



**UNHCR**  
The UN Refugee Agency

# HANDBOOK ON PROTECTION OF STATELESS PERSONS

**UNDER THE 1954 CONVENTION  
RELATING TO THE STATUS OF  
STATELESS PERSONS**



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THE STATUS OF STATELESS PERSONS

GENEVA, 2014





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# FOREWORD

In the last decade there has been a renewed impetus on the part of the international community, supported by the United Nations High Commissioner for Refugees (UNHCR), to address the plight of stateless persons. As the Universal Declaration of Human Rights makes clear, everyone has a right to a nationality. Without nationality, individuals face an existence characterised by insecurity and marginalisation. Stateless people are amongst the most vulnerable in the world, often denied enjoyment of rights such as equality before the law, the right to work, education or healthcare. Despite the actions of many States to prevent or reduce statelessness through measures such as reform of their nationality laws, new cases of statelessness continue to arise. Stateless persons can be found in almost every country. Indeed, some families have been stateless for generations.

The 1954 Convention relating to the Status of Stateless Persons lies at the heart of the international regime for protection of stateless persons. It establishes the universal definition of a “stateless person” and provides a core set of principles for their treatment. The Convention’s framework is as relevant today as it was at the time of the treaty’s adoption and has been complemented by developments in international human rights law. Whilst the 1961 Convention on the Reduction of Statelessness provides a comprehensive set of tools for eradicating statelessness, the 1954 Convention ensures that those who find themselves stateless need not be consigned to a life without dignity and security. In the Convention’s 60<sup>th</sup> anniversary year, UNHCR is pleased to issue this Handbook.

At the time of publication, 80 States are party to the 1954 Convention, with numerous accessions in the past three years prompted by UNHCR’s Statelessness Campaign. The increased focus on statelessness can also be seen in the rise in the number of countries establishing statelessness determination procedures. Whilst such procedures may only be appropriate for the minority of the world’s stateless persons who are in a migratory situation, they are nevertheless critical, providing a route to a status consistent with the standards both of the 1954 Convention and international human rights law. A different approach is called for in the case of stateless persons who are in their own country, recognising their profound connection with that State through, for example, birth or longstanding residence. States are increasingly aware of the benefits, not just to the individuals concerned, but for the stability and cohesiveness of their societies generally, of undertaking law and policy reforms to grant nationality to such persons.

UNHCR issues this Handbook pursuant to its mandate responsibilities to address statelessness. These responsibilities were initially limited to

stateless persons who were refugees as set out in paragraph 6 (A) (II) of the UNHCR Statute and Article 1 (A) (2) of the 1951 Convention relating to the Status of Refugees. This mandate has since been widened by a series of General Assembly Resolutions, in particular Resolutions 50/152 of 1995 and 61/137 of 2006 entrusting UNHCR with responsibility for stateless persons generally. UNHCR's responsibilities extend to the identification, prevention and reduction of statelessness, and the protection of stateless persons.

The content of this Handbook was first published in 2012 in the form of three UNHCR Guidelines concerned, respectively, with the definition of a stateless person, procedures for determination of statelessness and the status of stateless persons under national law.\* In replacing these Guidelines, the text of the Handbook replicates their content with only minimal changes, principally to address duplication and to update references to UNHCR publications. Minor gaps identified since publication of the Guidelines have also been addressed. This Handbook, like the Guidelines, results from a series of expert consultations conducted in the context of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness.† It does not consider prevention and reduction of statelessness; these are dealt with instead in separate Guidelines.

This Handbook is intended to guide government officials, judges and practitioners, as well as UNHCR staff and others involved in addressing statelessness. It is hoped that the Handbook will provide a valuable resource for both statelessness determination and the development and implementation of law and policies relating to the protection of stateless persons.

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Geneva, June 2014

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\* Please see 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*, 20 February 2012, HCR/GS/12/01, <http://www.refworld.org/docid/4f4371b82.html>; UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, <http://www.refworld.org/docid/4f7dafb52.html>; and UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 17 July 2012, HCR/GS/12/03, <http://www.refworld.org/docid/5005520f2.html>

† Please see UNHCR, *Expert Meeting - The Concept of Stateless Persons under International Law ("Prato Conclusions")*, May 2010, <http://www.refworld.org/docid/4ca1ae002.html>; and UNHCR, *Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons ("Geneva Conclusions")*, December 2010, <http://www.refworld.org/docid/4d9022762.html>

# INTRODUCTION

## A. BACKGROUND TO THE 1954 CONVENTION

1. Statelessness arises in a variety of contexts. It occurs in migratory situations, for example, among some expatriates who lose or are deprived of their nationality without having acquired the nationality of a country of habitual residence. Most stateless persons, however, have never crossed borders and find themselves in their “own country”.<sup>1</sup> Their predicament exists *in situ*, that is in the country of their long-term residence, in many cases the country of their birth. For these individuals, statelessness is often the result of problems in the framing and implementation of nationality laws.
2. In the aftermath of the Second World War the need for international action to protect stateless persons and refugees came to the fore. As such, the 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) shares the same origins as the 1951 Convention relating to the Status of Refugees (“1951 Convention”). It was initially conceived as a draft protocol to the refugee treaty. However, when the 1951 Convention was adopted, the protocol was left in draft form and referred to a separate negotiating conference where it was transformed into a self-standing treaty concerning stateless persons. The text of the 1954 Convention and a List of States Parties can be found in Annexes I and III, respectively.
3. The 1954 Convention remains the only international treaty aimed specifically at regulating the standards of treatment for stateless persons.<sup>2</sup> The Convention, therefore, is of critical importance in ensuring the protection of this vulnerable group.

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1 The phrase “own country” is taken from Article 12(4) of the International Covenant on Civil and Political Rights and used in line with its interpretation by the UN Human Rights Committee.

2 The 1961 Convention on the Reduction of Statelessness is concerned with avoiding statelessness primarily through safeguards in nationality laws, thereby reducing the phenomenon over time. The 1930 Special Protocol concerning Statelessness, which came into force in 2004, does not address standards of treatment but is concerned with specific obligations of the previous State of nationality. This Protocol has very few States Parties.

## **B. UNHCR AND STATELESSNESS**

4. UNHCR issues this Handbook pursuant to its mandate responsibilities to address statelessness. UNHCR's responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6 (A) (II) of the UNHCR Statute and Article 1 (A) (2) of the 1951 Convention. In this capacity, UNHCR was involved in the drafting of the 1954 Convention. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness ("1961 Convention") 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 by General Assembly Resolution 50/152 of 1995, which endorsed UNHCR Executive Committee Conclusion 78. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons. Extracts from relevant General Assembly resolutions and Executive Committee Conclusions are found in Annexes IV and V, respectively.

## **C. THE SCOPE OF THE HANDBOOK**

5. The 1954 Convention's provisions fall into three categories: those establishing the definition of a "stateless person"; those relating to their rights and obligations; and final provisions governing matters such as accession to the Convention and cooperation of States Parties with UNHCR. This Handbook sets out guidance on provisions falling within the first two of these categories.
6. This Handbook is intended to assist governments, policy makers, administrative adjudicators, the judiciary, NGOs, legal practitioners, UNHCR staff and other actors with interpreting and applying the 1954 Convention so as to facilitate the identification and proper treatment of its beneficiaries. In addition, this Handbook will be relevant in a range of other circumstances, such as the interpretation of other international instruments that refer to, but do not define, "stateless persons", "statelessness", or related terms. In this respect, it is noted that the 1954 Convention has not yet attracted the same level of ratifications/accessions as the 1951 Convention and other human rights treaties. Hence, there is limited State practice, including jurisprudence of national courts, on the application of the 1954 Convention, particularly regarding the interpretation of Article 1(1). The guidance in this Handbook nevertheless considers existing practice of States party to the 1954 Convention and results from a series of expert consultations held by UNHCR.

## D. STATELESSNESS AND *DE FACTO* STATELESSNESS

7. The 1954 Convention establishes the universal definition of a “stateless person” in its Article 1(1). Persons who fall within the scope of Article 1(1) are sometimes referred to as “*de jure*” stateless persons even though that term is not used in the Convention itself. By contrast, reference is made in the Final Act of the 1961 Convention to “*de facto*” stateless persons and there is an implicit reference in the Final Act of the 1954 Convention.<sup>3</sup> Unlike the term “stateless person” as defined in Article 1(1), the term *de facto* statelessness is not defined in any international instrument and there is no treaty regime specific to this category of persons (the reference in the Final Act of the 1961 Convention being limited and non-binding in nature).<sup>4</sup> Care must be taken that those who qualify as “stateless persons” under Article 1(1) of the 1954 Convention are recognised as such and not mistakenly referred to as *de facto* stateless persons as otherwise they may fail to receive the protection guaranteed under the 1954 Convention. This Handbook addresses a range of issues concerning the identification and protection of stateless persons as defined in Article 1(1) of the Convention, yet avoids qualifying them as *de jure* stateless persons as that term appears nowhere in the treaty itself.

3 Paragraph 3 of the 1954 Convention’s Final Act was drafted specifically to address the position of the *de facto* stateless. This recommendation requests that the benefits of the Convention be extended to individuals whom States consider to have had valid reasons for renouncing the protection of their State of nationality. As for the Final Act of the 1961 Convention, whilst not defining *de facto* statelessness, it sets out a recommendation that such persons benefit from the provisions in the 1961 Convention so as to obtain an “effective nationality”.

4 On *de facto* statelessness please see, for example, Section II.A. of UNHCR, *Expert Meeting - The Concept of Stateless Persons under International Law (“Prato Conclusions”)*, May 2010, <http://www.refworld.org/docid/4ca1ae002.html> : (1) *De facto* statelessness has traditionally been linked to the notion of effective nationality and some participants were of the view that a person’s nationality could be ineffective inside as well as outside of his or her country of nationality. Accordingly, a person could be *de facto* stateless even if inside his or her country of nationality. However, there was broad support from other participants for the approach set out in the discussion paper prepared for the meeting which defines a *de facto* stateless person on the basis of one the principal functions of nationality in international law, the provision of protection by a State to its nationals abroad. (2) The definition is as follows: *de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.

## E. DETERMINING WHO IS STATELESS

8. Whilst the 1954 Convention establishes the international legal definition of “stateless person” and the standards of treatment to which such individuals are entitled, it does not prescribe any mechanism to identify stateless persons as such. Yet, it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments.<sup>5</sup> This Handbook advises on the modalities of creating statelessness determination procedures, including questions of evidence that arise in such mechanisms. In so doing, the Handbook addresses procedures that are aimed specifically, if not exclusively, at determining whether an individual is stateless. Moreover, the focus is on recognition of stateless persons as defined in the 1954 Convention and on the obligations of States that are party to this Convention. Some consideration is given to States not bound by this treaty and to the identification of *de facto* stateless persons.
9. Only a relatively small number of countries have established statelessness determination procedures, not all of which are highly regulated. There is growing interest in introducing such mechanisms. Statelessness is a juridically relevant fact under international law. Thus, recognition of statelessness plays an important role in enhancing respect for the human rights of stateless persons, particularly through access to a secure legal status and enjoyment of rights afforded to stateless persons under the 1954 Convention.
10. It is also in States’ interests to establish statelessness determination procedures. Doing so enhances the ability of States to respect their obligations under the 1954 Convention. In countries where statelessness arises among mixed migratory movements, statelessness determination procedures also help governments assess the size and profile of stateless populations in their territory and thus determine the government services required. In addition, the identification of statelessness can help prevent statelessness by revealing the root causes and new trends in statelessness.

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<sup>5</sup> States have recognised this in relation to the establishment of refugee status determination procedures despite the 1951 Convention being silent on this matter. Please see Executive Committee Conclusion No. 8 (XXVIII) of 1977, paragraph a; Executive Committee Conclusion No. 11 (XXIX) of 1978, paragraph h; Executive Committee Conclusion No.14 (XXX) of 1979, paragraph f; and Executive Committee Conclusion No. 16 (XXXI) of 1980, paragraph h. Please see UNHCR, *Conclusions Adopted by the Executive Committee on The International Protection of Refugees, 1975-2009 (Conclusion No.1 – 114)*, 2017, HCR/IP/3/Eng/REV.2017, <https://www.refworld.org/docid/5a2ead6b4.html>.

## F. STATELESSNESS STATUS

11. Stateless persons are generally denied enjoyment of a range of human rights and prevented from participating fully in society. The 1954 Convention addresses this marginalisation by granting stateless persons a core set of rights. Its provisions, along with applicable standards of international human rights law, establish the minimum rights and the obligations of stateless persons in States party to the 1954 Convention. The status granted to a stateless person in a State Party, that is the rights and obligations of stateless persons under national law, must reflect these international standards.
  
12. This Handbook aims to assist States in ensuring that stateless persons receive such status in their jurisdictions. It addresses both the treatment of persons determined to be stateless by a State under the 1954 Convention and the position of individuals awaiting the outcome of a statelessness determination procedure. The Handbook also examines the position of stateless persons in countries not party to the 1954 Convention as well as those considered to be *de facto* stateless. While all stateless persons must be treated in line with international standards, their treatment can vary to reflect the context in which statelessness arises. This Handbook, therefore, first addresses the relevant international law standards and then examines separately the scope of stateless person status for individuals in a migratory context and for those in their “own country”.<sup>6</sup> In addition, the relationship between refugees and stateless persons is considered. Although an individual can be both stateless as per the 1954 Convention and a refugee as per the 1951 Convention, at a minimum, a stateless refugee must benefit from the protection of the 1951 Convention and international refugee law.

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<sup>6</sup> Paragraph 142 below examines the nature of an individual’s right to remain in his or her “own country” further to Article 12(4) of the International Covenant on Civil and Political Rights.





# PART ONE: CRITERIA FOR DETERMINING STATELESSNESS

## A. THE DEFINITION

13. Article 1(1) of the 1954 Convention sets out the definition of a stateless person as follows:

*For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.*

The Convention does not permit reservations to Article 1(1) and thus this definition is binding on all States Parties to the treaty. In addition, the International Law Commission has concluded that the definition in Article 1(1) is part of customary international law.<sup>7</sup> This Handbook does not address Article 1(2) of the 1954 Convention which sets out the circumstances in which persons who fall within the “stateless person” definition are nevertheless excluded from the protection of this treaty.

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<sup>7</sup> Please see page 49 of the International Law Commission, *Articles on Diplomatic Protection with commentaries*, 2006, which states that the Article 1 definition can “no doubt be considered as having acquired a customary nature”. The Commentary is accessible at <http://www.refworld.org/docid/525e7929d.html>. The text of Article 1(1) of the 1954 Convention is used in the Articles on Diplomatic Protection to provide a definition of stateless person.

## B. GENERAL CONSIDERATIONS

14. Article 1(1) of the 1954 Convention is to be interpreted in line with the ordinary meaning of the text, read in context and bearing in mind the treaty's object and purpose.<sup>8</sup> As indicated in its preamble and in the *Travaux Préparatoires*, the object and purpose of the 1954 Convention is to ensure that stateless persons enjoy the widest possible exercise of their human rights.<sup>9</sup> The drafters intended to improve the position of stateless persons by regulating their status. That said, as a general rule, possession of a nationality is preferable to recognition and protection as a stateless person. Therefore, in seeking to ensure that all those who fall within the 1954 Convention's reach benefit from its provisions, it is important to take care that individuals with a nationality are so recognised and not mistakenly identified as stateless.
15. Article 1(1) applies in both migration and non-migration contexts. A stateless person may never have crossed an international border, having lived in the same country for his or her entire life. Some stateless persons, however, may also be refugees or persons eligible for complementary protection.<sup>10</sup> Those stateless persons who fall within the scope of the 1954 Convention will be entitled to protection under that instrument, a matter discussed further in Part Three below.
16. An individual is a stateless person from the moment that the conditions in Article 1(1) of the 1954 Convention are met. Thus, any finding by a State or UNHCR that an individual satisfies the test in Article 1(1) is declaratory, rather than constitutive, in nature.<sup>11</sup>

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<sup>8</sup> Please see Article 31(1) of the 1969 Vienna Convention on the Law of Treaties which sets out this primary rule of interpretation. Article 31 goes on to set out other factors which are relevant in interpreting treaty provisions whilst supplementary methods of interpretation are listed in Article 32.

