UNHCR
The UN Refugee Agency

GOOD PRACTICE PAPERS
ACTION 1

Resolving Existing Major Situations of Statelessness

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UNHCR is publishing a series of Good Practices Papers to help States, with the support of other stakeholders, achieve the goals of its Campaign to End Statelessness within 10 Years. These goals are to:

Resolve the major situations of statelessness that exist today

Prevent the emergence of new cases of statelessness

Improve the identification and protection of stateless populations

Each Good Practices Paper corresponds to one of the 10 Actions proposed in UNHCR's *Global Action Plan to End Statelessness: 2014 – 2024* and highlights examples of how States, UNHCR and other stakeholders have addressed statelessness in a number of countries. Solutions to the problem of statelessness must be tailored to suit the particular circumstances prevalent in a country; as such, these examples are not intended to serve as a blueprint for strategies to counter statelessness everywhere. However, governments, NGOs, international organizations and UNHCR staff seeking to implement the *Global Action Plan* will be able to adapt the ideas they find in these papers to their own needs.

Background

Action 1 of the Global Action Plan calls on States to resolve major situations of statelessness that exist today. Many large-scale and protracted situations of statelessness trace their origins to the time of a State's creation, when particular groups of individuals were excluded from the initial body of citizens or subsequently deprived of their nationality for discriminatory reasons. Resolving such situations usually requires sustained advocacy for legislative and policy changes. Technical support from UNHCR may also be needed.

This Good Practices Paper on Action 1 was first published in 2015 (2015 Good Practices Paper). The 2015 Good Practices Paper highlights key elements in the successful resolution of major situations of statelessness in certain countries. This second edition published in 2022 has been updated to reflect important developments in the country examples provided in the 2015 paper and expanded to include new country case studies. While Action 1 refers to major situations of statelessness, the good practices covered by this paper are relevant to the resolution of statelessness generally and not only limited to addressing large scale and protracted situations of statelessness.

This paper illustrates that States generally address and resolve situations of statelessness through law and policy reform enabling stateless persons to acquire nationality either: 1) automatically by operation of law, 2) through a simple registration process, or 3) through the process of naturalization.

States that have opted for the first approach have addressed statelessness by amending the rules for acquisition of nationality so that stateless persons are automatically considered nationals, provided that they fulfil specific objective criteria that demonstrate their strong links to the country. Most commonly, these criteria cover stateless individuals born in the territory or resident there before a specific date (or who are descended from such persons). This is usually the most effective way to resolve large-scale statelessness, as it does not require the individuals concerned to take any action to acquire a nationality. However, procedures will need to be in place to ensure that these individuals can acquire documents that prove they are nationals.

The second and third approaches listed above both involve non-automatic procedures to acquire nationality. The difference between the second and third approach is that

the grant of nationality is non-discretionary where nationality is acquired through registration, while naturalization is usually a more elaborate process and often discretionary in nature. Non-automatic procedures are generally a less effective way to resolve statelessness because they require the person concerned to take certain steps to acquire nationality. For various reasons, including lack of information about the right to seek citizenship and the related procedures, or problems of physical access or poverty (if fees or other costs are involved), some stateless persons may not be able to benefit from such procedures. In addition, naturalization procedures usually give government authorities the discretion to reject applicants and may in some cases also lead to lengthy delays in the grant of nationality.

In accordance with article 32 of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), it is recommended that States Parties facilitate, as far as possible, the naturalization of stateless persons. They can do so by creating expedited procedures, charging lower fees, or reducing residence or other requirements, for example.[1] One possible approach is establishing a Statelessness Determination Procedure (SDP) to identify stateless persons and as a pathway to acquisition of nationality through facilitated naturalization. It should however be noted that SDPs are generally not the best option for resolving statelessness in the context of in situ stateless populations.[2] UNHCR's Good Practices Paper on Action 6 highlights specific good practices in this respect.[3]

Where States are willing to end statelessness but lack the capacity to do so, UNHCR can provide support, usually in coordination with national authorities and civil society, and sometimes regional organizations or UN partners. Such assistance may include:

- filling capacity gaps in administrative procedures;
- raising awareness through public information campaigns;
- providing legal advice to stateless individuals and guidance on how to access procedures;

1 See Article 32 of the Convention.

2 Paragraphs 58 – 61, UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: https://www.refworld.org/docid/53b676aa4.html

3 UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons, available at: https://www.refworld.org/docid/5f203d0e4.html

- supporting community outreach and mobile teams to ensure that stateless persons have access to nationality procedures and documents; and

- strengthening integration efforts, national-reconciliation activities and confidence-building initiatives.

Below, some key elements in the successful resolution of situations of statelessness are highlighted through examples of good practices in a number of countries.

LAW OR POLICY REFORM ENABLING AUTOMATIC ACQUISITION OF NATIONALITY

- **Sri Lanka – statelessness following migration and State succession**
  Stateless Hill Tamils acquired nationality through law reform. A concerted nationality campaign helped almost 200,000 members of the community to acquire proof of their new nationality.

- **Bangladesh – statelessness following migration and State succession**
  Statelessness among members of the Urdu-speaking, or "Bihari", community was resolved after Government policy was changed to accommodate a High Court ruling that recognized this group as nationals.

- **Kyrgyzstan – gradual resolution of statelessness following State succession**
  Implementation of an innovative citizenship law has led to the complete resolution of statelessness among former Soviet citizens and more recent arrivals.

LAW OR POLICY REFORM ENABLING ACQUISITION OF NATIONALITY BY REGISTRATION

- **Brazil – statelessness caused by a legal obstacle preventing children born to nationals abroad from acquiring nationality**
  A sustained advocacy campaign by civil society, the media and politicians resulted in constitutional reform which enabled stateless children born abroad to Brazilian parents to acquire Brazilian nationality upon registration at a Brazilian consulate.

- **Malaysia – statelessness following historical migration and independence from colonial rule**
  Multiple registration campaigns conducted jointly by a local grassroots organization and the Government of Malaysia led to a gradual resolution of statelessness among persons of Indian origin.

ACQUISITION OF NATIONALITY THROUGH NATURALIZATION

- **Russian Federation – statelessness following State succession**
  Implementation of legal and administrative reforms has facilitated the naturalization of hundreds of thousands of stateless former Soviet citizens.

- **Turkmenistan – statelessness following State succession**
  A Government-led registration campaign verified the nationality status of undocumented former Soviet citizens living in the country. This has paved the way for the naturalization of those who are stateless, with gradual processing of their cases and grant of nationality by decree.

- **Viet Nam – statelessness among former refugees and among women married to foreigners**
  Reform of the nationality law and implementation of an action plan involving national and local authorities allowed for the naturalization of former refugees from Cambodia who had become stateless. Reforms to the nationality law also addressed the situation of women who became stateless following marriage to a foreign national.

- **Kenya – statelessness following historical migration and independence from colonial rule**
  Constitutional and legislative reform led to the gradual resolution of statelessness among members of the Makonde tribe.

COMMON THEMES IN ALL RESPONSES TO ADDRESS STATELESSNESS SITUATIONS

- States **identified and acknowledged the existence of protracted situations of statelessness** in their territory.
- UNHCR, civil society and other actors, undertook **targeted advocacy** and provided **technical advice** to States.
- States demonstrated the **political will** to resolve statelessness.
- **Collaboration among a broad range of State institutions** allowed for both law reform and implementation of changes.

Law or policy reform enabling automatic acquisition of nationality

Sri Lanka

- **Political awareness** that statelessness persisted in the Hill Tamil community in Sri Lanka helped to spur reforms.
- **A new law in 2003 provided for the automatic grant of nationality** to some individuals and the chance to acquire **nationality by declaration** to others, with **facilitated procedures** for the acquisition of proof of nationality.
- **UNHCR collaborated with the Government of Sri Lanka and the Ceylon Workers Congress** to launch a **nationality campaign** that resulted in the **distribution of documentation** confirming Sri Lankan nationality to 190,000 Hill Tamils.
- Key elements of the nationality campaign included **extensive awareness-raising and media outreach** in local languages. A corps of volunteers was trained to conduct the campaign, while **mobile clinics** were deployed to **provide legal advice** to the affected populations and collect application forms for processing by the Government.
- **UNHCR and a broad range of stakeholders undertook follow-up activities** to ensure Hill Tamils received documentation confirming their Sri Lankan citizenship and to promote their social and economic integration into Sri Lankan society.
- Greater awareness of statelessness resulted in more **legislative reform** aimed at reducing statelessness among other groups in Sri Lanka.

Statelessness among the Hill Tamils

Sri Lanka represents one of the best examples of how legal and policy reform, combined with a citizenship campaign, can resolve a long-standing situation of statelessness in a short period of time.

The stateless population in Sri Lanka consisted mainly of individuals descended from laborers brought over from India by the British between 1820 and 1840 to work on tea plantations. They are commonly referred to as "Tamils of Recent Indian Origin" or "Hill Tamils." The majority of Hill Tamils have continued to live and work in tea plantation areas, though some have been displaced to northern parts of Sri Lanka as a result of the waves of conflict that have affected Sri Lanka since the 1980s.

Shortly after Sri Lanka (then called Ceylon) gained its independence, the 1948 Ceylon Citizenship Act and the 1949 Indian and Pakistani Residents Act were passed. Both laws discriminated against the Hill Tamils. The Ceylon Citizenship Act required that those born before independence prove that two generations of their families had been born in Sri Lanka. Furthermore, the Indian and Pakistani Residents Act required a seven or ten-year period of uninterrupted residence, respectively, and a specific level of income for an individual to qualify for citizenship. The Hill Tamils could not meet these requirements, rendering them stateless.

A census conducted in 1964 estimated there were 168,000 Hill Tamils without citizenship. Agreements were reached with India in 1964 and 1974 to address statelessness among the Hill Tamils. Under the agreements, Sri Lanka would grant citizenship to 375,000 Hill Tamils, while India would grant citizenship to 600,000 members of the community and repatriate them. A total of 506,000 people applied for Indian citizenship and 470,000 applied to become Sri Lankan citizens.

However, implementation of these agreements was slow and incomplete. Many of those who applied for Sri Lankan citizenship did not receive documentation confirming their nationality. As for those who applied for Indian citizenship, by 1982 there were 86,000 applications still pending with the Indian authorities, while 90,000 Hill Tamils who had been issued with Indian passports had not left Sri Lanka. In 1982, India informed Sri Lanka that the implementation periods for the 1964 and 1974 agreements had elapsed and it was no longer required to process claims for citizenship by and repatriation of Hill

Tamils who remained in Sri Lanka. Although Sri Lanka disputed this claim, the last Hill Tamil to be repatriated to India left in 1984, whereupon India no longer considered any Hill Tamils in Sri Lanka as possessing Indian nationality.

Law reform automatically granting Sri Lankan nationality to Hill Tamils

STEPS IN THE 1980S:

As many of the Hill Tamils remained stateless and had few options but to continue working on tea plantations, the Ceylon Worker's Congress (CWC), an organization that is both a trade union and a political party, took up their cause. The CWC began advocating for legal reforms to resolve the Tamils' statelessness, leading in the 1980s to the adoption of a series of laws to address the problem.

A first step was achieved with the Grant of Citizenship to Stateless Persons Act, No. 5 of 1986 (1986 Act).[4] The Act granted the right to acquire Sri Lankan citizenship through registration to two groups: those who should have acquired Sri Lankan citizenship pursuant to the bilateral agreements, but had not done so; and 94,000 persons who were originally to apply for Indian citizenship under the bilateral agreements, but had also failed to do so. Citizenship by registration could only be granted by the Minister to applicants who took an oath, which had to be registered, and to whom a certificate of registration confirming compliance with the procedure was given. The complexity of this process prevented many who were qualified to acquire citizenship from doing so.

The 1986 Act was followed by the Grant of Citizenship to Certain Stateless Persons (Special Provisions) Act, No. 39 of 1988 (1988 Act).[5] The 1988 Act granted automatic Sri Lankan citizenship (as opposed to citizenship by registration) to all stateless persons of Indian origin lawfully residing in Sri Lanka who were not covered by the 1986 Act. Pursuant to the 1988 Act, those qualifying for automatic Sri Lankan citizenship were to apply for and obtain a citizenship certificate from the Commissioner for the Registration of Persons of Indian Origin.

4 Grant of Citizenship to Stateless Persons Act, No. 5 of 1986 [Sri Lanka], 21 February 1987, available at: http://www.unhcr.org/refworld/docid/3ae6b5081c.html

5 Grant of Citizenship to Stateless Persons (Special Provisions) Act, No. 39 of 1988 [Sri Lanka], 11 November 1988, available at: http://www.unhcr.org/refworld/docid/3ae6b5084.html

Despite the positive steps taken to resolve statelessness through the 1986 and 1988 acts, implementation of these laws remained problematic, particularly in light of the complicated registration process set out in the 1986 Act and the cumbersome process of obtaining citizenship certificates set forth in the 1998 Act. The CWC and some community groups continued to advocate for an end to the plight of the stateless Hill Tamils in Sri Lanka, who in 2003 were estimated to number some 300,000.

STEPS IN 2003:

A new law to resolve statelessness among the Hill Tamils was passed in 2003. According to the Grant of Citizenship to Persons of Indian Origin Act, No. 153 of 2003 (2003 Act),[6] all persons of Indian origin who had been residing in Sri Lanka since October 1964 and their descendants were recognized as Sri Lankan nationals. Following lessons learned from the implementation of the 1986 and 1998 Acts, the 2003 Act granted nationality on an automatic basis and introduced streamlined procedures for Hill Tamils to acquire proof of nationality. Furthermore, the 2003 Act provided for nationality acquisition by declaration for Hill Tamils who had received Indian passports but had continued to live in Sri Lanka and were no longer considered nationals of India.

As such, the 2003 Act established two simplified procedures for those who qualified as Sri Lankan citizens to obtain proof of this fact. Hill Tamils who never possessed any citizenship documents could make a "general declaration," countersigned by a justice of the peace, as proof of their citizenship, rather than go through the lengthy process of obtaining citizenship certificates as prescribed by the 1988 Act. Hill Tamils who held Indian passports were required to sign a "special declaration" affirming their will to voluntarily acquire Sri Lankan citizenship, thereby renouncing any possible outstanding right to Indian citizenship. This was required because dual nationality is not permitted by India. These special declarations were to be countersigned by the Commissioner for the Registration of Persons of Indian Origin in Colombo and an acknowledgement of this approval returned to the individual concerned.

6 Grant of Citizenship to Persons of Indian Origin Act. No. 153, [Sri Lanka], 153, 23 September 2003, available at: http://www.unhcr.org/refworld/docid/45af77952.html This Act was accompanied by a separate legislative measure applying the provisions of this law as amendments to the 1948 Citizenship Act, Citizenship (Amendment) Act, No. 16 of 2003 [Sri Lanka], No. 16 of 2003, 1 April 2003, available at: http://www.unhcr.org/refworld/docid/4e6625b92.html

Hill Tamil nationality campaign

The successful reduction of statelessness among the Hill Tamils was due not only to the adoption of laws, such as the 2003 Act, but also to the readiness of the Sri Lankan Government to work with UNHCR, the CWC and Hill Tamil community organizers. Pursuant to its statelessness mandate, UNHCR approached the Sri Lankan Government while the legislative reform process was underway, offering technical and logistical assistance to provide citizenship documentation to Hill Tamils. Together, the CWC and UNHCR designed a nationality campaign, including a scheme to deploy volunteers to the plantation areas to collect applications for citizenship documentation. This plan was approved by the Sri Lankan Government and funded in large part by UNHCR.

UNHCR and the CWC deployed fifty mobile clinics to tea plantation areas, distributing and collecting the relevant forms from Hill Tamils who wished to make either a "general declaration" or "special declaration" for the appropriate counter-signature or acknowledgement by the Government. The campaign started in late November 2003, with a nationwide media drive using the major Tamil-, Sinhala- and English-language newspapers as well as television and radio to explain the law and inform the public about the mobile clinics.

UNHCR and the CWC also trained 500 volunteers who had signed up to assist with the mobile clinics. A one-day workshop was held to brief them on statelessness, the history of Sri Lankan nationality laws since 1948 and the eligibility criteria for citizenship under the 2003 Act. The volunteers were coached on how to answer the questions that would commonly arise and complete and register the relevant forms. Teams of at least six volunteers and a designated leader were established for each of the fifty mobile clinics. Each team leader had to be fluent in Sinhala and Tamil, as well as able to speak basic English, and each received special training.

The ten-day nationality campaign began on 1 December 2003 with the opening of the fifty mobile clinics in tea-plantation areas. The campaign encountered some challenges in producing the large number of application forms needed and in ensuring that photocopying, stamping and registration systems were fully functional at all mobile clinics. Another problem was the refusal of some tea-plantation managers to allow their workers to leave their jobs to attend the mobile clinics. To reach as many of these workers as possible, campaign volunteers set up clinics on the outskirts of plantations and worked overtime, including on weekends.

The nationality campaign was successful in processing, registering and providing documentation confirming the Sri Lankan citizenship of 190,000 Hill Tamils. Of this number, 72,000 were Hill Tamils with expired Indian passports who had to make a "special declaration", facilitated by the nationality campaign. The rest were Hill Tamils who had never previously possessed any citizenship.

