European Network on Statelessness 2013

STATELESSNESS

DETERMINATION AND THE PROTECTION STATUS OF STATELESS PERSONS

A summary guide of good practices and factors to consider when designing national determination and protection mechanisms

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This is a publication of the European Network on Statelessness (ENS), a civil society alliance with 50 member organisations in over 30 countries, committed to addressing statelessness in Europe. Among other objectives, ENS advocates for the establishment of specialised, effective and rights-based determination and protection mechanisms for stateless persons. This guide is therefore intended to support the ENS Campaign to Protect Stateless Persons in Europe which was launched in October 2013.

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I. INTRODUCTION

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I.1 Framework, scope and objective

At the time of writing, 79 states are party to the 1954 Convention relating to the Status of Stateless Persons. In recent years, there has been an unprecedented **wave of accessions** to this Convention. This reflects growing efforts to integrate statelessness within the mainstream of the international human rights agenda. As a key component of this process, **UNHCR published a set of guidelines** on various aspects of statelessness, including the definition of a stateless person,[2] statelessness determination procedures,[3] the status of stateless persons,[4] and the prevention of statelessness at birth.[5]

Shedding light on the necessity of creating **a specific statelessness determination procedure and a protection status for stateless persons** was central to this process. Several states have recently taken positive steps in this respect. However, given the currently low number of existing determination and protection models, states as well as other actors often face difficulties when looking for "good practices" or examples to copy or adapt. The objective of this guide is therefore to provide **practical support to states** which are considering the establishment of a specific determination and protection mechanism, or who wish to improve their existing regime. In addition, the information summarised in this paper is also of value to international and civil society organisations, as well as academics, who are committed to advocate for better protection standards for the stateless populations around the world.

This guide addresses **6 key areas** in which states need to take strategic decisions in the process of developing a national determination and protection regime for stateless persons. It covers the entire spectrum of issues related to determination and protection mechanisms, from basic questions of structure and access, through to procedural factors and assessment, and finally to appeal and status related topics. Yet, the document does not aim to address all potentially relevant questions; it rather concentrates on issues which have been identified as the most fundamental ones from a practical point of view, based on the experience of the author and the European Network on Statelessness (ENS). Each issue is presented in three parts:

A) A brief **summary of international standards** that relate to the issue at hand. These summaries are primarily based on the recent, authoritative guidance issued by UNHCR[6] which interprets the terms of the 1954 Convention,[7]

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2 UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012

3 UN High Commissioner for Refugees, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012 (hereinafter UNHCR Statelessness Guidelines 2)

4 UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 17 July 2012 2012, HCR/GS/12/03 (hereinafter UNHCR Statelessness Guidelines 3)

5 UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 21 December 2012

6 In concrete UNHCR Statelessness Guidelines 2 and 3

7 Note that the 1954 Convention only sets forth concrete standards with regard to the rights and status of stateless persons, but not the

including in light of international human rights standards. In the context of this guide, it is not possible to exhaustively or explicitly cover all relevant international human rights standards. Moreover, it is important to emphasise that in its policy work more generally, ENS advocates for a rights-based approach and a progressive interpretation of relevant international standards relating to the protection of stateless persons.

B) **Summary of existing state practices that may serve as a model** for other countries (see more details below).

C) Some key **practical questions and factors to consider** when a state is preparing to establish its own system. These non-exhaustive lists are inspired by both UNHCR guidance and practical experience. They aim to support states to find the most appropriate model to copy or to identify the best way of adaptation of existing good practices to their specific needs and circumstances.

When using this document it is important to keep in mind that **statelessness may arise both in a migratory and non-migratory context**. Many large stateless populations in the world have strong and long-established ties to a certain country, the nationality of which they have reasonable and well-founded grounds to claim (for example they have been living in the country since birth and have no significant links with any other state). In case of such *in situ* stateless populations, targeted nationality campaigns with the objective of resolving the statelessness situation through grant of nationality, is more appropriate than identifying persons as stateless and providing them with status as such.[8] The means and modalities to address these *in situ* stateless populations are beyond the scope of this guide, which instead focuses on the protection needs of stateless persons who are in a **migratory situation** with no or relatively weak ties with the country in which they live. In these cases, the grant of a protection status may be the suitable solution and a statelessness determination mechanism is critical to achieving this.

The guide takes a **global perspective**; the examples included and the lessons which can be drawn from it are not limited to Europe only.

1.2 Source of "good practice"

The 1954 Convention establishes a number of concrete standards regarding the legal status and rights states parties shall ensure for stateless persons. However, the Convention remains silent about how to determine who is actually stateless. UNHCR holds that **dedicated statelessness determination mechanisms are indispensable in order that a state**

determination procedures.

8 See UNHCR Statelessness Guidelines 2, Paras 6 and 7 ("Some stateless populations in a non-migratory context remain in their "own country" and may be referred to as *in situ* populations. For these groups, determination procedures for the purpose of obtaining status as stateless persons are not appropriate because of their long-established ties to these countries. Based on existing international standards and State practice in the area of reduction of statelessness, such ties include long-term habitual residence or residence at the time of State succession. Depending on the circumstances of the populations under consideration, States might be advised to undertake targeted nationality campaigns or nationality verification efforts rather than statelessness determination procedures.", footnotes omitted)

party to the 1954 Convention can fulfil its protection obligations under this international treaty.[9] Leading experts in the field endorse this position.[10] In addition, the lack of effective determination mechanisms may have seriously harmful effects for both the populations concerned (prolonged unlawful detention, destitution, social marginalisation, etc.) and the state itself (security risks, social tensions, etc.).

In recent years, a growing number of countries have established a determination and protection framework which is specific to stateless persons. In these national legal frameworks, statelessness is explicitly defined as a protection ground *per se* and individuals are able to claim protection based merely on their statelessness. If this fact is objectively confirmed through a statelessness determination procedure, they will receive a legal status solely on this ground. These systems may be referred to as **statelessness-specific protection regimes**.

Currently, **a dozen states worldwide** provide a right of residence to stateless persons, on the basis of their statelessness. Most of these countries are in Europe. The following table lists the relevant countries as well as the year of the creation of the national statelessness-specific protection regime. It also indicates three potential ways of classifying statelessness-specific protection regimes:

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9 UNHCR Statelessness Guidelines 2, Para 1

10 UN High Commissioner for Refugees, *Statelessness Determination Procedures and the Status of Stateless Persons ("Geneva Conclusions")*, December 2010, Para 1

11 2011 marked the 50th anniversary of the 1961 Convention on the Reduction of Statelessness, which – together with numerous other factors – triggered an unprecedented increase of awareness about statelessness and related international obligations within the international community.

12 Established by: *Royal Decree No. 865/2001 of 20 July approving the Regulation on the Recognition of the Stateless Status*, 20 July 2001

13 Established by: *Act on Stateless Persons*, 2 March 2004

14 Established by: *Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, 1 July 2007

15 Established by: *Act on the Amendment and Completion of Certain Legislative Documents, adopted by the Parliament of the Republic of Moldova on 28 December 2011*, 10 February 2012

16 Established by: *Georgian President's Decree: Approving the Rules for Stateless Status Determination*, No. 515, 27 June 2012
Established by: *Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, 1 July 2007

17 Established by: *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, 18 October 2012

18 Established by a change of *Immigration Rules* taking effect on 6 April 2013. See also: *Applications for leave to remain as a stateless person – Guidance*, UK Border Agency, 1 May 2013

19 Established by: *Act 52-893 of 25 July 1952 on the right to asylum* (amended in 2003 and 2006), 52-893, 25 July 1952

20 Italy has two parallel statelessness-specific protection mechanisms, an administrative and a purely judicial one. The first is largely considered as void, mainly due to the unrealistic administrative requirements set by the relevant regulation. The second has been functioning in practice for several decades; the earliest judgments that could be retrieved in previous research were from the seventies. This regime is based on Section 2 697 of the Italian Civil Code (Royal Decree no. 262 of 16 March 1942), therefore it is possible that there were even earlier relevant judgments. Given that only the second framework can be considered as functional at the time of writing, only this will be used as reference in this document.

