



UNHCR
The UN Refugee Agency



**Draft Articles on the
Protection of Stateless Persons
and the Facilities for their Naturalisation**
February 2017



UNHCR publishes this document in accordance with its responsibility for promoting uniform compliance with the provisions of the 1954 Convention Relating to the Status of Stateless Persons and for providing technical advice to States concerned with assuring that stateless persons are treated according to international human rights law and can access facilities for their naturalisation, as appropriate.

UNHCR's responsibilities were initially limited to stateless persons who were refugees, according to that established in paragraph 6 (A) (II) of UNHCR's Statute and in Article 1 (A) (2) of the 1951 Convention Relating to the Status of Refugees. However, in order to undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, UNHCR's mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106, which sets out the four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

This document was developed in consultation with various Latin American countries, which are developing regulations for the protection and naturalisation of stateless persons, with human rights organisations and with civil society organisations. Its purpose is to offer legal counsel to these countries and to respond to the requests for technical assistance received by UNHCR.

This draft of articles reflects the recommendations from the 'Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons' published by UNHCR in 2014, as well as the standards developed by the Inter-American System for the Protection of Human Rights and the best practices of drafts and bills existing in the Americas.

Index

Title. General Provisions _____	11
Chapter: Definition. Scope. Object and purpose.	
Individuals in a similar situation to stateless persons _____	11
Article. Definition of stateless person.	11
Article. Personal and material scope of application.	11
Article. Object and purpose.	12
Article. Individuals in a similar situation to stateless persons.	12
Chapter: Construction of the law _____	12
Article. Considerations of age, gender and diversity.	
Most favourable treatment.	12
Article. Rights recognised irrespective of this law.	12
Article. Regulations relating to foreign individuals and administrative procedures.	12
Article. Exclusion, cessation, revocation and cancellation clauses.	13
Chapter: Principles of protection _____	13
Article. Non-expulsion.	13
Article. Family unit. Reunification.	14
Article. Extra-territorial effect of the status.	14
Article. Diplomatic protection.	14
Chapter: Termination of the protection status as stateless person _____	14
Article. Cessation.	14
Article. Cancellation.	15
Title. Rights and Duties _____	17
Chapter: General Provisions _____	17
Article. Identity documents.	17
Article. Temporary and permanent residence.	17
Article. Identity document and residency.	
Family of the stateless person.	17
Article. Travel documents.	17
Article. Administrative assistance.	17
Article. Free of charge.	17

Title. National Commission for Refugees (CONARE). Technical and Administrative Secretariat _____	20
Chapter: Competences _____	20
Article. Competences.	20
Title. Procedures _____	23
Chapter: Ordinary Procedure _____	23
Article. Due process of law.	23
Article. Interviews.	23
Article. Translator or interpreter.	23
Article. Legal representation.	23
Article. Entry into the territory.	23
Article. Admissible evidence.	24
Article. Production of the evidence.	24
Article. Burden of proof.	24
Article. Duty of cooperation of the applicant.	24
Article. Duty of appearance of the applicant.	24
Article. Enquiries with other States.	24
Article. Personal data protection. Confidentiality.	25
Article. Standard of proof.	25
Article. Benefit of the doubt.	25
Article. Legal opinion of the Secretariat.	25
Article. Final resolution. Resolution period.	25
Article. Cessation, revocation and cancellation procedures.	25
Article. Notification of resolutions.	26
Article. Administrative and judicial review. Effect.	26
Chapter: Coordination with other procedures _____	26
Article. Stateless refugees. Recognition of both status.	26
Article. Cessation of the refugee status of a stateless person.	27
Chapter: Children and adolescents _____	29
Article. Interviews.	29
Article. Legal representation. Nullity.	29
Article. Best interest of the child. Participation.	29
Article. Priority processing.	29
Article. Unaccompanied or separated children and adolescents.	29
Article. Search for relatives.	29
Article. Declared age. Presumption.	29
Article. Appointment of a guardian.	29
Article. Best interest determination procedure.	30

Chapter: Disabled persons _____	30
Article. Facilities. Participation.	30
Article. Legal representation.	30
Article. Guardianship.	30
Article. Presumption of nationality.	30
Title. Solutions _____	31
Chapter: Naturalisation _____	31
Article. Facilities for naturalisation.	31





Draft Articles on the Protection of Stateless Persons and the Facilities for their Naturalisation

February 2017

Whereas:

The Republic of XXX is a State Party of the **1951 Convention Relating to the Status of Refugees**, which it approved under Law XX of XXXX, and its respective instrument of accession ['or ratification', as applicable] was deposited on XXXX. The Convention governs the international protection of refugees who have a nationality or who are stateless, with stateless persons who are not refugees falling outside of its scope;

Under Law XX of XXXX, the Republic of XXX approved the **1954 Convention Relating to the Status of Stateless Persons** and deposited, on XXXX, the corresponding instrument of accession ['or ratification', as applicable]. The objective and purpose of the Convention is to ensure that stateless persons who are not refugees can exercise their human rights to the fullest possible extent;

The Republic of XXX regulates the protection of refugees by means of Law XX of XXXX, but lacks a comprehensive regulation for the protection of stateless persons who are not refugees. Therefore, a special regulation needs to be adopted to ensure the identification, protection and search for solutions for such individuals.

