



Ending Statelessness Within 10 Years

Good
Practices
Paper

Action 6

Establishing statelessness determination procedures to protect stateless persons

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

Resolve the major
situations of statelessness
that exist today

Prevent the emergence
of new cases
of statelessness

Improve the identification
and protection of
stateless populations

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

Background

Action 6 of the Global Action Plan calls on States to grant protection status to stateless migrants through the establishment of statelessness determination procedures, and facilitate their naturalization. A statelessness determination procedure serves to identify stateless persons among migrant populations to ensure that they enjoy the rights to which they are entitled until they acquire a nationality. In 2014, UNHCR published its *Handbook on Protection of Stateless Persons*. This doctrinal tool is intended to help governments, policy makers, administrative adjudicators, the judiciary, NGOs, legal practitioners, UNHCR staff and others to interpret and apply the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) and to facilitate the identification and proper treatment of such persons.¹ Part Two of the Handbook covers the modalities for

¹ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.

creating statelessness determination procedures (SDPs) that enable States to recognize and grant protection status to stateless persons, including questions of evidence that arise in the course of such procedures.² Part Three of the Handbook discusses the status of, or minimum protection to be afforded to, stateless persons under national law.³

This Good Practices Paper complements the Handbook by presenting a brief overview of the key elements of SDPs and illustrating these with good practices from selected countries that are among a small pool that have established such procedures to date. The table in the Annex provides an overview of current practice in most of the countries that have a mechanism in place to identify stateless persons. The Handbook remains UNHCR's authoritative guidance on the issue and should be disseminated and cited as such.

THE INTERNATIONAL LEGAL BASIS FOR THE CREATION OF STATELESSNESS DETERMINATION PROCEDURES

- It is an implicit obligation of States party to the 1954 Convention to identify stateless persons within their jurisdiction in order to provide them with appropriate treatment in compliance with the Convention.
- The 1954 Convention establishes the international legal definition of a "stateless person" but is silent on how States are to determine whether an individual is stateless.
- Establishing a statelessness determination procedure is the most efficient means for States Parties to the 1954 Convention to identify the beneficiaries of that Convention.

Overview of existing statelessness determination procedures

Only about a dozen States worldwide have established SDPs. France has the oldest mechanism, one that has recognized and protected stateless persons since the 1950s. Italy, Hungary, Latvia and Spain followed suit some decades later. Some States have established SDPs through legislative or sub-legislative acts, while others do not provide a specific legal basis for the procedure.

There is a growing interest among States in establishing SDPs. At UNHCR's December 2011 Ministerial Meeting to commemorate the 60th and 50th anniversaries of the 1951 Convention relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness, respectively, ten States pledged to establish SDPs. These were Australia, Belgium, Brazil, Costa Rica, Georgia, Moldova, Peru, the Philippines, Uruguay, and the United States of America. Hungary pledged to improve its existing procedure.⁴

Moldova became the first State to fulfil its pledge, adopting its SDP at the end of 2011. The SDP is established through legislation and as one of the most detailed, serves as an example for other States to follow. In 2012, Georgia and the Philippines fulfilled their pledges to establish SDPs; they were followed by Costa Rica in 2016. Three countries that did not pledge to introduce SDPs but did so nonetheless are the United Kingdom, in 2013, and Kosovo (S/RES/1244 (1999)) in 2015 and Turkey, in 2016.

Greece, Slovakia and Switzerland have provisions for the protection of stateless persons in their laws but have not yet established procedures to determine statelessness. In Belgium, although a person can be determined to be stateless by one of 27 Tribunals of First Instance in the country, there are no specific safeguards in place for the determination of statelessness, and the person recognized as stateless does not derive any rights from

² The content of Part Two of the Handbook was first published in UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, ("UNHCR Procedures Guidelines") available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html>.

³ The content of Part Three of the Handbook was first published in UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 17 July 2012, HCR/GS/12/03, available at: <http://www.refworld.org/docid/5005520f2.html>.

⁴ A summary of pledges is presented in UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011)*, available at: <http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf>.

this recognition.⁵ UNHCR encourages these and other States to adopt dedicated mechanisms to determine statelessness that include the procedural safeguards set out in the Handbook and provide a legal status for stateless persons.

WILL THE ESTABLISHMENT OF A STATELESSNESS DETERMINATION PROCEDURE CREATE A “PULL FACTOR”?

It is unlikely that the establishment of SDPs will create a “pull factor” (i.e. draw persons to countries with SDPs for the purpose of receiving benefits). Countries that have established an SDP have not seen an increase in the number of people claiming statelessness status.

France, the State with the longest tradition of recognizing and protecting stateless persons, has received an average of 200 applications for statelessness status per year since 2010.⁶ Hungary has received just 242 applications between the establishment of the procedure in 2007 and 31 March 2016. In Moldova, 617 persons applied for statelessness status between the establishment of the procedure in 2012 and the end of 2015. In the United Kingdom, between the introduction of the SDP in April 2013 and the end of 2015, a total of 1,510 persons had applied for statelessness status.⁷

Key elements of statelessness determination procedures

Statelessness determination is a specialized field with specific procedural considerations. Key elements to include in SDPs are explained below, as are a number of good practices emerging from the experience of States undertaking formal statelessness determination. To the extent that statelessness determination presents similarities with refugee status determination, there are a number of procedural guarantees that have been developed in asylum systems that are relevant to SDPs.⁸

The lead-up to the establishment or improvement of a statelessness determination procedure

A number of initiatives and developments may contribute to building the necessary political will to establish an SDP or to improve the situation of stateless persons.

