



**UNHCR**  
The UN Refugee Agency

# STATELESS PERSONS IN DETENTION

A tool for their identification and enhanced protection

#IBELONG

“ *Across the world, stateless persons face violations of their right to liberty and security. In some instances they have been in detention for years, not because they have committed a crime, but solely because they are not allowed to stay in the country and have nowhere else to go. If States don't identify stateless persons and acknowledge their protection needs, such persons are at risk of repeated and prolonged detention. It is essential that States prevent and end this serious human rights violation.* ”

**Filippo Grandi,**

UN High Commissioner for Refugees



United Nations High Commissioner for Refugees  
June 2017

Cover Photo: Transit zone at a border crossing in Europe.  
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# I. INTRODUCTION

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**This practical tool has been developed for the purpose of identifying persons in the context of detention who may be stateless and to support the achievement of solutions to their predicament. This tool may be used to identify stateless persons before the decision to detain is made, when release in the community or referral to an alternative to detention are considered, or after the decision to detain has been made. It is intended for legal practitioners, decision makers and case workers who may be visiting detention places or are otherwise engaged in the asylum and migration process, including judges, border officials, staff of civil society organizations, as well as staff of the United Nations High Commissioner for Refugees (UNHCR), national preventive mechanisms,<sup>1</sup> national human rights institutions, ombudspersons and other national or international organisations that monitor (immigration) detention.**

Statelessness typically severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons often do not have legal residence in any country. Because they generally do not possess identity documents or valid residence permits, stateless persons can be at high risk of arrest and repeated and prolonged detention. In situations where they are detained outside their country of origin, they may also face prolonged detention because they are unable to return to their country of origin. However, being undocumented or lacking required immigration or residence permits cannot be used as a general justification for detention of stateless persons.<sup>2</sup> Identifying stateless persons in detention is therefore relevant at all stages of the migration or asylum process. As stateless persons are especially at risk of prolonged detention, the identification of statelessness should be considered as part of the identification of other vulnerabilities. Release in the community or referral to appropriate alternatives to detention should be favored.

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<sup>1</sup> National Preventive Mechanisms (NPMs) for the prevention of torture at the domestic level are designated or established by States Party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. They have the power to regularly examine the treatment of the persons deprived of their liberty in places of detention and make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment.

<sup>2</sup> See UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Para. 112 – 115, available at: <http://www.refworld.org/docid/53b676aa4.html>.

# #IBELONG

On 4 November 2014, UNHCR launched the #IBelong Campaign to End Statelessness by 2024. To achieve the goals of the #IBelong Campaign, the Global Action Plan to End Statelessness: 2014 – 2024 establishes a guiding framework comprising 10 Actions to be undertaken by States, with the support of UNHCR and other stakeholders. The Global Action Plan is intended to resolve existing major situations of statelessness and prevent new cases from emerging.<sup>2</sup>



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This tool will assist in identifying stateless persons through interviews to be held with persons during a first screening, or when detained in the context of irregular entry; unlawful presence in the territory; or return. While in most cases irregular entry or stay is an administrative offence or breach of immigrations regulations, in some countries, in contravention to international human rights standards, it may be considered a criminal offence and stateless persons may thus be subject to the criminal justice system.

It is also important to identify stateless persons who are convicted and detained for crimes unrelated to their immigration status because judges will usually condition release or parole on identity documentation which stateless people are often lacking. Such persons also risk being moved into indefinite immigration detention once criminal detention comes to an end.

## UNHCR's mandate

Stateless persons are persons of concern to UNHCR under its statelessness mandate, which includes the identification and protection of stateless persons as well as the prevention and reduction of statelessness.<sup>4</sup> In order to be able to effectively protect and assist persons of concern to the organization, it is important that UNHCR be given prompt and unhindered access to asylum-seekers, refugees and stateless persons and to support their well-being, wherever they are, including when they are detained.<sup>5</sup> This entails accessing and visiting places of detention, as well as supporting national authorities to improve detention conditions and by promoting alternatives to detention. It may also include intervening both in individual cases and in relation to system-wide shortcomings.

## International standards related to detention in the immigration context

International law protects every person's right to liberty and security. Detention for immigration related purposes should only take place as an exceptional measure, where necessary and reasonable in each individual case. It must also be proportionate to a legitimate purpose and occur only after less coercive or intrusive means are found to be unavailable and inappropriate.<sup>6</sup> The consideration of alternatives to detention also ensures that, in light of the stateless person, asylum-seeker or migrant's particular circumstances, detention is truly a measure of last resort.

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<sup>3</sup> For more information on the #IBelong Campaign, see: <http://www.unhcr.org/ibelong>.

<sup>4</sup> Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) – 2006, Executive Committee 56th session. Contained in United Nations General Assembly document A/AC.96/1035, available at: <http://www.refworld.org/docid/453497302.html>.

<sup>5</sup> See, e.g., Executive Committee Conclusion Nos. 44(XXXVII) – 1986 – Detention of Refugees and Asylum-Seekers, (f), (g); 46(XXXVIII) – 1987, (f); 47(XXXVIII) – 1987, (f); 50(XXXIX) – 1998, (i); 85(XLIX) – 1988, (dd); 106(LVII) – 2006 (on stateless persons), (w).

<sup>6</sup> See UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> (UNHCR *Detention Guidelines*) and *Policy on Detention Monitoring*, 3 December 2015, UNHCR/HCP/2015/7, available at: <http://www.refworld.org/docid/564199b54.html>.

***Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.***

Article 9, Liberty and Security of Person, International Covenant on Civil and Political Rights.

