



# Statelessness in Central Asia

*Prepared for UNHCR by Marjorie Farquharson*

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This study was commissioned by the United Nations High Commissioner for Refugees (UNHCR) in the context of a regional project on statelessness. The project culminated with a Regional Conference on Prevention and Reduction of Statelessness and Protection of Stateless Persons in Central Asia, which was hosted jointly by UNHCR and the OSCE Centre in Ashgabat (9-10 December 2009, Ashgabat, Turkmenistan).

The research for this study was conducted by Marjorie Farquharson, Consultant with UNHCR. The views expressed are those of the author only and do not necessarily reflect the views of UNHCR. The information provided in this study has been extracted from existing documents, reports and studies and is also based on field studies conducted by the author in Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan in September 2009. Please note that the verification of information compiled from these sources remains the responsibility of the respective author.

# 1 Introduction

In December 1991, when the USSR was dissolved and was succeeded by the Commonwealth of Independent States (CIS), at least 280 million people lost their citizenship. Among them were nearly 60 million in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.<sup>1</sup>

Despite some of these people having a link to a successor State in Central Asia through birth or residence they have been unable to confirm or acquire citizenship of any State. This is partly due to gaps in the nationality laws and practices that were adopted by the newly independent States. Subsequently, although significant progress has been made to reduce statelessness since the period immediately after independence, migration in and out of the region coupled with the lack of effective safeguards in citizenship laws has led to additional cases of statelessness in recent years.

In 2007, the United Nations High Commissioner for Refugees organized a regional workshop on statelessness in Dushanbe, funded by the European Union and with the participation of government and civil society representatives from Tajikistan, Turkmenistan, Kazakhstan and Kyrgyzstan. The meeting highlighted efforts governments have made to replace former USSR passports, naturalize large numbers of stateless persons and establish a legal rights framework for permanently resident stateless persons. It was recognized, however, that some people in post-Soviet Central Asia have remained stateless for more than 15 years and that the number of persons officially registered as stateless in most cases does not reflect the real numbers of stateless persons in each country. Delegates agreed that it was important to review existing statistics on stateless persons and expressed interest in targeting information campaigns at areas with large numbers of people who are potentially stateless, to inform them of their rights, and ways to regularise their status. Participants also agreed on the importance of examining gaps in nationality legislation that may result in statelessness and of considering accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

In the four years that have passed since the Dushanbe workshop, progress has been made by some Central Asian governments to address statelessness through: the systematic identification of stateless persons and persons at risk of statelessness; legal reform to reduce the risk of occurrence of new cases of statelessness occurring; and the naturalization of stateless persons.

In May 2009, with funding from the European Commission Aeneas programme “*Financial and technical assistance to third countries in the field of migration and asylum*”, in May 2009 UNHCR launched a project on prevention and reduction of statelessness and protection of stateless persons in Central Asia. The project aimed to identify and disseminate good practices in addressing statelessness in the region, as well as remaining gaps in law and administrative practice. Studies relating to the respective legal and administrative frameworks on nationality and stateless persons were carried out in Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan. Information was gathered through interviews with government officials; reports from UN agencies and NGOs and interviews with stateless people. The results of this research were discussed with government representatives and UN and NGO partners in national workshops held in September and October of 2009. The project culminated in a Regional Conference on Prevention and Reduction of Statelessness and the Protection of Stateless Persons in Central Asia, co-organized with the Organization for Security and Cooperation in Europe, in Ashgabat, Turkmenistan on 9-10 December 2009.

This regional report is based on the country studies carried out by UNHCR in Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan. It is structured along the lines of UNHCR’s 2008 publication “*Statelessness: An Analytical Framework for Identification, Prevention, and Reduction*”.

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<sup>1</sup>*Mikhail Tulsii*, Naselenie SNG k nachalu 2003 goda – 277,5 milliona chelovek, *Demoscope Weekly, Moscow, No 103-104, 3-16 March 2003*, available at <http://www.demoscope.ru/weekly/2003/0103/analit04.php>.

Chapter 1 describes government, UN and civil society initiatives to identify stateless persons through registration campaigns, population censuses and surveys. Chapter 2 analyses law and administrative practice relating to the acquisition, change, loss and deprivation of nationality and identifies gaps in legislation and its practical implementation that can lead to statelessness.<sup>2</sup> Chapter 3 looks at government procedures aimed at determining the status of stateless persons, and their dependents, and considers to what extent they incorporate due process guarantees. Chapter 4 analyses what protection stateless persons enjoy against exploitation and violence, and whether this extends to vulnerable groups among them, like stateless children. The access of stateless persons to basic goods and essential services is assessed in Chapter 5. Finally, Chapter 6 examines the opportunities stateless persons have for self-reliance and full participation in the communities around them.

### *1.1 Demographic Profile*

The break-up of the Soviet Union and the emergence of newly independent states led to increased migration and large-scale statelessness in the Central Asian region and elsewhere. Almost twenty years later, thousands of people have been left stateless or with undetermined nationality, because they failed to acquire or confirm the nationality of any of the States with which they had ties through birth, descent or habitual residence.

They came to this situation by different paths, but most were affected one way or another by the process of state succession. Others became stateless more recently, for instance as a result of legal provisions which cause automatic loss of citizenship if a citizen resides abroad for several years without registering at a consulate.

Almost all stateless people and persons at risk of statelessness in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan are former citizens of the USSR. Many live in border areas and were made stateless by the post-Soviet demarcation of territories. A second group are labour migrants. Yet another group are people moving back to their ethnic 'homelands', sometimes to places from where they were deported in the Soviet era. The great majority of stateless persons in each State originate from within the Central Asian region.

No complete and up-to-date demographic picture of statelessness in the five Central Asian States is available. Between 2008 and 2012 each State will carry out a census that includes a question on nationality. As the answers will be based on a self-assessment of nationality status, they may not provide sufficiently reliable data on the actual number of stateless persons,<sup>3</sup> but they will shed some light on the geographical spread of stateless persons, their age and gender.

In Kazakhstan, Kyrgyzstan and Tajikistan, official statistics on stateless persons include only people with a permanent residence permit in the country and an official document certifying them as stateless. There are no official statistics on stateless persons in Turkmenistan and Uzbekistan, though there is an estimate for the former.

### *1.2 Identification*

Identifying stateless populations and understanding why they either never acquired nationality or subsequently lost it, can lay the ground for strategies to resolve the problem. UNHCR's Executive Committee, which is made up of 78 States, has therefore encouraged UNHCR "to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant

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<sup>2</sup> No field studies and country report were carried out in Uzbekistan, where UNHCR has had no presence since 2005. In this regional report, an analysis of the Uzbek Citizenship Law and related legislation has nevertheless been included for the purpose of a comprehensive comparison of the legal frameworks in the region. Any reference to Uzbekistan in the report is based on a limited desk review of available information.

<sup>3</sup> Many persons who identify as stateless may in fact, unknown to them, hold the nationality of a state with which they have a connection, while other persons may wrongly assume that they are nationals of a state, when this state does not recognize them as its citizens.

academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem.”<sup>4</sup> As a result, UNHCR has worked with governments, civil society and academic institutions in Central Asia to increase efforts to identify stateless populations. Indeed, UNHCR has stepped-up reporting on the magnitude and nature of statelessness, relying on data gathered from States, academics, civil society and through the efforts of UNHCR field offices. Data on stateless populations is now systematically reported in UNHCR’s annual population statistics.

On a day-to-day basis, stateless persons in the Central Asian States are identified when they seek permission to stay in the country. Across the region, it is usually the Ministry of Internal Affairs of each country, or a specialised arm of it, that makes this determination. Most existing government data is of limited value for determining the total magnitude of stateless populations, because it includes only stateless persons with documentation. Those who have not approached the authorities and been documented as stateless persons, or who have difficulty establishing their nationality, are not included in these ministries figures. Nor are stateless persons who are refused citizenship, or deported. The situation is different in Kyrgyzstan where specialised commissions of the Ministry of Internal Affairs – called the Conflict Commissions on Citizenship Issues – deal mostly with former USSR citizens who may qualify for citizenship under the 2007 Citizenship Law. In Turkmenistan, stateless persons are registered by the State Migration Service, which does include in its statistics persons without documentation, and holders of USSR passports.

Drawing on official figures, UNHCR recorded 46,886 stateless persons in the Central Asia region at the end of 2009.<sup>5</sup> In Kyrgyzstan, 46 individuals had received residence permits for stateless persons and Stateless Person’s Cards allowing them to exit and re-enter the country. On the basis of 1999 census data and three surveys carried out in 2007-08 as well as data from the State Registration Service, UNHCR estimates that 24,615 stateless persons reside in Kyrgyzstan. In Tajikistan the number of officially registered stateless persons at the same time was 249 persons, while in Kazakhstan, 7,649 were officially registered as stateless persons at the end of 2009. Another 12,000 were estimated to be stateless in Turkmenistan. Nonetheless, UNHCR believes the real number of stateless persons in the region is higher. This conclusion is supported by the results of a registration drive held in Turkmenistan and surveys undertaken in Kyrgyzstan. Those efforts are described below and served to show that there were many stateless persons dispersed among the general population who were previously unknown to the authorities, civil society or UNHCR.

### *1.2.1 Population census*

Population census is a primary way of gathering demographic data, including on the number of stateless persons in a country. A national census carried out in Tajikistan in 2000 recorded 2,297 people who identified themselves as stateless. No data from other government sources was available to corroborate this figure. The census results were not widely publicised and led to no further demographic studies. It is not known how many stateless persons subsequently acquired a citizenship.

Tajikistan conducted a census in 2010 that also asked respondents about their nationality with “stateless/no nationality” as an option. UNHCR and the national authorities are currently discussing the possibility of carrying out in-depth follow-up sampling. Targeted local surveys could shed light on the age, gender and origin of stateless people and help to explain why they are stateless. It should also help identify obstacles these people had encountered in acquiring or confirming nationality and in enjoying basic rights.

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<sup>4</sup> *Executive Committee of UNHCR*, Conclusion No 106: Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 2006, Paragraph (e), available at <http://www.unhcr.org/refworld/docid/453497302.html>.

<sup>5</sup> *UN High Commissioner for Refugees*, 2009 Global Trends, *Division of Programme Support and Management*, 15 June 2010, available at <http://www.unhcr.org/4c11f0be9.html>.

Kazakhstan and Kyrgyzstan similarly included a question on nationality in their 2009 censuses and were expected to publish the results in 2010 or 2011. Turkmenistan will also include a similar question in the census planned for 2012.

It is not clear how States will correlate data collected on stateless persons through a census, with data drawn from other national procedures, such as birth registration and use it to make policy. The process of sharing statistics between government ministries is generally not comprehensive. In Kazakhstan, census results are likely to feed into the National Database of Natural Persons (which includes stateless persons). It includes information drawn from a range of state agencies and informs policy-making.

### 1.2.2 Registration Campaigns and Surveys

The State Migration Service of Turkmenistan (SMST) has been using mobile registration teams to determine the nationality of individuals living in border areas since the USSR collapsed. It expects to establish three things: who meets the criteria for nationality set down in the 1992 Citizenship Law and who have Turkmen nationality as a result;<sup>6</sup> who has the nationality of another state, with valid documentation to prove it; and who has no legal bond to any country. The last group will have to produce evidence that they have no affiliation to another state after which they will be entitled to a residence permit and to access naturalization procedures.<sup>7</sup> As part of its registration drive, the SMST has compiled a bio-database<sup>8</sup> on every individual it has registered. Although no official statistics have been made public, it is known that by the end of 2009 some 12,000 persons over the age of 16 had been identified as stateless by the end of 2009. The number of stateless children registered was not known.

In Kyrgyzstan, UNHCR's NGO implementing partners<sup>9</sup> carried out three surveys in the north and south of the country, with the help of government agencies. They focused on people with undetermined nationality and those not documented as Kyrgyz nationals. The surveys did not aspire to forensic accuracy or to identify every person at risk of statelessness, but for the first time elicited the reasons why people are stateless and provided detailed statistical data on the stateless population. The surveys were published in 2009 and shared with state agencies and civil society organizations dealing with statelessness and humanitarian issues.<sup>10</sup>

The surveys in Kyrgyzstan identified close to 13,000 persons who were stateless or at risk of statelessness in 2007 and 2008. These included approximately 4,500 former USSR nationals who qualify for citizenship under the new Nationality Law, but who have to apply to Conflict Commissions to confirm citizenship, as well as those Kyrgyz nationals who have not yet exchanged their USSR passports. The surveys also identified former citizens of another State who have become stateless because of shortcomings in citizenship legislation and practices. They are mainly spouses of Kyrgyz nationals, living in border areas. Finally, more than 6,000 children of stateless persons were found to face difficulties in obtaining passports due to the status of one or both of their parents. The survey in

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<sup>6</sup> This is set out in the 1992 Citizenship Law of Turkmenistan, Article 49.

<sup>7</sup> There was no specific identification of stateless persons conducted in the country after the declaration of independence in 1991. During the Soviet era, persons who had been identified as stateless persons by USSR authorities were issued Stateless Person's Cards which was a valid identification and travel document in the Soviet Union. It granted either treatment equal to other aliens, or with respect to some rights, such as education, employment, health and social security, identical treatment to nationals. After independence, the Turkmenistan Government replaced the USSR-format statelessness cards with residence permits, though the holders of the replaced cards continued to enjoy similar treatment as before. These were mainly students and immigrants who arrived in Turkmenistan during the Soviet time under educational schemes between the former USSR and other (non-USSR) countries or due to family links.

<sup>8</sup> It includes their date of birth, gender, marital status and bio-data of their children, as well as the information that identifies their eligibility for citizenship or permanent residence in the country.

<sup>9</sup> These are the NGOs Adilet, Fergana Lawyers without Borders, Centre for Support to International Protection, Counterpart Sheriktesh, and Help Refugees.

<sup>10</sup> *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009.*

the South of the Kyrgyz Republic also noted that some members of the Lyuli community in Osh province are at risk of statelessness in Kyrgyzstan due to lack of identity documents.

### *1.3 International & Regional Instruments*

The Central Asian States have all ratified universal human rights instruments that commit them to respect, protect, and fulfill the right to a nationality and a range of human rights that are to be enjoyed by stateless persons. These are, in particular, the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights and the Convention Against Torture.

Kyrgyzstan and Tajikistan, are also parties to the 1995 CIS Convention on Human Rights and Fundamental Freedoms – the so-called “Minsk Convention” – which proclaims the right to a nationality, the right to change nationality, and freedom from arbitrary deprivation of nationality. But the Convention has only been ratified by four States.

Kazakhstan and Kyrgyzstan are States party to the Convention on the Nationality of Married Women.

None of the Central Asian States is party to the 1954 Convention relating to the Status of Stateless Persons (the 1954 Convention), or the 1961 Convention on the Reduction of Statelessness (the 1961 Convention).

### *1.4 National Legal Framework*

The nationality legislation of each country states that citizenship is equal for all, regardless of how they acquired it.<sup>11</sup> It defines who is a stateless person and the grounds and procedures for acquisition, renunciation, loss and deprivation of citizenship. Each country has, in addition, a law on the legal status of foreigners, a term which includes stateless persons. Rules for entry and departure, and for documenting the stay of foreigners are set down in Residence Regulations in Tajikistan and Kyrgyzstan and in the Migration laws of Kazakhstan and Turkmenistan. These countries also have laws on education, pensions and social welfare and health that set out the rights of stateless persons to these services.

### *1.5 The Definition of a Stateless Person in National Laws*

The 1954 Convention defines a ‘stateless person’ as a person who is not considered as a national by any State under the operation of its law. The definition is recognized as forming part of customary international law.

The citizenship law of each Central Asian State defines a stateless person as someone “without the nationality of the state, who has no proof of affiliation to any other nationality”.<sup>12</sup> This definition is wider in scope than the international definition of a stateless person, as it can be – and often is – interpreted as including people who are citizens of a state but do not have proof of this, regardless of whether they could obtain it.

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<sup>11</sup> Article 5, 1992 Citizenship Law of Turkmenistan; Article 1, 1995 Citizenship Law of Tajikistan; Article 4(4), 2007 Law on Citizenship of Kyrgyzstan; Article 5, 1991 Citizenship Law of Kazakhstan, as amended in 2009.

<sup>12</sup> These are: Article 14c), 1995 Citizenship Law of Tajikistan; Article 6 of the 1992 Citizenship Law of Turkmenistan and Article 1 of the 2005 Migration Law of Turkmenistan, as amended in 2011; Article 3 of the 2007 Citizenship Law of Kyrgyzstan; and Article 1 of the 2000 External Migration Law of Kazakhstan, Article 6 of the 1991 Citizenship Law of Kazakhstan and Article 1 of the 1995 Law No 2337 ‘On the Legal Status of Foreigners in Kazakhstan’.

Turkmen law provides two definitions of 'statelessness'. The 1992 Citizenship Law identifies a stateless person as someone with no proof of affiliation to any state, while the 2005 Law on Migrants<sup>13</sup> defines a stateless person as someone "with an appropriate document" confirming that they are "not a national of Turkmenistan or any foreign state, or confirming their stateless situation".

### *1.6 National Administrative Framework*

Each State generally vests its President with the authority to decide on the grant, restoration, renunciation and loss of citizenship, with the assistance of a commission on nationality issues. In Kazakhstan, the authority of the President over citizenship issues does not include cases of loss of nationality, although decisions in such cases can be appealed to the President. The Ministry of Internal Affairs receives applications for naturalization from persons living on the territory, as well as petitions for the restoration and renunciation of nationality. Persons resident outside the territory submit these applications/petitions to consulates of the Ministry of Foreign Affairs. National security agencies screen applications when they are submitted, and when they reach the presidential commission.<sup>14</sup>

In addition to the institutional arrangements mentioned above, in each State specialised arms of the Ministry of Internal Affairs address specific aspects of nationality and related migration issues which arise under national law. Their precise role varies from State to State. In Tajikistan it is the Migration Service that enforces the 1999 Residence Rules<sup>15</sup> setting down the terms of lawful residence for stateless persons and other foreigners. Stateless individuals who enter the country on a valid visa may apply for a stateless person's residence permit and Stateless Person's Card after residing there lawfully for at least six months. They can be refused if they apply too early. In Kyrgyzstan, 'Conflict Commissions' under the Passport and Visa Control Division adjudicate the cases of persons from the CIS with expired USSR passports. The Passport and Visa Control Division issues those who are stateless with a stateless person's residence permit and Stateless Person's Card and publish a conclusion to that effect.<sup>16</sup> In Turkmenistan, the State Migration Service has led a registration drive since 2007 to clarify the status of undocumented residents and identify stateless persons among them. Established agencies of state security and internal affairs, in cooperation with the State Migration Service, are considering applications for residence and/or naturalization for those individuals who have been identified.<sup>17</sup> In Kazakhstan, the Migration Police processes citizenship applications and keeps a record of naturalizations and deprivations of citizenship each year. The Migration Committee of the Ministry of Labour and Social Welfare administers the resettlement quota for ethnic Kazakh repatriates.

### *1.7 Partnerships*

With UNFPA, UNHCR has advised on questions for the national census in Kazakhstan, Kyrgyzstan, Turkmenistan and Tajikistan. Its aim was to identify the stateless population more fully. In 2009 UNHCR published findings of three surveys of stateless persons carried out by its NGO partners, with government endorsement. These were believed to be among the first surveys of their kind. In all four States, UNICEF and UNFPA have advised on family law and improved methods of birth registration, which is key to prevention of statelessness.

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<sup>13</sup> Article 1, as amended in 2008.

<sup>14</sup> According to the 1995 Citizenship Law of Tajikistan, as amended in 2008; the Constitution of Kyrgyzstan and its 2007 Citizenship Law; the 2008 Constitution of Turkmenistan, its 1992 Citizenship Law and the 1992 Provision on Procedure for Hearing Petitions and Applications for Citizenship, confirmed by Presidential Decree No 1328.

<sup>15</sup> 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008.

<sup>16</sup> Under Paragraph 7 of the Regulation 'On the Manner of Execution and Issuance of Temporary and Permanent Residence Permit to Foreign Citizens and Stateless Persons in the Territory of Kyrgyz Republic', as adopted on 13 November 2008, to regulate implementation of the 2000 External Migration Law.

<sup>17</sup> Law on State Migration Service of 28 November 2009 and SMST Regulation approved by Presidential Decree No 6133 of 21 February 2003 lists functions which, among other things, ensure control over migration processes, including: the entry, sojourn and exit of foreigners and stateless persons in and from Turkmenistan; collection and analysis of information on foreigners and stateless persons; and accepting application for admission to Turkmen citizenship, and the issue of residence permits.



### *1.8 Relationship between Governments and UNHCR*

UNHCR is a major protection agency in the four states and carries out activities related to statelessness in each country. It is the main agency dealing directly with protection of stateless persons in the region and the prevention and reduction of statelessness. It has carried out activities to raise awareness of statelessness and build the capacity of central government institutions and local authorities in dealing with it. UNHCR advocates for the revision of national legislation and administrative practice in conformity with international standards and accession to the main international instruments relating to statelessness, namely the 1954 Convention and the 1961 Convention. With the help of local NGOs as implementing partners, UNHCR also provides legal aid and assistance to individual stateless persons in Kyrgyzstan, Turkmenistan and Kazakhstan.

## 2 Prevention and reduction of statelessness

### 2.1 Acquisition of citizenship at birth

The Convention on the Rights of the Child (CRC) establishes that every child has the right to acquire a nationality.<sup>18</sup> The CRC also establishes that States Parties have an obligation to ensure the implementation of this right in accordance with their national laws and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.<sup>19</sup>

In Central Asia, acquisition of citizenship at birth in each of the five States is primarily based on descent (*jus sanguinis*). Safeguards to prevent statelessness provide for acquisition of nationality in some circumstances by children born to non-nationals on the territory.

In all five States, a child born on State territory to two nationals automatically acquires citizenship,<sup>20</sup> as does a child born on State territory to one national, and another parent who is stateless or unknown.<sup>21</sup>

A child born on State territory to a national and a foreigner also automatically acquires citizenship in four of the five States,<sup>22</sup> whereas in Kyrgyzstan, since 2007, this requires the written consent of the foreign parent.

Under the law of Tajikistan, citizenship is automatically acquired by a child born to two stateless parents on Tajik territory, regardless of residence status.<sup>23</sup> A child born to two stateless parents in Kazakhstan, Kyrgyzstan, Uzbekistan, and Turkmenistan<sup>24</sup> automatically acquires citizenship at birth if the parents have permission to reside there permanently.

Tajik citizenship is also acquired by a child born on Tajik territory to parents of foreign nationality if “the child has not been granted a nationality by these states,” because they cannot confer their citizenship.<sup>25</sup> It is the only citizenship law in the region to contain such a safeguard against statelessness, however it should be examined whether this safeguard would also apply to cases of children born to one foreign national parent who cannot confer his/her nationality and one parent who is stateless.

In each of the five States citizenship is acquired automatically by a child born of unknown parents found abandoned on their territory.<sup>26</sup> All five States appear to be in compliance with the standard set out in the 1961 Convention which provides that *foundlings* are presumed to be born within the

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<sup>18</sup> Article 7, Convention on the Rights of the Child. Article 24(3) of International Covenant on Civil and Political Rights also recognizes this right.

<sup>19</sup> Article 7.

<sup>20</sup> Article 11, 1991 Citizenship law of Kazakhstan; Article 12(1), 2007 Citizenship Law of Kyrgyzstan; Article 12, 1992 Citizenship law of Turkmenistan; Article 16, 1995 Citizenship Law of Tajikistan; Article 13, 1992 Citizenship Law of Uzbekistan.

<sup>21</sup> Article 12(2 and 3), 2007 Citizenship Law of Kyrgyzstan; Article 13, 1992 Citizenship Law of Turkmenistan; Article 17, 1995 Citizenship Law of Tajikistan; Article 14, 1992 Citizenship Law of Uzbekistan.

<sup>22</sup> Article 12, 1991 Law on Citizenship of Kazakhstan; Article 12(2 and 3), 2007 Citizenship Law of Kyrgyzstan; Article 13, 1992 Citizenship law of Turkmenistan; Article 17, 1995 Citizenship Law of Tajikistan; Article 14, 1992 Citizenship Law of Uzbekistan.

<sup>23</sup> Article 18, 1995 Citizenship Law of Tajikistan.

<sup>24</sup> Article 14, 1991 Law on Citizenship of Kazakhstan, as amended in 2002; Article 14, 1992 Citizenship Law of Turkmenistan; Article 12(4), 2007 Citizenship Law of Kyrgyzstan; Article 15, 1992 Citizenship Law of Uzbekistan.

<sup>25</sup> Article 20, 1995 Citizenship Law of Tajikistan.

<sup>26</sup> Article 15, 1995 Citizenship Law of Turkmenistan; Article 19, 1995 Citizenship Law of Tajikistan; Article 12(5), 2007 Citizenship Law of Kyrgyzstan; Article 13, 1991 Citizenship Law of Kazakhstan; Article 16, 1992 Citizenship Law of Uzbekistan.

territory of the State in which they are found to parents possessing the nationality of that State. Therefore, foundlings are to be considered as nationals of this State.<sup>27</sup>

In all five States, a child born abroad to two nationals becomes a citizen automatically at birth<sup>28</sup> as does a child born abroad to one national and a parent who is stateless or unknown.<sup>29</sup>

If a child is born abroad to a national and a foreigner, the laws of four of the five States<sup>30</sup> establish that the child only becomes a national at birth if one or both parents were permanently resident in their State of nationality at the time of the child's birth. For a child born to parents permanently resident abroad, on the other hand, the child's nationality must be agreed in writing by his/her parents. In the case of Kyrgyzstan, written agreement is required regardless of the parents' residence status in Kyrgyzstan.<sup>31</sup> Only Tajikistan appears to set a deadline for the parents' decision. They must send the authorities a copy of the child's birth certificate with their written agreement before he or she is one year old.<sup>32</sup>

In line with guidance provided by the UN Human Rights Committee and the Committee on the Rights of the Child, all five States provide for equal rights of children born in and out of wedlock to acquire the nationality of the State.<sup>33</sup> Likewise, all five States give men and women equal rights to pass on their citizenship to children born within and outside of their territories, in line with their obligations under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>34</sup>

#### *Acquisition of nationality through restoration*

All five Central Asian States legislate for the reacquisition of nationality by former nationals.<sup>35</sup> In all five, the restoration process is similar to naturalization and requires a formal application and approval by the President. In Kyrgyzstan, restoration of nationality also involves one year's residence, before the application can be submitted, while no residence requirements appear to exist in the other States.

#### *Gaps compared to international standards*

► None of the States in the region guarantees children born on its territory the citizenship of the State where they 'would otherwise be stateless'.<sup>36</sup> Although they all have safeguards to grant citizenship at

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<sup>27</sup> Article 2, 1961 Convention on the Reduction of Statelessness.

<sup>28</sup> Article 11, 1991 Citizenship law of Kazakhstan; Article 12(1), 2007 Citizenship Law of Kyrgyzstan; Article 12, 1992 Citizenship law of Turkmenistan; Article 16, 1995 Citizenship Law of Tajikistan; Article 13, 1992 Citizenship Law of Uzbekistan.

<sup>29</sup> Article 12, 1991 Law on Citizenship of Kazakhstan; Article 12(3), 2007 Citizenship Law of Kyrgyzstan; Article 13, 1992 Citizenship Law of Turkmenistan; Article 17, 1995 Citizenship Law of Tajikistan; Article 14, 1992 Citizenship Law of Uzbekistan.

<sup>30</sup> Article 12, 1991 Law on Citizenship of Kazakhstan; Article 13, 1992 Citizenship Law of Turkmenistan; Article 17, 1995 Citizenship Law of Tajikistan; Article 14, 1992 Citizenship Law of Uzbekistan.

<sup>31</sup> Article 12(2), 2007 Citizenship Law of Kyrgyzstan.

<sup>32</sup> Article 12, 1996 Regulation No 611 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan'. In the national roundtable held in Dushanbe in preparation for the regional conference, a representative from the Ministry of Justice said that Tajiks who are married to foreigners and living abroad and who lack access to a consulate, can receive a birth certificate in Tajikistan after this deadline on the basis of a hospital attestation from the country where the child was born.

<sup>33</sup> Article 12, 1991 Law on Citizenship of Kazakhstan, as amended in 2002; Article 13, 1992 Citizenship Law of Turkmenistan; Article 17, 1995 Citizenship Law of Tajikistan; Article 12, 2007 Citizenship Law of Kyrgyzstan; Article 16, 1992 Citizenship Law of Uzbekistan.

<sup>34</sup> Article 9.2, UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<sup>35</sup> Article 20, 1992 Citizenship Law of Turkmenistan; Article 25, 1995 Citizenship Law of Tajikistan; Article 18, 1991 Citizenship Law of Kazakhstan; Articles 15 and 13, 2007 Citizenship Law of Kyrgyzstan; Article 18, 1992 Citizenship Law of Uzbekistan.

<sup>36</sup> Art. 3.1(2) of the 1991 Citizenship Law of Kazakhstan provides that persons, who were born in Kazakhstan and are not national of any other country, shall be Kazakh citizens. At the time of publication of this report, UNHCR was not aware whether this provision is used in practice to grant nationality to children born on territory who would otherwise be stateless.

birth to children born of stateless or unknown parents, as is explained below, the relevant provisions do not prevent statelessness from occurring in all cases. Tajikistan's Citizenship Law contains most safeguards to ensure that children who would otherwise be stateless acquire a nationality.

► Nationality laws in the region leave some children born on State territory stateless because their parents are not “permanent residents”. The Kyrgyz nationality law, like the law in Turkmenistan, Uzbekistan and Kazakhstan, guarantees citizenship only to children born to stateless parents with permanent residence in the country.<sup>37</sup> In these four States, a child born to stateless parents with only temporary residence does not acquire citizenship.

Information on the scope of statelessness in the region is incomplete and it is not known how many children are affected by these provisions. Nonetheless, the 2008 survey conducted by UNHCR's NGO partners in three regions of southern Kyrgyzstan indicated that 97% of stateless persons were classed as “temporarily resident” because of lack of valid documentation. Among the stateless population the survey identified 6,087 children,<sup>38</sup> all of whom are potentially stateless.

► If a child is born abroad to a national and a foreigner, all nationality laws in the region require that the parents must agree in writing for the child to acquire the nationality of the State. None of the States make provision for a situation of an irreconcilable disagreement between the parents, and this could put the child at risk of statelessness.

## 2.2 *Dual nationality and requirements to renounce nationality before applying for nationality*

Article 15 of the Universal Declaration of Human Rights establishes that “no one shall be denied the right to change his nationality.” At the same time, care needs to be taken to ensure that individuals who do change nationality are not left stateless in the process. In particular, where States prohibit dual and multiple nationality, adequate safeguards need to be in place to prevent statelessness. This is significant in the Central Asia region because generally States allow dual or multiple nationality only on the basis of bilateral and multilateral treaties.

Kazakhstan does not recognise dual citizenship. It is forbidden under the Constitution<sup>39</sup> and the possession of another citizenship is one of the grounds enumerated for depriving someone of their Kazakh citizenship.<sup>40</sup> It is also a ground for being refused Kazakh citizenship.<sup>41</sup> Applicants for citizenship must renounce their nationality, or nationalities, without any guarantee they will receive Kazakh citizenship, which leads to temporary and sometimes permanent statelessness.

Kazakhstan makes some exceptions to its own rule on dual nationality. Indigenous Kazakhs – *Oralmany* – “repatriating” to Kazakhstan, who hold an Oralman certificate,<sup>42</sup> do not need to renounce their previous citizenship before applying for Kazakh citizenship.<sup>43</sup> In the past *Oralmany* who travelled to Kazakhstan had to renounce their citizenship before applying for Kazakh citizenship. For example, many of those who arrived from Mongolia and China subsequently returned stateless to those countries, before a decision on naturalization had been made. Applicants from Belarus, the

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<sup>37</sup> Article 14, 1992 Citizenship Law of Turkmenistan; Article 12(4), 2007 Citizenship Law of Kyrgyzstan; Article 15, 1992 Citizenship Law of Uzbekistan.

<sup>38</sup> *UN High Commissioner for Refugees, A Place to Call Home: The Situation of Stateless Persons in the Kyrgyz Republic: Findings of Surveys Commission by the UNHCR, Bishkek 2009, p. 32.*

<sup>39</sup> Article 10(3), 1995 Constitution of the Republic of Kazakhstan, according to which “A citizen of the Republic of Kazakhstan shall not be recognized as the citizen of another State”. This has been interpreted in a Decree issued in 2003 by the Kazakh Constitutional Council as a prohibition of dual nationality.

<sup>40</sup> Article 21(5), 1991 Citizenship Law of Kazakhstan.

<sup>41</sup> Article 17(7), 1991 Citizenship Law of Kazakhstan.

<sup>42</sup> The procedure for acquiring *Oralman* status is given in Article 14 of the 1997 Law of Kazakhstan ‘On Population Migration’ (Law on Migration).