One such development is the increase in the number of States Parties to the 1954 Convention. Some countries have been States Parties to the Convention for years, without establishing any mechanism for the application of its provisions. Others, such as **Georgia, Moldova, Spain and Turkey**, have seen accession to the 1954 Convention and establishment of an SDP go hand in hand.

Research into the scope of statelessness and the profile of the stateless population in a number of countries has increased awareness of the problem and of the necessity of establishing SDPs to fully implement obligations owed under the 1954 Convention.⁹ This has led a number of governments to improve the identification and protection of stateless persons. For instance, the **United Kingdom** established a procedure in April 2013 following research and advocacy conducted by UNHCR and civil society organizations, in particular, Asylum Aid.

⁵ UNHCR, *Mapping Statelessness in Belgium – Summary Report*, October 2012, available at: <http://www.refworld.org/docid/5100f3412.html>.

⁶ For more details please see: <https://www.ofpra.gouv.fr/fr/apatriemie/quelques-chiffres>.

⁷ These figures reflect the applications submitted by individuals already in the country before the procedures were introduced as well as those submitted by individuals who arrived subsequently.

⁸ Extensive guidelines on how to conduct refugee status determination are compiled in UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* (reissued 2011), available at: <http://www.refworld.org/docid/4f33c8d92.html>.

⁹ See for example UNHCR, *Mapping Statelessness in Malta, August 2014*, available at: <http://www.refworld.org/docid/546dae5d4.html>; UNHCR, *Mapping Statelessness in the Netherlands*, November 2011, available at: <http://www.refworld.org/docid/4eef65da2.html>; UNHCR, *Mapping Statelessness in Norway*, October 2015, available at: <http://www.refworld.org/docid/5653140d4.html>; UNHCR, *Mapping Statelessness in The United Kingdom*, 22 November 2011, available at: <http://www.refworld.org/docid/4ecb6a192.html>.

HOW JOINT EFFORTS LED TO THE ESTABLISHMENT OF A STATELESSNESS DETERMINATION PROCEDURE IN THE UNITED KINGDOM

In 2011, research by the NGO Asylum Aid and UNHCR into the situation of stateless people in the United Kingdom and the applicable legal framework resulted in the report *Mapping Statelessness in the United Kingdom*.¹⁰ The report found that one of the major obstacles to the implementation of the 1954 Convention, to which the United Kingdom is a State Party, was the lack of a procedure to determine who is a stateless person.

UNHCR and Asylum Aid followed up with a number of public awareness-raising initiatives and behind-the-scenes advocacy. They also proposed a text for an SDP which was used in discussions with the Home Office. These efforts led to the adoption in April 2013 of Immigration Rules and Guidance that give stateless persons a pathway to recognition and the grant of leave to remain in the country.

Research by UNHCR in the **Netherlands** in 2011 drew attention to issues relating to the implementation of the 1954 Convention and the situation of more than 80,000 individuals in the country who were registered as being of undetermined nationality. The realization grew that an SDP would help to clarify the number of stateless persons within this group. UNHCR's report helped to galvanize academia and civil society, including the universities of Tilburg, Amsterdam, Leiden and Maastricht as well as the Netherlands Institute of Human Rights, to engage with the issue in the Netherlands. In 2013, the Advisory Committee on Migration Affairs submitted its report and recommendations¹¹ on statelessness to the Dutch Government. A decision of the Council of State in May 2014 also highlighted the absence of an SDP. As a consequence of these developments, in 2014 the State Secretary of Security and Justice agreed to examine how to establish an SDP in the Netherlands.

Following the publication of a UNHCR mapping study in 2013 on statelessness in **Belgium**, which highlighted gaps in the existing mechanisms, the Government of Belgium reiterated its commitment to improve the protection of stateless persons in principle, by granting residence permits to people determined by the courts to be stateless. In **Italy**, research and advocacy by UNHCR, the Association for Juridical Studies on Immigration - ASGI, Comunita' di Sant'Egidio, the Italian Council for Refugees and other NGOs have drawn attention to statelessness, particularly among the Roma population, and deficiencies in the existing judicial and administrative SDPs. The inter-ministerial Working Group on the Legal Status of Roma, established in 2013, is mandated to draft legislative and administrative proposals aimed at resolving gaps with regard to the legal status of Roma. Besides, a draft law proposal to reform and improve the SDPs in Italy was prepared in 2015 by the Italian Council for Refugees, the Human Rights Commission of the Italian Senate, and UNHCR. The draft law, largely inspired by the UNHCR Handbook, was registered at Parliament in November 2015 and submitted to the Constitutional Affairs Commission of the Senate in order to initiate the legislative process.