	First generation (20th century)	*Second generation (2000-2011)*	*Third generation (after 2011)*[11]
Specific rules in law, clear or relatively clear procedural framework		Spain (2001)[12] Latvia (2004)[13] Hungary (2007)[14]	Moldova (2012)[15] Georgia (2012)[16] Philippines (2012)[17] United Kingdom (2013)[18]
Clear protection ground, but no detailed rules in law, yet functioning procedural framework	France (1952)[19] Italy (70s?)[20]	Mexico (2007)[21]	
Clear protection ground, (yet incomplete) procedural framework			Slovakia (2012)[22] Turkey (2013)[23]

In addition to these countries, a number of others have recently shown interest in following their example.[24]

None of the above-referred models can be considered as a single "best practice"; as even those that are frequently looked to as a model, exhibit important persisting gaps and challenges. The following two principles guided the identification of good practices highlighted in this document:

- A good practice ensures the **effective implementation of legal standards** established by the 1954 Convention, UNHCR guidance and international human rights law;
- In addition, and without compromising the first principle, it facilitates **practical efficiency**.

21 Originally established by *Circular CRM-015-07: Migratory situation of stateless persons*, CRM-015-07, 3 July 2007, which was later succeeded by provisions incorporated into the *Act on Migration*, 25 May 2011 and the *Manual of Migratory Criteria and Procedures of the National Institute of Migration*, 29 January 2010

22 Established by: *Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts*, 21 October 2011 – The statelessness determination mechanism yet lacks detailed rules and a complete procedural framework in Slovakia at the time of writing. Therefore it will only be considered as potential good practice in connection with the status granted to stateless persons and some particular evidentiary rules that already exist in law.

23 Established by: *Act on Foreigners and International Protection*, Law No. 6458, 4 April 2013 – The determination and protection system in Turkey is very recent and yet lacks detailed regulation at the time of writing. Therefore it cannot yet be considered as a fully functioning determination and protection regime and will only be referred to in this document exceptionally.

24 At a ministerial meeting in December 2011, Belgium, Brazil, Costa Rica, Peru, the United States of America, Uruguay and Australia pledged to establish a statelessness determination mechanisms, while Austria pledged to "review her implementation of the Š1954Ć Convention" on the basis of UNHCR guidance. Preparatory work for the creation of such a regime is already on-going at the time of writing in some of these states (e.g. Brazil, Costa Rica, Uruguay, etc.), and in the United States a statelessness determination procedure has been tabled as part of comprehensive immigration reform.

II. STRUCTURE

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II.1 The authority in charge

A) Summary of international standards
For statelessness determination procedures to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. UNHCR recommends centralised procedural structures, as they are more likely to allow the necessary expertise to develop among the officials undertaking status determination.[25]

B) Existing good practices
There is **no general rule** for appointing the most appropriate authority for statelessness determination, as this largely depends on the characteristics of the given country, its administrative system and the size and location of the envisaged stateless population. In this respect, the structure must be evaluated **in light of the specific national circumstances**.

Statelessness determination has been delegated to the **asylum authority** in **France**,[26] **Moldova**,[27] **Spain**,[28] the **Philippines**[29] and the **United Kingdom**.[30] A very similar structure is in place in **Mexico**, where the immigration authority[31] takes the formal decision, but it is based on the assessment of the asylum authority.[32]

These can be considered as good practices, as:

- Statelessness is primarily a **migratory** phenomenon in these countries, the number of applicants is relatively **low**;
- The asylum authority is **centralised**, providing a good opportunity to accumulate knowledge and practical experience in determining statelessness;
- The authority in charge has a clear **protection** profile and mandate.

Therefore, the institutional framework chosen well reflects the national characteristics and enhances efficiency and respect of international standards.

25 For detailed guidance see UNHCR Statelessness Guidelines 2, Para 10-15
26 French Office for the Protection of Refugees and Stateless Persons *(Office français de protection des réfugiés et apatrides, OFPRA)*
27 The Asylum Directorate of the Bureau for Migration and Asylum *(Biroul Migraţie şi Azil, BMA)*
28 Office of Asylum and Refuge *(Oficina de Asilo y Refugio, OAR)*
29 Refugee and Stateless Persons Protection Unit (RSPPU) at the Ministry of Justice
30 The UK Home Office
31 National Institute of Migration *(Instituto Nacional de Migración, INM)*
32 Mexican Commission for Aid to Refugees *(Comisión Mexicana de Ayuda a Refugiados, COMAR)*

In **Georgia**, the authority in charge of statelessness determination is the Public Services Development Agency (former Civil Registry Agency). This also constitutes a good practice example, since:

- This authority has **expertise** and a long-standing **experience** in dealing with nationality and civil status-related procedures;
- It has the necessary human, IT and infrastructural **resources** to effectively conduct statelessness determination procedures.

A centralised and specialised authority is in charge also in **Latvia**.[33]

C) Factors to consider when designing a national system

- Does the country have a largely centralised or decentralised system of public administration? Is the country a federal state? It may potentially be useful if the administrative structure of statelessness determination reflects these characteristics.
- Are comparable procedures (e.g. asylum, immigration and/or naturalisation procedures for example) conducted in a centralised or decentralised structure?
- Is the expected number of applicants relatively low?[34]
    - If yes, a centralised framework may be the preferred option.
- Is there any authority with existing expertise and infrastructure (for example with long-standing experience in establishing statelessness as a part of asylum, removal, immigration, naturalisation or birth registration proceedings, etc.)?
    - If yes, there may be strong arguments for allocating the task of formalised statelessness determination to this authority.
- Is there any relevant procedure into which statelessness determination could be easily integrated (for example nationality verification procedure, etc.)?
- Other factors relevant for consideration: the size of the country, the location of populations concerned (e.g. if they are concentrated in a certain area), etc.

II.2 Relationship with asylum procedures

A) Summary of international standards

Stateless persons may also be refugees or may qualify for a complementary form of international protection.[35] When an applicant raises both a refugee and a statelessness claim, it is important that each claim is assessed

33 The Personal Status Control Division of the Office of Citizenship and Migration Affairs *(Pilsonības un migrācijas lietu pārvalde, PMLP)*

34 Note that all countries operating a statelessness-specific determination and protection mechanism report low figures.

35 Such as subsidiary protection in the European Union

and that both types of status are explicitly recognised when applicable. This can take place both in a joint and in separate procedures. If determining statelessness requires contact and information-sharing with the authorities of the country of origin (which is strictly prohibited where applicants claim a well-founded fear of persecution unless it is established that there is no such well-founded fear and all appeal rights to such a finding have been exhausted), statelessness determination shall be suspended and refugee status determination should proceed. If such contact is not necessary for establishing statelessness, the two procedures can run in parallel, but even in these cases refugee status determination may be prioritised in order to maximise efficiency and also in view of the greater rights owing under the 1951 Refugee Convention.[36]

B) Existing good practices

All existing models separate the statelessness determination procedure from refugee status determination. The **Philippines** and **Georgia** were the first states to clearly **codify the relationship between the two procedures**, in line with UNHCR guidance. The regulation of the **Philippines** stipulates that where during statelessness determination

> *[…] a refugee claim appears to exist, the stateless status determination shall, with the consent of the Applicant, be suspended and the application shall be considered first for refugee status determination. If the claim to refugee status is denied with finality, the stateless status determination shell recommence automatically.*[37]

Georgian regulation includes a similar provision stipulating that if any circumstance indicating a potential need of international protection (refugee or humanitarian status) is revealed, statelessness determination shall be suspended, and within 3 working days the case file should be transferred to the asylum authority[38] for the determination of refugee or humanitarian status.[39]

Another important good practice can be retrieved in the policy guidance of the **United Kingdom**, which clearly stipulates that

> *Under no circumstances is contact to be made with the authorities of a State (or with any official state-sponsored organisations) against which an individual has previously made an asylum claim unless it has finally been concluded (i.e. the applicant is appeals rights exhausted and has no outstanding further submissions) that he or she is neither a refugee nor entitled to subsidiary protection. Even so, there should be no disclosure of the details or the rejection of an asylum claim, and it would be good practice to ensure that the applicant consents to the contact*

36 For detailed guidance see UNHCR Statelessness Guidelines 2, Para 14 and 26-30

37 *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, Department of Justice, 18 October 2012, Section 8

38 Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees

39 *Georgian President's Decree: Approving the Rules for Stateless Status Determination, No. 515*, 27 June 2012, Section 6 (4)

even where the applicant has already approached those same authorities for assistance on nationality matters.[40]

C) Factors to consider when designing a national system

- Is the authority (that will be) responsible for statelessness determination the same as the one determining refugee status?
  - If yes, establishing a procedural framework that allows for the joint determination of refugee status (complementary forms of protection) and statelessness should be considered.
- Is the authority (that will be) responsible for statelessness determination different from the one determining refugee status?
  - If yes, the state should ensure that if both proceedings take place in parallel, refugee status determination is given preference and statelessness determination is only conducted once a decision on refugee status (and complementary forms of protection if relevant) is taken. The only exception from this rule may the case where it is possible to establish statelessness without contacting the authorities of the country of origin.
- The regulation should also guarantee that proper cross-referral systems exist for cases where the two determination procedures are not conducted in a joint framework (regardless of the fact whether joint processing is allowed or not). For example, potentially stateless persons whose asylum claim has been rejected are properly informed about the possibility to claim stateless status.

