336 (Cooke J)

- The applicants were born in Latvia and of Russian ethnicity. Under Latvian law they only had an entitlement to an "Alien's passport" from the Latvian authorities, with no rights to vote and were not classed by the Latvian authorities as EU citizens.
- They had been residing in Ireland from 1999 and applied for naturalisation as Irish citizens, which was refused on the basis that they had benefited from State financial support for lengthy periods in the past. As a matter of policy the Minister required applicants to demonstrate that they could generally support themselves without recourse to state social welfare benefits. It was stated that an exception to this were persons who the Minister accepted, by virtue of their recognised status as refugees, programme refugee or stateless persons, could avail of State support.
- Their application for judicial review was unsuccessful on the basis that they had declared themselves to be of Latvian nationality with the qualification of "ethnic Russian" origin. It was only following the issuance of the negative decision that the issue of statelessness was given considerable focus. Accordingly, the court decided that the appropriate course of action was to submit a new application for citizenship putting before the Minister all of the expert evidence presented at the trial in relation to statelessness.
- This case is an example of how potentially stateless persons may experience difficulties in applications, where statelessness is relevant in the assessment of that application, in the absence of a formal determination procedure.

T (D) v Refugee Appeals Tribunal & Min for Justice (No 2) [2012] IEHC 562 (O'Keeffe J.)

- The applicant was born in Bhutan and is a member of the minority Brahmin / Nepali ethnic group. His case is typical of a number of applicants in a similar situation in that he claimed to have originally left Bhutan in order to flee persecution for a convention reason and subsequently lived elsewhere.
- The Applicant account was as follows: he was detained and tortured for reason of his involvement with the Bhutan People's Party (BPP) and released only after signing an agreement to leave Bhutan. He and his family fled to Nepal where they lived in a refugee camp. They and a large number of similarly placed persons were then stripped of their Bhutanese citizenship. However, following international pressure on the Bhutanese government they returned a number of years later, but attempts to settle on their land again were unsuccessful. He was arrested, detained and tortured for a period of three months before he then escaped and fled to India and from there he travelled to Ireland via Moscow.
- The Applicant was refused refugee status at 1st and 2nd instance. ORAC accepted that the applicant was a Bhutanese refugee but determined his

application on the basis that he was stateless and that his country of former habitual residence was Nepal. It was not accepted that he had demonstrated a well-founded fear of persecution in relation to Nepal.

- His application for leave to judicially review the decision of the RAT was refused. However, the Court did grant leave to appeal its decision to the Supreme Court on a number of points of law "of exceptional public importance" and where "it is desirable in the public interest that an appeal should be taken":

  Is the arbitrary removal of a person's citizenship an act which constitutes "a severe violation of human rights" for the purpose of fulfilling the definition of persecution under the 1951 convention and related European Directives?

  In cases such as this where a State arbitrarily denies a person citizenship, is it correct to assess that person's claim to refugee status on the basis that that State is his or her "country of nationality" or is it correct to regard that person as "stateless"?

- The Appeal is currently awaiting a hearing date in the Supreme Court but serious delays in recent years have resulted in a backlog of cases awaiting hearing; at present it is unlikely to be heard for 4-5 years.
- This case highlights that stateless persons, even where it is accepted that they had been persecuted in the past for a convention reason, may not be able to access protection under the 1951 Convention due to the requirement that their claim be assessed by reference to their "country of former habitual residence".

G (A) v Refugee Appeals Tribunal (Linehan) & Min for Justice [2013] IEHC 247 (McDermott J.):

- The applicant was born in Bhutan and was ethnically Nepalese, as were his family. He claimed that ethnic Nepalese in Bhutan were subject to persecution in the form of discrimination and denial of fundamental rights, including citizenship.
- The applicant was accepted by the Tribunal as "stateless" having been deprived of Bhutanese nationality. The Tribunal decided that it must determine his claim for refugee status by reference to Nepal, which it considered to be his place of former "habitual residence".
- This case again highlights the difficulties that can arise for stateless applicants in satisfying the refugee definition. In seeking to judicially review the negative decision of the Tribunal, the applicant contended that the Tribunal should have considered his case on the basis that Bhutan was his first country of "habitual residence" where he was born and grew up.
- The applicant in this case was not granted the reliefs sought on the basis of lack of candour and good faith; information was received from the UK during this case that he had been living there for a number of years prior to coming to Ireland and was considered an absconder. In the account given by him of his experiences in Nepal over a period of fifteen years, four of those years overlapped with his time in the UK.