The institutional location of statelessness determination procedures

Where to situate SDPs institutionally is a matter of State discretion and can vary from one country to the next. Regardless of where SDPs are located within a State's legal or administrative framework, it is important that examiners develop expertise on statelessness determination while ensuring that the procedures are accessible to the concerned population. This requires a balance between the centralization of expertise to conduct statelessness determination within a specialized administrative or judicial unit of government and providing individuals the opportunity to lodge applications with government representatives dispersed across a country. The SDP in **Spain** strikes a balance in this regard, allowing individuals to submit applications through a number of governmental bodies throughout the country, but concentrating the examination and analysis of statelessness applications within a centralized body.

Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. The practice in **Hungary** provides an example. Training sessions for officials and meetings between the

¹⁰ UNHCR, *Mapping Statelessness in The United Kingdom*, 22 November 2011, available at: <http://www.refworld.org/docid/4ecb6a192.html>.

¹¹ ACVZ, *Geen land te bekennen*, December 2013, summary in English on page 108. <http://goo.gl/d5KX6W>.

various decentralized bodies, UNHCR and civil society take place on a regular basis, allowing for an exchange of information and discussion of trends and common challenges.

EFFECTIVE COOPERATION THROUGH THE USE OF STANDARD OPERATING PROCEDURES IN GEORGIA

In 2014, UNHCR worked with the Public Services Development Agency (PSDA), Georgia's primary government agency in charge of statelessness determination, and the Innovations Reform Center (IRC), an NGO with a long history of legal support to stateless persons in the country, to adopt Standard Operating Procedures (SOPs) for the SDP in Georgia. The SOPs regulate the cooperation between these actors and the various government agencies involved in determining who is stateless and the protection to be accorded to such a person.

The SOPs set out the responsibilities of the PSDA, UNHCR, the IRC, the Social Service Agency, the Ministry of Internal Affairs, the Consular Department of the Ministry of Foreign Affairs and the Ministry for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees at each step of the procedure. The SOPs were presented and unanimously endorsed at a meeting of the Working Group on Statelessness, which gathers these actors and functions under the auspices of the State Migration Commission.

Access to procedures

For procedures to be fair and efficient, and to ensure that all stateless persons benefit from the implementation of the 1954 Convention, access to the SDP must be guaranteed and not subject to time limits. Information on the procedure and counselling services must be available to potential applicants in a language they understand. The ability to submit both written and oral applications is provided for in the SDPs in **Moldova** and **Hungary**. In **Latvia**, applicants receive assistance from the competent authority when filling out the application form.

As many individuals are not aware that they might be stateless, it is recommended that governmental authorities be authorized to initiate these procedures *ex officio* when approached by individuals who present as potentially stateless, especially unaccompanied children. The legislation establishing the procedure in **Moldova** and in **Spain** foresees such an *ex officio* initiation of the procedure by the competent authority.

Another option is that the authorities who are in contact with people who may be stateless inform them that they could apply for statelessness status through the existing procedure. This duty to inform has been explicitly included in the **Hungarian** legislation establishing the SDP. Those with a potential statelessness claim identified in the course of the asylum procedure in **Spain** are also informed of the possibility of initiating the SDP.

Access to the procedure needs to be open to anyone who claims to be stateless, regardless of whether or not that person already has lawful stay or residence in the country. **Georgia's** Presidential Decree establishing the SDP states explicitly that the procedure is open to any stateless person, regardless of the legality of the person's stay in Georgia. Although **Hungary's** law establishing the SDP includes a requirement of lawful stay in the country in order to have the right to apply for statelessness status, a landmark decision by the Hungarian Constitutional Court in February 2015 has struck out this requirement, finding it in breach of international law.¹²

Evidentiary considerations

SDPs present unique evidentiary considerations. Given the nature of statelessness, individuals are often unable to substantiate a claim with documentary evidence. Many individuals are unable to, or unaware that they must, review the nationality laws of countries with which they have ties through birth, descent, marriage or habitual residence.

¹² Please see *Resolution 6/2015 (II.25.) of the Constitutional Court on the determination whether the term "lawfully" in Section 76(1) of Act II of 2007 on the conditions of Entry and Stay of Third-Country Nationals is contrary to the Fundamental Act and the annulment thereof*, Hungary: Constitutional Court, 25 February 2015, available at: <http://www.refworld.org/docid/5542301a4.html>



Nino was recognised as a stateless person pursuant to the Georgian SDP in 2015. She is now on a path to acquiring Georgian citizenship which will help her to realise her dream of becoming a professional musician. © UNHCR / I. Pirveli

Furthermore, contact with foreign authorities to request specific information about an individual's case or general guidance on a country's nationality laws, including both clarification as to the letter of the law and its implementation, can be fundamental in reaching a conclusion as to whether an individual is stateless. In many cases, States will only respond to such enquiries when initiated by officials of another State, rather than by individuals.