<sup>43</sup> Para. 15(8) of the Order of the Minister of Interior of Kazakhstan, No 556, dated 23 August 2002. In an interview with the Department of Migration and Social Welfare in South-Kazakhstan, UNHCR was able to confirm that practice is consistent with the law.

Russian Federation and Kyrgyzstan, who qualify for a fast-track naturalization procedure, also retain their nationality until their Kazakh citizenship has been granted.<sup>44</sup> They give up their foreign passports only when they receive their new Kazakh passports, as do applicants qualifying for simplified procedures from Ukraine.<sup>45</sup>

The Constitution and citizenship law of Tajikistan also prohibit dual nationality with the exception of cases foreseen by law or international treaties to which Tajikistan is party.<sup>46</sup> Such a treaty exists between Tajikistan and the Russian Federation since 1997.<sup>47</sup> Tajikistan's nationality legislation does not require someone applying for Tajik nationality to renounce his/her previous nationality but in practice the Tajik authorities also require this.

Turkmenistan's citizenship legislation expressly prohibits dual nationality.<sup>48</sup> All categories of applicants are required to submit a certificate confirming their renunciation of the other nationality in order to apply for naturalization.<sup>49</sup>

In Uzbekistan, all applicants for Uzbek nationality are likewise required to submit such a confirmation of renunciation.<sup>50</sup>

Kyrgyzstan permits dual nationality on the basis of bilateral/multilateral treaties and the laws of Kyrgyzstan and the other states. It does not recognise dual nationality with any of its neighbours.<sup>51</sup>

However, like Kazakhstan, Kyrgyzstan has found a way of ensuring renunciation of previous citizenship that does not put specific groups of persons concerned at risk of statelessness. It requires citizens from neighbouring States – China, Uzbekistan, Tajikistan and Kazakhstan – to write a renunciation notice for the record when they apply for Kyrgyz citizenship. This is kept with their national passports, and both are sent to their previous government when they receive a new Kyrgyz passport.<sup>52</sup>

#### *Gaps compared to international standards:*

► Apart from Kyrgyzstan, all States in the region require some or all applicants for citizenship to submit a certificate of renunciation of other previous citizenship together with their application for naturalization. Applicants are therefore stateless for at least the duration of the procedure and even indefinitely, if they do not actually acquire a new nationality.

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<sup>44</sup> Under a multilateral citizenship treaty between the States, dated February 1999.

<sup>45</sup> Article 43, Ministry of Internal Affairs Regulation No 556 'On Procedures for Considering Issues related to the Citizenship in Kazakhstan', of 23 August 2002 ('2002 Kazakhstan Ministry of Internal Affairs Regulation No 556'); Article 2, Agreement Between the Republic of Kazakhstan and Ukraine 'On a Simplified Procedure for the Acquisition and Loss of Citizenship for Citizens of Ukraine who are Permanently Resident in the Republic of Kazakhstan and citizens of the Republic of Kazakhstan who are Permanently Resident in Ukraine and the Avoidance of Statelessness and Dual Nationality', 19 May 2000.

<sup>46</sup> Article 15, 1994 Constitution of Tajikistan; Article 4, 1995 Citizenship Law of Tajikistan.

<sup>47</sup> Agreement on Dual Citizenship between Tajikistan and the Russian Federation (adopted 7 September 1995, entered into force 26 April 1997).

<sup>48</sup> Article 7, 1992 Constitution of Turkmenistan (redaction of 28 September 2008).

<sup>49</sup> Article 9, 1992 Regulation No 1328 'On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan'. Although the Regulation restricts this requirement to persons who are citizens of countries with which Turkmenistan has an agreement on avoidance of cases of dual citizenship or whose country of nationality does not recognize dual citizenship, practice would indicate that the requirement is applied to all applicants for citizenship.

<sup>50</sup> Article 17, 1992 Citizenship Law of Uzbekistan; 1992 Regulation No UP-500 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan'.

<sup>51</sup> Article 22(2)(1), 2007 Citizenship Law of Kyrgyzstan. Its neighbours are China, Uzbekistan, Kazakhstan and Tajikistan.

<sup>52</sup> Article 54, Annex 2 to Presidential Decree No 473, 25 October 2007.

### 2.3 *Voluntary renunciation of nationality*

The 1961 Convention sets out two key safeguards against statelessness in the context of change of nationality. The Convention requires that “[r]enunciation of nationality shall not result in loss of nationality unless the person concerned possesses or acquires another nationality”. Moreover, a national who seeks naturalization in a foreign country “[s]hall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.”<sup>53</sup> This aims to avoid a situation in which persons who seek to change their nationality inadvertently end up stateless – if the State where they apply for naturalization fails to grant them nationality.

Of the nationality laws in Central Asia, only the 2007 Nationality Regulation of Kyrgyzstan includes an adequate safeguard against statelessness in such situations. Someone applying to renounce their nationality must submit notification from a foreign State that they possess another nationality, or confirmation they will acquire one if they renounce their Kyrgyz citizenship.<sup>54</sup>

The President must approve renunciation of citizenship under the laws of all five States.<sup>55</sup> In Tajikistan a simpler procedure is in place for Tajik nationals leaving for permanent residence abroad. They can register an application to renounce their citizenship at their local department of Internal Affairs.<sup>56</sup> Tajik citizens already resident abroad can register an application to renounce their Tajik nationality through the consulate in the country where they live.<sup>57</sup> A Tajik citizen with a parent, spouse or child of foreign nationality can also renounce their nationality by registration.<sup>58</sup> Kyrgyz nationality law also foresees a simplified procedure for citizens abroad to renounce their nationality.<sup>59</sup>

#### *Gaps compared to international standards*

► With the exception of Kyrgyzstan, no State in the region has sufficient safeguards against statelessness in cases of voluntary renunciation of nationality. The other four States allow citizens to renounce their nationality without possessing or having an assurance of acquiring another nationality.

### 2.4 *Equality between men and women to acquire, change and retain nationality*

All five States are parties to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>60</sup> according to which States Parties shall grant women equal rights with men to acquire, change or retain their nationality.<sup>61</sup> In all five States, a change in the nationality of one spouse may not affect the nationality of the other.<sup>62</sup> Similarly, marriage with a foreign national, or divorce, does not result in the spouse’s loss of citizenship. All laws use the gender neutral term ‘spouse’ in provisions related to acquisition of nationality, which means there is no distinction between men and women married to nationals in their right to acquire the nationality of the State.

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<sup>53</sup> Article 7(1)(a) and 7.2, 1961 Convention on the Reduction of Statelessness.

<sup>54</sup> Paragraph 33, 2007 Regulation No 473 ‘On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic’.

<sup>55</sup> Article 35, 1992 Citizenship Law of Turkmenistan; Article 32, 1991 Citizenship Law of Kazakhstan; Article 33, 1992 Citizenship Law of Uzbekistan; Article 28, 2007 Citizenship Law of Kyrgyzstan; Article 39, 1995 Citizenship Law of Tajikistan.

<sup>56</sup> Article 20, 1996 Regulation No 611 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan’.

<sup>57</sup> *Ibid*, Article 21.

<sup>58</sup> Article 28.1(b) and 39(b), 1995 Citizenship Law of Tajikistan.

<sup>59</sup> Article 24(2), 2007 Citizenship Law of Kyrgyzstan.

<sup>60</sup> Kazakhstan and Kyrgyzstan are additionally, parties to the 1957 Convention on the Citizenship of Married Women.

<sup>61</sup> Article 9, Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>62</sup> Article 8, 2007 Citizenship Law of Kyrgyzstan; Article 7, 1991 Citizenship Law of Kazakhstan; Article 8, 1995 Citizenship Law of Tajikistan; Article 16, 1992 Citizenship Law of Turkmenistan; Article 6, 1992 Citizenship Law of Uzbekistan.

## 2.5 *Loss and deprivation of nationality*

International law does not prohibit deprivation of nationality but the Universal Declaration of Human Rights establishes that such deprivation must not be arbitrary<sup>63</sup> and that appropriate due process guarantees must be in place. Moreover, the 1961 Convention limits the grounds according to which States may deprive their citizens of nationality. With very limited exceptions,<sup>64</sup> it also expressly prohibits loss of nationality on the basis of departure, residence abroad, failure to register and other similar grounds if such loss results in statelessness.

The nationality laws in Central Asia all contain provisions for deprivation of nationality as a consequence of misrepresentation or fraud during the naturalization process, as well as disloyalty to the state, which generally fall within the scope of the 1961 Convention grounds. Deprivation of nationality may affect naturalized citizens, as well as citizens by birth. Three of the five States have laws with provisions which could cause citizens residing abroad without registering with the consular service to lose their citizenship. This is contrary to the 1961 Convention standard, which allows for loss of nationality resulting in statelessness only after at least seven years' consecutive residence abroad and failure by the individual to declare an intention to retain nationality. In all States, laws provide for some procedural guarantees.

The nationality laws in the region generally refer to all the situations described above as 'loss of nationality'. It should be noted that international instruments may use different wording to describe situations of loss of nationality. The 1961 Convention, for instance, distinguishes between loss of nationality, understood to occur *ex lege* (automatically or by operation of law), and deprivation of nationality, understood to occur through an individual decision by an executive or judicial authority. These international provisions need to be understood in their specific context and may apply to national legislation even where different terminology is used. The prohibition of arbitrary deprivation of nationality set out in Article 15 of the UDHR does not include loss of nationality voluntarily requested by the individual (renunciation), but does comprise all other forms of loss of nationality, including those which occur automatically by and those which result from acts taken by administrative or judicial authorities.

### 2.5.1 *Loss of nationality for residence abroad without consular registration*

The States of the Central Asian region are both countries of origin and hosts to large numbers of migrants. For instance, between 2000 and 2007, an estimated 25% of Tajik households had a family member working abroad.<sup>65</sup>

Tajikistan, Uzbekistan and Kazakhstan all have laws where nationals who live abroad and fail to register with their consulate within a time-limit risk losing their citizenship. For Tajiks and Uzbeks, this time limit is five years<sup>66</sup> and for Kazakhs, it is three.<sup>67</sup> In light of the net labour migration from all three States, this creates a major risk of statelessness. Turkmenistan and Kyrgyzstan do not have equivalent legislation.

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<sup>63</sup> Article 15, Universal Declaration of Human Rights.

<sup>64</sup> Article 7(3), 1961 Convention on the Reduction of Statelessness. The Convention establishes exceptions to this general prohibition in paragraphs 4 and 5 of the same article.

<sup>65</sup> Erica Mart, Central Asia: Migration, *Central Asia-Caucasus Institute, Johns Hopkins University, May 2009*, available at [www.silkroadstudies.org/new/docs/silkroadpapers/0905migration.pdf](http://www.silkroadstudies.org/new/docs/silkroadpapers/0905migration.pdf). According to UNDP, from 1996 more people moved out of Uzbekistan each year than moved in, and in 2005 and 2006 – twice as many, see [http://data.statistics.uz/data\\_finder/74/](http://data.statistics.uz/data_finder/74/) (accessed 7 March 2011). The Foreign Investors' Council of Kazakhstan noted Kazakhstan had achieved a balance in population flow by 2007, after it reduced from 17 to 15 million in the 1990s, see *Elmira Shakerimova*, Labour Deficit and the Necessity for Attracting Foreign Workforce to Kazakhstan, Centre for Marketing and Analytical Research, OJSC, available at [http://www.fic.kz/content/file/Events/seminar%2010%20nov-education/shakerimova\\_en.pdf](http://www.fic.kz/content/file/Events/seminar%2010%20nov-education/shakerimova_en.pdf).

<sup>66</sup> Article 29, 1995 Citizenship Law of Tajikistan; Article 21, 1992 Citizenship Law of Uzbekistan. In Tajikistan, the cost of registration is 10 Somoni. The monthly average wage in June 2009 was 60 Somoni.

<sup>67</sup> According to Article 21(4) of the 1991 Citizenship Law of Kazakhstan and Article 25(4) of 2002 Kazakhstan Ministry of Internal Affairs Regulation No 556.

Loss of Tajik citizenship occurs the day the “competent authorities” register the citizen’s non-compliance with the registration deadline.<sup>68</sup> It is not clear what procedures exist to register such non-compliance, but UNHCR knows of Tajiks who have lost their citizenship for long-term residence abroad. The provision of the Citizenship Law on the right to appeal decisions relating to registration of acquisition or loss of citizenship may also apply with regard to loss of citizenship for residence abroad.<sup>69</sup>

In Uzbekistan, the consular section of the relevant Uzbek diplomatic mission informs the Ministry of Foreign Affairs about Uzbek citizens who have failed to register. Before this, “depending on the circumstances”, the head of the consular section makes an independent evaluation of the citizen’s reasons for failing to register, and whether these are well-founded. The Ministry of Foreign Affairs issues an opinion and forwards it and the information received to the presidential Citizenship Commission.<sup>70</sup> Loss of citizenship takes effect from the day the Uzbek President issues his decision in the form of a decree.<sup>71</sup>

The 1991 Nationality Law of Kazakhstan contains a guarantee that residence of a Kazakh citizen abroad should not lead to the termination of his/her Kazakh citizenship.<sup>72</sup> The Law later states, that a person’s failure to register with a consulate within a deadline is one ground for their loss of citizenship.<sup>73</sup> An internal rule of the Ministry of Foreign Affairs regulates the procedure.<sup>74</sup> The Director of the relevant consular body examines the citizen’s reasons for missing the deadline and decides whether the reasons were adequate for purposes of the law. The revocation decision is explained to the person affected, along with a procedure for appeal,<sup>75</sup> – but the rule does not say if the explanation is given in writing.<sup>76</sup> If an appeal fails, the decision comes into force. The Foreign Ministry sends the decision to the Department of Law Enforcement and Judicial System of the Presidential Administration and the individual’s passport is cancelled, and their name removed from the consular register. Affected persons can receive a documentary record of the transaction, if they so request.<sup>77</sup>

Loss of citizenship in these cases is not conditional upon the acquisition, or guarantee of another nationality and so could lead to statelessness among Tajik, Kazakh and Uzbek nationals resident abroad.

After the adoption of the new citizenship law in Kyrgyzstan in 2007, residence abroad without consular registration no longer leads to loss of Kyrgyz citizenship.

### *2.5.2 Loss of nationality on grounds of personal behaviour*

All five States foresee loss<sup>78</sup> of citizenship acquired by misrepresentation or fraud.<sup>79</sup> The legislation of each State also provides for loss of citizenship for serving in the military or intelligence services of a

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<sup>68</sup> Article 29, 1995 Citizenship Law of Tajikistan.

<sup>69</sup> Article 52, 1995 Citizenship Law of Tajikistan.

<sup>70</sup> Section IV, para. 2, 1992 Regulation No UP-500 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan’.

<sup>71</sup> Article 21, 1992 Citizenship Law of Uzbekistan.

<sup>72</sup> Article 7, 1991 Citizenship Law of Kazakhstan; Para.41, Consular Services Regulation No 217, approved by the Decree of the President, dated 27 September 1999.

<sup>73</sup> Article 21(5), Citizenship Law of Kazakhstan.

<sup>74</sup> Kazakhstan Ministry of Foreign Affairs Rules No 263 ‘On Documenting Citizenship Issues in Consular Institutions’, 21 November 2000; Para. 41, Kazakhstan Consular Services Regulation No 217, approved by the Decree of the President, dated 27 September 1999.

<sup>75</sup> *Ibid*, Article 20(2).

<sup>76</sup> *Ibid*, Article 21.

<sup>77</sup> *Ibid*, Article 23.

<sup>78</sup> In the laws of the region, termination of nationality on the grounds referred to in this section is classified as ‘loss of nationality’. Article 7 and Article 8 of the 1961 Convention on Reduction of Statelessness refer to loss and deprivation of



foreign power, or also in other governmental bodies of a foreign State in the case of Uzbekistan, Turkmenistan, Tajikistan and Kazakhstan.<sup>80</sup> Loss on these grounds is generally not automatic.

In Tajikistan, in cases of misrepresentation or fraud, the procedure must be initiated within five years of the acquisition of citizenship.<sup>81</sup> The facts are initially established by a court, after which the Ministry of Interior or consulates of Tajikistan, forward a written opinion to the Commission on State Pardon and Citizenship under the President of the Republic of Tajikistan,<sup>82</sup> and the President takes the final decision.<sup>83</sup>

In Turkmenistan, it is also the President who takes decisions on loss of nationality in cases involving citizenship acquired by misrepresentation or fraud.<sup>84</sup> The facts first have to be confirmed through a court decision before they are considered by the State Migration Service, or by a diplomatic representation if the person is permanently resident abroad. These bodies then issue an opinion that is sent to the President for decision.<sup>85</sup> The President also decides on loss of citizenship on grounds foreseen by Turkmenistan's international treaty obligations. In cases involving service to a foreign State, the loss of nationality occurs once the assessment has been made by a Turkmen diplomatic representation abroad.<sup>86</sup>

In Kyrgyzstan, the President is also formally responsible for decisions on loss of nationality,<sup>87</sup> but the decisions are signed by the Minister of Interior/Foreign Affairs, or his deputy. This follows consultations between several ministries – including the Ministry of Defence and National Security, in cases of loss on the basis of service to a foreign State.<sup>88</sup>

In Kazakhstan, bodies of the Ministry of Internal Affairs verify allegations that a Kazakh citizen may be acting in the service of a foreign state, or may have acquired citizenship through misrepresentation or fraud. After informing the person of the reasons and grounds for withdrawing their citizenship, they record the fact in a special register and inform the Interior Ministry headquarters on a quarterly basis.<sup>89</sup> Loss of citizenship starts the day it has been registered.<sup>90</sup> Every six months, the Ministry of Internal Affairs gives information on people whose Kazakh citizenship has been withdrawn to the State Legal Department of the Presidential Administration.<sup>91</sup>

Where allegations concern a Kazakh citizen resident abroad, the Ministry of Internal Affairs sends any confirmed reports to the Kazakh Consulate in the State where they live. The consulate informs the person of the reasons for terminating their citizenship and explains their right to have the decision reconsidered. If any such request is unsuccessful, the Consulate records the fact of their loss of

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nationality respectively, a distinction drawn on the basis of withdrawal *ex lege* (automatically) or through executive or judicial act.

<sup>79</sup> Article 30, 1995 Citizenship Law of Tajikistan; Article 26, 1992 Citizenship Law of Turkmenistan; Article 21(2), 1991 Citizenship Law of Kazakhstan; Article 26(2), 2007 Citizenship Law of Kyrgyzstan; Article 21.3, 1992 Citizenship Law of Uzbekistan.

<sup>80</sup> Article 26(1), 2007 Citizenship Law of Kyrgyzstan; Article 25(1), 1992 Citizenship Law of Turkmenistan; Article 21(1), 1991 Kazakhstan Citizenship Law; Article 29(1), 1995 Citizenship Law of Tajikistan; Article 21(1), 1992 Citizenship Law of Uzbekistan.

<sup>81</sup> Article 30, 1995 Citizenship Law of Tajikistan.

<sup>82</sup> Section V, Para. 23, 1996 Regulation No 611 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan'.

<sup>83</sup> Article 39, 1995 Citizenship Law of Tajikistan.

<sup>84</sup> Article 31 and Articles 23(2) and (3), 1992 Citizenship Law of Turkmenistan.

<sup>85</sup> Articles 33 and 34, 1992 Citizenship Law of Turkmenistan.

<sup>86</sup> *Ibid*, Article 23.

<sup>87</sup> Article 28(3), 2007 Citizenship Law of Kyrgyzstan.

<sup>88</sup> Articles 37-42, 2007 Regulation No 473 'On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic'.

<sup>89</sup> Article 27, Kazakh Ministry of Internal Affairs Instruction No 556, 2002 'On Processing Citizenship Issues'.

<sup>90</sup> Article 37, 1991 Citizenship Law of Kazakhstan.

<sup>91</sup> Articles 26, 27 and 28 of the 2002 Instruction No 556 of the Kazakh Ministry of Internal Affairs 'On Processing Citizenship Issues' and Articles 30 and 31, 1991 Citizenship Law of Kazakhstan.

citizenship in a special register and sends a copy to the Kazakh Foreign Ministry. The original is stored in the consulate for one year.<sup>92</sup>

For Uzbekistan, the procedures for loss of nationality are the same as those described above for loss of nationality for prolonged residence abroad.

### 2.5.3 Loss of nationality affecting spouse and children

The 1961 Convention also provides that if a person loses or is deprived of his or her nationality, that person's spouse and children shall not be affected by such an action, if the result would be that they would then become stateless.<sup>93</sup>

Between the ages of 14 and 18, a child must consent in writing to any change in his/her citizenship in all five states.<sup>94</sup> This measure can provide some protection against statelessness, for instance if the parents renounce their nationality and become stateless. Elsewhere, children under 14 are most at risk of statelessness if one or both of their parents lose their citizenship.

In Turkmenistan, Tajikistan, Uzbekistan and Kazakhstan, a child under the age of 14 loses nationality if both parents renounce their nationality.<sup>95</sup> This could put the child at risk of statelessness in light of the general lack of safeguards in the situations described above. In Turkmenistan, however, a child can keep citizenship even if both parents change their nationality, provided at least one of its parents makes a request to this effect.<sup>96</sup>

In these countries, the child generally keeps citizenship if only one parent renounces his/her nationality.<sup>97</sup> The Tajik law establishes the same guarantee for children of a parent who loses his/her nationality.<sup>98</sup> In Uzbekistan and Kazakhstan, children under the age of 16 are not to be affected by loss of nationality for prolonged residence abroad without consular registration. Nothing similar is mentioned with regard to children of parents who lose their nationality on other grounds.<sup>99</sup> The Kazakh law is silent on the effect on children of the loss of citizenship affecting one or both parents.

In Tajikistan, the termination of the nationality of the parents also terminates citizenship of a child under 14, which creates a risk of statelessness.<sup>100</sup> If the child has two parents who are citizens of Tajikistan, and only one has lost their nationality, the child retains his/her Tajik citizenship. Citizenship can be terminated only with written consent of the remaining parent and the guarantee of citizenship elsewhere.<sup>101</sup>

In Kyrgyzstan, it is not clear whether the child of someone who loses their citizenship may also become stateless. Kyrgyz Nationality Law is silent on the issue, but at the same time the Nationality

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<sup>92</sup> Articles 21-23, Ministry of Foreign Affairs Instruction No 263 'On the Compilation of Documents on Citizenship Questions', 2000.

<sup>93</sup> Article 6, 1961 Convention on the Reduction of Statelessness.

<sup>94</sup> Article 31, 1995 Citizenship Law of Tajikistan; Article 21, 2007 Citizenship Law of Kyrgyzstan; Article 28, 1991 Citizenship Law of Kazakhstan; Article 30, 1992 Citizenship Law of Turkmenistan; Article 28, 1992 Citizenship Law of Uzbekistan.

<sup>95</sup> Article 24, 1992 Citizenship Law of Turkmenistan; Article 22, 1991 Citizenship Law of Kazakhstan; Article 22, 1992 Citizenship Law of Uzbekistan; Article 32, 1995 Citizenship Law of Tajikistan.

<sup>96</sup> Article 24, 1992 Citizenship Law of Turkmenistan.

<sup>97</sup> Article 26, 1992 Citizenship Law of Turkmenistan; Article 25, 1992 Citizenship Law of Uzbekistan; Article 24, 1991 Citizenship Law of Kazakhstan; Article 34, 1995 Citizenship Law of Tajikistan.

<sup>98</sup> Article 34, 1995 Citizenship Law of Tajikistan.

<sup>99</sup> Section IV, Para 2, 1992 Regulation No UP-500 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan'; Kazakhstan Consular Services Regulation No 217, approved by the Decree of the President, dated 27 September 1999.

<sup>100</sup> Article 32, 1995 Citizenship Law of Tajikistan.

<sup>101</sup> *Ibid*, Article 34.

Regulation refers to loss of nationality of minors, as “provided in law”.<sup>102</sup> The law does not contain a guarantee that the children of someone who loses their nationality shall not lose their Kyrgyz citizenship if they would become stateless.

In Tajikistan, the spouse and children of someone who loses their nationality for misrepresentation or fraud do not lose their own citizenship – unless it is proved they were party to the deception.<sup>103</sup> The other States have no provision of this sort.

#### *2.5.4 Due process guarantees and legal remedies*

In Turkmenistan, Kazakhstan and Uzbekistan, the law guarantees that a decision regarding loss of nationality does not come into force until the person concerned has been informed of the reasons. The person can seek reconsideration of the President’s decision in Kazakhstan and Turkmenistan, while it is not clear from the relevant legislation whether any remedy exists in Uzbekistan.<sup>104</sup> In all five States procedural violations in matters involving nationality, can be appealed through the courts.<sup>105</sup>

As previously noted, in Tajikistan, decisions in cases where a person is accused of acquiring Tajik citizenship through misrepresentation or fraud are taken by courts.<sup>106</sup> Persons eligible to acquire or terminate Tajik nationality by registration can also appeal to a court against an official refusal to register them. Their appeal must be made within one month of the refusal.<sup>107</sup> Neither the Citizenship Law of Tajikistan nor its Citizenship Regulation makes provision for judicial appeal against a Presidential decision on citizenship.

According to the 2007 Citizenship Law of Kyrgyzstan, persons who lose their nationality are to be issued with a certificate confirming this fact. The certificate does not contain the reasons for the decision.<sup>108</sup> It is only in Kyrgyzstan, that a Presidential<sup>109</sup> decision on citizenship can be appealed to a court – within six months or later if there is good reason.<sup>110</sup>

#### *Gaps compared to international standards:*

► Three of the countries in the region – Kazakhstan, Tajikistan, and Uzbekistan – have laws according to which citizens can lose their nationality if they reside abroad for three or five years without registering with a consulate. If applied regardless of whether the persons affected would be left stateless, such provisions can lead to large-scale statelessness.

► Laws in the region generally provide that loss and renunciation of nationality by parents extends to their children. The absence of full safeguards to prevent statelessness among parents will therefore also affect their children. Only Tajikistan explicitly guarantees that loss of the citizenship of parents for misrepresentation or fraud shall not affect the citizenship of their children if they would thereby become stateless.

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<sup>102</sup> Article 39, 2007 Regulation No 473 ‘On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic’.

<sup>103</sup> Articles 8 and 30, 1995 Citizenship Law of Tajikistan.

<sup>104</sup> Article 46, 1992 Citizenship Law of Turkmenistan, and Articles 24-27, 1992 Regulation No 1328 ‘On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan’. Article 28-32, 1996 Regulation No 3120 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Kazakhstan’, as amended in 2000; Section IV, Paragraph 4, 1992 Citizenship Regulation of Uzbekistan.

<sup>105</sup> Section VIII, Article 44, 1992 Citizenship Law of Uzbekistan; Chapter 8, Article 47, 1993 Law on Citizenship of Turkmenistan; Chapter 8, Article 53 1995 Citizenship Law of Tajikistan; Chapter 6, Article 42, 2007 Citizenship Law of Kyrgyzstan; Chapter 8, Article 41, 1991 Citizenship Law of Kazakhstan.

<sup>106</sup> Article 30, 1996 Law on Citizenship of Tajikistan.

<sup>107</sup> Articles 52 and 53, 1995 Law on Citizenship of Tajikistan.

<sup>108</sup> Article 41(1), 2007 Regulation No 473 ‘On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic’.

<sup>109</sup> Article 28, 2007 Citizenship Law of Kyrgyzstan.

<sup>110</sup> *Ibid*, Article 41(2).

► All laws in the region ensure some procedural guarantees in cases of loss and deprivation of nationality. Persons generally have the right to be informed before the decision takes effect, and the right to appeal to a court against procedural violations in nationality matters. Only Kyrgyzstan and, to some degree, Tajikistan, provide for the right to a judicial review of decisions. Other countries only give the right to seek reconsideration of the President's decision.

## 2.6 *Birth registration*

The CRC requires each state to register children immediately after birth and to ensure the right to acquire a nationality, in particular where they would otherwise be stateless.<sup>111</sup>

All five Central Asian States have well-established technical procedures for birth registration, largely adopted from the Soviet system. Hospitals certify the births of children they have delivered. Midwives and birth attendants certify home births, under general supervision of the Ministry of Health.<sup>112</sup> The medical attestation of birth is then registered in a civil registry office of the Ministry of Justice – known as ZAGS<sup>113</sup> from its Russian initials. Registration takes place in the ZAGS closest to the parents' permanent residence or at the place of the child's birth. In rural areas with no ZAGS, a birth is registered at the local community council. Parents who are resident abroad register births in their consulate, if there is one. If no consulate is accessible, Tajikistan allows parents to register the child when they return to Tajikistan, on the basis of hospital attestation from the foreign country where the child was born.

Each State requires prompt registration of births<sup>114</sup> – although each also provides for late registration, including self-registration by adults. In Kazakhstan, the registration procedure is printed on the medical attestation form given to parents. In Soghd region of northern Tajikistan, mobile ZAGS units have recently started to register births before mothers are allowed to leave hospital.<sup>115</sup> Registration is free of charge in Kyrgyzstan, Turkmenistan, and Kazakhstan. The UN Committee on the Rights of the Child has expressed concern at the existence of fees for the issuance of birth certificates both in Tajikistan<sup>116</sup> and Uzbekistan, in particular for families living in poverty. In 2006 it urged Uzbekistan to abolish the fees and take all measures to ensure that children are registered immediately after birth.<sup>117</sup>

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<sup>111</sup> Article 7(1) and (2), 1989 Convention on the Rights of the Child.

<sup>112</sup> In Turkmenistan the birth of a child delivered outside a hospital can also be certified by witness testimony, according to Article 18 of the Presidential Decree 'On Registering Civil Acts' No 141, 2004. Witness testimony, counter-signed by a general medical practitioner, is also sufficient to certify the birth of a child born not in a hospital in Uzbekistan, according to Article 18 of Supplement No 1 to the 1999 Rules for the Registration of Civil Acts in Uzbekistan, No 171.

<sup>113</sup> ZAGS stands for "записи актов гражданского состояния".

<sup>114</sup> From within one month in Kyrgyzstan, Turkmenistan and Uzbekistan, to within 3 months in Tajikistan. According to Article 10 of the Law on the Registration of Civil Acts in Kazakhstan, hospitals should send records of new births to ZAGS by the third day of each birth and it is the responsibility of ZAGS to contact parents who are registering their child's birth late.

<sup>115</sup> Interview with the Migration Service of the Ministry of Internal Affairs in Soghd region, northern Tajikistan. UNHCR did not interview anyone with firsthand experience of this.

<sup>116</sup> In 2000, the UN Committee on the Rights of the Child recommended Tajikistan to make greater effort to ensure free registration of all births, see CRC/C/15/Add.136. The current fee – the equivalent of 5 US Dollars – amounts to one quarter of the average monthly income of 60 Somoni in June 2009, according to the National Statistics Committee of Tajikistan, see [http://www.stat.tj/english\\_tables/table\\_20.xls](http://www.stat.tj/english_tables/table_20.xls). The UN Committee also recommended greater effort to ensure timely registration in rural areas. In Uzbekistan, UNHCR does not know how much birth registration costs. For Uzbek citizens living abroad, it should be carried out free of charge, according to Article 6 of Supplement No 1 to the 1999 Rules for the Registration of Civil Acts in Uzbekistan, No 171. In practice, the website of the Uzbek Ministry of Justice quotes a registration fee of 15 euros ([www.uzbekembassy.es/formularios/Birth-Certificate](http://www.uzbekembassy.es/formularios/Birth-Certificate), accessed on 9 February 2010 [in Russian]).

<sup>117</sup> Concluding Observations of the UN Committee on the Rights of the Child on Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006. The 2008 Uzbekistan Law on the Child states that every child has the right to nationality and citizenship from birth and the right to retain it (Article 9).

In 2009, penalties were introduced in Tajikistan for parents who failed to meet the registration deadline.<sup>118</sup> Tajikistan allows for refusal of birth registration, on grounds that must be given in writing.<sup>119</sup> Late registration is not thought to be among the grounds for such refusal.

Uzbekistan also allows for the refusal of birth registration, when the person applying to register it is not legally entitled to do so; is “mentally unsound”; or when registration of the birth as a civil act “would contravene the law.”<sup>120</sup> District and city departments of health are responsible for ensuring timely registration of births in Uzbekistan.<sup>121</sup>

A 2006 survey carried out by UNICEF Turkmenistan found that 86% of children were registered before the age of twelve months. The percentage rose significantly as the children reached the age of five, and again, among sixteen-year olds applying to receive a passport. A UNICEF survey in Tajikistan in 2006 found that births of 88% of children under the age of one were registered.

In Turkmenistan the introduction of the Social Welfare Code in 2007, which envisages the provision of child allowance up to the age of 3, improved birth registration significantly.<sup>122</sup> To collect their payment from the Ministry of Social Welfare, parents must show the child’s birth certificate. Tajikistan has introduced child benefit vouchers that can be issued on request.<sup>123</sup> It is not known if these have had the same effect. From 2000-2007, birth registration among under-fives in Kazakhstan was 99%, and 94% in Kyrgyzstan.<sup>124</sup> The proportion of births registered in Uzbekistan is not known.<sup>125</sup>

Regulations on registering births are internally inconsistent in parts and may also put a child at risk of statelessness.<sup>126</sup> The 2002 Law of Turkmenistan on the Guarantees of the Rights of a Child requires the proper registration of a child’s birth, including the child of a person who is not a citizen of Turkmenistan.<sup>127</sup> This is also required by the Civil Code. The hospital attests the fact of birth, but a mother can only register her baby’s birth and acquire a birth certificate for it, if she holds a valid passport.