***The inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention.***

General comment No.35 on Article 9, International Covenant on Civil and Political Rights.

Where an individual's identity is undetermined or in dispute in the context of initial identity verification, resorting to detention may be legitimate, subject to conditions and safeguards. Determination of nationality may be included in such verification. Minimal periods of detention may be permissible to carry out these initial identity checks but such measures should comply with international standards and must endure only as long as reasonable efforts are being made to establish the individual's identity, and within strict time limits established in law.<sup>7</sup> In line with the *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (UNHCR *Detention Guidelines*), detention must, furthermore, be subject to minimum procedural safeguards.<sup>8</sup> Prolonging detention beyond this initial period on the sole ground that an individual has an undetermined nationality or identity would run against international standards and should be considered arbitrary. The absence of proper mechanisms to verify identity or nationality can lead to prolonged or indefinite detention and may particularly affect stateless persons.<sup>9</sup>

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<sup>7</sup> See UNHCR *Detention Guidelines*, Para. 24,25 and 26.

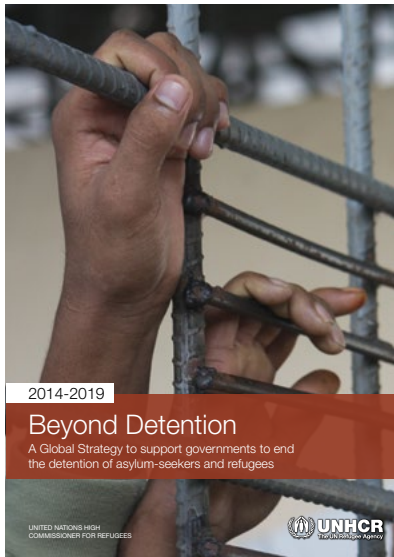
<sup>8</sup> See UNHCR *Detention Guidelines*, Para. 47.

<sup>9</sup> See also UNHCR, *Handbook on Protection of Stateless Persons*, Para. 112 – 115.

## DETENTION MUST NOT BE DISCRIMINATORY

*International law prohibits detention or restrictions on the movement of a person on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 2, International Covenant on Civil and Political Rights.



In line with these international standards, UNHCR in 2014 launched the *Global Strategy Beyond Detention (2014-2019)*,<sup>10</sup> a five-year initiative to support States to end the detention of asylum-seekers and refugees, and in particular to end the detention of children. Part of UNHCR's Global Strategy is to ensure that alternatives to detention are available in law and implemented in practice. In two published *Option Papers*<sup>11</sup> for Governments, over thirty examples of reception options and alternatives to detention are outlined. These examples are relevant for Governments interested in pursuing long-term solutions for stateless persons.

<sup>10</sup> See UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees*, 2014-2019, 2014, available at: <http://www.refworld.org/docid/536b564d4.html>. To find out more on the Global Strategy Beyond Detention, please consult: <http://www.unhcr.org/detention>.

<sup>11</sup> See UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2015, available at: <http://www.refworld.org/docid/5523e8d94.html> and UNHCR, *Options Paper 2: Options for governments on open reception and alternatives to detention*, 2015, available at: <http://www.refworld.org/docid/5523e9024.html>.

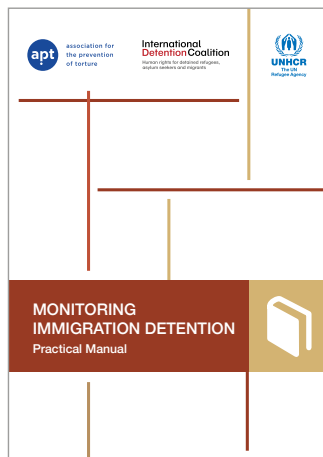


**Children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests. Appropriate care arrangements and community-based programmes need to be in place to ensure adequate reception of children and their families.**

UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017.<sup>12</sup>

This tool should be read together with the *Monitoring Immigration Detention: Practical Manual*,<sup>13</sup> which proposes a practical methodology for carrying out detention monitoring to ensure detention conditions meet international standards and are in line with UNHCR's *Policy on Detention Monitoring*.<sup>14</sup>

This tool may be used in a range of locations that serve as detention places, including but not limited to: designated immigration detention centres; removal or transit centres; closed reception or processing centres; airports, ports, transit and “international zones”; harbour facilities; islands; vehicles, aeroplanes, boats or other vessels; prisons, police lockups or police stations; military bases; medical facilities and psychiatric institutions; or any other place where people are physically deprived of their liberty for immigration-related or criminal purposes.



<sup>12</sup> See UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>.

<sup>13</sup> See UNHCR, Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>.

<sup>14</sup> See UNHCR, *Policy on Detention Monitoring*, 3 December 2015, available at: <http://www.refworld.org/docid/564199b54.html>.

## II. KEY CONCEPTS

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### Stateless person

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A stateless person is defined as a person who is not considered as a national by any State under the operation of its law.<sup>15</sup> Stateless persons are protected under the 1954 Convention relating to the Status of Stateless Persons. Statelessness can be caused by a number of factors such as: discrimination in nationality laws and practice (e.g. based on race, religion or gender), conflict between and gaps in nationality laws, and State succession.

In the absence of adequate mechanisms to identify stateless persons, individuals may be registered under categories such as ‘unknown nationality’, ‘undetermined citizenship’ or ‘nationality to be confirmed’ or under specific designations for particular stateless groups. While each country and institution will have a different understanding of who is registered under these categories, special attention should be paid to them as they could include stateless persons.