In November 2014, the Office of the United Nations High Commissioner for Refugees (UNHCR), in consultation with the States, civil society and international organisations, adopted the Global Action Plan to End Statelessness: 2014 – 2024 with a view to promoting the eradication of statelessness throughout the world. Action 6 of said plan proposes that the States identify stateless migrants through determination procedures which lead to a legal status that permits residence and guarantees the enjoyment of basic human rights, and facilitate naturalisation.



Adoption of the Brazil Declaration and Plan of Action. December 2014. UNHCR.

In December 2014, 28 countries and 3 territories of Latin America and the Caribbean adopted the Brazil Declaration and Plan of Action. In the 'Brazil Declaration: A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean', the countries reaffirmed their commitment to the eradication of statelessness and stressed that every person has the right to a nationality and that statelessness is a violation of this individual right.

The 'Eradicating Statelessness' programme, contained in chapter 6 of the **'Brazil Plan of Action: A Common Roadmap to Strengthen Protection and Promote Sustainable Solutions for Refugees, Displaced and Stateless Persons in Latin America and the Caribbean within a Framework of Cooperation and Solidarity'**, promotes the establishment of effective statelessness determination procedures, the adoption of legal protection frameworks that guarantee the rights of stateless persons and the facilitation of naturalisation.

The **General Assembly of the Organisation of American States**, under resolutions AG/RES. 2599 (XL-O/10), AG/RES. 2665 (XLI-O/11), AG/RES. 2787 (XLIII-O/13) and AG/RES. 2826 (XLIV-O/14), on the 'Prevention and Reduction of Statelessness in the Americas', urged Member States to consider adopting domestic laws to comprehensively regulate all matters relating to the identification and protection of stateless people. Likewise, through resolution AG/RES. 2887 (XLVI-O/16), on the 'Promotion and Protection of Human Rights', the General Assembly of the OAS welcomed UNHCR's Global Action Plan and the Brazil Declaration and Plan of Action as the global and sub-regional strategic framework for ending statelessness and invited Member States to establish fair and efficient procedures for determining statelessness and to provide facilities for the naturalisation of stateless persons.

The **Inter-American Court of Human Rights**, in Advisory Opinion OC-21/14 on the ‘Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection’, of August 19, 2014, Series A No. 21, indicated that the States have the international obligation to identify, within their jurisdiction, stateless children to provide appropriate treatment for their condition. According to the Inter-American Court, this requires the establishment of fair and efficient procedures for determining if it is a stateless person, to be responsive to the differing needs of girls and children, according to age, gender and diversity.

Various American countries, including Brazil, Costa Rica, Peru, the United States of America and Uruguay committed themselves to establishing statelessness determination procedures or to adopting initial measures with a view to the establishment of such procedures; Bolivia [The Plurinational State of], Mexico and Panama committed themselves to respecting international principles and action with regard to statelessness; and the United States of America also committed to addressing statelessness through foreign policy initiatives.

The [Republic of XXX] adopted the Brazil Declaration and Plan of Action, is a Member State of the General Assembly of the Organisation of American States and is committed to the protection and search for solutions for stateless persons.

Therefore, this law which regulates the rights and duties of stateless persons who are not refugees, establishes a statelessness determination procedure, provides facilities for the naturalisation of stateless persons and establishes the competences and duties of the body charged with bringing about this determination is hereby adopted.

General Provisions

Chapter

Definition. Scope. Object and purpose. Individuals in a similar situation to stateless persons.

Article. Definition of stateless person.

For the purposes of this law, the term ‘stateless person’ means an individual who is not considered as a national by any State under the operation of its law.

Article. Personal and material scope of application.

This law shall regulate the identification, status determination, protection, assistance and provision of facilities for the naturalisation of stateless persons who are not refugees, as well as the protection of non-refugees persons who have a nationality but who are not permitted to return to their own country.

The following persons will not be granted the status of stateless person:

1. Persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
2. Persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
3. Persons with respect to whom there are serious reasons for considering that:
 - a) They have committed a crime against peace, a war crime or a crime against humanity, as defined in the pertinent international instruments drawn up to make provisions in respect of such crimes;
 - b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
 - c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Without prejudice to the principle of non-refoulement encompassed in applicable international human rights instruments, and the individual’s right to seek a complementary form of protection, any person falling under subsection 3 shall be excluded from the stateless status due to not deserving protection as such.

Article. Object and purpose.

The purpose of this law is to ensure to stateless persons and applicants of the recognition of such status, the widest possible exercise of their human rights and regulate the provision of facilities for their naturalisation.

Article. Individuals in a similar situation to stateless persons.

The rights of stateless persons as recognised under this law shall be extended to those individuals who have a nationality but to whom the authorities of their country do not allow them to return to it.

When the application for the determination of statelessness status is rejected given the individual is found to be a national of a country, but the return of the individual to the territory of such country is not admitted by its authorities, the migration authority will authorise the temporary residence of said individual for humanitarian reasons, as long as it does not conflict with the criteria of migration regulations on the prohibition of the stay of foreigners.