The registration rules of Tajikistan and Turkmenistan include procedures for parents, of whom at least one is stateless. Like parents who are nationals, they are required to produce certified documents confirming each fact that they wish to register.<sup>128</sup> These include personal identification<sup>129</sup> and their nationality status – something which may be particularly difficult for stateless persons and persons with undetermined nationality to produce. In addition, regulations in Turkmenistan require parents registering a birth, in addition, to produce a marriage certificate.<sup>130</sup> This would seem to prevent the registration of any child born out of wedlock. These children may later have difficulty proving they are nationals of the State and be put at risk of statelessness. Any documents originating from abroad

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<sup>118</sup> Article 18(5) of the Law of Tajikistan ‘On State Registration of Civil Acts’ No 496, as amended in March 2009, introduced penalties but did not enumerate them.

<sup>119</sup> *Ibid*, Article 13.

<sup>120</sup> Article 7, Supplement No 1 to the 1999 Rules for Registration of Civil Acts in Uzbekistan, No 171.

<sup>121</sup> *Ibid*, Article 12.

<sup>122</sup> Information provided by UNFPA in an interview in Ashgabat.

<sup>123</sup> Article 26, Tajik Law ‘On State Registration of Civil Acts’, as amended in March 2009, No 496.

<sup>124</sup> UNICEF statistics on Kazakhstan and Kyrgyzstan, available from: <http://www.unicef.org/infobycountry>. No statistics are available for this period on Tajikistan, Turkmenistan and Uzbekistan.

<sup>125</sup> UNDP reports only that in 2007, 1,602,000 people in Uzbekistan were 2 years old or younger, see ‘Uzbekistan in figures’ at [www.undp.org/infobycountry](http://www.undp.org/infobycountry). The crude birth rate fell by 2.7% between early 2005 and early 2006, according to UNFPA, but the proportion of total births registered over this period is not known, see UNFPA.org/news/coverage/2007.

<sup>126</sup> The procedure is set down in the 2008 Regulation No 483 ‘On State Registration of Civil Acts’ in Tajikistan; in the 2004 Presidential Decree No 141 ‘On Registering Civil Acts’ in Turkmenistan; in the 2005 Civil Status Acts Law and the 2001 Civil Status Registration Rules in Kyrgyzstan; The Rules for Registration of Civil Acts in Uzbekistan No 171, April 1999; The Registration of Civil Status Acts in Kazakhstan, 1998.

<sup>127</sup> Articles 7 and 22, 2002 Law of Turkmenistan on the Guarantee of the Rights of the Child.

<sup>128</sup> Article 5(1), 2008 Regulation No 483 ‘On State Registration of Civil Acts’ in Tajikistan; Article 17, 2004 Presidential Decree No 141 ‘On Registering Civil Acts’ in Turkmenistan.

<sup>129</sup> *Ibid*.

<sup>130</sup> Article 17, 2004 Presidential Decree No 141 ‘On Registering Civil Acts’ in Turkmenistan.

must be produced in a notarised translation into Turkmen, which has been certified by a consul or ambassador.<sup>131</sup> The regulations of Tajikistan assume that the stateless parent is permanently resident elsewhere. For the Tajik ZAGS, they must produce a statelessness certificate from a state authority abroad, in a notarised translation that has been certified by a consulate.<sup>132</sup> The regulations do not appear to cover stateless persons actually resident in Tajikistan, on a temporary or permanent basis.

In Kyrgyzstan, neither the 2005 Civil Status Acts Law, nor the 2001 Civil Status Registration Rules, refers to procedures for registering a child whose parents are stateless. The Registration Rules only require<sup>133</sup> that the child of one parent who is a Kyrgyz national and the other a stateless person, is to be registered upon joint application of the parents.

Stateless people in northern Kyrgyzstan told UNHCR and its NGO partners they were concerned they would not have the documentation needed to register the birth of their children. The Survey showed that 49 children were unable to go to school, because they had no birth certificate – 8.22% of the children surveyed. In the south, the UNHCR Survey showed that 97% of children born to stateless people surveyed had received birth certificates. Most were children of mixed marriages, in which one spouse is a Kyrgyz national and the other has undetermined nationality.

Kazakhstan's Citizenship Law provides that a child born to two stateless parents who are permanently resident in the country, is a Kazakh citizen<sup>134</sup> and his/her birth certificate is proof of citizenship.<sup>135</sup> In practice, children who are registered are recorded as dependents of their stateless parents until the age of 16. If registered, these children and their stateless parents should be included on the National Population Database and allocated the 'code' that would enable them to secure State benefits or employment. Stateless persons without official documentation and registration are not allocated this 'code'. Any children born to them on Kazakh territory and entitled to the rights and benefits of citizens are not able to enjoy them. UNHCR has learned from representatives of the Kazakh Migration Police that "in most cases stateless parents choose not to register their children as citizens", to save their having to renounce their citizenship if the family later leaves Kazakhstan. They are apparently permitted to do this by the authorities – something that appears to undermine the child's fundamental right to a nationality, and increases incidences of statelessness, in particular among families which decide not to leave Kazakhstan. Statistics are not available for the number of children born to stateless parents whom Kazakhstan has registered as citizens.<sup>136</sup>

In Uzbekistan, the law also requires personal identification papers and a marriage certificate from both parents registering the birth of a child<sup>137</sup> but waives this requirement when no documentation is available.<sup>138</sup> In such cases, a statement from medical staff, attesting to the birth is sufficient for the purposes of registration. Parents who are stateless, or with undetermined nationality, should therefore not be prevented from registering the birth of their child.<sup>139</sup>

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<sup>131</sup> Article 56, 2004 Presidential Decree No 141 'On Registering Civil Acts' in Turkmenistan.

<sup>132</sup> Article 5(1) 2008 Regulation No 483 'On State Registration of Civil Acts' in Tajikistan.

<sup>133</sup> Section 2, paragraph 23, 2001 Rules 'On State Registration of Civil Status Acts' in Kyrgyzstan.

<sup>134</sup> Article 14, 1991 Citizenship Law of Kazakhstan.

<sup>135</sup> *Ibid*, Article 4.

<sup>136</sup> In a participatory assessment with stateless persons in Chymkent, two parents told UNHCR of their concern that their children would not be able to confirm that they are Kazakh citizens.

<sup>137</sup> Article 18, Rules 'On Registration of Civil Acts' in Uzbekistan No 171, April 1999.

<sup>138</sup> *Ibid*. Article 18 says further, that the absence of documentation is not grounds for the ZAGS to refuse to register a birth.

<sup>139</sup> The barriers to registering the birth of a child born abroad to a citizen and a stateless person are higher, according to an Uzbek Ministry of Justice website. Included among the documents necessary, is an Uzbek national passport with a photograph and permanent residence registration in Uzbekistan; (as well as a written request to the Consulate; birth attestation from a maternity ward; a marriage certificate, or written confirmation of paternity; two photographs of the child; a 15 euro consular fee for registration and a further 16 euros to enter the child's details in the mother's passport). Parents must also answer questions about their educational qualifications and their registered place of residence in Uzbekistan. No waiver is foreseen for parents unable to produce this identification, [www.minjust.uz/ru/gcontent.scm?groupId=3468&sectionId=17474&contentId=17275](http://www.minjust.uz/ru/gcontent.scm?groupId=3468&sectionId=17474&contentId=17275); [www.uzbekembassy.es/formularios/Birth\\_certificate\\_MotherUzbek\\_FatherOther.pdf](http://www.uzbekembassy.es/formularios/Birth_certificate_MotherUzbek_FatherOther.pdf).

Replacing a lost or damaged Uzbek birth certificate also involves the submission of detailed documentation to ZAGS, but claimants who cannot produce it, may submit any other documentation that supports their request for a new birth certificate.<sup>140</sup>

## 2.7 *Reduction of statelessness*

As yet, data on the number of stateless persons and the rate at which they acquire or confirm citizenship each year in Central Asia is incomplete. Using statistics from the government in Kyrgyzstan, based on their own data-sets, UNHCR knows of 11,843 stateless persons and persons at risk of statelessness in Kyrgyzstan who acquired or confirmed citizenship in 2009. These were persons with 1974 USSR passports who benefited from the broader definition of ‘citizen’ contained in the new nationality law.<sup>141</sup> In Turkmenistan, some 12,000 stateless persons have been registered through a government campaign that started in 2007. Although no official figures are available, some 6,000 of the persons who have been registered are believed to be stateless and the others to have undetermined nationality.<sup>142</sup> In 2009, approximately 5,000 of these persons had been able to complete applications for citizenship or permanent residency and were awaiting a final decision pending a review at the State Citizenship Commission.<sup>143</sup>

In interviews with UNHCR, the Migration Police in Kazakhstan said that some 10,000 persons acquired citizenship by naturalization in 2008, but it is not known how many of them had been stateless. No figures are available from Tajikistan or Uzbekistan on the number of stateless persons who acquired citizenship in that period.

### 2.7.1 *Naturalization*

A procedure for acquiring citizenship later in life by naturalization is outlined in the nationality laws of each State, and detailed in further instructions and regulations.

Acquisition of citizenship through naturalization is, however, not the only solution for stateless persons. One country in Central Asia has granted citizenship to large numbers of stateless residents through the adoption of a new citizenship law. Thus, the 2007 Citizenship Law of Kyrgyzstan considers as citizens of the country all former USSR citizens who reside there permanently for 5 years and who have not applied for the citizenship of any other state.<sup>144</sup>

None of the Central Asian States offers simplified naturalization for everyone it recognizes as stateless. Stateless persons can however naturalize by the procedure available for foreigners in general. Anyone aged 18 or over, who is of sound mind, can submit a written petition for naturalization to the President. They must be able to show continuous<sup>145</sup>, lawful residence on State territory for a specified number of years before they petition. In Turkmenistan this is seven years of registered permanent residence, while Tajikistan, Kazakhstan, Kyrgyzstan and Uzbekistan require five years’ permanent residence.<sup>146</sup>

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<sup>140</sup> *Ibid*, Article 141. Necessary documentation includes a copy of the parents’ passports, or death certificates; the marriage certificates of the parents or the claimant; or birth certificates of the claimant’s brothers and sisters.

<sup>141</sup> The 2007 Citizenship Law of Kyrgyzstan now recognizes as a citizen anyone who was a citizen of the USSR, has resided permanently on Kyrgyz territory for five years before applying, and who has applied nowhere else for citizenship (Article 5(2)).

<sup>142</sup> Figures cited by the Presidential Citizenship Commission of Kyrgyzstan.

<sup>143</sup> All figures cited by Turkmen government officials in workshops and meetings to discuss statelessness.

<sup>144</sup> Article 5.2, 2007 Citizenship Law of Kyrgyzstan.

<sup>145</sup> Residence is deemed to be continuous if the person does not exceed a specific number of months’ absence from the State for a legitimate reason, such as academic study or medical treatment.

<sup>146</sup> Article 23, 1995 Citizenship Law of Tajikistan and Article 14, 1996 Regulation No 611 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan’; Article 16, 2007 Citizenship Law of Kazakhstan and Section II, 1996 Regulation No 3120 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Kazakhstan’, as amended in 2000; Article 18, 1992 Citizenship Law of Turkmenistan and Section II, 1992 Regulation No 1328 ‘On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan’; Article 13(1), 2007 Citizenship Law of Kyrgyzstan and Article 10, 2007 Regulation No 473 ‘On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic’; Article 17, 1992 Citizenship Law of Uzbekistan and

Kyrgyzstan and Turkmenistan also require the applicant to be able to communicate in the State or official language and to submit proof of a legal source of income.<sup>147</sup> Proof of a lawful source of income is also a requirement in Uzbekistan.<sup>148</sup>

A simplified procedure is available for petitioners who meet set criteria.<sup>149</sup> The simplified procedure significantly reduces the residency required before submitting the petition – in Kyrgyzstan, for example, from five years down to one.<sup>150</sup> The simplified procedure may also have a faster processing time, which is the case in Kyrgyzstan and Tajikistan.<sup>151</sup>

Criteria that reduce the residency requirements for naturalization include being married to a citizen; being a minor or having a physical or mental disability; great achievements in science, technology or culture, or other special qualifications of interest to the State, as well as distinguished service to the State; investments in priority sectors of the national economy; or being a recognized refugee.<sup>152</sup> None of the States offers facilitated naturalization for everyone recognized as stateless, though some do facilitate naturalization for certain categories of persons, who are, or may be, stateless.

All Central Asian States offer reduced residency requirements to specific groups of persons on the basis of titular ethnic origin and a historical bond with the State. For instance, in Turkmenistan, ethnic Turkmens who were born and reside in States outside the former Soviet Union are entitled to apply under a simplified procedure. The same is the case for persons who were either forcibly deported from Turkmenistan or who left as a result of political or religious persecution, and their descendants.<sup>153</sup>

In Kazakhstan, residency requirements are lifted for persons who left Kazakhstan but have now returned to their historical motherland for permanent residence, and their descendants. In practice, the application of this provision has been restricted to ethnic Kazakhs, the Oralmany.<sup>154</sup> In addition to this, no residency requirements appear to be in place for persons who are citizens of former Soviet republics who have arrived to reside permanently in Kazakhstan and who have a close relative who is a Kazakh citizen, or for victims of political repression and their descendants.<sup>155</sup>

In Kyrgyzstan, residency requirements are reduced to one year if a person has at least one parent who is a Kyrgyz citizen and who lives in Kyrgyzstan. The same applies if the person was born in the Kyrgyz SSR and used to hold a USSR citizenship, or if he/she is of Kyrgyz ethnic origin.<sup>156</sup>

In Tajikistan, facilitated naturalization is provided to persons who are former USSR citizens or who in the past held Tajik citizenship by birth.<sup>157</sup>

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Section II, 1992 Regulation No UP-500 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan’.

<sup>147</sup> Article 13 and 14, 2007 Citizenship Law of Kyrgyzstan; Article 18(2) and (4), 1992 Citizenship Law of Turkmenistan. In Turkmenistan, the source of income must be inside Turkmenistan.

<sup>148</sup> Article 17(3), 1992 Citizenship Law of Uzbekistan.

<sup>149</sup> In Kyrgyzstan and Turkmenistan a specific, simplified procedure has been established for these categories of persons. The Citizenship Law of Tajikistan allows for acquisition of citizenship through registration for spouses of Tajik citizens and children born of at least one Tajik citizen who acquired another citizenship at birth, while reduced residency requirements apply for naturalization of certain other categories of applicants. Kazakhstan and Uzbekistan do not formally distinguish between an ordinary and simplified procedure for acquisition of nationality, but entitle specific categories of persons to reduced residency requirements.

<sup>150</sup> Article 14, 2007 Citizenship Law of Kyrgyzstan.

<sup>151</sup> Article 34(4), 2007 Citizenship Law of Kyrgyzstan; Article 47, 1995 Citizenship Law of Tajikistan, says the turnaround-time for applications from persons who qualify for acquisition of citizenship by registration is 6 months, as opposed to 9 months under the general procedure for naturalization.

<sup>152</sup> Only Kyrgyzstan and Tajikistan offer a simplified naturalization procedure for recognized refugees.

<sup>153</sup> Article 19, 1992 Citizenship Law of Turkmenistan.

<sup>154</sup> Article 16(1), 1991 Citizenship Law of Kazakhstan.

<sup>155</sup> Article 3 and 16(2), 1991 Citizenship Law of Kazakhstan; Article 21, 1993 Law of the Republic of Kazakhstan ‘on the Rehabilitation of Victims of Mass Political Repression’.

<sup>156</sup> Article 14, 2007 Citizenship Law of Kyrgyzstan.

<sup>157</sup> Article 23(3), 1995 Citizenship Law of Tajikistan.



Uzbekistan allows persons born in Uzbekistan, who can prove they are not citizens of any other State and that at least one of their parents or grandparents was born in Uzbekistan, to apply for citizenship without any residency requirements.<sup>158</sup>

In some States, applicants for naturalization may be exempt from paying fees. In Tajikistan<sup>159</sup> the law indicates specifically that impoverished applicants may be declared entirely or partly exempt from paying fees. In Kazakhstan, persons who fled the republic during the period of mass repression, forced collectivization, other inhuman political actions and their descendants, as well as *Oralmany*, may be exempt from paying fees.<sup>160</sup> In Kyrgyzstan,<sup>161</sup> Turkmenistan<sup>162</sup> and Uzbekistan<sup>163</sup> the law simply states that persons applying for citizenship must submit a document either confirming payment of the State fee, or the right to be exempted from paying it. Other naturalization conditions may also occasionally be waived, such as proof of language proficiency for graduates of higher education institutions where instruction was in the State or official language.<sup>164</sup>

Generally, however, the same procedure applies to everyone seeking naturalization in each of the States and the documentary requirements may be very cumbersome. Documentary evidence that must be attached to the application generally includes proof of identity; residence; family connection; financial solvency and linguistic competence. A stateless person, petitioning from abroad for Uzbek or Turkmen citizenship, must also certify they are free of HIV/AIDS infection.<sup>165</sup> A stateless person who applies for Tajik citizenship must also produce such certification.<sup>166</sup>

In particular, the requirement to submit a certificate proving they are not the citizen of any other country seriously hinders naturalization for many stateless persons in the region. Tajikistan, Turkmenistan and Kyrgyzstan<sup>167</sup> also require the marriage certificate of the parents to be included in applications for naturalization of minor children. It is not clear in this case whether exceptions are made in practice, for children born out of wedlock.

In Kyrgyzstan and Turkmenistan, applicants who, for reasons beyond their control, are unable to submit some of the documentary evidence are requested to explain why, in detail, in their application.<sup>168</sup> Similarly, in Tajikistan, many people are unable to produce required identity documents when applying to acquire or confirm Tajik citizenship, for instance because the documents were lost during the armed conflict in the 1990s. In such cases, the Migration Service accepts written explanations and alternative proof of identity. The citizenship law in Kyrgyzstan also mentions specifically that in cases where

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<sup>158</sup> Article 17, 1992 Citizenship Law of Uzbekistan.

<sup>159</sup> Article 45, 1995 Citizenship Law of Tajikistan. Under Article 10 of the 1996 Regulation No 611 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan', however, no one is exempt from paying fees.

<sup>160</sup> Paragraph 15(9) of Instruction on Issues Related to Citizenship of Kazakhstan (approved by the Order of Interior Minister No 556 dated 23.08.02).

<sup>161</sup> Article 45, 1995 Citizenship Law of Tajikistan; Article 33(1)(4), 2007 Citizenship Law of Kyrgyzstan.

<sup>162</sup> Section II, para. 8(i), 1992 Regulation No 1328 'On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan'.

<sup>163</sup> Chapter II(a), 1992 Regulation No UP-500 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan'.

<sup>164</sup> Article 33(7), 2007 Citizenship Law of Kyrgyzstan.

<sup>165</sup> Article 4, Chapter II(b)(1) 1992 Regulation No UP-500 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan'.

<sup>166</sup> Article 27, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008.

<sup>167</sup> Article 14, 1996 Regulation No 611 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan'; Section II, para. 8.2(a), 1992 Regulation No 1328 'On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan'; Article 33(2)(1), 2007 Citizenship Law of Kyrgyzstan (in the case of applicants through the general procedure, only).

<sup>168</sup> Article 15, 2007 Regulation No 473 'On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic'; Article 9, 1992 Regulation No 1328 'On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan'.

applications fail to contain all the documents required, an official of the Interior Ministry, or the diplomatic representation, must explain the procedures for applying for citizenship.<sup>169</sup>

All five States refuse to grant nationality to certain categories of applicants. These may include persons who have committed crimes against humanity or genocide; persons who have undermined State independence and sovereignty; persons who have sought to change the State's constitutional foundation through violent means; those who have committed acts threatening national security (including its inter-ethnic harmony); members of political parties and organizations that are incompatible with the constitutional principles of the State, and persons with outstanding criminal sentences.<sup>170</sup> Tajikistan and Kazakhstan also explicitly refuse petitions from persons who are citizens of another State.<sup>171</sup> All States apart from Kyrgyzstan require applicants first to renounce their other citizenship, which leads to at least temporary statelessness.

### 2.7.2 Other means of acquiring nationality

Other means of acquiring nationality operate in individual states.

All five Central Asian States legislate for the reacquisition of nationality by former nationals.<sup>172</sup> In all five States, this restoration process is similar to naturalization in that it requires a formal application, and approval by the President. In Kyrgyzstan it also involves one year's residence, before the application can be submitted.<sup>173</sup> In Tajikistan, applicants must produce a notarised birth certificate from Tajikistan and prove they were permanently resident on Tajik territory immediately before they left the USSR.<sup>174</sup> The other States appear to have no residence requirements.

In all States, the right to reacquire nationality extends to children on State territory who lost their citizenship through adoption, or a change in the nationality of its parents.

In Tajikistan, persons married to Tajik citizens and persons born to Tajik citizens who have acquired a foreign citizenship at birth can acquire nationality by a process of registration.<sup>175</sup> The registration is carried out at the department of internal affairs closest to the applicant, and does not involve the President. Until 2008, it was also open to former USSR citizens, stateless persons and former Tajik citizens and descendants of such citizens. Remarkably, the provisions relating to stateless persons and former USSR citizens extended to all such persons who resided in any of the USSR successor States and who applied for Tajik citizenship within one or three years from the entry into force of the law, respectively.

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<sup>169</sup> Article 16, 2007 Regulation No 473 'On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic'.

<sup>170</sup> Article 24, 1995 Citizenship Law of Tajikistan; Article 18 (Part 2), 1992 Citizenship Law of Turkmenistan; Article 17, 1991 Citizenship Law of Kazakhstan; Article 16, 2007 Citizenship Law of Kyrgyzstan; Article 17(3), Citizenship Law of Uzbekistan.

<sup>171</sup> Kazakhstan excludes from this category the people earmarked for simplified procedures under Article 16(1) of the 1991 Citizenship Law – such as indigenous (*korennye*) Kazakhs repatriating to Kazakhstan by official invitation. Tajikistan excludes persons who are citizens of States with whom it has a bilateral agreement on dual nationality under Article 24(d), 1995 Citizenship Law of Tajikistan.

<sup>172</sup> Article 20, 1992 Citizenship Law of Turkmenistan; Article 16, 1995 Citizenship Law of Tajikistan; Article 18, 1991 Citizenship Law of Kazakhstan; Articles 14(1)(3) and Article 15, 2007 Citizenship Law of Kyrgyzstan; Article 18, 1992 Citizenship Law of Uzbekistan.

<sup>173</sup> Articles 14 and 15, 2007 Citizenship Law of Kyrgyzstan.

<sup>174</sup> Article 17, 1996 Regulation No 611 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan'.

<sup>175</sup> Article 21, 1995 Citizenship Law of Tajikistan. In the case of persons born to at least one parent who is a Tajik citizen, they must have acquired a foreign citizenship by birth and the application for Tajik citizenship must be submitted during the five years before reaching 18 years old.

In Tajikistan, a person who is living on territory that is transferred to a different State, has the right to choose Tajik nationality by option in terms and in a manner defined in Tajikistan's international treaties.<sup>176</sup>

According to the citizenship laws of Kazakhstan, Kyrgyzstan and Uzbekistan, nationality can also be acquired under the terms of multilateral and bilateral treaties.<sup>177</sup> A number of such agreements have been concluded between States in the region or between these States and other States in the Former Soviet Union, as well as Mongolia. Only a few examples of these agreements are referred to below.

An Agreement between Kazakhstan, Kyrgyzstan, the Russian Federation and Belarus in February 1999, offers mutually simplified procedures for acquiring nationality.<sup>178</sup> Anyone born or resident in one of these States before 21 December 1991 is entitled to apply for its citizenship by a simplified procedure (through registration). Anyone with a close relative who is a citizen of the State is also entitled to apply for nationality under this procedure. Applicants need to establish that they themselves are permanent residents of the State where they apply for citizenship but no specific length of residence is otherwise required.<sup>179</sup> Applicants who apply to renounce their existing citizenship are to keep this citizenship until a decision has been made on their application for a new citizenship, which acts as a safeguard against statelessness.<sup>180</sup> Acquisition of citizenship by treaty involves registration at the nearest police department.<sup>181</sup>

Kazakhstan, Tajikistan and Kyrgyzstan each have bilateral agreements with Ukraine. These offer a simplified procedure for renouncing a citizenship and simultaneously acquiring a new nationality, but involve a residence requirement. These agreements also contain safeguards against statelessness in situations where citizens renounce one citizenship to acquire another. In these situations the former State can only register the loss of nationality two months after receiving information that the person has acquired the nationality of the other State.<sup>182</sup>

A bilateral agreement between Kyrgyzstan and Tajikistan, enabled about 10,000 stateless refugees from Tajikistan in Kyrgyzstan to acquire Kyrgyz nationality, by a simplified procedure in 2004-07.<sup>183</sup>

Up to 270,000 Crimean Tatars, deported to Central Asia in 1944, began returning to Ukraine en masse after the break-up of the USSR. Up to 195,000 of them and their descendants returned from Uzbekistan, up to 35,500 from the Russian Federation, up to 13,500 from Kazakhstan, up to 11,500 from Tajikistan, up to 8,500 from Kyrgyzstan and up to 5,500 from other countries.

A temporary agreement on cooperation between Uzbekistan and Ukraine for resolving the citizenship problems of persons who were formerly displaced, and their descendants, was in place from October 1998 to December 1999, and again from November 2000 to December 2001. It facilitated the re-settlement and naturalization of up to 90,000 Crimean Tatars in Ukraine. It enabled them simultaneously to give up Uzbek citizenship and to acquire Ukrainian nationality at the Ukrainian

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<sup>176</sup> Article 26, 1995 Citizenship Law of Tajikistan.

<sup>177</sup> Article 10, 1991 Citizenship Law of Kazakhstan; Article 11, 2007 Citizenship Law of Kyrgyzstan; Article 12, 1992 Citizenship Law of Uzbekistan.

<sup>178</sup> Article 1(1), Agreement between the Republics of Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation on a Simplified Procedure for Citizenship Acquisition, dated 26 February 1999. 16 December 1991 is the date on which Kazakhstan became an independent State.

<sup>179</sup> *Ibid*, Article 1(2).

<sup>180</sup> *Ibid*, Article 2(3).

<sup>181</sup> *Ibid*, Article 2(2).

<sup>182</sup> Agreement between Ukraine and Kazakhstan on a Simplified Procedure for Acquisition and Termination of Citizenship for Permanent Residents and the Prevention of Statelessness and Dual Nationality, May 2000; Agreement between Ukraine and Tajikistan on a Simplified Procedure for Citizenship Acquisition, for Ukrainians Permanently Resident in Tajikistan and Tajiks Permanently Resident in Ukraine, July 2001; Agreement between Ukraine and Kyrgyzstan on Altering the Citizenship of Permanent Residents and Preventing Statelessness and Dual Nationality, January 2003, cited by President Yushchenko of Ukraine, on 13 October 2008, see [www.president.gov.ua/ru/news/11639.html?PrintVersion](http://www.president.gov.ua/ru/news/11639.html?PrintVersion).

<sup>183</sup> Agreement between Kyrgyzstan and Tajikistan Giving Citizens of Tajikistan a Simplified Procedure for Acquiring Kyrgyz Citizenship, June 2002.

Embassy in Uzbekistan, before leaving Central Asia. Previously they had first to go to Ukraine before renouncing their Uzbek citizenship. They risked becoming stateless persons in Ukraine if their applications for naturalization failed, a problem which ceased to exist when a new Citizenship Law of Ukraine was adopted on 18 January 2001.

In 2008 Kazakhstan and Mongolia began negotiating an agreement on a simplified procedure for acquiring nationality and avoiding dual nationality. Until it is concluded, they have agreed on a better means of exchanging information.<sup>184</sup>

### *2.7.3 Information about nationality procedures*

Written information on how to acquire nationality is generally available in offices of Ministries of Internal Affairs, diplomatic representations and on governmental websites in each of the four States where field research was undertaken. UNHCR and its NGO partners also disseminate this information.

In Turkmenistan, a mobile registration campaign has made information on naturalization available in remote parts of the country. UNHCR understands that copies are also disseminated through SMST outposts near rural settlements.

In 2007, Tajikistan, Turkmenistan, Kyrgyzstan and Kazakhstan participated in a UNHCR regional round table in Dushanbe and agreed on the need for a public information campaign on statelessness, targeting populations who are at highest risk, but this has not taken place in all countries. There has been no information drive even in Kyrgyzstan, where positive changes in the law have helped resolve the problems of some stateless people.

Stateless persons in Kyrgyzstan told the UNHCR-sponsored survey that they did not know the rules for registering, or acquiring a passport. They also said they found it difficult to compile the documentary evidence, or afford the fee, which is 2,000 Kyrgyz SOM<sup>185</sup>, or 100 Kyrgyz SOM<sup>186</sup> for ethnic Kyrgyz, refugees and forced migrants.

Some stateless persons interviewed by UNHCR in Tajikistan, said that when they approached the authorities about naturalizations, officials did not properly explain the next step of any procedure, or what someone stateless must do to acquire citizenship.

### *2.7.4 Factors impeding the effectiveness of procedures for acquisition of citizenship*

Overall, procedures for acquisition of citizenship are cumbersome and make it difficult for many stateless persons to acquire nationality. The list of documents required from applicants for naturalization is generally long and detailed, involving originals as well as copies and a notarised translation endorsed by the relevant embassy, where the original is in the language of another State. In addition to a certificate proving they are not citizens of another State, applicants may be asked to produce: proof of identify; colour photographs; a curriculum vitae; proof of legal income and of five years' continuous residence; a stamp duty receipt; a reference from their place of work; a reference from their residents' association; and proof of a criminal record or absence of it. Where naturalization of minors is involved they may also be required to produce: a marriage certificate; birth certificates and the notarised consent of minor dependents of between 14 and 18 years to a change in their citizenship. Proof of refugee status, linguistic proficiency, scientific achievements and financial investments may also be required under simplified procedures for naturalization. This evidence is

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<sup>184</sup> Press release of 4 April 2008 from the Foreign Ministries' Working Group in Ulan-Bator said there were 30,641 persons in Kazakhstan who had renounced their Mongolian citizenship and 33,812 with both Mongolian and Kazakhstan citizenship. Of 88,333 Mongolian immigrants to Kazakhstan between 1991 and 2007 – some of whom may have been stateless – it said 76,000 had received Kazakh nationality by 1 April 2008.

<sup>185</sup> This equaled approximately 43 US Dollars according to exchanges rates of 30 April 2010.

<sup>186</sup> Approximately 2 US Dollars.

sometimes difficult for stateless applicants to compile. Some of these documents need regular renewal in order to be considered valid.<sup>187</sup>

The procedures for acquiring citizenship in all the States have a common flaw. Only Kyrgyzstan gives applicants confirmation in writing that the authorities have begun processing their application.<sup>188</sup> For applicants in the other States, it is impossible to monitor if deadlines are being met, and difficult to appeal effectively against delay.

In Turkmenistan, a petition for naturalization is said to have been accepted for consideration “on the day the applicant has submitted all the necessary documentation correctly, in the format foreseen by law and regulation”. Similar wording exists in the regulations of the other States. In Kazakhstan, a note is made in the applicant’s case file – but not communicated to them.<sup>189</sup>

Several individuals told UNHCR in interviews in the region that they had had to re-submit an application at least once, because of a perceived mistake in one paper, and so did not know if the naturalization process had actually started. One stateless person in Dushanbe claimed he had submitted an application to Tajik authorities five years ago, in 2004, but did not know what had happened to it.

Indigenous Kazakhs repatriating to Kazakhstan, *Oralmany*, who are turned down from a regional *Oralman* immigration quota, are entitled to receive a written copy of the decision within five calendar days.<sup>190</sup> In 2008, the Ombudsman found this procedure was not being followed.<sup>191</sup> To be included in the quota, *Oralmany* must score points according to fixed criteria, among them hardship.<sup>192</sup> Those who fall short of the score for the *Oralman* immigration quota, may still be eligible to apply for Kazakh citizenship, independently of the quota. Without a copy of the decision in their case, however, they are unable to take an informed decision.

### 2.7.5 *Due Process Guarantees and Legal Remedies in Citizenship Matters*

The nationality legislation of each State sets down certain due process guarantees for applicants for citizenship, including the right to have decisions on nationality issues reconsidered or appealed. The extent to which these guarantees are included in the nationality legislation, however, varies from State to State. Guarantees in some States – such as access to court and to a documentation trail – seem to be more effective than the remedies available in others.

All nationality laws in the region establish a time-limit by which decisions on applications must be taken, usually ranging from six months to one year.

The new nationality law in Kyrgyzstan offers the best procedural guarantees in the region for applicants for citizenship and persons seeking to confirm whether they are Kyrgyz citizens. Applicants for citizenship are entitled to written and dated confirmation from the authorities that their documents have been received and the application forwarded to the presidential Citizenship

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<sup>187</sup> In Turkmenistan, for instance, 17 documents are needed for a citizenship application, some of them valid only for ten working days.

