

**Amicus curiae of the United Nations High Commissioner for Refugees<sup>1</sup>  
regarding the interpretation of the  
1954 Convention Relating to the Status of Stateless Persons  
before the Borgarting Court of Appeal of Norway**

### UNHCR's mandate and role

1. The Office of the United Nations High Commissioner for Refugees ("UNHCR") has been mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness ("1961 Convention") and to assist such persons in presenting their claims to the appropriate national authorities. The 1961 Convention complements the 1954 Convention relating to the Status of Stateless Persons ("1954 Convention"), which remains the only international treaty aimed specifically at regulating the standards of treatment for stateless persons and is therefore of critical importance in ensuring the protection of this vulnerable group.<sup>2</sup> In 1995, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.<sup>3</sup> UNHCR's statelessness mandate has continued to evolve as the UN General Assembly has endorsed the Conclusions of UNHCR's Executive Committee<sup>4</sup> of which Norway is a member.<sup>5</sup>

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<sup>1</sup> This *amicus curiae* does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. See, UN General Assembly, Convention on the Privileges and Immunities of the United Nations, 13 February 1946, <http://www.refworld.org/docid/3ae6b3902.html>.

<sup>2</sup> The 1954 and 1961 Statelessness Conventions are complemented by standards contained in regional treaties. In Europe, the 1997 European Convention on Nationality (6 November 1997, ETS 166, <http://www.refworld.org/docid/3ae6b36618.html>), the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (15 March 2006, CETS 200, <http://www.refworld.org/docid/4444c8584.html>) and the 1996 European Social Charter (Revised) (3 May 1996, ETS 163, <http://www.refworld.org/docid/3ae6b3678.html>) directly address issues of nationality and statelessness.

<sup>3</sup> UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, Prevention and Reduction of Statelessness and the Protection of Stateless Persons, <http://www.unhcr.org/refworld/docid/3ae68c443f.html>.

<sup>4</sup> ExCom Conclusion No. 90 (LII), Conclusion on International Protection, 5 October 2001, para. (q); ExCom Conclusion No. 95 (LIV), General Conclusion on International Protection, 10 October 2003, para. (y); ExCom Conclusion No. 99 (LV), General Conclusion on International Protection, 8 October 2004, para. (aa); ExCom Conclusion No. 102 (LVI), General Conclusion on International Protection, 7 October 2005, para. (y); ExCom Conclusion No. 106 (LVII), Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, paras. (f), (h), (i), (j) and (t): all of which are available in: *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017* (Conclusion No. 1 – 114), October 2017, 2017, <http://www.refworld.org/docid/5a2ead6b4.html>.

<sup>5</sup> Norway has been a member of UNHCR's Executive Committee since 1955: <http://www.unhcr.org/excom/announce/40112e984/excom-membership-date-admission-members.html>. See also, ExCom Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) - 2006, 6 October 2006, which urges States to work with UNHCR and to consider examining their nationality laws with a view to adopting and implementing legislation to prevent

2. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee and statelessness instruments. Such guidelines are *inter alia* included in the *UNHCR Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons* (hereafter "UNHCR Handbook")<sup>6</sup> as well as other notes and guidance.<sup>7</sup> The status of UNHCR statements and publications, including in particular the UNHCR Refugee Handbook and Guidelines on International Protection, as normative guides has been acknowledged by numerous Courts and has been found by the Supreme Courts of Canada, the United Kingdom, and of the United States to be a "highly relevant authority",<sup>8</sup> a "highly persuasive authority",<sup>9</sup> providing "significant guidance",<sup>10</sup> and "should be accorded considerable weight".<sup>11</sup> By extension, the Handbook on Statelessness should also be considered persuasive authority on issues relating to the protection of stateless persons.
3. UNHCR also provides information on a regular basis to decision-makers and courts of law concerning the proper interpretation and application of the provisions within the 1951 Convention and the 1954 Convention has a history of third party interventions in many national and regional jurisdictions. The Office is often approached directly by courts or other interested parties to obtain UNHCR's "unique and unrivalled expertise"<sup>12</sup> on particular legal issues. UNHCR has, for example, been granted intervener status by the European

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statelessness and to actively disseminate information regarding access to citizenship, including naturalization procedures.