The competent authority may issue that individual a special travel document for foreigners who cannot obtain a passport from the authorities of the country of their nationality.

Chapter

Construction of the law

Article. Considerations of age, gender and diversity.**Most favourable treatment.**

This law shall be construed from a perspective that is sensitive to gender, age and diversity and in the most favourable sense for the stateless person.

Article. Rights recognised irrespective of this law.

No provision of this law shall be construed to limit or exclude stateless persons from the enjoyment and exercise of any other right recognised by international treaties on human rights to which the State is a Party, by the Constitution or by the laws.

Article. Regulations relating to foreign individuals and administrative procedures.

The set of regulations concerning the entry, admission, stay and exit of foreign individuals in and out of the national territory, as well as those regulations regarding their documents and naturalisation or, in general, those concerning administrative procedures, shall be directly applicable if they establish provisions which are more favourable to the stateless person.

Article. Exclusion, cessation, revocation and cancellation clauses.

Exclusion, cessation, revocation and cancellation clauses set out in this law shall be construed restrictively and no others can be established by analogy.

Chapter**Principles of protection****Article. Non-discrimination.**

The authorities shall guarantee the free and full exercise of all rights, as recognised in this law, to the stateless person or applicant for recognition of such status, who are subject to the jurisdiction of the country, without any discrimination based on race; colour; sex; sexual orientation; gender identity; language; religion; political or any other type of opinions; national, social or ethnic origin; economic position; birth; migration status or any other social status.

Article. Non-sanction for irregular entry or stay.

Neither stateless persons nor applicants for recognition of such status will face any criminal, migration or administrative sanctions on account of their irregular migration entry or presence.

The statelessness determination procedure will suspend any administrative or judicial punitive action which may have been brought against the applicants or the members of their family group.

Article. Non-detention.

No individual shall be detained for lacking nationality and identity or travel documents issued by a foreign authority, or due to their irregular migration status, before applying for stateless status.

Article. Non-refoulement.

No stateless person or applicant for recognition of such status shall be returned, expelled, extradited or in any way put at the frontier of a territory that may endanger their life, personal safety or freedom.

Article. Non-expulsion.

No stateless person or applicant for recognition of such status shall be expelled from the country, save on grounds of national security or public order.

In such a case, the expulsion shall only take place in pursuance of a decision reached in accordance with due process of law.

Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit exculpatory evidence, to resort to administrative and judicial remedies and to be represented for said purpose before the competent authorities.

When the expulsion is admissible, the stateless person shall be granted a reasonable period of time to arrange their legal admission into another country.

Article. Family unit. Reunification.

The family unit of stateless persons and that of applicants for such status shall be preserved, with their spouse or partner in a common law relationship, including persons of the same sex, minor children and other family members or individuals with whom they have an economic, cultural, psychological, emotional or any other type of dependency relationship which is considered valid by the National Commission for Refugees (CONARE).

Members of the family group who are nationals of another country will obtain a temporary residence permit in the country while the application is being processed.

CONARE will adopt all the necessary measures, including regulatory measures, to facilitate the reunification in the country of the family of a person recognised as stateless.

Article. Extra-territorial effect of the status.

The status of stateless persons, as determined by a State Party to the 1954 Convention Relating to the Status of Stateless Persons, shall be recognised in the country.

CONARE shall only be able to question said status in exceptional cases in which it is evident that the individual did not fulfil the requirements to be recognised as stateless.

Article. Diplomatic protection.

Through the Ministry of Foreign Affairs, CONARE may ensure the diplomatic protection of a stateless person if, on the date on which a nuisance occurred and on the date of the official presentation of the claim, said person had temporary or permanent residence in the country.

Chapter

Termination of the protection status as stateless person.

Article. Cessation.

The status as stateless person shall cease to apply when the individual:

a) has been naturalised or has otherwise acquired the nationality of the country;

b) is recognised as a national by another State, in accordance with its laws. The cessation of the stateless status in this instance will not entail a change of migration status nor the termination of permanent residence as granted in accordance with this law.

Article. Revocation.

CONARE shall revoke the status of statelessness of a person when there are serious reasons to believe that, after its granting, the individual engaged in any of the conduct included in Article XXX.3.a) or c) of this law.

Article. Cancellation.

CONARE can only review the administrative resolution which recognised the status of stateless person when there are serious reasons to believe that the individual deliberately withheld or forged information or documents which would have led to the rejection of said status had they been known about at the time, given that the individual would not have qualified as stateless or should have been excluded from the protection as such.

#IBELONG



Interview by Juan Ignacio Mondelli, Regional Protection Officer (Apatridia) for the Americas, to Maha Mamo, stateless person. Buenos Aires, November 2017. UNHCR.

Rights and Duties

Chapter

General Provisions

Article. Right to seek and receive protection as a stateless person.

All stateless persons have the right to seek and receive protection as such.

Article. Right to naturalisation.

All stateless persons have the right to naturalisation in accordance with Law XXX* and the facilities provided in this law.

Article. Application in one's own right.

Children and adolescents, irrespective of their age or of them being unaccompanied or separated from their families, and the other members of the family group, who qualify as stateless have the right to submit an application in their own right.