<sup>188</sup> Article 8, 2007 Regulation No 473 ‘On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic’.

<sup>189</sup> Article 2, 1992 Regulation No 1328 ‘On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan’; Article 6, 1996 Regulation No 611 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan’; Paragraph 2, 2002 Kazakhstan Ministry of Internal Affairs Instruction, No 556; Article 7, Annex 1 to 2007 Regulation No 473 ‘On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic’; Section II(a), Paragraph 1(4), 1992 Regulation No UP-500 ‘On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan’.

<sup>190</sup> 2004 Instruction ‘On Status Determination of *Oralmany* and their Inclusion in the Immigration Quota’ and 2007 Rules ‘For the Inclusion of *Oralmany* in the Immigration Quota’.

<sup>191</sup> *National Ombudsman of Kazakhstan*, Report on the Human Rights of Refugees and Oralman in Kazakhstan, Astana, 2008, p. 57.

<sup>192</sup> 2007 Rules ‘For the Inclusion of Oralman in the Immigration Quota’.

Commission.<sup>193</sup> They also have the right to request information from the relevant authorities about where their documents are and the date by when the application will be considered.<sup>194</sup> If the authorities refuse to consider the application, the applicant also has the right to request the reasons in writing.<sup>195</sup> Any decision on citizenship issues can be appealed to a court within six months.<sup>196</sup>

The nationality legislation in Kazakhstan, Turkmenistan, Tajikistan and Uzbekistan contains no similar right to seek information about the status of a citizenship application while it is underway. However in all four countries, applicants should be informed once a decision has been taken.

In Kazakhstan, the Ministry of Internal Affairs instructions setting out the procedures for consideration of citizenship issues indicate that an applicant shall be issued with a certificate indicating the motives for rejecting an application relating to citizenship.<sup>197</sup>

In Tajikistan applicants should be informed by the Ministry of Internal Affairs or the Ministry of Foreign Affairs about the decision in their case no later than two weeks after the agency has been notified of the decision. In Turkmenistan applicants should learn of the outcome from the State Migration Service, also within two weeks. The laws do not say, however, whether the decision is given in writing and with the reasons for refusal in case of a rejection.<sup>198</sup>

In Uzbekistan the nationality legislation does not indicate whether applicants are entitled to receive a reasoned response in writing at any stage, which makes it additionally difficult for them to appeal against decisions. As in Tajikistan, the nationality law in Uzbekistan, lacks a general right to appeal decisions on nationality issues or to have them reconsidered.

The citizenship laws in Kazakhstan and Turkmenistan provide individuals with the opportunity to seek a reconsideration of any decision on nationality issues, while Kyrgyzstan is the only country in the region where decisions on nationality can be appealed in court.<sup>199</sup>

All States provide a separate right of appeal against state officials who refuse to accept applications; fail to comply with set deadlines; or otherwise violate citizenship procedures and procedures for implementation of decisions on citizenship issues. Applicants can appeal to their hierarchical superior, or through the courts.<sup>200</sup>

In Tajikistan and Uzbekistan, where there is no general right to appeal decisions or to request their reconsideration, it is not clear to what extent this provision covers cases involving the rejection of an application for naturalization.

Persons applying for Tajik citizenship from abroad, can appeal against maladministration to the Supreme Court. Tajikistan also has a separate provision allowing persons who have been refused

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<sup>193</sup> Articles 8 and 19 and Annex 3, 2007 Regulation No 473 'On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic'.

<sup>194</sup> *Ibid*, Article 21.

<sup>195</sup> *Ibid*, Article 15.

<sup>196</sup> Article 41, 2007 Citizenship Law of Kyrgyzstan.

<sup>197</sup> Article 41, 2002 Ministry of Internal Affairs Order No 556 'On Instructions related to the Consideration of Questions related to the Citizenship of the Republic of Kazakhstan by Divisions of the Ministry of Internal Affairs'.

<sup>198</sup> Article 26, 1992 Citizenship Law of Turkmenistan and Article 35, 1992 Regulation No 1328 'On the Procedure for Considering Petitions and Applications on Issues related to the Citizenship of Turkmenistan'; Article 26, 1996 Regulation No 611 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Tajikistan'.

<sup>199</sup> Article 46, 1992 Citizenship Law of Turkmenistan; Article 41, 1991 Citizenship Law of Kazakhstan; Section VII, Paragraphs 71-73, 2007 Regulation No 473 'On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic' and Article 41, 2007 Citizenship Law of Kyrgyzstan. If the applicant is able to present a good excuse why he or she missed the appeal deadline, it can be reset by judicial proceeding.

<sup>200</sup> According to the Uzbekistan Citizenship Regulation, appeal to a court is possible only after an administrative appeal has failed. Section VIII, Paragraph 3, 1992 Regulation No UP-500 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Uzbekistan'.

registration of citizenship or who have not been recognized as citizens of Tajikistan to appeal the decision in court within one month.<sup>201</sup>

## 2.8 *Exercise of Nationality in Practice*

Formally, a person becomes a citizen by naturalization in each of the five States with the publication of the Presidential decree that confers the citizenship.<sup>202</sup> In practice new citizens start to exercise their nationality once they have received a national passport. The procedures for awarding passports vary from State to State.

The nationality laws of Uzbekistan, Turkmenistan, Kyrgyzstan and Kazakhstan say that citizenship is one and equal, irrespective of the grounds on which it was acquired.<sup>203</sup> In all five countries, however, the actual situation of people who were formerly stateless, has yet to be assessed. There is no comprehensive information about how each has been able to exercise rights that generally flow from citizenship. There has also been little research into discrimination such persons may experience on account of their former statelessness.

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<sup>201</sup> Article 41, 1991 Citizenship Law of Kazakhstan; Articles 52 and 53, 1995 Citizenship Law of Tajikistan; Article 47, 1992 Citizenship Law of Turkmenistan; Article 44, 1992 Citizenship Law of Uzbekistan; Article 42, 2007 Citizenship Law of Kyrgyzstan.

<sup>202</sup> Article 39, 1992 Citizenship Law of Uzbekistan; Article 48, 1995 Citizenship Law of Tajikistan, which also says that in cases involving registration, citizenship begins when the competent organ other than the President has decided it should; Article 38, 1992 Citizenship Law of Turkmenistan; Article 37(3), 2007 Citizenship Law of Kyrgyzstan; Article 15, 1991 Citizenship Law of Kazakhstan.

<sup>203</sup> Article 2, 1992 Citizenship Law of Uzbekistan; Article 5, 1992 Citizenship Law of Turkmenistan; Article 4(4), 2007 Citizenship Law of Kyrgyzstan; Article 5, 1991 Citizenship Law of Kazakhstan.

### 3 Fair Protection Processes and Documentation

#### 3.1 Procedures for Determination of Statelessness Status

Seventy-four States from five regions took part in a UNHCR survey on statelessness in 2004.<sup>204</sup> The aim was to plot steps that these States had taken to reduce statelessness and to meet the protection needs of stateless persons within their respective jurisdictions. The responses showed that only slightly more than half of the participating States – 54.1% – had any mechanisms in place to identify cases of statelessness, and only 44.6% knew the potential number of stateless persons within their territory.<sup>205</sup> Over 86% of States who participated in the survey asked for more information on how to identify and document stateless persons.

In UNHCR's experience, a determination procedure that is prompt and fair yields two main benefits: it allows governments to identify and document stateless persons properly, and it enables stateless individuals to access rights and freedoms due to them under national law. Due process guarantees such as accessibility, a reasonable time-frame for processing cases; determinations that are reasoned and in writing; and the right of appeal to an independent body are one component of a fair and prompt procedure.

In Kyrgyzstan, a major governmental reform which included changes to the procedures used for determining statelessness was interrupted by a revolution in April 2010. This chapter refers therefore to some new agencies and procedures, as well as old ones that were on the point of reform when the revolution took place.

In Kazakhstan, Uzbekistan and Tajikistan it is the responsibility of the Ministry of Internal Affairs to determine the citizenship of persons resident within State territory.<sup>206</sup> In Kyrgyzstan, responsibility for this has passed from the Ministry of Internal Affairs to a new State Registration Service. The State Service on Registration of Foreign Citizens determines citizenship in Turkmenistan.<sup>207</sup>

Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan all define a stateless person as a non-citizen, who has no proof of citizenship of another State. Uzbekistan also uses this definition but only in respect of persons resident on Uzbek territory.<sup>208</sup> In general, though, the Central Asian States have no dedicated and systematic procedure in place to determine whether a person is stateless. Instead, persons are often determined to be stateless incidentally through applications for residence permits or citizenship.

In Kyrgyzstan, the Department of Population Registration within the State Registration Service determines the status of persons resident on State territory, who hold or have lost a USSR passport, or have no proof of any nationality. They review the status of applicants for Kyrgyz nationality, and grant statelessness certificates (i.e. travel documents for stateless persons), or residence permits for stateless persons, which must be applied for under a separate procedure. An extensive registration of persons with undetermined nationality in Turkmenistan since 2007 also does not appear to involve a proper

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<sup>204</sup> Kazakhstan, Kyrgyzstan and Uzbekistan took part in the survey. Tajikistan and Turkmenistan were not among the 74. *UN High Commissioner for Refugees, Final Report Concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection, March 2004, available at* [www.unhcr.org/4047002e4.pdf](http://www.unhcr.org/4047002e4.pdf).

<sup>205</sup> *Ibid.*

<sup>206</sup> Article 29(3), 2007 Citizenship law of Kyrgyzstan; Article 33(3), 1992 Citizenship Law of Turkmenistan, as amended in 2003; Article 42, 1995 Citizenship law of Tajikistan, as amended in 2008; Article 31(4), 1992 Citizenship Law of Uzbekistan; Chapter 7, 'Determining Affiliation to the Citizenship of Kazakhstan' in Instruction No 556 of the Ministry of Internal Affairs 'On Processing Citizenship Issues in Kazakhstan', dated 15 November 2002.

<sup>207</sup> Article 33(3), 1992 Citizenship Law of Turkmenistan, as amended in 2003.

<sup>208</sup> Article 6, 1992 Citizenship Law of Turkmenistan; Article 14(f), 2008 Citizenship Law of Tajikistan; Article 3, 2007 Citizenship Law of Kyrgyzstan; Article 1(c), 1996 Regulation No 3120 'On the Procedure for Considering Issues related to the Citizenship of the Republic of Kazakhstan', as amended in 2000; Article 2, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 11, 1992 Citizenship Law of Uzbekistan.



procedure to determine statelessness and grant statelessness certificates to persons in need of them. Uzbekistan has set up Special Commissions to consider the registration and residency of stateless persons, CIS immigrants and other foreigners. Operating regionally and in Tashkent, they report to the Council of Ministers.<sup>209</sup> A survey commissioned by UNHCR in 2002 on the legal stay of immigrants from Tajikistan who arrived in Uzbekistan from 1990 to 2002 indicated that 26,792 persons originating from Tajikistan had been issued with Certificates for Stateless Persons. In 2009, UNHCR received reports that an undetermined number of them had arrived in the Soghd region of Tajikistan.

In most cases, each Central Asian State puts the burden of proving statelessness upon the individual concerned. 'Proof' is normally interpreted as documentary evidence, in the form of a certificate, or '*spravka*', confirming that the person has renounced their previous citizenship, or otherwise does not possess it. It is difficult for many stateless persons to acquire the requisite proof. Uzbekistan, Kazakhstan and Tajikistan have consular representation throughout the region, but the other two States do not. Some States outside the region have no consular representation in Central Asia at all. The means of proving 'statelessness' are therefore not equally accessible to all.

In practice, applicants told UNHCR that official answers often came late, or not at all. This was a particular problem for applicants needing a *spravka* from Uzbekistan, but not only applicants with links to that country. Stateless people interviewed for this report in each of the countries in the region reported lengthy waits to acquire a *spravka* from the country where they used to live. In extreme cases, the waiting time has been in excess of 10 years. Stateless persons often cannot afford to travel to the capital or pay a consular fee for a *spravka*.<sup>210</sup> Not every State concerned has consular representation in the region, Moldova being one case in point. Stateless persons who are refugees cannot contact the government of the state they have fled.

Exceptionally, some Central Asian States have shown flexibility in their statelessness determination procedures to address some of these problems. Passport authorities in Kyrgyzstan, for instance, have sometimes shared the burden of proving statelessness with applicants from CIS States whose passports have expired. In the Osh region, they have written to the authorities of the State concerned and have interpreted a lack of response as evidence that the applicants were not regarded as that State's nationals. The Kyrgyz authorities proceeded to recognise such applicants as stateless on this basis.<sup>211</sup>

Regional Ombudspersons have also tried to resolve statelessness determination problems across borders in individual cases and succeeded in securing a '*spravka*' from the relevant government to confirm the persons concerned were not citizens of the State. In 2007, the Ombud institutions of Kazakhstan and Uzbekistan cooperated successfully in the cases of 21 stateless persons according to the Uzbek Ombudswoman's Annual Report and an interview UNHCR held with the Kazakh Ombudsman.<sup>212</sup>

None of the five Central Asian States has provision to prevent the expulsion of someone living with invalid documents pending the determination of their statelessness status. The 2009 Administrative Code of Tajikistan prescribes the expulsion of foreigners living without documents or with invalid

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<sup>209</sup> Article 2, Annex 3, Presidential Decree UP 2240 'On Perfecting the Passport Regime in Uzbekistan', February 1999.

<sup>210</sup> A *spravka* from Uzbekistan, for instance, costs the equivalent of 117 US Dollars according to people interviewed by UNHCR.

<sup>211</sup> From UNHCR interviews with migration officials in Osh Region. This practice grants legal status to persons who otherwise may continue in limbo with undetermined nationality. On the other hand, unless it is based on a proper procedure and carried out by a centralised authority, it may cause a person to be found stateless before all reasonable efforts have been made to determine their nationality. In some cases this may mean that an opportunity to confirm possession of a nationality is lost.

<sup>212</sup> In her 2007 Annual Report, the Ombudswoman of Uzbekistan notes 21 requests for assistance from the Ombudsman of Kazakhstan and two each from the ombudspersons of Ukraine and the Russian Federation. Report on the Activities of the Authorized Person of the *OliyMajlis* of the Republic of Uzbekistan for Human Rights (Ombudsman) in 2007, *Tashkent, 2008*, available at <http://ombudsman.uz/files/2007-eng.pdf>.

documents, even if they are refugees. The landlord or employer of such a person is also liable for heavy fines.<sup>213</sup>

Through its network of offices UNHCR aims to help stateless persons obtain documentation they need for citizenship procedures from countries of previous residence, and to represent them where appropriate. None of the States in the Central Asia region is party to the 1961 Convention but UNHCR has an advisory role under its global mandate on statelessness and is ready to assist States with information and training if requested. Development of fair statelessness determination procedures is a priority target for UNHCR and the Working Group on nationality issues that it leads in the Kyrgyz Republic. UNHCR stands ready to give similar assistance to other Central Asian States that request it.

### 3.2 *Residence status*

In each of the five States, foreigners with permission for permanent residence are entitled to choose the place where they live in any part of State territory that is open to foreigners.<sup>214</sup> This right extends to foreigners officially recognised as stateless persons.<sup>215</sup> In Kazakhstan, Turkmenistan and Kyrgyzstan, stateless persons formally enjoy the same rights and obligations as nationals unless otherwise stated in law.<sup>216</sup>

Stateless persons who have no official documentation and recognition, believed to be the majority in the Central Asian region, do not enjoy these rights. Among stateless persons who *are* officially recognised, different groups are sometimes treated differently in law.

Turkmenistan provides for the issue of permanent residence permits to stateless persons who arrived from the CIS and registered on State territory before it introduced an entry visa system in 1999. It is not clear what procedure is open to stateless persons who arrived after the introduction of entry visas, or who came from outside the CIS.<sup>217</sup>

Kazakhstan and Kyrgyzstan require proof of financial solvency from stateless persons applying for permanent residence. In Kazakhstan, this must be established by a bank statement confirmed by a bank manager and in Kyrgyzstan, by an employer's reference, shares certificates, etc.<sup>218</sup> A 2003 Directive from the Kazakh Government details what financial solvency means in Kazakhstan. Using a notional consumer index as a basis for the calculation, applicants must prove they have 1 million 213,080 Tenge, to support themselves for five years.<sup>219</sup> If they have nowhere to live, they must show

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<sup>213</sup> Article 499, Part 1, 2009 Administrative Code of Tajikistan, No 1177 foresees fines 80 or 90 times the public index for calculating tax, or deportation for a foreigner living without documents or with incorrect documents; Part 3 foresees fines ten or 20 times the public index for calculating tax, or expulsion, for refugees who do the same. The employer or landlord of such a person is liable to a fine of up to 40 times the tax index (Article 495) or up to 70 times the index (Article 470(5)).

<sup>214</sup> Articles 4, 9 and 16, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Articles 5, 11, 12 and 19, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011; Articles 5, 11, and 19, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Articles 5, 11 and 18, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Articles 2 and 3, Supplement No 2, 1999 Rules of Residence for Foreigners and Stateless Persons in Uzbekistan, UP No 2240.

<sup>215</sup> Article 29, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 32, 1997 Law No 500 'On the Legal Status of Foreigners in Tajikistan', as amended in 2009; Article 29, Supplement No 2, 1999 Rules of Residence for Foreigners and Stateless Persons in Uzbekistan, UP No 2240; Article 24, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Article 24, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011.

<sup>216</sup> Article 9, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 3, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011; Article 3, 1993 Law No 1296 – XII 'On the Legal Status of Foreigners' in Kyrgyzstan.

<sup>217</sup> Article 6, 2005 Migration Law of Turkmenistan, as amended in 2011. A residence permit is the only lawful ground for residence in Turkmenistan (*ibid*, Article 16).

<sup>218</sup> 2003 Regulation No 1185 'On Approval of the Rules for Confirming Financial Solvency during a Period of Residence in the Republic of Kazakhstan of Foreigners and Stateless Persons who are Applying for Permanent Residence in the Republic of Kazakhstan'; Article 7, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan' (the Regulation was amended on 12 February 2010).

<sup>219</sup> According to the Kazakh Economy and Budget Planning Ministry, the average minimum monthly wage in July 2009 was 13,717 Tenge (90 US Dollars) or annually: 164,604 Tenge (1,080 US Dollars), see <http://www.resurs.kz/news/detail/788>.

they can afford to buy property with 15-square meters of space per family member in the population centre of their choice. Kazakhstan also requires that applicants for permanent residence produce proof that they have no tax payments outstanding.<sup>220</sup> Although Tajikistan makes no financial solvency demands, it too requires applicants for permanent residence to have no unpaid taxes.<sup>221</sup> Turkmenistan also requires evidence of a source of income from stateless persons applying for permanent residence, but sets no target.<sup>222</sup>

Kazakhstan exempts some categories of stateless person from its financial solvency requirements: for example, those who arrived before the Directive was published in 2003 and those arriving now from Belarus, the Russian Federation, Ukraine and Kyrgyzstan, if they were born in Kazakhstan; permanently resident there; or if they have relatives there who are Kazakh nationals. This group can apply for citizenship and permanent residence on arrival in a summary procedure agreed by bilateral treaty.<sup>223</sup> Indigenous groups repatriating to Kazakhstan and Kyrgyzstan by official invitation are also exempt from financial solvency criteria.<sup>224</sup> These groups are the *Oralmany* and *Kairylymany*, respectively, some of whom may be stateless. Section 6.7 of this report outlines the residence and property rights afforded to the *Oralmany* and *Kairylymany* as “socially protected groups”.

Stateless persons arriving for permanent residence in Kazakhstan from other parts of the Central Asian region – Uzbekistan, Turkmenistan and Tajikistan – must still meet the financial solvency requirements.

Each of the five States charges a fee for processing applications for permanent residence permits. This can vary so much that it may deter some groups of stateless persons from applying. Kyrgyzstan charges 20-25 times the national tax index to process applications from the CIS, and 5-6 times more to process applications from further afield.<sup>225</sup> Tajikistan levies a fee that is twice the average national wage, and charges for temporary registration until the permanent document is issued.<sup>226</sup> UNHCR spoke with a stateless person in Tajikistan who claimed he paid 100 Somoni<sup>227</sup> in stamp duty to acquire a permanent residence permit, and another from the CIS, who said she pays 35 Somoni<sup>228</sup>

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Using these figures, the financial solvency requirement is set quite high and would cover *more* than five years' residence on an average minimum monthly wage.

<sup>220</sup> A stateless person who has a written agreement for housing from an individual or legal entity need not produce this sum. At meetings with UNHCR in southern Kazakhstan, stateless persons without their own housing reported they had rental agreements and so fulfilled the requirements. Undocumented stateless persons, however, were in a difficult position. Because they did not have a valid identity document, they could not conclude a civil law transaction for housing. Article 62, 2003 Regulation No 1185 'On Approval of the Rules for Confirming Financial Solvency during a Period of Residence in the Republic of Kazakhstan of Foreigners and Stateless Persons who are Applying for Permanent Residence in the Republic of Kazakhstan' demands applicants prove they have paid all their taxes.

<sup>221</sup> Article 27 B(n) 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008.

<sup>222</sup> Paragraph 12, 2002 Regulation No 5833 'On the Procedure for Granting Permanent Residence Permits in Turkmenistan'.

<sup>223</sup> Agreement between the Republics of Belarus, Kazakhstan Kyrgyzstan and the Russian Federation on a Simplified Procedure for Acquisition of Citizenship, dated 26 February 1999.

<sup>224</sup> 2003 Regulation No 1185 'On Approval of the Rules for Confirming Financial Solvency during a Period of Residence in the Republic of Kazakhstan of Foreigners and Stateless Persons who are Applying for Permanent Residence in the Republic of Kazakhstan'.

<sup>225</sup> Article 5(k), 1994 Decree No 521 'On Stamp Duty Rates in Kyrgyzstan', as amended in 2007. Kyrgyzstan exempts persons wholly dependent on social welfare from paying stamp duty according to Article 44, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan'. Uzbekistan also exempts persons dependent on State benefits from paying stamp duty, according to Article 33, Enclosure 2, 1999 Regulations UP-2240 'On Residence Permit in the Republic of Uzbekistan Intended for a Foreign Citizen, Residence Permit in the Republic of Uzbekistan and a Certificate Intended for a Stateless Person'.

<sup>226</sup> Article 4(3), 2005 Law No 217 'On Stamp Duty in Tajikistan', as amended in 2006. The average minimum wage in Tajikistan in June 2009 was 60 Somoni (about 14 US Dollars), according to the National Committee for Statistics in Tajikistan [http://www.stat.tj/english\\_tables/table\\_20.xls](http://www.stat.tj/english_tables/table_20.xls).

<sup>227</sup> Approximately 22 US Dollars, according to the 30 April 2011 exchange rate.

<sup>228</sup> Approximately 8 US Dollars, according to the 30 April 2011 exchange rate.

every five years to renew her permit.<sup>229</sup> In Kazakhstan, the stamp duty is 20% of the monthly tax index.<sup>230</sup> In Turkmenistan, the stamp duty on a foreigner's application to enter the country for permanent residence is 50 US Dollars, and processing a permanent residence permit costs a further 30 US Dollars.<sup>231</sup> Equivalent details are not available from Uzbekistan.

Stateless persons applying for permanent residence permission must also certify their good health in Tajikistan, Kazakhstan, Uzbekistan and Kyrgyzstan. Tajikistan requires separate certificates establishing the person is free of mental illness; drug dependency; sexually-transmitted disease; and any other viral infection that could cause epidemic. Kyrgyzstan requires current proof that the applicant has no HIV/AIDS, drug dependency or mental illness.<sup>232</sup> Kazakhstan requires a general medical certificate.

In all five States the application procedures for permanent residence are exacting and demand a level of documentation that stateless persons may not have – for example, if they have moved frequently across borders. Each of the five States requires the personal ID of the applicant; recent photographs; a birth certificate; proof of statelessness; and a personal history. If stateless persons apply with a family, they must also produce the ID of their spouse; a marriage certificate; the birth certificates of any children, and the notarised written consent of dependents aged between 14 and 18 years. Kyrgyzstan requires that all dependents noted on an application be present when it is submitted. Each adult of sound mind, who wishes to have permanent residence, must make a separate application.<sup>233</sup> Tajikistan and Uzbekistan require written confirmation that relatives and residents accept the permanent residence of the applicant in the specific locality.<sup>234</sup> Finally, applicants in all five States must produce proof that they have paid the stamp duty on the application.

In the survey that UNHCR and its NGO partners carried out in southern Kyrgyzstan, stateless persons spoke of the difficulties they experienced in obtaining residence permits. Their lack of a valid ID prevented them from obtaining the certificates they needed from the authorities of the country where they previously resided. They also spoke of the difficulties involved in dealing with “parallel” procedures: before they could acquire the residence permit they needed to get an official status as an ‘immigrant’. In the surveys carried out in northern Kyrgyzstan, none of the stateless persons questioned said they had a residence permit and this was echoed at UNHCR's meetings with stateless persons. Those without official documentation doubted they would ever be able to obtain a residence permit because there was no real procedure for acquiring the prerequisite ‘immigrant’ status.<sup>235</sup>

It is the Ministry of Internal Affairs, acting with the State Security Service, that gives stateless persons permission for permanent residence on State territory, and administers their stay in Uzbekistan, Kazakhstan and Tajikistan. The new State Registration Service fulfills this function in Kyrgyzstan, acting with the national Security Service. In Turkmenistan, these functions are carried out by the State Service for the Registration of Foreign Citizens and Stateless Persons.<sup>236</sup> In four of the States,

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<sup>229</sup> A man from outside the CIS who was in Dushanbe seeking recognition as a stateless person in Tajikistan told UNHCR that he had been required to make unofficial payments of up to 800 US Dollars each year, registering a temporary residence permit.

<sup>230</sup> Article 500(3), 2001 Tax Code of Kazakhstan, No 20-11.

<sup>231</sup> Regulation of Turkmenistan No 7367 ‘On the Procedure for the Collection of Consular Fees’ (as of 13 July 2005).

<sup>232</sup> Article 13, 2008 Regulation No 626 ‘On the Procedure for Issuing Residence Permits in Kyrgyzstan’.

<sup>233</sup> *Ibid*, Article 3.

<sup>234</sup> Article 27(d) and (f), 1999 Law No 218 ‘On the Rules of Stay for Foreigners and Stateless Persons’ in Tajikistan, as amended in 2008; Article 9, Enclosure No 2 to 1999 Regulations UP-2240 ‘On Residence Permit in the Republic of Uzbekistan Intended for a Foreign Citizen, Residence Permit in the Republic of Uzbekistan and a Certificate Intended for a Stateless Person’.

<sup>235</sup> *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009, page 35.*

<sup>236</sup> The Migration Service of the Ministry of Internal Affairs is responsible for this in Tajikistan, Kyrgyzstan and Kazakhstan. Article 27, 1999 Law No 218 ‘On the Rules of Stay for Foreigners and Stateless Persons’ in Tajikistan, as amended in 2008; Article 18, 2008 Regulation No 626 ‘On the Procedure for Issuing Residence Permits in Kyrgyzstan’; Article 29, Enclosure No 2 to Rules No 315 of Stay for Foreigners and Stateless Persons in Uzbekistan, as amended in July 2001; Presidential Decree No 6133 of February 2003 ‘On the Establishment of the State Service of Turkmenistan on the Registration of Foreign

permission takes the form of a permanent residence permit, and in Kazakhstan, a Stateless Person's ID certificate.<sup>237</sup>

Dependents are recorded in the Stateless person's ID certificate in Kazakhstan, and in their permanent residence permit in the other four States, and enjoy the same residence rights. Dependents include children up to the age of 16 years in Tajikistan, Kazakhstan, Turkmenistan and Uzbekistan, and up to the age of 18 in Kyrgyzstan.<sup>238</sup>

Stateless persons, granted permission for permanent residence, must periodically renew it in all five States.<sup>239</sup> Those who do not, or who otherwise violate their residence rules, may have their permission to stay shortened. It is the Ministry of Internal Affairs in each State that takes the decision to shorten a stay.<sup>240</sup> Although Uzbekistan makes no financial solvency requirements of stateless persons who apply for permanent residence on State territory, it may shorten the stay of a foreigner it rules to have inadequate funds.<sup>241</sup>

All five States provide for the possibility of 'withdrawing' or 'revoking' the permanent residence rights of stateless persons and other foreigners on State territory.<sup>242</sup> Each State withdraws a stateless person's permission for permanent residence when the grounds for its acquisition no longer apply – for example, when the person acquires the nationality of the State, or emigrates permanently to another State. Turkmenistan may also withdraw the permanent residence permit of a stateless person who has stayed outside State Territory continuously for six months, for reasons the authorities deem invalid.<sup>243</sup> Kazakhstan automatically removes stateless persons from its register of permanent residents

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Citizens' (The agency was subsequently renamed The State Migration Service of Turkmenistan); Article 1(3), 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan'.

<sup>237</sup> Article 4(21), 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan'.

<sup>238</sup> Article 26, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 3, Enclosure No 2, 1999 Regulations UP-2240 'On Residence Permit in the Republic of Uzbekistan Intended for a Foreign Citizen, Residence Permit in the Republic of Uzbekistan and a Certificate Intended for a Stateless Person'; Article 3, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan'; Article 7, 2000 Decree No 1063 'On Rule for Documenting and Registering the Population of Kazakhstan'; Article 14.4, 2005 Migration Law of Turkmenistan, as amended in 2011.

<sup>239</sup> Stateless persons of 45 and over are entitled to permanent residence of unlimited duration in Tajikistan and Kyrgyzstan, and those of 60 and over in Uzbekistan. Permission is renewable after 10 years in Kazakhstan and every five years in the other three States. Residence permits that have been renewed five times in Uzbekistan must be replaced. In Turkmenistan, periodic renewal is required as stipulated in the 2005 Law on Migration (as amended in 2008), Article 14<sup>2</sup>, though the time period is not given in the Law; Article 7, 2000 Decree No 1063 'On Rule for Documenting and Registering the Population of Kazakhstan'; Article 29, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 30, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan'; Article 17, Enclosure No 2, 1999 Regulations UP-2240 'On Residence Permit in the Republic of Uzbekistan Intended for a Foreign Citizen, Residence Permit in the Republic of Uzbekistan and a Certificate Intended for a Stateless Person'.

<sup>240</sup> In Kazakhstan and Tajikistan, the Ministry of Internal Affairs and State Intelligence Service jointly decide on shortening the stay of a foreigner and give their reasons in writing in the case materials. Article 35, 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan' and Article 27, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 18, 2000 Law No 61 'On External Migration' of Kyrgyzstan and Article 41, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan'; Article 30, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009 and Article 31, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008.

<sup>241</sup> Article 39, Supplement No 2, 1996 Resolution of Cabinet of Ministers of Uzbekistan No 408 'On Rules of Residence for Foreign Citizens and Stateless Persons in the Republic of Uzbekistan'.

<sup>242</sup> Article 31, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 51, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan' and Articles 17 and 19, 2000 Law No 61 'On External Migration' of Kyrgyzstan; Article 16, 2005 Migration Law of Turkmenistan, as amended in 2011 and Articles 36-39, 2003 Regulation No 6135 'On Entry and Exit of Foreigners' in Turkmenistan; Chapter IV, Supplement No 2, 1996 Resolution of Cabinet of Ministers of Uzbekistan No 408, 'On Rules of Residence of Foreigners and Stateless Persons in Uzbekistan'; Article 27, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>243</sup> Article 16(11), 2005 Law on Migration in Turkmenistan, as amended in 2008.

once their names have appeared on the register of another Ministry of Internal Affairs.<sup>244</sup> It is not clear if there is a right of appeal in a case of mistaken identity.

Uzbekistan, Kazakhstan, Tajikistan and Kyrgyzstan withdraw permanent residence permission from prisoners who are stateless.<sup>245</sup> The migration service of the Ministry of Internal Affairs in each State stores it in the place where it was issued. Kazakhstan and Uzbekistan return it automatically when the prisoner's sentence is completed. In Tajikistan and Kyrgyzstan, prisoners should also receive a permanent residence permit when they are released, but it is not clear if the procedure is automatic. Tajikistan and Kyrgyzstan likewise withdraw the permanent residence permits of stateless persons placed in medical institutions and institutions for the elderly, for the duration of their stay.<sup>246</sup> UNHCR does not know what provision exists to restore their documents to them.