- 6 UNHCR, Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons, 30 June 2014: <http://www.refworld.org/docid/53b676aa4.html>. See also UNHCR Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons, 11 July 2016: <http://www.refworld.org/docid/57836cff4.html>.
- 7 See for example: Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04: <http://www.refworld.org/docid/50d460c72.html> and other recent documents of UNHCR on the topic including UNHCR Action to Address Statelessness: A Strategy Note, March 2010: <http://www.refworld.org/docid/4b9e0c3d2.html>; UNHCR, Statelessness: An Analytical Framework for Prevention, Reduction and Protection, 2008: <http://www.refworld.org/docid/49a28afb2.html>
- 8 *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, Canada: Supreme Court, 19 October 1995, [http://www.refworld.org/cases,CAN\\_SC,3ae6b68b4.html](http://www.refworld.org/cases,CAN_SC,3ae6b68b4.html) paras. 46 and 119; *Canada (Attorney General) v. Ward*, ("Ward"), [1993] 2 S.C.R. 689, Canada: Supreme Court, 30 June 1993, pp. 713-714, [http://www.refworld.org/cases,CAN\\_SC,3ae6b673c.html](http://www.refworld.org/cases,CAN_SC,3ae6b673c.html).
- 9 *R v. Secretary of State for the Home Department, Ex parte Adan*, United Kingdom: House of Lords (Judicial Committee), 19 December 2000, [http://www.refworld.org/cases,GBR\\_HL,3ae6b73b0.html](http://www.refworld.org/cases,GBR_HL,3ae6b73b0.html).
- 10 *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421; 107 S. Ct. 1207; 94 L. Ed. 2d 434; 55 U.S.L.W. 4313, U.S. Supreme Court, 9 March 1987, <http://www.refworld.org/cases,USSCT,3ae6b68d10.html>.
- 11 *Al-Sirri (FC) (Appellant) v Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)*, [2012] UKSC 54, United Kingdom: Supreme Court, 21 November 2012, [http://www.refworld.org/cases,UK\\_SC,50b89fd62.html](http://www.refworld.org/cases,UK_SC,50b89fd62.html), para. 36. Similarly, the Handbook has been found "particularly helpful as a guide to what is the international understanding of the Convention obligations, as worked out in practice". *R v. Secretary of State for the Home Department, Ex parte Robinson*, Case No: FC3 96/7394/D, United Kingdom: Court of Appeal (England and Wales), 11 July 1997, para. 11, [http://www.refworld.org/cases,GBR\\_CA\\_CIV,3ae6b72c0.html](http://www.refworld.org/cases,GBR_CA_CIV,3ae6b72c0.html).
- 12 *R (on the application of EM (Eritrea)) v. Secretary of State for the Home Department*, [2014] UKSC 12, United Kingdom: Supreme Court, 19 February 2014, para.72, [http://www.refworld.org/cases,UK\\_SC,5304d1354.html](http://www.refworld.org/cases,UK_SC,5304d1354.html).

Court of Human Rights (“ECtHR”)<sup>13</sup> and has appeared as a third party before the Court of Justice of the European Union, and various domestic courts, such as the US Supreme Court, the Supreme Court of Norway, Borgarting Court of Appeal of Norway, the Supreme Court of the United Kingdom (as well as the former House of Lords), the German Federal Constitutional Court and the Supreme Court of Canada.

4. According to Section 15-8 of the “*Tvisteloven*” (the Norwegian Dispute Act),<sup>14</sup> written submissions may be made in court proceedings by “organisations and associations within the purpose and normal scope of the organisation” in order to shed light on matters of public interest. UNHCR has an interest in ensuring a consistent and coherent interpretation and application of international law relating to stateless persons. UNHCR notes in this regard the heightened vulnerability of stateless persons to human rights violations<sup>15</sup> which has been identified in mapping studies conducted by UNHCR in several countries, including Norway. The study *Mapping Statelessness in Norway* (launched in October 2015) provides an in-depth analysis of administrative practices, statistics, and legislation on the protection, prevention and reduction of statelessness in Norway.<sup>16</sup>
5. In light of UNHCR’s mandate and expertise on statelessness issues, this *amicus* brief is submitted to provide expert information on the interpretation of the 1954 Convention to assist the Court in assessing the issues before it. The brief does not constitute an assessment or recommendation on the merits of the case in question.