CONARE will assess and resolve each application individually, although they may be processed under a single administrative record.

Article. Rights protected by the 1954 Convention.

With the exception of the more favourable treatment provided by the international treaties on human rights of which the State is Party, by the Constitution or by the laws, stateless persons shall enjoy in the country all the rights recognised in the 1954 Convention Relating to the Status of Stateless Persons.

Article. Right to work.

Stateless persons and applicants for recognition of such status shall have the right to work independently or as employees, and they shall also have access to healthcare services, education and other social programmes provided by the State.

Article. Duties.

All stateless persons and applicants for recognition of such status have the obligation to uphold the Constitution, its laws and regulations, as well as any measures adopted for the maintenance of public order.

Chapter

Identity and travel documents.

Legal residence. Administrative assistance.

Article. Identity documents.

All stateless persons and applicants for recognition of such status have the right to be issued an identity document when they do not possess a valid travel document.

Applicants shall be issued a document which shall be valid until a final resolution has been adopted with regard to their application. Should the statelessness be determined, said document shall be replaced by the identity document granted to foreigners with permanent residence in the country.

Article. Temporary and permanent residence.

Every person who has sought to be recognized as stateless persons is entitled to a temporary residence permit guaranteeing his/her legal stay in the country until his/her application has been finally resolved. Should the statelessness be determined, the stateless person shall be granted a permit for permanent residence.

Article. Identity document and residency.

Family of the stateless person.

Members of the family group who are foreign nationals shall be entitled to an identity document and to obtain a permanent residence permit under the same conditions as the stateless person.



First Subregional Meeting of the Triennial Evaluation of the Sixth Chapter of the Brazil Plan of Action (Eradicating Statelessness). Buenos Aires, November 2017.

Article. Travel documents.

All stateless persons who are lawfully staying in the territory are entitled to be issued travel documents for the purpose of travel outside and re-entry into the country, unless compelling reasons of national security or public order otherwise require.

Such travel document may be issued to any stateless person who is present in the territory, particularly when they are unable to obtain a travel document from the country of their lawful residency.

Article 28 and the schedule of the 1954 Convention Relating to the Status of Stateless Persons shall be applicable to the issue of the travel document, which must comply with the relevant standards of the International Civil Aviation Organisation.

Diplomatic or consular authorities shall extend the validity of the travel document as appropriate and they can likewise issue a safe conduct allowing for the swift return of the stateless person to the territory.

Article. Administrative assistance.

When the exercise of a right by a stateless person would normally require the assistance of authorities from a foreign country to whom he cannot have recourse, the CONARE Secretariat shall arrange that such assistance be afforded to him by their own authorities.

The CONARE Secretariat shall issue, or cause to be issued by the competent authority to stateless persons such documents or certifications as would normally be issued to aliens by or through their national authorities.

The documents or certifications so issued shall stand in the stead of the official instruments issued to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

Article. Free of charge.

The statelessness determination procedure, the migration proceedings and the naturalisation process shall be free of charge for stateless persons, applicants for recognition of stateless status, and the members of their family group.

Stateless persons who are not destitute may be required to pay the lowest fees, duties or taxes charged to nationals to obtain identity and travel documents or for other similar services.

National Commission for Refugees (CONARE). Technical and Administrative Secretariat

Chapter

Competences

NOTE: Chapter 6 of the Brazil Plan of Action recommends the inclusion of the competence to determine the statelessness of a person among the competences of the National Commissions for Refugees (CONAREs) or equivalent body.

Article. The National Commission for Stateless Persons and Refugees (CONARE).

The 'National Commission for Refugees' (CONARE), as established by Art. XXX of Law XXX, shall exercise the competences assigned to it by this law.

After the coming into force of this law, the commission shall henceforth be known as the 'National Commission for Stateless Persons and Refugees' (CONARE).

Article. Competences.

CONARE shall adopt all the necessary measures to identify, protect, assist and facilitate the naturalisation of stateless persons, by determining their statelessness. In particular, CONARE shall have the following duties:

- a)** To identify and determine the statelessness of a person in the first instance, resolving all matters regarding inclusion and exclusion, as well as regarding cessation, cancellation and revocation of the stateless status;
- b)** To ensure that stateless persons effectively enjoy their rights, promoting their effective access to public social, economic and cultural assistance programmes;
- c)** To coordinate with national, provincial and municipal authorities the adoption of the necessary actions for the exercise of its duties and competences;
- d)** To provide advice to the pertinent governmental bodies regarding the needs of stateless persons and the ways to include them in public policies and in assistance and integration programmes;
- e)** To intercede in family reunification procedures and procedures for the resettlement of stateless persons in the country;
- f)** To approve the regulations required for the implementation this law;
- g)** To provide the President of the Republic before March 31 with an annual report of the activities of the preceding year.

Article. Technical and Administrative Secretariat. Duties.