<sup>9</sup> Please see the second and fourth paragraphs of the Preamble:  
*Considering* that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,...  
*Considering* that it is desirable to regulate and improve the status of stateless persons by an international agreement,...

(The reference to "fundamental rights and freedoms" is a reference to the Universal Declaration of Human Rights which is mentioned in the first paragraph of the Preamble).

<sup>10</sup> For example, they may fall within the European Union's subsidiary protection regime set out in Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Please see, more generally, UNHCR Executive Committee Conclusion No.103 (LVI) of 2005 on complementary forms of protection, <http://www.unhcr.org/43576e292.html>

<sup>11</sup> The implications of this, in terms of the suspensive effect of determination procedures and the treatment of individuals awaiting an outcome of a determination of their statelessness, are addressed in Parts Two and Three below.

17. Article 1(1) can be analysed by breaking the definition down into two constituent elements: “not considered as a national...under the operation of its law” and “by any State”. When determining whether an individual is stateless under Article 1(1), it is often most practical to look first at the matter of “by any State,” as this will not only narrow the scope of inquiry to States with which an individual has ties, but might also exclude from consideration at the outset entities that do not fulfil the concept of “State” under international law. Indeed, in some instances consideration of this element alone will be decisive, such as where the only entity to which an individual has a relevant link is not a State.

## C. INTERPRETION OF TERMS

### (1) “by any State”

#### (a) Which States need to be examined?

18. Although the definition in Article 1(1) is formulated in the negative (“not considered to be a national by any State”), an enquiry into whether someone is stateless is limited to the States with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, adoption or habitual residence. In some cases this may limit the scope of investigation to only one State (or indeed to an entity which is not a State).<sup>12</sup>

#### (b) What is a “State”?

19. The definition of “State” in Article 1(1) is informed by how the term has generally evolved in international law. The criteria in the 1933 Montevideo Convention on Rights and Duties of States remain pertinent in this regard. According to that Convention, a State is constituted when an entity has a permanent population, defined territory, government and capacity to enter into relations with other States. Other factors of statehood that have subsequently emerged in international legal discourse include the effectiveness of the entity in question, the right of self-determination, the prohibition on the use of force and the consent of the State which previously exercised control over the territory in question.<sup>13</sup>

<sup>12</sup> The issue of what constitutes a relevant link is dealt with further in Part Two of this Handbook in the context of the standard of proof required to establish statelessness.

<sup>13</sup> Where an entity claims to be a new State but the manner in which it emerged involved a breach of a *jus cogens* norm, this would raise questions about its eligibility for statehood. A *jus cogens* norm is a principle of customary international law considered to be peremptory in nature, that is it takes precedence over any other obligations (whether customary or treaty in nature), is binding on all States and can only be overridden by another peremptory norm. Examples of *jus cogens* norms include the prohibition on the use of force and the right to self-determination.

20. For an entity to be a “State” for the purposes of Article 1(1) it is not necessary for it to have received universal or large-scale recognition of its statehood by other States or to have become a Member State of the United Nations. Nevertheless, recognition or admission will be strong evidence of statehood.<sup>14</sup> Differences of opinion may arise within the international community on whether a particular entity has achieved statehood. In part, this reflects the complexity of some of the criteria involved and their application. Even where an entity objectively appears to satisfy the criteria mentioned in the paragraph above, there may be States that for political reasons choose to withhold recognition of, or actively not recognise, it as a State. In making an Article 1(1) determination, a decision-maker may be inclined to look toward his or her State’s official stance on a particular entity’s legal personality. Such an approach could, however, lead to decisions influenced more by the political position of the government of the State making the determination rather than the position of the entity in international law.
21. Once a State is established, there is a strong presumption in international law as to its continuity irrespective of the effectiveness of its government. Therefore, a State which loses an effective central government because of internal conflict can nevertheless remain a “State” for the purposes of Article 1(1).

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

**(a) Meaning of “law”**

22. The reference to “law” in Article 1(1) should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.<sup>15</sup>

**(b) When is a person “not considered as a national” under a State’s law and practice?**

23. Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual’s case in practice and any review/appeal decisions that may have had an impact on the individual’s status.<sup>16</sup> This is a mixed question of fact and law.

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<sup>14</sup> Please note, though, the longstanding debate on the constitutive versus declaratory nature of recognition of States. The former doctrine considers the act of recognition to be a prerequisite to statehood whilst the latter treats recognition as merely evidence of that status under international law. These different approaches also contribute to the complexity in some cases of determining the statehood of an entity.

<sup>15</sup> A similar approach is taken in Article 2(d) of the 1997 European Convention on Nationality.

<sup>16</sup> This approach reflects the general principle of law set out in Articles 1 and 2 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws.

24. Applying this approach of examining an individual's position in practice may lead to a different conclusion than one derived from a purely formalistic analysis of the application of nationality laws of a country to an individual's case. A State may not in practice follow the letter of the law, even going so far as to ignore its substance. The reference to "law" in the definition of statelessness in Article 1(1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.

*(i) Automatic and non-automatic modes of acquisition or withdrawal of nationality*

25. The majority of States have a mixture of automatic and non-automatic modes for effecting changes to nationality, including through acquisition, renunciation, loss or deprivation of nationality.<sup>17</sup> When determining whether someone is considered as a national of a State or is stateless, it is helpful to establish whether an individual's nationality status has been influenced by automatic or non-automatic mechanisms or modes.
26. Automatic modes are those where a change in nationality status takes place by operation of law (*ex lege*).<sup>18</sup> According to automatic modes, nationality is acquired as soon as criteria set forth by law are met, such as birth on a territory or birth to nationals of a State. By contrast, in non-automatic modes an act of the individual or a State authority is required before the change in nationality status takes place.

*(ii) Identifying competent authorities*

27. To establish whether a State considers an individual to be its national, it is necessary to identify which institution(s) is/are the competent authority(ies) for nationality matters in a given country with which he or she has relevant links. Competence in this context relates to the authority responsible for conferring or withdrawing nationality from individuals, or for clarifying nationality status where nationality is acquired or withdrawn automatically. The competent authority or authorities will differ from State to State and in many cases there will be more than one competent authority involved.<sup>19</sup>

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<sup>17</sup> Please note that the terms loss and deprivation are used here in the same manner as in the 1961 Convention: "loss" refers to withdrawal of nationality by operation of law (*ex lege*) and "deprivation" refers to withdrawal of nationality initiated by the authorities of the State.

<sup>18</sup> Please note in this regard that the phrase "under the operation of its law" in Article 1(1) is not synonymous with "by operation of law". The latter is a term of art (used, for example, in the 1961 Convention) which signifies a mechanism that is automatic in nature. The stateless person definition encompasses nationality that may have been acquired or withdrawn through non-automatic as well as automatic mechanisms.

<sup>19</sup> It follows from the above that the views of a State body that is not competent to pronounce on nationality status are irrelevant.

28. Some States have a single, centralized body that governs nationality issues that would constitute the competent authority for the purposes of an analysis of nationality status. Other States, however, have several authorities that can determine nationality, any one of which might be considered a competent authority depending on the circumstances. Thus, it is not necessary that a competent authority be a central State body. A local or regional administrative body can be a competent authority as can a consular official<sup>20</sup> and in many cases low-level local government officials will constitute the competent authority. The mere possibility that the decision of such an official can later be overridden by a senior official does not in itself exclude the former from being treated as a competent authority for the purposes of an Article 1(1) analysis.
29. Identifying the competent authority or authorities involves establishing which legal provision(s) relating to nationality may be relevant in an individual's case and which authority/authorities are mandated to apply them. Isolating the relevant legal provisions requires both an assessment of an individual's personal history as well as an understanding of the nationality laws of a State, including the interpretation and application, or non-application in some cases, of nationality laws in practice.
30. The identity and number of competent authorities in a particular case will depend, in particular, on the following factors:
- whether automatic or non-automatic modes for the acquisition, renunciation, or withdrawal of nationality need to be considered; and
  - whether more than one nationality-related event needs to be examined.

*(iii) Evaluating evidence of competent authorities in non-automatic modes of nationality acquisition and withdrawal*

31. Identifying the competent authority where a non-automatic mode of changing nationality status is involved can be relatively straightforward. For mechanisms which are dependent on an act or decision of a State body, that body will be the competent authority.
32. For example, the government department that decides naturalization applications will be the competent authority in respect of this mechanism. The position of this authority is generally decisive. Some non-automatic modes involving an act of the State do not involve any discretion on the part of the officials concerned; if an individual satisfies the requirements

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<sup>20</sup> Please see below at paragraphs 39-40.

set out in law, the official will be required to carry out a specific act bestowing or withdrawing nationality.<sup>21</sup>

33. In non-automatic modes where an act of the State is required for acquisition of nationality, there will generally be a document recording that act, such as a citizenship certificate. Such documentation will be decisive in proving nationality. In the absence of such evidence it can be assumed that the necessary action was not taken and nationality not acquired.<sup>22</sup> This assumption of non-citizenship can be set aside by subsequent statements, actions, or evidence by the competent authority indicating that nationality was actually conferred.

*(iv) Evaluating evidence of competent authorities in automatic modes of citizenship acquisition or loss of nationality*

34. In cases where acquisition or loss of nationality occurs automatically, no State body is actively involved in the change of status and no active step is required of an individual. Such change occurs by operation of law (*ex lege*) when prescribed criteria are met. In most countries, nationality is acquired automatically either through birth on the territory or descent. Nationality is also acquired automatically by most individuals affected by State succession.<sup>23</sup> Some laws provide for automatic loss of nationality when certain conditions are met, such as prescribed periods of residency abroad, or failure to register or make a declaration within a specific period.
35. Where nationality is acquired automatically, documents are typically not issued by the State as part of the mechanism. In such cases, it is generally birth registration that provides proof of place of birth and parentage and thereby provides evidence of acquisition of nationality, either by *jus soli* or *jus sanguinis*, rather than being the formal basis for the acquisition of nationality.<sup>24</sup>
36. When automatic modes of nationality acquisition or loss are under consideration, the competent authority is any State institution that is empowered to make a determination of an individual's nationality status in

<sup>21</sup> Please note that it cannot be concluded that an individual is a national (or has been deprived of nationality) until such a procedure has been completed, please see paragraph 50 below.

<sup>22</sup> Applications for naturalization or other documents submitted through a non-automatic nationality procedure do not qualify as sufficient evidence regarding a State's determination on that individual's nationality status.

<sup>23</sup> In some cases of State succession, however, citizenship of a successor State is not automatic and non-automatic modes of citizenship acquisition are employed instead. Please see the International Law Commission, *Articles on the Nationality of Natural Persons in relation to the Succession of States with commentaries*, 3 April 1999, <http://www.refworld.org/docid/4512b6dd4.html>, for an overview of State practice.

<sup>24</sup> *Jus soli* and *jus sanguinis* refer to the two main principles governing acquisition of nationality in the legal systems of States, on the basis of place of birth and descent from a national, respectively.

the sense of clarifying that status, rather than deciding whether to confer or withdraw it. Examples of such bodies are passport authorities or, in a limited number of States, civil registration officials (where nationality is indicated in acts of civil registration, in particular birth registration). It is possible that, in a particular case, more than one competent authority will emerge as a number of bodies may legitimately take positions regarding an individual's nationality in the course of their designated activities.

*(v) Considerations where State practice contravenes automatic modes of acquisition of nationality*

37. Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national. This scenario frequently arises where discrimination against a particular group is widespread in government departments or where, in practice, the law governing automatic acquisition at birth is systematically ignored and individuals are required instead to prove additional ties to a State.<sup>25</sup>

*(vi) Assessing nationality in the absence of evidence of the position of competent authorities*

38. There may be cases where an individual has never come into contact with a State's competent authorities, perhaps because acquisition was automatic at birth and a person has lived in a region without public services and has never applied for identity documents or a passport. In such cases, it is important to assess the State's general attitude in terms of nationality status of persons who are similarly situated. If the State has a good record in terms of recognising, in a non-discriminatory fashion, the nationality status of all those who appear to come within the scope of the relevant law, for example in the manner in which identity card applications are handled, this may indicate that the person concerned is considered as a national by the State. However, if the individual belongs to a group whose members are routinely denied identification documents issued only to nationals, this may indicate that he or she is not considered as a national by the State.

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<sup>25</sup> Where a State's laws provides for automatic acquisition of nationality, but in practice a State places additional requirements on individuals to acquire nationality, this does not negate the automatic nature of the nationality law. Rather, it indicates that the State in practice does not consider those who do not satisfy the extra-legal requirements as nationals, potentially rendering them stateless under the Article 1(1) definition.



*(vii) Role of consular authorities*

39. The role of consular authorities merits particular consideration. A consulate may be the competent authority responsible for conducting the necessary step in a non-automatic mechanism. This occurs, for example, where a country's laws require children born to their nationals overseas to register with a consulate as a prerequisite for acquiring the nationality of the parents. As such, the consulate in the country of such a child's birth will be the competent authority and its position on his or her nationality will be decisive, assuming no subsequent mechanism has also to be considered. If an individual is refused such registration or is prevented from applying for it, he or she is not considered as a national for the purposes of Article 1(1).
40. Consulates might be identified as competent authorities in other respects. Where individuals seek assistance from a consulate, for example to renew a passport or to obtain clarification of their nationality status, a consulate is legitimately required to take a position on that individual's nationality status within its powers of consular protection. In doing so, it acts as a competent authority. This is also the case when it responds to enquiries from other States regarding an individual's nationality status. Where a consulate is the only competent authority to take a position on an individual's nationality status, its position is typically decisive. Where other competent authorities have also taken positions on an individual's nationality status, their positions must be weighed up against any taken by consular authorities.<sup>26</sup>

*(viii) Enquiries with competent authorities*

41. In some cases an individual or a State may seek clarification of that individual's nationality status with competent authorities. This need typically arises where an automatic mode of acquisition or loss is involved or where an individual may have acquired or been deprived of nationality through a non-automatic mechanism, but lacks any documentary proof of this. Such enquiries may be met either with silence or a refusal to respond from the competent authority. Conclusions regarding a lack of response should only be drawn after a reasonable period of time. If a competent authority has a general policy of never replying to such requests, no inference can be drawn from this failure to respond based on the non-response alone. Conversely, when a State routinely responds to such queries, a lack of response will generally provide strong confirmation that the individual is not a national. Where a competent authority issues a pro forma response to an enquiry and it is clear that the authority has not examined the particular circumstances of an individual's position, such a

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<sup>26</sup> Please see paragraph 44 on the relative weight to be given to bodies tasked with issuing identity documents which mention nationality status.

response carries little weight. In any case, the position of the competent authority on a nationality status enquiry will need to be weighed up against the position taken by any other competent authority, or authorities, involved in an individual's case.<sup>27</sup>

*(ix) Inconsistent treatment by competent authorities*

42. The assessment of the positions of competent authorities becomes complex when an individual has been treated by various State actors inconsistently. For example, an individual may have been allowed to receive public benefits, which by law and in practice are reserved for nationals, but on reaching adulthood is denied a passport. Depending on the specific facts of the case, inconsistent treatment may be an instance of a national's rights being violated, the consequence of that person never having acquired nationality of that State, or the result of an individual having been deprived of or losing his or her nationality.
43. In cases where there is evidence that an individual has acquired nationality through a non-automatic mechanism dependent on an act of a State body, subsequent denial by other State bodies of rights generally accorded to nationals indicates that his or her rights are being breached. That being said, in certain circumstances the nature of the subsequent treatment may point to the State having changed its position on the nationality status of that individual, or that nationality has been withdrawn.
44. Even where acquisition or withdrawal of nationality may have occurred automatically or through the formal act of an individual, State authorities nonetheless will often subsequently confirm that nationality has been acquired or withdrawn. This is generally undertaken through procedures for the issuance of identity documents. In relation to mechanisms for acquisition or loss of nationality either automatically or through the formal act of an individual, greater weight is warranted regarding the view of the competent authorities responsible for issuing identity documents that constitute proof of nationality, such as passports, certificates of nationality and, where they are only issued to nationals, identity cards.<sup>28</sup>

*(x) Nationality acquired in error or bad faith*

45. Where the action of the competent authority in a non-automatic mechanism is undertaken in error (for example, because of a misunderstanding of the law to be applied) or in bad faith, this does not in itself invalidate the individual's nationality status so acquired. This flows from the ordinary

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<sup>27</sup> Please note that in cases of a non-automatic change in nationality status that requires an act of a State, the existence (or lack) of documents normally issued as part of the State's action will be decisive in establishing nationality. Please see paragraph 33.