#### Legal background:

6. The 1954 Convention was adopted on 28 September 1954 and entered into force on 6 June 1960. The 1954 Convention was originally conceived as a draft protocol to the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”), and was later transformed into a separate treaty.<sup>17</sup> The

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<sup>13</sup> Including on the specific issue of Statelessness: see for example, *Hoti v Croatia* (Application no. 63311/14), ECtHR, 26 April 2018: <http://www.refworld.org/cases,ECHR,5ae1b4e94.html> along with UNHCR’s intervention: <http://www.refworld.org/docid/560a2cdb4.html>; *Kuric and others v. Slovenia*, (Application no. 26828/06), ECtHR, 26 June 2012: <http://www.refworld.org/cases,ECHR,4fe9c88c2.html> along with UNHCR’s intervention: <http://www.refworld.org/docid/4df9cd8c2.html>; *Anna Lakatos and Others v. Russia*, (Application no. 32002/10), ECtHR, 7 June 2011: <http://www.refworld.org/cases,ECHR,4f475cc72.html> along with UNHCR’s intervention: <http://www.refworld.org/docid/4d74aec52.html>.

<sup>14</sup> *Lov 17. juni 2005 nr. 90 om mekling og rettergang i sivile tvister (Tvisteloven)*, unofficial English translation, <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20050617-090-eng.pdf>.

<sup>15</sup> The UK Supreme Court in *Secretary of State for the Home Department v Al-Jedda*, recognised “the evil of statelessness”, quoting the description by Warren CJ in *Perez v Brownell* (1958) 356 US 44, §64 of the right to nationality as “man’s basic right, for it is nothing less than the right to have rights”, and noting that fifty years later, “worldwide legal disabilities with terrible practical consequences still flow from lack of nationality” (per Lord Wilson at §12): <https://www.supremecourt.uk/cases/docs/uksc-2012-0129-judgment.pdf>.

<sup>16</sup> UNHCR, *Mapping Statelessness in Norway*, October 2015: <http://www.refworld.org/docid/5653140d4.html>.

<sup>17</sup> Many provisions were taken literally from the Refugee Convention, reflecting the Conventions’ shared drafting history. See, *Convention relating to the Status of Stateless Persons: Its History and Interpretation*, A commentary by Nehemiah Robinson, Institute of Jewish Affairs, World Jewish Congress, 1955. Reprinted by the Division of International Protection of UNHCR, 1997, pp 3-4. The drafters used, inter alia, the provisions

1954 Convention addresses the special vulnerability of stateless persons<sup>18</sup> by granting them a core set of civil, economic, social and cultural rights.<sup>19</sup>

7. UNHCR notes that, as an international treaty, the 1954 Convention must have one “autonomous and international meaning”<sup>20</sup>, as disparate interpretations would frustrate the intention to provide a uniformity of approach to the problem of statelessness. The 1954 Convention is the primary international instrument that aims to regulate and improve the status of stateless persons and to ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination.<sup>21</sup>
8. The definition of a “stateless person” is set forth in Article 1(1) of the 1954 Convention, and provides that a “stateless person” is “a person who is not considered as a national by any State under the operation of its law”.<sup>22</sup> The Convention further spells out a set of rights and safeguards that are applicable to all individuals who are either subject to the jurisdiction of a State Party or present in its territory.
9. UNHCR wishes to underline that the 1954 Convention should be interpreted in light of its human rights and humanitarian objectives.<sup>23</sup> The object and purpose of the treaty is to ensure that stateless persons enjoy the rights contained therein.

## Key questions addressed in this submission

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of the 1951 Refugee Convention as the basis of their discussions with the Ad Hoc Committee preparing a draft protocol that applied the provisions of the 1951 Convention *mutatis mutandis* to stateless persons, see in this regard annex III (*Proposed Protocol Relating to the Status of Stateless Persons*); *Report of the Ad Hoc Committee on Refugees and Stateless Persons*, UN ESCOR, 2nd sess, UN Docs E/AC.32/8, E/1850 (25 August 1950) annex II (*Draft Protocol Relating to the Status of Stateless Persons*).