40 *Applications for leave to remain as a stateless person – Guidance*, UK Border Agency, 1 May 2013,Para 3.3

III. ACCESS

III.1 Legal conditions of submitting a claim

A) Summary of international standards

Everyone in a state's territory must have access to statelessness determination procedures. There is no basis in the 1954 Convention for requiring that applicants for statelessness determination be lawfully within a state. Such a requirement is particularly inequitable given that lack of nationality denies many stateless persons the very documentation that is necessary to enter or reside in any state lawfully. In addition, there is also no basis in the 1954 Convention to set time-limits for individuals to claim stateless status and such deadlines may arbitrarily exclude individuals from protection.[41]

B) Existing good practices

France, **Georgia**, **Italy** (judicial procedure), **Latvia**, **Mexico**, **Moldova**, the **Philippines**, **Slovakia**, **Spain**, **Turkey** and the **United Kingdom** do not require applicants for stateless status to be lawfully present in the country's territory. **Georgia** – as a particularly positive example – explicitly emphasises that

> *Any person staying in Georgia has a right to undergo status determination procedure despite his/her legality of stay on the territory of Georgia.*[42]

Mexican law exempts those who wish to apply for stateless status from the obligation to obtain a visa upon entry in the country.[43]

France, **Georgia**, **Hungary**, **Italy** (both procedures), **Latvia**, **Mexico**, **Moldova**, the **Philippines**, **Slovakia**, **Turkey** and the **United Kingdom** do not set any time-limit within which applications for stateless status shall be made.

In the overwhelming majority of states where statelessness is defined by law as a protection ground **any non-national can submit an application for protection at any time** (as in the case of asylum procedures).

C) Factors to consider when designing a national system

- Is statelessness determination integrated into any other procedural framework (application for a specific residence permit, etc.), where a requirement of lawful stay or time-limits apply as a general condition for accepting claims?
  - If yes, specific rules should ensure that applicants for protection on grounds of statelessness are explicitly exempted from the scope of this provision.

41 For detailed guidance see UNHCR Statelessness Guidelines 2, Para 17-18

42 *Georgian President's Decree: Approving the Rules for Stateless Status Determination, No. 515*, 27 June 2012, Section 2 (2) – see also examples in Section III.4

43 *Act on Migration*, 25 May 2011, Section 37 (III) (e)

III.2 Practical access to the determination procedure (where and how to submit a claim for protection)

A) Summary of international standards

For statelessness determination procedures to be fair and efficient, access to them must be ensured. Dissemination of information, including through targeted information campaigns where appropriate and counselling on the procedures, facilitates access to the mechanism for the identification of stateless persons. Applications should be received in writing, and assistance with this should be provided if necessary.[44] This is separate to the recommended requirement to provide free legal representation to those who lack means.

B) Existing good practices

Bureaucratic difficulties (such as complicated application forms, inflexible procedures, strict language requirements, limited places where claims can be submitted, high costs, etc.) can encumber, or even impede access to statelessness determination mechanisms. The protection-oriented framework therefore requires a flexible interpretation of such rules, especially since the majority of the population of concern may be in a vulnerable position and may not have the necessary language skill, financial means or possibility to travel that may be justifiably expected in other types of standard administrative procedures.

Hungarian and **Moldovan** regulation provide a positive example, as claims for stateless status in these two countries can be submitted both in written and oral form and in any language.[45] In **Hungary**, claims submitted to any state authority should be – according to the law – forwarded to the competent regional directorate of the immigration authority (which is responsible for statelessness determination).[46] The **Moldovan** rules specifically foresee the provision of an interpreter in case the applicant does not speak the official language of the state.[47] In **Spain**, claims can be entered at immigration offices and police stations all around the country, or at the asylum authority in Madrid (which is in charge of determining statelessness).[48] In the **Philippines**, applications for stateless status may be filed directly with the Refugee and Stateless Persons Protection Unit (the decision-making authority), as well as in the central office or any field office of the Bureau of Immigration in the port of entry or admission of the applicant.[49]

44 See UNHCR Statelessness Guidelines 2, Para 16 and 19

45 *Government Decree 114/2007.(V. 24.) on the execution of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, Section 159 (1); *Act on the Amendment and Completion of Certain Legislative Documents, adopted by the Parliament of the Republic of Moldova on 28 December 2011*, 10 February 2012, Section 87[1] (2) and (4), respectively

46 *Act CXL of 2004 on the General Rules of Administrative Procedures and Services*, Section 22 (2)

47 *Act on the Amendment and Completion of Certain Legislative Documents, adopted by the Parliament of the Republic of Moldova on 28 December 2011*, 10 February 2012, Section 87[1] (4)

48 *Royal Decree No. 865/2001 of 20 July approving the Regulation on the Recognition of the Stateless Status*, 20 July 2001, Section 2 (3)

49 *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, Department of Justice, 18 October 2012, Section 6

C) Factors to consider when designing a national system

- What are the practical rules for submitting applications for refugee status, residence permits and naturalisation? Do they ensure proper access to these procedures? Can they be used as models for statelessness determination?
- Is statelessness determination foreseen to be conducted in a centralised structure?
  - If yes, would allowing the submission of claims only where the procedure is conducted ensure effective access to statelessness determination (for example in case of a small country)?
  - If it would not, are there other branches within the same authority, or are there other relevant authorities that would be suitable for being in charge of receiving claims for stateless status (as they have a relevant scope of activities and good geographical coverage/network in the country)?
- Does the country's legal system allow authorities in certain cases to receive oral – rather than just written – applications (for example in asylum cases)? Does the country's legal system allow authorities in certain cases to receive applications in a language which is not official in the country? Do proper procedural guarantees apply (for example written registration of the claim) in these cases?
  - If yes, a similar flexible framework should apply for the submission of claims for stateless status, and the existing example can be copied for this purpose.

III.3 Ex officio initiation of statelessness determination

A) Summary of international standards

Given that individuals are sometimes unaware of statelessness determination procedures or hesitant to apply for statelessness status, procedures can usefully contain safeguards permitting state authorities to initiate a procedure *ex officio*.[50]

B) Existing good practices

At the time of writing, **Spain** and **Moldova** allow for the *ex officio* initiation of a statelessness determination procedure.[51] The **Spanish** regulation clarifies also that

> *[A statelessness determination procedure] will be initiated* ex officio *when the Office of Asylum and Refuge has knowledge of facts, data or information that may indicate the possible concurrence of circumstances that determine statelessness. In this case, the Office of Asylum and Refuge will duly inform the applicant so that he may have the opportunity to submit his allegations.*[52]

50 See UNHCR Statelessness Guidelines 2, Para 16

51 *Royal Decree No. 865/2001 of 20 July approving the Regulation on the Recognition of the Stateless Status*, 20 July 2001, Section 2 (1); *Act on the Amendment and Completion of Certain Legislative Documents, adopted by the Parliament of the Republic of Moldova on 28 December 2011*, 10 February 2012, Section 87[1] (1), respectively

52 *Royal Decree No. 865/2001 of 20 July approving the Regulation on the Recognition of the Stateless Status*, 20 July 2001, Section 2 (2)

The **HUNGARIAN** regulation only allows the person concerned to initiate the procedure, but obliges the immigration authorities to provide information about the possibility of applying for stateless status and the rights that can be acquired in this way to any person whose potential statelessness arises in any migration-related procedure.[53]

C) Factors to consider when designing a national system

- Is it presumed that an important proportion of the envisaged stateless population is extremely vulnerable and/or for certain reasons is unable to effectively access statelessness determination procedures (for example unaccompanied minors, persons who are illiterate or have never enrolled in formal education, persons living in extreme poverty or destitution especially in remote rural areas, etc.)?
  - If yes, this circumstance may indicate a specific necessity to allow the competent state authority to initiate statelessness determination *ex officio*.
- In case of *ex officio* initiation of statelessness determination, proper safeguards should be in place to ensure that no such measure is taken against the will or without the consent of the person concerned.