V (N H) (Bangladesh) v Min For Justice & Ors [2013] IEHC 535 (Clark J,)

- The applicant was born in Burma of Rohingya ethnicity. He was a registered refugee in Bangladesh where he claimed he was falsely sought for crimes which he did not commit and feared being forcibly returned to Burma where he would suffer persecution.
- Both the Refugee Applications Commissioner and the Refugee Appeals Tribunal both found that he is stateless and that Bangladesh is the country of his former habitual residence for the purposes of assessing his application for refugee status.
- The Tribunal Member did not believe some aspects of his claim in relation to unfair prosecution and dismissed his claim on the basis that the evidence before him was that Rohingyas are not *refouled*. The Court, having considered the relevant COI in relation to the risk of refoulement, concluded that the Tribunal member had failed to take into consideration all relevant matters, in particular the risks pertaining to UNHCR registered refugees who had left the refugee camp some time before. The matter was remitted to the RAT for a rehearing.
- This case again highlights the difficulties that can arise for stateless persons in seeking to satisfy the definition of a refugee under the 1951 Convention in cases where they were born in one country but subsequently spend time as a refugee in another country from which they also subsequently fled.

K.A. v Refugee Appeals Tribunal & Anor. [2014] IEHC 223 (McDermott J.)

- The applicant was a minor born in Ireland to a mother from Cameroon and a father from Ghana. She was not entitled to Irish citizenship.
- Her mother had fled Cameroon having refused to participate in an arranged marriage and she feared that if returned the man she refused might target her child. Her father also feared that were she returned to Ghana with him she would become a target because of his previous political activities and because he converted from Islam to Christianity.
- Having received negative decisions from ORAC and the RAT the Applicant sought judicial review of the latter decision.
- In the meantime the Applicant's father, M.I., had sought to challenge his deportation order, *inter alia,* based on his right to respect for family life under Article 8 in respect of the Applicant's twin-siblings, also Irish born. It was claimed that the children were stateless and that it was unclear whether either parent could go to the country of origin of the other. O'Neill J.'s ex-tempore judgment in that case was referred to here. He had found that: P.A. had a clear entitlement to return to Cameroon and M.I. had a right to return to Ghana; that the parents had been aware in 2008 of the necessity to address the matter of citizenship for their children but did nothing, and that the two children were still entitled under the constitutional and legal provisions of the two countries to assert their citizenship in either. While it was clear that both parents were entitled to go to their native countries, it was not clear that they were entitled to go to the country of the other parent. The Court noted that there was an onus on the applicants to decide where to go together. They could not use their inaction as a ground to resist deportation.

- It was argued in the instant case that the Refugee Appeals Tribunal had wrongfully relied upon the Applicant's right to acquire citizenship in Ghana and Cameroon and that it had not been established as a matter of fact that she could reside in either country with both parents.
- This ground of review was rejected by the Court. McDermott J. found that no effort had been made by the parents to assert the citizenship of the Applicant or to obtain the necessary documents from their appropriate national authorities. This took place in circumstances where there is no suggestion that either parent was the subject of government persecution or that they are stateless themselves or have been deprived of their nationality.
- This case is an example of the complexities that can arise in relation to asserting nationality where children are born to parents of different nationalities outside of their countries of origin.

9. Conclusions

From the above we can conclude that the issue of statelessness is a live one in Ireland today. Statelessness issues can arise in relation to a number of different procedures, and in the absence of a determination mechanism, practical difficulties can arise for persons seeking to access their rights under both domestic legislation and under the 1954 Convention. There are inconsistencies in the way that statelessness is recorded by different arms of the State. In light of this and absent a determination procedure, it is not possible to assess with any certainty the scale of the stateless population in Ireland today.

Presently, and in the absence of a determination procedure UNHCR recommends greater co-ordination between state agencies both in the way that data is recorded and the way that statelessness is assessed in individual cases. UNHCR also recommends the introduction of a statelessness determination procedure to facilitate access to the rights guaranteed to stateless persons under international and national law. Formalising a determination procedure would ensure fairness, transparency and efficiency to the benefit of stateless persons and the Irish authorities.

UNHCR stands ready to assist the Irish authorities in their efforts to identify and protect stateless persons. UNHCR can provide specific advice on the development of new procedures and facilitate enquiries made by stateless determination authorities with the authorities of other States.

UNHCR Ireland

October 2014