Although extremely effective, the December 2003 campaign was unable to deploy to all tea plantation areas. It could also not reach areas in northern and eastern Sri Lanka where approximately 10,000 Hill Tamils had been displaced from the plantation areas. To remedy this, UNHCR launched a supplementary small-scale nationality campaign in the north and east of Sri Lanka in 2004. This followed the successful model of first launching a media campaign and training volunteers before deploying mobile units in government offices in designated areas to reach the concerned individuals. Approximately 700 Hill Tamils were registered and granted proof of nationality under this program before the December 2004 tsunami halted the operation.

Resolving the remaining statelessness gaps in Sri Lanka

UNHCR not only deployed protection officers to monitor how the campaign unfolded in 2003 and 2004, but also conducted an evaluation in 2006 to examine the impact of the campaign. This revealed that proof of their newly acquired Sri Lankan citizenship allowed many Hill Tamils to receive national identification cards and open bank accounts. However, Hill Tamils who had not received nationality documentation as part of the 2003-2004 campaign but had approached the Sri Lankan Government for citizenship documents reported that they were still required to give a statement or oath pursuant to the requirements of the 1988 Act, despite these requirements having been superseded by the automatic acquisition procedure under the 2003 Act. Furthermore, some Hill Tamils reported that they were discriminated against by the authorities when they tried to obtain birth certificates.

Although the change in law and policy ensured that Hill Tamils acquired Sri Lankan nationality, more efforts are required to overcome discriminatory attitudes towards the community, including projects to promote their economic and social development and integration into Sri Lankan society. The 2003-2004 nationality campaigns raised awareness among other UN actors and NGOs of the need to assist the Hill Tamils, and UNHCR has collaborated with these stakeholders on a number of projects. One example is a 2007 initiative with the Government

of Sri Lanka and UNDP's Access to Justice Project that aims to provide nationality and other civil-registration documents through mobile clinics.

Efforts by UNHCR to map other statelessness issues in Sri Lanka and the Sri Lankan Government's greater awareness of statelessness led to the passing of two new laws granting Sri Lankan nationality to two additional stateless groups. First, the Grant of Citizenship to Persons of Chinese Origin (Special Provisions) Act, No. 38 of 2008[7] provided for automatic acquisition of Sri Lankan nationality by individuals of Chinese origin who had been permanent residents of Sri Lanka since 1948 and their descendants. Second, the Grant of Citizenship to Stateless Persons (Special Provisions) (Amendment) Act, No. 5 of 2009[8] amended the 1988 Act to allow stateless persons of Indian origin who fled Sri Lanka and have lived in refugee camps in India since the 1980s, but who would otherwise have qualified for Sri Lankan nationality, to acquire it.

7 Grant of Citizenship to Persons of Chinese Origin (Special Provisions) Act, No. 38 of 2008 [Sri Lanka], No. 38 of 2008, 31 October 2008, available at: http://www.unhcr.org/refworld/docid/4c5170452.html

8 Grant of Citizenship to Stateless Persons (Special Provisions) (Amendment) Act, No.5 of 2009 [Sri Lanka], No.5 of 2009, 29 July 2010, available at: http://www.unhcr.org/refworld/docid/4c515bfe2.html

Bangladesh

- Statelessness affecting the Urdu-speaking minority was resolved as a result of sustained community-based advocacy, a successful litigation strategy and lobbying for the implementation of court decisions upholding the Bangladeshi citizenship of this group.
- National advocacy was bolstered by increasing pressure from the international community to reduce statelessness among the Urdu-speakers.
- UNHCR played an important liaison role between national campaigners, the international community and the Government of Bangladesh. UNHCR's awareness-raising activities encouraged other UN actors, including the UN Country Team, to work to reduce statelessness among the Urdu-speakers.
- A landmark High Court ruling, and a favorable political environment led to the prompt implementation of the court's decision and the allocation of resources to ensure that Urdu-speakers were registered in the voter rolls and received national identification cards.

Statelessness among the Urdu-speaking community

The Urdu-speaking community of Bangladesh, also known as the "Biharis", is a linguistic minority that was excluded from the body of citizens upon the creation of the independent State of Bangladesh in 1971. The community comprises individuals who emigrated from India at the time of partition to settle in what was then East Pakistan, as well as their descendants. During Bangladesh's Liberation War, some Urdu-speakers sided with Pakistan. As a result, Urdu-speakers in Bangladesh faced violence and were forced to convene in camps run by the International Committee of the Red Cross. Whereas some 100,000 Urdu-speakers were repatriated to Pakistan,[9] more than 100,000 remained, mostly in the camps, which turned into permanent settlements. The community then entered a cycle of poverty and exclusion from mainstream Bangladeshi society. By 2006, it was estimated that there were 151,000 Urdu-speakers in 116 camps and settlements in Bangladesh, with approximately 100,000 additional Urdu-speakers living outside camps throughout the country.

9 Only a portion of Urdu-speakers who registered to repatriate to Pakistan were eventually repatriated pursuant to tripartite agreements between India, Pakistan and Bangladesh in 1973 and 1974.

Although the Urdu-speakers qualified for Bangladeshi citizenship pursuant to the relevant laws in force,[10] in practice, from 1971-2008 the Bangladeshi authorities refused to consider the remaining Urdu-speakers in Bangladesh as its nationals. Urdu-speakers were systematically excluded by the Government from exercising many of the rights accorded to Bangladeshi citizens, including the ability to obtain national identity documents and access education, as well as other basic services.

The fact that the Urdu-speaking community was entitled to Bangladeshi citizenship by law but denied it in practice meant that any change in the situation would require a fundamental shift in Government policy. However, progress on this issue was hampered by divided loyalties among members of the community and differences over the appropriate solution to end their statelessness.[11] Meanwhile, members of the younger generation of Urdu-speakers in Bangladesh began to emerge from the camps and integrate into Bangladeshi society. Some did so by learning to speak Bangla and expending their scarce resources to obtain an education from private institutions. The younger generation also formed several community-based NGOs.[12]

Community-driven strategic litigation to prompt systemic policy change

The younger generation of Urdu-speaking activists decided to pursue strategic litigation to confirm the right of Urdu-speakers to Bangladeshi citizenship. In the first landmark

10 According to the Adaptation of Existing Bangladesh Laws Order of 1972, all pre-existing laws were to remain in force, meaning that the Pakistani Citizenship Act of 1951 governs nationality. This law confers Bangladeshi citizenship on every person born in Bangladesh after independence or born to a father who is a citizen of Bangladesh. Further, the Bangladesh Citizenship (Temporary Provisions) Order of 1972, also known as the President's Order, confirmed as Bangladeshi citizens all those who were resident in Bangladesh at the time of independence and continued to reside in Bangladesh, without any ethnic or linguistic distinctions, in addition to those who were born in Bangladesh or whose father or grandfather was born there. Please see Pakistan Citizenship Act, 1951 (Bangladesh) [Bangladesh], II of 1951, 13 April 1951, available at: http://www.unhcr.org/refworld/docid/3ae6b52a8.htm l; and Bangladesh Citizenship (Temporary Provisions) Order, 1972 [Bangladesh], 149 of 1972, 26 March 1971, available at: http://www.unhcr.org/refworld/docid/3ae6b51f10.html

11 For example, community members of the older generation of Urdu-speakers formed the Stranded Pakistanis General Repatriation Committee (SPGRC) and continued to advocate that their community be allowed to repatriate to Pakistan. After Pakistan's initial acceptance of the 109,000 in 1973, Pakistan lost interest in the repatriation of any more Urdu speakers from Bangladesh.

12 For example, the Association of Young Generation of Urdu-Speaking Community (AYGUSC) worked with the Dhaka-University based Refugee and Migratory Movement Research Unit to support its advocacy by providing historical and sociological background on the development of the Urdu-speaking community and its integration in Bangladesh. See Saad Hamadi, Bangladeshi at Last, October 2007, available at: http://www.himalmag.com/component/content/article/1310-Bangladeshi-at-last.html

case, *Khan v. Bangladesh* (2003)[13] (2003 *Khan* case), ten Urdu-speakers petitioned the Bangladesh Supreme Court, High Court Division (High Court) to direct the Election Commission of Bangladesh to register them as voters. The petitioners claimed that not only had they been denied the right to register to vote in forthcoming elections despite being citizens, two Government authorities named as respondents in their case had informed them verbally that Urdu-speaking Geneva Camp residents were categorically not entitled to vote in Bangladesh. In a decision handed down on 5 May 2003, the High Court ruled that the petitioners were Bangladeshi citizens as a matter of law, were entitled to be registered as Bangladeshi voters, and ordered the Election Commission to enroll them as such.

While the 2003 *Khan* case was an important milestone, it failed to transform Government policy on a systemic basis for all Urdu-speakers. The High Court's decision was limited to determining the citizenship status and right to register as voters of the ten petitioners who participated in the case. This decision joined a series of prior legal decisions that upheld the Urdu-speakers' right to Bangladeshi citizenship as a matter of law but had not been implemented with respect to the whole population.[14]

As Bangladesh began to prepare for elections in 2007, the Election Commission registered some Urdu-speakers who had integrated into Bangladeshi society to vote as Bangladeshi nationals, but continued to systematically avoid approaching Urdu-speakers living in the long-established camps and settlements, thereby perpetuating the Government's policy of not considering these Urdu-speakers as Bangladeshi nationals. In 2007, political tensions resulted in the declaration of a state of emergency and the creation of a caretaker Government, which pledged to ensure meaningful elections.

13 *Abid Khan and others v. Government of Bangladesh and others*, Writ Petition No. 3831 of 2001, Bangladesh: Supreme Court, 5 March 2003, available at: http://www.unhcr.org/refworld/docid/4a54bbcf0.html

14 The Supreme Court in *Khan v. Bangladesh* (2003), for example, cited the case of *Mukhtar Ahmed v. Bangladesh* from 1977, which considered the Bangladeshi nationality status of an Urdu-speaker who had applied to relocate to Pakistan in the immediate aftermath of the creation of independent Bangladesh. In that case, the Court ruled that simply registering for relocation neither conferred Pakistani citizenship on an individual, nor extinguished the petitioner's acquisition of Bangladeshi nationality. The case of *Abdul Khlaeque v. the Court of Settlement* (1992) upheld this ruling, while in another, *Bangladesh v. Professor Golam Azam* (1994), the Bangladeshi Appellate Court ruled that even an Urdu-speaker who was politically active as pro-Pakistan fell within Bangladesh's laws and was to be considered as a Bangladeshi national. The Bangladeshi Government consistently refused to translate these court decisions into a systemic policy recognizing the Bangladeshi nationality of the Urdu-speaking community.

The political stalemate that delayed the elections presented another opportunity for a group of Urdu-speakers to go to court to seek a wider ruling that would benefit the Urdu-speaking community at large, particularly the camp-based population. In the case of *Khan v. Election Commissioner* (2008)[15] (2008 *Khan* case), a group of 11 Urdu-speaking petitioners residing in two camps in Dhaka filed another petition with the High Court. The petitioners presented evidence that the Election Commission had adopted a policy of not enrolling camp-based Urdu-speakers. The court ruled in the petitioners' favor. It directed the Election Commission to enroll not only the petitioners as Bangladeshi citizens eligible to vote, but also all adult Urdu-speaking people living in camps in Bangladesh. The court also urged the Commission to provide these individuals with national identity cards without delay.

The resolution of the statelessness status of the Urdu-speakers of Bangladesh was achieved at a time of political transition in the country. The formation of a caretaker Government in 2007 presented an opportune moment for the authorities to move beyond entrenched prejudice against the Urdu-speaking community. It was in this environment that the 2008 *Khan* case was pursued in court alongside direct advocacy with the Government by national NGOs and community organizations.

Multi-level advocacy to implement the decision in the 2008 *Khan* case

Though strategic litigation in the courts played a catalytic role in resolving the statelessness status of the Urdu-speaking community of Bangladesh, the eventual reform of policy that allowed the Supreme Court's ruling to be implemented was the result of advocacy by community-based and national actors, as well as the international community.

Following the decision in the 2003 *Khan* case, UNHCR boosted its efforts to encourage policy reform as a means of tackling statelessness among the Urdu-speakers of Bangladesh. By 2005, UNHCR had approached the Government for discussions on how to uphold the nationality rights of the Urdu-speaking communities. UNHCR also worked

15 *Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner*, Bangladesh Election Commission, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008, available at: http://www.unhcr.org/refworld/docid/4a7c0c352.html

with its UN sister agencies and the diplomatic community in Bangladesh to highlight the plight of the stateless Urdu-speakers. This resulted in a coordinated UN inter-agency approach designed to assist the Urdu-speaking community. The UN Resident Coordinator and UNDP Resident Representative gave priority to assisting the stateless Urdu-speakers in the UN Country Team's goals for 2005 and 2006. Meanwhile, UN-Habitat and UNICEF implemented projects to improve housing and child protection among Urdu-speaking communities.

Furthermore, in 2006 UNHCR deployed a protection officer through the International Rescue Committee's Surge deployment program to work full-time on the statelessness situation in Bangladesh. The deployee conducted a legal analysis of the citizenship status of the Urdu-speaking community, made recommendations on policy reform that would permit the Government to recognize the Urdu-speakers as Bangladeshi citizens, and collaborated with community-based NGOs to coordinate advocacy strategies. For example, UNHCR partnered with the NGO Al-Falah[16] to conduct a survey of Urdu-speakers living in camps in order to tailor its recommendations to address the challenges these communities face.

Even before the 2008 *Khan* case was decided, the Government of Bangladesh had agreed (in September 2007) to give citizenship to Urdu-speaking Biharis born after 1971 or who were under 18 years of age on the date that Bangladesh became an independent nation. In November 2007, a group of 23 eminent academics, journalists, lawyers and human rights activists made a joint statement urging the Government to offer citizenship rights in line with the country's Constitution to all Urdu-speakers in the camps. International advocacy organizations, such as Refugees International[17] and Minority Rights Group International[18] issued reports on the statelessness status of the Urdu-speakers, contributing to international awareness of the problem and increasing the pressure to resolve it.

16 For more information about Al-Falah's work, see their website, available at: http://www.alfalah.com.bd

17 An overview of Refugees International's work on the Urdu-speakers of Bangladesh is available here: http://www.refugeesinternational.org/where-we-work/asia/bangladesh; of particular note is the Refugees International report, Citizens of Nowhere: The Stateless Biharis of Bangladesh, available at: http://www.refugeesinternational.org/policy/in-depth-report/citizens-nowhere-stateless-biharis-bangladesh

18 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Bangladesh: Biharis*, 2008, available at: http://www.unhcr.org/refworld/docid/49749d58c.html

2008 voter registration and national identity card distribution

The decision in the 2008 *Khan* case provided the final impetus for the transitional Bangladeshi Government to take concrete measures to recognize Urdu-speakers as Bangladeshi citizens. In August 2008, the Election Commission of Bangladesh began a campaign to register the Urdu-speaking communities in the camps and settlements around Bangladesh. Election Commission enumerators took voter registration forms door to door to reach as much of the Urdu-speaking community as possible. In this process, Urdu-speakers also acquired national identification cards, confirming alongside their voter registration their status as Bangladeshi citizens and their entitlement to State social services.[19]

19 By the end of 2014, in line with the court judgments and the Government's change of policy, the overwhelming majority of the Urdu-speakers residing in Geneva Camp had acquired national identity cards or other documentation confirming their status as Bangladeshi citizens. A minority still consider themselves to be "Stranded Pakistanis" and have chosen not to apply for national identity cards despite their legal entitlement. The Council on Minorities, a community organization, reported that a small number of Geneva camp residents had faced difficulties in obtaining Bangladeshi passports or birth certificates for their children. This appears to be a localized problem unrelated to citizenship status and is not reported to be faced by members of the community who live outside Geneva Camp or in camps or settlements outside Dhaka. See Council of Minorities and Namati, *Realising Citizenship Rights: Paralegals in the Urdu-Speaking Community in Bangladesh*, 2014.

Kyrgyz Republic

- In July 2019, **Kyrgyzstan became the first country to resolve all known cases of statelessness on its territory**. 13,707 stateless persons or those with undetermined nationality, identified since 2014 through a country-wide statelessness mapping exercise, were naturalized or had their Kyrgyz nationality confirmed and received documentary proof of their nationality.

- **A citizenship law** adopted in 2007 created several avenues for reducing statelessness, including the possibility of **stateless former USSR citizens to be recognized as nationals.** The law also created a **simplified naturalization procedure** for individuals able to prove a link with Kyrgyzstan.

- **UNHCR and its implementing partners conducted pilot surveys** to identify the prevalence and causes of statelessness in the country and to propose recommendations to resolve protracted cases.

- The findings of the surveys resulted in the **creation of an inter-ministerial process** to address statelessness and **led to the adoption of a National Action Plan to Prevent and Reduce Statelessness**.

- At the High-Level Segment on Statelessness in 2019, **Kyrgyzstan made four time-bound pledges on statelessness**, including on accession to the Statelessness Conventions, enaction of a Statelessness Status Determination Procedure and ensuring universal birth registration.

- The **2020 Civil Acts Law** brought the national legislation in closer compliance with international standards to prevent statelessness at birth. However, universal birth registration is yet to be achieved. On the basis of the new law, a child born to undocumented parents will be able to receive a statement confirming the fact of birth, which will provide the child with access to social and medical services.

- **UNHCR provides capacity support** to the Government agencies in charge of citizenship issues and processing applications for citizenship determination.