III.4 Applicant's status during the procedure

A) Summary of international standards

The applicant for stateless status, at a minimum, should be entitled to all rights based on jurisdiction or presence in the territory as well as "lawfully in" rights as defined by the 1954 Convention. States should refrain from expelling or removing an individual from their territory pending the outcome of the determination process. The applicant's status must guarantee, *inter alia*, identity papers, the right to self-employment and freedom of movement. In addition, the applicant's status must also reflect applicable human rights such as protection against arbitrary detention and assistance to meet basic needs. As the aforementioned Convention rights are formulated almost identically to those in the 1951 Refugee Convention, it is recommended that applicants for stateless status receive the same standards of treatment as asylum-seekers whose claims are being considered in the same state.[54]

B) Existing good practices

Unfortunately, no clear good practice exists at the time of writing, and improving the regulation with regard to the temporary status of the applicant for stateless status in line with UNHCR guidance is an important challenge for all the national statelessness determination mechanisms examined in this publication. However, some states have recently made noteworthy steps in this direction. The **MOLDOVAN** regulation was the first one to clearly and explicitly confer **the right to stay on the national territory** while statelessness determination is being conducted, as well as a documentary proof about this fact:

53 *Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, 1 July 2007, Section 22 (2)

54 For detailed guidance see UNHCR Statelessness Guidelines 2, Para 20 and UNHCR Statelessness Guidelines 3, Para 25-27

(1) The applicant has a right to stay on the territory of the Republic of Moldova during the examination of his/her claim may be removed from the territory only for reasons of national security and public order.

(2) The competent authority for foreigners shall issue the applicant a document confirming his/her status (confirmation certificate) for the whole period of the examination of his/her application.[55]

The **Georgian** regulation sets forth a similar principle, but in more general terms:

If a status seeker stays on the territory of Georgia illegally, his/her stay in the country, during the administrative proceeding of status determination, shall be considered as legal.[56]

The regulation of the **Philippines** opted for more specific language, when stipulating that an application for stateless status automatically triggers the **suspension of the deportation proceedings** of the applicant or her/his dependants. In addition, it was the first regulatory framework to explicitly refer to the possibility of **releasing applicants from detention** as a consequence of the claim for stateless status.[57]

Applicants for stateless status may also be issued a temporary residence entitlement for the time of the procedure in **Spain**, but only those who are not under an expulsion or removal procedure.[58]

C) Factors to consider when designing a national system

- What rights and forms of support (temporary accommodation, alimentation, financial benefits, social assistance, etc.) are granted to asylum-seekers in the country? Is there any pressing reason why these rights and forms of support could not be automatically granted to applicants for stateless status, under a similar scheme?
  - If there is, it should be decided whether the creation of a specific "statelessness applicant status" is preferred, or there exists another temporary stay entitlement that can be effectively used for this purpose (for example short-term humanitarian residence permit which ensures access to the labour market and basic forms of support during the procedure).

55 *Act on the Amendment and Completion of Certain Legislative Documents, adopted by the Parliament of the Republic of Moldova on 28 December 2011*, 10 February 2012, Section 87^3 (1)-(2)

56 *Georgian President's Decree: Approving the Rules for Stateless Status Determination, No. 515*, 27 June 2012, Section 7 (2)

57 *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, Department of Justice, 18 October 2012, Section 7

58 *Royal Decree No. 865/2001 of 20 July approving the Regulation on the Recognition of the Stateless Status*, 20 July 2001, Section 5

IV. PROCEDURE

IV.1 Clear and realistic deadlines

A) Summary of international standards

Statelessness determination should be conducted as expeditiously as possible, subject to reasonable time being available to gather evidence. In general, it is undesirable for a first-instance decision to be issued more than 6 months from the submission of an application as this prolongs the period spent by an applicant in an insecure position. However, in exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months to provide time for enquiries regarding the applicant's nationality status to be pursued with another state, where it is likely that a substantive response will be forthcoming in that period.[59]

B) Existing good practices

The following countries have stipulated an explicit and reasonable deadline for first-instance decision-making in statelessness determination (in order of proximity with the above benchmarks set by UNHCR guidance):

	Deadline	***Which can be prolonged, if necessary, by…***
Moldova	6 months	6 months
Georgia	6 months	3 months
Latvia	3 months	1 month
Hungary	2 months	No possibility of further prolongation[60]

C) Factors to consider when designing a national system

- What are the deadlines for first-instance decision-making in procedures that can be used as reference (such as asylum procedures, applications for a humanitarian residence permit, naturalisation claims, etc.)?
- Are there any specific circumstances (for example the size of the envisaged population, capacity shortage, special difficulties in assessing potential nationality ties, etc.) which would make it difficult to keep the procedural deadlines (6+6 months) recommended by UNHCR?
    - If yes, what preliminary measures are needed in order to prevent undue delays (for example training programmes, additional capacity, cooperation initiatives with other states or UNHCR, etc.)?

59 See UNHCR Statelessness Guidelines 2, Para 22-23

60 However, the general regulation on public administration procedures enables the determining authority to suspend the statelessness determination procedure, while waiting for information crucial for decision-making from another authority (in this case, the Ministry of Foreign Affairs for example). This means that in practice statelessness determination procedures can take even much longer, without necessarily breaching the relevant deadline under national regulation.

IV.2 Access to free-of-charge translation and interpretation

A) Summary of international standards
Assistance should be available for translation and interpretation in respect of written applications and interviews.[61]

B) Existing good practices
The regulation of **France**, **Georgia**, **Hungary**, **Moldova**, **Spain** and the **United Kingdom** explicitly stipulate that the applicant has a right to the free-of-charge service of an interpreter at interviews.
In addition, **Hungarian** law includes an important safeguard as it allows the determining authority to admit as evidence foreign-language documents submitted by the applicant, without official translation and an *apostille* (which would normally be a standard requirement under administrative procedural law).[62]

C) Factors to consider when designing a national system
- What sort of assistance is provided (if any) with translation and interpretation in procedures that could serve as reference, in particular in asylum procedures (for example automatic provision of an interpreter free of charge at interviews, reimbursement of translation costs, etc.)?

IV.3 Access to legal assistance

A) Summary of international standards
Applicants are to have access to legal counsel both at first instance and upon appeal. Where free legal assistance is available, it is to be offered to applicants without financial means.[63]

B) Existing good practices
Under **Georgian**, **Hungarian**, **Italian** and **Moldovan** law, applicants for stateless status are entitled to benefit from **state-funded legal aid**. In addition, **Hungarian** law explicitly stipulates that the proceeding authority shall provide the applicant with access to legal assistance. The regulation of the **Philippines** includes a similar provision, according to which applicants have a right to a legal counsel.

C) Factors to consider when designing a national system
- Does a system of state-funded legal aid exist in the country?

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61 See UNHCR Statelessness Guidelines 2, Para 19
62 *Government Decree 114/2007.(V. 24.) on the execution of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, Section 164 (2)
63 See UNHCR Statelessness Guidelines 2, Para 19 and 24

- If yes, do asylum-seekers or foreigners in other relevant situations (for example facing expulsion, extradition or removal measures) have access to it?
  - If yes, the same type of access to free legal aid should be granted to applicants for stateless status, too.

- If there is no state-funded legal aid in the country, are there specific provisions that facilitate the access of asylum-seekers or foreigners in other relevant situations to free-of-charge legal assistance (for example offered by civil society organisations)?
  - If yes, the same type of access to free-of-charge legal assistance should be granted to applicants for stateless status, too.