<sup>18</sup> UNHCR considers that “[s]tateless people are amongst the most vulnerable in the world” because they do not have access to the basic rights associated with citizenship of a nation state. Foreword to the UNHCR Handbook on Protection of Stateless Persons under the 1954 Convention (2014). As the Office of the United Nations Secretary-General has recognized “[s]tatelessness results in widespread denial of human rights and the phenomenon of statelessness itself violates the universal human right to a nationality”, and has emphasized that discrimination (e.g. against racial/ethnic groups, religious/ linguistic minorities and women) is both a common root cause and a consequence of statelessness. UN Secretary-General (UNSG), *Guidance Note of the Secretary General: The United Nations and Statelessness*, June 2011, <http://www.refworld.org/docid/4e11d5092.html>, p. 4.

<sup>19</sup> These are set out in Articles 12-32 of the 1954 Convention. See UNHCR *Handbook*, paras 129-130.

<sup>20</sup> See UK House of Lords decision, *R v SSHD, ex parte Adan*, in the context of interpreting the Refugee Convention: <http://opil.ouplaw.com/view/10.1093/law/ildc/229uk00.case.1/law-ildc-229uk00>, paras 2 and 44; or [2001] 2 AC 477, p. 516-7 and 528.

<sup>21</sup> The 1954 Convention’s preamble confirms that the Convention endeavours to “assure stateless persons the widest possible exercise of [their] fundamental rights and freedoms.”

<sup>22</sup> A finding that an individual satisfies the test in Article 1(1) is declaratory, rather than constitutive, in nature, akin to the recognition that a person is a refugee. UNHCR *Handbook*, para. 16.

<sup>23</sup> The Vienna Convention confirms that a treaty shall be “interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in the context and in the light of its object and purpose.” United Nations, *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, 12 March 1986, <http://www.refworld.org/docid/3ae6b3924.html>, Article 31(1).

10. In the present *amicus* brief, UNHCR will address four core questions as raised by the parties in their written submissions:

- i. What obligations do Contracting Parties to the 1954 Convention have to identify stateless persons within their jurisdiction?
- ii. At what point in time is statelessness to be assessed?
- iii. What is the burden and standard of proof applicable to the determination of whether a person qualifies for the status of a stateless person as defined in the 1954 Convention?
- iv. Are Contracting Parties required under the 1954 Convention to grant residence permits to persons who qualify for the status of a stateless person?

***i. What obligations do Contracting Parties to the 1954 Convention have to identify stateless persons within their jurisdiction?***

11. The 1954 Convention obliges States Parties to extend administrative assistance to stateless persons and to issue them with identity papers (regardless of legal status) and travel documents, as well as to facilitate their naturalisation.<sup>24</sup> In keeping with the object and purpose of the Convention, in order to fulfill these obligations, States must logically have some kind of procedure in place for identifying those who meet the international legal definition of a stateless person, who are on their territory.<sup>25</sup> Indeed, unless stateless persons are identified, the rights conferred by the 1954 Convention are rendered nugatory.<sup>26</sup>

12. As noted above, Article 1(1) of the 1954 Convention sets out the international legal definition of a stateless person. That is, “a person who is not considered as a national by any State under the operation of its law.” The International Law Commission has concluded that the definition in Article 1 (1) of the 1954 Convention is part of customary international law.<sup>27</sup> To correctly identify stateless persons in their jurisdictions, it is therefore essential that States use and correctly apply the international legal definition of a stateless person. Part

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<sup>24</sup> Those rights in the 1954 Convention which are triggered when an individual is subject to the jurisdiction of a State party include personal status (Article 12), property (Article 13), access to courts (Article 16(1)), rationing (Article 20), public education (Article 22), administrative assistance (Article 25) and facilitated naturalization (Article 32). Additional rights that accrue to individuals when they are physically present in a State party's territory are freedom of religion (Article 4) and the right to identity papers (Article 27). See UNHCR *Handbook*, paras 132 and 133. See also, UNHCR, Observations of the Office of the United Nations High Commissioner for Refugees in the Case of X v Office of Immigration and Nationality (17.K.32.297/2013) before the Constitutional Court of Hungary, 30 November 2014: <http://www.refworld.org/docid/547c69434.html>.