SDPs must therefore take into consideration the difficulties inherent in proving statelessness. UNHCR recommends that SDPs provide for a shared burden of proof between the applicant and the examiners and that States establish an appropriate standard of proof; namely, that a finding of statelessness would be warranted where it is established to a "reasonable degree" that an individual meets the 1954 Convention's definition of a stateless person.¹³

Although in many administrative or judicial proceedings the claimant bears the initial responsibility of substantiating his or her claim, the practice among the States with established SDPs, such as **France, Hungary, Moldova, the Philippines and Spain**, is that the burden of proof is shared. This means that both the applicant and the case worker make efforts to establish whether the applicant is considered as a national of a country. This may involve contacting the authorities of countries with which the applicant has a link. In **Kosovo** (S/RES/1244 (1999)) and **Moldova**, for instance, legislative provisions allow the competent authority to take the necessary steps to collect documents to substantiate the application by contacting the authorities of the countries with which the applicant has a link.

In addition, examiners in most countries with an SDP are found to apply an appropriate (lower) standard of proof consistent with the humanitarian objectives of statelessness status, that is, ensuring that stateless persons receive protection.

¹³ For further guidance on the appropriate burden and standard of proof in statelessness determination procedures, please see UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Part Two: Procedures on the Determination of Statelessness, Section D (3) and (4) (paragraphs 89-93).

Procedural guarantees

SDPs should be formalized in law so as to ensure fairness and transparency, and must include basic procedural guarantees. Part Two of the *Handbook on Protection of Stateless Persons* outlines a comprehensive list of procedural guarantees to be respected.¹⁴ Some of the most fundamental guarantees reflected in current State practice include:

- access to an interview;
- interpretation assistance;
- legal aid;
- respect for the specific protection needs presented by women, children and people with disabilities;
- a time limit for a decision following submission of a statelessness status application;
- a right to receive a decision in writing with an explanation of the grounds on which it was made; and
- a right to appeal a first-instance rejection of an application on the basis of fact or law.

In addition, State practice also reflects rights to liberty and freedom of movement by avoiding detention of those seeking recognition of their stateless status. **Moldova's** law explicitly grants the applicant a right to stay during the procedure.

AN EXAMPLE OF LEGAL AID PROVISION: THE LIVERPOOL LAW CLINIC

In October 2013, within six months of the establishment of the United Kingdom's new SDP, the Liverpool Law Clinic (part of the Law Department at the University of Liverpool) launched a project to advise and represent stateless persons in relation to their statelessness status applications. Since then it has offered a free service to stateless clients who travel from all over the United Kingdom for advice. The Clinic is run by specialist lawyers assisted by law students. With no legal aid funding in the United Kingdom for advice and representation in

relation to a statelessness application, clients are referred by organizations such as the Red Cross and UNHCR, or find the Clinic through internet research or word of mouth.

Though it deals with a relatively small number of clients, the Clinic has quickly established its expertise. It has secured some significant changes of approach by the Home Office by undertaking strategic litigation to ensure the United Kingdom follows best practice as closely as possible. The Clinic's lawyers support other legal representatives making statelessness applications on behalf of their clients, foster contacts with many partners in this field and participate in international meetings to encourage best practice and exchange experiences.

Through their involvement in the work of the Clinic, some 150 University of Liverpool students have developed in-depth, practical knowledge about the situation of stateless people, encouraging them to specialize in this field. From June 2016 the Clinic will have funding for a project to develop its strategic legal work on statelessness, initially focused on vulnerable young stateless migrants aged 25 and under. In addition, some 10,000 people, both prospective students and their guests, have learned about statelessness and UNHCR's #IBelong Campaign by attending talks on open days.



¹⁴ Please see UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Part Two: Procedures on the Determination of Statelessness, Section B (3) (paragraphs 71 – 77).

The rights granted to recognized stateless persons

Stateless persons should be able to enjoy their rights under the 1954 Convention. Although the Convention does not explicitly require States to grant a person determined to be stateless a right of residence, affording such permission would help to fulfil the purpose of the treaty. Currently, all States with SDPs grant residence rights to recognized stateless persons, though some deny this right if the person is considered to be a danger to national security or public order, or if the person is admissible to another country. Recognized stateless persons in **France** receive a renewable residence permit for one year. In **Turkey**, the stateless person receives a renewable Stateless Person Identification Card entitling him or her to lawful residence, valid for two years. In the **United Kingdom**, a stateless person can be granted leave to remain for up to 30 months. A subsequent grant of leave to remain, including for an indefinite period, may also be given as long as certain conditions are met.

To be consistent with the standards set out in the 1954 Convention, the grant of a residence permit to a stateless person should be accompanied by the right to work, access to health care and social assistance, and the issuance of identity papers and a travel document. Legislation in **Spain** provides for the right to work for those recognized as stateless.

In accordance with Article 32 of the 1954 Convention, it is also recommended that States Parties facilitate, as far as possible, the naturalization of stateless persons. This may be achieved, for example, by reducing or waiving residence, income and language requirements for applicants and by exempting them from fees or the obligation to provide documentary evidence.