Statelessness in the Kyrgyz Republic

As in other States formed since the dissolution of the Soviet Union, statelessness in Kyrgyzstan has persisted for more than three decades. The causes are migration between the former Soviet republics, particularly within Central Asia, problems with modernizing and simplifying the rules and facilities for providing legal residence and identity documentation, and differences in nationality laws among the countries in the region. Nationality problems were further exacerbated by territorial disputes, as a number of successor states failed to agree on the demarcation of frontiers. Political calculations and national security concerns brought further complexity into nationality issues that required international cooperation. The biggest groups of stateless persons in Kyrgyzstan comprised persons holding former USSR passports, undocumented persons living in border areas and foreign spouses married to Kyrgyz nationals.

Since the adoption of the 2007 Law on Citizenship, the Kyrgyz Republic has been taking active steps to tackle the roots of statelessness in the country through joint efforts of the Government, civil society and international organizations. This cooperation has been in the form of a number of joint initiatives such as surveys, gaps analysis studies, and finally – field operations to provide assistance to individual applicants.

In the early 1990s, Kyrgyzstan was one of the primary destinations for refugees from Tajikistan. These refugees became stateless because they left Tajikistan before the country adopted its first nationality law. The facilitated naturalization of around 10,000 of these refugees between 2004 and 2007 was thus a major achievement in ensuring durable solutions for refugees through local integration, as well as in the resolution of a protracted statelessness situation.

Recognition of stateless former USSR citizens as citizens and simplified naturalization procedures through the 2007 Citizenship Law

Recognizing that many individuals had yet to replace USSR passports and confirm their citizenship, Kyrgyzstan adopted the Law on Citizenship of the Kyrgyz Republic in 2007 (2007 Law).[20] Shortly thereafter, Presidential Decree #473, "Regulation on Procedures to Consider Issues of Kyrgyz Republic Citizenship" was issued, providing implementing rules for the new law.

Article 5 of the 2007 Law automatically recognizes as Kyrgyz nationals former USSR citizens who have permanently resided in the Kyrgyz Republic for the last five years (from the moment of approaching an organ of the Ministry of Interior) and who have not declared that they possess the citizenship of another State.[21] Individuals falling within this category are required to lodge an application with a citizenship determination commission in the territorial passport unit. These citizenship commissions may then confirm if a person is a Kyrgyz citizen, or a stateless person. This is significant, considering that the process whereby citizenship is granted in Central Asia and elsewhere in the Commonwealth of Independent States (CIS) region is usually highly centralized, with naturalization decisions in most cases taken by the President. The decentralized, non-discretionary procedure in Kyrgyzstan has meant that a large number of cases have been processed in only a few years' time (nearly 45,000 citizenship determinations and replacements of USSR passports between 2009 and 2012). The procedure for citizenship determination is also characterized by a remarkable degree of flexibility and contains some important procedural safeguards, as described below.

Another important innovation in the 2007 Law was the inclusion of simplified procedures for naturalization of foreign citizens and stateless persons. Article 13 sets out the ordinary naturalization procedure, under which foreign citizens and stateless persons who reach the age of 18 can apply to naturalize if they meet certain criteria.[22]

20 Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic [Kyrgyzstan], available at: http://www.unhcr.org/refworld/docid/4693a5e514f.html

21 This means that from the moment the individual applies for determination of Kyrgyz citizenship, the authority competent to make the nationality determination counts backwards to see whether an individual contacted a department of the Ministry of Interior five years ago or more (usually to regulate their residence status).

22 These include: a minimum of five years of permanent and continuous residence in the Kyrgyz Republic; ability to speak the state or official language at a level sufficient for communication; a commitment to respect the Constitution and laws of the country; and a source of income.

The key differences between Article 5 and Article 13 are that Article 5 is limited to former USSR citizens and recognizes them automatically as citizens, whereas the naturalization procedure of Article 13 does not limit its scope according to former nationality but is a discretionary procedure which also sets out additional conditions (knowledge of the State or official language sufficient for communication, proof of source of subsistence and commitment to comply with the Constitution and legislation of the Kyrgyz Republic).

Article 14 establishes a facilitated naturalization procedure separate from the ordinary one set forth in Article 13. According to the simplified procedure in Article 14, foreign citizens or stateless persons need to prove only one year of permanent residence in the Kyrgyz Republic if they meet designated criteria,[23] but otherwise need to fulfil the other naturalization criteria.[24] In 2012, the Law was amended to grant the right to naturalization through a simplified procedure to former citizens who returned to reside permanently in the Kyrgyz Republic, as well as to foreign and stateless women married to Kyrgyz citizens and residing permanently in the Kyrgyz Republic. These categories of individuals are exempted from the residence requirement of Article 13.1 and also from the requirement to speak the State or official language. Although the amendment introduces an element of gender discrimination in the law by facilitating acquisition of citizenship for women married to nationals, it aims specifically to address the situation of Uzbek women who reside in Kyrgyzstan in violation of Uzbek and Kyrgyz migration rules and possess only expired Uzbek passports. Because of their failure to renew these passports and register with the Uzbek consular office in Bishkek, many of these women may be stateless due to an Uzbek law whereby citizens who reside abroad for five years without registering with the Uzbek authorities may have their citizenship withdrawn.

23 These include: an individual who has at least one parent who is a Kyrgyz national and who resides in the territory of the Kyrgyz Republic; an individual who was born in the Kyrgyz Soviet Socialist Republic and held the nationality of the former USSR; and an individual who is restoring his or her status as a national of the Kyrgyz Republic.

24 Article 14 also offers facilitated naturalization to two additional groups. First, ethnic Kyrgyz who are nationals or residents of a foreign State can apply to acquire Kyrgyz nationality through the facilitated naturalization procedure on the same terms as for the other groups established in Article 14. Furthermore, Article 14 establishes an even more relaxed procedure, waiving all of the naturalization requirements set forth in Article 13 for the following categories of children: a child with one parent who is a Kyrgyz citizen (the application is to be made by the Kyrgyz parent proving consent of the other parent); a child whose only parent is a Kyrgyz citizen (the application is to be made by the sole Kyrgyz parent); a child or person with disabilities whose legal guardian or caretaker is a Kyrgyz citizen (an application is to be made by the legal guardian).

It is also important to mention that the 2007 law generally recognizes dual nationality, except for citizens of the neighboring States of China, Uzbekistan, Tajikistan and Kazakhstan. However, in the case of citizens from these States, the Citizenship Regulations contain a safeguard against statelessness by providing that their passports and applications on renunciation of citizenship are forwarded to the consular offices of the relevant States only after the acquisition of Kyrgyz citizenship. Since the 2012 amendment to the Citizenship Law, the same exception applies to ethnic Kyrgyz, former nationals who have returned to reside in the Kyrgyz Republic, as well as to foreign and stateless women who are married to Kyrgyz nationals.

The requirement that a presumed pre-existing nationality be renounced before acquiring Kyrgyz nationality is similar to what is found throughout the CIS region and linked to the prohibition on dual nationality in most countries in the region. The requirement had previously posed acute problems, particularly for Uzbek nationals residing in Kyrgyzstan, who had to submit an application for renunciation of their Uzbek nationality, pay a high fee and wait for several years for an official confirmation before being able to apply for Kyrgyz nationality. In other cases, persons may have renounced their foreign nationality but failed to fulfil some other naturalization criteria and ended up stateless. The safeguard in the Kyrgyz citizenship legislation is thus a best practice.

The procedure for determining Kyrgyz citizenship

Presidential Decree #473 of 2007 granted authority to bodies called Conflict Commissions in provincial Departments for Passport and Visa Control (DPVCs) of the Ministry of Interior of the Kyrgyz Republic to consider applications from the category of persons described in Article 5 (former USSR citizens with five years of permanent residence who have not declared that they possess the citizenship of another State).[25] Through the adoption in August 2013 of the Regulation on the Procedure for Considering Issues relating to the Citizenship of the Kyrgyz Republic, approved by Presidential Decree No 174 (hereinafter the "2013 Citizenship Regulation"), the Conflict Commissions were renamed Commissions for Citizenship Determination and their competence broadened from determining whether someone is a citizen of Kyrgyzstan to determining whether the person is a citizen of Kyrgyzstan, of a third State or stateless.

25 Since 2009, the State Registration Service has become the successor agency to the DPVCs with regard to passport issuance and registration of citizens.

The Commissions for Citizenship Determination are composed of at least three persons who make decisions at the local level as to whether an individual is or is not a Kyrgyz citizen or a stateless person under Article 5.[26]

The 2007 Law and Presidential Decree #473 contain a number of other positive developments. Among these are flexible requirements for what may be considered proof of residence for the purpose of determining whether a person is a Kyrgyz citizen. According to Presidential Decree #473, applications to the Commissions for Citizenship Determination must include: a) the original and photocopy of documents confirming the identity of the applicant (in practice a passport, including the Soviet passport); b) a detailed biography; c) two photos; and d) a document which proves that the individual has resided permanently and continuously in the territory of the Kyrgyz Republic. With the adoption of the 2013 Regulation, birth certificates are also considered valid proof of identity.[27] However, individuals who possess neither a passport nor a birth certificate are required to go through the laborious process of establishing their identity through a court procedure for late birth registration before they can apply to the commissions.

Importantly, USSR passport holders can be confirmed as citizens of Kyrgyzstan whether or not they possess proof of permanent residence in Kyrgyzstan (propiska). Rather, the

26 According to Presidential Decree #473, paragraph 27, the following categories of persons are considered as falling under the competency of the Commissions: (1) Former USSR citizens who still possess a Soviet passport (1974 type) and who have permanently resided in the Kyrgyz Republic for the last five years (from the moment of addressing a department of the Ministry of Interior) and have not declared possessing the citizenship of another country; (2) former USSR citizens with Soviet passports (1974 type) with a stamp to indicate temporary residence in the Kyrgyz Republic (linked to the fact that they did not own property and were registered temporarily with family or friends) but who have permanently resided for the previous five years (at the moment of addressing a department of the Ministry of Interior) and do not possess a notification that they are citizens of another State; (3) persons who have lost their USSR passports (1974 type) but who held permanent or temporary residence in the Kyrgyz Republic and who habitually reside there; (4) persons who were unable to obtain Kyrgyz passports in the past, either because they did not fall under the criteria of the 1993 Citizenship Law or were orphans who were brought up by relatives or friends, and who are habitually resident in the Kyrgyz Republic. By the adoption of the 2013 Citizenship Regulations, two new categories were added (paragraph 51):(...) 4) Persons who permanently reside in the territory of the Kyrgyz Republic, possess Soviet passports (1974 type) with a notification of possession of citizenship of a CIS member State, and to this date remain without a national passport of this State. This category of persons is required to submit a note explaining why they do not possess a valid identity document in case the State concerned does not have a diplomatic or consular representation in Kyrgyzstan, or, in particular cases, a certificate of loss or lack of citizenship of a foreign State; 5) persons who reside permanently on the territory of the Kyrgyz Republic for five years or more, who possess expired passports of a CIS member State, and who are unable for reasons beyond the control of the person concerned to extend or replace this passport with a valid one. Such individuals are required to submit a declaration setting out the reasons for the failure to present a valid passport. Furthermore, in the new Citizenship Regulation, categories 1 and 2 above have been combined and the residence requirement has changed to “permanently or temporarily registered on the territory of the Kyrgyz Republic”. It is also worth noting that the requirement “at/from the moment of addressing the Agencies of Interior” does not appear in the new Regulation.

27 Paragraph 53 of the 2013 Citizenship Regulation.

Commissions for Citizenship Determination look for proof that the individual concerned is habitually resident in Kyrgyzstan. The documents which may be considered as proof of residence in Kyrgyzstan include a passport with a registration stamp or a registration document, a military service book (voennaia kniga), certificates from places of work (trudovaia kniga), diplomas from educational institutions, and certificates from the place of residence.[28] Testimony from a residence committee or village chief, with the participation of a district police officer and three neighbors of the individual concerned, was included in the list of possible forms of evidence of habitual residence in the 2013 Regulations.[29] This flexible approach to proof of residence has allowed individuals who did not qualify for citizenship under the 1993 law, because this law required proof of permanent residence (propiska), to acquire Kyrgyz citizenship.

Finally, it is worth mentioning that the 2013 citizenship regulations contain some important procedural guarantees pertaining to the process of determining if an individual is a citizen of Kyrgyzstan, a non-citizen or a stateless person. This includes a time limit of 10 days for checking a case in the Ministry of Interior information system, one month from the receipt of applications for determining whether an individual is a Kyrgyz citizen and two months if the application is received by a diplomatic representation or consular office. Importantly, applicants are also entitled to receive a reasoned response to their application and an explanation of the additional procedures to obtain a permanent residence permit.

Reduction of statelessness through implementation of the nationality framework

Since the 2007 Law entered into force, the Kyrgyz Government has collaborated with UNHCR to find ways to implement laws and policies on nationality to reduce statelessness. Three important initiatives have been undertaken to create awareness of further steps needed to resolve statelessness in Kyrgyzstan. Between 2009 and 2020, these initiatives helped approximately 78,000 people to replace old USSR passports and some 13,700 formerly stateless individuals to obtain citizenship by presidential decree, many with the assistance of UNHCR and its Kyrgyz NGO partners.

28 Paragraph 25 of Presidential Decree #473 of 2007.
29 Paragraph 53 of the 2013 Citizenship Regulation.

1. PILOT SURVEYS TO IDENTIFY THE PREVALENCE AND ONGOING CAUSES OF STATELESSNESS IN KYRGYZSTAN

After passage of the 2007 Law, the Kyrgyz Government requested UNHCR to conduct a survey to support recommendations on how to improve the identification of stateless persons and resolve their status. To this end, UNHCR commissioned Kyrgyz NGOs, namely the Centre for International Protection, Ferghana Valley Lawyers Without Borders and Counterpart-Sheriktesh, to conduct three field studies in 2007 and 2008. The NGOs were asked to concentrate their research on the border regions in the north and south of the country. The surveys found some 13,000 stateless persons in 18 districts in four provinces. They confirmed that most of these stateless persons had resided in Kyrgyzstan for many years and were an integral part of the Kyrgyz social fabric, with close family and cultural links to the country. However, they continued to face problems in acquiring Kyrgyz nationality, primarily because they did not have the right identity documents to establish their eligibility to confirm or acquire nationality through the improved legal framework. The surveys supported the process of improving the by-laws and administrative procedures relating to citizenship and documentation.

2. DEVELOPMENT OF AN INTER-GOVERNMENTAL STATELESSNESS STRATEGY

After UNHCR and its civil society partners presented the results of their surveys and the recommendations arising from them to the Kyrgyz Government at a roundtable meeting in 2008, an inter-agency process was launched with the goal of resolving statelessness in the country. A first High-Level Steering Meeting on the Prevention and Reduction of Statelessness in the Kyrgyz Republic in 2009, jointly chaired by the State Registration Service of the Kyrgyz Government and UNHCR, led to the adoption of a National Action Plan to Prevent and Reduce Statelessness. The outbreak of violence in Kyrgyzstan in 2010 delayed deliberations and progress temporarily. However, a second High Level Steering Committee Meeting held in 2011 resulted in the adoption of a revised and updated National Action Plan to Prevent and Reduce Statelessness.[30]

30 The key actions that the Kyrgyz Government has committed to undertake to address statelessness include: the continued accelerated exchange of old Soviet passports by the State Registration Service; pursuit of a comprehensive survey on statelessness; awareness-raising among stateless persons of their rights and duties; drafting and adoption of by-laws and instructions to comply with the 2007 Law; the introduction of changes in the legislative and administrative frameworks in Kyrgyzstan to improve provision of birth registration to all children; development and adoption of a statelessness determination procedure; and steps to accede to the 1954 and 1961 Conventions.

The Action Plan was revised and updated further through a series of High-Level Steering Committee Meetings in 2012, and progress was monitored at a fourth meeting in 2013. At UNHCR's 2011 Ministerial Intergovernmental Event on Refugees and Stateless Persons, Kyrgyzstan pledged to "uphold a policy of prevention and reduction of statelessness and continue actively working in that direction in accordance with the National Action Plan (NAP) on Statelessness". A Citizenship Working Group established by UNHCR with the participation of government officials, civil society partners and UN agencies meets regularly to work on the various law reform initiatives included in the National Action Plan.

3. LEGAL AID AND COMMUNITY OUTREACH

Since the Government of Kyrgyzstan approached UNHCR to undertake the surveys on statelessness in the northern and southern regions of the country in 2008, UNHCR has consistently worked with the Kyrgyz authorities and civil society partners to address statelessness. For instance, in view of the lack of government resources to deal with the large number of people with USSR passports, UNHCR has provided capacity support to the departments of the State Registration Service in the South (Batken, Jalal-Abad and Osh provinces, where the largest numbers of stateless persons were believed to reside) and in the North (Chui province, including the country's capital, Bishkek), as well as to the Citizenship Commission under the President of the Kyrgyz Republic.