<sup>28</sup> Indeed, other authorities may consult with this competent authority when taking a position on the individual's nationality.

meaning of the terms employed in Article 1(1) of the 1954 Convention. The same is true if the individual's nationality status changes as a result of a fraudulent application by the individual or one which inadvertently contained mistakes regarding material facts. For the purposes of the definition, conferrals of nationality under a non-automatic mechanism are to be considered valid even if there is no legal basis for such conferral.<sup>29</sup> However, in some cases the State, on discovering the error or bad faith involved in the nationality procedure in question, will subsequently have taken action to deprive the individual of nationality and this will need to be taken into account in determining the State's position of the individual's current status.

46. The impact of fraud or mistake in the acquisition of nationality is to be distinguished from the fraudulent acquisition of documents which may be presented as evidence of nationality. These documents will not necessarily support a finding of nationality as in many cases they will be unconnected to any nationality mechanism, automatic or non-automatic, which actually was applied in respect of the individual.

*(xi) Impact of appeal/review proceedings*

47. In instances where an individual's nationality status has been the subject of review or appeal proceedings, whether by a judicial or other body, its decision must be taken into account. In States that generally respect the rule of law,<sup>30</sup> the appellate/review body's decision typically would constitute the position of the State regarding the individual's nationality for the purposes of Article 1(1) if under the local law its decisions are binding on the executive.<sup>31</sup> Thus, where authorities have subsequently treated an individual in a manner inconsistent with a finding of nationality by a review body, this represents an instance of a national's rights not being respected rather than the individual not being a national.
48. A different approach may be justified in countries where the executive is able to ignore the positions of judicial or other review bodies (even though these are binding as a matter of law) with impunity. This may be the case, for example, in States where a practice of discriminating against

<sup>29</sup> This situation must be distinguished from one where a non-national is merely treated to the privileges of nationality.

<sup>30</sup> "Rule of law" is described in a 2004 Report of the UN Secretary-General as: ... a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards...

Please see, UN Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, 23 August 2004, S/2004/616, <http://www.refworld.org/docid/45069c434.html>, paragraph 6.

<sup>31</sup> The exception would be where under the domestic law the judicial finding is only a recommendation and is not binding in nature on the authorities.

a particular group is widespread through State institutions. In such cases, the position of State authorities that such groups are not nationals would be decisive rather than the position of judicial authorities that might uphold the nationality rights of such groups.

49. There may be situations where the judgment of a court in a case not directly concerning the individual nevertheless has legal implications for that person's nationality status. If the judgment alters, as a matter of domestic law, such a person's nationality status, this will generally be conclusive as to his or her nationality (subject to the qualification regarding rule of law set out in the preceding paragraph). This may arise, for example, where in a particular case the interpretation of a provision governing a mechanism for automatic acquisition has the effect of bringing a whole body of people within the ambit of that provision without any action required on their or the government's part.<sup>32</sup>

*(xii) Temporal issues*

50. An individual's nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention.<sup>33</sup> Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or completed, the individual is still a national for the purposes of the stateless person definition.

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<sup>32</sup> For example, this would be the case where a court rules that a provision of the nationality legislation governing automatic acquisition of nationality by individuals born in the territory prior to a specific date applies to an entire ethnic group, despite statements to the contrary by the government.

<sup>33</sup> The same approach applies where the individual has not pursued or exhausted a remedy in relation to denial or withdrawal of nationality.

*(xiii) Voluntary renunciation of nationality*

51. Voluntary renunciation relates to an act of free will whereby an individual gives up his or her nationality status. This generally takes the form of an oral or written declaration. The subsequent withdrawal of nationality may be automatic or at the discretion of the authorities.<sup>34</sup> In some States voluntary renunciation of nationality is treated as grounds for excluding an individual from the coverage of Article 1(1). However, this is not permitted by the 1954 Convention. The treaty's object and purpose, of facilitating the enjoyment by stateless persons of their human rights, is equally relevant in cases of voluntary as well as involuntary withdrawal of nationality. Indeed, in many cases the renunciation may have pursued a legitimate objective, for example the fulfilment of conditions for acquiring another nationality, and the individual may only have expected a very short spell as stateless. The question of an individual's free choice is not relevant when determining eligibility for recognition as stateless under Article 1(1); it may, however, be pertinent to the matter of the treatment received thereafter. Those who have renounced their nationality voluntarily might be able to reacquire such nationality, unlike other stateless persons. The availability of protection in another State may have an impact on the status to be awarded on recognition and, as such, this issue is explored in Part Three.

*(xiv) Concept of nationality*

52. In assessing the nationality laws of a State it is important to bear in mind that the terminology used to describe a "national" varies from country to country. For example, other labels that might be applied to that status include "citizen", "subject", "national" in French, and "nacional" in Spanish. Moreover, within a State there may be various categories of nationality with differing names and associated rights. The 1954 Convention is concerned with ameliorating the negative effect, in terms of dignity and security, of an individual not satisfying a fundamental aspect of the system for human rights protection; the existence of a national-State relationship. As such, the definition of stateless person in Article 1(1) incorporates a concept of national which reflects a formal link, of a political and legal character, between the individual and a particular State. This is distinct from the concept of nationality which is concerned with membership of a religious, linguistic or ethnic group.<sup>35</sup> As such, the treaty's concept of national is consistent with the traditional understanding of this term under international law; that is persons over whom a State considers it has

<sup>34</sup> Voluntary renunciation is to be distinguished from loss of nationality through failure to comply with formalities, including where the individual is aware of the relevant requirements and still chooses to ignore them.

<sup>35</sup> This meaning of nationality can be found, for example, in the refugee definition in Article 1A(2) of the 1951 Convention in relation to the phrase "well-founded fear of being persecuted for reasons of race, religion, *nationality*..." (emphasis added).

jurisdiction on the basis of nationality, including the right to bring claims against other States for their ill-treatment.

53. Where States grant a legal status to certain groups of people over whom they consider to have jurisdiction on the basis of a nationality link rather than a form of residence, then a person belonging to this category will be a “national” for the purposes of the 1954 Convention. Generally, at a minimum, such status will be associated with the right of entry, re-entry and residence in the State’s territory but there may be situations where, for historical reasons, entry is only permitted to a non-metropolitan territory belonging to a State. The fact that different categories of nationality within a State have different rights associated with them does not prevent their holders from being treated as a “national” for the purposes of Article 1(1). Nor does the fact that in some countries the rights associated with nationality are fewer than those enjoyed by nationals of other States or indeed fall short of those required in terms of international human rights obligations.<sup>36</sup> Although the issue of diminished rights may raise issues regarding the effectiveness of the nationality and violations of international human rights obligations, this is not pertinent to the application of the stateless person definition in the 1954 Convention.<sup>37</sup>
54. There is no requirement of a “genuine” or an “effective” link implicit in the concept of “national” in Article 1(1).<sup>38</sup> Nationality, by its nature, reflects a linkage between the State and the individual, often on the basis of birth on the territory or descent from a national and this is often evident in the criteria for acquisition of nationality in most countries. However, a person can still be a “national” for the purposes of Article 1(1) despite not being born or habitually resident in the State of purported nationality.
55. Under international law, States have broad discretion in the granting and withdrawal of nationality. This discretion may be circumscribed by treaty. In particular, there are numerous prohibitions in global and regional human rights treaties regarding discrimination on grounds such as race, which apply with regard to grant, loss and deprivation of nationality.<sup>39</sup>

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<sup>36</sup> Please note that it is the rights *generally* associated with nationality that are relevant, not whether such rights are actually observed in a specific individual’s experience.

<sup>37</sup> Historically, there does not appear to have been any requirement under international law for nationality to have a specific content in terms of rights of individuals, as opposed to it creating certain inter-State obligations.

<sup>38</sup> These concepts have arisen in the field of diplomatic protection, that is the area of customary international law that governs the right of a State to take diplomatic and other action against another State on behalf of its national whose rights and interests have been injured by the other State. The International Law Commission recently underlined why these concepts should not be applied beyond a narrow set of circumstances; please see page 33 of its *Articles on Diplomatic Protection with commentaries*, note 7 above.

<sup>39</sup> An example is Article 9 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women which guarantees that all women should have equal rights as men in their ability to confer nationality on their children and with respect to acquisition, change, or retention of their nationality (typically upon marriage to a foreigner).

Prohibitions in terms of customary international law are not so clear, though one example would be deprivation on the grounds of race.

56. Bestowal, refusal, or withdrawal of nationality in contravention of international obligations must not be condoned. The illegality on the international level, however, is generally irrelevant for the purposes of Article 1(1). The alternative would mean that an individual who has been stripped of his or her nationality in a manner inconsistent with international law would nevertheless be considered a “national” for the purposes of Article 1(1); a situation at variance with the object and purpose of the 1954 Convention.<sup>40</sup>

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<sup>40</sup> The exception to the general approach may be situations where the breach of international law amounts to a violation of a peremptory norm of international law. In such circumstances, States may be under an obligation not to recognise situations flowing from that violation as legal. This may involve non-recognition of the nationality status including, perhaps, how this status is treated in an Article 1(1) determination. The exact scope of this obligation under customary international law remains a matter of debate.





# PART TWO: PROCEDURES FOR THE DETERMINATION OF STATELESSNESS

## A. GENERAL

### (1) Overview

57. Government officials might encounter the question of whether a person is stateless in a range of contexts, reflecting the critical role that nationality plays in everyday life. For example, consideration of nationality status is relevant when individuals apply for passports or identity documents, seek legal residence or employment in the public sector, want to exercise their voting rights, perform military service, or attempt to access government services. The issue of nationality and statelessness may arise when an individual's right to be in a country is challenged in removal procedures. In refugee status determination, nationality is often key to identifying the country (or countries) in relation to which an individual's allegations of a well-founded fear of persecution should be assessed. An assessment of statelessness will be necessary where an individual seeks the application of the safeguards set out in the 1961 Convention. These examples illustrate that determination of statelessness is necessary in a range of judicial and administrative procedures. This Handbook is concerned, though, with procedures that are aimed specifically, if not exclusively, at determining whether an individual is stateless.

### (2) Determination of statelessness and the right to a nationality

58. Statelessness determination procedures generally assist States in meeting their commitments under the 1954 Convention. Their use, however, may not be appropriate in relation to certain stateless populations. Statelessness can arise both in a migratory and non-migratory context and the profile of statelessness in a particular country may fit one or the other scenario or might be mixed. Some stateless populations in a non-migratory context remain in their "own country" and may be referred to as *in situ* populations.<sup>41</sup> For these groups, determination procedures for the purpose of obtaining status as stateless persons are not appropriate

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<sup>41</sup> The phrase "own country" is taken from Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR) and its interpretation by the UN Human Rights Committee.

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.<sup>42</sup>

59. Targeted nationality campaigns are undertaken with the objective of resolving the statelessness situation through the grant of nationality, rather than identifying persons as stateless to provide them with a status as such. A number of States have undertaken such nationality campaigns with regard to longstanding stateless populations in their territory, in some cases with the assistance of UNHCR. Even where States undertake nationality campaigns, it is still beneficial to establish statelessness determination procedures for stateless individuals who do not fall within the *in situ* population as the profile of stateless persons in a particular country may be mixed or may change over time.
60. Nationality verification procedures assist individuals in a territory where they have difficulties obtaining proof of their nationality status. Such procedures often involve an accessible, swift and straightforward process for documenting existing nationality, including the nationality of another State.
61. The procedural requirements of both nationality campaigns and nationality verification procedures will be similar to those used in statelessness determination procedures in practice, as they need to reflect the forms of evidence available in a country and the difficulties faced by applicants in proving their nationality status. Documentary evidence may sometimes be dispensed with and the sworn testimony of community members that an individual meets the relevant criteria under the nationality laws, such as birth in the territory or descent from a parent who was a national, may instead suffice.

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<sup>42</sup> Please see paragraph 50 of UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>:

... resources should not be dedicated to a formal determination of statelessness where a realistic, immediate goal is the acquisition, reacquisition or confirmation of nationality by such a population. This will usually be the case for those protracted situations in which an entire population has significant ties only with the State in which they are resident.

## B. ESTABLISHING DETERMINATION PROCEDURES

### (1) Design and location of determination procedures

62. States have broad discretion in the design and operation of statelessness determination procedures as the 1954 Convention is silent on such matters. Local factors, such as the estimated size and diversity of the stateless population, as well as the complexity of the legal and evidentiary issues to be examined, will influence the approach taken. For such procedures to be effective, though, the determination of statelessness must be a specific objective of the mechanism in question, though not necessarily the only one.
63. Current State practice is varied with respect to the location of statelessness determination procedures within national administrative structures, reflecting country-specific considerations. States may choose between a centralized procedure or one that is conducted by local authorities. Centralized procedures are preferable as they are more likely to develop the necessary expertise among the officials undertaking status determination. Ensuring easy access for applicants located in different parts of a country can be facilitated through various measures: for example, permitting written applications to be submitted to local offices for onward transmission to the central determination body, which can coordinate and guide the appropriate examination of relevant facts at the local level, including the personal interview with the applicant.
64. Establishing whether a person is stateless can be complex and challenging but it is in the interests of both States and stateless persons that determination procedures be as simple, fair and efficient as possible. To this end, some States might consider adapting existing administrative procedures to include statelessness determination. Factors to consider include administrative capacity, existing expertise on statelessness matters, as well as expected size and profile of the stateless population. In any combined procedure it is essential that the definition of a stateless person is clearly understood and properly applied and that procedural safeguards and evidentiary standards are respected.
65. Some States might elect to integrate statelessness determination procedures within the competence of immigration authorities. Other States may place statelessness determination within the body responsible for nationality issues, for example naturalization applications or verification of nationality requests. This would be particularly appropriate where the individuals concerned are likely to be longstanding residents of the State.
66. As some stateless persons may also be refugees, States may consider combining statelessness and refugee determination in the same procedure. Confidentiality requirements for applications by asylum-

seekers and refugees must be respected regardless of the form or location of the statelessness determination procedure.<sup>43</sup>

67. Resource considerations, both financial and human, will be significant in the planning of statelessness determination procedures. Countries with statelessness determination procedures have experienced low numbers of applicants. The costs involved can be balanced against savings made from freeing up other administrative mechanisms to which stateless persons may otherwise resort, such as requests for other forms of immigration status.

## **(2) Access to procedures**

68. For 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 stateless persons. 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.
69. Everyone in a State's territory must have access to statelessness determination procedures. There is no basis in the 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.
70. There is also no basis in the Convention to set time-limits for individuals to claim statelessness status. Such deadlines may arbitrarily exclude individuals from receiving 1954 Convention protection.

## **(3) Procedural guarantees**

71. Statelessness determination procedures should be formalized in law. Establishing procedures through legislation ensures fairness, transparency and clarity. Procedural guarantees are fundamental elements of statelessness determination procedures. The due process guarantees that are to be integrated into administrative law procedures, including refugee status determination procedures, are necessary in this context. States are encouraged, therefore, to incorporate the following safeguards:

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<sup>43</sup> For further details on coordinating refugee and statelessness determination procedures, please see paragraphs 78-82.