The Secretariat, as established by Article XXX of Law XXX, shall provide technical and administrative support to CONARE in the performance of its duties. In particular, the Secretariat shall:

- a)** Receive, register and process the applications for recognition of the stateless status;
- b)** Deliver the required communications and notices during the procedure, including inquiries to consulates, embassies and other foreign authorities of the country of origin, as well as CONARE decisions;
- c)** Coordinate with migration, border, judicial or municipal public authorities the referral of the applications they might have received;
- d)** Interview the applicants, offering them the possibility to choose the sex of the interviewer and the interpreter if applicable;
- e)** Prepare an administrative record of the applicant, to include: **1)** his/her personal details and those of his/her relatives, whether they are accompanying him/her or not; **2)** a document explaining the reasons for his/her application; **3)** any evidence which may have been produced; **4)** the minutes of previous interviews; **5)** a legal opinion from the Secretariat on the merit of the application;
- f)** Issue or have issued under its authority identity, travel, and migration residence documents to the stateless person and his/her family;
- g)** Provide administrative assistance to the stateless person and his/her family, facilitating the permits or documents required for their effective access to work and to public healthcare, education and social assistance programmes and services;
- h)** Carry out any other duties assigned to it under this law or by CONARE.



ACNUR

Comisión Nacional para los Refugiados
Comisión de las Naciones Unidas
Para los Refugiados

Procedures

Chapter

Ordinary Procedure

Article. Due process of law.

The statelessness determination procedure shall respect all the guarantees of due process of law.

Article. Provision of information.

Once the application has been lodged, the Secretariat shall inform the individual of their rights and duties as an applicant for recognition of stateless status, as well as of the criteria and procedures for recognition of refugee status.

Article. Interviews.

Applicants have the right to be interviewed prior to the adjudication of their application. The Secretariat shall conduct follow-up interviews whenever necessary, and in all cases provide them with the time and means needed to present their case and shall give them the choice of the sex of the interviewers and the interpreters. This choice shall appear in writing in the file.

Article. Translator or interpreter.

When an applicant does not understand the national language, the Secretariat shall provide them with the services of a qualified translator or interpreter, free of charge.

Article. Legal representation.

Applicants have the right to legal representation at all stages of the procedure.

When applicants have no economic resources, CONARE shall adopt the necessary measures to facilitate their access to suitable free legal assistance services specialised in international protection of refugees and stateless persons.

Article. Entry into the territory.

Migration authorities shall permit entry into the territory to all individuals who manifest their intention to apply for recognition of the stateless status, even when the applicant does not have the documents required by the migration regulations.

Article. Filing of applications.

Applications for the recognition of stateless status can be filed verbally or in writing, in person or through a legal representative. Any public authorities which identify that an individual may require protection as a stateless person shall immediately refer the case to the CONARE Secretariat, which shall interview the individual so as to provide them with information and to verify whether they wish to file an application.

Article. Admissible evidence.

All types of evidence shall be admissible in the procedure. However, its production shall be subject to CONARE considering it relevant to the circumstances of the case.

Article. Production of the evidence.

The Secretariat shall prepare the case *ex officio*, producing all evidence considered relevant for the determination of the merit of the application, especially regarding how the competent foreign authorities construe and apply their Nationality Law.

Article. Burden of proof.

CONARE and the applicant share the burden of proof.

Article. Duty of cooperation of the applicant.

Applicants must cooperate with the Secretariat in order to determine the facts in support of their application and to present any piece of evidence in their possession or which they may reasonably obtain.

Article. Duty of appearance of the applicant.

Upon reception of a detailed report by the Secretariat on a given case, CONARE may implement the measures it deems necessary, reasonable and proportional to ensure the appearance of the applicant during the statelessness determination procedure.

Said measures must have been detailed in a unanimously approved set of regulations which shall specify their content, the criteria governing their use and the procedure for their application, supervision and revision.

Article. Enquiries with other States.

CONARE may consult the States with whom an applicant may have a relevant link based on his/her place of birth, descent, residence, marriage or any other status, in order to establish whether that applicant is considered a national of that State under the operation of its laws. Consultations with foreign authorities shall be made through the Secretariat, as long as the applicant has no protection needs as a refugee or under other complementary forms of protection.

Article. Personal data protection. Confidentiality.

The statelessness determination procedure shall ensure the protection and confidentiality of the information referring to stateless persons and their families.

CONARE shall only share information that is strictly necessary for the consulted State to be able to confirm within a reasonable period of time if it deems that the applicant is a national of that State.

Article. Standard of proof.

The finding of statelessness shall be justified when it has been established to a reasonable degree that the individual is not considered a national by any State under the operation of its law.

Article. Benefit of the doubt.

When a fact that is relevant to determining the application cannot be proven, CONARE may give the benefit of the doubt to applicants who have complied with their duty of cooperation and as long as their statements are coherent and consistent with the general account put forward by the applicant and with generally known facts.

Article. Legal opinion of the Secretariat.

Upon production of relevant evidence, the Secretariat shall draft within a reasonable period of time a technical report on the merit of the application that shall be presented to CONARE.

Article. Final resolution. Resolution period.

CONARE shall come to a decision on applications through a reasoned resolution and within 180 calendar days, to be counted from the date on which the application is filed, unless the preparation of the file, the complexity of the case or the consultations with foreign authorities require an extension of a maximum of 180 calendar days.

Article. Declaratory effect. Humanitarian and apolitical nature.