The support given to the Government has been complemented by strong partnerships with national legal service NGOs in Bishkek and in the south. These NGOs collaborated with UNHCR on campaigns designed to raise community awareness of the procedures for determination or acquisition of citizenship and for obtaining documents. NGO partners provided direct legal assistance to individuals applying for citizenship and documentation, in particular through leading mobile clinics throughout the country, even in the most remote regions. The mobile clinics consisted of representatives of territorial Population and Civil Status Acts Registration Departments of the State Registration Service (SRS), regional and local Passport and Visa Registration Work Departments under the State Registration Service, local self-governance bodies, a driver/lawyer's assistant and a partner NGO lawyer, the latter person being responsible for coordinating the mobile team. There were more than 60 mobile teams created both in northern and southern Kyrgyzstan. UNHCR partner organizations Women Entrepreneurs Support

Association (WESA) and Ferghana Valley Lawyers Without Borders provided free legal advice to people in remote areas. The teams were fully prepared with vehicles, technical equipment and application forms to essentially function as a 'mobile passport desk'.[31]

4. OUTCOMES

Kyrgyzstan resolved a total of 13,700 cases of statelessness between 2014 and July 2019.[32] The last known 50 stateless persons were granted nationality during a ceremony on 4 July 2019. On this day, Kyrgyzstan became the first country to resolve all known cases of statelessness on its territory.

31 See UNHCR, "Preventing and reducing statelessness in the Kyrgyz Republic" (Video), published on 2 April 2019 (accessed 25 November 2019), available from https://www.youtube.com/watch?v=E93nLfGvWHQ&feature=youtu.be

32 UNHCR Campaign update, April – June 2019, available from https://www.refworld.org/docid/5d356a927.html.

Law or policy reform enabling acquisition of nationality by registration

Brazil

- Brazilians abroad whose children were stateless because of a 1994 Constitutional Amendment joined together to form a **civil society movement**, *Brasileirinhos Apátridas*, to achieve legal reform. The movement used a **clearinghouse website** to centralize the exchange of experiences and strategies.
- A **political ally** of the movement in the Brazilian Senate **drafted an amendment to the Constitution** that would reduce and prevent statelessness. To overcome a congressional stalemate, other partners joined the movement to increase political pressure for reform.
- **Strategic and creative use of the media** – both abroad and in Brazil – highlighted the cost of statelessness for the children and their families.
- The **2007 Constitutional Amendment** not only ensured that statelessness would be prevented from arising in the future, but also included a **special transitional provision** guaranteeing that all children who had been rendered stateless could acquire Brazilian citizenship and rectify their situation.
- After the 2007 Constitutional Amendment was passed, the *Brasileirinhos Apátridas* **movement publicized the new law** throughout the diaspora and **helped families** to ensure their children could acquire Brazilian nationality by registering with Brazilian authorities abroad.
- **Brazil acceded to the 1961 Convention on the Reduction of Statelessness** shortly after amending its Constitution.

Statelessness situation

Nationality matters in Brazil are regulated by the country's Constitution, rather than ordinary legislation. The Brazilian Constitution has always enshrined the *jus soli* principle by conferring Brazilian nationality to all children born in Brazil. However, the rules regarding conferral of Brazilian nationality through descent, pursuant to the *jus sanguinis* principle, have been subject to amendment. Until 1994, children born abroad to a Brazilian mother or father could acquire Brazilian nationality provided they registered with a Brazilian consular representation. From 1994 onwards, due to an amendment of Article 12 of the Brazilian Constitution, Brazilian nationality could only be conferred on a child born abroad to a Brazilian father or mother if the child returned to reside in Brazil and applied for Brazilian nationality.

Brazil is not only a country of immigration but also of emigration. An estimated 3 million Brazilians were living abroad when the 1994 Constitutional amendment was passed. Between 1994 and 2007, an estimated 200,000 children of Brazilians abroad were rendered stateless as a result of the 1994 Constitutional amendment, particularly those born in countries with strict *jus sanguinis* traditions.

Civil society mobilization among the Brazilian diaspora to advocate for constitutional reform

The negative effects of the 1994 Constitutional amendment were immediately felt in the Brazilian diaspora. The children of some in this group were being born stateless, in some cases without any possibility of acquiring travel documentation to enable them to go to Brazil to meet the residency requirement for citizenship. Members of the diaspora began to lobby politicians in Brasilia to urge reform. One supporting Senator drafted a bill in 1999 to correct the shortcomings of the 1994 Constitutional Amendment. This bill was successfully passed in the Senate in 2000 and deposited before the Chamber of Deputies. Brazilians abroad began to rally around the reform bill to advocate for its passage.

Faced with a stalemate before the Brazilian Congress, the diaspora began to mobilize. A civil society movement, *Brasileirinhos Apátridas*, was created by Brazilians living in Switzerland. Chapters of the movement were also established in Israel, Japan, Germany, Portugal, France and Hungary – all countries where children of Brazilians born abroad

were being rendered stateless as a result of the 1994 Constitutional amendment. The movement created a website[33] to serve as a clearinghouse for information and advocacy strategies.

A central element of the *Brasileirinhos Apátridas* approach was to engage with the media, both in the countries of the diaspora communities and in Brazil, to highlight the plight of the stateless children. By 2006-2007, the movement had begun to organize demonstrations in front of Brazilian consulates around the world to promote passage of the reform bill. When the United Nations Human Rights Council sat for its first session in early 2007, the movement drew the Council's attention to the contradiction between the Brazilian nationality provision that was rendering children stateless and the universal human right to a nationality.

Meanwhile, UNHCR lobbied for the Brazilian Congress's accession to the 1961 Convention on the Reduction of Statelessness, disseminating widely the Portuguese version of the *Handbook on Nationality and Statelessness: a Guide for Parliamentarians*. Complementing the highly successful awareness-raising campaign of *Brasileirinhos Apátridas*, the handbook increased awareness of statelessness and nationality issues among members of Congress and helped pave the way for accession to the Convention.

In 2007, the Brazilian Congress finally scheduled hearings and a vote on the bill, which had been pending for seven years. Two members of the *Brasileirinhos Apátridas* movement, a former Vice-Consul of Brazil in Zurich and a well-known Brazilian journalist, represented the movement in Brasilia, lobbying members of Congress and drawing sustained media attention to the issue.

These efforts paid off when the Brazilian Congress passed the bill, which paved the way for the passage and promulgation of Constitutional Amendment 54/07 on 20 September 2007 (the 2007 Constitutional Amendment).

33 The website of the "*Brasileirinhos Apátridas*" movement is still accessible at: http://brasileirinhosapatridas.org

Legislative and constitutional reform to reduce and prevent statelessness

Pursuant to the 2007 Constitutional Amendment, Article 12 of the Brazilian Constitution now confers Brazilian citizenship by birth to the following persons: (a) those born in Brazil, even of foreign parents provided they are not working in the service of their country; (b) those born abroad to a Brazilian father or mother working for the Brazilian Government; and (c) those born abroad to either a Brazilian father or mother provided they are either registered with a Brazilian authority abroad (i.e., a consulate) or who reside in Brazil before reaching majority and opt for Brazilian nationality any time after reaching majority. These provisions fully resolve the statelessness problems created by the 1994 Constitutional Amendment.

In addition, a special transitional provision sought to resolve the plight of the estimated 200,000 children who had been rendered stateless as a result of the 1994 Constitutional Amendment. According to the revised Article 12 (c) of the Constitution, children born abroad to a Brazilian father or mother between the date of the passage of the 1994 Constitutional Amendment and the date of entry into force of the 2007 Constitutional Amendment were also entitled to acquire Brazilian citizenship by birth, either by registering as nationals of Brazil at consulates abroad or by opting for Brazilian nationality upon reaching majority after residence in Brazil. In this way, the reform not only sought to prevent future cases of statelessness from arising but also to reduce statelessness caused by the 1994 Constitutional Amendment.

The *Brasileirinhos Apátridas* movement continued its community outreach activities. It publicized the 2007 Constitutional Amendment and the transitional provisions among Brazilian diaspora communities and helped individuals to ensure that their children could register with Brazilian authorities abroad to acquire nationality. The debate on nationality rules also served to sensitize the authorities to the issue of statelessness. Already a party to the 1954 Convention relating to the Status of Stateless Persons, within a month of the passage of the 2007 Constitutional Amendment, Brazil had also acceded to the 1961 Convention on the Reduction of Statelessness.

Ultimately, the most persuasive argument that led to the reforms and to Brazil's accession to the 1961 Statelessness Convention was that it was in the country's own interests to resolve the situation of stateless children in the diaspora. The reforms helped Brazil to ensure that its nationals living abroad, and their offspring would have the opportunity to return and contribute their talents to their homeland's globalizing society.

Malaysia

- **Political awareness** that statelessness persisted among persons of Indian descent, despite the legal provisions providing for their nationality, helped to spur action to identify stateless persons and resolve their situation.
- The Government, UNHCR and a local NGO, Development of Human Resources for Rural Areas (DHRRA), collaborated to launch a **mapping and registration** project that resulted in a large number of persons of Indian descent acquiring Malaysian nationality.
- The registration process involved **mobile registration teams including community-based paralegals who provided extensive support to communities.**
- The mapping exercise resulted in a **comprehensive situation analysis** with statistics on level of employment, access to education, early marriage, and child labor.
- Advocacy and policy recommendations to simplify administrative procedures in citizenship applications resulted in the adoption of **policy changes** which has helped many stateless persons to acquire Malaysian nationality.

Statelessness in Malaysia

The stateless population and population at risk of statelessness in Malaysia consists of diverse groups, residing in West and East Malaysia. In West Malaysia, the stateless population or population at risk of statelessness mainly consists of persons of Indian-Tamil origin, while in East Malaysia the make-up of the population is more complex and includes the maritime community of Bajau Lout, indigenous people living in remote areas of Sabah and Sarawak, descendants of Filipino and Indonesian migrants and street children. The good practices in Malaysia with regard to reducing statelessness mainly concern the population of Indian-Tamil descent in West Malaysia.

In the late 19th and early 20th centuries, persons of Indian-Tamil origin arrived in Malaysia during British colonial rule to work in public services and rubber plantations.

For generations, these communities resided predominantly in and around rubber estates within Selangor, Perak, Kedah and Negeri Sembilan. After Malaysia gained independence in 1957, the Malaysian Federal Constitution came into force which entitled these communities to citizenship.[34] However, many persons of Indian-Tamil origin did not register for citizenship due to the isolated nature of the plantations, illiteracy and lack of awareness of the importance of obtaining documentation.[35] Critically, persons of Indian-Tamil origin living in the estates often did not register their children's births as the plantations were in essence self-contained communities and there was little reason for them to venture out of the plantations.

On the rubber estates, which were classified as private property, children attended Tamil primary schools and adults worked in an informal context where identity cards and birth certificates were not required.[36] Between 1980 and 2000, large numbers of the community were internally displaced after closure of the rubber plantations and the implementation of the Government's rapid industrialization programs. During this period, many faced significant challenges to access public services, such as schooling and birth registration, due to their lack of proof of Malaysian nationality and birth documentation.[37] Obstacles to applying for identity documents included difficulty communicating effectively with government officers due to language barriers, and lack of understanding of the procedures and requirements.[38]

Malaysian nationality law provides for citizenship through a number of routes. Under the Constitution, individuals born in the country before 16 September 1963 (Malaysia Day) automatically acquire Malaysian citizenship.[39] The Federal Constitution also provides for acquisition of nationality by registration (for individuals under the age of 21)[40] and by naturalization (for individuals over the age of 21 who meet the relevant criteria).[41]

34 *Federal Constitution*, as at 1 November 2010, available at: https://www.wipo.int/edocs/lexdocs/laws/en/my/my063en.pdf
35 Center for Public Policy Studies, *The case for low income Malaysian Indians*, undated, p. 10, available at: http://cpps.org.my/wp-content/uploads/2017/10/Low-Income-Malaysian-Indians-9MP-Recommendations.pdf
36 Ibid, page 10
37 Ibid, page 10
38 Ibid, page 10
39 *Federal Constitution of Malaysia*, Art. 14(1), available at: http://www.agc.gov.my/agcportal/index.php?r=portal2/left&menu_id=dDI5alZpOWFtcGI5MnZ5M1dtT1NNZz09
40 *Federal Constitution of Malaysia,* Article 15
41 *Federal Constitution of Malaysia,* Article 19

Although legal solutions to address statelessness exist, complicated administrative and bureaucratic procedures prevent many from accessing citizenship and civil documentation. The authority responsible for issuing civil documentation and registering births is the National Registration Department (NRD) under the Ministry of Home Affairs. Since State registration offices are authorized to administer their own bureaucratic procedures, the provision of supporting documents required to make a successful claim for nationality was not applied consistently. Many were therefore left without the documentation needed to prove their claims to Malaysian nationality. High application fees also present a barrier. Late birth registration penalties can amount to RM 1,000[42] (USD 250) and DNA tests to prove parentage and therefore claim to citizenship range from RM1,500 to RM2,500 (USD 375 – USD 625). Upon naturalization, formerly stateless persons are required to pay RM300 (USD 75) for a citizenship certificate as a precursor to obtaining an identity card.

Government efforts to identify and assist undocumented persons

In 2010, a Special Implementation Task Force (SITF) was set up under the Cabinet Committee on the Indian Community (Prime-Minister's Office) in coordination with the Ministry of Home Affairs and the National Registration Department. The rationale for the SITF was to ensure that Malaysian Indians can access the services, programs and projects of the Federal government in a just, fair and equitable manner.[43]

From 2011 to 2017, the SITF carried out the 'My Daftar Campaign' to identify and assist undocumented persons by conducting mobile registration campaigns. Through the MyDaftar Campaign, the Government issued birth certificates and national identity cards to more than 7,000 applicants.[44] Out of the 12,726 applications received, about 10,000 cases pertained to citizenship, 4,400 of which led to citizenship.[45]

42 "RM1,000 fine for late registration of births", The Star, 11 October 2017, available at: www.thestar.com.my/news/nation/2017/10/11/fine-for-late-birth-registration/.

43 In 2017, the SITF and three other units focusing on addressing issues facing the Indian community were consolidated and merged into a single unit for the Socioeconomic Development of Indian Community (SEDIC).

44 "Mega MyDaftar drive to help Indians", *The Star*, 8 May 2017, available at: www.thestar.com.my/news/nation/2017/05/08/mega-mydaftar-drive-to-help-indians/

45 "Mega MyDaftar' campaign to reach Indians facing documentation woes, Subramaniam says", *The Malay Mail*, 15 May 2017, available at: https://www.malaymail.com/news/malaysia/2017/05/15/mega-mydaftar-campaign-to-reach-indians-facing-documentation-woes-subramani/1377249

The Malaysian Government has since officially acknowledged the issue of statelessness at the global stage during UNHCR's High-Level Segment on Statelessness, which was held on the first day of UNHCR's 70th Executive Committee meeting in October 2019.

UNHCR and civil society efforts to identify and assist stateless persons

In April 2014, UNHCR started a collaboration with the community-based NGO DHRRA, with the goal of identifying and resolving the situation of stateless persons. As a result of previous work on skills training for rural Indian-Tamil persons, mostly women DHRRA staff had discovered that statelessness was a recurring theme amongst these communities. DHRRA therefore began to assist individuals with their citizenship applications on a case-by-case basis.

DHRRA works with community-based paralegals who understand the issues faced by their communities. The paralegals educated community members on the importance of having legal identity documents, eligibility requirements and application processes. They served as an informal link between a stateless applicant and formal government institutions and thus provided an approachable way to access justice. Through this work, DHRRA has also built relationships with local authorities, such as the police, the registration authorities and authorities in the health and education sectors to aid their efforts to assist communities with obtaining documentary proof to support their citizenship applications. Between 2006 and 2013, DHRRA submitted over 7,000 cases to the national registration authorities to obtain legal identity documentation.

UNHCR provided DHRRA with technical and resource support to design and implement a mapping and registration project to provide accurate baseline data on the remaining number of stateless persons of Indian ethnic origin residing in four states in West Malaysia. The objective was to identify and reduce statelessness amongst persons considered to have strong links to Malaysia but who did not have any documentation or other proof of nationality. UNHCR worked with a civil society partner to increase sustainability and community acceptance. UNHCR also provided technical support to DHRRA with the legal analysis of the nationality law provisions. For example, DHRRA trained paralegals on the procedures and legal provisions with support from UNHCR. DHRRA continues to train paralegals as necessary to keep up to date on new developments and application procedures.

The mapping and registration project started in Kedah and Perak. In 2015, registration was carried out in Negeri Sembilan and Selangor. Community-based paralegals identified stateless households based on knowledge from key informants. The registration process involved mobile registration teams as well as community-based paralegals to collect necessary information. This information was used to provide individual applicants with tailored counselling and assistance.[46] The paralegals addressed issues in acquiring nationality documentation using a combination of legal and non-legal tools including mediation, advocacy, education and community organizing.

Paralegals assisted the applicants with submitting their nationality application to the NRD. They also assisted applicants with preparing for language tests, family tracing, and accessing services. For example, in cases involving stateless children, the paralegals used the proof of submission of the nationality application to facilitate their registration with the State Education Department to ensure that they were enrolled in school. More complex cases were referred to DHRRA's team of pro bono lawyers. The paralegals further assisted with gathering information, setting up meetings with lawyers, and acting as interpreters for applicants who could not converse in Malay or English. Unsuccessful applicants were assisted with resubmission.

DHRRA's mapping exercise was the first time that data on statelessness in Malaysia was collected. In total, 13,076 stateless persons were registered with DHRRA, and out of these cases, 12,786 nationality applications were submitted to the authorities as of June 2017, of which 4,036 had been granted citizenship.[47]

In addition to registration and legal assistance to facilitate the acquisition of Malaysian nationality, the project also resulted in a comprehensive situation analysis. Volunteers collected social welfare statistics such as level of employment, access to education, early marriage, and child labour. The analytical data, disaggregated by key factors such as age and gender, can reveal patterns in civil registration including areas with low birth

46 DHRRA Malaysia, "Monthly Bulletin", April 2016, available at: https://dhrramalaysia.org.my/publications/dhrra-buletin-april-2016/.