- information on eligibility criteria, the determination procedure and the rights associated with recognition of statelessness is widely disseminated by the authorities in a range of languages; counseling regarding the procedures is provided to all applicants in a language they understand;
  - there is a right to an interview with a decision-making official;
  - applications are submitted in writing and assistance with this is provided if necessary;
  - assistance is available for translation/interpretation in respect of written applications and interviews;
  - it is the right of every member of a family to make an independent application;
  - an adult may make an application on behalf of a dependent child and special procedural guarantees for unaccompanied children are also available;
  - a child has the right to be heard where he or she has the capacity to form and express a view;
  - applicants are to have access to legal counsel; where free legal assistance is available, it is to be offered to applicants without financial means;
  - determinations are made on the individual merits of the claim with reference to country information regarding nationality law and practice in the relevant States, including information pertaining to the law and practice during periods in the past which are of relevance to the case under examination;
  - if the determination is made in a judicial setting, the process is inquisitorial rather than adversarial;
  - decisions are made in writing with reasons;
  - decisions are made and communicated within a reasonable time;
  - there is a right of appeal; and
  - access to UNHCR is guaranteed.
72. To ensure that procedures are fair and effective, States are to refrain from removing an individual from their territory pending the outcome of the determination process.
73. The right to an individual interview, and necessary assistance with translation/interpretation throughout the process, are essential to ensure that applicants have the opportunity to present their cases fully and to provide and clarify information that is material to the claim. These procedural guarantees also permit the decision-maker to explore any ambiguities in an individual case.

74. It is in the interests of all parties that statelessness determination is conducted as expeditiously as possible, subject to reasonable time being available to gather evidence. Several countries have established time limits within which determination authorities are to make a decision on a statelessness application. In applications where the immediately available evidence is clear and the statelessness claim is manifestly well-founded, fair and efficient procedures may only require a few months to reach a final determination.
75. In general, it is undesirable for a first instance decision to be issued more than six 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 individual's nationality status to be pursued with another State, where it is likely that a substantive response will be forthcoming in that period.<sup>44</sup>
76. An effective right to appeal against a negative first instance decision is an essential safeguard in a statelessness determination procedure. The appeal procedure is to rest with an independent body. The applicant is to have access to legal counsel and, where free legal assistance is available, it is to be offered to applicants without financial means.
77. 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. Whether an appellate body can substitute its own judgment on eligibility under the 1954 Convention or whether it can merely quash the first instance decision and send the matter back for reconsideration by the determination authority is at the discretion of the State. The choice will tend to reflect the general approach to such matters in its legal/administrative system. In addition, States may permit a further judicial review, which addresses questions of law only, and may be limited by the procedural rules of the judicial system concerned.

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<sup>44</sup> This highlights the importance of applicants receiving an appropriate standard of treatment during the determination process. Please see, further, Part Three below.

## C. COORDINATING REFUGEE STATUS AND STATELESSNESS DETERMINATIONS

78. When an applicant raises both a refugee and a statelessness claim, it is important that each claim is assessed and that both types of status are explicitly recognised. This is because protection under the 1951 Convention generally gives rise to a greater set of rights at the national level than that under the 1954 Convention. Nevertheless, there may be instances where refugee status ceases without the person having acquired a nationality, necessitating then international protection as a stateless person.
79. As a stateless person may also be a refugee or be entitled to a complementary form of protection,<sup>45</sup> States must ensure that confidentiality requirements for refugees who might also be stateless are upheld in statelessness determination procedures. Every applicant in a statelessness determination procedure is to be informed at the outset of the need to raise refugee-related concerns, should they exist.<sup>46</sup> The identity of a refugee or an asylum-seeker must not be disclosed to the authorities of the individual's country of origin. As discussed below in paragraphs 96-99, statelessness determination officials might be required to make enquiries with foreign authorities regarding applicants, which could compromise the confidentiality to which refugees and asylum-seekers are entitled. When this is the case, refugee status determination is to proceed and consideration of the statelessness claim to be suspended.
80. Where refugee status and statelessness determinations are conducted in separate procedures and a determination of statelessness can be made without contacting the authorities of the country of origin, both procedures may proceed in parallel. However, to maximize efficiency, where findings of fact from one procedure can be used in the other, it may be appropriate to first conduct interviews and to gather and assess country information for the refugee determination procedure.
81. Similarly, in a procedure that combines refugee and statelessness determination and an applicant raises both claims, it is important that the examiner conduct refugee and statelessness determination together.<sup>47</sup> If there is insufficient information to conclude that an individual is stateless

<sup>45</sup> Please see Executive Committee Conclusion No.103 (LVI) of 2005 on complementary forms of protection, <http://www.unhcr.org/refworld/docid/43576e292.html>

<sup>46</sup> Similarly, applicants for refugee status are to be informed of the possibility of applying for recognition as a stateless person.

<sup>47</sup> Refugee status determination requires the identification of either an individual's country of nationality or, for stateless persons, the country of former habitual residence for the purposes of assessing an individual's fear of persecution. Please see paragraphs 87-93 and 101-105, UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, HCR/1P/4/ENG/REV.3, December 2011, <http://www.unhcr.org/refworld/docid/4f33c8d92.html>

without contacting the authorities of a foreign State, refugee status determination shall proceed.

82. In both separate and combined procedures, in certain circumstances it must be possible for an individual to re-activate a suspended statelessness claim. A statelessness claim may be re-activated in the event that:
- the refugee claim fails;
  - refugee status is recognised but subsequently ceases;
  - refugee status is cancelled because the inclusion criteria of Article 1A(2) of the 1951 Convention were not met;<sup>48</sup> or
  - if additional evidence emerges that an individual is stateless.

Similar considerations apply to individuals with claims to both statelessness status and a complementary form of protection.

## D. ASSESSMENT OF EVIDENCE

### (1) Types of evidence

83. Statelessness determination requires a mixed assessment of fact and law. Such cases cannot be settled through analysis of nationality laws alone as the definition of a stateless person requires an evaluation of the application of these laws in practice, including the extent to which judicial decisions are respected by government officials.<sup>49</sup> The kinds of evidence that may be relevant can be divided into two categories: evidence relating to the individual's personal circumstances and evidence concerning the laws and other circumstances in the country in question.
84. Evidence concerning personal history helps identify which States and nationality procedures need to be considered in determining an applicant's nationality status.<sup>50</sup> In any given case, the following non-exhaustive list of types of evidence may be pertinent:
- testimony of the applicant (e.g. written application, interview);
  - response(s) from a foreign authority to an enquiry regarding nationality status of an individual;
  - identity documents (e.g. birth certificate, extract from civil register, national identity card, voter registration document);

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48 Please see UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, <http://www.unhcr.org/refworld/docid/41a5dfd94.html>

49 This is discussed in paragraph 48 above.

50 Please see paragraph 92 below.



- travel documents (including expired ones);
  - documents regarding applications to acquire nationality or obtain proof of nationality;
  - certificate of naturalization;
  - certificate of renunciation of nationality;
  - previous responses by States to enquiries on the nationality of the applicant;
  - marriage certificate;
  - military service record/discharge certificate;
  - school certificates;
  - medical certificates/records (e.g. attestations issued from hospital on birth, vaccination booklets);
  - identity and travel documents of parents, spouse and children;
  - immigration documents, such as residence permits of country(ies) of habitual residence;
  - other documents pertaining to countries of residence (for example, employment documents, property deeds, tenancy agreements, school records, baptismal certificates); and
  - record of sworn oral testimony of neighbours and community members.
85. Information concerning the circumstances in the country or countries under consideration covers evidence about the nationality and other relevant laws, their implementation and practices of relevant States, as well as the general legal environment in those jurisdictions in terms of respect by the executive branch for judicial decisions. It can be obtained from a variety of sources, governmental and non-governmental. The complexity of nationality law and practice in a particular State may justify recourse to expert evidence in some cases.
86. For such country-related information to be treated as accurate, it needs to be obtained from reliable and unbiased sources, preferably more than one. Thus, information sourced from State bodies directly involved in nationality mechanisms in the relevant State, or non-State actors which have built up expertise in monitoring or reviewing such matters, is preferred. It is important that country-related information is continuously updated so that changes in nationality law and practice in relevant countries are taken into account. That being said, the country-related information relied on should be contemporaneous with the nationality events that are under consideration in the case in question. In addition, where the practice of officials involved in applying the nationality laws of a State appears to differ by region, this must be taken into account with respect to the country-related evidence relied on.

## **(2) Issues of proof**

87. Authorities undertaking statelessness determination procedures need to consider all available evidence, oral and written, regarding an individual's claim.
88. The stateless person definition in Article 1(1) of the 1954 Convention requires proof of a negative – that an individual is not considered as a national by any State under the operation of its law. This presents significant challenges to applicants and informs how evidentiary rules in statelessness determination procedures are to be applied.

## **(3) Burden of proof**

89. The burden of proof in legal proceedings refers to the question of which party bears the responsibility of proving a claim or allegation. Typically in administrative or judicial proceedings, a claimant bears an initial responsibility in substantiating his or her claim. 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 be truthful, provide as full an 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. This non-adversarial approach can be found in the practice of a number of States that already operate statelessness determination procedures.
90. 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.<sup>51</sup>

## **(4) Standard of proof**

91. As with the burden of proof, 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

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<sup>51</sup> Further flexibility is also warranted where it is difficult for individuals to obtain documents originating from a foreign authority properly notarized or fixed with official seals.

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.<sup>52</sup>

92. 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, adoption or habitual residence.<sup>53</sup> However, statelessness will not be established to a reasonable degree where the determination authority is able to point to clear evidence that the individual is a national of an identified State. Such evidence of nationality may take the form, for example, of written confirmation from the competent authority responsible for naturalization decisions in another country that the applicant is a national of that State through naturalization or information establishing that under the nationality law and practice of another State the applicant has automatically acquired nationality there.<sup>54</sup>
93. Where an applicant does not cooperate in establishing the facts, for example by deliberately withholding information that could determine his or her identity, then he or she may fail to establish to a reasonable degree that he or she is stateless even if the determination authority is unable to demonstrate clear evidence of a particular nationality. The application can thus be rejected unless the evidence available nevertheless establishes statelessness to a reasonable degree.<sup>55</sup> Such cases need, however, to be distinguished from instances where an applicant is unable, as opposed to unwilling, to produce supporting evidence and/or testimony about his or her personal history.

### **(5) Weighing the evidence**

94. Where authentic documentary evidence is presented regarding an individual’s personal history in a statelessness determination procedure, this evidence typically takes precedence over that individual’s testimony in reaching a conclusion on statelessness. Where limited or no documentary evidence regarding an individual’s personal circumstances is presented, however, additional weight will be given to an applicant’s written and/or

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52 Please see paragraph 42, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, note 47 above. In the refugee status determination context, an individual can claim a well-founded fear of persecution by establishing “to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the [refugee] definition.”

53 Please see paragraph 18 above.

54 Please see paragraphs 27 to 44 above on the treatment of evidence from other States, including from their consular authorities.

55 Please see section 9 below on Credibility Issues.

oral testimony, available country information and any results of additional enquiries with relevant States. The guidance in the paragraphs below on the weight to be given to certain kinds of evidence that will commonly be under consideration in statelessness determinations must be read alongside guidance on this matter found in Part One above.

## **(6) Passports**

95. Authentic, unexpired passports raise a presumption that the passport holder is a national of the country issuing the passport. However, this presumption may be rebutted where there is evidence showing that an individual is not actually considered to be a national of a State, for example where the document is a passport of convenience or the passport has been issued in error by an authority that is not competent to determine nationality issues. In such cases the passport is not a manifestation of a State's position that the individual is one of its nationals. No presumption is raised by passports that are counterfeit or otherwise fraudulently issued.<sup>56</sup>

## **(7) Enquiries with and responses from foreign authorities**

96. Information provided by foreign authorities is sometimes of central importance to statelessness determination procedures, although not necessary in cases where there is otherwise adequate proof. Under no circumstances is contact to be made with authorities of a State against which an individual alleges a well-founded fear of persecution unless it has definitively been concluded that he or she is neither a refugee nor entitled to a complementary form of protection.
97. Flexibility may be necessary in relation to the procedures for making contact with foreign authorities to confirm whether or not an individual is its national. Some foreign authorities may accept enquiries that come directly from another State while others may indicate that they will only respond to requests from individuals.<sup>57</sup>
98. Where statelessness determination authorities make enquiries with foreign authorities regarding the nationality or statelessness status of an individual, they must consider the weight to be attached to the response or lack of response from the State in question.<sup>58</sup>
99. Where a response from a foreign authority includes reasoning that appears to involve a mistake in applying the local law to the facts of the case or an

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<sup>56</sup> On these issues, please see also paragraphs [45](#) and [46](#) above.

<sup>57</sup> States may wish to set up bilateral or multilateral arrangements for making nationality enquiries. An example of such an arrangement is the 1999 Convention on the Issue of a Certificate of Nationality, to which member States of the International Commission on Civil Status, the European Union or the Council of Europe can accede.

<sup>58</sup> Guidance on this issue is provided in paragraph [41](#) above.

error in assessing the facts, the reply must be taken on face value. It is the subjective position of the other State that is critical in determining whether an individual is its national for the purposes of the stateless person definition.<sup>59</sup> Time permitting, statelessness determination authorities may be able to raise such concerns with the foreign authority in the hope of obtaining greater clarity about the individual's nationality status. Indeed, in some cases this may result in the foreign authority belatedly acknowledging that the individual is its national or accepting that he or she is entitled to acquire nationality.

## **(8) Interviews**

100. An interview with an applicant is an important opportunity for the decision-maker to explore any questions regarding the evidence presented. Open-ended questioning, conducted in a non-adversarial atmosphere, can create a "climate of confidence"<sup>60</sup> encouraging applicants to deliver as full an account as possible.<sup>61</sup> Applicants must be reminded at the outset of the interview that they have a duty to cooperate with the proceedings. That being said, an applicant can only be expected to reply to the best of his or her abilities and in many cases even basic information may not be known, for example the place of birth or whether birth was registered. While one interview will normally be sufficient to elicit the applicant's history, it may sometimes be necessary to conduct follow-up interviews.

## **(9) Credibility issues**

101. The credibility of an applicant's statements will not be at issue during statelessness determination procedures where a determination can be reached on the basis of the available documentary evidence when assessed in light of relevant country-related information. Where, however, little or no documentary evidence is available, statelessness determination authorities will need to rely to a greater degree on an applicant's testimony and issues relating to the credibility of the applicant's account might arise. In assessing whether statements can be considered credible, the decision-maker can consider objective credibility indicators, namely, the specificity and sufficiency of detail provided, consistency in the applicant's account including his or her written and oral statements, consistency of the applicant's statements with those of witnesses or family members, consistency with country of origin information and the plausibility of the statements.

<sup>59</sup> Please see paragraphs 45 and 46 which note that an error as to the application of local law to an individual's case is irrelevant in determining the State's position.

<sup>60</sup> Please see paragraph 200, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, note 47 above.

<sup>61</sup> Interviewing techniques are discussed more generally in UNHCR, *Interviewing Applicants for Refugee Status*, RLD 4, 1995, <http://www.unhcr.org/refworld/pdfid/3ccea3304.pdf>. Please see also UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Summary*, 2013, <http://www.refworld.org/docid/51a704244.html>, page 24.