### Risk of Statelessness

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The following is a non-exhaustive list of persons who may be at risk of statelessness on account of belonging to one or more of the following groups: persons living in border areas where a lack of birth registration, civil registration and identity documents may lead to confusion as to whether they are nationals of one State or another; victims of trafficking; minorities and persons who have perceived or actual ties with foreign States; nomadic or semi-nomadic populations whose territories cross international borders; and migrant and refugee populations where difficulty proving nationality of the country of origin may occur as a result of one or more generations of descendants having been born abroad, a difficulty that potentially increases with each successive generation. Further, lack of birth

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<sup>15</sup> Article 1, 1954 Convention relating to the Status of Stateless Persons (1954 Convention). This definition is recognized as customary international law and applies therefore even to States not Party to the 1954 Convention. See *Convention relating to the Status of Stateless persons*, available at: <http://www.refworld.org/docid/3ae6b3840.html> and UNHCR, *Handbook on Protection of Stateless Persons*, Para. 18-56.

registration can put people at risk of statelessness as a birth certificate provides proof of where a person was born and of parentage – key information needed to establish a nationality.<sup>16</sup>

## Stateless refugee

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A stateless person can also meet the definition of a refugee.<sup>17</sup> In that case, the stateless refugee is protected by the 1951 Convention relating to the Status of Refugees and should be treated in accordance with international refugee law. It is important nonetheless to seek to address the person's statelessness, as there may be instances where refugee status ceases without the person having acquired a nationality, which would then necessitate protection as a stateless person. Moreover, the statelessness of a refugee may have consequences for him/her as well as his/her children.

## Detention

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For the purpose of this tool, “detention” refers to the deprivation of liberty or confinement in a closed place which a person is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities. The place of detention may be administered either by public authorities or private contractors; the confinement may be authorised by an administrative or judicial procedure. The person may have been confined with or without “lawful” authority.<sup>18</sup>

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<sup>16</sup> See UNHCR, *Action to Address Statelessness: A Strategy Note*, March 2010, available at: <http://www.refworld.org/docid/4b9e0c3d2.html>.

<sup>17</sup> A refugee is any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. Article 1 of the 1951 Convention relating to the Status of Refugees. See *Convention relating to the Status of Refugees*, available at: <http://www.unhcr.org/3b66c2aa10>.

<sup>18</sup> See UNHCR *Detention Guidelines*, page 9.

## Arbitrary detention

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In accordance with international standards, “arbitrariness” is to be interpreted broadly so as to include not only unlawfulness, but also elements of inappropriateness, injustice and lack of predictability. Mandatory or automatic detention is arbitrary as it is not based on an examination of the necessity of the detention in the individual case. Detention will be arbitrary when it is not lawful, when it is resorted to without a legitimate purpose, when it exceeds a reasonable time limit or when no less coercive or intrusive measures available or appropriate in the individual case (as alternatives to detention) have been considered. Courts generally consider the following additional criteria in evaluating the arbitrariness of detention: conditions of detention, detention safeguards such as the existence of independent periodic reviews and the availability of access to an effective remedy while in detention.<sup>19</sup>

## Alternatives to detention

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“Alternatives to detention” refers to any legislation, policy or practice that allows persons to reside in the community subject to a number of conditions or restrictions on their freedom of movement. Alternatives to detention must not become alternative forms of detention, nor should they become alternatives to release. They should respect the principle of minimum intervention and pay close attention to the situation of particularly vulnerable groups. Liberty and freedom of movement for stateless persons are always the first options.

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<sup>19</sup> See UNHCR *Detention Guidelines 3, 4 and 6*.

# III. GUIDING QUESTIONS FOR THE IDENTIFICATION OF STATELESS PERSONS IN DETENTION

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The following guiding questions can be addressed during various stages of engagement with a person in detention. Such stages may include the preparatory or follow-up phase to a visit, interviews during visits with the individual and regular dialogue with the authorities. Not all questions will be applicable to the individual's situation and in some cases more than one interview may be necessary. If the visiting entity is unable to undertake multiple visits, the answers to the guiding questions in **brown and bold** may help taking the first step towards identifying persons who may be stateless.

## Preparation of the visit

**To prepare a visit to a detention centre where persons who may be stateless can be found, the following questions related to statelessness should be considered:**

- ☑ Is the country a State Party to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention)?<sup>20</sup>
- ☑ Does the country have a statelessness determination procedure in place? If yes, who is responsible for carrying out the procedure? Does the country explicitly recognize statelessness as a protection ground and issue a residence permit? If not, does the country refer persons who may be stateless to UNHCR?

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<sup>20</sup> Where a State is party to the 1954 Convention, the stateless person is entitled to a number of rights, including a right to administrative assistance (Article 25), a right to identity and travel documents (Articles 27 and 28) and exempts them from reciprocity requirements (Article 7). The 1954 Convention does not establish a right for stateless persons to acquire the nationality of a specific State. However, because stateless persons have no State to protect them, the Convention requires States Parties to facilitate the integration and naturalization of stateless persons as far as possible, for example by expediting and reducing the costs of naturalization proceedings for stateless persons. It is also implicit in the 1954 Convention that States must identify stateless persons so as to provide them appropriate treatment, including secure residence and a range of rights. A statelessness determination procedure is a mechanism to do so.

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- ☑ If not, what other avenues are used by stateless persons to access protection? (Consider factors such as administrative or judicial procedures to regularize their stay based on humanitarian grounds, refugee status, subsidiary protection, tolerated stay etc.)