47 Para 4 of "Update on statelessness", Executive Committee of the High Commissioner's Programme, 69th meeting of the standing committee, 7 June 2017, available at: https://www.refworld.org/pdfid/59a58d724.pdf The 350 cases that were registered with DHRRA but whose cases had not (yet) been submitted as of September 2019 include newly registered cases that have yet to be submitted and complex cases that could not be resolved by the National Registration Department and needed legal remedy from courts. DHRRA continues to source for funding to cover the litigation fees of the pro bono lawyers.

rates.[48] This data will assist the Malaysian Government in finding larger scale solutions for the remaining stateless populations.

Malaysian Indian Blueprint to resolve statelessness and documentation issues

In 2017, the Prime Minister's Office published the Malaysian Indian Blueprint which includes a target to 'resolve statelessness and documentation issues' of persons of Indian descent living in Malaysia within five years.[49] This was the first time a government document officially acknowledged the issue of statelessness in Malaysia.

Following the Blueprint, the Government launched a major registration campaign, 'Mega MyDaftar', in June 2017. DHRRA accompanied the national registration authorities on the ground to provide information and advice to applicants. Through the project, more than 2,000 applications obtained documentary proof of citizenship and legal status[50] of which 1,054 people were granted citizenship.[51]

In 2018, the Malaysian Government committed to resolve statelessness amongst the Indian community within 100 days of being in office.[52] While the commitment was initially limited to stateless persons of Indian descent, the Government later announced that the policy would apply to affected persons of all ethnicities.[53] As part of this commitment the Malaysian Prime Minister announced in August 2018 that the Government would

48 DHRRA Malaysia, "Monthly Bulletin", April 2016, available at: https://dhrramalaysia.org.my/publications/dhrra-buletin-april-2016/

49 Para 4 of "Update on statelessness", Executive Committee of the High Commissioner's Programme, 69th Meeting of the Standing Committee, 7 June 2017.

50 Joseph Kaos Jr, "Claim of 300,000 stateless Indians baseless, says MIC, *The Star*, 23 June 2017, available at: www.thestar.com.my/news/nation/2017/06/23/claim-of-300000-stateless-indians-baseless-says-mic/; Rodziana Mohamed Razali, "Addressing statelessness in Malaysia: New hope and remaining challenges", Institute on Statelessness and Inclusion, 2017, at p. 6, available at: https://files.institutesi.org/WP2017_09.pdf

51 Farhana Syed Nokman and Arnaz M Khairul, "MyDaftar initiative helped many obtain citizenship", *New Straits Times*, 31 October 2017, available at: https://www.nst.com.my/news/nation/2017/10/297475/mydaftar-initiative-helped-many-obtain-citizenship

52 See "Pakatan says will resolve stateless Indians issue within 100 days of winning GE14", *The Malay Mail*, 8 March 2018, available at: https://www.malaymail.com/news/malaysia/2018/03/08/pakatan-says-will-resolve-stateless-indians-issue-within-100-days-of-winnin/1593857.

53 See "3,407 Indian Residents Will Get Malaysian Citizenship: Mahathir", *Benar News*, 14 August 2018, available at: https://www.benarnews.org/english/news/malaysian/citizenship-status-08142018160655.html and UNHCR, "UNHCR welcomes move by Malaysia to grant citizenship to stateless persons", available at: https://www.unhcr.org/en-my/news/press/2018/8/5b73e54d4/unhcr-welcomes-move-by-malaysia-to-grant-citizenship-to-stateless-persons.html

grant citizenship to permanent residency holders over the age of 60, some of whom were stateless. In April 2019, the Government announced that it was reviewing standard operating procedures to expedite citizenship applications for those under the age of 21 years.[54] In December 2019, the Government further announced that the revised procedures would entail a reduced processing time for children and a notification mechanism in case of rejection.[55] This announcement was welcomed by UNHCR and DHRRA and both organizations have engaged in ongoing advocacy and made policy recommendations to simplify administrative procedures in citizenship applications.[56]

54 "Government to review SOP on granting citizenship: Muhyiddin", New Straits Times, 6 November 2019, available at: www.nst.com.my/news/government-public-policy/2019/04/475054/government-review-sop-granting-citizenship-muhyiddin

55 "Muhyiddin: Home Ministry taking proactive measures to resolve issues on citizenship application", The Malay Mail, 28 December 2019, available at: https://www.malaymail.com/news/malaysia/2019/12/28/muhyiddin-home-ministry-taking-proactive-measures-to-resolve-issues-on-citi/1822760

56 DHRRA Malaysia, "Recommendation on statelessness & documentation issues", 5 June 2018, available at: https://dhrramalaysia.org.my/publications/procedural-policy-recommendation-on-statelessness-documentation-issues/

Acquisition of nationality through naturalization

Russian Federation

- Some important reforms were introduced in the 2002 Law on Citizenship, which drew on the **technical advice of international legal experts** on how to address statelessness in the context of State succession.
- **A facilitated naturalization procedure**, available from 2003 to 2009, allowed former USSR citizens to acquire Russian nationality. More than 650,000 stateless persons acquired Russian nationality through naturalization between 2003 and 2012.
- In 2009, the **2002 Law "On Citizenship" was amended** to extend the list of persons eligible to acquire citizenship through the simplified procedure.
- At UNHCR's 2011 Ministerial Meeting, the **Russian Government pledged to introduce procedures to facilitate acquisition of citizenship** and issue residency permits to additional categories of stateless persons.
- **Additional amendments** to the Russian Citizenship Law that were adopted in November 2012 filled remaining gaps in the law to reduce statelessness.

Statelessness in the Russian Federation

The break-up of the former Soviet Union left millions of people stateless in the newly-independent Russian Federation. Pursuant to Article 13.1 of the 1991 Federal Law on Citizenship (1991 Citizenship Law) former Soviet citizens who were permanent residents in the Russian Federation on the day the law took effect were considered to be Russian citizens, but were entitled to make a declaration that they did not wish to be considered as citizens within a year from the entry into force of the Law. In addition to this, stateless persons who resided permanently in the territory of the Russian Federation or another

former Soviet republic had the opportunity to register as citizens within a year of the law entering into force (Article 18(e)).

The same opportunity was extended to foreign citizens and stateless persons who had either acquired Russian citizenship by birth or had an ancestor who was a Russian citizen by birth, regardless of their place of residence. Through a 1993 amendment, the law also allowed former USSR citizens who took up residence in the territory of the Russian Federation after 6 February 1992 to acquire Russian Federation citizenship by registration, with a three-year deadline to do so, later extended to 31 December 2000. The Russian citizenship of the vast majority of the population living in the Russian Federation after its independence was thus secured, as was the citizenship of many individuals who had ties with Russia.

Individuals who could not prove that they were permanently resident in the Russian Federation but who held temporary residence status or had no legal residence were not entitled to acquire Russian citizenship. Over the course of the Russian Federation's first decade as an independent State, the practical application of the Federal Law was complicated by related laws regarding the regulation of residence in the Federation. Before new passports of the Russian Federation were given, citizenship of the Russian Federation was established by inserting stickers (kaddish) into an individual's former USSR passport. Once new Russian Federation passports were developed, a series of deadlines were given for individuals to exchange their former Soviet passports for new Russian Federation passports. Many individuals did not comply with these deadlines and continued to use their former Soviet passports as identity documents.

Furthermore, after 1992, the Russian Federation continued to attract many migrants from other former constituent republics of the Soviet Union, which had also become independent States. By the end of the 1990s, many former Soviet citizens in the Russian Federation had not undertaken affirmative steps to regulate their citizenship status there or in other States they had ties with. Some had automatically become citizens of other newly-independent States, sometimes without knowing it, while others remained stateless because their personal circumstances were such that they failed to qualify for nationality anywhere.

Reform of the Federal Law on Citizenship of the Russian Federation

By 1999, little time remained for those wishing to acquire Russian nationality through registration as the process was to close at the end of 2000. Aware that many former Soviet citizens remained without regularized status in the Russian Federation, the Government began proceedings to reform the 1991 Citizenship Law and harmonize it with the Russian Constitution of 1993.

The complex interplay of nationality laws in the former Soviet Union and the former Yugoslavia had revived the interest of the international legal community, particularly in the Council of Europe, to strengthen legal norms to guarantee the right to a nationality and to prevent statelessness in the context of State succession.[57] A Citizenship Commission established by the Russian Government to review the 1991 Citizenship Law invited Council of Europe nationality law experts as well as UNHCR's statelessness specialist to participate in a series of four meetings in Moscow and Strasbourg. The meetings, conducted between 1999 and 2001, discussed reform of the 1991 Citizenship Law. This consultative process gave UNHCR an opportunity to ensure that the reform process would help to reduce and prevent statelessness.

The new Federal Law No. 62-FZ on Citizenship of the Russian Federation entered into force on 1 July 2002 (2002 Citizenship Law). Additional amendments to the law were passed in November 2003, with the objective of facilitating the acquisition of Russian Federation citizenship by former USSR citizens residing in the Russian Federation.

The key provision that resulted in the reduction of statelessness concerned Article 14.4,[58] which was introduced through the 2003 amendments. It was a temporary measure to facilitate the acquisition of Russian nationality through naturalization of former Soviet citizens on the basis of a temporary or permanent residence permit at the time the 2002 Citizenship Law took effect. This facilitated procedure for naturalization was extended three times by law and was in effect from 2003 through the end of June

57 This resulted in the adoption of the European Convention on Nationality and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. The Russian Federation signed the European Convention on Nationality in June 1997 but has yet to ratify it.

58 Federal Law No. 62-FZ of 31 May 2002 "On Citizenship of the Russian Federation" [Russian Federation], 1 July 2002, available at: http://www.refworld.org/docid/3ed72d964.html Note that because Article 14.4 was introduced as a temporary measure through an amendment in 2003 and was only valid until 2009, the language of this provision is not included in the current text of the law available on Reword.

2009. It is significant in that it waived the requirements that were most difficult to fulfil for citizens of the former USSR residing in the Russian Federation with undetermined nationality status, namely, proof of uninterrupted residence for five years, proof of means of self-sufficiency, and Russian-language proficiency. Applicants were also exempted from paying naturalization fees.

Implementation of the simplified naturalization procedure

Article 14.4 of the 2002 Citizenship Law required those who qualified to submit individual applications for naturalization, enabling the Russian Government to closely track the numbers of those who took advantage of this simplified procedure. According to statistics provided by the Russian Government to UNHCR, during the six-year time frame of the procedure a total of 2,679,225 people acquired Russian nationality through naturalization, of whom 575,044 were stateless.[59] After the simplified naturalization procedure expired in 2009, stateless individuals were naturalized in 2010 and 2011 under the regular naturalization procedure, but at a much lower rate, thereby demonstrating the value of the simplified procedure.[60]

In total, more than 650,000 stateless persons acquired Russian nationality between 2003 and 2012. Between 2014 and 2016, 36,585 stateless persons acquired Russian nationality, followed by a further reduction of 8,623 stateless persons in 2017. This represents one of the most successful efforts at reduction of statelessness in the past decade.

59 The remaining 2,104,181 persons who acquired Russian nationality through naturalization were found to have possessed another nationality. In many instances, where these individuals had migrated to the Russian Federation from other former Soviet Republics, they may have automatically acquired nationality of another successor State to the former Soviet Union, sometimes without knowing it, but intended to reside permanently in the Russian Federation.

60 The number of stateless persons who acquired citizenship in the Russian Federation in 2010 and 2011 was 19,000 and 15,144, respectively.

Addressing the remaining gaps perpetuating statelessness in the Russian Federation

Despite the success of the simplified naturalization procedure, there remained a number of stateless persons with unregulated status in the Russian Federation as a result of gaps in legislation governing the interrelated issues of nationality, identity documentation and temporary and permanent residence. Many individuals were unable to take advantage of Article 14.4 of the 2002 Law on Citizenship because it was limited to former USSR citizens who had proof of temporary or permanent residence in the Russian Federation in 2002. This required proof of identity as well as proof of legal stay in the Russian Federation. The authorities continued to extend the validity of expired former Soviet passports throughout the time that the facilitated naturalization procedure was in place.[61] Many individuals, however, no longer possessed former Soviet passports and did not, or were unable to, regularize their residence in the Russian Federation because of the administrative requirements linked to acquisition of temporary or permanent residence permits. Apart from the condition that a document proving identity and nationality had to be submitted, applicants were also requested to submit documents to prove that they had not been convicted of a crime in the permanent place of residence, documents to prove that they were able to support themselves financially and, for children under the age of 18, a birth certificate or passport. In addition to this, applicants generally needed to prove that they had somewhere to live in the place of proposed residence. As a result, many stateless individuals in the Russian Federation were caught in a vicious cycle, unable to regularize their residence status and in turn prevented from applying for Russian citizenship.

As it became clear that the facilitated naturalization procedure under Article 14.4 would not resolve all remaining cases of statelessness in the Russian Federation, the Government Commission on Migration Policy was reactivated in 2008 to find new solutions. Leading Russian civil-society experts, including UNHCR's implementing partners,[62] participated in the commission. The Committee on Constitutional Supervision

61 This was first done through Government Resolution No 731 "On the extension of the validity of 1974-type USSR passports until 1 January 2006." Even after this deadline, the Russian authorities confirmed to UNHCR that they would accept expired Soviet passports as relevant identification for the purpose of acquiring nationality through the simplified naturalization procedure through 2009.

62 For a more detailed discussion of the law reform deliberations, please see the blog entry on the European Network on Statelessness's website by Svetlana Anushka, Chair of the Civic Assistance Committee and a Member of the Council of the Memorial Human Rights Centre, entitled "Innovations in Russian Legislation on Citizenship" from 20 March 2013, available at: http://www.statelessness.eu/blog/innovations-russian-legislation-citizenship

of the State Duma was concurrently deliberating a separate draft bill to the same end. Acknowledging that a formal, durable solution needed to be found, the Russian Government pledged at the December 2011 Ministerial Meeting to introduce additional procedures to facilitate acquisition of Russian Federation citizenship and residency permits for certain categories of stateless persons.[63]

The Russian parliament passed additional amendments to its 2002 Citizenship Law in November 2012 (2012 amendments).[64] This reform established procedures for facilitated naturalization for certain groups of individuals, including stateless former Soviet citizens, and addressed the challenge that arose from Article 14.4 of the 2002 Citizenship Law by eliminating any requirement that applicants for citizenship produce proof of residence registration in the Russian Federation. The procedures for facilitated naturalization are similar to those provided for under Article 14.4 of the 2002 Citizenship Law; in other words, they waive the requirement for proof of uninterrupted residence for five years, proof of means of self-sufficiency and Russian-language proficiency. In addition, Article 41.1.e of the amended law extends facilitated naturalization to former USSR citizens who acquired Russian Federation passports that had been subsequently revoked due to a determination that the passports were issued by administrative error. Although it remains to be seen how the obstacle of the loss or non-possession of USSR passports will be addressed in practice, the 2012 amendments to the Citizenship Law confirm the Russian Federation's intention of resolving statelessness in its territory.

The President of the Russian Federation signed a law in December 2016 that would continue to simplify acquisition of citizenship for stateless persons who meet the Russian language requirements and live or have lived in the Russian Federation. In April 2020, a law was adopted which further simplifies the naturalization procedure. As of 24 July 2020, the five-year legal residence and proof of income requirements were waived for stateless persons.

63 The full text of the Russian Federation pledge is included in UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011)*, available at: http://www.unhcr.org/4ff55a319.html

64 Federal Law N° 182-FZ dated 12 November 2012 "On introducing amendments to the Federal Law On Citizenship of the Russian Federation.

Turkmenistan

- **The political and operational initiative of the Turkmenistan Government** to resolve the protracted situation of thousands of former USSR citizens with undetermined nationality was demonstrated through its strong involvement in an **identification and registration campaign**.

- **The authorities gained technical expertise through collaboration with UNHCR** on the identification and registration of 11,000 long-term refugees for naturalization (2004-2005).

- **An initial registration drive in 2007-2010** by the Turkmenistan authorities found some 4,000 individuals with undetermined nationality. The registered individuals **completed and filed applications for naturalization or residence status** (depending on their personal circumstances) for the Government's review.

- **A dialogue** on statelessness between the Turkmenistan Government and UNHCR, which began in 2008, led to the **adoption in 2010 of an Action Plan for Joint Activities on Prevention and Reduction of Statelessness** between the Government of Turkmenistan and UNHCR.

- **The Government re-launched the registration campaign in 2011 as a collaborative multi-stakeholder process. Stationary and mobile registration teams** consisting of representatives of the Government and civil society, and including legal experts, were deployed to assist individuals with the registration and application process.

- **UNHCR established contacts and relationships with embassies and representatives of Commonwealth of Independent States (CIS) countries** to help in verifying whether certain individuals were considered nationals of their States.