102. An applicant can only be expected to have a level of knowledge that is reasonable taking into account factors such as the applicant's level of education and age at the time of relevant events. Nationality laws and their application can be complex. An applicant will not necessarily be able to explain clearly why a particular decision was made by authorities or what the nationality practice is in countries under consideration. Where an applicant's ethnic identity is material to the determination, testing his or her knowledge of cultural practices or languages must take account of, *inter alia*, differing levels of education and understanding of traditions. Persistent unexplained evasiveness on key questions may legitimately raise concerns about an individual's credibility on these aspects of his or her testimony. This is even more so where an individual refuses, without giving any reason, to answer certain questions.
103. When determining whether an applicant's account is credible, a decision-maker must evaluate whether the story presented is internally consistent. It must also be consistent with reliable information about nationality law and practice in relevant countries and whether it is corroborated by any documentary or other evidence available. Credibility is not undermined by minor inconsistencies in the applicant's account, particularly where these are not material to the claim or relate to events that took place many years ago. Where the applicant's testimony appears to conflict with evidence regarding the country in question, it is important to verify that there are no regional divergences or discriminatory practices on the basis of political affiliation, ethnicity, religion or other grounds in the application of the nationality mechanism in question by officials of that State.
104. An applicant's demeanour is not a reliable indicator of credibility. A stateless person may have endured significant discrimination as a result of lack of nationality, rendering him or her anxious, reticent or defensive in any interview. Cultural differences between the applicant and the decision-maker also often preclude an accurate interpretation of specific forms of demeanour.
105. Negative inferences are not to be drawn where an individual has not had the opportunity, in an appropriate interview setting, to explain or clarify any apparent gaps, contradictions or discrepancies in his or her account.
106. The credibility of the facts material to the claim is established with reference to the credibility indicators, taking into account any reasonable explanations provided by the applicant for apparent credibility problems and with due regard to his or her individual circumstances. If, after due consideration of an applicant's statements and all other evidence available, an element of doubt nevertheless remains in relation to the credibility of an asserted relevant fact and there is no other evidence to support that

fact, the decision-maker should consider whether it is appropriate to apply the principle of the benefit of the doubt.<sup>62</sup>

107. Even where material elements of the applicant's statements are found to lack credibility, this does not preclude a determination of statelessness. An individual's testimony must still be evaluated in the light of all other evidence, such as that relating to the countries concerned, which may still support a finding of statelessness.<sup>63</sup>

## E. ADDITIONAL PROCEDURAL CONSIDERATIONS

### (1) Group determination

108. Given the nature of statelessness, individualized procedures are the norm as these allow for the exploration of the applicant's personal circumstances. Countries that have adopted statelessness determination procedures thus far have followed this approach. Most of them are parties to the 1954 Convention and are assessing nationality/statelessness in relation to individuals present in a migratory context.
109. It is possible, however, to grant stateless person status to individuals within a group on a *prima facie* basis,<sup>64</sup> that is, without undertaking a full individual status determination. This could be appropriate where there is readily apparent, objective information about the lack of nationality of members of a group such that they would *prima facie* meet the stateless person definition in Article 1(1) of the 1954 Convention. In the absence of contrary evidence, an individual's eligibility for protection under the Convention would therefore be based on whether he or she is a member of an identified group that satisfies the Article 1(1) definition.
110. *Prima facie* recognition is not a subsidiary category or lesser status, but rather reflects an efficient evidentiary assessment leading to recognition under the 1954 Convention. As stateless persons, they benefit from the rights attached to that status until such status ends. As with individual determination mechanisms, there must be an effective legal remedy for

<sup>62</sup> Please see, in a different context, discussion of the principle of benefit of the doubt in *Beyond Proof, Credibility Assessment in EU Asylum Systems: Summary*, note 61 above, in particular at page 44.

<sup>63</sup> A similar approach applies in determination of refugee status. Please see paragraph 42 of *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, note 47 above. Given the nature of the statelessness definition, credibility issues are less likely to prevent a finding of statelessness than they are in a determination of refugee status.

<sup>64</sup> The *prima facie* technique is used in refugee status determination, usually in a group context. But it has also been applied in individual determinations.

individuals in a group to challenge a negative *prima facie* finding on the question of status.

111. Group determination must allow for consideration of the exclusion clauses set out in Article 1(2) of the 1954 Convention on an individual basis. Persons falling within Article 1(2) would not be entitled to the protection of the 1954 Convention even though they meet the stateless person definition set out in Article 1(1) of that instrument.<sup>65</sup>

## **(2) Detention**

112. Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary.<sup>66</sup> Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for detention of such persons. Article 9 of the International Covenant on Civil and Political Rights (“ICCPR”), guaranteeing the right to liberty and

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<sup>65</sup> Article 1(2) is concerned with persons undeserving of protection either because they have an alternative route to protection or because of their behaviour:

2. This Convention shall not apply:

(i) To 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;

(ii) To 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;

(iii) To 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 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.

<sup>66</sup> Please see, in regard to immigration detention generally, the position taken by the UN Working Group on Arbitrary Detention: (58)...it considers that immigration detention should gradually be abolished. Migrants in an irregular situation have not committed any crime. The criminalization of irregular migration exceeds the legitimate interests of States in protecting its territories and regulating irregular migration flows. (59) If there has to be administrative detention, the principle of proportionality requires it to be the last resort. Strict legal limitations must be observed and judicial safeguards be provided for. The reasons put forward by States to justify detention, such as the necessity of identification of the migrant in an irregular situation, the risk of absconding, or facilitating the expulsion of an irregular migrant who has been served with a removal order, must be clearly defined and exhaustively enumerated in legislation. UN Working Group on Arbitrary Detention, *Report to the Human Rights Council, A/HRC/13/30*, 18 January 2010, <http://www.refworld.org/docid/502e0fa62.html> In relation to stateless persons specifically, please see UNHCR Executive Committee Conclusion 106 (LV1) of 2006 on identification, prevention and reduction of statelessness and protection of stateless persons, <http://www.unhcr.org/453497302.html> which “Calls on States not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law... ”.



security of person, prohibits unlawful as well as arbitrary detention. For detention to be lawful, it must be regulated by domestic law, preferably with maximum limits set on such detention, and subject to periodic and judicial review. For detention not to be arbitrary, it must be necessary in each individual case, reasonable in all the circumstances, proportionate and non-discriminatory. Indefinite as well as mandatory forms of detention are arbitrary per se.<sup>67</sup>

113. Detention is therefore a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention. Alternatives to detention – from reporting requirements or bail/bond systems to structured community supervision and/or case management programmes – are part of any assessment of the necessity and proportionality of detention. General principles relating to detention apply *a fortiori* to children who as a rule are not to be detained in any circumstances.
114. Where persons awaiting statelessness determination are detained they must not be held with convicted criminals or individuals awaiting trial.<sup>68</sup> Moreover, judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means.
115. For stateless persons, the absence of status determination procedures to verify identity or nationality can lead to prolonged or indefinite detention. Statelessness determination procedures are therefore an important mechanism to reduce the risk of prolonged and/or arbitrary detention.

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67 Please see the UN Human Rights Committee's decisions in *van Alpen v Netherlands*, Communication No. 305/1988, 23 July 1990, <http://www.refworld.org/docid/525414304.html> paragraph 5.8; *A v Australia*, CCPR/C/59/D/560/1993, 30 April 1997, <http://www.refworld.org/docid/3ae6b71a0.html> paragraph 9.4; and *Danyal Shafiq v Australia*, CCPR/C/88/D/1324/2004, 13 November 2006, <http://www.refworld.org/docid/47975af921.html> paragraph 7.3. In the context of refugees, UNHCR Executive Committee Conclusion 44 (XXXVII) of 1986 on detention of refugees and asylum-seekers, available at: <http://www.refworld.org/docid/3ae68c43c0.html> states that detention of asylum-seekers should normally be avoided but if necessary should only occur on grounds prescribed by law in order to determine the identity of the individual; in order to obtain the basic facts of the case; where an individual has purposely destroyed documentation or presented fraudulent documentation in order to mislead the authorities; and/or where there are national security or public order concerns. Please see also UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <http://www.unhcr.org/505b10ee9.html>

68 Please see similarly guidance in relation to detention of asylum-seekers, *ibid*.

### **(3) Role of UNHCR**

116. UNHCR assists States in a variety of ways to fulfil its statelessness mandate.<sup>69</sup> Drawing on its comparative knowledge of statelessness determination procedures in a range of States and its own experience making statelessness and nationality assessments, UNHCR can advise on both the development of new statelessness determination procedures and the enhancement of existing ones.<sup>70</sup> 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.<sup>71</sup> Access for applicants to UNHCR also plays a significant role in ensuring the fairness of determination procedures. Finally, UNHCR may conduct statelessness determination itself at an individual and/or group level if necessary.

### **(4) Exploring solutions abroad**

117. Some applicants in statelessness determination procedures may have a realistic prospect of admission or readmission in another State, in some cases through the acquisition or reacquisition of nationality. These cases, which tend to arise where individuals are seeking statelessness determination in a migratory context, raise the issue of cooperation between States to find the most appropriate solution. Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness. Suspension of the determination proceedings, however, is not appropriate in this context as recognition of the individual's statelessness is necessary to ensure full protection of the rights to which he or she is entitled.

### **(5) Additional procedural and evidentiary safeguards for specific groups**

118. Certain groups may face particular challenges in establishing their nationality status. Age, gender and diversity considerations may require that some individuals are afforded additional procedural and evidentiary

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69 In particular, under paragraph 4 of Resolution 61/137 the UN General Assembly. Please see paragraph 4 above and Annex IV.

70 As set out in UNHCR Executive Committee Conclusion 106 (LVII) of 2006, note 666 above, the Executive Committee has requested UNHCR "to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons" and "to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions" (paragraphs (t) and (x)). Please see also Annex V.

71 States are also advised to consult nationality databases available through sources such as UNHCR's Refworld database, [www.refworld.org](http://www.refworld.org), or regional sources such as the European Union Democracy Observer (EUDO) nationality law database, <http://eudo-citizenship.eu/databases>, and the Africa Governance Monitoring and Advocacy Project (AfriMAP), [www.afriMAP.org](http://www.afriMAP.org)

safeguards to ensure that fair statelessness determination decisions are reached.

119. Children, especially unaccompanied children, may face acute challenges in communicating basic facts with respect to their nationality. States that establish statelessness determination procedures must follow the principle of pursuing the best interests of the child when considering the nationality status and need for statelessness protection of children.<sup>72</sup> Additional procedural and evidentiary safeguards for child claimants include priority processing of their claims, provision of appropriately trained legal representatives, interviewers and interpreters as well as the assumption of a greater share of the burden of proof by the State.
120. In certain circumstances, similar considerations may apply to persons with disabilities<sup>73</sup> who face difficulties communicating information about their nationality status. Decision makers need to take into account that owing to discrimination, persons with disabilities may be less likely to possess identity and other documentation.
121. It would be preferable if all claimants could be offered the choice to have interviewers and interpreters of the same sex as themselves. Interviewers and interpreters should also be aware of and responsive to any cultural or religious sensitivities or personal factors such as age and level of education. As a result of discrimination, women might face additional barriers in acquiring relevant documentation, such as birth certificates or other identification documents that would be pertinent to establishing their nationality status.

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<sup>72</sup> All unaccompanied and separated children are to have access to a procedure to determine their best interests. The outcome of a statelessness determination procedure, as with the result of a refugee status determination, form part of best interests determination. With regard to refugee status determination procedures and best interest determinations, please see UNHCR, *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, <http://www.refworld.org/docid/48480c342.html>

<sup>73</sup> The 2006 Convention on the Rights of Persons with Disabilities recognizes that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”, Preamble, paragraph (e).

## F. STATELESSNESS DETERMINATION WHERE THE 1954 CONVENTION DOES NOT APPLY

122. Many stateless persons who meet the 1954 Convention definition find themselves in countries not bound by this treaty. Nevertheless, a number of non-contracting States have introduced some form of statelessness determination procedure to address the situation of such persons in their territories, given their commitments under international human rights law. With respect to the latter, statelessness is a juridically relevant fact, for example in relation to protection against arbitrary detention (Article 9(1) of the ICCPR), the right of women to equal treatment with men with regard to nationality (Article 9 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women) and the right of every child to a nationality (Article 24(3) of the ICCPR and Article 7(1) of the 1989 Convention on the Rights of the Child).
123. *De facto* stateless persons also fall outside of the protection of the 1954 Convention.<sup>74</sup> Some States have incorporated the concept of *de facto* statelessness (in substance, if not always in name) into their statelessness determination procedures, examining eligibility for protection on that basis alongside the 1954 Convention criteria.
124. States are encouraged to provide protection to *de facto* stateless persons in addition to 1954 Convention stateless persons. Often *de facto* stateless persons are in irregular situations or in prolonged detention because they are unable to return to their country of nationality. States will take a variety of factors into account when deciding the type of procedure in which *de facto* statelessness will be determined. One consideration is that it will not be clear at the outset, even in the view of the applicant, whether he or she is stateless as per the 1954 Convention or within the *de facto* concept. Irrespective of where *de facto* statelessness is determined, the procedure must not prevent individuals from claiming protection as a refugee or as a stateless person in terms of the 1954 Convention, as recognition as such would trigger greater obligations for the State under international law than recognition as a *de facto* stateless person.

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<sup>74</sup> As noted in paragraph 7 above there is no international definition of the term *de facto* stateless person. Section II.A. of the Prato Conclusions, note 4 above, proposes the following operational definition for the term: *De facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.

# PART THREE: STATUS OF STATELESS PERSONS AT THE NATIONAL LEVEL

## A. INTERNATIONAL LAW AND THE STATUS OF STATELESS PERSONS

### (1) Parallels between the status of refugees and stateless persons

125. The status set out for stateless persons in the 1954 Convention is modelled on that established for refugees in the 1951 Convention. Comparison of the texts of the two treaties shows that numerous provisions of the 1954 Convention were taken literally, or with minimal changes, from the corresponding provisions of the 1951 Convention. This is largely because of the shared drafting history of the 1951 and 1954 Conventions which both emerged from the work of the Ad Hoc Committee on Statelessness and Related Problems that was appointed by the Economic and Social Council in 1949.<sup>75</sup> As a result, the *Travaux Préparatoires* of the 1951 Convention are particularly pertinent in interpreting the 1954 Convention.<sup>76</sup>
126. As with the 1951 Convention, the rights set out in the 1954 Convention are not limited to individuals who have been recognised as stateless following a determination made by a State or UNHCR. A person is stateless from the moment he or she satisfies the criteria in the 1954 Convention definition, any determination of this fact being merely declaratory. Instead, the rights afforded to an individual under the Convention are linked to the nature of that person's presence in the State, assessed in terms of degree of attachment to the host country.

<sup>75</sup> Resolution 248 (IX) (B) of 8 August 1949. Although the protection of stateless persons was initially intended to be addressed in a Protocol which would apply *mutatis mutandis* most of the substantive rights set out in the 1951 Convention, it was subsequently decided to adopt a standalone instrument, the Convention relating to the Status of Stateless Persons. For additional information on the drafting history, please see the detailed account of the *Travaux Préparatoires* in UNHCR, *Convention Relating to the Status of Stateless Persons: Its History and Interpretation – A Commentary by Nehemiah Robinson*, 1955, <http://www.unhcr.org/refworld/pdfid/4785f03d2.pdf> (“*Robinson Commentary to the 1954 Convention*”).

<sup>76</sup> Please see, in particular, paragraphs 132-139 below on the scale of rights accorded to stateless persons under the 1954 Convention depending on their level of attachment to the State party.

127. Despite sharing the same overall approach, the 1954 Convention nevertheless contains several significant differences from the 1951 Convention. There is no prohibition against *refoulement* (Article 33, 1951 Convention) and no protection against penalties for illegal entry (Article 31, 1951 Convention). Moreover, both the right to employment and the right of association provide for a lower standard of treatment than the equivalent provisions in the 1951 Convention.<sup>77</sup> The scope of protection against expulsion also differs between the treaties.
128. A stateless person may simultaneously be a refugee.<sup>78</sup> Where this is the case, it is important that each claim is assessed and that both statelessness and refugee status are explicitly recognised. Similarly, where standards of treatment are provided for a complementary form of protection, including protection against *refoulement*, States must apply these standards to stateless individuals who qualify for that protection.<sup>79</sup>

## **(2) Overview of the standard of treatment required by the 1954 Convention**

129. Articles 12-32 of the 1954 Convention establish a broad range of civil, economic, social and cultural rights for States to accord to stateless persons. The 1954 Convention divides these rights into the following categories:
- juridical status (including personal status, property rights, right of association, and access to courts);
  - gainful employment (including wage-earning employment, self-employment, and access to the liberal professions);
  - welfare (including rationing, housing, public education, public relief, labour legislation, and social security); and
  - administrative measures (including administrative assistance, freedom of movement, identity papers, travel documents, fiscal charges, transfer of assets, expulsion, and naturalization).
130. The 1954 Convention establishes minimum standards. Like the 1951 Convention, the 1954 Convention requires that States provide its beneficiaries with treatment along the following scale:

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<sup>77</sup> However, like the 1951 Convention, the 1954 Convention calls on States to “give sympathetic consideration to assimilating the rights of all stateless persons with regards to wage-earning employment to those of nationals...”. Please see Article 17(2) of the 1954 Convention.