IV.4 Access to and the supervisory role of UNHCR

A) Summary of international standards

In statelessness determination procedures the applicants' access to UNHCR should be guaranteed. In addition, UNHCR can facilitate enquiries made by statelessness determination authorities with authorities of other states and can act as an information resource on nationality laws and practices.[64]

B) Existing good practices

Hungarian legislation explicitly stipulates that the determining authority shall take UNHCR's opinion into consideration.[65] In addition, the law provides a wide range of rights to UNHCR in the statelessness determination process:

> *The representative of the United Nations High Commissioner for Refugees may take part in any stage of the statelessness determination procedure. Accordingly, the representative*
>
> *(a) may be present at the applicant's interview;*
> *(b) may give administrative assistance to the applicant;*
> *(c) may gain access to the documents/files of the procedure and may make copies thereof;*
> *(d) shall be provided with the administrative decision and the court's judgement by the alien policing authority.*[66]

64 See UNHCR Statelessness Guidelines 2, Para 19

65 *Government Decree 114/2007.(V. 24.) on the execution of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, Section 164 (1)

66 *Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, 1 July 2007, Section 81

Hungary was also the first country to implement, in cooperation with UNHCR, a quality assurance initiative with regard to statelessness determination.[67]

Moldovan legislation also provides UNHCR with a possibility to have access to information regarding individual cases of statelessness determination, subject to the consent of the applicant.[68] The regulation of the **Philippines** includes a more limited guarantee, which ensures that the applicant's access to UNHCR cannot be denied.[69] Positive examples of practical cooperation between UNHCR and national authorities in the field of statelessness determination exist in other countries, such as **Georgia**.

C) Factors to consider when designing a national system

- Are there any guarantees in law to ensure asylum-seekers' access to UNHCR in asylum procedures?
  - If yes, can the similar modalities of access be ensured for applicants for stateless status?
- Does UNHCR have any formalised supervisory, quality monitoring or advisory role in asylum procedures in the country?
  - If yes, can the same model be applied for statelessness determination?
- Are there rules in national law that regulate the way in which the competent authority or courts can contact UNHCR for information in individual asylum cases?
  - If yes, can the same model be applied for statelessness determination?
- If no such points of reference exist in national law, states should consider international good practices, as well as UNHCR for advice, on how to ensure the most effective access to and involvement of UNHCR at different points of the procedure. Good practice examples of joint quality assurance initiatives and decision-making monitoring should also be considered.

IV.5 Mandatory interview

A) Summary of international standards

States should guarantee applicants for stateless status the right to an interview with a decision-making official. While one interview will normally be sufficient to elicit the applicant's history, it may sometimes be necessary to conduct follow-up interviews.[70]

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67 See for example Alajos Lángi, *Because quality matters – in statelessness determination as well*, 8 January 2013, blog of the European Network on Statelessness

68 *Act on the Amendment and Completion of Certain Legislative Documents, adopted by the Parliament of the Republic of Moldova on 28 December 2011*, 10 February 2012, Section 87^{11} (2)

69 *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, Department of Justice, 18 October 2012, Section 10

70 See UNHCR Statelessness Guidelines 2, Para 19 and 48

B) Existing good practices

Applicants for stateless status have an **automatic right to an interview** in **Hungary**, **Moldova** and the **Philippines**. Even though not based on a clear legal provision, this is also the practice in **France**. Under the guidance of the **United Kingdom**, the determining authority is only allowed to refrain from the interview

> *[...] if there is sufficient evidence of statelessness, including previous findings of fact established during the asylum claim (for example) and the individual is eligible for leave to remain on this basis.*[71]

C) Factors to consider when designing a national system

- How is the right to an interview regulated in asylum procedures? Does the law provide for a separate pre-screening and an in-merit interview?
  - If yes, would it be reasonable to adapt the same model to statelessness determination?
- Does the law regulate in which cases a follow-up interview needs to take place in asylum procedures or other relevant proceedings (for example expulsion or removal measures, application for a humanitarian residence permit, etc.)?
  - If yes, would it be reasonable to adapt the same rules to statelessness determination?

71 *Applications for leave to remain as a stateless person – Guidance*, UK Border Agency, 1 May 2013,Para 2.2

V. ASSESSMENT

V.1 Shared duty to substantiate (burden of proof)

A) Summary of international standards

In the case of statelessness determination, the burden of proof is in principle shared, in that both the applicant and examiner must cooperate to obtain evidence and to establish the facts. The procedure is a collaborative one aimed at clarifying whether an individual comes within the scope of the 1954 Convention. Thus, the applicant has a duty to provide as full and truthful account of his or her position as possible and to submit all evidence reasonably available. Similarly, the determination authority is required to obtain and present all relevant evidence reasonably available to it, enabling an objective determination of the applicant's status. Given the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence.[72]

B) Existing good practices

The regulation of the **Philippines explicitly shares the burden of proof** between the applicant and the determining authority and provides useful guidance in this respect:

> *The responsibility of proving a claim to refugee or stateless status is a shared and collaborative burden between the Applicant and the Protection Officer.*
>
> *The Applicant has the obligation to provide accurate, full and credible account or proof in support of his/her claim, and submit all relevant evidence reasonably available. […]*[73]

In implicit terms, the burden of ascertaining facts and circumstances is shared in the regulation of **Moldova**. This country's regulation sets forth a number of obligations both for the applicant (fully cooperate with the authority, provide all relevant information, be present at interviews) and the determining authority, which has the primary duty to examine the claim and collect information.[74] A similar approach was adopted in **Spain**, where the regulation remains silent about the burden of proof; however it stipulates that the authority is responsible to assess the claim, while the applicant is obliged to cooperate in this process.[75] Under **Hungarian** law, while in principle the primary duty to substantiate the claim is on the applicant, the determining authority – upon request – shall provide

72 See UNHCR Statelessness Guidelines 2, Para 37-38

73 *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, Department of Justice, 18 October 2012, Section 9

74 *Act on the Amendment and Completion of Certain Legislative Documents, adopted by the Parliament of the Republic of Moldova on 28 December 2011*, 10 February 2012, Sections 87^2 and 87^3 (4)

75 *Royal Decree No. 865/2001 of 20 July approving the Regulation on the Recognition of the Stateless Status*, 20 July 2001, Section 7 (1)-(2)

administrative assistance in the process of obtaining relevant information, as well as it is bound by the obligation of fully establishing the facts and circumstances of the case *ex officio* under general rules on administrative procedures.[76]

C) Factors to consider when designing a national system

- Has the country's legislation or jurisprudence established formal rules concerning the burden of proof applicable in relevant procedures (asylum, immigration matters, etc.)?
  - If yes, are there specific rules referring to a shared burden of proof/duty to substantiate in asylum procedures that could be copied to statelessness determination?
- If the country's legislation and jurisprudence do not normally establish formal rules concerning the burden of proof, are there any specific rules that aim to ease the burden of proof on persons claiming protection in relevant situations (for example asylum-seekers, applicants for a humanitarian residence permit, victims of discrimination or domestic violence seeking redress with authorities, etc.)?
  - If yes, can these provisions be effectively applied in case of statelessness determination?
- Does the law regulating administrative procedures put a duty on decision-making authorities to fully establish facts and circumstances before taking decisions?
  - If yes, is this duty normally understood as sharing the burden of proof between applicants and the decision-making authority in relevant (in particular asylum) procedures?
- When establishing national rules on the burden of proof and the duties of the applicant and the determining authority, states should consider that authorities are usually better equipped to elicit responses from other states than an individual. Vulnerable or destitute applicants may in particular struggle to obtain evidence (for example they often cannot afford to travel to an embassy for an interview). These factors call for a protection-oriented approach and a duty on determining authorities to proactively obtain evidence.

V.2 Appropriate standard of proof

A) Summary of international standards

The standard of proof or threshold of evidence necessary to determine statelessness must take into consideration the difficulties inherent in proving statelessness, particularly in light of the consequences of incorrectly rejecting an application. Requiring a high standard of proof of statelessness would undermine the object and purpose of the 1954 Convention. States are therefore advised to adopt the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a "reasonable degree" that an individual is not considered as a national by any state under the operation of its law.[77]

76 *Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, 1 July 2007, Section 79 (2); *Act CXL of 2004 on the General Rules of Administrative Procedures and Services*, Section 3 (2) (b)

77 See UNHCR Statelessness Guidelines 2, Para 39

B) Existing good practices
The regulation of the **Philippines** explicitly adopted the standard suggested by UNHCR:

> *The finding that the Applicant is stateless is warranted where it is **established to a reasonable degree** that he or she is not considered a national by any State under the operation of its laws.*[78]

Hungarian law also sets an explicitly lower standard of proof (inspired by a similar provision in the country's asylum legislation), by stipulating that the applicant shall **prove or substantiate** her/his claim.[79]

C) Factors to consider when designing a national system
- Has the country's legislation or jurisprudence established formal rules concerning the standard of proof applicable in relevant procedures (asylum, immigration matters, etc.)?
  - If yes, is there a specific rule defining a lower standard of proof/threshold of evidence/level of conviction in asylum procedures that could be copied to statelessness determination?
- If the country's legislation and jurisprudence do not normally establish formal rules concerning the standard of proof, are there any specific provisions in place to suggest that no strict evidentiary rules apply (for example proving beyond reasonable doubt) in relevant procedures (asylum in particular)? Is a specific term (for example "substantiate", "establish" or "demonstrate" instead of "prove") used for this purpose in legislation?
  - If yes, can the same wording be copied to statelessness determination?
- Is the standard of proof suggested by UNHCR ("established to a reasonable degree") applied in any other relevant fields of law, which can be used as a reference?