All five States may revoke the permanent residence rights of a stateless person, deemed to be a national security threat.<sup>247</sup> In Kyrgyzstan, Turkmenistan and Kazakhstan this includes persons understood to pose a threat to "public order, morals or health".<sup>248</sup> All five States provide for the revocation of permanent residence permission, found to have been acquired under false pretences. Under this heading, Kyrgyzstan, Turkmenistan and Kazakhstan specify acquisition of permanent residence by means of a fictitious marriage between a stateless person and a national.<sup>249</sup> In this context, Turkmenistan and Kyrgyzstan may revoke the permanent residence permission of a stateless person if their marriage to a national dissolves within five years, and produced no children.<sup>250</sup>

In all five States, a stateless person whose permission to stay has been revoked, must leave the country or face expulsion within days.<sup>251</sup> It is a court that issues expulsion orders in Tajikistan, Kazakhstan and Kyrgyzstan, and such orders are open to judicial appeal.<sup>252</sup> In Uzbekistan and Turkmenistan, the

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<sup>244</sup> Article 107, 2004 Inter-Ministerial Order No 215 'On Rules of Entry, Exit and Stay of Foreigners in Kazakhstan'; Article 108(3), 2005 Order No 338 'On Confirmation of the Instruction on the Ministry of Internal Affairs' Application of Rules for Documenting and Registering the Population in Kazakhstan'.

<sup>245</sup> Article 31, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 51, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan' and Articles 17 and 19, 2000 Law No 61 'On External Migration' of Kyrgyzstan; Article 30(4), Enclosure No 2, 1996 Rules of Residence of Foreigners and Stateless Persons in Uzbekistan; Article 27, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>246</sup> Article 26, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 43, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan'; Article 32, Enclosure No 2, 1999 Regulations UP-2240 'On Residence Permit in the Republic of Uzbekistan Intended for a Foreign Citizen, Residence Permit in the Republic of Uzbekistan and a Certificate Intended for a Stateless Person'; Article 24, 2000 Decree No 1063 'On Rules for Documenting and Registering the Population of Kazakhstan'.

<sup>247</sup> Article 31(a), 1999 Law No 218 'On the Rules of Stay of Foreigners in Tajikistan', as amended in 2008; Article 17(2), 2000 Law No 61 'On External Migration' of Kyrgyzstan, as amended in 2008; Article 16(3), 2005 Migration Law of Turkmenistan, as amended in 2011; Article 38, Supplement No 2, 1996 Resolution of Cabinet of Ministers of Uzbekistan No 408, 'On Rules of Residence of Foreigners and Stateless Persons in Uzbekistan'; Article 28 (a), 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>248</sup> Article 17(2), 2000 Law No 61 'On External Migration' of Kyrgyzstan, as amended in 2008; Article 18(2.2), 2005 Migration Law of Turkmenistan, as amended in 2011; Article 28(a) and (b), 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>249</sup> Article 17(3), 2000 Law No 61 'On External Migration' of Kyrgyzstan, as amended in 2008; Article 16(7), 2005 Migration Law of Turkmenistan, as amended in 2008; Article 28(d), 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>250</sup> Article 16(10), 2005 Migration Law of Turkmenistan, as amended in 2011; Article 17(6), 2000 Law No 61 'On External Migration' of Kyrgyzstan, as amended in 2008.

<sup>251</sup> Article 74, 2006 Order No 338 'On Confirmation of the Instruction on the Ministry of Internal Affairs' Application of Rules for Documenting and Registering the Population in Kazakhstan'; Article 28, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 14, Enclosure No 2, 1999 Regulations UP-2240 'On Residence Permit in the Republic of Uzbekistan Intended for a Foreign Citizen, Residence Permit in the Republic of Uzbekistan and a Certificate Intended for a Stateless Person'; Articles 51-56, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan'; Articles 16 and 18, 2005 Migration Law of Turkmenistan, as amended in 2011.

<sup>252</sup> Article 41, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Articles 36 and 37, 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also

decision to expel is taken administratively. Although Uzbekistan foresees a right of appeal to superior officials, no appeal is available in Turkmenistan.<sup>253</sup> Section 4.7 of this report outlines the procedures for expelling stateless persons in the region.

None of the States makes specific provision for family reunification.

### 3.3 Individual Documentation

A Permanent Residence Permit is the proof of identity for a stateless adult in Tajikistan, Kyrgyzstan, Uzbekistan and Turkmenistan, and defines her or his legal status on State territory.<sup>254</sup> Stateless adults in all four States must acquire a Stateless Person's Certificate or Card as proof of their identity if they travel beyond State borders. In Turkmenistan, this, together with a permanent residence permit, entitles stateless persons to multiple re-entry without a visa.<sup>255</sup> Kazakhstan issues a Stateless Person's Card that serves as legal ID both within and outside State borders for stateless adults who are permanently resident in Kazakhstan and already on State territory for 10 years.<sup>256</sup>

A birth certificate is proof of legal identity for stateless children in all five States. Under the age of 16 years, those in Uzbekistan, Tajikistan and Kazakhstan who are part of a family, are recorded in the identity documents of their parents. Kazakhstan may also issue a Stateless Person's Card to a stateless child who travels abroad without parents, sponsors or guardians. In Tajikistan stateless children are noted in the Permanent Residence Permits of both parents and in the Stateless Person's Certificate of one parent. Stateless children in Kyrgyzstan and Turkmenistan are registered in their parents' identity documents until the age of 18, when they must acquire their own ID.<sup>257</sup>

Section 3.3 of this report describes how stateless persons can acquire permanent residence permission in countries of the region. It identifies the procedural difficulties facing someone who is stateless, but cannot prove it with a statelessness certificate from the State of their previous citizenship or residence. Notably, those who hold expired USSR passports throughout the region are in this position, but persons with expired documents from other States are also affected. Stateless persons in Kazakhstan, Turkmenistan and Tajikistan confirmed this in interviews with UNHCR as did those surveyed in Kyrgyzstan by UNHCR's NGO partners.<sup>258</sup> Similar information is not available on stateless persons in Uzbekistan.

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their Exit from the Republic of Kazakhstan'; Article 599 of the 1998 Kyrgyzstan Code of Administrative Responsibility, No 140, as amended in 2009.

<sup>253</sup> Articles 17 and 18, 2005 Migration Law of Turkmenistan, as amended in 2011; Article 45, Supplement No 2, 1996 Resolution of Cabinet of Ministers of Uzbekistan No 408, 'On Rules of Residence of Foreigners and Stateless Persons in Uzbekistan', provides for a right of appeal to State authorities but not to a court.

<sup>254</sup> Article 2, Annex 2, 1999 Regulations UP-2240 'On the Residence Permit in Uzbekistan for Foreigners and on the Residence Permit and Certificate for Stateless Persons'; Article 14, 2005 Migration Law of Turkmenistan, as amended in 2011; Article 26, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 15, 2000 Law No 61 'On External Migration' of Kyrgyzstan.

<sup>255</sup> Article 14.8, 2005 Migration Law of Turkmenistan, as amended in 2011; Article 26, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 2, Annex 2, 1999 Regulations UP-2240 'On the Residence Permit in Uzbekistan for Foreigners and on the Residence Permit and Certificate for Stateless Persons'; Article 24, 2008 Regulation No 626 'On the Procedure for Issuing Residence Permits in Kyrgyzstan'.

<sup>256</sup> Article 3, 2005 Interior Ministry Rules No 338 'On Documenting and Registering the Population in Kazakhstan'.

<sup>257</sup> Article 3, Annex 2, 1999 Regulations UP-2240 'On the Residence Permit in Uzbekistan for Foreigners and on the Residence Permit and Certificate for Stateless Persons'; Article 26, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Article 3, 2005 Interior Ministry Rules No 338 'On Documenting and Registering the Population in Kazakhstan'; Paragraph 242, 2008 Residence Permit Regulation of Kyrgyzstan; Article 14.4, 2005 Migration Law of Turkmenistan, as amended in 2011.

<sup>258</sup> Published in *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009, page 23.*

### 3.4 Civil documentation

The arrangements that each State makes for registering the births of children to stateless parents are described in Section 2.6.

In all five States, persons officially registered as stateless, and other foreigners, have the same rights to marry and the same responsibilities in marriage as citizens. They are also entitled to divorce on the same terms as citizens.<sup>259</sup> In all five States, stateless persons and foreigners intending to marry a national on State territory must produce valid identification.<sup>260</sup> For stateless persons, this can mean a valid residence permit.<sup>261</sup>

Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan require that any additional documents issued abroad be produced in notarised translation. Kyrgyzstan and Tajikistan also require that the document be legalised by a consulate, or Foreign Ministry department.<sup>262</sup>

Marriage on the territory of each of the five States becomes legally valid when it is registered at a state registry office.<sup>263</sup> Marriage to a national resident abroad takes place in the State consulate, or other State representative office, which transmits the record for registration in a national ZAGS.<sup>264</sup>

In Turkmenistan, the prescribed form of marriage between a citizen and a stateless person, or other foreigner, is a 'Marriage Contract' in which partners agree on their property rights and obligations in the event of a divorce.<sup>265</sup> It comes into force as soon as it is signed by the partners and registered in a ZAGS. Kyrgyzstan and Tajikistan also offer the option of a marriage contract – a *brachnyi dogovor* – to anyone who is intending to marry, but only in addition to a civil marriage registration in a ZAGS.<sup>266</sup>

Turkmenistan sets an age limit of 18 for nationals who wish to marry a non-national – two years higher than the otherwise legal age for marriage.<sup>267</sup> At a session in December 2004, the UN Committee for the Elimination of Racial Discrimination expressed concern about this difference.<sup>268</sup> The other four States set no higher age requirements for spouses in their marriages to non-nationals.

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<sup>259</sup> Article 17, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 16, 1993 Law No 1296–XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Article 17, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011; Article 14, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 96, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts' of Uzbekistan.

<sup>260</sup> Article 6(4), 1999 Government Decree No 620, 'On the Procedure for Registering Civil Status Acts' in Kazakhstan; Article 5(1), 2008 Law No 483 'On the Registration of Civil Acts' in Tajikistan; Article 96, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts' in Uzbekistan; Para. 6, 2004 Rules No 141 'On the Registration of Civil Acts' in Turkmenistan; Article 3, 2001 Rules No 91 'On the Registration of Civil Status Acts' in Kyrgyzstan.

<sup>261</sup> Article 35(1), 2008 Law No 483 'On the Registration of Civil Acts' in Tajikistan; Article 93(4), 1999 Government Decree No 620, 'On the Procedure for Registering Civil Status Acts' in Kazakhstan; Article 96, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts' in Uzbekistan; Article 15, 2002 Marriage and Family Code of Turkmenistan; Article 3, 2001 Rules No 91 'On the Registration of Civil Status Acts' in Kyrgyzstan.

<sup>262</sup> Article 5(1), 2008 Law No 483 'On the Registration of Civil Acts' in Tajikistan; Article 96, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts' in Uzbekistan; Article 7.1, 2005 Law No 60 'On Civil Status Acts' in Kyrgyzstan; Article 94, 1999 Government Decree No 620, 'On the Procedure for Registering Civil Status Acts' in Kazakhstan.

<sup>263</sup> Articles 4.2 and 34.2, 2008 Law No 483 'On the Registration of Civil Acts' in Tajikistan; Article 200(3), 1999 Government Decree No 620, 'On the Procedure for Registering Civil Status Acts' in Kazakhstan; Article 96, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts' in Uzbekistan; Article 14, 2002 Marriage and Family Code of Turkmenistan; Article 11, 2003 Family Code of Kyrgyzstan, No 201.

<sup>264</sup> Article 168, 2008 Law No 483 'On the Registration of Civil Acts' in Tajikistan; Article 5, 1999 Government Decree No 620 'On the Procedure for Registering Civil Status Acts' in Kazakhstan; Article 13, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts' in Uzbekistan; Article 215, 2002 Marriage and Family Code of Turkmenistan; Article 164, 2003 Family Code of Kyrgyzstan, No 210.

<sup>265</sup> Article 14, 2002 Marriage and Family Code of Turkmenistan.

<sup>266</sup> Articles 40 and 41, 1998 Family Code of Tajikistan, No 682; Article 43, 2005 Family Code of Kyrgyzstan, No 80, as amended in June 2005. In 2006 Turkmenistan abolished the requirement that a Marriage Contract between a Turkmen national and a stateless person or other foreigner include a 50,000 US Dollar down-payment for insurance.

<sup>267</sup> Article 16, 2002 Marriage and Family Code of Turkmenistan.

<sup>268</sup> UN Committee for the Elimination of Racial Discrimination, CERD/C/65/TKM/CO/8 2004.



Tajikistan charges stamp duty for registering a marriage between a Tajik national and non-national; an amount that is twice the average Tajik minimum wage. Registration of a marriage between nationals in Tajikistan, on the other hand, is free of charge.<sup>269</sup> The other four States charge small quantities of stamp duty for registering marriages, regardless of the nationality status of the spouses.<sup>270</sup>

There is a right of judicial appeal for anyone whose application to marry is refused by a ZAGS in Tajikistan, Kazakhstan, Uzbekistan and Kyrgyzstan, and this right extends to stateless persons. This seems to give some leeway to persons who are unable to assemble a complete set of documentation because in the past they may have lived elsewhere, across State borders. A “groundless” refusal, made because an applicant missed a deadline for supplying a document, or presented documentation incorrectly on account of the “natural movement of populations”, is specifically prohibited in Kazakhstan and Kyrgyzstan.<sup>271</sup>

Right of appeal on these grounds, however, does not apply to the marriage application of a stateless person without any documents, or someone with undetermined nationality. In all five states, they are likely to have an application to register a marriage, rejected.

The UNHCR survey carried out in southern Kyrgyzstan, for instance, shows that 12% of the marriage applications made by interviewees had been rejected for lack of a valid passport or valid identification as a stateless person. This meant that 478 of the 4,042 married individuals surveyed had not been able to register their marriage.<sup>272</sup> In Kazakhstan, Tajikistan and Turkmenistan, UNHCR interviewed other stateless persons who had been unable officially to marry. They included holders of 1974 USSR passports in each country, now with adult children.

Stateless persons who marry each other, or a foreigner, on State territory in Tajikistan, Kazakhstan, Turkmenistan and Kyrgyzstan do so according to the legislation of the country of their permanent residence.<sup>273</sup> All five States recognise the validity of a marriage concluded outside the country by stateless persons with each other or with other foreigners,<sup>274</sup> although foreign laws on family and marriage will not be applied in Turkmenistan if they contradict national law.<sup>275</sup>

A stateless person on State territory who is married to a foreigner, or a national, is entitled to apply for a divorce, in accordance with the national legislation of all five States. Applications are registered in a ZAGS office, on the basis of valid identity documents and a marriage certificate. Stateless persons married to nationals resident outside State territory can also file for divorce, through the relevant consulate or other State representative office, which transmits the information to the national ZAGS office for registration.<sup>276</sup> Some States in the region levy a high stamp duty on registering divorce,

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<sup>269</sup> Article 1 and Article 4, para. 7(1), 2006 Law on Stamp Duty of Tajikistan, No 217.

<sup>270</sup> Article 6(a), 1996 Law on Stamp Duty of Kazakhstan, No 631; Article 94, Supplement No 1, 1999 Law No 171 ‘On the Registration of Civil Acts’ in Uzbekistan; Article 5, 2001 Rules No 91 ‘On the Registration of Civil Status Acts’ in Kyrgyzstan.

<sup>271</sup> Article 13(3), 2008 Law No 483 ‘On the Registration of Civil Acts’ in Tajikistan; Article 154, Supplement No 1, 1999 Law No 171 ‘On the Registration of Civil Acts’ in Uzbekistan; Article 170, 1998 Marriage and Family Law of Kazakhstan, No 241; Article 7, 2001 Rules No 91 ‘On the Registration of Civil Status Acts’ in Kyrgyzstan.

<sup>272</sup> *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009, page 23.*

<sup>273</sup> Article 167(4), 1998 Family Code of Tajikistan, No 682; Article 200(3), 1998 Marriage and Family Law of Kazakhstan, No 241; Article 214, 2002 Marriage and Family Code of Turkmenistan; Article 163(4), 2003 Family Code of Kyrgyzstan, No 201.

<sup>274</sup> Article 169(2), 1998 Tajik Family Code, No 682; Article 202(1), 1998 Marriage and Family Law of Kazakhstan, No 241; Article 165, 2003 Family Code of Kyrgyzstan; Article 235, 1998 Family Code of Uzbekistan, No 607-1; Article 215, 2002 Marriage and family Code of Turkmenistan

<sup>275</sup> Article 222, 2002 Marriage and Family Code of Turkmenistan.

<sup>276</sup> Article 216, 2002 Marriage and Family Code of Turkmenistan; Article 37.3, 2005 Law No 60 ‘On Civil Status Acts’ of Kyrgyzstan; Article 42, 2008 Law No 483 ‘On the Registration of Civil Acts’ in Tajikistan; Article 169, 1998 Marriage and Family Law of Kazakhstan, No 241; Article 13, Supplement No 1, 1999 Law No 171 ‘On the Registration of Civil Acts’ in Uzbekistan.

presumably to deter people from separating fecklessly. In Kazakhstan, for example, the cost of registering a divorce is more than six times the cost of registering marriage.<sup>277</sup>

Tajik law contains a provision to protect the wives in registered marriages from hardship through abandonment. A husband cannot file for divorce without his wife's agreement when she is pregnant or if she has given birth within the preceding 18 months.<sup>278</sup> No similar protection appears to exist in the legislation of the other four States.

Because of migration flows throughout the region, many stateless women prevented from marrying officially through lack of documentation are known to be living in unregistered marriages in Turkmenistan, Kyrgyzstan and Kazakhstan. UNHCR believes there are others in Tajikistan and Uzbekistan. None of the five States gives "informal" or common law marriages legal validity. The social and economic position of women in such marriages is precarious and outlined in Chapters 4 and 5 of this report. Partners who are not married officially, also have no recourse to the rights and compensations of divorce. Stateless women in unregistered matrimonies concluded by traditional religious observance – so called *nikoh* marriages – are made particularly vulnerable as a result. Their matrimonial contract can be broken unilaterally and without compensation, by their common-law husband, if he utters the word *taloh* three times.<sup>279</sup>

The death of a stateless person is registered on the same basis as the death of a citizen and in four of the States the process is exempt from stamp duty.<sup>280</sup> The regulations on stamp duty in Turkmenistan are not readily available and so could not be confirmed. In all five countries, 'stateless' is entered under the nationality column on the death certificate.

The ZAGS office registering a death in Kyrgyzstan issues the person reporting the death with a death certificate and a promissory note towards funeral expenses. These appear to be issued equally to the survivors of a stateless person, and of a citizen.<sup>281</sup> Kazakhstan, Uzbekistan and Kyrgyzstan all confiscate the residence permit of stateless persons who have died, and notify the relevant Department of Internal Affairs.<sup>282</sup>

In order to register a death, ZAGS offices in all five States require a copy of the birth certificate, or equivalent, of the person who has died. Many stateless people in the region have not been registered at birth.<sup>283</sup> It seems very possible, therefore, that the deaths of some stateless children and adults may also go unregistered.<sup>284</sup>

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<sup>277</sup> Article 6, 1996 Law No 631 'On Stamp Duty of Kazakhstan'. Stamp duty in Kazakhstan is proportional. The cost of registering a divorce by mutual consent of a couple with no young children is 200%, while the cost of registering marriage is 30%.

<sup>278</sup> Article 17, 1998 Family Code of Tajikistan, No 682.

<sup>279</sup> See, for instance, *Amnesty International*, Violence is Not Just a Family Affair: Women Face Abuse in Tajikistan, *London*, 24 November 2009, available at <http://www.amnesty.org/en/library/info/EUR60/001/2009/en>. Also, a case reported in *Institute of War and Peace Reporting*, Divorce Leaves Tajik Women Out In the Cold, 5 March 2010, available at <http://www.iwpr.net/fa/node/38831>.

<sup>280</sup> Article 31(3), 2008 Law No 483 'On the Registration of Civil Acts' in Tajikistan; Article 166(2), 1998 Marriage and Family Law of Kazakhstan, No 241; Article 6, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts of Uzbekistan'; Article 5, 2001 Rules No 91 'On the Registration of Civil Status Acts in Kyrgyzstan'.

<sup>281</sup> Articles 16, 2001 Rules No 91 'On the Registration of Civil Status Acts in Kyrgyzstan'.

<sup>282</sup> Article 202, 1999 Government Decree No 620, 'On the Procedure for Registering Civil Status Acts' in Kazakhstan; Article 132, Supplement No 1, 1999 Law No 171 'On the Registration of Civil Acts of Uzbekistan'; Article 17, 2001 Rules No 91 'On the Registration of Civil Status Acts in Kyrgyzstan'.

<sup>283</sup> Please see Section 2.5. Low birth registration in Tajikistan and Turkmenistan was a cause for concern to UN agencies during the last decade.

<sup>284</sup> UNHCR interview with a UNFPA official in Dushanbe, 2009.

### 3.5 Travel documents and external freedom of movement

In the USSR, persons recognized *de jure* as stateless were entitled to receive a Stateless Person's Certificate from the Ministry of Internal Affairs that enabled them to leave and re-enter State territory.<sup>285</sup> Its cost depended on the applicant's destination.

All five Central Asian states recognise that persons officially registered as stateless have the right to leave and re-enter State territory.<sup>286</sup> They also have the right to move freely on State territory in areas that are not closed to foreigners on security grounds.<sup>287</sup> Children of stateless persons are listed in their parents' residence permits and have the same legal rights to travel.<sup>288</sup> Stateless persons without documentation, and persons with undetermined nationality do not have these rights.

To travel abroad from Tajikistan, Uzbekistan and Kazakhstan, a stateless person needs valid identification – in the form of a Stateless Person's Certificate or Card – and an exit visa.<sup>289</sup> In all three States, it is the Ministry of Internal Affairs that issues Stateless Person's Certificates or Cards. It also issues exit visas in Uzbekistan, and Kazakhstan.<sup>290</sup> The Ministry of Foreign Affairs issues them in Tajikistan.<sup>291</sup> In Turkmenistan and Kyrgyzstan, stateless persons with permanent residence permission and a Stateless Person's Card are entitled to leave and re-enter the country without an exit visa.<sup>292</sup>

In Kazakhstan, Tajikistan and Uzbekistan, stateless persons and other foreigners permanently resident on State territory, can leave on an exit visa or a re-entry visa.<sup>293</sup> Uzbekistan issues a multiple re-entry visa for a maximum of two years. For a fee,<sup>294</sup> stateless persons can extend their visa or, where

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<sup>285</sup> *Feldbrugge, van den Berg and Simons*, Encyclopedia of Soviet Law, *Dordrecht, Boston, 1973*. Stamp duty was significantly higher for travel to capitalist countries, outside the COMECON zone.

<sup>286</sup> Article 7, 2005 Migration Law of Turkmenistan, as amended in 2011; Article 16, 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan', as amended by Order No 178, 1999; Article 18, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Article 25, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 23, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>287</sup> Article 7, 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan', as amended by Order No 178, 1999; Article 19, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 19, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011; Articles 16 and 26, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 18, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan.

<sup>288</sup> They are included on their parents' documents until the age of 18 in Turkmenistan, Kyrgyzstan and Uzbekistan, and until the age of 16 in Tajikistan and Kazakhstan.

<sup>289</sup> Article 8, 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; Articles 15 and 16, 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan', as amended by Order No 178, 1999; Article 23, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan. A stateless person's card also serves as internal ID in Kazakhstan.

<sup>290</sup> Article 16, 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan', as amended by Order No 178, 1999; Article 6, 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan'; Article 1.6(c), 2009 Rules No 122 'On the Issue of Visas of the Tajik Republic to Foreigners and Stateless Persons'.

<sup>291</sup> Article 16, 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan', as amended by Order No 178, 1999; Article 6, 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan'; Article 1.6.c, 2009 Rules No 122 'On the Issue of Visas of the Tajik Republic to Foreigners and Stateless Persons'.

<sup>292</sup> Article 1, 2002 Regulation No 5833 'On the Procedure for Granting Permanent Residence Permits in Turkmenistan'; Article 15, 2000 Law No 61 'On External Migration' of Kyrgyzstan.

<sup>293</sup> Article 2(a), 2009 Rules No 122 'On Visa Issue for Foreigners and Stateless Persons' in Tajikistan; Article 14, 2003 Regulation No 6135 'On the Entry and Exit of Foreigners' in Turkmenistan; Article 16, 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan', as amended by Order No 178, 1999; Article 6, 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan'.

<sup>294</sup> Stateless persons from Uzbekistan can extend their visa for seven days for 40 US Dollars and up to one year for 160 US Dollars, Article 8, 1996 Order No 486 'On Entry and Exit of Foreigners in Uzbekistan', as amended by Order No 178 of April 1999. Extension of a Tajik visa costs the average minimum wage, Article 7, 2009 Rules No 122 'On Visa Issue for Foreigners and Stateless Persons' in Tajikistan. In Kazakhstan visa extension is the joint decision of the Foreign and Interior Ministries, with the Committee for National Security, according to Article 10, 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan'. Extension of a Kyrgyz exit

necessary, acquire a re-entry one at the relevant national consulate while they are traveling abroad.<sup>295</sup> Uzbekistan allows stateless persons and other foreigners to acquire an entry visa on their arrival at Tashkent airport.<sup>296</sup>

Each State charges stateless persons a fee for issuing a visa. In some it is a flat-rate and in others a sliding scale. Each is significant and might deter a stateless person from exercising their right to travel. The cost of an exit visa from Tajikistan, for example, equals the average minimum wage and doubles in cases of urgency. The duty is deducted while the application is being processed, and is non-returnable if the application fails. No reasons need be given for rejection of an application. A multiple re-entry visa from Tajikistan costs twice as much as a single-entry visa.<sup>297</sup>

In Uzbekistan, stamp duty is the equivalent of 20 US dollars for processing a one-month exit visa and 200 US dollars for a one-year exit visa.<sup>298</sup> Stamp duty in Kazakhstan is expressed as a percentage of a monthly public tax index. The cost of an exit visa from Kazakhstan is 50% of this index, and the cost of renewing a visa, is 100%. A multiple re-entry visa costs 200% of the index.<sup>299</sup> The Certificates, or Cards, that are issued to identify Stateless Persons are sufficiently robust to carry visas, according to government representatives of Kazakhstan, Tajikistan and Turkmenistan that attended the UNHCR conference on statelessness in Ashgabat in December 2009.

In some Central Asian States, the cards have security features, intended to prevent forgery. In Tajikistan, for instance, these include computerised print, customised paper and machine-readable text.<sup>300</sup> In Kazakhstan, Stateless Persons' Cards follow the same format as the national passport. They include pages for electronic data and visas; parallel print in Kazakh and English; and are in a format that complies with standards for international travel.<sup>301</sup> Turkmenistan and Uzbekistan<sup>302</sup> are also in the process of developing ICAO compliant biometric Travel Documents for stateless persons.

Generally, stateless persons told UNHCR that other States did not recognise their statelessness documentation as valid, or a basis for issuing visas. Apart from the cost of their visas this may be the single largest deterrent to travel for persons officially recognised as stateless.

At a meeting with stateless persons in Ashgabat, UNHCR learned of one stateless woman who had been able to travel visa-free to the foreign university where she was enrolled on the basis of a Stateless Person's Card issued by the State Migration Service of Turkmenistan.

To UNHCR's knowledge, most stateless persons in the region are undocumented and therefore unable to exercise their right to travel. It seems in practice, that the five Central Asian states generally issue a stateless person's certificate and, when required, an exit visa to someone who is leaving State territory

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visa for 3 months costs 10 times the tax calculation index. Extension for one year costs 25 times the index, according to the 1994 Law No 521 'On Stamp Duty Rates' of Kyrgyzstan.

<sup>295</sup> Article 11, 1996 Order No 486 'On the Entry and Exit of Foreigners in Uzbekistan'; Article 7.1, 2009 Rules No 122 'On Visa issue for Foreigners and Stateless Persons' in Tajikistan; Article 10, 2003 Regulation No 6135 'On the Entry and Exit of Foreigners' in Turkmenistan; Article 6, 2000 Rules No 136 'On the Entry and Stay of Foreigners in the Republic of Kazakhstan, and also their Exit from the Republic of Kazakhstan'.

<sup>296</sup> Article 12, 1996 Order No 486 'On the Entry and Exit of Foreigners in Uzbekistan'.

<sup>297</sup> Articles 4(2) and 4(5), 2006 Law No 217 'On State Stamp Duty' of Tajikistan; Articles 6.3, 6.1 and 6.6 of 2009 Rules No 122 'On Visa Issue for Foreigners and Stateless Persons in Tajikistan'.

<sup>298</sup> 2008 Cabinet of Ministers Order No 13 'On Amending Cabinet of Ministers' Instruction No 423, August 1993 'On Rates of Stamp Duty' in Uzbekistan, [www.mvd.uz/ru/content/296](http://www.mvd.uz/ru/content/296).

<sup>299</sup> The 'Raschetnyi Pokazatel'. Article 538(1) and (2), Section XIX, 2008 Tax Code of Kazakhstan No 99-IV 'On Taxes and Compulsory Payments to the State Budget'.

<sup>300</sup> Article 10.10, 2009 Rules No 122 'On Visa Issue for Foreigners and Stateless Persons' in Tajikistan.

<sup>301</sup> See Paragraphs 1 and 10 in the Sample Stateless Person's Card, as approved by the Decree of the Government of the Republic of Kazakhstan No 1235, dated 24 December 2008.

<sup>302</sup> 'Uzbekistan starts application of biometric passport system', 6 January 2011, *available at* <http://en.trend.az/news/politics/1807184.html>.

for permanent residence abroad.<sup>303</sup> For permanent residence abroad, a stateless person in Turkmenistan also requires a visa, and acquires it from the Commission Supervising the Issue of Visas.<sup>304</sup>

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<sup>303</sup> Article 9, 2003 Regulation No 6135 'On the Entry and Exit of Foreigners' in Turkmenistan; Article 14(5), 1999 Law No 218 'On the Rules of Stay for Foreigners and Stateless Persons' in Tajikistan, as amended in 2008; first hand testimony from stateless persons in Kyrgyzstan, Tajikistan and Kazakhstan.

<sup>304</sup> Articles 9 and 11, 2003 Regulation No 6135 'On the Entry, Exit of Foreigners' in Turkmenistan.

## 4 Security from Violence and Exploitation

Stateless persons with permanent residence permission in the territory of Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan generally enjoy the same rights and obligations as citizens. They are equal before the law, regardless of their origin and other attributes, and they can defend themselves and their property through the courts.<sup>305</sup> Stateless persons without permanent residence permission and formal recognition as ‘stateless’, do not have these entitlements. They make up most of the stateless population known to UNHCR in the Central Asia region.

In each of the four States, people not officially recognised as ‘stateless persons’ generally find themselves living and working on the margins of society. Here, they and their children may be prone to exploitation, but their status in law is so precarious that many fear that contact with law enforcement agencies will lead to administrative fines or expulsion. Although they are among the most vulnerable social groups in each of the States, unrecognised ‘stateless persons’ are among the least able to find legal protection.

### 4.1 Law enforcement

UNHCR has limited data on law enforcement and stateless persons in the Central Asia region – in some cases caused by limited access to stateless populations. Until the arrival of large numbers of refugees in Uzbekistan from Kyrgyzstan in June 2010, UNHCR had not been present in Uzbekistan since June 2005. In Turkmenistan, access to interview stateless persons living in northern Turkmenistan, where most stateless persons in the country are believed to be, has been difficult since UNHCR has no regular presence in the provinces.

In northern Tajikistan, law enforcement officers working with stateless persons enabled UNHCR to speak with a diverse group of people with documentation problems in Khujand. In Kazakhstan, migration police officers and local branches of UNHCR’s implementing partner facilitated focus group discussions with stateless persons in the furthest parts of the South-Kazakhstan region. All these interviews identified areas where law enforcement officers have helped stateless persons with the exchange of passports, or with compiling documents for statelessness applications. UNHCR recognises, however, that the presence of uniformed officers in the meetings may have inhibited some stateless participants from speaking freely.

The most detailed information available on law enforcement in the region comes from surveys conducted by UNHCR’s NGO partners in Kyrgyzstan. These found that male immigrants from Uzbekistan with expired national passports, are liable to arbitrary arrest and detention by local law enforcement officers. Eight percent of respondents in the survey carried out in southern Kyrgyzstan alleged that their rights had been violated by State agents and 88% of these linked the incident to the fact that they were stateless.<sup>306</sup>

Stateless persons in Kyrgyzstan have consequently tried to avoid law enforcement authorities. In their view, it is not the fact that they are stateless that puts them at risk of discrimination and abuse, but their lack of any legal status at all. Not having proper documents creates problems with law enforcement officers and makes them reluctant to ask for help.<sup>307</sup>

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<sup>305</sup> Articles 3 and 18, 1995 Law No 2337 ‘On the Legal Status of Foreigners’ in Kazakhstan; Articles 3 and 20, 1993 Law No 1296-XII ‘On the Legal Status of Aliens in Kyrgyzstan’; Article 21, 1997 Law No 500 ‘On the Legal Status of Foreigners’ in Tajikistan, as amended in 2009; Articles 3 and 21, 1993 Law ‘On the Legal Status of Foreigners’ in Turkmenistan, as amended in 2011. There is no equivalent law in Uzbekistan.