**The general framework related to immigration detention should also be examined. One tool which may assist in gaining an understanding of the detention-related legislative framework, policies and practice is UNHCR's Detention Checklist.<sup>21</sup> The following questions from this checklist are particularly relevant:**

- ☑ What international, regional and national legislation is applicable to immigration detention?

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- ☑ Is there a limit to the maximum period of detention according to the law?<sup>22</sup>

- ☑ Does national legislation provide for the initial decision to detain to be systematically followed by a judicial or independent administrative authority decision to release or detain? What is the timeline for this initial review?

- 
- ☑ Does national legislation provide that the detention decision is subject to periodic review? If so, which authority is responsible for the detention reviews and what is the frequency of these reviews?

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- ☑ In practice, what is the procedure for the review of detention decisions? Is the review automatic or does it need to be requested? Is it individualized? How often do such reviews take place?

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- ☑ Does national legislation provide for individuals to have the right to challenge their detention before a court of law? Is the right to bring such a challenge effective in practice?<sup>23</sup>

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<sup>21</sup> See Annex 3 of UNHCR, *Progress Report mid-2016. Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees*, 2014-2019, August 2016, available at: <http://www.refworld.org/docid/57b850dba.html>.

<sup>22</sup> Where a limit to the maximum period of detention is not yet set in law, case law may provide a reference.

<sup>23</sup> To be effective, the right to challenge the detention should be preceded by information about this right. The judicial review should entail an oral hearing with free legal assistance as it is also available to nationals similarly situated. If required, linguistic assistance should be provided free of charge.

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- ☑ Are foreigners in an irregular situation systematically placed in immigration detention after serving a criminal sentence?

**Policies and practices relevant to detention of stateless persons and alternatives to detention available to such individuals should also be considered:**

- ☑ Are there any known cases of stateless persons in detention?
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- ☑ Are there any known cases of stateless persons who were released from detention?
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- ☑ If so, was the person recognized as a stateless person through the competent authority, and did they subsequently receive the right to stay in the country? How did the authorities ensure that further detention was avoided?
- 
- ☑ What are the alternatives to detention available in law or policy, and which ones are implemented in practice?
- 
- ☑ Are any specific alternatives to detention established by the country for stateless persons? (This could include a specific visa or reporting requirements, for example). If not, would the authorities consider setting up such alternatives?

**To find out more about alternatives to detention, please consult:**

- UNHCR *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*;
- UNHCR *Options Paper 2: Options for governments on open reception and alternatives to detention*;
- UNHCR Executive Committee of the High Commissioner's Programme Standing Committee, *Alternatives to detention*, EC/66/SC/CRP.12.<sup>24</sup>

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<sup>24</sup> See UNHCR Executive Committee of the High Commissioner's Programme Standing Committee, *Alternatives to detention*, EC/66/SC/CRP.12, June 2015, available at: <http://www.refworld.org/pdfid/58638ecf4.pdf>.

## During the visit

### a Check the detention registers

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Relevant information can be obtained by consulting the registers if access is granted, in particular entry and exit registers of detainees if they exist. Consider information on the immigration status (including pending asylum claim or removal orders), the countries of origin and the nationality status of those detained.

An assessment can then be made of whether the countries of origin are known to have stateless populations. Particular attention should be brought to those designated under, for example, 'unknown nationality', 'undetermined nationality' and 'nationality to be confirmed' or to those listed under specific designations for particular stateless groups.

Based on the detention register(s) or on any other sources, identify:

- Persons whose nationality is unclear or disputed.
- Persons who claim to be without any nationality.**
- Persons who are members of a group that is known to be stateless.**
- Persons who have been in detention for a longer period than the average period of time in this detention facility.
- Persons who have been in removal proceedings for a longer period than the average period of time.**
- Persons who have previously been detained and released, and are now subject to further detention.

### b Discuss with the authorities<sup>25</sup>

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**Where there is no ground for detention, stateless persons should be released.**

- What groups of persons are detained (asylum-seekers, refugees, irregular migrants outside the asylum system, persons in return proceedings etc.)?

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<sup>25</sup> Relevant authorities in this context include: management of the detention centers, members of the judiciary, immigration authorities, asylum authorities, authorities in charge of returns etc.



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- ☑ What is the basis for registering someone's nationality or country or origin in the detention register, especially in cases where the individual concerned lacks documentation? Is a person's nationality registered based on the the person's claim or the authorities' assessment?
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- ☑ Is the duration of the detention for each person recorded and if so, how?
- 
- ☑ What mechanisms exist to verify that the duration of the detention does not exceed the maximum period (if established in law) or is not unduly prolonged?
- 
- ☑ What measures are taken when the maximum period is reached/will be reached shortly?
- 
- ☑ **Whether some persons have been detained for a significantly longer period than the others? If so why?**
- 
- ☑ **Whether there are persons for whom the authorities have difficulty establishing identity and/or nationality.**
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- ☑ **Whether there are persons for whom there are difficulties in organising return/removal**, for example due to difficulties obtaining travel documents or because of a lack of cooperation from the relevant Consulate.
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- ☑ Whether there are persons whose release was denied because of lack of documentation or because of unestablished identity and/or nationality.
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- ☑ Whether you may obtain access to the files and documentation of those persons (with the explicit consent of the detainees).
- 
- ☑ Whether they have received information or training on issues related to statelessness in detention?
- 
- ☑ Whether persons identified as stateless can be referred to alternatives to detention? If not, whether the authorities would consider doing so in the future?
- 
- ☑ What mechanisms exist to ensure persons identified as stateless are released?
- 
- ☑ Whether persons for whom a statelessness determination procedure has been launched/ is ongoing can be released or, if there are grounds for detention in their individual cases, whether these persons can be referred to alternatives to detention? If not, whether the authorities would consider doing so in the future?