The administrative or judicial act recognising the statelessness of an individual has a declaratory effect and is of a humanitarian and non-political nature.

Article. Cessation, revocation and cancellation procedures.

CONARE shall decide in the first instance, in a duly substantiated resolution and upon interviewing the person and receiving a technical report from the Secretariat, on the application of the cessation, revocation or cancellation clauses. The Secretariat shall arrange an interview with the person and share the reasons leading to the opinion that said clauses could be applicable.

CONARE shall come to a decision within 60 calendar days to be counted from the date of reception of the technical report unless the preparation of the case file, the complexity of the case or the consultations with foreign authorities require an extension of 60 calendar days

Article. Notification of resolutions.

The Secretariat shall formally notify applicants of the definitive resolutions of CONARE, both those regarding the procedure and those which may cause subsequent irreparable harm, no more than five days after they have been adopted.

Article. Administrative and judicial review. Effect.

Resolutions by CONARE on the rejection, cessation, cancellation and revocation of stateless status, as well as those procedural decisions which may cause irreparable harm, shall be review in accordance with the ordinary system for the administrative and judicial review of administrative acts.

The lodging of appeals or administrative or judicial remedies shall suspend the execution of any resolution concerning expulsion.

[NOTE: If the regulation for the protection of refugees establishes a special system of appeals that results to be more favourable, it is recommended that said special system be extended to stateless persons.]

Chapter

Coordination with other procedures

Article. Refugee status determination procedure.

At any stage of the procedure, CONARE shall process application in accordance with the regulations and procedure to determine refugee status if the individual applies for the recognition of said status or if the Secretariat deems that the individual could qualify as a refugee and said individual gives written consent for his/her application to be handled through said procedure.

Article. Confidentiality.

When a refugee status determination is conducted, CONARE shall ensure the confidentiality of the procedure and shall refrain from contacting the authorities of the country in which the alleged persecution took place as part of the process to determine whether the person is a stateless refugee.

Article. Stateless refugees. Recognition of both status.

During the refugee status determination procedure, CONARE shall evaluate whether the individual qualifies as a stateless refugee, meeting both status; whether he/she is a refugee who has a nationality; whether he/she is stateless but does not qualify as a refugee; or whether he/she meets neither of the two status. This shall be expressly stated in the corresponding resolution.

Article. Cessation of the refugee status of a stateless person.

When the refugee status of a stateless person ceases without the individual having acquired a nationality, the stateless status shall remain in force and shall only end in accordance with the provisions on ‘Termination of the protection status as stateless person’ established in this law.

Article. Procedure of late birth registration.

Whenever CONARE deems, based on the documents submitted and the facts put forward in the application or interview, that an individual may have been born in the territory of the country without the birth having been registered, the statelessness determination procedure shall be suspended and the case referred to the competent registry authority so that the said authority can perform the late birth registration, as applicable.

If this procedure is completed without the individual having been registered as a national of the country, the administrative or judicial decision will be notified to CONARE so that the statelessness determination procedure can resume.

Article. Procedure for acquiring nationality.

Whenever CONARE deems, based on the documents submitted and the facts put forward in the application or interview, that an individual is entitled to acquire the nationality of the country through a procedure different from naturalisation, said individual shall be duly informed so that he/she can consider starting the procedure.

With the consent of the applicant the case shall be referred to the competent authority, which shall process the application for nationality with urgency and priority.

Article. Procedure for acquiring the nationality of another country.

Whenever CONARE deems, based on the documents submitted and the facts put forward in the application or interview, that an individual is entitled to acquire the nationality of another country, it shall, with the consent of the applicant, provide its good offices before the foreign authorities in order to facilitate the acquisition or recovery of such nationality, as applicable.

The provision of good offices or the start of the process for acquiring a foreign nationality shall not suspend the statelessness determination procedure unless the applicant so requires.



Chapter

Children and adolescents

Article. Interviews.

Children and adolescents have the right to be interviewed by specially trained staff.

Article. Legal representation. Nullity.

When an application for recognition of the stateless status is filed by a child or adolescent, the Secretariat shall procure the immediate appointment of a legal representative who shall compulsorily intervene in all stages of the procedure, under penalty of nullity.

Article. Best interest of the child. Participation.

CONARE shall give primary consideration to the best interests of the child and adolescent and shall ensure their participation and right to be heard in all stages of the procedure and in the decisions concerning them, whilst taking their age and maturity into consideration.

Article. Priority processing.

The applications filed by children or adolescents shall be given priority in their processing, assessment and resolution.

Article. Unaccompanied or separated children and adolescents.

The competent authority [Governmental body for child welfare and protection] shall determine the status of unaccompanied or separated children and adolescents immediately after their arrival at the port of entry or as soon as it is made aware of their presence in the country.

Article. Search for relatives.

The competent authority [Governmental body for child welfare and protection] shall immediately start the process for tracing relatives and shall implement the necessary measures to identify a foster family should family reunification not be possible within a reasonable period of time or should it not be in the best interests of the child or adolescent.

Article. Declared age. Presumption.

In cases of doubt over age, the age declared by the individual shall be accepted until age determination tests are carried out.

Article. Appointment of a guardian.