Profile of those with undetermined nationality, including stateless persons, in Turkmenistan

More than two decades after the break-up of the Soviet Union, a large number of people continue to live in Turkmenistan with irregular residence status and without valid identification documents. The majority moved to Turkmenistan during Soviet times or in the years immediately following the dissolution of the USSR and have links to other former Soviet republics. Most of these people are of undetermined nationality, with the great majority believed to be stateless. While some live in cities, most reside in agricultural areas in the northern and north-eastern regions bordering Uzbekistan. These people have links with multiple countries on the basis of birth, descent, past residence or marriage, making verification of their nationality status a complex task. Turkmenistan does not allow dual nationality and, according to nationality regulations adopted in 1993 and in force since that time, anyone applying for Turkmen citizenship must submit a certificate confirming that they do not possess the nationality of other countries with which they have a link.

Individuals with ties to Uzbekistan face particular challenges. Turkmenistan and Uzbekistan finalized the demarcation of their border in early 2000 and many residents in Turkmenistan's north-east border region were left without an established nationality of either State. Uzbekistan's nationality law requires the country's nationals who establish permanent residence abroad to register with an Uzbek consulate within five years of their departure. Failure to do so results in withdrawal of Uzbek citizenship. Many individuals of Uzbek origin in Turkmenistan were not aware of this provision and did not take the necessary steps to preserve their Uzbek nationality.

2004-2005 registration campaign to naturalize ethnic Turkmen refugees

From October 2004 to February 2005, the Turkmen Government and UNHCR conducted a joint registration exercise (2004-2005 Refugee Registration Campaign) to identify and register all the refugees who had settled in Turkmenistan a decade or so earlier. Most were ethnic Turkmen who fled armed conflict in Tajikistan for Turkmenistan between 1992 and 1997, although some were ethnic Turkmen from Afghanistan who had been granted residence permits in 1994.

UNHCR offered technical advice to the Turkmen Government during the 2004-2005 Refugee Registration Campaign, for instance by providing inputs on the type of biographical data to be collected. UNHCR also provided logistical and material assistance, including software, cars, laptops, cameras, printers and copying machines to help mobile units reach the affected population and conduct the registration. Once the exercise was completed, negotiations were conducted with the Government to find the best durable solution for these individuals. The Presidential Decree of August 2005 resulted in the naturalization of 16,298 persons who had been registered, of whom 11,200 were refugees.

Turkmen Government's initiative to resolve statelessness and collaboration with UNHCR

With the experience gained from the 2004-2005 Refugee Registration Campaign, the Turkmen Government took the initiative to identify those with undetermined nationality in Turkmenistan, with the goal of regularizing their status and reducing statelessness. Government officials adopted a plan to identify the following categories of individuals:

- Those who possessed Turkmen nationality pursuant to the provisions of the 1992 Nationality Law.
- Those who possessed the nationality of another country, including individuals who held valid passports or certificates from foreign authorities attesting to their nationality of another State.
- Those who were stateless.

Depending on an individual's circumstances, the goal of the identification and registration campaign was to provide documentation confirming Turkmen nationality of those who possessed it; grant permanent residence status to those who were nationals of other countries; and provide stateless persons the opportunity to apply for naturalization in Turkmenistan.

The Turkmen authorities had already begun to identify and register persons with undetermined nationality in 2007. They adopted a streamlined process whereby all individuals whose bio-data was registered would concurrently fill out relevant

applications to establish their nationality, regularize their status or apply for naturalization. The Government established mobile groups of migration officials to travel to settlements, register individuals and fill out application forms electronically, which, once completed on the spot, would be printed, signed and filed.

Turkmenistan initiated this program with the skills, experience and materials it had acquired from working with UNHCR on the 2004-2005 Refugee Registration Campaign, as well as some additional material support. Between 2007 and 2010, the Government registered approximately 4,000 persons with undetermined nationality. The authorities, however, had not been able to reach all of the affected population and needed additional resources not only to identify and register all relevant individuals, but also to conduct the necessary analysis of their individual cases to resolve their irregular status.

After initiating this identification and registration drive, the authorities approached UNHCR to discuss how to increase the scale of their efforts and improve related processes. In 2008, UNHCR began to contribute to the Inter-Ministerial Working Group on the Improvement of Legislation, an inter-agency forum to develop recommendations for the improvement and harmonization of legislation and administrative practices related to refugees and stateless persons. In February 2009, a Roundtable on Statelessness, organized by UNHCR and the National Institute for Democracy and Human Rights, brought together government officials who exchanged ideas on solutions to statelessness in Turkmenistan. UNHCR then convened a Regional Statelessness Conference for Central Asia in December 2009, which was held in Ashgabat.

As a result of these capacity-building activities, the Turkmen Government adopted the Action Plan for Joint Activities on Prevention and Reduction of Statelessness in Turkmenistan in December 2010. This created a framework for collaboration with UNHCR on completing the identification and registration of individuals with undetermined nationality and then reviewing and revising the relevant laws.

2011 identification and registration campaign

The 2011 identification and registration campaign (2011 Campaign) was designed to scale up and complete the Government's efforts from 2007 to 2010. It was undertaken as a joint initiative between the Turkmen Ministry of Foreign Affairs (MFA), the State

Migration Service of Turkmenistan (SMST), the Ministry of Interior, the Ministry of National Security and UNHCR. Additional stakeholders brought into the project included UNHCR's national NGO partner, Keik Okara, which operated legal clinics and assisted individuals through the registration process; local authorities and village administrators, who assisted in sensitizing the targeted populations and facilitated the work of the registration teams; and the embassies of CIS countries, which confirmed whether persons identified through the registration process were nationals of their States.

Coordination was achieved through the creation of a Task Force consisting of a UNHCR national protection staff member, the Head of the Citizenship Unit of the SMST and the Deputy Director of Keik Okara, as well as an Advisory Board made up of UNHCR Country Representative, the Head of the Consular Section of the MFA, deputy ministers of the SMST and the Director of Keik Okara. The campaign unfolded in three distinct phases, as outlined below:

PHASE 1: PRE-REGISTRATION: TRAINING AND AWARENESS-RAISING

The objectives of the pre-registration phase included recruitment and training of staff to undertake the registration campaign and raise awareness of the issues among local authorities. This phase also involved briefing representatives of CIS countries to prepare them to respond to queries on the nationality of registered individuals with ties to their countries.

UNHCR and the Turkmen Government organized training for the SMST officials, NGO representatives and legal-clinic lawyers who would undertake the campaign. These individuals were instructed on interview techniques and the questions to be asked when filling out the electronic registration and application forms. Acting on lessons learned during prior registration exercises, staff for the teams were recruited from local populations so that they possessed the language skills to communicate with the affected individuals.

An information campaign was also launched in this initial phase. Leaflets and posters were produced in both the Turkmen and Russian languages. SMST, UNHCR and Keik Okara staff travelled throughout the country to hold discussions with local authorities and raise their awareness of the campaign. The local authorities were also requested to help distribute information materials and disseminate information on the dates when registration would take place.

PHASE 2: REGISTRATION PHASE

The registration phase of the 2011 Campaign took place from 6 May to 3 July 2011, with some individuals continuing to register until August 2011. During this phase, stationary and mobile teams were deployed to 70 registration points covering all provinces as well as the capital, Ashgabat. The two districts of Dashoguz and Lebap in the north and north-east region along the Uzbek border received the most registration teams.

Fifty-five people conducted the registration. Of these, 24 were from the SMST, while the rest came from Keik Okara, with seven of the latter being lawyers from the organization's legal clinics. Each stationary or mobile team included one SMST authority and one representative of Keik Okara.

Stationary registration teams were placed in the administrative centre of the State Migration Service of each province to receive, interview and register affected persons living there and in the surrounding districts. Mobile teams were deployed to rural areas. One registration team was based in each rural district centre to assist those living in the vicinity. For those affected persons living farther away, the executive authorities in each sub-district organized transportation to bring them to the mobile teams operating at the district level. Individuals with undetermined nationality filled out citizenship application forms, whereas individuals with documentary proof of nationality of another State filled out applications for permanent residency.

PHASE 3: POST-REGISTRATION PHASE: REVIEW OF APPLICATIONS AND CONTACT WITH EMBASSIES TO OBTAIN CONFIRMATION OF NATIONALITY OR NON-NATIONALITY

As information from the registration phase was collected and forwarded to the SMST in Ashgabat, the Turkmen authorities began to make background and security checks of those who had submitted applications. This started in June 2011 and is continuing.

At the same time, the Turkmen authorities began to review applications, while UNHCR and Keik Okara helped registered persons obtain confirmation of nationality or non-nationality. UNHCR and Keik Okara organized "reception days" at the embassy of each CIS country with consular representation in Ashgabat. During these events, lawyers accompanied individuals to meet embassy officials to consult on their individual cases.

For individuals with ties to CIS countries that did not have consular representation in Ashgabat, the Turkmen Government provided UNHCR with a list of applicants from these countries. UNHCR then liaised with its offices in the relevant countries for assistance in contacting the competent authorities for confirmation of a person's citizenship. UNHCR transmitted the results of such enquiries back to the Turkmen officials in Ashgabat. Initially, UNHCR covered the costs of obtaining such proof and applications for citizenship, but in 2013 negotiated a waiver of the naturalization fee.

Results

In July and October 2011, the Turkmen President signed two successive decrees granting citizenship to 1,590 and 1,728 stateless persons, respectively. All of the 3,318 individuals who were naturalized in 2011 had submitted citizenship applications under the 2007-2010 registration drive. During the 2011 campaign, approximately 8,300 individuals with undetermined nationality were registered. Of these, UNHCR and its partners had assisted 6,158 people by the end of 2013, helping them to file their naturalization applications and requests for confirmation of their citizenship status. The remaining 2,143 individuals registered in 2011 were awaiting confirmation of their citizenship from embassies. Some 680 cases from the 2007 registration exercise remained unresolved. On 25 October 2013, another presidential decree resulted in the grant of Turkmen citizenship to 609 stateless persons. Most of these individuals had been registered during the 2007-2010 registration drive and some in the 2011 exercise.

As the review of the applications from the 2011 Campaign remains ongoing, the Turkmen Government and UNHCR are continuing to pursue the goals of their joint action plan. Turkmenistan acceded to the 1954 Convention relating to the Status of Stateless Persons in December 2011 and the 1961 Convention on the Reduction of Statelessness in August 2012. In June 2013, a new Citizenship Law was adopted, incorporating several safeguards to prevent statelessness. An additional 786 stateless individuals were naturalized during a side event at a conference on statelessness and migration that was organized by the Government of Turkmenistan, UNHCR and IOM in June 2014. This has brought the total number of formerly stateless individuals who received Turkmen nationality between 2011 and 2014 to approximately 5,000. Additional Presidential decrees were issued in the subsequent years. In the period from 2014 to 2021, 10,271 stateless persons were granted Turkmen nationality.

Viet Nam

- The **revision of the 1998 Nationality Law in 2008** created a new Article 22 for simplifying conditions for the naturalization of the stateless former Cambodian refugees in the country.

- On 20 March 2020, the **Prime Minister of Viet Nam issued Decision No. 402/QD-TTg** to implement the UN Global Compact for Safe, Orderly and Regular Migration, which includes a commitment to undertake ambitious activities to address Statelessness: acceding to the Statelessness Conventions by 2025, establishing a statelessness determination procedure, strengthening access to civil registration and wider commitments to improve the identification and reduction of Statelessness and protect the rights of stateless persons.

- **High-level outreach by UNHCR raised awareness** of the statelessness issue among other UN agencies and the diplomatic community in Viet Nam, helping to build consensus that resolution of the problem was a priority.

- **UNHCR has provided technical and operational support** to the Government through workshops to facilitate the naturalization of stateless Cambodians, spontaneous migrants from Lao PDR and Cambodia and other stateless people and people with undetermined nationality residing in border areas. These activities have helped to **develop an Operational Plan** that proposed relaxation of the naturalization criteria for this group.

- Examples of the **relaxed naturalization requirements** included: acceptance of all former Cambodian refugees as stateless (ending the requirement for individual statements relinquishing former nationality); acceptance of sworn testimony on the date and place of birth in place of the requirement for birth certificates; and waiver of the naturalization fee.

- UNHCR conducted a **comprehensive assessment of gaps in Viet Nam's nationality laws** that gave rise to statelessness. This led to the **identification of statelessness among Vietnamese women** with failed marriages who renounced their nationality upon marrying foreigners without acquiring a new nationality as another issue in need of resolution.

- Raising awareness of international standards on the prevention of statelessness helped spur the Vietnamese Government to adopt the r**evised 2008 Nationality Law, which included numerous safeguards against statelessness.**

Statelessness situations

Viet Nam became host to tens of thousands of refugees from neighbouring Cambodia after the Khmer Rouge took power in 1975. When UNHCR ceased its assistance to Cambodian refugee camps in 1994, it was estimated that approximately 9,500 former Cambodian refugees remained in Viet Nam.[65] Approximately 2,500 of them continued to live in the former UNHCR camp sites, while an estimated 7,000 others were believed to have integrated into urban communities in Ho Chi Minh City and other provinces in the south of Viet Nam. Many of the Cambodian refugees in Viet Nam were of ethnic Chinese descent. At the heart of their uncertain future was the fact that Cambodia did not consider them its nationals, rendering them stateless. In 2002, UNHCR's country office and the Vietnamese Government discussed the need to find a durable solution for this group. As a result, in 2008, the revised Nationality Law included a new Article 22 that simplified procedures for the naturalization of the remaining former Cambodian refugees residing in Viet Nam.

The plight of the former Cambodian refugees prompted the Vietnamese Government to look at gaps in the nationality law that gave rise to statelessness. For its part, in 2005 UNHCR tapped the Surge deployment scheme to engage a protection officer to focus on statelessness in Viet Nam.

Statelessness among Vietnamese women who left Viet Nam to marry foreigners was found to be another pressing issue in need of a solution. In 2005, the Vietnamese and French Governments co-convened an international conference addressing the phenomenon of "economic marriages" of Vietnamese women to foreigners.[66] The Vietnamese Ministry of Justice estimated that between 1997 and 2005, more than 180,000 Vietnamese women had married foreigners, and that at least 10,000 additional marriages to foreigners occurred each year from 2005 to 2009. Most Vietnamese women moved abroad to marry their foreign husbands. It was the norm that a woman

65 Political negotiations to resolve the Cambodian conflict through the Paris Conference on Cambodia in 1989 and 1990 resulted in the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict signed by Cambodia and 18 other countries under the auspices of the United Nations Secretary-General in October 1991. In this Agreement, Cambodia undertook to create an environment conducive to the voluntary return and integration of Cambodian refugees from abroad and the United Nations was requested to assist in the repatriation of Cambodian refugees. Those who had fled Cambodia in the 1970s were deemed no longer in need of international protection.

66 The publication of presentations (*« Receuil des Interventions »*) made at this regional conference entitled: *« Les aspects pratiques du Droit international privé des personnes, de la famille et des biens »* convened in Hanoi from 25 to 17 May 2005 is on file with UNHCR's Statelessness Section.

would acquire the nationality of her new husband in the new country of residence. Because most countries in Asia prohibit dual nationality, some Vietnamese women renounced their Vietnamese nationality to apply to acquire the nationality of their foreign husbands.

However, an estimated 10 per cent of the marriages between Vietnamese women and foreign men resulted in divorce. Vietnamese women who had renounced their Vietnamese nationality and either failed to finalize the process to acquire the nationality of their foreign husbands or automatically lost their newly acquired foreign nationalities upon dissolution of their marriages found themselves stateless. In 2006, the Vietnamese Government estimated that at least 3,000 women had returned to Viet Nam due to such circumstances and were stateless. They were accompanied by at least 3,000 children born abroad who had undetermined nationality. In 2021, the cases of approximately 1,000 children of a mixed marriage whose nationality was undetermined have been resolved.

UNHCR identified five priorities for preventing and reducing statelessness in Viet Nam: resolving the nationality status of the former stateless Cambodian refugees, spontaneous migrants from Lao PDR and Cambodia and other stateless and/or undetermined nationality groups residing in Viet Nam; devising solutions for those women who had renounced their Vietnamese nationality upon marriage to a foreigner that rendered them stateless; promoting reform of Vietnamese nationality legislation in order to fill legal gaps and thereby prevent new cases of statelessness; implementing the National Action Framework on Civil Registration and Vital Statistics 2017-2024 to ensure that all Vietnamese citizens and hard-to-reach and marginalized population groups will be included in the civil registration system, receive a birth certificate and other required identification documents; and accelerating a preparation for the accession to the 1954 and 1961 Conventions on Statelessness by 2025.

International engagement and technical assistance to promote reform to address statelessness

Once the main statelessness situations in Viet Nam had been identified, the next step was to seek reform of the nationality law and related policies. This was achieved in part through the discreet but significant engagement of the international community with the

Vietnamese Government. UNHCR played a central and consistent role in channeling technical advice and political encouragement to this end. The period 2006-2008 presented a particular watershed. In 2006, UNHCR undertook high-level outreach with the Vietnamese Government to raise awareness on statelessness, including through letters from UNHCR's Regional Bureau Director, Assistant High Commissioner – Protection, and the High Commissioner. UNHCR successfully placed statelessness on the agendas not only of the international diplomatic community in Viet Nam but also of other UN agencies operating in the country. As a result, talking points encouraging the Government to resolve statelessness were included in the brief of the United Nations Secretary-General when he visited the country in May 2006.

The same year, the Vietnamese Government expressed its renewed resolve to naturalize the stateless former Cambodian refugees. This triggered a second phase of UNHCR engagement at a more technical and operational level, with a series of workshops and meetings between UNHCR and government stakeholders. Several meetings were held in 2006, but a breakthrough came at a multi-stakeholder workshop in November 2007. Participants in this workshop identified obstacles that prevented stateless Cambodian refugees from benefitting from the ordinary naturalization procedures available under Vietnamese law and suggested the adoption of exceptional procedures to overcome these challenges.