V.3 Evidence assessment

A) Summary of international standards
The lack of nationality does not need to be established in relation to every state in the world. Consideration is only necessary of those states with which an individual has a relevant link, generally on the basis of birth on the territory, descent, marriage, or habitual residence.[80]

The types of evidence that may be relevant can be divided into two categories: evidence relating to the applicant's personal circumstances and evidence concerning the laws and other circumstances in the country in question. As for the first, UNHCR guidance provides a detailed list of examples, including the applicant's statements, documentary and testimonial evidence, as well as information provided by other states. As for the second, it

78 *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, Department of Justice, 18 October 2012, Section 9 – emphasis added
79 *Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, 1 July 2007, Section 79 (1)
80 See UNHCR Statelessness Guidelines 2, Para 40

should be up-to-date and should be obtained from a variety of reliable sources. The complexity of nationality law and practice in a particular State may justify recourse to expert evidence in some cases.[81]

B) Existing good practices

Establishing statelessness may be a significant challenge, especially in newly established systems, where awareness and expertise on this issue is still limited. A growing number of dedicated databases with comparative information on nationality laws exist at the time of writing, and they offer a wide range of relevant data for statelessness determination.[82] At the same time, determining authorities can benefit significantly from any concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances (i.e. on how to obtain and assess the information available).[83] The laws of **Hungary**,[84] **Slovakia**[85] and the **Philippines**[86] provide a good example of such guidance on evidence assessment: these regulations emphasise that potential nationality ties should only (**Slovakia**, **Philippines**) or in particular (**Hungary**) be examined with states with which the applicant has a relevant link, namely birth, previous residence or family links.[87]

Hungarian law provides further useful guidance since it specifies the types of evidence that will typically be considered in the process of decision-making, namely:

- Country information on nationality legislation;
- Information provided by UNHCR;
- Information provided by foreign authorities;
- Information provided by Hungarian diplomatic representations abroad; as well as
- Evidence submitted by the applicant.[88]

The guidance for decision-makers issued by the **United Kingdom** provides a detailed and useful explanation on gathering and assessing evidence in statelessness determination, including on the types of evidence that should be examined.[89] This guidance also requires that decision-makers "should make reasonable efforts to assist the applicant in establishing the necessary evidence, whether by research or enquiry".[90]

81 See UNHCR Statelessness Guidelines 2, Para 32-34

82 See for example the *EUDO Citizenship Database*, or the *Refworld* database of UNHCR

83 For example, guidance on how to identify the competent authority when making enquiries to a state

84 *Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, 1 July 2007, Section 79 (1)

85 *Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts*, 21 October 2011, Section 46 (3)

86 *Department Circular No. 058 – Establishing the Refugees and Stateless Status Determination Procedure*, Department of Justice, 18 October 2012, Section 9

87 Note that this principle has also been crystallised in consequent Italian jurisprudence of several decades.

88 *Government Decree 114/2007.(V. 24.) on the execution of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, Section 164 (1)

89 *Applications for leave to remain as a stateless person – Guidance*, UK Border Agency, 1 May 2013,Para 3.3

90 *Applications for leave to remain as a stateless person – Guidance*, UK Border Agency, 1 May 2013,Para 3.2

Finally, it is noteworthy as a good practice that the regulation of **Spain** explicitly mentions among the evidence that needs to be considered by the proceeding authority documents submitted by civil society organisations.[91]

C) Factors to consider when designing a national system

- Are there any legal obstacles in the general procedural regulations of the country that may hinder or make it difficult to use relevant evidence in statelessness determination (for example an obligation to submit all documentary evidence in the official language of the state, in certified translation)?
    - If yes, do specific exceptions exist from these rules in relevant procedures (for example asylum)?
- Given the usual difficulties of establishing statelessness with limited evidence, as well as the importance of contacting other states in many cases, it is desirable that regulation contains clear, but flexible standards and procedural benchmarks in this respect (for example on how to contact foreign authorities and how to evaluate the information provided by them). Besides international good practice examples, standards and guidelines from the field of asylum can also be useful (for example on how to research and assess country of origin information).

91 *Royal Decree No. 865/2001 of 20 July approving the Regulation on the Recognition of the Stateless Status*, 20 July 2001, Section 8 (2)

VI. APPEAL

VI. APPEAL[92]

A) Summary of international standards

An effective right to appeal against a negative first-instance decision is an essential safeguard in a statelessness determination procedure. The appeal procedure must rest with an independent body. States may permit a further judicial review, which may be limited by the procedural rules of the judicial system concerned. Appeals must be possible on both points of fact and law as the possibility exists that there may have been an incorrect assessment of the evidence at first-instance level. The choice whether the appellate body can itself grant protection under the 1954 Convention or whether it can merely quash the first-instance decision and send the matter back for reconsideration may reflect the general approach to such matters in the country's legal/administrative system.[93]

B) Existing good practices

Appeal mechanisms differ between countries operating a statelessness determination procedure. Some (such as **Latvia**, **Mexico**, **Moldova** or the **Philippines**) allow for administrative appeal, while others (such as **France**, **Georgia**, **Hungary** or **Spain**) only allow for judicial review. Judicial review may be performed by two or three instances, depending on the country. These characteristics of different systems usually reflect national frameworks and traditions. However, in light of UNHCR guidance, the principles explained in Section I.2 and practical experience, the following three main characteristics have been identified as crucial elements of an effective appeal mechanism:[94]

1. **Automatic right to appeal** – Considering the protection-oriented scope of statelessness determination and the human rights issues at stake, the right to appeal or seek judicial review against a negative decision should be automatic, rather than subject to any form of approval by an authority or a court. This right is guaranteed throughout the appeal/judicial review structure in **France**, **Georgia**, **Hungary**, **Italy**, **Latvia**, **Moldova**, the **Philippines** and **Spain**.
2. **Centralised structure** – Given the usually limited number of cases,[95] together with the special character of statelessness determination (for example as compared to "standard" matters of administrative jurisprudence), centralised and specialised judicial structures may be better able to accumulate specific expertise and deal efficiently with these cases. The appeal system (including judicial review) is entirely centralised and therefore provides a good practice example in **Hungary**, **Latvia**, **Moldova** and **Spain**.[96]
3. **Possibility to grant protection** – Providing appeal bodies and courts with the possibility of granting

92 This section deals with appeal and judicial review mechanisms. It is important to note that these terms may have different meanings in different jurisdictions, languages and legal traditions. The conditions, scope, procedural aspects and consequences of these terms differ from one country to another. For the purposes of this publication appeal is understood as a generic term indicating the possibility to seek remedy by an independent decision-making body or court against a decision denying stateless status or residence permit on the grounds of statelessness. Judicial review refers to a specific form of appeal that is lodged to and decided upon by a court.

93 See UNHCR Statelessness Guidelines 2, Para 25

94 A number of other considerations exist of course

95 Note that all countries operating a statelessness-specific determination and protection mechanism report low figures.

96 Centralisation may be a result of explicit legislative rules (Hungary, Spain) or factual circumstances, i.e. the first-instance authority is centralised (Latvia, Moldova).

protection by their own decision (rather than limiting their scope of review to quashing lower-instance decisions and referring cases back for reconsideration) may have a number of positive impacts. Such "full review" can help avoid lengthy appeal proceedings where cases are referred back for reconsideration several times. Moreover, it facilitates a more in-merit examination of cases and the development of useful judicial guidance not only on procedural issues, but also on material and conceptual matters. **Hungary**, **Italy**, **Latvia**, **Moldova** and **Spain** provide a good practice example in this regard because in these systems all appeal instances can directly grant protection to stateless persons.