<sup>306</sup> *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009, p. 26.*

<sup>307</sup> In August 2000, the UN Committee on the Rights of the Child recommended Kyrgyzstan to ensure in future that fines for non-possession of documentation be made only to a court, or to officials not involved in the citation, and that receipts be mandatory, Concluding Comments and Observations of the Committee on the Rights of the Child, *CRC/C/15/Add.127, 9 August 2000, para. 54.*

This reluctance was shared by stateless persons in small focus groups that UNHCR was able to conduct without the participation of law enforcement officers in Turkmenistan, Tajikistan and Kazakhstan. While no one with a former USSR passport in Ashgabat reported arbitrary detention, they worried that their lack of valid identification made them liable to abuse and discrimination. Individuals the Tajik authorities have recognised as ‘stateless’ in Dushanbe (some of whom may not be stateless under the international definition of a stateless person), mostly said they were not arbitrarily detained, but were subject to stop-checks by law enforcement officers trying to extort money. Afghans among them claimed to have experienced verbal abuse and discrimination quite widely from Tajik society. In Kazakhstan, stateless persons told UNHCR they were stopped by law enforcement agents in the street ‘like everyone’. One individual who came from outside the CIS claimed he was continually detained for short periods.

The threat of expulsion is real for stateless persons, particularly if they express themselves assertively. This was the separate testimony of two stateless women in Turkmenistan after they had asked for an answer to their applications for statelessness status, pending for more than 15 years. In southern Tajikistan, threats of expulsion were also reported, and piecemeal expulsion alleged. Interviewees in Dushanbe claimed one stateless person had been expelled the previous week. Section 4.7 of this report deals with expulsion of stateless persons in more detail.

There are no special Government training programmes for law enforcement authorities dealing with stateless persons in the Central Asian region. In some countries, UNHCR has included a statelessness component in its training and capacity-building activity.

#### 4.2 Human trafficking

Human trafficking in Central Asia has increased since 2000 and authorities in all five States have taken steps to reduce it. A 2005 study by the International Organisation of Migration (IOM),<sup>308</sup> suggests that stateless persons run a greater risk of being trafficked than citizens and other residents. Firstly, they have limited opportunities to earn a living and so are more motivated to take risks. Second, many do not have valid documents and may already have been involved in irregular migration.

IOM’s first studies in Central Asia at the beginning of this century found that most victims were girls and women, trafficked for sexual exploitation.<sup>309</sup> By 2004, it found that just as many victims were being trafficked for non-sexual exploitation and some were men. A study by the UN Office on Drugs and Crime (UNODC) in 2008, found that victims now include women, and men, girls and boys.<sup>310</sup>

According to UNODC, in Uzbekistan and Kazakhstan most victims are now men, trafficked for non-sexual purposes. In the other three Central Asian States, women comprise the majority of victims as before.<sup>311</sup> Most identified victims were trafficked *within* State borders,<sup>312</sup> although in Kyrgyzstan,

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<sup>308</sup> *International Organization of Migration*, *Fertile Fields: Trafficking in Persons in Central Asia, April 2005*, available at <http://www.belgium.iom.int/pan-europeandialogue/documents/TRAFFICKING%20IN%20PERSONS%20IN%20CENTRAL%20ASIA.pdf>. This is also borne out by independent research from within the region, for example *E.D.Badikova*, *Identifying and prosecuting human trafficking, and giving assistance to victims, Kazakhstan, 2007* (In Russian).

<sup>309</sup> In May 2007, the UN Committee on the Rights of the Child noted in its Concluding Observations on Kyrgyzstan that the Criminal Code contained rules on extraterritorial jurisdiction, but they were limited to crimes committed by Kyrgyz citizens and stateless persons. They did not cover cases where the victim of child trafficking, prostitution and pornography was a citizen of Kyrgyzstan, see *CRC/C/OPSC/KGZ/CO/1*.

<sup>310</sup> *United Nations Office on Drugs and Crime*, *Global Report on Trafficking in Persons, 2009*, available at [http://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/Global_Report_on_TIP.pdf).

<sup>311</sup> In Uzbekistan in 2005, 556 men were found to have been trafficked and 203 women. Equivalent detail is not available from Kazakhstan.

<sup>312</sup> In Kyrgyzstan, 88% of identified victims were Kyrgyz; in Kazakhstan, 95% were Kazakh; and in Tajikistan and Turkmenistan, all were ethnic Tajiks or Turkmens respectively.

Tajikistan and Kazakhstan, victims were known also to have been trafficked across State borders, particularly to the Middle East.<sup>313</sup>

All five Central Asian States have ratified or acceded to the 2003 UN Convention Against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>314</sup> Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan also became simultaneously parties to the Protocol against Smuggling of Migrants by Land, Sea and Air, while Uzbekistan has only signed this Protocol.

Each of the five States has adopted laws against human trafficking.<sup>315</sup> Uzbekistan, Tajikistan, Kyrgyzstan and Kazakhstan have also drawn up national action plans to combat trafficking<sup>316</sup> and set up specialist law enforcement units.<sup>317</sup> Turkmenistan has no national plan against human trafficking. In practice, it entrusts the detection of traffickers and their victims to the State Migration Service.

If they are prepared to act as witnesses, victims with irregular documentation, or no documents at all, are protected from expulsion and have the right of temporary stay in Uzbekistan, Kyrgyzstan, Kazakhstan and Turkmenistan, regardless of the manner in which they entered the country.<sup>318</sup> In Tajikistan, stateless victims of trafficking without valid personal identification are not eligible for temporary residence.<sup>319</sup>

#### 4.3 *Sexual and gender-based violence*

Society in each of the five States is patrilocal. New wives move into their husband's households and in many cases lose contact with their own family over time. The Surveys in north and south Kyrgyzstan did not report any sexual and gender-based violence (SGBV) among the stateless population, but interviews in focus groups pointed to the clear vulnerability of undocumented women in mixed marriage families.

Those who attended the participatory assessment organized by UNHCR in South Kyrgyzstan referred to their complete financial and social dependence on their husbands, or parents-in-law. Interviews with women married to Kyrgyz nationals in the southern border district underlined the potential risk for SGBV. The women were living undocumented, or with expired passports, and noted that their lack of a nationality or proper documentation created administrative problems that resulted in financial implications for their families. They were unable to claim State allowances for their children and had no proper employment opportunities. Their relatives often considered them a 'burden' and unable to contribute to their prosperity, which made them vulnerable in their families.

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<sup>313</sup> In 2005, in Kyrgyzstan 19 victims of trafficking were returned from the Middle East, 24 from eastern Europe and Central Asia and 55 from southern Europe; in Kazakhstan, 14 were repatriated from the Middle East and one from southern Europe; and an un-specified number of women victims of trafficking were repatriated from the Middle East to Tajikistan.

<sup>314</sup> 2000 UN Convention on Transnational Organized Crime, ratified in 2002 by Tajikistan; 2003 by Kyrgyzstan and Uzbekistan; acceded to in 2005 by Turkmenistan and ratified in 2008 by Kazakhstan. Kyrgyzstan ratified the Protocol in 2003 and Uzbekistan in 2008. The other four States acceded to it when they ratified the Convention.

<sup>315</sup> Kyrgyzstan adopted a trafficking offence in 2003 and in 2005 broadened it to include all forms of human trafficking; Tajikistan adopted a trafficking offence in 2004 which was amended in 2008; Kazakhstan established an offence of trafficking in 2006 and amended five related Codes; Uzbekistan introduced a specific offence of trafficking in persons in 2008; Turkmenistan adopted a Law on Combating Trafficking in Persons in 2007.

<sup>316</sup> National Action Plan of Tajikistan 2006-2010; a State Programme to Combat Trafficking in Kyrgyzstan 2008-2010; since 2006 A National Action Plan of Kazakhstan; since 2008 an Action Plan of Uzbekistan.

<sup>317</sup> The Tajik Ministry of Internal Affairs has a specialist unit within its Organised Crime Division; the Uzbek Ministry of Internal Affairs set up a specialized unit in 2004 to combat recruitment of persons for sexual or other exploitation. It has branches at regional and local level. Since 2005 Kyrgyzstan has a specialised section against smuggling and trafficking of persons in the anti-kidnapping unit of the Criminal Investigation Department of the Kyrgyz Ministry of Internal Affairs; the Kazakh Ministry of Internal Affairs has a Unit Against Human Trafficking in the Chymkent Police Committee and the central Ministry of Internal Affairs.

<sup>318</sup> Articles 7 and 12, 2008 Law No ZRU-154 'To Counteract Human Trafficking' in Uzbekistan; Article 16(2), 2007 Law 'On Combating Trafficking in Persons' in Turkmenistan; Article 28(3-5), Law 'To Combat Human Trafficking' in Kyrgyzstan.

<sup>319</sup> Article 20(5), 2004 Act No 47 'On the Fight against Trafficking in Persons' in Tajikistan.



Because they have no proper documentation, these women are unable to leave their husbands if abuse occurs to them in the family. They are not able to live anywhere else, or work independently to support themselves. They also cannot go back to their own country because their national passports have expired and they are not able to renew them. Women in this position are afraid of being turned out of families and homes and therefore keep the lowest profile in the household. The problems of regularising their civil and legal status are reported to have led to a decrease in the number of wives crossing the border to live on Kyrgyz territory in mixed marriages.

UNHCR has carried out no specific assessment of SGBV risks among stateless persons elsewhere in the region.

In 2009, a UNDP survey of legislation against domestic violence noted that of the five Central Asian states, only Kazakhstan has legislation in place – legislation that UNDP classifies as very “general”. The other four States are said to be in the process of “planning, drafting or reviewing” their first laws against domestic violence. UNDP also describes these laws in Turkmenistan and Uzbekistan as very “general”.<sup>320</sup>

The 2009 UNDP survey also assesses the context in which the legislative process is taking place. It finds the situations in Tajikistan, Turkmenistan and Uzbekistan very similar: laws against domestic violence, rape and marital rape are weak or non-existent. Where they exist, they are generally not enforced. On the other hand, in Kazakhstan and Kyrgyzstan, the survey finds that laws against domestic violence and rape exist, but are rarely enforced. There are taboos or norms against reporting these crimes that affect the majority of women and often their victims do not know that these are actually reportable crimes.

None of the States has a national programme aimed at raising awareness and prevention of SGBV and there is no Government training of law enforcement and executive authorities to respond to SGBV and prevent it. UNHCR and other UN agencies include an SGBV component in their workshops and trainings for public officials and implementing partners.

#### 4.4 *Protection of children*

All five States are parties to the UN Convention on the Rights of the Child and its two Optional Protocols that forbid the use of children in armed conflict and in trafficking and sexual exploitation. In 1997 they issued a Joint Declaration on implementing the Convention across the region<sup>321</sup>, and four of the five States have since adopted national legislation that incorporates provisions of the Convention.<sup>322</sup> Tajikistan set up a National Commission on Child Rights in 2001 and is working on a national action plan with UNICEF.

As noted in Section 2 of this study, none of the States in the region have Citizenship Laws which grant nationality to all children born on its territory who would otherwise be stateless, as required by the 1961 Convention and Article 7 of the CRC.<sup>323</sup> Children born to stateless or unknown parents generally acquire citizenship in the State where they are born, but as mentioned in Section 2, some States only grant citizenship if the parents are permanent residents.

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<sup>320</sup> *United Nations Development Programme*, Beijing Platform for Action + 15 in Europe and CIS, available at [europeandcis.undp.org/gender/beijing/show/2EE63E4A-F203-1EE9-BBE2E2A835D18B0E#lwinplace](http://europeandcis.undp.org/gender/beijing/show/2EE63E4A-F203-1EE9-BBE2E2A835D18B0E#lwinplace).

<sup>321</sup> The Ashgabat Declaration, agreed to at the Inter-Parliamentary Workshop “Implementation of the Convention on the Rights of the Child in Central Asia and Kazakhstan”, organized by the United Nations Children’s Fund (UNICEF) and Turkmenistan under the sponsorship of the Inter-Parliamentary Union, February 1997.

<sup>322</sup> Kazakhstan 2000 Law No 345 ‘On the Rights of the Child’; Turkmenistan 2002 Law ‘On Guarantees of the Rights of the Child’; Kyrgyzstan 2006 Code on Children; Uzbekistan 2008 Law ‘On Guarantees of the Rights of the Child’.

<sup>323</sup> As mentioned In Section 2 above, Art.3.1(2) of the 1991 Citizenship Law of Kazakhstan provides that persons who were born in Kazakhstan and are not national of any other country, shall be Kazakh citizens. At the time of publication of this report, UNHCR was not aware whether is provision is implemented in practice to grant nationality to children born on territory who would otherwise be stateless.

Tajikistan, Kyrgyzstan, Kazakhstan and Uzbekistan have ratified two ILO Conventions, intended specifically to combat the exploitation and trafficking of children.<sup>324</sup> These are ILO Conventions No 138 ‘On the Minimum Age for Work’ and No 182 ‘On the Worst Forms of Child Labour’. This is labour that is “intolerable” and “unacceptable” (like slavery, debt-bondage, trafficking, sexual exploitation, drug-taking and armed conflict, amongst other).

In 2003, the ILO carried out a Child Labour Survey that included Central Asia.<sup>325</sup> Stateless children have not yet been the subject of a specific study, but they fit several of the categories identified in this one. The ILO found that children from marginalised groups are disproportionately involved in child labour; those from ethnic minorities in particular. In Central Asia, numbers of these may also be stateless. The ILO found too that regionally, child-trafficking is on the rise, with rural children being trafficked to urban centres or to wealthier neighbouring countries for exploitation. It identifies Kyrgyzstan and Mongolia as targets of international trafficking rings, that respectively move girls through the Russian Federation to Western Europe, and through China to Japan or Australia. As discussed above, human trafficking puts the victims at risk of statelessness as the nationality of the individuals concerned may be impossible to confirm.

#### 4.5 Detention

UNHCR does not have a comprehensive picture of the detention of stateless persons in the Central Asian region, including information about conditions of detention or the procedural guarantees stateless detainees enjoy.

Identity-checking is common in Central Asian States upon access to public buildings and services, and confirming transactions, etc. Stateless persons who hold out-of-date USSR passports, or no identity documents at all, are therefore at regular risk of exposure. In all five States, people may be detained while the police establish their identity.

In Tajikistan and Kazakhstan, stateless persons and State agencies both said that the risk of detention increases in big cities and settlements where law enforcement officers do not know the population. Stateless persons are more likely to be detained while their identity and the lawfulness of their residence in the country are established. In each State, UNHCR encountered individuals who had been repeatedly detained.

Stateless persons at UNHCR’s Participatory Assessment in Dushanbe confirmed that short-term detention after a document check was a real risk to them. The 1996 Aliens Law of Tajikistan<sup>326</sup> foresees administrative and criminal liability for persons who have invalid residency or ID, or for anyone who fails to comply with registration and residency rules, or regulations on stay, transit and travel in the territory of Tajikistan. Persons with expired documents, or with no documents, are therefore liable to detention.

Other stateless persons who took part in the UNHCR’s Participatory Assessments in South-Kazakhstan and the Almaty Region did not mention detention for irregular residency; lack of ID or other grounds connected to their statelessness. This may have been because they were from small settlements where local authorities knew them and their reasons for not having valid ID or lawful residence permits. UNHCR recognises it may also have been that the presence of uniformed law enforcement officers at the meeting inhibited the conversation. In May 2010, the Kazakh Ministry of Internal Affairs announced that in the space of three days it had detained 1,119 individuals to establish

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<sup>324</sup> ILO Convention No 182 was ratified by Tajikistan in 2000; Kazakhstan in 2003, Kyrgyzstan in 2004, Uzbekistan in 2009 and Turkmenistan in 2010. ILO Convention No 138 on a Minimum Age for Work was ratified by Kyrgyzstan in 1992; Tajikistan in 1993; Kazakhstan in 2001 and Uzbekistan in 2009. Turkmenistan has not yet ratified the latter ILO Convention.

<sup>325</sup> *International Labour Organization, Child Labour in Europe and Central Asia: Problem and Response, 2003, available at* [www.ilo.org](http://www.ilo.org).

<sup>326</sup> Article 29, 1997 Law No 500 ‘On the Legal Status of Foreigners’ in Tajikistan, as amended in 2009.

their identity. It is not known how many of these may have been stateless or with undetermined nationality.<sup>327</sup> Individuals who hold Stateless Person's Cards in Kazakhstan did not report being detained on ground of their statelessness situation.

In Turkmenistan, there has been no analysis to date of the number of stateless persons detained for holding out-of-date USSR passports, irregular residence or lack of identity documents. UNHCR is in regular contact with the State Migration Service of Turkmenistan (SMST) and cooperates with it when persons of concern to UNHCR have been detained. So far, it has never been asked to help with a stateless person held in detention. Also, no one attending the UNHCR focus group on statelessness reported they had been detained for passport irregularities.

UNHCR is not in a position to comment on detention of stateless persons in Uzbekistan, where it has had no permanent presence since 2005.

Finally, holders of former USSR passports who attended the UNHCR Participatory Assessments in Kyrgyzstan claimed that lack of valid identification puts them at real risk of detention. Although Kyrgyz NGOs have made the most detailed empirical study of statelessness in the region so far, they have yet to document detention of individuals with undetermined nationality. UNHCR does not know what legal aid or interpretation service is available to such detainees, or how they are treated in detention. It also does not know the reasons law enforcement authorities typically give for detaining them.

#### 4.6 Access to legal remedies

Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan each guarantee stateless persons the general right of access to a court and the protection of the law. They also have procedural equality with nationals of the country in any judicial proceedings.<sup>328</sup> In Tajikistan, free legal assistance is guaranteed at all stages of investigation and trial,<sup>329</sup> according to Article 92 of the Constitution of Tajikistan.

In 2007, a Presidential Decree for the first time gave individuals the right to bring complaints to the Constitutional Court of Tajikistan. Previously they were not included among the subjects entitled to bring such complaints. Judges of the Constitutional Court told UNHCR that they would consider cases brought to them by stateless persons as well as by nationals.

In Kazakhstan, the 1999 Civil Procedure Code guarantees the right to address the court and make statements, complaints, petitions and lead evidence in the person's own language; the right to free interpreting services; and to free translation of case papers.<sup>330</sup> Persons officially registered as stateless have exercised their right to access courts and state institutions,<sup>331</sup> and told UNHCR that they had successfully used them to acquire nationality and resolve property questions. The National Ombudsman also protects the rights of stateless persons and has acted for them in a number of cases noted in his annual reports. Yet, stateless persons in remote areas of South-Kazakhstan said they had only limited access to free legal aid, through the services of a legal clinic.

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<sup>327</sup> 19 May 2010 Press Conference in Astana, reported in *Kazakhstan Today*, <http://www.zakon.kz/172726-iz-kazakhstana-vydvoreno>.

<sup>328</sup> Article 20, 1993 Law No 1296-XII 'On the Legal Status of Aliens in Kyrgyzstan'; Article 21, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011; Article 21, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 18, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan. Uzbekistan does not have an equivalent law.

<sup>329</sup> Article 92, 1994 Constitution of the Republic of Tajikistan. The forms of legal aid available from the Organisation of Advocates are defined by law.

<sup>330</sup> Civil Procedure Code of Kazakhstan, Article 14. Persons who are not officially registered as 'stateless', or who otherwise have no valid ID, would encounter problems accessing the courts because they lack the documents necessary for paying court fees.

<sup>331</sup> The legal clinic of the Human Rights Bureau NGO in Kazakhstan has provided free legal aid to stateless persons who approach it in Almaty and South-Kazakhstan *Oblast*.

UNHCR does not have information on stateless persons' access to legal remedies in Uzbekistan. In the other four States, it seems that remedies that are widely available and free of charge are usually of poor quality. Legal remedies of good quality are mostly too expensive for stateless persons.

In northern Kyrgyzstan, for instance, participants in the focus group organised by UNHCR's NGO partners said that they had unrestricted access to legal aid. Local NGOs, however, pointed out that good legal assistance was scarce in rural areas. In the south, participants said that legal remedies were available, but too expensive to afford. Legal clinics operating in the field remain the most effective channel for free legal aid to stateless persons.

In Turkmenistan, one of UNHCR's implementing partners gives legal assistance to stateless persons, among other people of concern. They report there are no obstacles of principle to prevent stateless persons accessing courts in Turkmenistan, on the same footing as nationals.

#### 4.7 *Expulsion*

Each of the five Central Asian States reserves the right to expel stateless persons in accordance with a procedure set down in law.<sup>332</sup> As indicated below, grounds for expulsion are generally quite broad. Kyrgyzstan and Uzbekistan set an age limit of 16 years, below which stateless persons cannot be expelled, but there are no age limits in the other States.<sup>333</sup>

In determining these cases, none of the five States recognises family unity as a guiding principle. An undocumented child could face insurmountable problems confirming his or her nationality if the parents were expelled and left them behind. The same could be true where only one of the parents is expelled together with the child and the child does not carry a birth certificate. None of the five states gives the person under an expulsion order the right to seek legal admission to another country.

To be expelled from Kazakhstan and Uzbekistan<sup>334</sup>, stateless persons and other foreigners must have committed an 'administrative offence', although the law in Uzbekistan does not elaborate upon what these offences are.<sup>335</sup> Grounds common to Tajikistan, Turkmenistan, Kyrgyzstan and Kazakhstan are 'violations of public order' and considerations of 'national security'. Tajikistan, Turkmenistan and Kazakhstan may also expel stateless persons on additional grounds, that include threatening 'public health and morals', violating currency and customs rules, and infringing the need to protect public 'rights and interests'.<sup>336</sup> The 2005 Migration Law foresees administrative expulsion for foreigners and stateless who 'repeatedly or seriously violate the legislation of Turkmenistan'.<sup>337</sup>

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<sup>332</sup> The procedure is set down in the 1993 Turkmenistan Law 'On the Legal Status of Foreigners', as amended in 2000; the 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan', as amended by Order No 178, 1999; and in the Administrative Codes of Kazakhstan, Kyrgyzstan and Tajikistan. Tajikistan also sets down procedural rules in the 1997 Law No 500 'On the Legal Status of Foreigners', as amended in 2009.

<sup>333</sup> Article 39, 1998 Kyrgyzstan Code of Administrative Responsibility, No 114, as amended in 2007. Uzbekistan absolves individuals under 16 years old of responsibility for administrative offences. Article 271(2), Chapter 19, 1995 Administrative Code of Uzbekistan, No ZRU-242, as amended in 2009; Article 12(e) of Annex 2, 1996 Regulation No 408 'On the Entrance, Exit, Stay and Transit of Foreigners and Persons without Citizenship in the Republic of Uzbekistan' also frees foreigners under 16 of the rules of registration.

<sup>334</sup> Article 23, Chapter 3, Section 2, 1995 Administrative Code of Uzbekistan, No ZRU-242, as amended in 2009. In the 2001 Kazakhstan Administrative Code, these are unregistered missionary activities (Article 375), violating the rules for crossing state borders (Article 391) and violating the rules of sojourn in the country (Article 394).

<sup>335</sup> In Uzbekistan there is no law governing the expulsion of foreigners. Expulsion and extradition are regulated by bilateral agreement, which may allow the expulsion of aliens, even to countries where they risk torture. In April 2005, the UN Human Rights Committee said that Uzbekistan should adopt norms to prevent the deportation or forcible return of aliens to a country where they would risk torture, and adopt a mechanism to appeal against forced removal, with suspensive effect, see *Human Rights Committee*, Concluding Observations: Uzbekistan, *CCPR/CO/83/UZB*.

<sup>336</sup> Article 46 of the 2009 Administrative Code of Tajikistan; Article 18, 2005 Migration Law of Turkmenistan, as amended in 2011, and several equivalent articles of the 1995 Law 'On the Legal Status of Foreigners' in Kazakhstan. The 1997 Migration Law of Kazakhstan also provides for the expulsion of stateless persons who have arrived on State territory without an employment permit (Article 8); Article 19, 2000 Law No 61 'On External Migration' of Kyrgyzstan.

<sup>337</sup> Article 18.3(3), 2005 Migration Law of Turkmenistan, as amended in 2011.

In Kyrgyzstan, Kazakhstan and Tajikistan, it is a court that decides on expulsion.<sup>338</sup> In Kazakhstan and Tajikistan, the case is decided on the same day that the court receives the administrative charge sheet – within eight hours in Kazakhstan, if the individual is in administrative detention.<sup>339</sup> In Turkmenistan and Uzbekistan, the decision is taken administratively.

Tajikistan and Kazakhstan provide some due process guarantees for individuals facing expulsion. Their presence at the hearing is compulsory and they have the right to interpretation in their own language – although in Kazakhstan it is not clear how interpretation for non-standard languages can be found and available in the space of only eight hours. They can also familiarise themselves with the case against them, and present a defence with the assistance of a lawyer.<sup>340</sup>

Stateless persons sentenced to expulsion from Tajikistan, Kyrgyzstan and Kazakhstan, have the right to judicial appeal and court fees are waived in Tajikistan. In the case of a stateless person, an appeal must be lodged within ten days of judgment in Kyrgyzstan and Kazakhstan<sup>341</sup> and within 24 hours in Tajikistan, during which time it is also adjudicated.<sup>342</sup>

In Uzbekistan, stateless persons also have the right of judicial appeal against expulsion if an administrative appeal fails first and if they apply within ten days of receiving the expulsion decision. No fee is levied.<sup>343</sup>

Expulsion from Turkmenistan can be appealed to a higher administrative body, but not through the courts.<sup>344</sup> The SMST<sup>345</sup> takes the decision and sets a deadline for it to take place.

In Kazakhstan, a court ordering an administrative expulsion must set a reasonable time period for carrying it out.<sup>346</sup> Where a bilateral treaty exists with the destination State, the Kazakh court notifies its authorities and the person is handed over to a State representative.

No similar time-frame is provided to stateless persons facing expulsion from Kyrgyzstan and Tajikistan. Expulsion from Tajikistan is undertaken particularly quickly, and may make it difficult for a stateless person to exercise their due process rights in practice. They have access to the charge sheet against them only on the day their case is heard. Expulsion normally follows immediately after their appeal has been rejected.<sup>347</sup> The law does not provide for compensation to anyone wrongfully expelled.

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<sup>338</sup> Article 39 of the 1998 Kyrgyzstan Code of Administrative Responsibility, No 114, as amended in 2007; Articles 45 and 56 of the 2001 Administrative Code of Kazakhstan, No 155-II; Article 770 the 2009 Administrative Code of Tajikistan, No 1177.

<sup>339</sup> Articles 801(4) and 847, 2009 Administrative Code of Tajikistan, No 1177; Article 647, 2001 Administrative Code of Kazakhstan, No 155-II.

<sup>340</sup> Article 770, 2009 Administrative Code of Tajikistan, No 1177; Articles 588-590, 2001 Administrative Code of Kazakhstan, No 155-II.

<sup>341</sup> According to Article 597, 1998 Kyrgyzstan Code of Administrative Responsibility, No 114, as amended in 2007; Article 316, Article 657 of the 2001 Administrative Code of Kazakhstan, No 155-II; and Article 810(1) and Article 812(5), 2009 Administrative Code of Tajikistan, No 1177.

<sup>342</sup> Article 816(3), 2009 Administrative Code of Tajikistan, No 1177.

<sup>343</sup> Article 315 and 316, 1995 Administrative Code of Uzbekistan No ZRU-242 as amended in 2009.

<sup>344</sup> Articles 36-40, 2003 Regulation No 6135 'On Entry and Exit of Foreigners' of Turkmenistan; Chapter 22, 1984 Administrative Code of Turkmenistan.

<sup>345</sup> Article 18.3, 2005 Migration Law of Turkmenistan, as amended in 2011.

<sup>346</sup> Article 651(2), 2001 Administrative Code of Kazakhstan, No 155-II.

<sup>347</sup> Article 633, 1998 Kyrgyzstan Code of Administrative Responsibility, No 114, as amended in 2007; Article 826(2), 2009 Administrative Code of Tajikistan, No 1177.

For an individual with no nationality, expulsion from one State where they reside to another poses particularly daunting difficulties. A recent case has been brought to UNHCR's attention in which a stateless person was twice expelled from Tajikistan to Turkmenistan, and back.<sup>348</sup>

The UNHCR's NGO survey of southern Kyrgyzstan, suggests that expulsion is not often applied to punish administrative violations. Some 7 expulsions were ordered, for example, out of 218 violations of the passport regime identified by internal affairs bodies during 2008 in Osh province. But as the law does not observe the principle of family unity, the impact of these expulsions may have been disproportionately large.

In northern Tajikistan, the Migration Service told UNHCR that it tried to avoid disrupting families, and so would fine rather than expel stateless persons with invalid documentation. They said no one had been expelled from Soghd Region, where most stateless persons are long-term residents married to nationals. UNHCR learned of one foreigner who was expelled from Turkmenistan in 2000, leaving behind a small daughter who was at risk of statelessness until she was adopted by a Turkmen national and acquired Turkmen nationality. Official figures are not easily accessible from either State, or Uzbekistan.

In April 2010, the Kazakhstan Ministry of Internal Affairs announced it had opened 41 criminal cases for violations of migration legislation, and administratively expelled 3,189 persons for "gross violations of migration rules" in a four-day operation called 'Migrant'. Thirteen of these expellees had come from outside the CIS and 3,176 from within. In May 2010, the Ministry announced that it had opened a further 27 criminal cases for violating migration law, and expelled nearly 2,000 more people – 1,792 of them reportedly by court decision. Twenty six of the expellees came from outside the CIS and 1,766 from within. The reports did not refer to the nationality of the individuals involved – or whether they were stateless.<sup>349</sup> Nor did it mention the age or gender of these individuals.

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<sup>348</sup> This case was raised by the government representatives of Tajikistan and Turkmenistan themselves at the UNHCR-OSCE Regional Roundtable on the Prevention and Reduction of Statelessness and Protection of Stateless Persons in Central Asia in Ashgabat in December 2009.

<sup>349</sup> Briefings to the press in April and May 2010 in Astana, see [www.kz.mvd](http://www.kz.mvd).

## 5 Basic Needs and Essential Services

In Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan, a law ‘On the Legal Status of Foreigners’ accords foreign citizens a range of essential services.<sup>350</sup> The provisions of the law extend to stateless persons, unless otherwise specified in the legislation of the State. In each case, this embraces only permanent residents, whom the State has formally recognised as ‘stateless’. With few exceptions, undocumented stateless people, or people with difficulties establishing their nationality, are not legally entitled to essential services provided by the State.

### 5.1 Food security and nutrition

The availability of water, energy and food are closely connected in Central Asia.<sup>351</sup> Shortages of each have affected populations known to include stateless persons. There is, however, little information available on the specific situation of stateless persons in each country.

Agricultural policy in Turkmenistan and Kazakhstan has aimed for food self-sufficiency since 1991.<sup>352</sup> Kyrgyzstan and Tajikistan are net food importers, where the cost of foodstuffs comprises two thirds of the consumer price index in each country. In poor households, the proportion of the budget devoted to food is higher.

Food insecurity in both States is chronic and relates to cost rather than physical availability, according to a 2009 study by UNDP.<sup>353</sup> In 2008, food prices rose by 32% in Kyrgyzstan and 26% in Tajikistan as a result of the global recession.<sup>354</sup> A UN World Food Programme (WFP) survey at the end of that year found that 1 million people in Kyrgyzstan had insecure sources of food – almost 20% of the population. In Tajikistan, 2.2 million were found to be food-insecure – almost half of those resident on Tajik territory.

The WFP survey identified areas and family-types that particularly suffered from uncertain food supply. In Kyrgyzstan, for instance, the highest rates of food insecurity were noted in Jalalabad (where 28% had uncertain access to food) and in Osh (where 26% were found to be food-insecure).<sup>355</sup> Households headed by men were also found to be more prone to food insecurity than households headed by women. They tended to be larger and to benefit from fewer remittances sent by family members living and working abroad.

The sampling carried out in 2008 by UNHCR’s NGO partners in the same two areas, identified dense concentrations of stateless people in both, many of them women who had crossed over the border from Uzbekistan and married into households headed by local men. Although Kyrgyzstan, like the other three States, has not yet assessed the needs of stateless persons within its borders, it seems likely that in areas of high food insecurity, the stateless are particularly vulnerable to food shortage. The WFP survey noted that rural ‘solidarity mechanisms’ appeared to help people severely short of food.

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<sup>350</sup> Since 2005, UNHCR has not been regularly present in Uzbekistan, the fifth Central Asian State, and so this and the following chapter do not cover for the situation of stateless persons there. A comprehensive analysis of the legal framework for protection of stateless persons in Uzbekistan was also not possible for the same reason. Any reference made to Uzbekistan is based on a limited desk review.

<sup>351</sup> *World Bank*, *Water Energy Nexus in Central Asia*, World Bank Report, January 2004. *UN World Food Programme*, *Food Security Analysis of the Kyrgyz Integrated Household Survey for 2006, 2007 and the first quarter of 2008*, 4 November 2008. This link distinguishes Central Asia from other regions with a comparable level of economic development but different energy sources.

<sup>352</sup> *Baydilina, Akshiyab, Bayeteva, Mkrtychyan, Haliepesasa, Aktaev*, *Agricultural Reforms and Food Security in Kazakhstan and Turkmenistan*, *Food Policy*, Vol 25, Issue 6, Amsterdam, December 2000, pp 629-747.