This workshop concluded with the development of an Operational Plan for naturalizing stateless Cambodian refugees. The plan was approved by Viet Nam's Deputy Prime Minister on 4 December 2007. This paved the way for a series of subsequent meetings in 2008 of a Working Group created to implement the Operational Plan. The group was composed of officials from the Vietnamese ministries of Foreign Affairs, Justice and Public Security as well as the Office of the Government and Office of the President of State.[67]

In the Southeast Asian region, Viet Nam adopted the 2012 ASEAN Human Rights Declaration, which contains provisions relating to the right to nationality and contribute to the protection of stateless persons and the prevention of statelessness. Viet Nam had taken the lead on the regional project of the ASEAN Commission on the Promotion and

67 The Working Group designated relevant authorities at both the central and local levels in Ho Chi Minh City and the two provinces of Binh Doung and Binh Phuoc, where stateless Cambodian refugees continued to reside in the former UNHCR camps.

Protection of the Rights of Women and Children (ACWC) to ensure the recognition of the legal identity of all women and children in ASEAN.

To address statelessness and support civil status registration for the vulnerable and hard-to-reach population groups, Viet Nam as a member state of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime – as part of which the issues relating to the civil registration were addressed, especially during the Sixth Ministerial Conference held in Bali, Indonesia on 23 March 2016 - has taken part in implementing the Pilot Project for the Bali Process Civil Registration Assessment Toolkit. The Toolkit is developed to help the government to assess and improve the national civil registration system in order to record all the births, deaths and marriages that occur in the territory among the populations of concern. Viet Nam's efforts and experiences in the Pilot Project have been a significant contribution to improving the Toolkit and served as lessons learned for other member states of the Bali Process.

Policy reform to reduce statelessness among former Cambodian refugees

According to the Vietnamese nationality law at the time, applicants for naturalization were required to produce the following: proof of renunciation of foreign nationality, a birth certificate, a curriculum vitae, a judicial background certificate, a certificate of proficiency in the Vietnamese language, a certificate of continuous residence in Viet Nam for a certain period, information on the applicant's domicile/occupation/income, and funds in payment of a processing fee. But most of the stateless former Cambodian refugees could not meet these requirements. Having fled Cambodia more than three decades earlier, this population had become aged; many were also illiterate and indigent. Given the circumstances under which they fled Cambodia, most did not have personal documentation, such as birth certificates.

The greatest obstacle, however, was the requirement for proof of renunciation of foreign nationality. Some individuals had attempted to approach the Cambodian Government on this point. Although Cambodia did not recognize the former refugees as Cambodian citizens, it refused to issue documents confirming that they had relinquished their former nationality, as required by the Vietnamese law.

The Operational Plan provided solutions to all of these obstacles to naturalization. Regarding the requirement to prove renunciation of foreign nationality, the Vietnamese Government initiated bilateral discussions with its Cambodian counterpart to seek certification that all those in this group were not considered Cambodian nationals.[68] The Cambodian Government responded that it had no records of these people and confirmed it did not consider them to be Cambodian nationals. The Vietnamese Ministry of Foreign Affairs concluded that the entire Cambodian refugee population remaining in Viet Nam was stateless and waived the requirement for a certificate of renunciation of foreign nationality.

With respect to the other naturalization requirements, the Vietnamese Government agreed to accept sworn statements attesting to applicants' parentage and date and place of birth, rather than demanding the submission of birth certificates. It waived fees for individuals from this group and permitted elderly individuals to pass a simple verbal interview in spoken Vietnamese to satisfy the language requirement. In addition, the Central Government agreed to work with local and district officials in Ho Chi Minh City and Binh Duong and Binh Phuoc provinces to review individual applicants' circumstances related to their curriculum vitae, judicial background certificate, certificate of continuous residence in Viet Nam and other information on domicile, occupation and income.

Between 2008 and 2009, inter-ministerial working groups were established at the local level in Ho Chi Minh City and Binh Duong and Binh Phuoc provinces to implement the Operational Plan to naturalize the former Cambodian refugees. The Government decided to concentrate first on naturalizing the approximately 2,000 people still living in camps in the two provinces and Ho Chi Minh City. The three local working groups developed action plans for each province/city that included a census to verify the names of the individuals living in the former UNHCR camps. They also established mobile teams to conduct an information campaign and distribute and collect naturalization applications.

In July 2010, the Vietnamese Government held the first naturalization ceremony, granting Vietnamese citizenship to 287 former Cambodian refugees who continued to reside in the former UNHCR refugee camp in Ho Chi Minh City.[69] An additional 2,000

68 This was pursued during the annual meeting between the foreign ministries of Cambodia and Viet Nam in 2007, where the Vietnamese Government inquired about the Cambodian Government's position vis-à-vis the Cambodian refugee population in Viet Nam.

69 See UNHCR, *Viet Nam ends stateless limbo for 2,300 former Cambodians*, 19 July 2010, available at: http://www.unhcr.org/4c447a796.html.

stateless Cambodian refugees residing in the former UNHCR camps in Binh Duong and Binh Phuoc provinces also acquired Vietnamese nationality through naturalization by the end of 2010.[70] As the Vietnamese Government reviewed and approved naturalization applications from the camp-based applicants, UNHCR supported five micro projects through the Vietnamese Ministry of Labour, Invalids and Social Affairs (MOLISA) to promote the local integration of this group of new citizens. The projects covered the provision of vocational-training equipment and kindergarten education as well improvements to road infrastructure to ease travel between the camps in the provinces and Ho Chi Minh City.

Law reform to prevent and reduce statelessness, including among Vietnamese women who marry foreigners

In addition to seeking to reduce statelessness among former Cambodian refugees, the Vietnamese Government also resolved to address statelessness among Vietnamese women who had married foreigners. It aimed to do so by reforming its nationality law and incorporating a number of safeguards against statelessness. Throughout the workshops and meetings with the Vietnamese Government from 2006 to 2008, UNHCR raised awareness of international legal standards that contribute to the prevention and reduction of statelessness. With this information, the Vietnamese Ministry of Justice and Ministry of Foreign Affairs led a process in consultation with the Department of Consular Affairs, the Ministry of Public Security in the Department of Immigration and other local bodies to reform its 1998 nationality law. The revised 2008 Vietnamese Nationality Law entered into force on 1 July 2009.[71]

The 2008 Nationality Law introduced a number of improvements that are significant for the prevention of statelessness for all Vietnamese abroad, including Vietnamese women who marry foreigners. With the passage of the law, no longer will there be an automatic loss of Vietnamese nationality should a Vietnamese citizen acquire a second, foreign nationality. This eliminates the danger of rendering an individual stateless, should that

70 See UNHCR, Statelessness: Former refugees win citizenship, and now dream of home ownership, 15 September 2011, available at: http://www.unhcr.org/4e7204db6.html.

71 *Law on Vietnamese Nationality* [Viet Nam], No. 24/2008/QH12, 13 November 2008, available at: http://www.unhcr.org/refworld/docid/4ac49b132.html. Please see also *Decree No. 78/2009/ND-CP of September 22, 2009, detailing and guiding a number of articles of the Law on Vietnamese Nationality*, available at: http://www.unhcr.org/refworld/docid/4b470b2d2.html

individual lose an acquired second nationality, but only if the individual has not had to renounce his or her Vietnamese nationality to acquire a new nationality. Furthermore, Article 13 of the 2008 Nationality Law provides that Vietnamese citizens abroad who had not yet lost their Vietnamese nationality pursuant to the prior nationality law can retain their Vietnamese nationality so long as they register with the overseas Vietnamese consular authorities by July 2014, with the deadline subsequently removed by legislative amendment in June 2014.[72]

According to both the 1998 and 2008 Nationality Laws, the act of marriage, divorce or annulment of unlawful marriage between a Vietnamese citizen and a foreigner does not alter the Vietnamese nationality of either the concerned individual or any minor children. As had been documented, however, several thousand Vietnamese women had been rendered stateless upon marriage to foreigners because they elected to renounce their Vietnamese nationality in the hopes of acquiring the foreign nationality of their spouses. Unfortunately, the 2008 nationality law maintains the possibility of loss of Vietnamese nationality through renunciation in its Article 27 without incorporating a safeguard to ensure that this would only be effective where the concerned individual has definitively acquired another nationality.[73]

Nevertheless, to address the situation of Vietnamese women who become stateless through marriage to a foreigner, Article 7(2) of the 2009 law makes clear that the "State adopts policies to create favorable conditions for persons who have lost their Vietnamese nationality to restore Vietnamese nationality." Article 23(1) (f) of the law facilitates the restoration of Vietnamese nationality, particularly for those "having renounced Vietnamese nationality for acquisition of a foreign nationality but failing to obtain permission to acquire the foreign nationality." A procedure for applying to restore one's Vietnamese nationality is set forth in Article 24.

72 See Law on Vietnamese Nationality No 56/2014/QH13, 24 June 2014. Additional positive developments in the 2009 law include Article 18, a progressive provision according to which all "abandoned newborns and children found in the Vietnamese territory whose parents are unknown, have Vietnamese nationality." Furthermore, the new law introduced limited circumstances in which foreigners could apply to acquire Vietnamese nationality as a second nationality, for example foreigners with a Vietnamese parent or child or someone who would contribute to the benefit of Vietnamese society, including Viet Nam's development and defence.

73 *Law on Vietnamese Nationality* [Viet Nam], No. 24/2008/QH12, 13 November 2008, available at: http://www.unhcr.org/refworld/docid/4ac49b132.html.

Specific provisions to facilitate the naturalization of the stateless Cambodian refugees are contained in Article 22 of the 2008 law. It provides that "stateless persons who do not have adequate personal identification papers but have been stably residing in the Vietnamese territory for 20 years or more by the effective date of this Law [1 July 2009] and obey Vietnam's Constitution and laws will be permitted for naturalization in Vietnam under the order, procedures and dossiers specified by the Government."

Promoting the 2008 Nationality Law provisions to restore nationality and reduce statelessness

After the 2008 Nationality Law entered into force, UNHCR partnered with MOLISA to devise projects to implement the new nationality restoration provisions to reduce statelessness among Vietnamese women who had lost their nationality upon marriage to foreigners and had returned to Viet Nam without having acquired another nationality. With funding from the European Union, MOLISA and UNHCR conducted surveys in various cities in Viet Nam to obtain a better understanding of how statelessness arises from mixed marriages between Vietnamese and foreigners. A series of awareness campaigns was organized with local authorities as well as the affected communities to publicize the new procedure in Article 23 for restoration of Vietnamese nationality. MOLISA's actions were coordinated with organizations at the local level, such as the women's, youth and labor unions. This project included some vocational training and counselling to bolster the reintegration of women and children who had returned to Viet Nam from abroad.

In addition, the Prime Minister's Decision No. 402/QD-TTg on the Implementation Plan of the United Nations' Global Compact for Safe, Orderly and Regular Migration, promulgated in March 2020, has assigned duties to the Ministry of Justice to review and propose concrete solutions to ensure the right to nationality and the right to birth registration for stateless and persons-at-risk of statelessness.

Kenya

- **Collective advocacy efforts** of civil society organizations, the Catholic Church, UNHCR, and affected persons brought the issue of statelessness in Kenya to the attention of the Kenya National Commission on Human Rights, which made recommendations to the Government on law reform to address and prevent statelessness.
- A **study conducted by UNHCR on the nationality status of the stateless Makonde population** in Kenya revealed the continuing challenges that this population experiences in attaining nationality.
- **Petitions and protest marches** organized by affected persons gave visibility to the plight of the Makonde which ultimately led to the issuance of a directive by the President to ensure that the Makonde were registered as citizens before the end of 2016.
- **Waiving onerous evidentiary requirements and application fees**, including for late birth registration, removed barriers for many of the Makonde to get registered.
- **A mobile registration exercise following a one-stop approach** allowed the communities to complete all processes required to be registered as citizens of Kenya.

Statelessness in Kenya

There are different groups of stateless persons in Kenya, mainly Pemba, Galjeel, and persons of Burundian, Congolese, Malawian and Rwandan descent, as well as persons born in Kenya to British Overseas Citizens. With the exception of the Galjeel[74] and the Pemba, these groups are stateless owing to the pre-independence migration of their ancestors to Kenya or their own historical migration to Kenya from their country of origin. The vast majority of stateless persons in Kenya today are descendants of these historical migrants. Other groups that are at risk of statelessness include the Nubians,

74 The Galjeel were stripped of their Kenyan nationality in 1989.

some Kenyans of Somali ethnicity, coastal Arabs, the Waata,[75] Daasanach,[76] Pare[77], Sakuye[78], and Munyoyaya[79] whose access to Kenyan identity documents is limited.[80] As the good practices in Kenya to date primarily relate to resolution of the statelessness of the Makonde population, this chapter will focus on these efforts.

The first generation of the Makonde community arrived in Kenya during the first half of the twentieth century from Northern Mozambique, recruited by the British Government during the colonial period to work mainly on sisal, sugar and other plantations in the coastal counties of Kwale and Kilifi, and in the hills of Taita Teveta.[81] Other Makonde came to Kenya as exiled freedom fighters and refugees from the Mozambican civil war. In both situations, their descendants remained in Kenya.[82] When Kenya gained independence in 1963, transitional provisions were established governing who automatically became a citizen of Kenya at independence. Automatic acquisition of citizenship applied to a person born in Kenya who at the time of independence was a citizen of the United Kingdom and Colonies or a British protected person, provided one parent was also born in Kenya.[83] The Makonde did not automatically become Kenyan under these transitional provisions, since few were born in the country or had parents born in the country. Individuals who did not automatically qualify as citizens but met certain conditions could register as Kenyans within two years, until 12 December 1965.[84] Many of the Makonde were eligible to register as citizens, but did not do so for various reasons, including due to the costs involved, because they eventually expected to return to Mozambique, or because they were unaware of the requirement to register for citizenship.[85]

75 Living in Tana River, Lamu counties and at the border with Somalia.
76 Living in Turkana country and at the border with Ethiopia.
77 Living in Taita Taveta county and at the border with Tanzania.
78 Living in Marsabit and Isiolo Counties.
79 Living in Tana River.
80 The nationality of populations living in border regions is often contested because they are on both sides of the border. In addition to contested nationality, the Government does not have registration offices in the areas where they reside, leaving them with very limited options to seek identification documents and birth certificates
81 UNHCR, *"This is Our Home": Stateless Minorities and Their Search for Citizenship*, 2017, page 40, available at: https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf.
82 Ibid.
83 Constitution of Kenya 1963, Section 1(1); Bronwen Manby, *Statelessness and Citizenship in the East African Community*, UNHCR, September 2018, page 47, available at: https://data2.unhcr.org/en/documents/download/66807
84 Constitution of Kenya 1963, Art. 2. Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/1963_Constitution.pdf
85 Bronwen Manby, *Statelessness and Citizenship in the East African Community*, UNHCR, September 2018, page 48, available at: https://data2.unhcr.org/en/documents/download/66807

At the time of Kenya's independence, only 42 tribes were recognized as Kenyan, which did not include the Makonde. The concept of the 42 indigenous tribes of Kenya does not have a constitutional or legislative basis but is commonly shared by government officials.[86] Belonging to one of the indigenous tribes is commonly understood in Kenya as a determinant of full inclusion in Kenyan society and a feature of citizenship.[87] Exclusion from the 42 indigenous tribes meant that the Makonde were not recognized as citizens or included in any of the population registration databases, despite most Makonde residing in Kenya since before independence. Consequently, the Makonde (and other 'non-indigenous' ethnic groups) faced significant procedural difficulties when applying for Kenyan ID cards.[88] The Kenyan ID card is the main form of proof of nationality and is the most important documentary proof of identity in the country.[89]

In 1985, the President of Kenya amended the Constitution to remove the right to citizenship based on birth in Kenya. Descent was deemed to be the only basis for citizenship. The Constitution applied retroactively to the date of independence. As a result, proving Kenyan citizenship required showing that a parent had either acquired citizenship automatically, or by registration or naturalization.[90] The constitutional amendment thus excluded a number of communities from Kenyan citizenship, particularly the descendants of groups who arrived in Kenya before or soon after independence such as the Makonde.

86 Samantha Balaton-Chrimes, *Ethnicity, Democracy and Citizenship in Africa: Political Marginalization of Kenya's Nubians* (Ashgate, 2015) page 26, 80-81.

87 Ibid, page 26.

88 Samantha Balaton-Chrimes, *Statelessness, Identity Cards and Citizenships as Status in the Case of the Nubians of Kenya* (2014) 18(1) Citizenship Studies 15-16; Declaring tribe or race on the ID application form was a statutory requirement for obtaining a Kenyan Identity Card until the legislation was amended in 2018. See Registration of Persons Act, s 5(1)(d) (formal title – Cap 107, Laws of Kenya).