Selected country examples

France

-
- Centralized administrative SDP conducted by the French Office for the Protection of Refugees and Stateless Persons (OFPRA).
-
- The protection of stateless persons was included in the French Asylum Law of 1952. Article L812 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (amendments of 29 July 2015) sets out the details of the procedure.
-
- Good practices include:
 - An application procedure accessible to all individuals in France, without any legal stay requirement or time limits;
 - a shared burden of proof, in practice;
 - interviews, in practice;
 - access to interpretation;
 - the right to appeal a negative first-instance decision though not with automatic legal stay until the end of the procedure; and
 - the availability of judicial review.
-
- Statelessness and asylum determination procedures are implemented separately by OFPRA, but cases where an individual raises claims for both refugee and statelessness status are treated together by the asylum authorities, which can grant combined “stateless refugee” status. Refugee status provides more comprehensive protection than statelessness status from which “stateless refugees” benefit.

Since 1952, the French Office for the Protection of Refugees and Stateless Persons (*Office Français de Protection des Réfugiés et Apatrides*, or OFPRA) has been mandated to provide for the juridical and administrative protection of stateless persons. This makes France the country with the longest-established SDP. The precise modalities for this procedure have been elaborated through administrative and jurisprudential practice,¹⁵ rather than through legislative or sub-legislative acts.

To initiate the procedure, an individual must write to OFPRA to request an application form. The request must be drafted in French and contain personal details such as date and place of birth, as well as the reason for wishing to apply for statelessness status. Once received, the application form must be filled out and submitted with all the supporting documents to the centralized, specialized statelessness authority within OFPRA located in Paris. After the claim is submitted, a certificate of registration is issued; however, this does not grant applicants any particular legal status, such as temporary residence, while an application is pending.

¹⁵ Information regarding the procedural rules for the French statelessness determination procedure is accessible on the OFPRA website, available at: <https://www.ofpra.gouv.fr/fr/apatridie/procedure>.

The French SDP does not explicitly have a suspensive effect on immigration enforcement activities, such as deportation orders at the initial stage. However, applicants can submit an urgent administrative appeal for this purpose. If an individual presents claims for both asylum and statelessness status, OFPRA will combine the two claims and responsibility for ruling on them will be conducted by OFPRA's asylum division, which has the authority to recognize the combined status of "stateless refugee."

Although under the French administrative and legal frameworks an applicant bears the burden of proof, in the French SDP the burden of proof is, in practice, shared. A claim of statelessness will be established on the basis of all available evidence that is "sufficiently precise and serious."¹⁶ An applicant for statelessness status is invited for an interview at the OFPRA premises, allowing the examiner to explore to which States the individual may have ties and whether he or she would be considered a national of any of them. If needed, interpretation for the interviews is provided by OFPRA free of charge.

The examiner has access to relevant nationality legislation from the OFPRA research division. OFPRA also has the authority to investigate applicants' claims. In some instances, OFPRA contacts French consular offices in relevant countries for advice. Where an applicant does not claim any fear of persecution, OFPRA can contact the official representation of relevant foreign authorities, either in France or through French consular missions abroad, for additional information regarding an individual.

There is no time limit specified for OFPRA to issue decisions on statelessness status applications. In practice, statelessness determination typically takes several months, although it can take longer when OFPRA contacts foreign authorities for additional information. When an applicant for statelessness status can acquire French nationality (for example, if he or she was born stateless in France) or a foreign nationality, OFPRA informs the applicant of this possibility and directs the person to the relevant authorities.

Individuals who receive a negative decision on their statelessness applications can submit an appeal within two months before the administrative tribunal in the province or region where they live. Reasons for decisions are not provided. The decision of the administrative tribunal can be appealed in turn to the Administrative Court of Appeal, and then the highest administrative court of appeal, the *Conseil d'Etat*. All appeals are conducted on the written record of the initial administrative application conducted by OFPRA. Pending appeals of SDPs do not have a suspensive effect, which means that expulsion orders can be enforced while appeals are pending.

Individuals who are granted statelessness status are given a temporary one-year residence permit, renewable for three years, after which it is converted into a permanent residence permit valid for ten years. They can also request a travel document. Recognized stateless persons in France receive a brochure, also available online,¹⁷ which sets out their rights and obligations, including the kind of residence permit to which stateless persons are entitled, and the implications for family members. Spouses and children under the age of 19 of recognized stateless persons can submit a request for family reunification with the French consulate in their country of residence.

If a recognized stateless person in France does not have civil status documentation from the country of origin, such as a birth certificate, and cannot obtain such documents, OFPRA can issue them. This allows stateless persons to exercise other rights, for example, to get married in France as a birth certificate is required for such a step.

In 2015, OFPRA received 281 applications for statelessness status. Of those, 24 per cent were submitted by former Soviet citizens, and 8 per cent by individuals from the former Yugoslavia. The remaining 68 per cent of applications were from people from Syria, Western Sahara, Myanmar and other countries. The recognition rate in 2014 was 26 per cent; in 2015 it was 16 per cent.

¹⁶ « La qualité d'apatride ne se présume pas. Elle doit être établie dans tous les éléments qui la déterminent par des preuves suffisamment précises et sérieuses. » Please see the overview of the French procedure as provided in the OFPRA website cited in note 14 above.

¹⁷ Please see https://www.ofpra.gouv.fr/sites/default/files/atoms/files/livret_dinformations_apatrides.pdf.