<sup>353</sup> *United Nations Development Programme*, *Central Asia Regional Risk Assessment: Responding to Water, Energy and Food Insecurity*, January 2009, available at <http://europeandcis.undp.org/home/show/60A5CE02-F203-1EE9-B62FC5613A5C6D5A>.

<sup>354</sup> *Ibid.*

<sup>355</sup> *UN World Food Programme*, *Food Security Analysis of the Kyrgyz Integrated Household Survey 2006, 2007 and the first quarter of 2008*, 4 November 2008.

In Tajikistan, a joint UN survey in spring 2008 also identified the areas and family groups<sup>356</sup> most typically without secure sources of food. Notably, these were urban areas, like Khujand and Taboshar in the north and Qurganteppe and Sarband in the south. Households with difficulties feeding themselves typically relied on self-employment (in 30% of cases) or on casual day labour in the agricultural or non-agricultural sectors for income (in 20% of cases). This is the employment pattern of urban stateless persons in Tajikistan interviewed by UNHCR. Additionally, the survey found that 34% of the rural population in Tajikistan has insecure access to food, sometimes because trade and transport networks do not reach them. It seems probable that stateless persons in rural areas share this problem.

Since 1991, Turkmenistan and Kazakhstan have dismantled the State Farm system they inherited from the USSR and oriented it towards grain production, a proportion of it for export within the region. Local research suggests that this re-orientation may have made less food available at the household level. The impact on stateless persons in their territories is not known.<sup>357</sup>

## 5.2 Water and sanitation

Water is a contentious subject in the Central Asia region. Upstream, it is required by Kyrgyzstan and Tajikistan to generate electricity and diversify their farming. Downstream, it is used by Turkmenistan, South West Kazakhstan and Uzbekistan to irrigate their cotton harvest.<sup>358</sup> There have been periodic disputes about the quantities of irrigation water released, and the cost of fossil fuels provided in exchange.<sup>359</sup> Agriculture consumes 80% of the water supply in Central Asia. Households have access to only 20%, which they share with industry.<sup>360</sup>

Traditionally, regional agreements on water have focussed on water distribution, and not on its overall supply. The needs of domestic users have had relatively low priority. According to World Bank statistics, only 30% of households in the region have access to piped drinking water.<sup>361</sup> This leaves 25 million people without it. In some areas, the percentage of people without access to piped drinking water is higher than the regional average. In northern Turkmenistan, for instance, 76% of the population is reported to be without piped drinking water.<sup>362</sup> This is where most stateless persons in Turkmenistan are known to live. According to UNDP, 41% of the urban and rural populations of Tajikistan are estimated to be without piped drinking water.<sup>363</sup>

Kyrgyz data comes from areas known to have dense populations of stateless persons.<sup>364</sup> The Kyrgyz meteorological agency reports that in 2008, river flows were only 65% of their 30-year average in Chui; 60% in Osh; and 50% in Jalalabad.<sup>365</sup> In 2009, some villagers were reported to be moving north

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<sup>356</sup> UN World Food Programme, UNICEF and FAO, Rural Tajikistan Emergency Food Assessment, Joint Food Security Livelihood and Nutrition Assessment, April/May 2008.

<sup>357</sup> Baydilina, Akshibay, Bayeteva, Mkrtychyan, Haliepesasa, Aktaev, Agricultural Reforms and Food Security in Kazakhstan and Turkmenistan, *Food Policy*, Vol 25, Issue 6, Amsterdam, December 2000, pp 629-747.

<sup>358</sup> In the USSR this arrangement was brokered by the Ministry of Land Reclamation and Water Resources in Moscow and administered by Ministries of Water in the Central Asian Republics. Darya Pushkina, *Cooperation or Conflict: Water in Central Asia*, Conference Paper, International Studies Association, San Diego, California, 2006.

<sup>359</sup> International Crisis Group Report, *Water and Conflict, Asia*, No 34, 30 May 2002, available at [www.crisisgroup.org/home/index.cfm?id=1440](http://www.crisisgroup.org/home/index.cfm?id=1440).

<sup>360</sup> Dr. David Smith, *Water in Central Asia: Access and Availability*, University of Arizona, 1999, available at <http://ag.arizona.edu/oals/ALN/aln45/central-asia.html#water>.

<sup>361</sup> Cited by UN Office of Humanitarian Affairs, *Running Dry: the Humanitarian Impact of the Global Water Crisis*, October 2006, available at <http://www.irinnews.org/InDepthMain.aspx?reportid=62312&indepthid=13>.

<sup>362</sup> UNICEF data for 2007, available at <http://www.unicef.org/infobycountry/Turkmenistan.html>.

<sup>363</sup> Figures from the 2006 UNDP Human Development Global Report <http://hdr.undp.org/en/media/HDR06-complete.pdf>.

<sup>364</sup> UN High Commissioner for Refugees, *A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR*, UNHCR Bishkek, 2009.

<sup>365</sup> Cited in the Central Asia Regional Risk Assessment by UNDP.



from southern Osh, because of water shortages.<sup>366</sup> They had been using water from irrigation trenches and other open sources.<sup>367</sup> Local water specialists say that irrigation water is unsafe for drinking because of groundwater pollution from industrial and municipal wastes; the absence of sewage systems; and the proximity of animal-breeding.<sup>368</sup>

Multi-lateral agreements between the four Central Asian States in 1992 and 2008, and a string of bi-lateral agreements, have tried to regulate water usage in the region<sup>369</sup> with mixed success. UNDP estimates that 700 cubic meters of water is now available per person across Central Asia and 5,000 cubic meters is needed.<sup>370</sup> In a context of general water shortage, stateless persons are in a weak position to press their right to it. Household demand is highest in Uzbekistan's Ferghana Valley, the populous strip where Kyrgyzstan, Tajikistan, and Kazakhstan converge. It is also where many stateless persons in these States crossed their border. According to members of the Central Asian Alliance for Water,<sup>371</sup> formed after a session of the UN World Water Forum, 60% of the Ferghana population has no access to clean drinking water.

A UN inter-agency survey in 2006<sup>372</sup> found that in Kazakhstan, 93.7 percent of the population uses an improved source of drinking water – 98.1 percent in urban areas and 87.7 percent in rural areas. The situation in South Kazakhstan, where many stateless persons live, was said to be below average – at 85.7% – with 6.8% of the population using water from surface sources. Sewerage provision was also less developed.

There is a strong link between the ready availability of clean water, basic levels of sanitation, and hygiene in food preparation and storage.

### 5.3 Healthcare

People documented as stateless, who are permanently resident on State territory, have the right to use the national health service on the same basis as citizens, according to the legislation of Tajikistan, Kyrgyzstan and Kazakhstan. Those registered as 'temporarily resident' can use it according to a procedure set down by the Ministry of Health in each State.<sup>373</sup> Throughout the region, the national welfare sector has shrunk since Soviet times and increasingly been replaced by commercial medical care. Access to private medicine depends on variable fees. There is no information to suggest these are higher for stateless persons.

In Turkmenistan, foreign nationals are entitled to use "the network of health institutions and medical services" according to legally established procedure<sup>374</sup> and the same provision applies to persons legally recognised as stateless. In Turkmenistan no health provision is made for stateless persons

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<sup>366</sup> UN Office for the Coordination of Humanitarian Affairs, *Running Dry: the Humanitarian Impact of the Global Water Crisis, October 2006*, available at <http://www.irinnews.org/InDepthMain.aspx?reportid=62312&indepthid=13>.

<sup>367</sup> This carries the risk of water-borne disease, like typhoid and diarrhoea.

<sup>368</sup> *Central Asian Water Alliance*, ELA partner Central Asian Alliance for Water successfully presents its 2009 ELA project to Regional Government, 3 March 2009, available at [www.wecf.eu/english/articles/2009/03/bishkek-caaw.php](http://www.wecf.eu/english/articles/2009/03/bishkek-caaw.php).

<sup>369</sup> In 1992, an Inter-State Commission for Water Coordination was set up by Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan with World Bank help, to "manage and protect" its use, cited by Darya Pushkina in *Cooperation or Conflict: Water in Central Asia*. In October 2008, a CIS Summit in Bishkek agreed on cooperation in supporting hydro-energy; water accumulation; and fuel supply. There have also been bi-lateral agreements, including ten between Kyrgyzstan and Uzbekistan in 2004 on sharing gas and water, cited in the 2008 Central Asia Regional Risk Assessment by UNDP.

<sup>370</sup> *UN Development Programme*, Poverty Reduction in Europe and the CIS: Water Governance, available at <http://europeandcis.undp.org/poverty/show/AFC9C290-F203-1EE9-B2066514D56EDAD4#>.

<sup>371</sup> The Osh-based NGOs, Mehr-Shavat and Alay-Ata-Just.

<sup>372</sup> *UNICEF*, Multiple Indicator Cluster Survey on Kazakhstan, submitted to USAID by UNICEF, Astana, May 2006, with support of UNFPA and ILO, available at [http://pdf.usaid.gov/pdf\\_docs/PDACH102.pdf](http://pdf.usaid.gov/pdf_docs/PDACH102.pdf).

<sup>373</sup> Article 9, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 7, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 9, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan.

<sup>374</sup> Article 9, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011.

without documents, or for those who have difficulty in establishing their national identity. In Ashgabat, however, UNHCR spoke with someone who had been born to a stateless single mother without a passport. Delivery and post-natal care had been administered to this person, free of charge, in a state medical facility.

In Kazakhstan, the rules for providing health care to people documented as stateless, and to other foreigners, are set down in Government Instruction No 997 of 2006.<sup>375</sup> Stateless persons are entitled to a selection of free medical services at the state clinic nearest to them, for a prescribed list of illnesses. Beyond that, they can also pay for medical help at commercial rates at any clinic in the country. Among the free services available to stateless persons are emergency ambulance transport for acute illnesses or exacerbation of a chronic condition, medical and sanitary assistance in an epidemic, consultation, diagnosis for in-patients and follow-up treatment in a rest home.<sup>376</sup> Treatment for other complaints is to be paid privately by the patient, by employers or by private voluntary insurance.<sup>377</sup> The list of free medical care available to the registered stateless in Kazakhstan seems to exclude surgery. Stateless persons who took part in Participatory Assessments with UNHCR reported no unequal medical treatment. Some, however, noted the difficulty of receiving such treatment without a valid document identifying them as a stateless person.

In Kyrgyzstan and Tajikistan, the lines are drawn less clearly between the medical care on offer to nationals and to registered stateless persons. The same is the case for the distinction between services that are free and those that must be paid for by stateless persons.

In Kyrgyzstan, children and their parents interviewed in the UNHCR surveys confirmed they were included in all immunisation and vaccination programs undertaken in the area where they lived. Some 25% of the individuals surveyed in northern Kyrgyzstan said they could not get medical help because their documentation was inadequate – but they did not specify exactly what range of services was inaccessible to them. People interviewed in the south had similar problems with documentation. Clinics were also said to have refused to treat children without birth certificates, which meant they could not get skilled diagnosis or surgery. According to the UNHCR surveys, 3% of undocumented stateless children surveyed in north and south Kyrgyzstan did not have birth certificates.<sup>378</sup>

#### 5.4 HIV/AIDS

No study on HIV/AIDS in Central Asia has thus far looked at how the disease affects stateless persons in the region. Since the late 1990s, each of the four Central Asian States dealt with in this section has been working with international agencies to combat HIV/AIDS infection. Each has adopted a national programme and set up an inter-agency body to manage it.<sup>379</sup> The programme has included education, monitoring, and confidential testing and the adoption of laws on AIDS-prevention. Identification of the virus has risen steadily in Kyrgyzstan, Kazakhstan and Tajikistan – although UN experts estimate the figures are only a fraction of the real total. Data is not available in Turkmenistan.<sup>380</sup>

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<sup>375</sup> This Instruction was replaced in part by the 2009 Health Code.

<sup>376</sup> Article 1, 2006 Instruction No 997 'On Rules for Receiving Medical Services for Foreigners and Stateless Persons'.

<sup>377</sup> *Ibid*, Article 9.

<sup>378</sup> *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009, page 23.*

<sup>379</sup> Since 1999, a National Programme on HIV/AIDS in Tajikistan, under a National Coordination Committee for HIV/AIDS Prevention; in Turkmenistan, since 1999 a National Programme on HIV/AIDS and STIs Prevention under an Inter-Ministerial task Force led by the Ministry of Health, the National AIDS Centre and STIs Dispensary, now on a plan for 2005-2010; in Kyrgyzstan since 2000 A Strategic Plan of national response to the Epidemic of HIV/AIDS; and in Kazakhstan, five-yearly National Programmes, most recently from 2005-2010. Data provided by the World Bank Central Asia AIDS Control Project in November 2004, available at

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/EXTECAREGTOPHEANUT/EXTECAREGTOPHIVAIDS/0,,contentMDK:21081679~pagePK:34004173~piPK:34003707~theSitePK:571172,00.html>.

<sup>380</sup> According to Epidemiological Country Survey Profiles for 2008, compiled by UNAIDS, World Health Organization (WHO) and the FAO, *inter alia*. Appendices to WHO reports, available at [www.apps.who.int](http://www.apps.who.int).

Confidential diagnosis and palliative treatment extend to people with permanent residence who are registered as stateless persons. In its National Programme for 2001-2005 Kazakhstan aims to ensure that at least 80% of people with HIV/AIDS infection are covered by medical and social programmes. Its inventory of illnesses to be treated free of charge includes “life-threatening conditions, among them ones that are hazardous to society”.<sup>381</sup> Although not explicitly stated, this might include treatment for HIV/AIDS infection. As in the three other States, in Kazakhstan these provisions do not extend to undocumented stateless persons.

The World Bank<sup>382</sup> described Kyrgyzstan’s early response to the HIV/AIDS phenomenon as “international best practice” despite its shortage of resources. Kyrgyzstan’s National Strategy for Reproductive Health till 2015<sup>383</sup> identifies factors that have led to a recorded increase in HIV/AIDS infection in the country, particularly among women. These mostly relate to poverty. Like the other three Central Asian States, Kyrgyzstan has made no study of HIV/AIDS infection rates among stateless people. Its findings on poverty and migration, however, suggest that stateless persons throughout the region may be a group at risk of infection.

Kazakhstan has identified more cases of HIV/AIDS infection than its neighbours and registered double the number each year since 2000, now in each region of the country. Government studies have found that 75% of people were unemployed when they were infected and most are men of 20-29 years.<sup>384</sup> Epidemiological studies have shown up numerous infection hot spots in the country. In the south these include the trading city of Shymkent, where a large population of stateless persons is known to live.<sup>385</sup>

Equivalent data is not available from Tajikistan and Turkmenistan.<sup>386</sup> One quarter of the Tajik population is said to be migrants.

Public attitudes towards HIV/AIDS infection are said to be harsh. In Kazakhstan,<sup>387</sup> for instance, 82.7% of people surveyed said they would not buy foodstuffs from an HIV-positive vendor and 9.4% said they would not care for a family member with HIV/AIDS. Some 65.9% of respondents said they would keep it secret if they were infected.

HIV/AIDS infection may thwart the efforts of some stateless persons in the region to naturalize. Among 14 documents required of stateless persons applying for permanent residence in Tajikistan, for instance, is one certifying they do not have an “illness that might become an epidemic on Tajik territory”.<sup>388</sup> Kazakh residency regulations contain a similar provision.<sup>389</sup>

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<sup>381</sup> 2008-2009 Inventory of Illnesses Treated from State-Funds [Perechen’ GOBMR 2008-2009].

<sup>382</sup> Central Asia AIDS Control Project, World Bank.

<sup>383</sup> Kyrgyz Republic: Information on the Implementation of the Beijing Platform for Action in the Preparation of a Regional Survey, available at

[http://www.unescap.org/ESID/GAD/Issues/Beijing+15/Responds\\_to\\_Questionnaire/Kyrgyz\\_unofficial\\_eng.pdf](http://www.unescap.org/ESID/GAD/Issues/Beijing+15/Responds_to_Questionnaire/Kyrgyz_unofficial_eng.pdf) (accessed on 10 March 2011).

<sup>384</sup> World Bank, HIV/AIDS in Central Asia, 2002.

<sup>385</sup> According to the 2008 UNAIDS, WHO, FAO Epidemiological Country Surveys Profile. Appendices to WHO reports, available at [www.apps.who.int](http://www.apps.who.int).

<sup>386</sup> World Bank, HIV/AIDS in Central Asia, 2002. The economic effects of transition have affected each State differently. An IOM Report notes that the average wage in Tajikistan is now less than 20% of its level in 1989. Some 80% of the population are said to live in poverty, according to its 2005 publication, Fertile Fields: Trafficking in Persons in Central Asia.

<sup>387</sup> In a 2006 Multiple Indicator Cluster Survey on Kazakhstan supported by UNICEF, UNFPA, ILO, USAID. Urban respondents were 10% more concerned to keep the infection secret.

<sup>388</sup> Article 27, 1999 Law No 218 ‘On the Rules of Stay for Foreigners and Stateless Persons’ in Tajikistan, as amended in 2008.

<sup>389</sup> Articles 62 and 70(d), 2003 Regulation No 1185 ‘On Approval of the Rules for Confirming Financial Solvency during a Period of Residence in the Republic of Kazakhstan of Foreigners and Stateless Persons who are Applying for Permanent Residence in the Republic of Kazakhstan’. Infection can also be grounds for deportation (*ibid*, Article 84).

## 5.5 Primary and secondary education

Foreigners have the same right to education as nationals in Tajikistan, Turkmenistan, Kyrgyzstan and Kazakhstan and this right extends to recognised stateless persons in Kazakhstan. Anyone enrolled in a national educational establishment has the same rights and obligations as other students and staff, according to the law.<sup>390</sup>

In Kazakhstan, foreign nationals and stateless persons permanently resident on Kazakh territory have the same rights as nationals to pre-school, primary, junior and intermediate education, according to the law. People who are officially recognised as stateless and permanently resident in Kazakhstan can also acquire free vocational and professional training as well as higher and post-graduate education on a competitive basis – provided they have not previously had one. Those who are undocumented do not have access to higher education on this basis.<sup>391</sup>

In Tajikistan, free basic education is compulsory under Article 41 of the Constitution of Tajikistan, and the 1996 Aliens Law grants stateless persons and other foreigners, rights to an education on an equal footing with nationals of the country.<sup>392</sup> According to stateless persons who participated in meetings with UNHCR in Dushanbe, their children have no problem with access to primary and secondary education on an equal basis with nationals of the country. There is no comprehensive information, however, on the level of enrolment and attendance or the drop-out rate by age or gender. None of the stateless persons reported harassment or violence at schools by staff or other students. Although formally compulsory for the children of citizens, penalties do not seem to apply for non-attendance at school. Some sources have estimated that school attendance may have fallen significantly between 1991 and 2003.<sup>393</sup> UNHCR was told that the cost of school uniforms and basic equipment, like books and pens, prevented some stateless persons from sending their children to school.

In Kyrgyzstan, 70% of the children of the stateless persons surveyed in the North had completed secondary education and 9% an advanced secondary education. In the South, some 94% of children had completed a secondary education. They felt they had been fully integrated into their school life and given full access to sport and other facilities, and their parents did not disagree. Those surveyed reported no administrative obstacles to their education at elementary and secondary level. Another 6 % said they had missed school altogether,<sup>394</sup> because of emotional disruption in the family. There was apparently no State supervision of their absence or penalty for non-attendance.

In Kazakhstan, if they wish to register a child under the age of 16 in an educational institution<sup>395</sup> stateless persons must present their Stateless Person's Card, indicating their registered place of residence. Their children are then legally guaranteed access on an equal footing with nationals of the country.<sup>396</sup> No documented or undocumented stateless persons who attended Participatory Assessments with UNHCR in Almaty or South-Kazakhstan reported that their children had been

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<sup>390</sup> Article 12, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Article 13, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011; Article 13, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 10, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>391</sup> Article 10, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>392</sup> Article 13, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009.

<sup>393</sup> Report of the International Crisis Group, 2003.

<sup>394</sup> Quoted in the UNHCR surveys and published in *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009.*

<sup>395</sup> Paragraphs 4, 2007 Order of the Minister of Education No 659 'On The Rules for Receiving Pre-School, Primary, Main and General Secondary Education by Foreigners and Stateless Persons who Permanently Reside in the Republic of Kazakhstan'.

<sup>396</sup> Article 8, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan. According to Article 14 of the 1991 Citizenship Law of Kazakhstan, a child born in Kazakhstan to two stateless parents is a Kazakh citizen, but it appears that its parents are nevertheless required to present this card to have their children enrolled. It is not clear if schools can refuse to enrol anyone whose parents do not have Stateless Person's Cards.

refused education at primary or secondary schools. In Turkmenistan too, stateless persons with school-age children who attended meetings in Ashgabat, told UNHCR that their children had received primary and secondary education in state schools on an equal footing with nationals of the country.

Within an apparently flexible legal context, practical problems affecting the broader population may have restricted the access of some stateless children to primary and secondary education. Endemic electricity shortages have closed schools in Tajikistan and Kyrgyzstan, for example, most often in rural areas.<sup>397</sup> Attendance at schools in Tajikistan reportedly halved in 2008 and in 2009 electricity was rationed on a daily basis in schools, homes and businesses without generators. According to NGO surveys in Tajikistan, on a daily basis rural children also help their mothers to carry water, and consequently, girls in particular miss school.<sup>398</sup>

The school year in Turkmenistan is limited to 150 days, traditionally to free children for agricultural labour.<sup>399</sup> In 2008, a presidential decree forbade the use of school children in the cotton harvest<sup>400</sup> but school attendance figures have not yet been published, to show how far the decree was implemented and the impact on stateless children is not known.

### 5.6 Higher education, language and vocational training

In all four States, higher education and vocational training are available on a commercial basis to foreigners in general and persons officially documented as stateless. Enrolment fees for these courses are set by the institution in question and sometimes discriminate in favour of nationals.<sup>401</sup>

Exceptionally among the four States, Kazakhstan offers free vocational and professional training and higher and post-graduate education in state educational institutions, on a competitive basis, to people who are officially recognised as stateless – provided they have not previously had such education.<sup>402</sup>

Undocumented stateless persons who attended Participatory Assessments in Kazakhstan with UNHCR said that for their children higher education was inaccessible, because neither they nor their children had a Stateless Person's Card. In Turkmenistan too, UNHCR spoke with a stateless parent whose son was unable to enter tertiary education because of his family's unresolved nationality problems. In Turkmenistan, a shortage of higher education places may also limit the prospects for school-leavers, including persons with undocumented nationality. According to the official newspaper *Neutral Turkmenistan* in May 2009,<sup>403</sup> 115,000 school-leavers were chasing available places. In 2008, the same newspaper gave these as 4,275 openings in higher education institutes; 1,698 places for vocational training, and 940 higher education places in military and police academies.<sup>404</sup>

In Kyrgyzstan, the UNHCR regional survey of statelessness in the North showed that three percent of respondents had received a higher education. Comparative statistics for exactly the same period are not available, but the 1999 national census showed that 12% of the population had a higher education.<sup>405</sup> In Tajikistan, a stateless parent who attended a Participatory Assessment with UNHCR said that the

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<sup>397</sup> Central Asia Regional Risk Assessment by UNDP.

<sup>398</sup> Data from a 2003 survey of 15,000 households in Temurmalik and Beshkent in rural Khatlon, by the water rights NGO *Parastor*, available at [www.ngoparastor.freenet.tj](http://www.ngoparastor.freenet.tj).

<sup>399</sup> UNICEF, Country Information, available at [www.unicef.org/infobycountry/Turkmenistan.html](http://www.unicef.org/infobycountry/Turkmenistan.html).

<sup>400</sup> *Turkmen Initiative for Human Rights*, Little Turkmen Trojans, 25 August 2008, available at [www.chrono-tm.org/?heading=26&page=4](http://www.chrono-tm.org/?heading=26&page=4).

<sup>401</sup> For example, fees are significantly higher for foreign students enrolling in Tajikistan and Kyrgyzstan, according to UNDP's 2008 Central Asia Regional Risk Assessment.

<sup>402</sup> Under Article 10, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan. A national scholarship test to enter University in Kyrgyzstan is not open to stateless candidates.

<sup>403</sup> *Neutral Turkmenistan*, No 139, 25 May 2009.

<sup>404</sup> *Neutral Turkmenistan*, 3 September 2008.

<sup>405</sup> Cited in UNESCO, Education System, Literacy and Life Long Learning, *Country Report on Kyrgyzstan*, available at [www.unescobkk.org](http://www.unescobkk.org). Typical private university fees for nationals in Kyrgyzstan are 1,500 US Dollars, and for foreigners (who include the recognized stateless) they are 2,000 US Dollars.

cost of higher education was prohibitive and had prevented him putting his child through teacher-training.<sup>406</sup> In 2009, annual fees for foreign students, including those who are stateless, at the Institute of Higher Education had nearly doubled, to 1,800 US Dollars. In Tajikistan, an annual Presidential Quota is intended to give higher education places to 500 girl school-leavers from mountainous districts who would otherwise be disadvantaged. It is not known if this might include young women who are stateless. In practice, there appear to have been problems administering the quota: some of the 5,500 places awarded over 12 years appear to have gone to boys.<sup>407</sup>

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<sup>406</sup> He said that annual fee for a course at the Institute of Higher Education had risen from 1,000 US Dollars to 1,800 US Dollars.

<sup>407</sup> Over 12 years, the presidential quota benefited “mostly girls”. Presidential report, cited in the Central Asia Regional Risk Assessment by UNDP.

## 6 Community Participation, Self-Management and Self-Reliance

In each of the four Central Asian States covered in this chapter, a law ‘On the Legal Status of Foreigners’ accords foreigners a number of rights that give them the possibility to achieve a degree of self-reliance and opportunity to participate in the community. As with the satisfaction of basic needs and provision of services outlined in the previous chapter, the law extends to stateless persons, unless otherwise specified in the legislation of the State. As in Chapter 5, in each case the term ‘stateless’ embraces only those who are permanently resident, whom the State has formally recognised in law as ‘stateless’. By law, undocumented stateless people, or people with difficulties establishing their nationality, are generally not entitled to the rights outlined below.

### 6.1 *Rights and responsibilities*

As mentioned above, the profiling of stateless people in the region is incomplete. There is therefore no comprehensive information on the extent to which they exercise their rights and responsibilities.

Some work has been done by national migration services and local NGOs to disseminate information about rights and responsibilities among stateless persons and help them enjoy their rights.<sup>408</sup> In Turkmenistan, field offices of the State Migration Services give stateless persons some information about their rights and responsibilities. In all four States, UNHCR’s NGO partners give practical assistance to stateless persons on an individual basis. In Kazakhstan, fifteen NGOs work with ‘*Oralmany*’, ethnic Kazakhs returning to Kazakhstan by official invitation.<sup>409</sup> Although they mostly enter the country in resettlement quotas, some of them are stateless. Five of the NGOs are self-help groups that give legal advice and one specializes in the rights of *Oralman* women subjected to violence in the family.

The two surveys in northern Kyrgyzstan carried out by UNHCR’s NGO partners reported that by far the majority of queries at the legal clinics related to information about how to acquire citizenship (86% and 96%); around half related to legal problems of different sorts (41% in both surveys); and up to one quarter related to employment rights (24% and 18%).<sup>410</sup> In focus groups in all four States, stateless persons asked UNHCR for more information. They particularly wanted to know how to acquire citizenship; how to solve practical problems with passports; what education their children had the right to expect; whether their statelessness status would prevent their children marrying in a legal ceremony and having children who were legitimate; how to find work; and how to establish the same nationality for all members of their family.

### 6.2 *Participatory assessments and community mobilization*

Foreigners are entitled to join non-profit making organisations in each of the four States, as are stateless people who are permanent residents.<sup>411</sup> Kyrgyzstan and Kazakhstan restricts membership to organisations with ‘non-political aims’ and Kazakhstan also prohibits stateless persons and other foreigners from joining political parties. In Tajikistan, they cannot join non-profit groups with a

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<sup>408</sup> Some information on citizenship and naturalization procedures is also available on consular websites, as is some information on migration rules, temporary sojourn and permanent residence.

<sup>409</sup> *Human Rights Ombudsman of the Republic of Kazakhstan*, Activities of NGOs, Section 6: Observing the Right of Refugees and Oralman in Kazakhstan, *Astana, 2008*, p. 72.

<sup>410</sup> *UN High Commissioner for Refugees*, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, *UNHCR Bishkek, 2009*, pages 49 and 65.

<sup>411</sup> In Tajikistan, Article 12, 2007 Law ‘on Public Associations’ and Article 15, 1997 Law No 500 ‘On the Legal Status of Foreigners’, as amended in 2009; Article 15, 1993 Law ‘On the Legal Status of Foreigners’ in Turkmenistan, as amended in 2011; Article 12, 1995 Law No 2337 ‘On the Legal Status of Foreigners’ in Kazakhstan; and Article 14, 1993 Law No 1296-XII ‘On the Legal Status of Foreigners’ in Kyrgyzstan.

political mandate, political parties, or trade unions.<sup>412</sup> Stateless persons, like all foreigners in the four States, are ineligible to vote or stand for election.<sup>413</sup>

There are few civil society organisations in Turkmenistan, but its social security law does make provision for a network of ‘Public Associations of Invalids’. Their mandate is to protect the medical welfare of members and to help improve their enjoyment of social and labour rights.<sup>414</sup> From UNHCR’s reading of the law, it may be construed that these public associations are also open to documented and undocumented stateless persons with physical disabilities. With UNDP in 2009, Turkmen disability associations ran a programme for people with visual and hearing impairment called “Making the Millennium Goals Disability-Inclusive”.<sup>415</sup> Opportunities for community mobilization are limited, however, since the registration of non-governmental organizations is complex and requires extensive documentation.

Each State guarantees freedom of conscience to the foreigners on its territory, including the people it recognises as stateless, and each outlaws hate speech on religious grounds.<sup>416</sup> There is a variety of religious belief among the registered and unregistered stateless in the region. UNHCR does not know what opportunity they have to exercise their religious observances in practice. In meetings with the stateless throughout the region, no one raised this as their most pressing problem.

### 6.3 Employment

The transition from the administrative-command economy of Soviet times towards an era of mixed economies has spawned a vast informal sector. This has been the subject of research in each State. A World Bank study in 2003 described the informal sector as “the best and possibly the only survival strategy in the context of difficult transitions”.<sup>417</sup> Stateless persons who are undocumented, engage mostly in this sector because they are not legally able to access jobs in the formal economy.

There has been no study of the socio-economic profile of stateless persons in the region. The three surveys in Kyrgyzstan by UNHCR’s implementing partners constitute the most probing research to date. The first two, carried out in the north of Kyrgyzstan in 2007 and 2008 among migrants to the Chuy region, collected information on 5,588 persons, some of whom were found to be stateless. Of those interviewed, over 42% of the adults were doing casual day-labour; 14% were cultivating plants and 10% engaged in cattle-breeding. Some 214 married couples said they had no constant source of income. Ninety said they regularly put together an income from three different sources and one from nine sources.<sup>418</sup> In Tajikistan, stateless persons told UNHCR they also largely work for themselves in the private sector. No clear data emerged from Turkmenistan.

Because they have greater problems finding formal employment, undocumented stateless persons are more likely to be exposed to extreme poverty than other parts of the population. Kyrgyzstan’s National

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<sup>412</sup> Article 15, 1997 Law No 500 ‘On the Legal Status of Foreigners’ in Tajikistan, as amended in 2009; 1995 Article 12, 1995 Law No 2337 ‘On the Legal Status of Foreigners’ in Kazakhstan; Article 14, 1993 Law No 1296 XII ‘On the Legal Status of Foreigners’ in Kyrgyzstan.

<sup>413</sup> Article 21, 1993 Law No 1296-XII ‘On the Legal Status of Foreigners’ in Kyrgyzstan; Article 19, 1995 Law No 2337 ‘On the Legal Status of Foreigners’ in Kazakhstan; Article 22, 1997 Law No 500 ‘On the Legal Status of Foreigners’ in Tajikistan, as amended in 2009.

<sup>414</sup> Articles 149-158, 2007 Law on Social Security of Turkmenistan.

<sup>415</sup> *United Nations Development Programme in Turkmenistan*, UN Brings Forward New Plans to Support People with Disabilities at Round Table, 3-4 December 2009, available at [www.undptkm.org/index.php?option=com\\_content&task=view&id=618&Itemid=43](http://www.undptkm.org/index.php?option=com_content&task=view&id=618&Itemid=43).

<sup>416</sup> Article 16, 2007 Law No 500 ‘On the Legal Status of Foreigners’ in Tajikistan, as amended in 2009; Article 16, 1993 Law ‘On the Legal Status of Foreigners’ in Turkmenistan, as amended in 2011; Article 13, 1995 Law No 2337 ‘On the Legal Status of Foreigners’ in Kazakhstan; Article 15, 1993 Law No 1296-XII ‘On the Legal Status of Foreigners’ in Kyrgyzstan.

<sup>417</sup> *Yoon, Reilly, Krstic and Bernabè*, A Study of Informal Labour Market Activity in the CIS-7, *World Bank*, 2003.