## In case of children born in detention

Article 7 of the Convention on the Rights of the Child foresees that the child shall be registered immediately after birth and shall have the right to acquire a nationality. States parties shall ensure the implementation of these rights, in particular where the child would otherwise be stateless.

Birth registration generally does not by itself confer nationality upon a child. The process for registering births is distinct from the process whereby individuals acquire nationality. Birth registration is nevertheless important for the prevention of statelessness because it establishes a legal record of where a child was born and who his or her parents are.

It is therefore important to verify the following:

- What is the procedure and practice for the birth registration of children born to asylum-seekers, refugees and stateless persons in the country?
- What is the procedure and practice for the birth registration of children born to mothers who are detained?
- How many children were born to mothers who were detained during the last year? How many pregnant women are detained in the detention facility?
- Were births of children to mothers in detention registered, and did the children receive birth certificates? If not, why not? Are there financial obstacles to registration and issuance of birth certificates, for some (destitute) or all applicants?
- In cases where a birth certificate is not issued, is a birth notification provided by the mid-wife or the hospital?
- Does the person need assistance registering the birth of the child?

### c Discuss with the detainee:

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Collecting information from individuals in the course of an interview requires informed and explicit consent of the detainee.<sup>26</sup> He/she must be informed of the specific purpose of the interview, how it will be processed and whether the information will be shared with third parties. In principle, personal data must be treated as strictly confidential, and ought only to be disclosed to partners or third

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<sup>26</sup> For more information on the principle of confidentiality, see Para. 4.1 of the *Policy on the Protection of Personal Data of Persons of Concern to UNHCR*, May 2015, available at: <http://www.refworld.org/docid/55643c1d4.html>.

parties for a specific purpose, and on terms to which the interviewee has agreed and to which he/she has expressly consented.<sup>27</sup>



An enquiry into whether someone is stateless is limited to the States with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, adoption or habitual residence. In some cases this may limit the scope of investigation to only one State.<sup>28</sup> In other cases this means investigating the links with several countries. The questions below will help you establishing any potential links.

## NATIONALITY

Does he/she hold, or has he/she previously held one or more nationality?

If in doubt, what nationality does he/she think he/she has or should have?

Where was he/she born?

What ethnic group does he/she belong to?

What nationality/ies did his/her parents and grandparents have? Where and when were his/her parents born?

What nationality/ies do his/her siblings (if any) have?

What nationality/ies do his/her (former) spouse/partner and children have?

Whether he/she has lost or been deprived of his/her nationality? If so, on what grounds? Ask for an explanation of the circumstances.

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<sup>27</sup> However, it should be noted that there are exceptional circumstances, most notably related to the safety and security of persons of concern to UNHCR or others, in which the individual's consent is not required. See Para. 2.2 and 6.3.2 of the *Policy on the Protection of Personal Data of Persons of Concern to UNHCR*. In such cases, additional consultation with UNHCR Headquarters is advisable.

<sup>28</sup> See UNHCR, *Handbook on Protection of Stateless Persons*, Para. 18.

- 
- ☑ Whether he/she has attempted to acquire nationality of any specific country. What authorities did he/she approach, where, and when? What was the outcome of these steps?
- 
- ☑ Whether he/she has renounced any nationality and whether there is any documentary proof of this process?



**Being undocumented – not possessing a passport or identity documentation for example – is not the same as being stateless. However most stateless persons lack any form of nationality documentation.**

## DOCUMENTATION

- ☑ **Does he/she possess any valid or expired identity document** (passport, ID card, residence permit etc.) or can name a person that possesses a copy of his/her valid or expired identity documents, and if he/she is in regular contact with this person.
- 
- ☑ If he/she is married, does he/she possess a marriage certificate? If not, why not, and can it be obtained?
- 
- ☑ Does he/she possess a birth certificate issued by government authorities or religious authorities? If not, why not? Was he/she born in a health center, a hospital, at home, or somewhere else? Can a birth certificate be obtained? If birth took place in a health center or hospital, does he/she have a record from those institutions or can it be obtained?
- 
- ☑ Are the name and date of birth accurately recorded on the birth certificate and identity documentation?
- 
- ☑ Has he/she changed his/her name and was this change recorded on his/her birth certificate/identity documentation?
- 
- ☑ **Has he/she attempted to acquire identity documents from a certain country.** What authorities did he/she approach, where and when? **What were the outcomes of these steps?**
- 
- ☑ Does he/she have documents issued by authorities of the country of detention stating that he/she is not considered as a national of that country?<sup>29</sup>

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<sup>29</sup> See for more about the competent authorities, Para. 27-44 of the *Handbook on Protection of Stateless Persons*.

- 
- ☑ Does he/she have documents issued by authorities of other countries stating that he/she is not considered as a national of those countries?

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  - ☑ Has any lawyer, organisation, friend or other actor ever assisted him/her in obtaining civil registration or identity documents? Who, when and where? What were the outcomes of these steps?

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  - ☑ Did he/she ever study at school or university? If so, where and when? Was he/she able to obtain a graduation certificate?

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  - ☑ Does he/she have any medical records (immunisation records, pre-natal check-up book of mother etc)?

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  - ☑ Has he/she undertaken any employment and/or military service in any country of previous residence or in the country where he/she is now? Is there any documentary proof?