<sup>25</sup> For such procedures to be effective, the determination of statelessness must be a specific objective of the procedures or mechanism in question, though not necessarily the only one. UNHCR, *Handbook*, para. 62.

<sup>26</sup> UNHCR, *Handbook*, paras 8, 10.

<sup>27</sup> Please see page 49 of the International Law Commission, Articles on Diplomatic Protection with commentaries, 2006, which states that the Article 1 definition can “no doubt be considered as having acquired a customary nature”. The Commentary is accessible at <http://www.refworld.org/docid/525e7929d.html>.

I of the UNHCR Handbook provides detailed guidance on how the definition of a stateless person is to be interpreted.

13. The UNHCR Handbook notes that while the 1954 Convention does not prescribe any mechanism to identify stateless persons as such, it is implicit that Contracting Parties have an obligation to ‘identify stateless persons within their jurisdiction so as to provide them appropriate treatment in order to comply with their Convention commitments.’<sup>28</sup>
14. The requirement that States identify all stateless persons within their jurisdiction is further supported by the UNHCR Handbook which clarifies that:

Everyone in a State’s territory must have access to statelessness determination procedures. There is no basis in the [1954] Convention for requiring that applicants for statelessness determination be lawfully within a State. Such a requirement is particularly inequitable given that lack of nationality denies stateless persons the very documentation that is necessary to enter or reside in any State lawfully.”<sup>29</sup>

15. UNHCR recalls that the Committee on the Rights of the Child (“CRC”) recently recommended in its *Concluding Observations* that Norway provide in the national law a specific definition of statelessness, in line with international standards.<sup>30</sup> In a similar vein, the Human Rights Committee (“HRC”) recently expressed concern over the lack of a clear legal definition of stateless persons in Norway’s domestic legislation and recommended that Norway provide a specific procedure to determine statelessness, in line with international standards.<sup>31</sup> In UNHCR’s view, introducing a definition of a stateless person and a procedure for determining statelessness would ensure that Norway is in line with its obligations under both the International Convention on Civil and Political Rights (ICCPR),<sup>32</sup> the Convention on the Rights of the Child,<sup>33</sup> other international instruments <sup>34</sup> as well as its obligations under the 1954 Convention.

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<sup>28</sup> UNHCR, *Handbook*, paras 8 and 144 [Emphasis added]. Similarly, States have recognized the need to identify refugees in relation to the establishment of refugee determination procedures under the 1951 Convention and notes that a “stateless person may simultaneously be a refugee. Where this is the case, it is important that each claim is assessed and that both statelessness and refugee status are explicitly recognised.” UNHCR, *Handbook*, para. 128.

<sup>29</sup> UNHCR, *Handbook*, para. 69

<sup>30</sup> Concluding observations on the combined 5th and 6th periodic reports of Norway, 1 June 2018: [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NOR/CRC\\_C\\_NOR\\_CO\\_5-6\\_31367\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NOR/CRC_C_NOR_CO_5-6_31367_E.pdf)

<sup>31</sup> Human Rights Committee Concluding observations on the seventh periodic report of Norway: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NOR/CO/7&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NOR/CO/7&Lang=En)

<sup>32</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171: <http://www.refworld.org/docid/3ae6b3aa0.html>.

<sup>33</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3: <http://www.refworld.org/docid/3ae6b38f0.html>.

<sup>34</sup> The right to a nationality is recognised in the 1948 *Universal Declaration of Human Rights*, art 15; *Convention on the Rights of the Child*, art 7; *Convention on the Elimination of all Forms of Discrimination Against Women*, art

**ii. At what point in time is statelessness to be assessed?**

16. Statelessness is to be determined in the present. As noted in the UNHCR Handbook: “An individual’s nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention.”<sup>35</sup> If an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention. Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or completed, the individual is still a national for the purposes of the stateless person definition.<sup>36</sup>

17. In light of the foregoing, UNHCR considers that assessments that the person concerned *could* be entitled to citizenship are not relevant to the assessment of statelessness, as statelessness “is to be assessed as at the time of determination”; it is “neither a historic nor a predictive exercise”.<sup>37</sup> The use of the present tense in the definition (i.e., whether the person *is* considered a national by any State) supports this approach.