<sup>418</sup> *UN High Commissioner for Refugees*, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, *UNHCR Bishkek*, 2009, pages 47 and 62. A third survey, of stateless persons in southern Kyrgyzstan, was carried out between September 2008 and January 2009 and did not ask respondents about their sources of income.



Strategy for Reproductive Health, for instance, found that 45.9% of the Kyrgyz population lives below the poverty line. Statistics for extreme poverty in Kyrgyzstan vary, but are highest in areas where many stateless are known to live. In Batken region, for example, where UNHCR's partners conducted a survey of stateless people, 77% live in extreme poverty in rural areas and 33.7% in the towns. Nationwide, the government strategy paper notes that the search for work prompts migration within States, from villages to towns, migration within the Central Asia region and migration further afield. Unusually, local unemployment has affected women much more severely than men,<sup>419</sup> a finding borne out by UNHCR's own survey of stateless persons.<sup>420</sup>

Each of the four States reserves the right to earmark some posts exclusively for citizens, such as positions in government service.<sup>421</sup> Kazakhstan operates an annual quota for foreign and stateless labour<sup>422</sup> and puts certain other types of wage-earning employment beyond limits for the stateless and other foreigners "in the interests of ensuring the constitutional right to work" for Kazakh citizens. Since the global economy went into recession in 2008, Tajikistan has also started to operate a quota system for foreign and stateless labour.

Stateless persons, and other foreign labour, are channelled into the service sector and semi-skilled manual labour in the legislation of Kyrgyzstan. Stateless persons with a permanent residence permit in Kyrgyzstan can work as labourers or service staff in enterprises and organisations, or do other work on terms set for foreigners. Those with a temporary residence permit are also allowed to come and work, provided their job is compatible with the aims of their stay, approved by the Ministry of Internal Affairs and fits within the duration of a temporary visa.<sup>423</sup> Stateless persons surveyed in northern Kyrgyzstan said that the documentation needed for book-keeping and taxation purposes sometimes put employers off hiring them in the wage-earning sector.

By law, Tajikistan provides various employment rights for foreigners. In order to work in the country, they need permission from the migration division of the Ministry of Internal Affairs.<sup>424</sup>

These provisions make a pool of stateless labour possible in all three countries for seasonal work, like harvesting cotton, nuts and tobacco.

In Turkmenistan, foreign nationals can work as labourers and service staff in enterprises, institutions and organisations. They can also do other work, under procedures established for Turkmen *citizens*, but the law does not indicate what type of work this might be. In Turkmenistan, stateless persons do not have labour rights in law.<sup>425</sup>

In 2009, Tajikistan adopted several measures aimed at restricting wage-earning employment for foreigners and stateless persons among them. On 1 April, a government instruction<sup>426</sup> imposed an annual quota of 6,000 on foreign labourers working inside the country, including stateless persons. The largest sub-quota was for Chinese.

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<sup>419</sup> UNESCO, Education System, Literacy and Life Long Learning. Country Report on Kyrgyzstan, available at [www.unescobkk.org](http://www.unescobkk.org).

<sup>420</sup> According to the 2008 UNAIDS, WHO, FAO Epidemiological Country Surveys Profile, ten percent of the infected population is in Osh region. The figure is between one and four percent in Bishkek. Appendices to WHO reports, available at [www.apps.who.int](http://www.apps.who.int).

<sup>421</sup> Article 7, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 7, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Article 7, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011; Article 6, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

*Oralmany* are not as a rule stateless but in southern Kazakhstan they told UNHCR that they were not allowed to occupy certain posts – for example, a job in the militia or in the Kazakh State Security Service.

<sup>422</sup> Article 15, 2001 Employment Law of Kazakhstan, No 149-11.

<sup>423</sup> Article 7, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan.

<sup>424</sup> Article 7, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009.

<sup>425</sup> Article 7, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011.

<sup>426</sup> 1999 Instruction 'Confirming the Rules for Issuing work permits to Foreigners and Stateless Persons, who are carrying out work in Tajikistan'.

Tajikistan also raised the cost of a 12-month work permit that employers must buy. A permit for a labourer from the CIS now costs 110 US Dollars, and for a labourer from further afield, 230 US Dollars. Employers who hire stateless or other foreign labour without necessary permission are liable to fines ranging from 20 to 1,000 times their rate of pay.<sup>427</sup> Stateless persons in northern Tajikistan told UNHCR that their employers had shifted the cost of the permit to them – 1,050 Somoni<sup>428</sup> – and docked it from their wages.

In 2004 Kazakhstan became a net importer of labour. Its efforts to meet its own labour shortage and to regulate its immigrant work-force have had an impact across the region, including on stateless persons.<sup>429</sup> From 2004-2006, Kazakhstan experienced labour shortages in its agricultural, industrial, educational and health sectors.<sup>430</sup> It is still analysing the wave of migrant labour that responded to this shortage and making some amendments to its legislation in the light of it.

Han Chinese comprised the largest group of registered immigrant workers in those years.<sup>431</sup> There was also an exponential rise in non-contractual, unregistered labour immigration. In southern Kazakhstan, for instance, between March and November of each year, between 30,000 and 70,000 unregistered labour migrants reportedly arrived for seasonal agricultural work, peaking at harvest-time in September-October. According to an independent Sociological Research Centre based in Chymkent, most seasonal farm workers are Uzbeks, crossing the 784-kilometer open border with Kazakhstan, and include stateless persons. Significantly fewer come from Kyrgyzstan and Tajikistan.<sup>432</sup>

The impact of labour migration on stateless persons in Kazakhstan has not been studied. The Chymkent research centre maintains that from 2004, national law enforcement agencies attempted to control it by administrative means and force, detaining and expelling migrants who were working without permission. Around 14,000 were expelled each month.<sup>433</sup> Owing to a shortage of customised holding centres, stateless persons and suspected illegal migrants were placed in remand prisons alongside criminal suspects<sup>434</sup> before being expelled.

Policy makers in Kazakhstan were divided about labour migration, according to the research centre. Authorities and law enforcement agencies in south-Kazakhstan favoured a change in the law that would make it simpler for Kazakh employers to recruit foreign labour and license it. It found widespread detention and expulsion to be ineffective and inappropriate. For one thing, Kyrgyzstan, Tajikistan and Uzbekistan are part of an agreement on visa-free travel with Kazakhstan<sup>435</sup> and most migrants arrive in the country legally.

In the light of global economic recession, Kazakhstan has scaled down its annual quota for foreign labour. Government Instruction No 1197 of 22 December 2008 reduces the quotas previously set for seasonal agricultural labour in border areas for the period 2008-2010, from 2.4% of the total

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<sup>427</sup> Article 138, 2009 Administrative Code of Tajikistan.

<sup>428</sup> Approximately 235 US Dollars according to 30 April 2011 exchange rates.

<sup>429</sup> *Elena Y. Sadovskaya*, Migration in Kazakhstan on the Threshold of the 21<sup>st</sup> century: An Analytical Overview for the ILO in the Russian Federation, *Almaty-Moscow*, 2005; *Serik Aidossev*, Expert Member of the Presidential Human Rights Commission of Kazakhstan, 'Integration of Economic Migrants from Central Asian Countries into Kazakhstan's Labour Market, Avoiding Intolerance and Discrimination', *Paper to the 13<sup>th</sup> Economic Forum, Prague 23-27 May 2005*.

<sup>430</sup> *Elena Y. Sadovskaya*, Migration in Kazakhstan on the Threshold of the 21<sup>st</sup> century: An Analytical Overview for the ILO in the Russian Federation, *Almaty-Moscow*, 2005.

<sup>431</sup> 5,000 had work contracts mostly in Almaty and Astana. *Elena Y. Sadovskaya*, Chinese Migration to Kazakhstan: Silk Road for Cooperation or Thorny Road of Prejudice, *The China and Eurasia Forum Quarterly*, Vol. 5, No. 4, *Caucasus-Central Asia Institute, Johns Hopkins University*, November 2007.

<sup>432</sup> Cited in a presentation by *Serik Aidossev*, Expert Member of the Presidential Human Rights Commission of Kazakhstan, 'Integration of Economic Migrants from Central Asian Countries into Kazakhstan's Labour Market, Avoiding Intolerance and Discrimination', *13 Economic Forum, Prague, 23 May 2005*.

<sup>433</sup> *UN Office for the Coordination of Humanitarian Affairs*, Kazakhstan: Focus on New Immigration Law, 6 January 2004, available on <http://www.irinnews.org/Report.aspx?ReportID=22690>.

<sup>434</sup> *Ibid.*

<sup>435</sup> The Bishkek Accord signed in October 1992 with five other CIS states. Turkmenistan was also a signatory but left in 1999 and concluded a bi-lateral agreement with Kazakhstan in 2003.

economically active population to 0.75%. It also sets foreign labour quotas for other sectors of the economy in 2009 at 0.75% of the total economically active population.<sup>436</sup> A stateless person on Kazakh territory who has a Stateless Person's Certificate, is entitled to conclude a contract for employment in the mainstream economy, as is a foreigner with a permanent residence permit.<sup>437</sup>

Employment contracts that migrant labourers, including stateless migrants, draw up outside the quota system are invalid.<sup>438</sup> Employment contracts drawn up within the quota system are legal, but in their present form may leave migrant labourers and stateless persons vulnerable to bad working conditions, according to a study carried out by the International Federation for Human Rights in Kazakhstan and Kyrgyzstan in July 2009.<sup>439</sup> This is because the work permit system is an arrangement between the state authorities and employers. Migrant employees are not given a copy of their permit to work, and the study finds they are dependent on their employer and may not be able to seek work elsewhere if they suffer abuse.

#### 6.4 *Social security and just and favourable conditions of work*

In all four States, stateless persons and other foreigners with a permanent residence permit are entitled to pensions and social security payments on the same footing as citizens.<sup>440</sup> Each State makes two sorts of payment available to eligible individuals: a professional pension to insure against loss of earning capacity and a social pension that benefits specified categories of needy people. *Temporary* residents are also entitled to these benefits in Kyrgyzstan and Tajikistan, in accordance with a procedure established by law.<sup>441</sup>

All four States pay professional pensions to people who have contributed compulsory national insurance contributions through their place of work. Employers channel the contributions to a Pension Fund from which beneficiaries can claim a pension when their earning capacity is diminished – most notably when they retire but also if they suffer unemployment; industrial injury, the death of a breadwinner, child-birth or spend time caring for a very young child. The system operates through the formal employment sector of each country and is therefore generally not accessible to people outside it, such as undocumented stateless persons.

In 1998, Kazakhstan part-privatised its professional pension scheme and opened mandatory individual pension accounts for employees of all ages.<sup>442</sup> In 2009, Kyrgyzstan also switched to a system of individual pension accounts<sup>443</sup> and a similar switch-over in Turkmenistan should be complete by 2012.<sup>444</sup> Monthly insurance contributions towards professional pensions remain universal and compulsory in each State. Tajikistan has retained the previous professional pension scheme administered by the State on a 'Pay As You Earn' (PAYE) basis.

In June 2003, Kazakhstan raised professional pensions across the board by 23% and in June 2005 introduced a so-called '*demogrant*' – or 'citizen's pension' – worth around 40% of subsistence income.

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<sup>436</sup> Article 15(5), 2007 Labour Code of Kazakhstan.

<sup>437</sup> *Ibid*, Article 31(2).

<sup>438</sup> *Ibid*, Article 61(3).

<sup>439</sup> *International Federation for Human Rights, Kazakhstan/Kyrgyzstan: Exploitation of Migrant Workers, Protection Denied to Asylum-Seekers and Refugees, press release, 22 July 2009, available at* <http://www.fidh.org/IMG/pdf/kgkaz2207a.pdf>.

<sup>440</sup> Article 8, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Article 10, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009; Article 10, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Article 10, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, as amended in 2011.

<sup>441</sup> Article 10, 1996 Law No 230 'On Legal Status of Foreigners' in Tajikistan, updated in 2009; Article 10, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan.

<sup>442</sup> The 1998 Pension Law of Kazakhstan, as amended seven times to 2005. The self-employed, including foreigners and stateless persons "permanently resident on Kazakh territory and engaged in work that brings wealth to Kazakhstan", are included in the obligatory national insurance and professional pension scheme, according to Article 8.

<sup>443</sup> Article 9, 2009 Law No 217 'On National Social Welfare' of Kyrgyzstan. Article 5(3) says that "Stateless persons and foreigners are eligible for state social insurance on an equal footing with citizens, on conditions foreseen by current law and Kyrgyzstan's international treaties".

<sup>444</sup> Article 187, 2007 Social Security Code of Turkmenistan.

This is believed to extend to registered stateless persons.<sup>445</sup> To claim social benefits, a stateless person within the national labor quota of Kazakhstan, must present a Statelessness Certificate issued by the Ministry of Internal Affairs which is equivalent to a permanent residence permit.<sup>446</sup>

Data on the operation of the new individual professional pension accounts is so far only available from Kazakhstan. Only 43% of the economically active population was found to be covered by the professional pension system, as compared with 64% in 1997.<sup>447</sup> A growth in the shadow, untaxed economy was unexpectedly found to have accompanied the new pension arrangements.

Within the economically active population that contributes to the professional pension scheme, the system was found to have disadvantaged women. In Kazakhstan, their earnings are generally 57% of male earnings and, because of an earlier retirement date amongst other factors, they have fewer economically active years.<sup>448</sup> No study has been made of the impact of the new pension scheme on stateless persons, but there appear to be no grounds to suspect that stateless women will enjoy higher pensions than women who are citizens. Against a background growth in the shadow economy, it also seems unlikely that undocumented stateless will have transferred in large number to the formal economy and its professional pension scheme.

The procedures for drawing a professional pension in Turkmenistan, Kazakhstan and Kyrgyzstan make them inaccessible to undocumented stateless people. In Turkmenistan, for instance, retirement pension payments are made directly to the beneficiary's bank account in the district where their residence is registered.<sup>449</sup> Someone without valid identification papers cannot open a bank account. One-off payments for loss of earnings, for example due to industrial injury, also demand a type of documentation in Turkmenistan that is generally beyond a claimant working outside the formal employment sector, such as an undocumented stateless person. Someone wishing to claim a pension for a radiation accident, for instance, needs to produce valid personal identification; confirmation from a Medico-Social Expert Commission; a work book, and documentary proof of their last five years' earnings.<sup>450</sup>

In Kyrgyzstan, stateless elderly person without documents told the UNHCR survey that they normally experienced difficulty in arranging and collecting a retirement pension. A 'composite monthly benefit', which is a means-tested payment for indigent families with children, is available only at the place where people are permanently registered.<sup>451</sup> This precludes unregistered stateless persons from receiving it.<sup>452</sup> In Tajikistan, retired people are entitled to draw their professional pensions in cash from social welfare committees in the district where they actually live, regardless of where their residence is formally registered.<sup>453</sup>

The second benefit available in each State is a 'social pension'. Tajikistan offers these to the widest range of beneficiaries. There, social pensions are tax-free, paid monthly in cash and available to the

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<sup>445</sup> In accordance with Article 8, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan.

<sup>446</sup> Article 8, 1995 Law No 2337 'On the Legal Status of Foreigners' in Kazakhstan; Articles 11 and 15, 2001 Employment Law of Kazakhstan, No 149-11.

<sup>447</sup> Cited in *Richard P Hinz, Asta Zviniene, Anna-Marie Vilamovska, The New Pensions in Kazakhstan: Challenges in Making the Transition, SP Discussion Paper No 0537, World Bank, September 2005, available at* <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0537.pdf>. The average coverage in CIS States at that time was 59%. In OECD States it was 81%.

<sup>448</sup> *Ibid.* Typically, women are also more likely to lose years of earned income through giving unpaid child-care.

<sup>449</sup> Article 41 (1), 2007 Social Security Code of Turkmenistan.

<sup>450</sup> Article 85, 2007 Social Security Code of Turkmenistan.

<sup>451</sup> Article 12, 2003 Law No 405-VI 'On Compulsory Social Security' in Kazakhstan; Article 9(2), 2009 Law No 217 'On National Social Welfare' of Kyrgyzstan.

<sup>452</sup> Cited in *UN World Food Programme, Food Security Analysis of the Kyrgyz Integrated Household Survey for 2006, 2007 and first quarter of 2008, 2008, updated in April 2010, available at*

<http://home.wfp.org/stellent/groups/public/documents/ena/wfp220175.pdf>, accessed on 7 March 2011; *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009, page 50.*

<sup>453</sup> Article 96, 1993 Law No 796 'On Pension Provision to Citizens of Tajikistan'.

following categories of people: individuals with stunted growth, the blind, and to victims of the nuclear reactor accident at Chernobyl in 1986.<sup>454</sup> Pension supplements are also available to solitary pensioners of 80 years and over; to invalids with 1<sup>st</sup> and 2<sup>nd</sup> degree disabilities; persons rehabilitated from unlawful repression on political grounds, and persons infected with HIV/AIDS.<sup>455</sup> Stateless persons who can prove they meet any of these criteria, should be able to draw a social pension without a Stateless Person's Card.<sup>456</sup>

Social pensions are available in the other three States on a more limited scale. Turkmenistan, for instance, offers benefits to persons with stunted growth,<sup>457</sup> to invalids suffering from accidents with radiation (including accidents that took place in other States)<sup>458</sup> and to veterans of the Soviet war in Afghanistan 1979-1989<sup>459</sup> and veterans of wars elsewhere.<sup>460</sup> Carriers of infection and sexually-transmitted diseases, however, are disqualified from receiving a social pension.<sup>461</sup> Kyrgyzstan offers social pensions in specific cases to cover funeral costs and medical reimbursements.<sup>462</sup> Kazakhstan offers social pensions to children under 16 infected by HIV/AIDS or injured by nuclear tests and ecological disaster, to persons rehabilitated after wrongful political imprisonment and to people who worked in the Semipalatinsk testing site from 1963-1992.<sup>463</sup>

In Turkmenistan,<sup>464</sup> stateless children are ordinarily not able to receive a higher education in state institutions. Young people who are invalids, however, do have this entitlement.<sup>465</sup> No exclusion clauses attach to this right, and so it may also apply to disabled young persons who are stateless.

Kazakhstan and Kyrgyzstan restrict payment of social pensions to persons who contribute obligatory social insurance payments through their place of work.<sup>466</sup>

In 2009, the majority of stateless in each State are unregistered and working in the informal sector, where labour rights and provisions of social security do not apply. The prohibition on joining groups with political aims in Kazakhstan, Kyrgyzstan and Tajikistan makes it hard for them to improve their conditions.<sup>467</sup>

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<sup>454</sup> *Ibid*, Article 15.

<sup>455</sup> *Ibid*, Article 18.

<sup>456</sup> In northern Tajikistan, UNHCR interviewed one elderly man with impaired sight and mobility, who said he received a state pension although he had not yet been able to establish his statelessness status.

<sup>457</sup> Article 23(8), 2007 Social Security Code of Turkmenistan.

<sup>458</sup> *Ibid*, Article 82.

<sup>459</sup> *Ibid*, Article 131.

<sup>460</sup> *Ibid*, Article 136.

<sup>461</sup> *Ibid*, Article 127(2).

<sup>462</sup> Article 10, 2009 Law No 217 'On National Social Welfare in Kyrgyzstan'.

<sup>463</sup> Richard P Hinz, Asta Zviniene, Anna-Marie Vilamovska, The New Pensions in Kazakhstan: Challenges in Making the Transition, *SP Discussion Paper No 0537*, World Bank, September 2005, available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0537.pdf>.

<sup>464</sup> Please see Sections 5.7 and 5.8 of this report.

<sup>465</sup> According to Article 158(4), 2007 Social Security Code of Turkmenistan.

<sup>466</sup> Article 12, 2003 Law No 405-VI 'On Compulsory Social Security in Kazakhstan'; Article 9(2), 2009 Law No 217 'On National Social Welfare of Kyrgyzstan'. In Kyrgyzstan, since 1995 a 'composite monthly benefit', which is a means-tested payment for indigent families with children, has only been available to people at the place where they are permanently registered. This precludes unregistered stateless from receiving it. Cited in the Food Security Analysis of the Kyrgyz Integrated Household Survey for 2006, 2007 and first quarter of 2008, carried out by the World Food Programme. Stateless elderly persons without documents in Kyrgyzstan told the UNHCR survey that they normally experienced difficulty in arranging and collecting a pension, see *UNHCR, A Place to Call Home. The Situation of Stateless Persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, Bishkek, 2009, page 50*.

<sup>467</sup> In its November 2001 Concluding Observations on Uzbekistan, the UN Committee on the Rights of the Child expressed concern that social security laws in Uzbekistan effectively deprive non-citizens of rights to social security benefits and impose fees that may inhibit access to health and education services. It urged that all children within Uzbek jurisdiction enjoy all the rights set out in the Convention without discrimination, see *CRC/C/15/Add 167*.

## 6.5 *Right to own property*

According to legislation on the status of foreigners in all four States, rights to own property and intellectual property are accorded to foreigners<sup>468</sup> on the same footing as nationals and extend to people officially recognised as stateless who have permission to reside permanently on the territory.

In Kyrgyzstan and Kazakhstan, rights to *land* ownership are not the same for foreigners and stateless as for nationals.

Kyrgyzstan introduced private ownership of land in its Land Code of 1999<sup>469</sup> and has subsequently given Kyrgyz town-dwellers and corporate buyers the right to purchase it, in an attempt to encourage agricultural investment. Between 2006 and 2009, it was the first Central Asian State to make a complete land inventory of its territory. According to the Law on the Management of Agricultural Lands, agricultural land cannot be offered or transferred to foreigners; to stateless persons living on Kyrgyz territory; or to married partners, if one is foreign or stateless.<sup>470</sup>

Kazakhstan imposes geographical restrictions on the lease and ownership of land by stateless persons and other foreigners. According to its 2003 Land Code, within a 3-kilometer protection zone next to the State border foreigners and stateless persons are not allowed to own or have permanent use of forests or agricultural land. Elsewhere on Kazakh territory they are unable to own land but can lease it for up to 10 years. Kazakh nationals and Kazakh legal entities, on the other hand, can lease land parcels for terms of between 5 and 49 years.<sup>471</sup> The Property Law of Turkmenistan<sup>472</sup> also distinguishes between the rights of nationals and foreigners to own land.<sup>473</sup>

The Property Law of Tajikistan<sup>474</sup> vests ownership of the land (and all other natural resources and air space) in the Tajik State, which can provide plots of land and other resources for ownership and use by physical and juridical personalities, in accordance with the Land Code.<sup>475</sup> Land owners can include foreign States, foreign citizens and stateless persons<sup>476</sup> and all the legal provisions that apply to the property of Tajik citizens apply equally to foreigners and stateless persons, unless otherwise provided by law.<sup>477</sup>

None of the four States distinguishes between rights to *other* forms of property enjoyed by stateless persons and nationals. Kazakhstan, for instance, sets no ceiling on the number of shares that foreigners or stateless persons can hold in a national company.<sup>478</sup> In each State, the enjoyment of property rights involves the conclusion of civil law deeds and contracts and all four States demand valid identity documentation to do this. In Kyrgyzstan, purchases and transfers of land are registered by the State. Land plots sub-divided independently will not be registered and their<sup>479</sup> owners' title to them will not

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<sup>468</sup> Article 11, 1993 Law No 1296-XII 'On the Legal Status of Foreigners' in Kyrgyzstan; Article 12, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, amended in 2009; Article 12, 1993 Law 'On the Legal Status of Foreigners' in Turkmenistan, amended in 2011; Article 9, 1995 Law No 2337 'On the Legal Status of Foreigners in Kazakhstan.

<sup>469</sup> The 1999 Land Code of Kyrgyzstan, subsequently amended in 2007.

<sup>470</sup> Article 7 of the 2001 Law on the Management of Agricultural Lands of Kyrgyzstan, subsequently amended in 2006, 2007 and 2009.

<sup>471</sup> Decision of the Supreme Court of Kazakhstan, No 6, 16 July 2007 'Clarifying Property Rights and Application of Land Legislation'. Point 19 clarifies the land and property rights of foreigners and stateless persons.

<sup>472</sup> 1993 Property Law of Turkmenistan.

<sup>473</sup> *Ibid*, Article 19. The law says that stateless persons and foreigners are allowed to own land 'plots'. It does not articulate in what ways their property rights differ from those of Turkmen nationals.

<sup>474</sup> 1996 Law No 385 'On Property' of Tajikistan.

<sup>475</sup> *Ibid*, Article 7.

<sup>476</sup> *Ibid*, Article 5.

<sup>477</sup> *Ibid*, Article 38.

<sup>478</sup> The Russian Federation, for instance, imposes a 50% ceiling on foreign shareholdings, cited in *Zhaniya B. Ussen and Zarina S. Umerbayeva*, New Land Code is Centrepiece of Agricultural Reform in Kazakhstan, *Kazakhstan International Business Magazine*, No 3, 2003, available at [www.investkz.com/en/journals/36/2000](http://www.investkz.com/en/journals/36/2000).

<sup>479</sup> Article 9, 2000 Law 'On the Management of Agricultural Lands' in Kyrgyzstan.

be secure. In each of the four States, property rights are justiciable in the national courts, although Turkmen property law is not always clear on this point.<sup>480</sup>

In meetings with UNHCR throughout the region, stateless persons with official Stateless Person's Cards reported no significant problems with their rights to own property. Stateless individuals in mixed marriages attending meetings with UNHCR said they lived in houses or flats, whose formal ownership belonged to their national spouse. Stateless persons without a national partner, who themselves had not been officially documented as a stateless person, have experienced difficulties with property in the four States.

According to the surveys carried out in Kyrgyzstan by UNHCR's NGO partners, ethnic Tajiks who had settled temporarily in Batken region in the 1990s lost the homes they had bought without valid sale and purchase documents. Once a simplified procedure for acquiring Kyrgyz citizenship was concluded between Kyrgyzstan and Tajikistan in June 2002, they were able to legalise their house purchases retroactively and the homes were returned to them.<sup>481</sup> In Tajikistan, there is no property provision for temporary residents.<sup>482</sup> Stateless persons in Dushanbe without official registration as 'stateless persons' told UNHCR that they are unable to conclude a contract, for example, to buy a house or a car. In their case, their anomalous situation had lasted between 10 and 15 years, which made their lives very difficult. One had entrusted a Tajik national to buy a property on his behalf. He said he was cheated and then had been unable to bring a case through the civil courts. In Kazakhstan, temporary residents – such as undocumented stateless persons – can exercise property rights, on a basis set down in national law. Temporary residents who are tenants can be evicted at seven days' notice without compensation, and those who sub-let a property risk summary eviction, because the end of a let automatically ends a sub-let.<sup>483</sup> In Turkmenistan, stateless persons from near Ashgabat, holding a 1974 USSR passport, told UNHCR they were unable to buy a home because they lacked valid identification documents.

Kazakhstan and Kyrgyzstan give some specific property rights to members of their titular ethnic group returning to settle in the country. Indigenous Kazakhs – *Oralmany* – have accelerated access to municipal housing for rent if they have judicial proof that they were once victims of political repression.<sup>484</sup> When they have acquired Kazakh citizenship they can buy property from the State housing sector, as a social category protected in law.<sup>485</sup> They are restricted to buying one property.<sup>486</sup> Ethnic Kyrgyz returning to Kyrgyzstan – *Kairylmans* – receive a plot of land from the Migration Service, a grant, and permission to build a house once they have acquired citizenship. They are also able to transfer property from their previous residence, tax-free, for their own personal use. According to the Ministry of Labor, Employment and Migration of Kyrgyzstan, since 1991, 22,000 *Kairylmans* from Tajikistan and Uzbekistan have received citizenship and a plot of land.<sup>487</sup>

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<sup>480</sup> Article 19, 1993 Property Law of Turkmenistan says that the provisions of the law “do not apply to the rights of foreigners and stateless persons to land”. Article 25(4) gives property holders who are not the owners of a particular piece of property the right to defend their rights *against* the owner. Article 26 requires a court order for the expropriation of someone's property, only if they object to the expropriation. The law envisages 11 situations in which expropriation of property might be carried out lawfully or unlawfully.

<sup>481</sup> 2004 Regulation 'On Simplified Procedures for Acquiring Kyrgyz Citizenship by Tajik Citizens'. This was reported in the survey on statelessness in southern Kyrgyzstan, see *UN High Commissioner for Refugees, A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR Bishkek, 2009, page 24.*

<sup>482</sup> Article 11, 1997 Law No 500 'On the Legal Status of Foreigners' in Tajikistan, as amended in 2009.

<sup>483</sup> Article 26 and 27, 1997 Law No 94-I 'On Housing Relations' in Kazakhstan.

<sup>484</sup> *Ibid*, Article 118(8).

<sup>485</sup> *Ibid*, Article 68(7).

<sup>486</sup> *Ibid*, Article 70.

<sup>487</sup> In an interview with UNHCR. A further 3,000 *Kairylmans* who had immigrated to Kyrgyzstan since 1991 were going through citizenship procedures in 2009.

Kazakhstan and Tajikistan reserve the right to confiscate property without compensation from citizens who fail to register with a consulate when they are long-term resident abroad – in addition to revoking their citizenship.<sup>488</sup> It is not clear what happens to the property of family members in such cases.

In Tajikistan, confiscation of property without compensation can be ordered either by a court or by administrative decision. Administrative decisions are open to judicial appeal,<sup>489</sup> but it is not clear how effectively a non-citizen outside State borders can exercise this right.

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<sup>488</sup> Article 254, 1994 Civil Code of Kazakhstan, as amended in 2001; Article 267(1) and (2) of the 2001 Civil Code of Tajikistan, No 601, as amended in March 2010.

<sup>489</sup> Article 267(2) of the 2001 Civil Code of Tajikistan, No 601, as amended in March 2010.





## ANNEX

### **Conclusions of the Regional Conference on Prevention and Reduction of Statelessness and Protection of Stateless Persons in Central Asia**

**Ashgabat, Turkmenistan 9-10 December 2009**

Since independence, the Central Asian States have taken major steps to avoid future statelessness, to grant nationality to stateless persons and to ensure that they enjoy a broad range of fundamental rights until such time as their status can be resolved. This is particularly the case for persons who became stateless as a result of state succession.

Prior to the regional conference, UNHCR organized national roundtables in Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan, where government representatives, together with UN and NGO partners, discussed best practices and remaining challenges in addressing statelessness in each State. In some countries, the roundtables led to the drafting of national action plans to address statelessness.

Among the good State practices brought to light by the Regional Conference are:

- Campaigns to replace USSR passports with valid identity documents;
- The identification of cases of statelessness through outreach and systematic registration of persons of undetermined or undocumented citizenship;
- Legal reform to remove legislative gaps which cause statelessness;
- Prompt, efficient and accessible birth registration;
- Adopting a flexible approach to proof of continuous residence on State territory for the purpose of confirmation or acquisition of citizenship;
- Legal reforms which have allowed for conferral of citizenship on some categories of stateless persons on the basis of residence;
- Granting nationality to large numbers of stateless persons;
- Granting a legal status to stateless persons and ensuring their enjoyment of a wide range of fundamental rights;
- Close cooperation between legislative, executive and judicative authorities, UNHCR, other UN agencies and civil society for the prevention and reduction of statelessness and the protection of stateless persons.

At the same time, the Conference has demonstrated that a range of challenges continue to cause statelessness and pose obstacles to resolving the situation of stateless persons in Central Asia.

We, the participants of the Regional Conference on Prevention and Reduction of Statelessness and Protection of Stateless Persons in Central Asia, recognize the importance of:



The conference was funded by the European Commission

- Continuing efforts to identify stateless persons, including through population census, surveys and registration campaigns;
- Strengthening cooperation between States to confirm the identify and nationality of specific individuals;
- Ensuring that individuals who lack valid identity documents, including holders of expired USSR passports, are issued with documentation,<sup>490</sup> thereby confirming their legal status in the State;
- Ensuring that all children born on the territory of the State are registered at birth;
- Legal and administrative reform to address provisions and practices which cause statelessness or pose obstacles to the reduction of statelessness in Central Asia, specifically provisions and practices under which:
  - a. Some children born on the territory of the State or to nationals abroad are at risk of statelessness due to lack of adequate legal safeguards to prevent statelessness at birth;
  - b. A citizen is permitted to renounce his/her citizenship without possessing another citizenship, or the assurance of acquiring one;
  - c. Prolonged residence abroad without consular registration can lead to loss of citizenship;
  - d. Stateless persons applying for residence permits or citizenship are required to submit a certificate to confirm they do not possess the nationality of other States with which they have links, without providing for exceptions for situations where the States concerned fail to reply.
- Facilitating acquisition of nationality for stateless persons through simplified procedures, including through reduced residency and documentation requirements and waiving of fees;
- Establishing formal procedures for the determination of statelessness status;
- Granting a legal status, basic rights and identity documentation to stateless persons for an interim period until they are able to acquire a nationality;
- Considering accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

At the close of the Regional Conference, the participants welcomed the upcoming 50<sup>th</sup> anniversary of the 1961 Convention on the Reduction of Statelessness. It was agreed that progress to address the areas identified above will be reviewed one year after the regional conference.

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<sup>490</sup> National passport, passport of a foreign State or identity document for stateless persons