<sup>78</sup> As noted in paragraph 15 above, the definitions of stateless person under the 1954 Convention and that of refugees under the 1951 Convention are not mutually exclusive.

<sup>79</sup> For further information about how refugee, complementary protection, and statelessness claims are to be assessed in statelessness determination procedures, as well as necessary confidentiality guarantees, please see paragraphs 78-82 above.

- treatment which is to be afforded to stateless persons irrespective of the treatment afforded to citizens or other aliens;
  - the same treatment as nationals;
  - treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances; and
  - the same treatment accorded to aliens generally.
131. States have discretion to facilitate greater parity between the status of stateless persons and that of nationals and indeed may also have an obligation to do so under international human rights treaties. The responsibility placed on States to respect, protect and fulfil 1954 Convention rights is balanced by the obligation in Article 2 of the same treaty that stateless persons abide by the laws of the country in which they find themselves.

#### **(a) Rights on a gradual, conditional scale**

132. The rights provided for in the 1954 Convention are extended to stateless persons based on their degree of attachment to the State. Some provisions are applicable to any individual who satisfies the definition of “stateless person” in the 1954 Convention and are either subject to the jurisdiction of a State party or present in its territory. Other rights, however, are conferred on stateless persons, conditional upon whether an individual is “lawfully in”, “lawfully staying in” or “habitually resident” in the territory of a State party. States may thus grant individuals determined to be stateless more comprehensive rights than those guaranteed to individuals awaiting a determination. Nevertheless, the latter are entitled to many of the 1954 Convention rights. This is similar to the treatment of asylum-seekers under the 1951 Convention.
133. Those rights in the 1954 Convention which are triggered when an individual is subject to the jurisdiction of a State party include personal status (Article 12), property (Article 13), access to courts (Article 16(1)), rationing (Article 20), public education (Article 22), administrative assistance (Article 25) and facilitated naturalization (Article 32). Additional rights that accrue to individuals when they are physically present in a State party’s territory are freedom of religion (Article 4) and the right to identity papers (Article 27).
134. The 1954 Convention foresees that stateless persons who are “lawfully in” a State party (in French “*se trouvant régulièrement*”), are entitled to an additional set of rights. The “lawfully in” rights include the right to engage in self-employment (Article 18), freedom of movement within a State (Article 26) and protection from expulsion (Article 31).
135. For stateless persons to be “lawfully in” a State party, their presence in the country needs to be authorized by the State. The concept encompasses

both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all personal circumstances of the individual.<sup>80</sup> The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention,<sup>81</sup> applicants for statelessness status who enter into a determination procedure are therefore “lawfully in” the territory of a State party.<sup>82</sup> By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not “lawfully in” the country.

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<sup>80</sup> The 1951 Convention also makes the enjoyment of specific rights to refugees conditional upon various degrees of attachment to the State, please see paragraph 29 of UNHCR, *Note on International Protection*, A/AC.96/830, 7 September 1994, <http://www.unhcr.org/refworld/docid/3f0a935f2.html> According to the *Robinson Commentary to the 1954 Convention*, note 75 above: “It is to be assumed that the expression ‘lawfully in the country’ as used in this [1954] Convention has the same meaning as the one in the Refugee Convention”; at paragraph 5 of the Commentary on Article 15. The concept of “lawful” stay for the purposes of the 1951 Convention has been interpreted as follows and, in light of the shared drafting history of the 1951 and 1954 Conventions, also applies in interpreting the 1954 Convention: “...‘lawful’ normally is to be assessed against prevailing national laws and regulations; a judgment as to lawfulness should nevertheless take into account all the prevailing circumstances, including the fact that the stay in question is known and not prohibited, i.e. tolerated, because of the precarious circumstances of the person”. Please see in this regard the discussion of “lawfully in” in paragraph 8 of UNHCR, *“Lawfully Staying” – A Note on Interpretation*, 3 May 1988, <http://www.unhcr.org/refworld/docid/42ad93304.html> The UN Human Rights Committee has decided that an individual with an expulsion order that was not enforced, who was allowed to stay in Sweden on humanitarian grounds was “lawfully in the territory” for the purposes of enjoying the right to freedom of movement protected by Article 12 of the ICCPR. Please see *Celepli v. Sweden*, CCPR/C/51/D/456/1991, 26 July 1994, <http://www.refworld.org/docid/51b6e7ad4.html> paragraph 9.2.

<sup>81</sup> Please see the *Robinson Commentary to the 1954 Convention*, note 75 above, in particular in relation to Articles 15, 18 and 31. Given the shared drafting history of the 1951 and 1954 Conventions and the extent to which specific provisions of the 1954 Convention mirror those of the 1951 Convention, it is important to note the statement of the delegate of France in explaining the meaning of the term “regularly admitted” as used in the text proposed by France which was later accepted by the drafting committee: “Any person in possession of a residence permit was in a regular position. In fact, the same was true of a person who was not yet in possession of a residence permit but who had applied for it and had the receipt for that application. Only those persons who had not applied, or whose application had been refused, were in an irregular position”. UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Fifteenth Meeting Held at Lake Success, New York, on 27 January 1950*, E/AC.32/SR.15, 6 February 1950, <http://www.unhcr.org/refworld/docid/40aa1d5f2.html> Whilst the term “regularly admitted” did not eventually find its way into the 1951 Convention it informed the concept of “lawfully in”.

<sup>82</sup> Please see paragraph 72 which sets out that statelessness determination procedures are to have suspensive effect on removal proceedings for the individual concerned for the duration of the procedure until a determination is reached. The length of time an individual would be considered as “lawfully in” a country as a result of being in a statelessness determination procedure will often be short. As established in paragraphs 74-75, manifestly well-founded applications may only require a few months to reach a final determination, with first instance decisions generally to be issued no more than six months from the application.



136. The 1954 Convention grants another set of rights to stateless persons who are “lawfully staying” in a State party (in French “*résidant régulièrement*”). The “lawfully staying” rights in the 1954 Convention include the right of association (Article 15), right to work (Article 17), practice of liberal professions (Article 19), access to public housing (Article 21), right to public relief (Article 23), labour and social security rights (Article 24), and travel documents (Article 28).<sup>83</sup>
137. The “lawfully staying” requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorised by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category.<sup>84</sup> It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be “lawfully staying”. Individuals recognised as stateless following a determination procedure but to whom no residence permit has been issued will generally be “lawfully staying” in a State party by virtue of the length of time already spent in the country awaiting a determination.
138. A final set of rights foreseen by the 1954 Convention are those to be accorded to stateless persons who are “habitually resident” or “residing” in a State party. The rights accruing to those who are “habitually resident” are protection of artistic rights and intellectual property (Article 14) and rights pertaining to access to Courts, including legal assistance and assistance in posting bond or paying security for legal costs (Article 16(2)).
139. The condition that a stateless person be “habitually resident” or “residing” indicates that the person resides in a State party on an on-going and stable basis. “Habitual residence” is to be understood as stable, factual residence. This covers those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of on-going residence there.

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<sup>83</sup> Since 1 April 2010, all travel documents issued by States, including travel documents for stateless persons pursuant to the 1954 Convention must be machine readable in accordance with International Civil Aviation Organization (“ICAO”) standards. Please see ICAO, *Annex 9 to the Convention on International Civil Aviation, Facilitation*, July 2005 and ICAO-UNHCR, *Guide for Issuing Machine Readable Travel Documents for Refugees and Stateless Persons*, October 2012, <http://www.refworld.org/docid/52b166a34.html>

<sup>84</sup> The concept of “stay” has been interpreted in the context of the 1951 Convention and is applicable to interpreting the 1954 Convention as follows: “‘stay’ means something less than durable residence, although clearly more than a transit stop”. Please see paragraph 23, UNHCR, “*Lawfully Staying*” – *A Note on Interpretation*, above note 80.

### (3) International human rights law

140. The status of a stateless person under national law must also reflect applicable provisions of international human rights law. The vast majority of human rights apply to all persons irrespective of nationality or immigration status, including to stateless persons.<sup>85</sup> Moreover, the principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status.<sup>86</sup> Legitimate differentiation may be permitted for groups who are in a materially different position.<sup>87</sup> Thus, States may explore affirmative action measures to help particularly vulnerable groups of stateless persons in their territory.
141. International human rights law supplements the protection regime set out in the 1954 Convention.<sup>88</sup> Whilst a number of provisions of international human rights law replicate rights found in the 1954 Convention, others provide for a higher standard of treatment or for rights not found in the Convention at all.<sup>89</sup>
142. Of particular importance to stateless persons is the right enshrined in Article 12(4) of the ICCPR to enter one's "own country". This goes beyond

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85 Please see Human Rights Committee, *General Comment No.15 (The Position of Aliens under the Covenant)*, 11 April 1986, <http://www.unhcr.org/refworld/pdfid/45139acfc.pdf> and Human Rights Committee, *General Comment No. 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant)*, CCPR/C/21/Rev.1/Add.13, 26 May 2004, <http://www.refworld.org/docid/478b26ae2.html> Please see also the UN Sub-Commission on the Promotion and Protection of Human Rights, Special Rapporteur on the rights of non-citizens, *Final Report*, E/CN.4/Sub.2/2003/23, 26 May 2003, <http://www.unhcr.org/refworld/pdfid/3f46114c4.pdf> Please note though that full enjoyment of human rights is facilitated by the possession of a nationality, hence the need for specific protection for stateless persons in the form of the 1954 Convention.

86 Please see, for example, Articles 2(1) and 26 of the ICCPR

87 Please see Human Rights Committee, *General Comment No. 18 (Non-discrimination)*, 10 November 1989, <http://www.unhcr.org/refworld/pdfid/453883fa8.pdf> paragraph 13. Please see also Executive Summary and paragraph 23 of UN Special Rapporteur on the rights of non-citizens, *Final Report*, above at note 85.

88 It also provides an alternate regulatory framework in countries that have not acceded to the 1954 Convention. This is considered further in paragraph 166 below.

89 For example, protection against arbitrary detention as found in Article 9(1) of the ICCPR. Regional human rights treaties are also pertinent.

a right of entry to one's country of nationality.<sup>90</sup> It also guarantees the right of entry, and thus the right to remain, of individuals with special ties to a State. This includes, for instance, stateless persons long-established in a State as well as stateless persons who have been stripped of their nationality in violation of international law or who have been denied nationality of a State which has acquired through State succession the territory in which they habitually reside.

143. Even considering these developments in international human rights law, the 1954 Convention retains its significance as it addresses matters specific to statelessness that are not addressed elsewhere, notably the provision of identity papers and travel documents as well as administrative assistance to stateless persons. Moreover, the provisions of the Convention do not allow for derogation in times of public emergency unlike some human rights treaties and it sets out a number of standards that are more generous than their counterparts under human rights law.<sup>91</sup>

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<sup>90</sup> Please see Human Rights Committee, *General Comment No. 27 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9, 2 November 1999, <http://www.refworld.org/docid/45139c394.html> paragraph 20: The wording of article 12, paragraph 4, does not distinguish between nationals and aliens (“no one”). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase “his own country”. The scope of “his own country” is broader than the concept “country of his nationality”. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.

<sup>91</sup> For example, protection against expulsion for persons “lawfully in” the territory is confined under Article 13 of the ICCPR to procedural safeguards, whereas Article 31 of the 1954 Convention also limits the substantive grounds on which expulsion can be justified.

## B. INDIVIDUALS IN A MIGRATORY CONTEXT

### (1) Individuals awaiting determination of statelessness

144. As discussed in the Introduction to the Handbook, although the 1954 Convention does not explicitly address statelessness determination procedures, there is an implicit responsibility for States to identify stateless persons in order to accord them appropriate standards of treatment under the Convention.<sup>92</sup> The following paragraphs consider the appropriate status for individuals awaiting the determination of their statelessness.
145. An individual awaiting a decision is entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as “lawfully in” rights.<sup>93</sup> Thus, his or her status must guarantee, *inter alia*, identity papers, the right to self-employment, freedom of movement and protection against expulsion.<sup>94</sup> As the aforementioned Convention rights are formulated almost identically to those in the 1951 Convention, it is recommended that individuals awaiting a determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered in the same State.
146. The status of those awaiting statelessness determination must also reflect applicable human rights such as protection against arbitrary detention and assistance to meet basic needs.<sup>95</sup> Allowing individuals awaiting statelessness determination to engage in wage-earning employment, even on a limited basis, may reduce the pressure on State resources and contributes to the dignity and self-sufficiency of the individuals concerned.

### (2) Individuals determined to be stateless – right of residence

147. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.

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<sup>92</sup> Please see paragraph 8.

<sup>93</sup> As set out in paragraphs 134-135 above. This would also apply in States without dedicated determination procedures when an individual raises a statelessness claim in another context.

<sup>94</sup> Please see paragraph 72 above on protection against expulsion for fair and efficient determination procedures.

<sup>95</sup> Please see paragraphs 140-141 above.

148. 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, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.
149. If an individual recognised as stateless subsequently acquires or re-acquires the nationality of another State, for instance because of a change in its nationality laws, he or she will cease to be stateless in terms of the 1954 Convention. This may justify the cancellation of a residence permit obtained on the basis of statelessness status, although proportionality considerations in relation to acquired rights and factors arising under international human rights law, such as the degree to which the individual has established a private and family life in the State, need to be taken into account.
150. Recognition of an individual as a stateless person under the 1954 Convention also triggers the “lawfully staying” rights,<sup>96</sup> in addition to a right to residence. Thus the right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.
151. Although the 1954 Convention does not address family unity, States parties are nevertheless encouraged to facilitate the reunion of those with recognised statelessness status in their territory with their spouses and dependents.<sup>97</sup> Indeed, some States have obligations arising under relevant international or regional human rights treaties to do so.<sup>98</sup>
152. The two provisions in the Convention that are restricted to individuals with “habitual residence” would not automatically flow from recognition as stateless.<sup>99</sup> These may be activated, though, if the individual can be considered to be living in the country on a stable basis.

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<sup>96</sup> Please see paragraphs 136-137 above.

<sup>97</sup> For an explanation of family unity in the context of the 1951 Convention, please see *Handbook on Procedures and Criteria for Determining Refugee Status*, note 47 above, at paragraphs 181-188. Whether dependents of a stateless person would be entitled to statelessness status is subject to an inquiry into the nationality status of each dependent to verify qualification as a “stateless person” under the 1954 Convention. Facilitating family unity, however, could also be achieved by granting residence rights to dependents of a stateless person in the territory of a State party, even where the dependents are not stateless.

<sup>98</sup> For more on how international human rights obligations supplement those that arise from the 1954 Convention, please see paragraphs 140-143 above.

<sup>99</sup> Please see paragraphs 138-139 above.