C) Factors to consider when designing a national system

- What are the general rules of appeal (formal requirements, deadlines, place to submit the appeal, etc.) under administrative procedural law in the country? And in specific procedures that may serve as reference (for example asylum procedures)?
  - Do these rules ensure an effective right to appeal in case of vulnerable non-nationals applying for protection, who may not speak the official language of the country?
    - If not, what specific conditions or additional safeguards need to be in place for such cases?
- Do rejected applicants for stateless status have access to free-of-charge legal assistance for the formulation and submission of appeal?
- What is the structure of appeal/judicial review procedures in specific procedures that may serve as reference in the country? Is it carried out by a centralised, semi-centralised[97] or decentralised appeal body or court system? How many instances are involved?
  - Asylum procedures may be relevant as well as other procedures aiming at the provision of international protection (for example humanitarian residence permit, complementary forms of protection, etc.).
- What is the expected case-load?[98]
  - If the expected case-load is limited, it may be convenient to bring these cases under the jurisdiction of existing appeal bodies/courts, which have already accumulated experience in relevant matters (asylum, nationality, civil status, etc. – also depending on the profile of the envisaged population), and/or a fully centralised structure may be preferred.
  - If the expected case-load is significant, targeted efforts should ensure the necessary additional capacities for the appeal bodies/courts concerned.
- Considering that statelessness determination is usually a new area of jurisdiction for most appeal bodies/courts (which therefore does not make part of standard training programmes), what is the best structure toensure an effective and fast knowledge transfer? What has proved to a positive experience in past situations that may serve as reference (introduction of judicial review in asylum or naturalisation matters, establishment of a new equal treatment appeal body, etc.)?

97 Decentralised at lower, and centralised at higher instances

98 Note that all countries operating a statelessness-specific determination and protection mechanism report low figures.

- What is the scope of appeal/judicial review procedures in specific procedures that may serve as reference in the country? Do appeal bodies/courts review points of fact and law? Can they grant protection, residence permit, nationality, etc. themselves, or can they only quash lower-instance decisions and send the matter back for reconsideration? Is there a difference between different instances in any of these respects?
- If the appeal bodies/courts in question are not allowed to grant protection, residence permit, nationality, etc. themselves and can only quash lower-instance decisions, does this seem to cause excessive delays in relevant proceedings in the country (where cases are re- and reconsidered by different instances and final decisions often take several years to reach)? Is this a likely risk for statelessness determination cases?
    - If yes, it should be considered that in statelessness determination such undue delays may have a particularly negative impact on the persons concerned (legal limbo, destitution, lengthy detention, etc.) and the possibility to allow appeal bodies/courts to grant stateless status themselves is preferred.

VII.STATUS

VII.STATUS[99]

VII.1 Length and type of residence

A) Summary of international standards

Granting the right of residence for persons recognised as stateless fulfils the object and purpose of the 1954 Convention. It is therefore recommended that states grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interests of stability. Such permits are to be renewable.[100]

B) Existing good practices

All countries with a specific statelessness determination mechanism establish a right of residence for those recognised as stateless. State practice varies significantly as to the type and validity period of residence entitlements for stateless persons. **Mexico** and **Slovakia** currently provide the best practice example by issuing a **permanent residence** permit to stateless persons, recognised as such. This not only ensures more stability and better integration prospects for the stateless persons concerned, but it also saves state authorities from unnecessary administrative burden (it should be kept in mind that statelessness is typically an enduring phenomenon).

Moldova also provides a good practice example: stateless persons recognised by this country are issued an **identity card** (and not a residence permit), the validity of which depends on the age of the person concerned:

- From birth to 10 years of age;
- From 10 to 16 years of age;
- From 16 to 25 years of age;
- From 25 to 45 years of age;
- From 45 years for life.

The following table summarises those states' practices where the validity of the residence permit issued to stateless persons exceeds the minimum benchmark of two years, as recommended by UNHCR:

	Maximum validity	***Which can be renewed for periods of…***
Spain	5 years	5 years
Latvia	5 years	5 years
Georgia	3 years	3 years
Hungary	3 years	1 year
United Kingdom	30 months	30 months

99 In this section, only the rights flowing from recognition as stateless person (and the grant of the relevant residence permit) will be presented. In all countries covered, stateless persons may have access to other statuses as well (refugee status, complementary forms of protection, tolerated stay, etc.), which may provide different rights and conditions than those presented in this section.

100 For detailed guidance see UNHCR Statelessness Guidelines 3, Para 28-30

C) Factors to consider when designing a national system

- What types of residence permit do refugees (and potentially other non-nationals granted international protection) receive? Would the same type of permit be suitable for stateless persons in light of UNHCR guidance and international good practices?
- Does the country's legal system prefer creating separate types of residence permits for all different categories of foreigners staying on its territory?
    - If yes, the possibility of separate residence permit for stateless persons may be considered.
- Does the country's legal system prefer integrating many different categories of resident foreigners under a few main types of residence permits (for example, a permanent residence permit or indefinite leave to remain is granted to refugees, beneficiaries of subsidiary protection, long-term residents and unaccompanied minors)?
    - If yes, an appropriate, already existing type of residence permit may be used in case of stateless persons as well.
- Can the creation of a completely new type of residence permit cause serious technical difficulties and thus significantly delay the issuance of such documents?
    - If yes, using an appropriate, already existing type of residence permit may be the preferred option for stateless persons as well.

VII.2 Access to the labour market

A) Summary of international standards

Recognition of an individual as a stateless person also triggers the "lawfully staying" rights under the 1954 Convention. Thus the right to work must accompany a residence permit.[101]

B) Existing good practices

Employment is usually pivotal for successful social integration and economic self-reliance. Stateless persons are often in a vulnerable situation and usually have enduring protection needs. Consequently, their facilitated access to the labour market is a key condition of a valid protection status and leading a dignified existence. Recognising this, the vast majority of states operating a specific protection regime for stateless persons (namely **France**, **Georgia**, **Italy**, **Latvia**, **Moldova**, **Slovakia**, **Spain** and the **United Kingdom**) ensure **unrestricted access to the labour market** for stateless persons recognised as such. This means that stateless persons can be employed without any additional administrative condition (for example obtaining a work permit), which in many of these countries constitutes preferential treatment as compared to foreigners in general. Of course, in every state there are certain specific jobs (public administration, military, etc.) that may still be reserved only for nationals.

101 See 1954 Convention, Art 17; UNHCR Statelessness Guidelines 3, Para 31

C) Factors to consider when designing a national system

- Under what practical arrangements are other persons granted international protection (such as refugees) have access to the labour market? Can this serve as a reference for the case of stateless persons?
- Are foreigners holding a similar residence permit than that issued to stateless persons (if relevant) required to obtain a work permit or any other specific permission prior to be employed?
  - If yes, the law should exempt stateless persons from this obligation.
- Are there specific provisions in place to facilitate the access of certain groups of foreigners (for example refugees, family members of nationals, etc.) to employment?
  - If yes, the scope of these favourable provisions should be extended to stateless persons as well.

VII.3 Access to education

A) Summary of international standards

The 1954 Convention requires that stateless persons enjoy the same rights as nationals to elementary education and treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances with respect to education other than elementary education.[102]

B) Existing good practices

Access to education is another crucial element of a protection status, which for many provides an opportunity for successful integration and social mobility. At the time of writing, **France**, **Hungary**, **Italy**, **Mexico**, **Moldova** and **Spain** provide a good practice example of **unrestricted access to all levels of education** (primary, secondary and higher), as in these countries stateless persons enjoy the same rights as nationals in this respect (including access to state-funded higher education and scholarships). In most other states, unrestricted access is ensured to primary and secondary (but not to higher) education, under the same scheme as for nationals.

C) Factors to consider when designing a national system

- Under what practical arrangements do other persons granted international protection (such as refugees), and their children have access to public primary, secondary and higher education? Can this serve as reference for stateless persons?
- Do foreigners holding a similar residence permit to that issued to stateless persons (if relevant) face any limitation in accessing public primary, secondary and higher education?
  - If yes, the law should exempt stateless persons from this limitation.
- Are there specific provisions in place to facilitate the access of certain groups of foreigners (for example refugees, family members of nationals, etc.) to state-funded public education and/or scholarships?
  - If yes, the scope of these favourable provisions should be extended to stateless persons as well.