Upon identification of an unaccompanied child or adolescent, a guardian will be appointed to carry out the duties as such until the child or adolescent comes of age or leaves the territory permanently. The child shall be notified of the decisions concerning his/her

guardianship and legal representation, and his/her opinion shall be born in mind.

In the case of a separated child, the accompanying adult relative or the primary carer who is not a direct relative shall be appointed guardian, unless there are indications that this arrangement would not be in the best interest of the child.

Article. Best interest determination procedure.

When a child or adolescent is unaccompanied or separated, the competent authority [Governmental body for child welfare and protection] shall initiate a best interest determination procedure in order to identify appropriate long-term solutions such as naturalisation or resettling in another country for family reunification, as well as temporary care and assistance measures to ensure a safe and protective environment to provide the child or adolescent with the appropriate physical and emotional care and to cater for their special needs.

Chapter

Disabled persons

Article. Facilities. Participation.

CONARE shall adopt the necessary measures to ensure that disabled applicants have access to facilities adapted to their special needs allowing them to present their case and to satisfy all the stages of the procedure, ensuring their participation.

Article. Legal representation.

When an applicant has a long-term mental, intellectual or sensory impairment preventing or seriously impeding their full and effective participation in the procedure, the Secretariat shall immediately appoint a legal representative who shall compulsorily intervene in all stages of the procedure, under penalty of nullity.

Article. Guardianship.

The appointment of a guardian, as applicable, shall be decided according to the criteria and proceedings of the applicable Civil Law provisions.

Article. Presumption of nationality.

No individual shall be deemed stateless if, due to reasons of disability, he/she cannot make himself/herself understood on his/her own or through another person and, as a result, he/she cannot prove that he/she is a national or that he/she has the right to the nationality of the country.

In these instances, the Secretariat shall refer the case to the competent authorities for the verification or granting of nationality. In case of doubt, said authority shall rule in favour of the status of national.

Solutions

Chapter

Naturalisation

Article. Facilities for naturalisation.

Stateless persons shall enjoy the following facilities for their naturalisation and, in this regard, any other regulation which may establish greater requirements shall be considered repealed.

NOTE: in accordance with the requirements established by the provisions of the constitution and the laws for the naturalisation of foreigners in general, States can consider providing the following facilities for the naturalisation of stateless persons, as applicable:

Facilities (access to the naturalisation procedure)
Dissemination of information about the procedure
CONARE and the competent authority (naturalisation) provide stateless persons with information about the criteria and requirements for their naturalisation in a language they can understand.
Facilities (procedural)
The role of CONARE
The law assigns CONARE an accompanying or monitoring role to facilitate and ensure naturalisation as a long-term solution.

Costs

Free of charge (exemption from the payment of charges)

According to Article 32 of the 1954 Convention, States must make every effort to reduce as far as possible the charges and costs of the naturalisation proceedings. In virtue of this, stateless persons could be exempted from paying the fees, taxes, charges or tariffs **normally required** in the naturalisation procedure (free of charge), including the expenses for filing their application, the costs of obtaining documents (e.g. certificates, publication of notices) or apostilles, legalisations, etc.

Cost reduction. Most favourable treatment to certain aliens

When the procedure cannot be totally free of charge, the payment of fees, taxes, charges or tariffs can be reduced, and the stateless person shall be granted the most favourable treatment recognised by naturalisation regulations for a certain category of aliens (e.g. those married to nationals of the country).

Duration

According to Article 32 of the 1954 Convention, States must make every effort to expedite naturalisation proceedings. Consequently, the law should establish an expedited naturalisation procedure in which the **applications filed by stateless persons** receive priority treatment.

Burden of proof

The burden of proof may be shared. **Stateless persons seeking naturalisation** must provide all the evidence in their possession or which they may reasonably obtain, while the competent authority (naturalisation) shall facilitate as far as possible the attainment of **the remaining** required documents (**administrative aid**).

Standard of proof

When necessary to resolve an application, the competent authority (naturalisation) can give the benefit of the doubt to stateless persons who have cooperated throughout the naturalisation procedure in order to meet the requirements of the process. Similarly, it can be flexible in its construction of the legal requirements so as to favour naturalisation.

Free legal assistance

Stateless persons with no economic means are provided with free legal assistance in all the stages of the naturalisation procedure.

Facilities (substantive requirements)

Residence

Exemption from the period of residence

An individual may apply for naturalisation as soon as their statelessness is recognised, without having to fulfil the period of residence usually required of foreigners who are nationals of another country.

Reduction of the term of residence

Stateless persons receive the most favourable treatment recognised under domestic law applicable to aliens seeking naturalisation in the country (e.g. a foreign person married to a national).

Non-requirement of a legal residence category or a certain visa

Stateless persons do not require a given residency category or a certain visa (e.g. permanent). The mere stay or residence in the country before the granting of the stateless status is considered for the purpose of the period of residence required by law, regardless of the migration category.

Consideration of the term of stay abroad

The law regulates justified cases where the stays outside of the country do not suspend the period of residence required for naturalization.

Livelihood

Employed workers

When the law requires accreditation of economic self-sufficiency, it shall be deemed that a stateless person meets said requirement when he/she demonstrates that he/she receives the minimum wage stated by the law.