89 Samantha Balaton-Chrimes, *Ethnicity, Democracy and Citizenship in Africa: Political Marginalization of Kenya's Nubians* (Ashgate, 2015) 68; Samantha Balaton-Chrimes, Statelessness, *Identity Cards and Citizenships as Status in the Case of the Nubians of Kenya* (2014) 18(1) Citizenship Studies 16; See also Kenya National Human Rights Commission, *An Identity Crisis? A Study on the Issuance of National Identity Cards in Kenya*, 2007, 5, available at: http://www.knchr.org/Portals/0/EcosocReports/KNCHR%20Final%20IDs%20Report.pdf

90 Bronwen Manby, *Citizenship in Africa: The Law of Belonging* (Bloomsbury, 2019), page 182.

Law reform enabling acquisition of nationality by registration

CIVIL SOCIETY ADVOCACY

For many years, local civil society organizations and the Catholic Church in Kwale advocated with the county and the national Government to recognize as nationals the Makonde who had arrived in the 30s. Other advocacy messages were directed at the Government task force for the Identification and Registration of Eligible Stateless Persons as Kenyan Citizens.[91] These advocacy efforts raised a number of concerns including Kenya's long history of discriminatory practices in issuing citizenship documents.[92] Women's and children's rights movements also lobbied the Government.[93] After numerous complaints by a large number of affected persons, the issue was lodged with the Kenya National Commission on Human Rights ("Commission"). In 2007, the Commission released a report on the issuance of national identity cards. The report concluded that "specific ethnic groups face almost unsurmountable challenges in obtaining ID cards" for a number of reasons, including a weak legislative framework and systemic discrimination.[94] The Commission made a number of recommendations for review of the Constitution and the legislative framework related to citizenship and entitlement to Kenyan ID cards.

REFORM OF THE CONSTITUTION IN 2010

The Kenyan Government responded to the concerns raised by the Commission. In 2010, following a referendum, Kenya adopted a new Constitution with a revised chapter on citizenship. The 2010 Constitution retains descent from either parent as the basis for citizenship. However, for the first time, the Constitution provides that every citizen is

91 The Gazette Notice No. 7881 stipulates that the Terms of Reference of the task force was to: (a) identify all persons who are claiming stateless person status in Kenya; (b) develop vetting, verification and eligibility criteria for stateless persons to be used together with a comprehensive stateless persons database; (c) develop modalities, timelines and cost estimates for the identification and registration of stateless persons in Kenya; (d) develop a sensitization programme for Kenya host communities for the seamless integration of stateless persons; (e) examine and recommend an appropriate legal and policy framework for the identification, registration and integration of stateless persons; and (f) identify emerging international best practices in the management of stateless persons in the context of national security. The first Task Force was established in 2015, and a second was established in August 2019.

92 Bronwen Manby, *Citizenship in Africa: The Law of Belonging (Bloomsbury*, 2019), page 189.

93 Ibid.

94 Kenya National Human Rights Commission, *An Identity Crisis? A Study on the Issuance of National Identity Cards* in Kenya, 2007, page 24.

entitled to "a Kenyan passport and any document of registration or identification issued by the State to citizens".[95] The Constitution provides for gender equality in the conferral of nationality: for the first time, women could confer their Kenyan nationality to children and spouses on an equal basis as men.

KENYA CITIZENSHIP AND IMMIGRATION ACT, 2011

The new Constitution led to the enactment of the Kenya Citizenship and Immigration Act 2011 ('the 2011 Act'[96]). For the first time, a definition of a stateless person was included in Kenyan law.[97] The 2011 Act contains some safeguards against statelessness, including presumption of citizenship for foundlings below the age of 8 years old, found in Kenya, entitlement to dual nationality in some circumstances, and restrictions on the withdrawal of citizenship. Citizens are expressly entitled to any document of registration or identification issued by the State to citizens, including a passport and a Kenyan ID card.[98]

The 2011 Act provides for special temporary procedures to allow people resident in Kenya since 1963 and their descendants to register as citizens. With respect to citizenship by registration, the 2011 Act makes provision for three categories of individuals without Kenyan nationality: stateless persons[99], migrants[100], and descendants of either stateless persons or migrants[101]. These three legal categories provide for persons living in Kenya for a continuous period since 12 December 1963 to be deemed lawful residents and to be eligible on application to be registered as citizens.[102]

While the 2011 Act drew a distinction between "stateless persons" (described as those without "an enforceable claim to the citizenship of any recognized state") and "migrants" (those "who voluntarily migrated into Kenya before 12 December 1963"), there is no real

95 Constitution of Kenya 2010, Article 12(1)(b).
96 Kenya Citizenship and Immigration Act of 2011. Note that Section 17 was amended in 2012; Sections 15 and 16 were amended in 2017.
97 Section 15 of the 2011 Act, which sets out the definition of a stateless persons adds a temporal condition that the person must have been in the country since independence. Therefore, the definition in the 2011 Act is at variance with international legal definition of a stateless person as found in Article 1 of the 1954 Convention and in customary international law.
98 Kenya Citizenship and Immigration Act of 2011, Section 22(g).
99 Ibid, Section 15.
100 Ibid, Section 16.
101 Ibid, Section 17.
102 UNHCR, Statelessness and Citizenship in the East African Community, September 2018, page 19, available at: https://www.refworld.org/docid/5bee966d4.html

distinction in the treatment of these two categories with the exception that migrants are only eligible if they do not hold a passport or an identification document of any other country.[103]

Descendants of those eligible to register under the legal category of either stateless person or migrant are also eligible for registration if they were born in Kenya, are aged 18 years and above, have continuously resided in Kenya, and do not hold identification documents from any other country. To benefit as descendants, they must first demonstrate that there is sufficient proof that their parents fall within the legal categories either of a stateless person or migrant.[104]

For each of these three categories, they must also meet the following specific conditions set out in the 2011 Act: they must have adequate knowledge of Kiswahili or a local dialect; they must not have been convicted of an offence or sentenced to imprisonment for a term of three years or longer; upon registration they must intend to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and they must understand the rights and duties of a citizen.

When the Act was enacted in 2011, it provided for a five-year window for persons falling within the above categories to apply for citizenship by registration, with the possibility for the Cabinet Secretary to extend this period for a further three years. Since then, the deadline has been extended again in 2016, 2017 and 2019 so that applications for Kenyan citizenship can be submitted until August 2021. Advocacy for further extension of the measure is ongoing.

103 Ibid.
104 Kenya Citizenship and Immigration Act of 2011, Section 17.

Combined advocacy efforts to improve the implementation of the registration procedure

STEPS IN 2014

Since 1995, the Makonde advocated to be recognized as Kenyan citizens.[105] However, implementation of the reformed citizenship legislation remained slow. The Makonde (and other stateless communities) remained without access to civil documentation including birth, marriage and death certificates. UNHCR identified that a general obstacle to efforts to regularize nationality status was a lack of specific information on affected populations.[106] To address this shortcoming, UNHCR conducted a study in October 2014 to "[c]ollect specific and quantifiable data on all dimensions relevant to the definition of the nationality status of the Makonde population in Kenya".[107]

Throughout 2014, UNHCR provided training on statelessness to government and civil society stakeholders. UNHCR also convened the first National Roundtable on Statelessness in Kenya on 3 December 2014 to reflect on the current statelessness situation and identify the best way forward. The 52 participants at the National Roundtable represented different Government departments[108], UNHCR and civil society organizations. This was an opportunity for advocates to raise concerns that although the Nubian community was increasingly able to access nationality documentation in recent years, the situation had not improved for other stateless and at-risk populations. UNHCR presented the preliminary findings of its study on the nationality status of the Makonde to raise awareness of the low level of access to documentation, with only a

105 Kazungu Samuel and Fadhili Fredrick, 'For the Makonde, challenges abound a year after receiving Citizenship', Daily Nation, 26 March 2018, available at: https://www.nation.co.ke/news/Challenges-abound-for-the-Makonde-community/1056-4358542-lqp9qrz/index.html

106 UNHCR Kenya, *Integrated but Undocumented: A Study into the Nationality Status of the Makonde Community in Kenya*, February 2015, 3, available at: https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/68-makonde-community-assessment/file.html

107 The study was conducted in partnership with Haki Centre, Kenya Human Rights Commission, Haki Africa and Open Society Initiative for Eastern Africa. See *Integrated but Undocumented: A Study into the Nationality Status of the Makonde Community in Kenya*, February 2015, page 3, available at: https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/68-makonde-community-assessment/file.html

108 The following Government departments were represented: the Kenya National Bureau of Statistics, the National Registration Bureau, the Department of Immigration Services, the Department of Children Services, the Department of Refugee Affairs now Refugee Affairs Secretariat, the Office of the Attorney General, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, the Commission for the Implementation of the Constitution, the County Commissioner of Garissa and Assistant County Commissioners of Mombasa, Tana Delta and Wajir where stateless populations were known to reside.

small minority receiving the documents for which they had applied. The Government participants expressed their commitment to reinforcing the implementation of the statelessness provisions and application procedures for Kenyan nationality, including by ascertaining why affected populations groups were not benefitting from the relevant provisions of the 2011 Act.

UNHCR's study on the Makonde was published in February 2015. It concluded that "the Makonde in Kenya are integrated into Kenyan society in many ways" but only a small fraction possessed documents proving their status as Kenyan citizens. The study concluded that "over half of respondents had approached Kenyan Government officials to register for Kenyan documentation, predominantly the national identity card, but in most cases their application was either rejected or not acted upon".[109] The most common reason given by officials when rejecting a national identity card application was that the individual was not entitled to nationality documentation, demonstrating a lack of awareness or misunderstanding of the relevant provisions of the 2011 Act.

In August 2015, the Commission on Administrative Justice under the Office of the Ombudsman published *Stateless in Kenya: An Investigation Report on the Crisis of Acquiring Identification Documents in Kenya*.[110] The report found that there were undue delays in processing and issuing vital documents, with some respondents having to wait for up to three years.

BREAKTHROUGH IN 2015 – INTERDEPARTMENTAL TASK FORCE AND PROFILING EXERCISE

In 2014, the Kwale County Justice and Legal Assembly Committee, adopted a motion recommending the registration of the Makonde as Kenyan citizens, and sent it to Senate, which supported the recommendation. In 2015, President Kenyatta agreed to review the situation of the Makonde.[111] He called for the formation of an inter-departmental

109 UNHCR Kenya, *Integrated but Undocumented: A Study into the Nationality Status of the Makonde Community in Kenya,* February 2015, page 31, available at: https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/68-makonde-community-assessment/file.html

110 UNHCR, *Stateless in Kenya: An Investigation Report on the Crisis of Acquiring Identification Documents in Kenya*, August 2015, available at: http://citizenshiprightsafrica.org/wp-content/uploads/2016/06/CAJ_Report-Identification-documents_2015.pdf

111 Wanja Lisa Munaita, *Kenya's stateless Makonde people finally obtain papers,* UNHCR, 27 October 2016, available at: https://www.refworld.org/docid/582c79714.html

taskforce made up of multiple ministerial departments and agencies to examine statelessness in Kenya.[112] With assistance from UNHCR, the taskforce identified stateless persons from Makonde communities and other groups living in Kwale, Kilifi, Mombasa and Taita Taveta counties and gathered data through questionnaires and focus group discussions. The taskforce's subsequent report recommended that the Makonde be registered and given Kenyan citizenship.[113] In July 2016, the Makonde community, supported by the Kenya Human Rights Commission (KHRC), a civil society organization, petitioned President Kenyatta. The petition, containing about 300 signatures from affected members of the Makonde community, documented the history of the Makonde and showed their positive contribution to Kenya and its culture that could be greatly enhanced with the grant of Kenyan citizenship, as well as detailing all their previous attempts to be registered and given Kenyan citizenship.

MARCH FOR CITIZENSHIP IN OCTOBER 2016

To spur action on the demands made in their petition, in October 2016, with the support of KHRC, around 300 Makonde people embarked on a four-day trek from Makongeni village in Kwale to Nairobi with the intention of seeking an audience before President Kenyatta and presenting a new petition.

The new petition expressed gratitude for the establishment of an interdepartmental task force and requested the immediate publication of its Makonde report. The petition noted that although the 2011 Act provided a pathway for persons who have been in Kenya since 12 December 1963 to be recognized as Kenyans, no stateless persons had been registered to date as citizens pursuant to that law. The Makonde called on the President's office to ensure that the Makonde people and all stateless persons in Kenya be recognized as Kenyan citizens, ensure that stateless persons be documented, adopt clear legislation on the procedure for stateless persons to acquire citizenship of Kenya, and establish a national action plan to address the issue of ending statelessness in Kenya.

112 Including the Directorate of Immigration and Registration of Persons, the National Registration Bureau, the Kenya National Bureau of Statistics, the Refugee Affairs Secretariat, Civil Registration Services and the National Intelligence Services.

113 Radha Govil, *'I feel like I am born again': citizenship brings hope to stateless minority in Kenya,* UNHCR, 6 November 2017, available at: https://www.unhcr.org/news/latest/2017/11/59f9a6c94/feel-born-citizenship-brings-hope-stateless-minority-kenya.html

The march gave significant visibility to the plight of the Makonde and had a galvanizing effect. President Kenyatta issued a directive that all eligible stateless Makonde be registered as Kenyan nationals and issued with Kenya identity cards by December 2016.

To address the situation of the Makonde people and other eligible groups, the deadline to register as a citizen under the 2011 law was extended to August 2019.[114] This positive outcome was a result of years of awareness raising, community mobilization and advocacy efforts by the Makonde, national civil society, constitutional bodies, UNHCR and others.[115]

Facilitating access to citizenship by waiving onerous evidentiary requirements and application fee

In order to facilitate acquisition of citizenship by registration for the Makonde and to implement the Presidential directive, the Government amended the Regulations to the 2011 Act to empower the Cabinet Secretary to waive the onerous requirements on applicants to provide supporting documentary and other evidence, such as certificates of good conduct. The amendment also provided that the Cabinet Secretary could waive the requirement to pay an application fee (2,000 Kenya Shillings, or 20 USD).[116] The Cabinet Secretary exercised this discretion during the registration of the Makonde in 2016-2017.

In October 2016, the compulsory civil registration of the Makonde ordinarily residing in Kenya was published in a Gazette Notice with effect from 1 November 2016. This was implemented by enabling Makonde who were born in Kenya to register their births through late birth registration procedures and by waiving late birth registration fees.

114 The Kenya Citizenship and Immigration Act, 2011, Extension of Time, Legal Notice No 178, 7 October 2016, available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2016/LN178_2016.pdf

115 Bronwen Manby, *Citizenship in Africa: The Law of Belonging* (Bloomsbury, 2019), page 192.

116 Kenya Citizenship and Immigration (Amendment) Regulations 2016 (http://citizenshiprightsafrica.org/wp-content/uploads/2018/09/Kenya-Citizenship-Immigration-Amendment-Regulations_2016.pdf); The updated Regulations: http://www.kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=No.%2012%20of%202011

Resolving the statelessness of the Makonde through registration

MOBILE REGISTRATION DRIVES IN OCTOBER AND NOVEMBER 2016

The legal provisions of the 2011 Act paved the way for the task force's recommendations to be implemented through a registration program for the Makonde. The registration was officially launched by the Cabinet Secretary in October 2016.

Based on a one-stop-shop approach, the mobile registration exercise was set up with different 'stations'.

UNHCR and the civil society organizations (KHRC and Haki Centre) were on the ground to monitor the process. Civil society organizations also supported the acquisition of venues and other relevant logistical aspects for the registration teams and the Makonde people.

Outcomes

At the end of 2019, 1,496 Makonde had been registered as citizens of Kenya, finally resolving their statelessness. Of these, 1,176 Makonde were issued with certificates of registration and Kenyan ID cards. A total of 1,731 Makonde born in Kenya were issued with birth certificates including children and adults paving the way for them to subsequently receive Kenyan ID cards.

Addressing Remaining Issues of Statelessness in Kenya

The citizenship provisions of the 2010 Constitution and the 2011 Act constitute the basis for the Government to identify other stateless groups in Kenya, such as the Shona, the Pemba, and people of Rwanda, Burundian, Congolese, Malawian and Indian descent, and to resolve their lack of citizenship status.

At the High-Level Segment on Statelessness held in October 2019 in Geneva, the Government of Kenya committed to recognize and register as Kenyan citizens the members of the Shona community who qualify for citizenship under the law by 2020. Other advocacy activities included a prayer pilgrimage conducted in October 2020

during which the Shona presented their history in a report entitled “African Missionaries in Identity Limbo - The Shona of Kenya” [117]. The pilgrimage resulted in cooperation between the taskforce, UNHCR, KHRC and the County Government of Kiambu. These stakeholders jointly supported different aspects of the registration process which saw 1,670 Shona registered as citizens of Kenya in December 2020, putting an end to their statelessness situation. However, the Shona are yet to receive their certificates of registration and other identity documents including birth certificates for adult Shona who were born in Kenya.

Following up on its pledge made at the 2019 HLS to identify other stateless groups in the country and to resolve their lack of citizenship, the Government of Kenya announced its recognition as Kenyan citizens of persons of Rwanda descent whose ancestors came to Kenya in the 1930s as laborers to work in the colonial tea and sisal plantations. In December 2020, the Government of Kenya also pronounced its intention to register as citizens persons of the Asian descent who qualify under the law as well as other communities who remain stateless in the country.[118]

117 *African Missionaries in Identity Limbo,-The Shona of Kenya*, Kenya Human Rights Commission, available at: file.html (khrc.or.ke)

118 *High-Level Segment on Statelessness: Results and Highlights*, May 2020, page 18, available at: https://www.refworld.org/docid/5ec3e91b4.html

Cover Image:
Kyrgyzstan. Son of formerly stateless Lyuli family dreams of being a doctor again.
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