**iii. What is the burden and standard of proof applicable to the determination of whether a person qualifies for the status of a stateless person as defined in the 1954 Convention?**

18. The UNHCR Handbook provides guidance on the creation of determination procedures, and the identification of stateless persons. UNHCR advises State parties that (a) they should apply a shared burden of proof, and (b) they should adopt the same standard of proof as that applied in refugee cases, such that statelessness must be established “to a reasonable degree”.<sup>38</sup> This is for two reasons: first, because of the fundamental importance of the substantive rights conferred on stateless persons by the 1954 Convention and the serious consequences of incorrectly rejecting an application for stateless status; second because of the practical difficulties inherent in proving statelessness.<sup>39</sup> These

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9; *Convention on the Elimination of All Forms of Racial Discrimination*, art 5; *Convention on the Rights of Persons with Disabilities*, art 18; *International Covenant on Civil and Political Rights*, art. 24(3).

<sup>35</sup> UNHCR, *Handbook*, para. 50

<sup>36</sup> UNHCR acknowledges that where “an individual recognised as stateless has a realistic prospect, in the near future, of obtaining protection consistent with the standards of the 1954 Convention in another State, the host State has discretion to provide a status that is more transitional in nature”. However, “protection can only be considered available in another country when a stateless person is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality; or enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.” UNHCR, *Handbook* paras 153-154.

<sup>37</sup> *Ibid.*

<sup>38</sup> See UNHCR, *Handbook*, paras 89-93

<sup>39</sup> “As with the burden of proof, the standard of proof or threshold of evidence necessary to determine statelessness must take into consideration the difficulties inherent in proving statelessness, particularly in light of the consequences of incorrectly rejecting an application. Requiring a high standard of proof of

are the same reasons as those behind the standard and burden of proof in refugee cases.<sup>40</sup> There is no legal nor policy basis for setting the bar to protection under the 1954 Convention higher than that under the 1951 Convention.

19. The UNHCR Handbook advises that:

“the burden of proof is in principle shared, in that both the applicant and the examiner must cooperate to obtain evidence and to establish the facts. The procedure is a collaborative one [and] the applicant has a duty to be truthful, provide as full an account of his or her position as possible, and to submit all evidence reasonably available. Similarly, the determination authority is required to obtain and present all relevant evidence reasonably available to it, enabling an objective determination of the applicant’s status”.<sup>41</sup>

20. As to the practical difficulties of proving statelessness, the definition in Article 1(1) of the 1954 Convention, requires proof of a negative (i.e., that a person is not considered a national). Proving a negative generally presents significant evidentiary and practical challenges. It will usually require the authorities of a State or several States to reject a claim that the person in question is one of its nationals. UNHCR recognises that contact with foreign authorities to request both specific information pertaining to the individual, or general guidance, is fundamental to statelessness determination, and that “[i]n many cases, States will only respond to such enquiries when initiated by officials of another State”.<sup>42</sup>

21. The UNHCR Handbook further advises that “applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence”.<sup>43</sup> States are therefore advised to adopt “the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a ‘reasonable degree’ that an

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statelessness would undermine the object and purpose of the 1954 Convention.” UNHCR, *Handbook* para. 89.

<sup>40</sup> *Ibid.*

<sup>41</sup> UNHCR, *Handbook* para. 89.

<sup>42</sup> UNHCR, Good Practices Paper– Action 6: ‘Establishing Statelessness Determination Procedures to Protect Stateless Persons’ (11 July 2016) p 6: <http://www.refworld.org/docid/57836cff4.html>. Such enquiries are important because the subjective position of the other State is “critical” in determining whether an individual is its national. UNHCR *Handbook* para. 99. See also UK Home Office’s *Asylum Policy Instruction and applications for leave to remain*, § 4.3.6, § 4.6.3, 18 February 2016: <https://www.gov.uk/government/publications/stateless-guidance>. UNHCR notes according to Internal Practices Note 2010-061 regarding asylum practices in other countries: <https://udiregelverk.no/en/documents/udi-internal-practices/im-2010-061/> legislation and jurisprudence from the United Kingdom and Sweden are of particular importance to Norway.