#### RESIDENCE IN LAST AND CURRENT COUNTRIES

- ☑ If applicable, how long has he/she lived outside the country birth/origin/nationality?

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- ☑ How long did he/she reside in that country, and in previous countries of residence?

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- ☑ Does he/she have documents that prove residence in these countries?

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- ☑ When and how did he/she enter the country where he/she is now detained?

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- ☑ Did he/she lodge an application for asylum or stateless status in another country? If so, in which country and when?

#### REGULARISATION OF STAY THROUGH ASYLUM, STATELESSNESS DETERMINATION OR OTHER PATHWAYS

- ☑ **Has he/she applied for asylum in the country of detention?** If so, what was the outcome or is the procedure ongoing?

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- ☑ **Where a statelessness determination procedure exists, has he/she accessed it?** What was the outcome or is the procedure ongoing?

---

- ☑ Has he/she tried to regularize his/her stay through other procedures? If so, which, and what was the outcome or are the procedures ongoing?

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- ☑ Is he/she currently receiving or has the person ever received protection or assistance from a United Nations entity or organisation different from UNHCR? If so, which?

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- ☑ Are there any removal proceedings pending against him/her?

**☑ Has he/she been detained before? If so, for how long and where? For what reasons?**

- ☑** Is he/she detained alone or with family members?
- ☑** Is he/she currently separated from immediate family members present in the country or in another country'?
- ☑** Is he/she able to make regular contacts (including through telephone or internet, where possible) and receive visits from relatives, friends as well as religious, international and/or non-governmental organizations?
- ☑** If known, what are the grounds for his/her detention? Did he/she receive individualized written reasons for the initial detention decision? Can he/she show this document?
- ☑** Has he/she had the opportunity to be heard before the detention decision was issued, in particular in relation to establishing his/her identity, country of origin/nationality and the absence of documentation?
- ☑** Was interpretation available during the proceedings? If so, in what language?
- ☑** Has information about the detention review process been shared in a language he/she understands?
- ☑** Has the detention decision been reviewed? If so, by which authority? When was the latest hearing? Could he/she and his/her representative attend the hearing? How often is the detention reviewed? Was the decision well-reasoned? Does it make any reference to an eventual lack of nationality?
- ☑** Can he/she request to be referred to the statelessness determination procedure in place in the country?
- ☑** On the occasion of the review, did he/she have the opportunity to express elements related to his/her identity and possible lack of nationality and explain the absence of documentation?
- ☑** If there is a ground for detention, would suitable alternatives to detention apply to her/his case? Were these alternatives considered during the detention review?
- ☑ Did he/she have access to legal representation throughout the detention process?** If so, is he/she willing to share the contact details of the lawyer? In which language did he/she communicate with him/her?

# TOP 10

## GUIDING QUESTIONS FOR THE IDENTIFICATION OF STATELESS PERSONS IN DETENTION

1

Does he/she hold, or has he/she previously held one or more nationality?

2

Where was he/she born?

3

Does he/she belong to a particular group that is known to be stateless?

4

What nationality/ies did his/her parents and grandparents have?

5

Does he/she possess any valid or expired identity document?

6

Has he/she attempted to acquire identity documents from a certain country?

7

Has he/she applied for asylum in the country of detention?

8

Where a statelessness determination procedure exists, has he/she accessed it?

9

Has he/she been detained before? If so, for how long and where? For what reasons?

10

Did he/she have access to legal representation throughout the detention process?

## IV. FURTHER ANALYSIS AND STEPS AFTER THE DETENTION VISIT

The following steps can help verify whether the persons detained may be stateless and support arguments for their release. Confidentiality requirements must be upheld throughout this process, and consent of the individual to disclose information to third parties, including authorities of the host State, must be obtained prior to sharing any information outside UNHCR.

*To assess someone's nationality, it may be necessary to contact the authorities of his/her country of origin or other countries the person has ties to. The identity of a refugee or an asylum-seeker must not be disclosed to the authorities of the individual's country of origin.*

UNHCR Handbook on Protection of Stateless Persons, paragraph 78-82.

### Verify possible statelessness or nationality

It may not be possible to verify with certainty that someone is stateless but 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>30</sup>

- ☑ Check the nationality laws and to the extent possible, the implementation of the laws of the different countries to which the person has ties. These are the country of birth, the country/ies of nationality of the parents and (former) spouse and country/ies of (previous) long term residence.
- ☑ Is there a possibility that the person has acquired nationality by birth in the territory of a country or through his/her parents?
- ☑ Verify whether prolonged residence outside the country of nationality could have led to the loss of his/her nationality.
- ☑ Consider contacting lawyers, NGOs or UNHCR operations in the country of possible nationality with further detailed questions and for advice on how to obtain identity documentation and/or acquire or confirm nationality.

<sup>30</sup> See UNHCR, *Handbook on Protection of Stateless Persons*, Para. 91 – 93.



- 
- ☑ Consider contacting the competent authorities of the country of possible nationality in order to verify the identity and/or nationality of the person concerned.<sup>31</sup>

## Challenge the detention decision

### BASED ON THE GROUNDS OF THE DETENTION

- ☑ Is there one or more grounds for detention and is this clearly specified in the detention decision?
- ☑ Are these grounds in line with the UNHCR *Detention Guidelines*?<sup>32</sup>
- ☑ Are these grounds sufficiently reasoned?