### **(3) Where protection is available in another State**

153. Where an individual recognised as stateless has a realistic prospect, in the near future, of obtaining protection consistent with the standards of the 1954 Convention in another State, the host State has discretion to provide a status that is more transitional in nature than that described in paragraphs 148-152 above. Separate considerations apply for those who voluntarily renounce their nationality as a matter of convenience or choice.<sup>100</sup>
154. In these cases, care must be taken to ensure that the criteria for determining whether an individual has a realistic prospect of obtaining protection elsewhere are narrowly construed.<sup>101</sup> In UNHCR's view protection can only be considered available in another country when a stateless person:
- is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality; or
  - enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.
155. With respect to acquisition or reacquisition of nationality, individuals must be able to avail themselves of a procedure that is easily accessible, both physically and financially, as well as one that is simple in terms of procedural steps and evidentiary requirements. Moreover, the acquisition/reacquisition procedure must be swift and the outcome guaranteed because it is non-discretionary where prescribed requirements are met.<sup>102</sup>
156. By contrast, other procedures for acquisition of nationality may not present a sufficiently reliable prospect of obtaining protection elsewhere and would therefore not justify providing merely a transitional status to stateless persons. For example, it would not suffice that the individual has access to naturalization procedures which, as a general rule, leave discretion in the hands of officials and have no guaranteed outcome. Similarly, procedures with vague requirements for the acquisition of nationality or those that would oblige an individual to be physically present in a country of former nationality where legal entry and residence are not guaranteed would also not suffice.

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<sup>100</sup> Please see further paragraphs 161-162 below.

<sup>101</sup> Moreover, safeguards are necessary to prevent the individual being left without a legal status anywhere and to ensure that any special circumstances justifying a residence permit are properly examined.

<sup>102</sup> An example would be a procedure through which former nationals can reacquire their nationality by simply signing a declaration at the nearest consular authority following production of their birth certificate or cancelled/expired passport, where the competent authority is then obliged to restore nationality. Similar procedures may also involve registration or the exercise of the right of option to acquire nationality.

157. As for an individual's ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted it upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that State.<sup>103</sup> Permission to return to another country on a short-term basis would not suffice.

**(a) Where statelessness results from loss/deprivation or good-faith voluntary renunciation of nationality**

158. In many cases an individual will cooperate in attempting to acquire or restore nationality or to make arrangements for return to a country of previous habitual residence. This might arise where an individual involuntarily renounced or lost his or her nationality. This could also arise where an individual renounced his or her former nationality consciously and in good faith with a view to acquiring another nationality. In some cases, on account of poorly drafted nationality laws such individuals must renounce their nationality in order to apply for another but are then unable to acquire the second nationality and are left stateless.

159. The best solution in such cases is reacquisition of the former nationality. Where a State determines that such individuals are stateless, but have the possibility of reacquiring their former nationality, the State would not need to provide them with a residence permit. Rather, they can be provided with some form of immigration status to allow the individuals concerned to remain briefly in the territory while making arrangements to move to the other State. Such temporary permission could be for as short a period as a few months and the rights to be enjoyed need not match those required when a residence permit is issued. Indeed, a status closer to that provided during the determination process may be justifiable.

160. States can extend temporary permission to stay where admission/readmission or reacquisition of nationality does not materialise through no fault of the individual. However, extensions can be limited in duration in order to strike a fair balance between facilitating the completion of admission/readmission or reacquisition efforts and providing a degree of certainty for the affected stateless person. If the time limit is reached and admission/readmission or reacquisition has not yet materialised despite the good faith attempts of the individual, it is then the responsibility of the State party to grant the individual the status generally accorded upon

<sup>103</sup> Paragraphs 20-22 of UNHCR, *Position on the return of persons not found to be in need of international protection to their countries of origin: UNHCR's Role*, November 2010, <http://www.unhcr.org/refworld/pdfid/4cea23c62.pdf> are to be read in light of the criteria set forth in this Handbook.

recognition as a stateless person; that is, a renewable residence permit with a complement of rights, including the right to work and receive a travel document.

**(b) Where statelessness results from voluntary renunciation of nationality as a matter of convenience or choice**

161. Some individuals voluntarily renounce a nationality because they do not wish to be nationals of a particular State or in the belief that this will lead to grant of a protection status in another country.<sup>104</sup> Re-admission to the State of former nationality, coupled with acquisition of that nationality, is the preferred solution in such situations. Where cooperation from the individual for readmission to another State or for reacquisition of nationality is lacking, the authorities are entitled to pursue their own discussions with the other State to secure admission of the individual concerned. In this context, other international obligations of the State of former nationality will be relevant, including those relating to prevention of statelessness upon renunciation of nationality and the right to enter one's own country.<sup>105</sup>
162. A State need not necessarily grant or renew permission for stay to such individuals. Nor would they be entitled to all of the rights foreseen by the 1954 Convention. Bar any other protection obstacles, involuntary return cannot be excluded in such cases, for example, where the former State of nationality is also the country of previous habitual residence and its authorities are prepared to grant permanent residence to the individual concerned.

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<sup>104</sup> International law recognises that every individual has a right to a nationality, but this does not extend to a right for individuals to choose a specific nationality. There is widespread acceptance of automatic conferral of nationality by States based on factors outside an individual's control, such as descent, birth on the territory, or residence in the territory at the moment of State succession.

<sup>105</sup> Please see, in particular, Article 7(1) of the 1961 Convention on the Reduction of Statelessness and Article 12(4) of the ICCPR. In addition, friendly relations and cooperation between States based on the principle of good faith require re-admission in such circumstances. Numerous agreements between States now facilitate this by providing for re-admission of stateless persons, including former nationals and former habitual residents. UNHCR may be able to play a role in this regard, please see paragraph (j) of UNHCR Executive Committee Conclusion No. 96 (LIV) of 2003 on the return of persons found not to be in need of international protection, <http://www.unhcr.org/refworld/docid/3f93b1ca4.html> in which the Executive Committee: Recommends, depending on the situation, that UNHCR complement the efforts of States in the return of persons found not to be in need of international protection by: (i) Promoting with States those principles which bear on their responsibility to accept back their nationals, as well as principles on the reduction of statelessness; (ii) Taking clear public positions on the acceptability of return of persons found not to be in need of international protection; (iii) Continuing its dialogue with States to review their citizenship legislation, particularly if it allows renunciation of nationality without at the same time ensuring that the person in question has acquired another nationality and could be used to stop or delay the return of a person to a country of nationality.



### (c) Consideration of local ties

163. Where an individual has developed close ties with a host State as a result of long-term residence and family links, conferral of the status normally granted upon recognition as a stateless person, that is a renewable residence permit with a complement of rights, would be appropriate, even where protection may be available in another State.<sup>106</sup> In some cases, this approach may be required to satisfy human rights obligations such as refraining from unlawful or arbitrary interference with privacy, family or home.<sup>107</sup>

## C. INDIVIDUALS IN THEIR “OWN COUNTRY”

164. As noted in paragraph 142 above, certain stateless persons can be considered to be in their “own country” in the sense envisaged by Article 12(4) of the ICCPR. Such persons include individuals who are long-term, habitual residents of a State which is often their country of birth. Being in their “own country” they have a right to enter and remain there with significant implications for their status under national law. Their profound connection with the State in question, often accompanied by an absence of links with other countries, imposes a political and moral imperative on the State to facilitate their full integration into society. The fact that these people are stateless in their “own country” is often a reflection of discriminatory treatment in the framing and application of nationality laws. Some will have been denied nationality despite being born and resident solely in that State; others may have been stripped of their nationality because of membership of a section of the community that has fallen out of political or social favour.<sup>108</sup>
165. The appropriate status for such individuals in their “own country” is nationality of the State in question. As set out in Part Two above, in these cases the correct mechanism for determining an individual’s or a population group’s status is one that is concerned with the restoration or conferral of nationality.<sup>109</sup> Recourse to a statelessness determination procedure will not generally be appropriate. If, however, individuals are expected to seek

<sup>106</sup> This is particularly so where the link with the other State is relatively tenuous. This is to be distinguished, however, from ties that are so profound that the individual is considered to be in his or her “own country”.

<sup>107</sup> Please see paragraphs 140-143 above.

<sup>108</sup> Of relevance in this regard are the prohibition on arbitrary deprivation of nationality found, *inter alia*, in Article 15(2) of the Universal Declaration of Human Rights and the prohibition against discrimination found in international human rights law, in particular the *jus cogens* prohibition on racial discrimination. The nature of a *jus cogens* norm is discussed in note 13 above.

<sup>109</sup> Please see paragraphs 58-61.

protection through such a mechanism, the status awarded on recognition shall include, at the very least, permanent residence with facilitated access to nationality.<sup>110</sup>

## D. STATUS FOR STATELESS PERSONS NOT COVERED BY THE 1954 CONVENTION

166. Many individuals who meet the stateless person definition in the 1954 Convention live in countries that are not party to this treaty. Nevertheless, the standards in the Convention and the practice of States parties may prove helpful to such countries in devising and implementing strategies to address statelessness in their territories, and regulating the status of stateless persons. In particular, States which are not yet party to the Convention may take note of the practice of providing identity papers and travel documents to stateless persons, measures which have already been adopted in several other non-Contracting States. In addition, all States would need to comply with their obligations under international human rights law, such as protection against arbitrary detention (Article 9(1) of the ICCPR) and, in the case of persons stateless *in situ*, the right to enter and remain in one's "own country" (Article 12(4) of the ICCPR).<sup>111</sup>
167. *De facto* stateless persons also fall outside of the protection of the 1954 Convention.<sup>112</sup> Nevertheless, as *de facto* stateless persons are unable to return immediately to their country of nationality, providing them at the very minimum with temporary permission to stay promotes a degree of stability. Thus, States may consider giving them a status similar to that recommended above in paragraph 159 for stateless persons who have the possibility of securing protection elsewhere. In many cases an interim measure of this nature will prove sufficient as return will become possible

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<sup>110</sup> Where States have created stateless populations in their territory, they may well be unwilling to introduce statelessness determination procedures or grant stateless persons the status recommended. In such cases UNHCR's efforts to secure solutions for the population in question may go beyond advocacy to technical advice and operational support for initiatives aimed at recognising the link between such individuals and the State through the grant of nationality.

<sup>111</sup> Please see further paragraphs 164-165 above.

<sup>112</sup> As noted in paragraph 7 above, there is no internationally accepted definition of *de facto* statelessness. According to recent efforts to define the term, *de facto* stateless persons possess a nationality, but are unable, or for valid reasons are unwilling, to avail themselves of the protection of a State of nationality. Please see further Section II.A. of the *Prato Conclusions*, note 4 above, which proposes the following operational definition for the term: *De facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.

through, for example, improved consular assistance or a change in policy with regard to consular assistance for such individuals.

168. Where the prospects of national protection appear more distant, it is recommended to enhance the status of *de facto* stateless persons through the grant of a residence permit similar to those granted to persons who are recognised as stateless pursuant to the 1954 Convention. In general, the fact that *de facto* stateless persons have a nationality means that return to their country of nationality is the preferred durable solution. However, where the obstacles to return prove intractable, practical and humanitarian considerations point towards local solutions through naturalization as the appropriate response.



# ANNEX I - 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS\*

## Preamble

### *The High Contracting Parties*

*Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

*Considering* that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

*Considering* that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

*Considering* that it is desirable to regulate and improve the status of stateless persons by an international agreement,

*Have agreed* as follows:

## CHAPTER I: GENERAL PROVISIONS

### ARTICLE 1

#### *Definition of the term "Stateless person"*

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

- (i) To 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;
- (ii) To 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;

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\* United Nations Treaty Series, vol. 360, p. 117

- (iii) To 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 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.

## **ARTICLE 2**

### *General obligations*

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

## **ARTICLE 3**

### *Non-discrimination*

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

## **ARTICLE 4**

### *Religion*

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

## **ARTICLE 5**

### *Rights granted apart from this convention*

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

## **ARTICLE 6**

### *The term “in the same circumstances”*

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

## **ARTICLE 7**

### *Exemption from reciprocity*

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.

The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

## **ARTICLE 8**

### *Exemption from exceptional measures*

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

## **ARTICLE 9**

### *Provisional measures*

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

## **ARTICLE 10**

### *Continuity of residence*

1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

## **ARTICLE 11**

### *Stateless seamen*

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

## **CHAPTER II: JURIDICAL STATUS**

## **ARTICLE 12**

### *Personal status*

1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall



be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

### **ARTICLE 13**

#### *Movable and immovable property*

The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

### **ARTICLE 14**

#### *Artistic rights and industrial property*

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

### **ARTICLE 15**

#### *Right of association*

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

### **ARTICLE 16**

#### *Access to courts*

1. A stateless person shall have free access to the Courts of Law on the territory of all Contracting States.

2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual

residence the treatment granted to a national of the country of his habitual residence.

### **CHAPTER III: GAINFUL EMPLOYMENT**

#### **ARTICLE 17**

##### *Wage-earning employment*

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

#### **ARTICLE 18**

##### *Self-employment*

The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

#### **ARTICLE 19**

##### *Liberal professions*

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

## CHAPTER IV: WELFARE

### ARTICLE 20

#### *Rationing*

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

### ARTICLE 21

#### *Housing*

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

### ARTICLE 22

#### *Public education*

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to stateless persons 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 and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

### ARTICLE 23

#### *Public relief*

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

## **ARTICLE 24**

### *Labour legislation and social security*

1. The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

- (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
- (b) Social security (legal provisions in respect of employment, injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
  - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
  - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

## CHAPTER V: ADMINISTRATIVE MEASURES

### ARTICLE 25

#### *Administrative assistance*

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

### ARTICLE 26

#### *Freedom of movement*

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

### ARTICLE 27

#### *Identity papers*

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

### ARTICLE 28

#### *Travel documents*

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall

in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

## **ARTICLE 29**

### *Fiscal charges*

1. The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

## **ARTICLE 30**

### *Transfer of assets*

1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

## **ARTICLE 31**

### *Expulsion*

1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only 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 evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

## **ARTICLE 32**

### *Naturalization*

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

## **CHAPTER VI: FINAL CLAUSES**

## **ARTICLE 33**

### *Information on national legislation*

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

## **ARTICLE 34**

### *Settlement of disputes*

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

## **ARTICLE 35**

### *Signature, ratification and accession*

1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.

2. It shall be open for signature on behalf of:

- (a) Any State Member of the United Nations;
- (b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and
- (c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

## **ARTICLE 36**

### *Territorial application clause*

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

## **ARTICLE 37**

### *Federal clause*

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.



## **ARTICLE 38**

### *Reservations*

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

## **ARTICLE 39**

### *Entry into force*

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

## **ARTICLE 40**

### *Denunciation*

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

## **ARTICLE 41**

### *Revision*

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

## **ARTICLE 42**

### *Notifications by the Secretary-General of the United Nations*

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-Member States referred to in article 35:

- (a) Of signatures, ratifications and accessions in accordance with article 35;
- (b) Of declarations and notifications in accordance with article 36;
- (c) Of reservations and withdrawals in accordance with article 38;
- (d) Of the date on which this Convention will come into force in accordance with article 39;
- (e) Of denunciations and notifications in accordance with article 40;
- (f) Of requests for revision in accordance with article 41.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at New York, this twenty-eighth day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-Member States referred to in article 35.

## **SCHEDULE**

### *Paragraph 1*

1. The travel document referred to in article 28 of this Convention shall indicate that the holder is a stateless person under the terms of the Convention of 28 September 1954.

2. The document shall be made out in at least two languages, one of which shall be English or French.

3. The Contracting States will consider the desirability of adopting the model travel document attached hereto.

### *Paragraph 2*

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult.

### *Paragraph 3*

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

#### *Paragraph 4*

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

#### *Paragraph 5*

The document shall have a validity of not less than three months and not more than two years.

#### *Paragraph 6*

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities may be authorized to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to stateless persons no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

#### *Paragraph 7*

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

#### *Paragraph 8*

The competent authorities of the country to which the stateless person desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

#### *Paragraph 9*

1. The Contracting States undertake to issue transit visas to stateless persons who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

#### *Paragraph 10*

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

#### *Paragraph 11*

When a stateless person has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28 shall be that of the competent authority of that territory, to which the stateless person shall be entitled to apply.

*Paragraph 12*

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

*Paragraph 13*

1. A travel document issued in accordance with article 28 of this Convention shall, unless it contains a statement to the contrary, entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity. In any case the period during which the holder may return to the country issuing the document shall not be less than three months, except when the country to which the stateless person proposes to travel does not insist on the travel document according the right of re-entry.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

*Paragraph 14*

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

*Paragraph 15*

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

*Paragraph 16*

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not ipso facto confer on these authorities a right of protection.