Hungary

-
- An administrative SDP is conducted by the Alien Policing Directorates of the Office of Immigration and Nationality (OIN).
-
- The SDP was established under Chapter VIII of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals of 1 July 2007, and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.
-
- Good practices include:
 - applications accepted at any one of seven regional directorates of the OIN;
 - applicants provided a temporary residence card if needed;
 - mandatory preliminary and detailed interviews;
 - applications accepted whether made orally or in writing and in any language;
 - the availability of legal assistance and interpretation;
 - in practice, a shared burden of proof;
 - UNHCR participation in proceedings, including access to files;
 - decisions taken within 60 days of the submission of an application;
 - the availability of interpretation;
 - the availability of judicial review of negative first-instance decisions;
 - quality assurance in the form of in-house and joint UNHCR/OIN audits of interview records;
 - decisions based on parameters specified by a Quality Assurance Manual for the SDP (October 2012).
-
- Refugee status determination is conducted by the Asylum Directorate of the OIN and is a separate procedure from statelessness determination, which is conducted by the Alien Policing Directorates of the same agency.

In 2007, Hungary amended its Aliens Act,¹⁸ thereby creating a dedicated SDP falling within the jurisdiction of the alien policing authorities. The Act provides that any individual who is lawfully staying in Hungary can initiate the procedure. The condition of lawful stay for an application undermines the object and purpose of the 1954 Convention, but a landmark decision by the Hungarian Constitutional Court in February 2015 struck out this requirement, finding it in breach of international law.¹⁹

An applicant can initiate the procedure, which is free of charge, by making a written or oral application at one of seven regional directorates of the Office of Immigration and Nationality (OIN), depending on the individual's place of accommodation or residence in Hungary. Although Hungarian alien policing authorities cannot initiate statelessness determination *ex officio*, the Aliens Act allows them to inform individuals who might present as a possible case of statelessness that they may apply for statelessness status.

¹⁸ Chapter VIII, Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals [Hungary], Act II of 2007, 1 July 2007, available at: <http://www.unhcr.org/refworld/docid/4979cael2.html>.

¹⁹ Please see Resolution 6/2015 (II.25.) of the Constitutional Court on the determination whether the term "lawfully" in Section 76(1) of Act II of 2007 on the conditions of Entry and Stay of Third-Country Nationals is contrary to the Fundamental Act and the annulment thereof, Hungary: Constitutional Court, 25 February 2015, available at: <http://www.refworld.org/docid/5542301a4.html>.

In principle, separate claims for statelessness and asylum/refugee status can be considered in parallel. However, until now individuals who presented claims for both asylum and statelessness statuses have had their statelessness claim suspended and the asylum claim addressed first.

The applicant is called for a preliminary interview during which he or she is informed of the rights and obligations during the procedure. Basic personal data and information on marital status, habitual residence, accommodation in Hungary, are recorded at this stage. Following this, the applicant undergoes a detailed interview. In those exceptional cases where the applicant submits relevant supporting evidence during the first interview that is considered sufficient to substantiate the claim for statelessness status, the authority can conduct the preliminary and detailed interviews at the same time. The applicant is given access to interpretation services, and receives a temporary residence certificate for the duration of the procedure if necessary.

The applicant is required to “prove or substantiate” his or her statelessness status by establishing place of birth, place of prior permanent or habitual residence, and the nationality of parents and family members. The case worker will take into consideration the relevant personal documents of the applicants without requesting that these documents are officially translated and certified, as would usually be the case in other administrative procedures under the Aliens Act, saving time and money.

The burden of establishing statelessness becomes shared in that the Hungarian authorities provide administrative assistance to establish relevant facts if the applicant so requests, for example, by contacting foreign authorities to supplement the facts provided by the applicant. In practice, the standard of proof in SDPs is a lower threshold than in criminal proceedings, consistent with the humanitarian objectives of statelessness status. UNHCR may participate at any stage of the proceedings, at the request of the applicant. The examiners are to reach a decision on an application for statelessness status within two months.

Individuals who are recognized as stateless are granted humanitarian residence permits that are valid for a maximum of three years, and after expiry can be extended by one-year periods. The residence permit attests to the individual’s legal status and gives access to employment, education and health care. After five years, the stateless person can apply for a permanent residence permit. After three years of permanent residence, the stateless person can apply for naturalization, which is favourable treatment compared to foreign nationals seeking naturalization, who need to prove five years of permanent residence.

Individuals whose applications for statelessness status are rejected can lodge a request for judicial review of the negative decision with the Metropolitan Court within 15 days of the communication of the decision. The rejections are reasoned, and it is possible to make a further appeal to the Budapest Regional Court of Appeal.

It is important to note that in 2011, Hungary pledged to improve its SDP by introducing a quality assurance mechanism similar to the one that operates for refugee status determination. To that end, in 2012 the OIN signed an agreement with UNHCR to review the effectiveness of the implementation of the SDP to date, with a view to its amendment and improvement. The project led to the establishment of a quality assurance mechanism within OIN, including a *Quality Assurance Manual for the Statelessness Determination Procedure* and standard templates for interviews and decisions for case workers. The regular exchanges and training sessions in which the OIN, UNHCR and the Hungarian Helsinki Committee participate help to harmonize decision making and identify and address common problems.