### BASED ON THE FACT THAT NO ALTERNATIVES TO DETENTION WERE CONSIDERED INITIALLY

- ☑ Were alternatives to detention actively considered when the decision to detain was taken?
- ☑ Was an **individual vulnerability assessment** carried out to inform the placement/detention decision?
- ☑ Does the detention order justify why no alternative measure was used? Was it related to the absence of documentation?
- ☑ Are there any alternatives to detention that the legal representative can put forward at the next detention review (such as the provision of a guarantor, reporting obligations for example)?

### BASED ON THE ABSENCE OF REMOVAL PROSPECTS

- ☑ In the case that the person has received a removal, return, deportation or expulsion order, what is the country of intended destination?
- ☑ Has he/she sought the assistance of the authorities, IOM, a lawyer or others to return to his/her country of return?
- ☑ Did the immigration authorities in charge of these proceedings liaise with the relevant authorities of the country of origin/return to obtain necessary documentation? When did this process start? What was the outcome?

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<sup>31</sup> See UNHCR, *Handbook on Protection of Stateless Persons*, Para. 26 – 56.

<sup>32</sup> See UNHCR *Detention Guidelines*, Para. 18 - 33.

- 
- ✓ Can the person concerned challenge the detention on the basis that there are no return/removal prospects?

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  - ✓ Can the person concerned challenge the return/removal order?

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  - ✓ In preparing to challenge the detention decision and/or the return/removal order, consider referring to relevant national and regional jurisprudence.<sup>33</sup>

#### BASED ON THE UNREASONABLE LENGTH OR THE ABSENCE OF LIMITS ON THE MAXIMUM PERIOD OF DETENTION IN LAW AND ITS IMPACT ON THE MENTAL HEALTH AND WELL-BEING OF THE PERSON

- ✓ Establish the period of detention in the individual's case and compare it to the average length of detention for others.

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- ✓ Consider challenging the detention of the person on the basis that there is no limit on the maximum period of detention, or that the maximum period of time established in law was not respected.<sup>34</sup>

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- ✓ Based on literature available and, if possible, report provided by a medical expert or psychologist, demonstrate deterioration of the mental and/or physical state of the person and the need for urgent release, or placement in an alternative to detention.<sup>35</sup>

## Support a post-release solution

#### FACILITATE REGULARISATION

- ✓ If a statelessness determination procedure or another immigration or regularisation procedure has already been initiated, ensure that the procedure is not put on hold during the detention period.

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- ✓ If no statelessness determination procedure has been initiated, assist or refer to a legal assistance provider to consider the possibility of initiating a statelessness determination procedure or another immigration or regularization procedure<sup>36</sup>

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<sup>33</sup> See European Network on Statelessness, *Protecting stateless persons from arbitrary detention – A regional toolkit for practitioners*, 2015, available at <http://goo.gl/Jr258f>.

<sup>34</sup> See UNHCR *Detention Guidelines*, Guideline 3, Para. 17. Where time limit are not yet set in law, case law may also provide a reference.

<sup>35</sup> See, Jesuit Refugee Service, *Europe: Becoming Vulnerable in Detention*, June 2011, available at: <http://www.refworld.org/docid/4ec269f62.html>.

<sup>36</sup> It should therefore be ensured that the person receives official notifications from the relevant authorities to not miss any deadlines (e.g. to submit further documentation or a scheduled interview).

which may provide a solution. Liaise with the detention authorities to ensure that the person is present at the interviews and ensure that the procedure has a suspensive effect on any removal order.

- ☑ If no statelessness determination procedure is in place, would the authorities consider allowing the process to be conducted by UNHCR on behalf of the Government?
- ☑ Upon release from detention, verify whether he/she has received an identity document and permission to stay in the country in order to prevent repeat detention.
- ☑ If the person remains in an irregular situation upon release, assist or refer to a legal assistance provider who can assist in preparing an application for statelessness determination or for regularisation of status on other grounds.

#### FACILITATE THE (RE)ACQUISITION OR CONFIRMATION OF NATIONALITY

- ☑ Analyse the nationality legislation and practice of the countries to which the person has links in order to assess whether the person could acquire/has acquired nationality.
- ☑ Analyse the provisions and practice related to civil registration and the issuance of identity and nationality documents in those countries in order to assess whether any obstacles exist(ed) to acquiring those documents.
- ☑ While taking into consideration confidentiality requirements,<sup>37</sup> contact the competent authorities of the countries to which the person has relevant links, to verify whether the person could (re)acquire nationality and access identity documents.<sup>38</sup>
- ☑ Consider contacting lawyers, NGOs or UNHCR operations in the country of possible nationality for advice on procedures to acquire documentation and/or nationality.
- ☑ If the person has the possibility to acquire identity and nationality documentation in the country of residence or the country of origin, assist or refer to legal aid providers who can provide support.

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<sup>37</sup> Under no circumstances is contact to be made with authorities of a State against which the person alleges a well-founded fear of persecution unless it has definitely been concluded that he or she is neither a refugee nor entitled to a complementary form of protection. Consent of the individual(s) concerned is normally required for any transfer of data to such authorities.

<sup>38</sup> See UNHCR, *Handbook on Protection of Stateless Persons*, Para. 26 – 56.