**MODEL TRAVEL DOCUMENT**

[not reproduced here]

# ANNEX II - 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS\*

## The Contracting States,

**Acting** in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954,

**Considering** it desirable to reduce statelessness by international agreement,

**Have agreed** as follows:

## **ARTICLE 1**

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

- (a) At birth, by operation of law, or
- (b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:

- (a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
- (c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

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\* United Nations Treaty Series, vol. 989, p. 175

(d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this Article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this Article, such application shall not be refused.

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this Article subject to one or more of the following conditions:

- (a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;
- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
- (c) that the person concerned has always been stateless.

## **ARTICLE 2**

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

## **ARTICLE 3**

For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

#### **ARTICLE 4**

1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

- (a) at birth, by operation of law, or
- (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this Article subject to one or more of the following conditions:

- (a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;
- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
- (c) that the person concerned has not been convicted of an offence against national security;
- (d) that the person concerned has always been stateless.

#### **ARTICLE 5**

1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of Article 1 of this Convention.

## **ARTICLE 6**

If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

## **ARTICLE 7**

1. (a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(b) The provisions of sub-paragraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in Articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this Article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this Article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

## **ARTICLE 8**

1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this Article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of Article 7, it is permissible that a person should lose his nationality;



(b) where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

- (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
- (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

#### **ARTICLE 9**

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

#### **ARTICLE 10**

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

#### **ARTICLE 11**

The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

## **ARTICLE 12**

1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of Article 1 or of Article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of Article 1 or of Article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2. The provisions of paragraph 4 of Article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of Article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

## **ARTICLE 13**

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

## **ARTICLE 14**

Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

## **ARTICLE 15**

1. This Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this Article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-

General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this Article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

## **ARTICLE 16**

1. This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This Convention shall be open for signature on behalf of:

- (a) any State Member of the United Nations;
- (b) any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;
- (c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. This Convention shall be open for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

## **ARTICLE 17**

1. At the time of signature, ratification or accession any State may make a reservation in respect of Articles 11, 14 or 15.

2. No other reservations to this Convention shall be admissible.

## **ARTICLE 18**

1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this Article, whichever is the later.

## **ARTICLE 19**

1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.

2. In cases where, in accordance with the provisions of Article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.

## **ARTICLE 20**

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in Article 16 of the following particulars:

- (a) signatures, ratifications and accessions under Article 16;
- (b) reservations under Article 17;
- (c) the date upon which this Convention enters into force in pursuance of Article 18;
- (d) denunciations under Article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with Article 11, of such a body as therein mentioned.

## **ARTICLE 21**

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

IN WITNESS of the undersigned Plenipotentiaries have signed this Convention.

DONE at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General of the United Nations to all Members of the United Nations and to the non-member States referred to in Article 16 of this Convention.

## ANNEX III - LIST OF STATES PARTIES TO THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS AND THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS

Country	1954 Convention*	1961 Convention*
Albania	23 Jun 2003 a	9 Jul 2003 a
Algeria	15 Jul 1964 a	
Antigua and Barbuda	25 Oct 1988 d	
Argentina	1 Jun 1972 a	
Armenia	18 May 1994 a	18 May 1994 a
Australia	13 Dec 1973 a	13 Dec 1973 a
Austria	8 Feb 2008 a	22 Sep 1972 a
Azerbaijan	16 Aug 1996 a	16 Aug 1996 a
Barbados	6 Mar 1972 d	
Belgium	27 May 1960 r	
Belize	14 Sep 2006 a	
Benin	8 Dec 2011 a	8 Dec 2011 a
Bolivia (Plurinational State of)	6 Oct 1983 a	6 Oct 1983 a
Bosnia and Herzegovina	1 Sep 1993 d	13 Dec 1996 a
Botswana	25 Feb 1969 d	
Brazil	13 Aug 1996 r	25 Oct 2007 a
Bulgaria	22 Mar 2012 a	22 Mar 2012 a
Burkina Faso	1 May 2012 a	
Canada		17 Jul 1978 a
Chad	12 Aug 1999 a	12 Aug 1999 a
China <sup>†</sup>		
Costa Rica	2 Nov 1977 r	2 Nov 1977 a
Côte d'Ivoire	3 Oct 2013 a	3 Oct 2013 a
Croatia	12 Oct 1992 d	22 Sep 2011 a
Czech Republic	19 Jul 2004 a	19 Dec 2001 a

\* Accession (a), Succession (d), Ratification (r)

<sup>†</sup> Upon resuming the exercise of sovereignty over Hong Kong, on 10 June 1997 China notified the Secretary-General that the responsibility for the international rights and obligations of Hong Kong with respect to the 1954 Convention will be assumed by the Government of the People's Republic of China.

Country	1954 Convention	1961 Convention
Denmark	17 Jan 1956 r	11 Jul 1977 a
Ecuador	2 Oct 1970 r	24 Sep 2012 a
Fiji	12 Jun 1972 d	
Finland	10 Oct 1968 a	7 Aug 2008 a
France	8 Mar 1960 r	
Georgia	23 Dec 2011 a	
Germany	26 Oct 1976 r	31 Aug 1977 a
Greece	4 Nov 1975 a	
Guatemala	28 Nov 2000 r	19 Jul 2001 a
Guinea	21 Mar 1962 a	
Honduras	1 Oct 2012 r	18 Dec 2012 a
Hungary	21 Nov 2001 a	12 May 2009 a
Ireland	17 Dec 1962 a	18 Jan 1973 a
Israel	23 Dec 1958 r	
Jamaica		9 Jan 2013 a
Italy	3 Dec 1962 r	
Kiribati	29 Nov 1983 d	29 Nov 1983 d
Latvia	5 Nov 1999 a	14 Apr 1992 a
Lesotho	4 Nov 1974 d	24 Sep 2004 a
Liberia	11 Sep 1964 a	22 Sep 2004 a
Libya	16 May 1989 a	16 May 1989 a
Liechtenstein	25 Sep 2009 r	25 Sep 2009 a
Lithuania	7 Feb 2000 a	22 Jul 2013 a
Luxembourg	27 Jun 1960 r	
Madagascar <sup>1</sup>	[20 Feb 1962 a]	
Malawi	7 Oct 2009 a	
Mexico	7 Jun 2000 a	
Montenegro	23 Oct 2006 d	5 Dec 2013 a
Netherlands	12 Apr 1962 r	13 May 1985 r
New Zealand		20 Sep 2006 a
Nicaragua	15 Jul 2013 a	29 Jul 2013 a
Niger		17 Jun 1985 a
Nigeria	20 Sep 2011 a	20 Sep 2011 a
Norway	19 Nov 1956 r	11 Aug 1971 a
Panama	2 Jun 2011 a	2 Jun 2011 a
Paraguay		6 Jun 2012 a
Peru	23 Jan 2014 a	
Philippines	22 Sep 2011 r	
Portugal	1 Oct 2012 a	1 Oct 2012 a

<sup>1</sup> By a notification received by the Secretary-General on 2 April 1965, the Government of Madagascar denounced the Convention; the denunciation took effect on 2 April 1966.

Country	1954 Convention	1961 Convention
Republic of Korea	22 Aug 1962 a	
Republic of Moldova	19 Apr 2012 a	19 Apr 2012 a
Romania	27 Jan 2006 a	27 Jan 2006 a
Rwanda	4 Oct 2006 a	4 Oct 2006 a
Senegal	21 Sep 2005 a	21 Sep 2005 a
Serbia	12 Mar 2001 d	7 Dec 2011 a
Slovakia	3 Apr 2000 a	3 Apr 2000 a
Slovenia	6 Jul 1992 d	
Spain	12 May 1997 a	
St. Vincent and the Grenadines	27 Apr 1999 d	
Swaziland	16 Nov 1999 a	16 Nov 1999 a
Sweden	2 Apr 1965 r	19 Feb 1969 a
Switzerland	3 Jul 1972 r	
The former Yugoslav Republic of Macedonia	18 Jan 1994 d	
Trinidad and Tobago	11 Apr 1966 d	
Tunisia	29 Jul 1969 a	12 May 2000 a
Turkmenistan	7 Dec 2011 a	29 Aug 2012 a
Uganda	15 Apr 1965 a	
Ukraine	25 Mar 2013 a	25 Mar 2013 a
United Kingdom of Great Britain and Northern Ireland	16 Apr 1959 r	29 Mar 1966 r
Uruguay	2 Apr 2004 a	21 Sep 2001 a
Zambia	1 Nov 1974 d	
Zimbabwe	1 Dec 1998 d	

## **ANNEX IV - EXCERPTS FROM GENERAL ASSEMBLY RESOLUTIONS**

**Resolution adopted by the General Assembly on 23 December 1994**  
A/RES/49/169, 24 February 1995

### **49/169, Office of the United Nations High Commissioner for Refugees**

The General Assembly, ...

20. Calls upon States to assist the High Commissioner to fulfil her responsibilities, under General Assembly resolution 3274 (XXIX) of 10 December 1974, with respect to the reduction of statelessness, including the promotion of accessions to and full implementation of international instruments relating to statelessness;

**Resolution adopted by the General Assembly on 21 December 1995**  
A/RES/50/152, 9 February 1996

### **50/152, Office of the United Nations High Commissioner for Refugees**

The General Assembly,

...

Concerned that statelessness, including the inability to establish one's nationality, may result in displacement, and stressing, in this regard, that the prevention and reduction of statelessness and the protection of stateless persons are important also in the prevention of potential refugee situations,

...

14. Encourages the High Commissioner to continue her activities on behalf of stateless persons, as part of her statutory function of providing international protection and of seeking preventive action, as well as her responsibilities under General Assembly resolutions 3274 (XXIV) of 10 December 1974 and 31/36 of 30 November 1976;

15. Requests the Office of the High Commissioner, in view of the limited number of States party to these instruments, actively to promote accession to the 1954 Convention relating to the Status of Stateless Persons<sup>1</sup> and the 1961 Convention on the reduction of statelessness,<sup>2</sup> as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States; ...

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<sup>1</sup> United Nations, Treaty Series, vol.360, No.5158.

<sup>2</sup> Ibid., vol. 989, No. 14458.



**Resolution adopted by the General Assembly on 19 December 2006**  
A/RES/61/137, 25 January 2007

**61/137. Office of the United Nations High Commissioner for Refugees**

The General Assembly,...

2. Welcomes the important work undertaken by the Office of the United Nations High Commissioner for Refugees and its Executive Committee in the course of the year, and notes in this context the adoption of the conclusion on women and girls at risk and the conclusion on identification, prevention and reduction of statelessness and protection of stateless persons,<sup>3</sup> which are aimed at strengthening the international protection regime, consistent with the Agenda for Protection,<sup>4</sup> and at assisting Governments in meeting their protection responsibilities in today's changing international environment, including by promoting the progressive implementation of mechanisms and standards through relevant national public policies supported by the international community;...

4. Notes that sixty-two States are now parties to the 1954 Convention relating to the Status of Stateless Persons<sup>7</sup> and that thirty-three States are parties to the 1961 Convention on the Reduction of Statelessness,<sup>8</sup> encourages States that have not done so to give consideration to acceding to these instruments, notes the work of the High Commissioner in regard to identifying stateless persons, preventing and reducing statelessness, and protecting stateless persons, and urges the Office of the High Commissioner to continue to work in this area in accordance with relevant General Assembly resolutions and Executive Committee conclusions;...

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<sup>3</sup> Ibid., chap. III, sects. A and B.

<sup>4</sup> Ibid., *Fifty-seventh Session, Supplement No. 12A (A/57/12/Add.1)*, annex IV.

<sup>5</sup> United Nations, Treaty Series, vol. 360, No. 5158.

<sup>6</sup> Ibid., vol. 989, No. 14458.

# ANNEX V - EXCERPTS FROM UNHCR EXECUTIVE COMMITTEE CONCLUSIONS

## Conclusion on Prevention and Reduction of Statelessness and Protection of Stateless Persons

### No. 78 (XLVI) – 1995

20 October 1995

*The Executive Committee,*

*Recognizing* the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality,

*Concerned* that statelessness, including the inability to establish one's nationality, may result in displacement,

*Stressing* that the prevention and reduction of statelessness and the protection of stateless persons are important in the prevention of potential refugee situations,

- (a) *Acknowledges* the responsibilities already entrusted to the High Commissioner for stateless refugees and with respect to the reduction of statelessness, and encourages UNHCR to continue its activities on behalf of stateless persons, as part of its statutory function of providing international protection and of seeking preventive action, as well as its responsibility entrusted by the General Assembly to undertake the functions foreseen under Article 11 of the 1961 Convention on the Reduction of Statelessness;...
- (c) Requests UNHCR actively to promote accession to the 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, in view of the limited number of States parties to these instruments, as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States;...

## **General Conclusion on International Protection**

### **No. 95 (LIV) – 2003**

10 October 2003

*The Executive Committee, ...*

- (v) Encourages States to co-operate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person's situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious;

## **Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons**

### **No. 106 (LVII) – 2006**

6 October 2006

*The Executive Committee,*

*Remaining* deeply concerned with the persistence of statelessness problems in various regions of the world and the emergence of new situations of statelessness,...

*Reaffirming* the responsibilities given to the High Commissioner by the United Nations General Assembly to contribute to the prevention and reduction of statelessness and to further the protection of stateless persons,

*Recalling* its Conclusion No 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons as well as Conclusions 90 (LII), 95 (LIV), 96 (LIV), and Conclusions 99 (LV) and 102 (LVI) with regard to solving protracted statelessness situations,

- (a) *Urges* UNHCR, in cooperation with governments, other United Nations and international as well as relevant regional and non-governmental organizations, to strengthen its efforts in this domain by pursuing targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons;

### *Identification of Statelessness*

- (b) *Calls on* UNHCR to continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality residing in their territory, in cooperation with other United Nations agencies, in particular UNICEF

and UNFPA as well as DPA, OHCHR and UNDP within the framework of national programmes, which may include, as appropriate, processes linked to birth registration and updating of population data;

- (c) *Encourages* UNHCR to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem;
- (d) *Encourages* those States which are in possession of statistics on stateless persons or individuals with undetermined nationality to share those statistics with UNHCR and calls on UNHCR to establish a more formal, systematic methodology for information gathering, updating, and sharing;
- (e) *Encourages* UNHCR to include in its biennial reports on activities related to stateless persons to the Executive Committee, statistics provided by States and research undertaken by academic institutions and experts, civil society and its own staff in the field on the magnitude of statelessness;
- (f) *Encourages* UNHCR to continue to provide technical advice and operational support to States, and to promote an understanding of the problem of statelessness, also serving to facilitate the dialogue between interested States at the global and regional levels;
- (g) *Takes note* of the cooperation established with the Inter-Parliamentary Union (IPU) in the field of nationality and statelessness, *and notes further the 2005 Nationality and Statelessness Handbook for Parliamentarians* which is being used in national and regional parliaments to raise awareness and build capacity among State administrations and civil society; ...

#### *Protection of Stateless Persons*

- (s) *Encourages* States to give consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons and, in regard to States Parties, to consider lifting reservations;
- (t) *Requests* UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons;
- (u) *Encourages* States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons to treat stateless persons

lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation;

- (v) *Encourages* UNHCR to implement programmes, at the request of concerned States, which contribute to protecting and assisting stateless persons, in particular by assisting stateless persons to access legal remedies to redress their stateless situation and in this context, to work with NGOs in providing legal counselling and other assistance as appropriate;
- (w) *Calls on States* not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law and also calls on States Parties to the 1954 Convention relating to the Status of Stateless Persons to fully implement its provisions;
- (x) *Requests* UNHCR to further improve the training of its own staff and those of other United Nations agencies on issues relating to statelessness to enable UNHCR to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions.

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**UNHCR**  
The UN Refugee Agency

# HANDBOOK ON PROTECTION OF STATELESS PERSONS

UNDER THE 1954 CONVENTION  
RELATING TO THE STATUS  
OF STATELESS PERSONS

Geneva, 2014



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