From the establishment of the procedure in 2007 through 31 March 2016, 241 applications for statelessness status were received. The overall recognition rate was 59 per cent. By 31 March 2016, 142 individuals had been recognized as stateless in Hungary. Most of the accepted applications were submitted by applicants from the former Soviet Union and the former Yugoslavia.

Mexico

- A formal SDP was established pursuant to the Migration Law (2011) and its Regulations (2012).
-
- Good practices include:
 - the same definition of a stateless person as in the 1954 Convention;
 - equality under the law for those whose nationality is deemed ineffective;
 - the right to be informed of 1) the right to seek asylum as well as recognition of stateless status and 2) the right to appeal a negative decision;
 - waiver of 1) visa requirements to enter the country and 2) time limits to apply for a residency card;
 - the explicit requirement that issues related to the SDP are dealt with as per the relevant international treaties to which Mexico is a party, including the 1954 Convention and the American Convention on Human Rights; and
 - the grant of permanent residence following recognition of statelessness status.

In 2011, Mexico adopted its Migration Law²⁰, creating a formal SDP which began functioning in 2012.²¹

The SDP is mainly regulated by Article 150 of the Regulations to the Migration Law (Regulations). Pursuant to these Regulations, applications for statelessness status are received by the National Migration Institute (INM). On the next business day following receipt of the application, the INM must request a legal opinion from the Mexican Refugee Commission (COMAR), a body experienced in refugee status adjudication. COMAR then has 45 business days to deliver its legal opinion to INM, for which purpose it may gather the necessary information.

COMAR is required to undertake at least one interview with the applicant, using interpreters if the applicant is unable to communicate in Spanish. Once COMAR delivers its opinion, INM makes a formal statelessness status determination in writing and, where the person concerned is found to be stateless, immediately issues a certificate stating the person's legal status as stateless. A person recognized as stateless is issued a permanent residence card between five days and one month after the certificate of statelessness is issued. He or she may subsequently apply for other identity and travel documents.

If the applicant is found not to be a stateless person, he or she may appeal that decision or apply for a different legal status under the law, such as that provided by the temporary visitor's card given for humanitarian reasons. These reasons include being an unaccompanied child, having a close family member with a serious medical condition in Mexico, being the victim of or witness to a crime in Mexico, family reunification, etc. Following the SDP, and independent of its conclusions, the person may also apply for refugee status.



A COMAR staff member interviews an applicant for statelessness status. The Mexican statelessness determination procedure is the first of its kind in the Americas. © UNHCR / M. Echandi

²⁰ Available in Spanish at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_301014.pdf.

²¹ Available in Spanish at: http://www.dof.gob.mx/nota_detalle.php?codigo=5270615&fecha=28/09/2012.

The Republic of Moldova

-
- Moldova established its SDP on 28 December 2011 by introducing Chapter X⁽¹⁾ in the Law on the Regime of Foreigners.
-
- Centralized, administrative SDP is conducted by the Statelessness and Information Unit within the Refugee Directorate under the Bureau for Migration and Asylum of the Ministry of Internal Affairs (the competent authority for foreigners).
-
- Good practices include:
 - applications initiated *ex officio* by authorities;
 - applications accepted orally or in writing and in any language;
 - mandatory interviews conducted within 15 days of submission of an application;
 - the right to legal representation;
 - the right to interpretation;
 - special protection considerations for unaccompanied minors and those with mental disabilities requiring a legal guardian;
 - the right to stay pending an application;
 - a shared burden of proof;
 - decisions rendered in writing within six months with the possibility of one-month extensions not to exceed an additional six months;
 - the availability of judicial review of a negative first-instance decision; and
 - UNHCR access to applications and decisions.

In 2011, the Republic of Moldova adopted legislation establishing an SDP by introducing Chapter X⁽¹⁾ to the Law on the Regime of Foreigners (Moldovan Law).²² This legislation contains some of the most detailed provisions of any SDP on how the procedure is to be conducted. An application for statelessness status can be initiated either by an individual or *ex officio* by the Bureau for Migration and Asylum of the Ministry of Internal Affairs (Bureau for Migration and Asylum). There is a specialized administrative unit dealing with statelessness and information within the Refugee Directorate under the Bureau for Migration and Asylum.

An application can be submitted orally or in writing. Applicants who are unable to speak the State language will be provided with an interpreter. According to other relevant legislation, they also have the right to legal representation. The application must contain a clear and detailed description of the facts, including evidence necessary to substantiate a claim for statelessness, and must indicate an individual's place of birth, parentage and countries of habitual residence.

The Moldovan Law requires that applicants are granted an interview within 15 working days following the submission of an application. The interview must be recorded in writing, and include information on the applicant's identity; the type of evidence submitted; details regarding any submitted documents, such as validity, place of issuance and issuing authority; civil status; employment; education; and place of residence in

²² *Law on Amendment and Completion of Certain Legislative Document*, adopted by the Parliament of the Republic of Moldova on 28 December 2011 [Republic of Moldova], 10 February 2012, available at: <http://www.unhcr.org/refworld/docid/4fbdf662.html>.

the Republic of Moldova. During the interview, the applicant is required to explain the reasons for submitting a statelessness application and present any additional available evidence.