## Advocate for changes in law, policy and practice

- ❑ Identify specific gaps in law, policy and practice that lead to arbitrary, repeat and/or prolonged detention of stateless persons. Advocate for changes in the relevant laws, policies and practices in relation to the identified gaps (grounds for detention, maximum period of detention, independent and regular reviews).
- ❑ Identify any government officers or lawmakers who are in a position to pursue changes in policy and law. Advocate for legal amendments to ensure alternatives are available in law and actively promote their use in practice.
- ❑ Identify partner organisations, lawyers, and other stakeholders who can support advocacy initiatives to release stateless persons from detention and support the establishment of appropriate reception options and community-based alternatives to detention.
- ❑ Consider strategic litigation at the national and, if applicable, the regional level, to challenge the arbitrary detention of stateless persons and address difficulties concerning regularisation and obtaining documentation. Where appropriate, consider requesting compensation for periods of unlawful detention.
- ❑ Advocate for the establishment of dedicated statelessness determination procedures to identify stateless persons in the migratory context<sup>39</sup> or for statelessness determination to be conducted by UNHCR on behalf of the Government.
- ❑ Advocate for clear categories in registration practices by authorities in charge of immigration and civil status documentation that allow for stateless persons to be recorded as such.
- ❑ Conduct sensitisation activities, such as briefings and translation of relevant materials, capacity building and training activities, for immigration and asylum authorities as well as lawyers and the judiciary on international standards related to statelessness and detention.

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<sup>39</sup> Statelessness determination procedures generally assist States in meeting their commitments under the 1954 Convention, in particular for stateless persons in the migration context. Statelessness can arise both in a migratory and non-migratory context and the profile of statelessness in a particular country may fit one or the other scenario or might be mixed. Some stateless populations in a non-migratory context remain in their “own country” and may be referred to as *in situ* populations. For these groups, determination procedures for the purpose of obtaining status as stateless persons are not appropriate because of their long-established ties to these countries. The determination of their statelessness is however a relevant factor in the context of their detention and merits specific consideration in the assessment of the detention decision.

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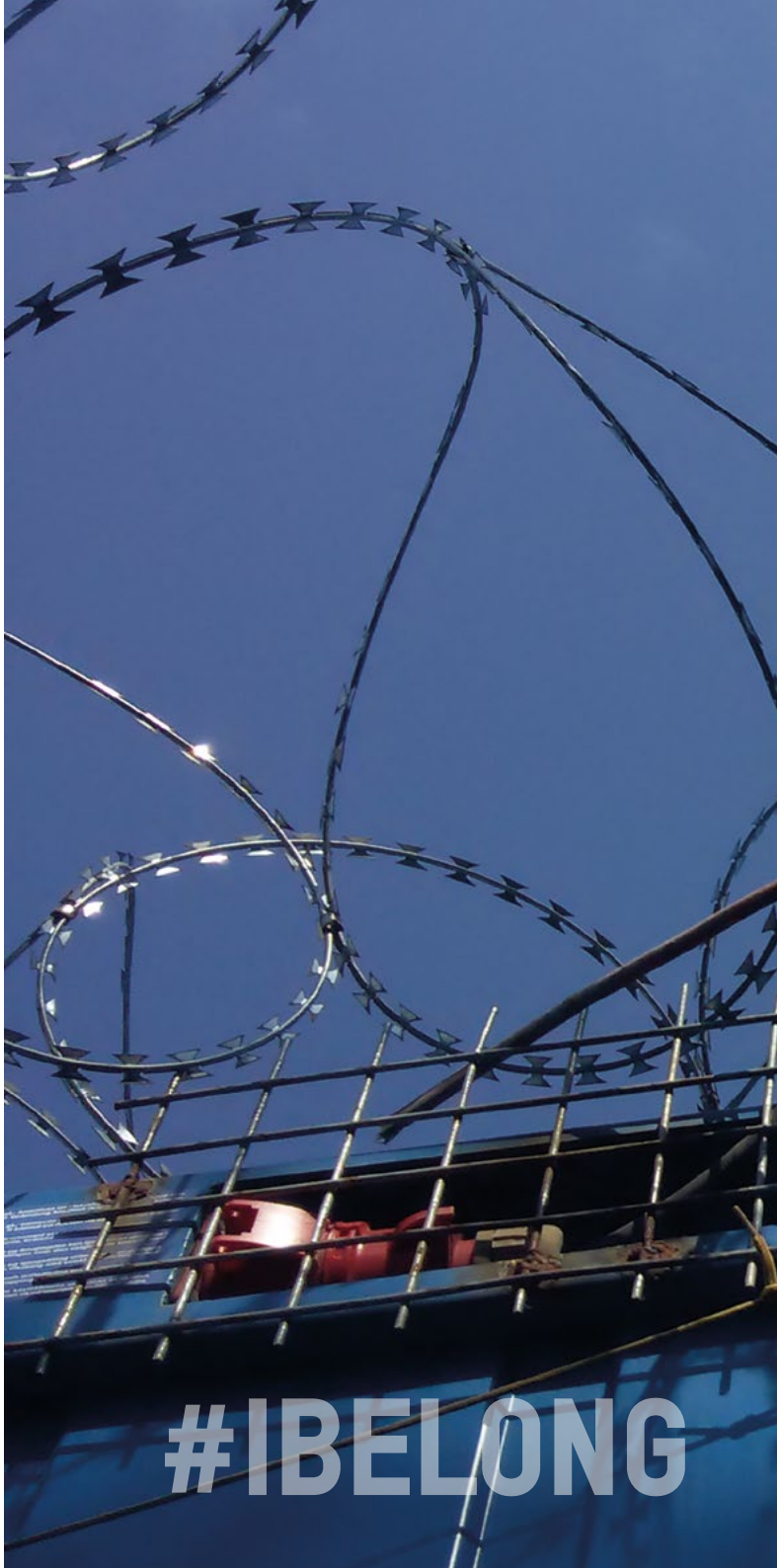
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