102 See 1954 Convention, Art 22

VII.4 Access to health care and social assistance

A) Summary of international standards
Recognition of an individual as a stateless person also triggers the "lawfully staying" rights under the 1954 Convention. Thus access to healthcare and social assistance must accompany a residence permit.[103]

B) Existing good practices
Many stateless persons may be in a vulnerable situation and may need various forms of support by the state providing protection to them. The scope, structure, means, etc. of social and health care systems differ from country to country and it is not easy to identify general benchmarks for good practices. Yet **France**, **Hungary**, **Italy**, **Moldova**, **Slovakia** and **Spain** clearly show positive models; as stateless persons recognised as such in these countries have **the same access to health care and social benefits (including unemployment benefits) as nationals**. Equal access to health care services is also ensured by the **Mexican** legislation. Moreover, in **France** stateless persons – unlike some other foreigners – can request to be entitled to a state-funded minimum subsistence allowance[104] immediately upon the recognition of their status. In **Moldova**, stateless persons can benefit – as a special form of support – from socio-cultural adaptation and language courses, as well as support in finding employment.

C) Factors to consider when designing a national system
- Under what circumstances do other persons granted international protection (such as refugees) have access to the health care and social assistance? Can this serve as reference for the case of stateless persons?
- Do foreigners holding a similar residence permit to that issued to stateless persons (if relevant) have only restricted access to health care and social assistance?
  - If yes, the law should exempt stateless persons from these restrictions.
- Are there specific provisions that ensure the access of certain groups of foreigners (for example refugees, family members of nationals, etc.) to health care services under preferential conditions?
  - If yes, the scope of these favourable provisions should be extended to stateless persons as well.

VII.5 Facilitated naturalisation

A) Summary of international standards
The legal status of stateless persons should provide the possibility of facilitated naturalisation. In particular, states shall make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.[105]

103 See 1954 Convention, Art 23-24; UNHCR Statelessness Guidelines 3, Para 31
104 *Revenu de solidarité active, RSA*
105 See 1954 Convention, Art 32; UNHCR Statelessness Guidelines 3, Para 29 – Note as well that under the 1997 European Convention on Nationality, states parties shall facilitate the acquisition of nationality of stateless persons (Article 6 (4) (g)) and the standard "waiting

B) Existing good practices

No protection mechanism can be complete without offering a pathway to a durable solution, which actually resolves the person's statelessness. Again, states have diverging traditions and policies when it comes to the naturalisation of foreigners. Therefore, when identifying good practices, the main benchmark is whether there is any **preferential treatment** for stateless persons as compared to the general rules applied to those with a foreign nationality (rather than the comparison of absolute numbers and conditions). In this respect, the regulation of **Slovakia** deserves special credit as good practice, since it allows stateless persons to apply for naturalisation after 3 years of continuous lawful stay in the country. This constitutes preferential treatment not only compared to foreigners in general (8 years of permanent residence permit), but also to refugees (4 years).

Among those countries which have statelessness determination procedures in place, **Italy** is another positive example, where stateless persons (similarly to refugees) can apply for naturalisation after 5 years of residence, which is half the waiting time according to the general rule (10 years). In **Hungary**, stateless persons can be naturalised after 5 years of having a registered domicile in the country, while the general rule is 8 years.[106]

C) Factors to consider when designing a national system

- Are there preferential conditions (for example shorter waiting time, reduced costs, exemption from examinations, language requirements, etc.) in place for the naturalisation of certain categories of non-nationals (for example refugees, family members or nationals, those born in the country, based on ethnic/cultural affiliation, etc.)?
  - If yes, these preferential conditions should apply to stateless persons as well. If there are different preferential categories, stateless persons should be integrated into the most preferential one.
- Is renouncing one's previous nationality a general condition for naturalisation in the country?
  - If yes, the law should explicitly exempt stateless persons from this obligation, otherwise this would constitute an insurmountable obstacle preventing any stateless person's naturalisation.
- Is presenting one's birth certificate (or another relevant civil registry document) a general condition for naturalisation in the country?
  - If yes, the law should explicitly exempt stateless persons from this obligation, otherwise this would constitute a practical obstacle hindering many stateless persons' naturalisation.

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time" prescribed by law before lawfully staying non-nationals can lodge an application for naturalisation cannot exceed ten years (Article 6 (3)).

106 Note that many countries in the world which do not have a statelessness-specific determination and protection mechanism offer preferential conditions for stateless persons when it comes to naturalisation. This may include shorter waiting times or exemption from administrative requirements (such as proving the loss of previous nationality). This document approaches the question of facilitated naturalisation as a part of a more complex protection mechanism, and not as a stand-alone issue of reducing statelessness. Therefore good practices have only been selected from the countries covered by this paper, but this should not, by any means, reduce the importance of other positive models with regard to this particular issue.

The European Network on Statelessness (ENS) is a network of non-governmental organisations, academic initiatives, and individual experts committed to address statelessness in Europe. We believe that all human beings have a right to a nationality and that those who lack nationality altogether – stateless persons – are entitled to adequate protection. We are dedicated to strengthening the often unheard voice of stateless persons in Europe, and to advocate for full respect of their human rights. We aim to reach our goals by conducting and supporting legal and policy development, awareness-raising and capacity building activities.

ENS currently has 81 members in over 30 European countries. Six serve on its Steering Committee, 44 are associate member organisations, and 31 are individual associate members.

Steering Committee member organisations: Asylum Aid, UK * The Equal Rights Trust, UK * Hungarian Helsinki Committee, Hungary * Open Society Justice Initiative * Praxis, Serbia * Statelessness Programme – Tilburg University, the Netherlands

Associate member organisations: Aditus Foundation, Malta * AIRE Centre, UK * Archway Foundation, Romania * Association for Integration and Migration, Czech Republic * Association for Juridical Studies on Immigration (ASGI), Italy * Asylkoordination. Austria * Bail for Immigration Detainees, UK * Belgian Refugee Council, Belgium *British Red Cross, UK * Caritas Vienna, Austria * Civil Rights Programme, Kosovo * Danish Refugee Council, Denmark * Detention Action, UK * EUDO Citizenship, regional * Faith Hope Love, Russia *Forum Réfugiés – Cosi, France * Greek Council for Refugees, Greece * Halina NiećLegal Aid Centre, Poland * Helsinki Citizens Assembly, Turkey * Helsinki Foundation for Human Rights, Poland * HIAS, Ukraine * Human Rights League, Slovakia * Immigrant Council of Ireland * Information Legal Centre, Croatia * Innovations and Reforms Center, Georgia * Interights, UK * Italian Council for Refugees (CIR), Italy * Jesuit Refugee Service Romania * Kerk in Actie, Netherlands * Latvian Centre on Human Rights, Latvia * Law Centre of Advocates, Moldova * Legal Centre, Montenegro * Legal Clinic for Refugees and Immigrants, Bulgaria * Legal Information Centre on Human Rights, Estonia * Lithuanian Red Cross Society, Lithuania * Macedonia Young Lawyers Association, Macedonia * Migrant Rights Network, UK * NGO Vitality, Moldova * Peace Institute, Slovenia * People for Change Foundation, Malta * Portuguese Refugee Council, Portugal * Refugee Action, UK * Refugees International, regional * Vaša Prava, Bosnia and Herzegovina

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Eudo Observatory on Statelessness http://eudo-citizenship.eu/

In recent years, there has been an unprecedented wave of accessions to the 1954 Statelessness Convention. This reflects growing efforts to integrate statelessness within the mainstream international human rights agenda. Shedding light on the necessity of creating a specific statelessness determination procedure and a protection status for stateless persons was central to this process. Several states have recently taken positive steps in this respect.

However, given the currently low number of existing determination and protection models specifically relating to statelessness, states as well as other actors often face difficulties when looking for "good practices" or examples to copy or adapt. The objective of this short guide published by the European Network on Statelessness (ENS) is therefore to provide practical support to states considering the establishment of such a specific mechanism, or who wish to improve their existing regime. In addition, the information summarised in this paper is also of value to international and civil society organisations, as well as academics, who are committed to advocate for better protection standards for the world's stateless population.

This guide addresses 6 key areas in which states need to take strategic decisions in the process of building a national determination and protection regime for stateless persons. The issues cover the entire spectrum of determination and protection mechanisms, from basic questions of structure and access, through to procedural factors and assessment, and finally to appeal- and status-related topics.