<sup>43</sup> UNHCR, *Handbook* para. 90.



individual is not considered as a national by any State under the operation of its law".<sup>44</sup>

**iv. Are Contracting Parties required under the 1954 Convention to grant residence permits to persons who qualify for the status of a stateless person?**

22. Granting stateless persons the right of residence is a logical and necessary prerequisite to the granting of the other rights contained in the 1954 Convention. The UNHCR Handbook confirms that granting the right of residence is an implicit obligation in the 1954 Convention, in line with the object and purpose of the treaty.<sup>45</sup> The granting of a residence permit facilitates, and is indeed necessary, to the realisation of the rights set out in the 1954 Convention such as the right to work, access to health care and social assistance, and the issuance of identity papers and a travel document.<sup>46</sup>

23. Thus, UNHCR recommends "that States grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interests of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention."<sup>47</sup>

24. Granting such a right is also reflected in current State practice, where statelessness determination procedures have been established. Currently, all States with statelessness determination procedures grant residence rights to recognized stateless persons,<sup>48</sup> unless the person is excluded from the 1954 Convention as set out in Article 1(2).<sup>49</sup>

25. Thus, a correct interpretation of the 1954 Convention, would require Contracting Parties to grant residence permits to stateless persons so as to enable the fulfillment of the obligations contained in the Convention.

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<sup>44</sup> UNHCR, *Handbook* para. 91.

<sup>45</sup> UNHCR, *Handbook* para. 147.

<sup>46</sup> UNHCR, *Handbook*, para 150.

<sup>47</sup> UNHCR, *Handbook* para. 148.

<sup>48</sup> For example, recognized stateless persons in France receive a renewable residence permit for one year, while Latvia grants temporary residence permits to stateless persons for a period of time not exceeding five years. In Turkey, a stateless person receives a renewable Stateless Person Identification Card entitling him or her to lawful residence, valid for two years. In the United Kingdom, a stateless person can be granted leave to remain for up to 30 months. A subsequent grant of leave to remain, including for an indefinite period, may also be given as long as certain conditions are met. UNHCR, Good Practices Paper- Action 6: 'Establishing Statelessness Determination Procedures to Protect Stateless Persons' (11 July 2016) p 6: <http://www.refworld.org/docid/57836cff4.html>.

<sup>49</sup> Article 1(2) of the 1954 Convention specifically excludes persons who, despite falling within the scope of the definition contained in Article 1(1), from the application of the Convention: "This Convention shall not apply: (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance; (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; (iii) To persons with respect to whom there are serious reasons for considering that: (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes; (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country; (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

## Conclusions

26. In light of its mandate to address statelessness and its responsibility to provide interpretive guidance concerning the 1954 Convention, UNHCR submits the following answers regarding the four questions set out above:

- i. Contracting Parties have obligations under the 1954 Convention to identify stateless persons within their jurisdiction so as to be able to provide them with the substantive rights contained in the treaty, bearing in mind that the object and purpose of the 1954 Convention is to secure for stateless people the widest possible enjoyment of their human rights. Furthermore, the identification of stateless persons requires States to use and correctly apply the international legal definition of a stateless person and the establishment of statelessness determination procedures to do so.
- ii. Given that nationality 'is to be assessed as at the time of determination' and is 'neither a historic nor a predictive exercise', Contracting Parties should not refuse to recognise a person as stateless based on whether or not the person might be able to acquire a nationality at some point in the future.
- iii. States should apply "the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a 'reasonable degree' that an individual is not considered as a national by any State under the operation of its law".<sup>50</sup>
- iv. Granting stateless persons on their territory the right of residence is a necessary prerequisite for State Parties to the 1954 Convention to be able to fulfill the obligations contained therein.

All of which is respectfully submitted,

UNHCR  
3 September 2018

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<sup>50</sup> UNHCR *Handbook*, para. 91.