Independent workers

When a stateless person is self-employed or works independently, he/she only needs to prove that they pay taxes as such, regardless of his/her monthly income.

Economically dependent stateless persons

Stateless persons who are economically dependent on another person shall not be required to provide evidence of income.

Clean criminal record

Exemption from a certificate from the country of origin

Stateless persons are exempted from presenting a certificate of criminal record from their country of origin when they do not have it and they may not reasonably obtain it.

Exams (language or other knowledge)

Stateless persons are exempted from taking exams testing knowledge of language, history or culture, among others. When tests are required to aliens in general, those stateless persons with difficulties in taking exams due to having physical or mental disabilities, due to being children or elderly, or due to not being able to access the education system in their country of origin, shall be exempted from taking exams or else their special needs shall be accommodated.

I Parliamentarians Regional Meeting: Eradicating Statelessness in America through Legislative Actions. Quito, November 2016 .



Certificates of good health (physical or mental)

Stateless persons are exempted from presenting certificates or proof of good health and of their lack of any physical or mental condition or disability.

Documents

Stateless persons are exempted from presenting any document when they do not have it and they may not reasonably obtain it.

Required age for naturalisation

The law allows any stateless person to become naturalised, irrespective of their age.

Upon request from a stateless person seeking naturalisation, said naturalisation can be extended to other members of their family group (dependants) as long as they give their consent. As required by national law, children or adolescents who have become naturalised can confirm their wish to continue being considered as nationals of the country once they come of age.

A guardian or legal representative of an unaccompanied or separated child or adolescent may apply for their naturalisation. Best interests of the child /adolescent should be taken into consideration when processing and deciding on the application.

Word index

A

Acquiring nationality · 3, 19
Authorities · 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 21
Administrative assistance · 2, 12, 14, 23
Applicant · 2, 8, 9, 11, 12, 14, 15, 16, 17, 19, 21
Application · 1, 10
Administrative resolution · 10
Age · 3, 20, 25

B

Benefit of the doubt · 2, 17, 23
Border · 8
Best interest of the child · 3, 20

C

Cancellation · 1, 2, 8, 13, 17, 18
Cessation · 1, 2, 8, 9, 13, 17, 18
Consideration of the term · 24
CONARE · 2, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22
Confidentiality · 2, 3, 16, 18
Constitution · 7, 10, 11
Convention Relating to the Status of Refugees · 2, 4, 11, 12
Competent authorities · 7, 12, 19, 20, 21, 22, 23
Crime against humanity · 6
Crime against peace · 6
Complementary form of protection · 6
Civil Aviation Organisation · 12

D

Due process · 2, 14
Disabled · 3, 21, 25
Discrimination · 8

E

Extra-territorial effect · 1, 9
Exclusion · 1, 8, 13
Extension · 17

F

Facilities · 2, 4, 5, 6, 7, 10, 21, 22
Family · 9, 14, 16, 20, 21, 25
Family Unit · 1, 9
Free of charge · 2, 12, 22
Foreign individuals · 1, 7, 23, 25

G

Good offices · 19
Gender, age and diversity · 1, 7
Guardianship · 20
Guardian · 3, 20, 21, 25

H

Human rights · 2, 4, 6, 7, 10

I

Inter-American Court of Human Rights · 5
Identity documents · 2, 11
Interview · 14, 17, 19

L

Laws · 7, 10, 11
Legal Assistance · 23
Legal representation · 2, 15, 20
Late birth registration · 3, 19

M

Most favourable treatment · 1, 7, 10, 23

N

Naturalisation · 2, 1, 3, 4, 5, 6, 7, 10, 12, 13, 19, 21, 22, 23, 24, 25
Non-detention · 1, 8
Non-refoulement · 1, 6, 8
Non-discrimination · 1, 8
Non-expulsion · 1, 8
Non-sanction · 1, 8

O

Object and Purpose · 1, 6, 7

P

Proof · 2, 12, 15, 16, 17, 23, 24
Proofs · 9, 14, 15, 16, 20, 23, 25
Priority processing · 3

R

Recognition of stateless status · 7, 15, 20
Recognition of such status · 11, 14, 24
Refugee · 3, 15, 18
Regulation · 16
Residence · 2, 4, 6, 7, 9, 11, 12, 14, 16, 23, 24
Restrictively · 8
Revocation · 1, 2, 8, 13, 17, 18
Right to work · 11
Rights · 2, 4, 5, 6, 7, 8, 10, 12, 13, 14, 22, 23
Reasonable degree · 16

S

Secretariat · 2, 12, 13, 14, 15, 16, 17, 18, 20, 21
Separated · 3, 10, 20, 21
Sustainable Solutions · 21
Serious non-political crime · 6
Statelessness determination · 5, 8, 12, 14, 16, 19, 20
Status determination · 6
Stateless refugees · 1
Stateless status · 6, 9, 10, 17, 18
Standard of proof · 2, 16, 23
Stay · 1, 7, 8, 11, 24

T

Travel documents · 2, 12

U

Unaccompanied · 3, 10, 20, 21

W

Worker · 24





acnur.org