The Moldovan Law takes particular consideration of the special protection concerns of unaccompanied minors and persons with mental disabilities, both of whom are to be represented via a legal guardian. At the conclusion of the interview, an interview note will be signed by the applicant and the examiner, indicating whether an interpreter or a guardian was used in the process. Applicants for statelessness status will be granted the right to stay in the Republic of Moldova during the examination of their claim and can only be removed from the territory for reasons of national security and public order.

The examiner renders a decision based on all available evidence within a period of six months from the date an application is registered. This deadline can be extended by successive periods of one month, but must not exceed a total of an additional six months.

In practice, the burden of establishing statelessness is shared. Applicants are obliged to cooperate fully with the authorities by submitting all evidence regarding their status and presenting themselves to the authorities for as many interviews as may be required. The examiner is obliged to collect additional information about an applicant's case, including through contacts with foreign authorities or with Moldovan embassies and consulates abroad. If there is no reply from the foreign authorities to a request for information from the Moldovan authorities, this is interpreted as meaning the applicant is not considered a national by that State. If information is received confirming nationality after statelessness status is granted, the Moldovan Law allows for the cancellation of statelessness status.

A decision recognizing or rejecting an application for statelessness status must be issued and communicated to the concerned individual within three working days after the application is made. Reasons for negative decisions must be communicated to the applicant. A negative decision can be appealed in a court of law in accordance with Moldovan legal procedures. Individuals with recognized statelessness status will be given appropriate identity documents and will be entitled to enjoy all the rights, freedoms and obligations stipulated by Moldovan legislation. They can also benefit from dedicated social integration activities offered by the Ministry of Culture and language classes offered to foreigners by the Ministry of Education, which are free of cost.

Article 87(11) of the Moldovan Law stipulates that UNHCR may request access to information regarding applications for the recognition of stateless status, applicant interviews and issued decisions, subject to the consent of the applicants. UNHCR also identifies and counsels potential stateless persons and refers them to the Bureau for Migration and Asylum or the NGO partner organization that assists individuals with preparing their applications.

Between the establishment of the SDP in 2011 and December 2015, 617 persons applied for statelessness status in the Republic of Moldova and 256 were granted it. It is noteworthy that among the 261 individuals who were rejected, a significant number were persons who were eligible to apply for Moldovan citizenship and were directed to the appropriate government institution. The outcome was the grant of Moldovan nationality to many persons.

FURTHER READING:

- UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.
- UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>.
- UNHCR, *Statelessness determination procedures – Identifying and protecting stateless persons*, August 2014, available at: <http://www.refworld.org/docid/5412a7be4.html>.
- European Network on Statelessness, *Statelessness Determination and the Protection Status of Stateless persons*, October 2013, available at: <http://www.refworld.org/docid/53162a2f4.html>.

ANNEX: Overview of National Procedures for Determining Statelessness

Legal basis / Determining authority	Conditions for access Submission in writing/ orally Central/ decentralized	Suspensive effect of removal order Right to stay during the procedure	Interview	Legal aid	Burden of proof	Right to appeal
France: Article L812 of the Code de l'entrée et du séjour des étrangers et du droit d'asile and article 23 of the Décret n° 2015-1166 du 21 septembre 2015 pris pour l'application de la loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile .						
French Office for Refugees and Stateless Persons (OFPRA). Same as asylum authority at the first instance.	No conditions for access to procedure. Submissions in writing in standard form provided by OFPRA. Centralized procedure.	Suspensive effect available through urgent administrative request. No independent right to stay during the procedure.	Yes, but not mandatory.	State funded legal aid is available at the appeals stage.	Law is silent; in practice, shared.	Yes.
Georgia: Law of Georgia on Citizenship of Georgia ; Law of Georgia on Aliens and Stateless Persons ; Ordinance N. 523 of the Government of Georgia on Approving the Procedures for Determining the Status of Stateless Persons in Georgia ; Decree N237 of the President of Georgia (10.06.2014) on Approval of the Regulations of Consideration and Decision of Citizenship Issues.						
The Public Service Development Agency (PSDA). Unrelated to the asylum authority.	Procedure open to anyone unless a decision of expulsion from Georgia has been issued. Submissions in writing. Centralized procedure, however written applications are received by all branches countrywide.	Suspensive effect of removal order on grounds of irregular entry or lack of legal grounds of stay, for the duration of the procedure. Temporary ID card is issued to the applicant to facilitate stay.	Yes, but not mandatory.	No State funded legal aid.	Shared.	Yes.
Hungary: Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and Government Decree 114/2007 (V.24.) on the Implementation of Act II of 2007 on the Admission and Rights of Residence of Third-Country Nationals .						
Alien Policing Directorates of the Office of Immigration and Nationality. Unrelated to the asylum authority.	No conditions for access to the procedure. Submissions can be made orally or in writing. Decentralized procedure.	Suspensive effect through issuance of a certificate of temporary residence issued for the duration of the procedure if the applicant does not have authorization to reside in the country. No suspensive effect of the expulsion during the appeal procedure decision but it can be requested by the applicant.	Yes, mandatory.	Provision for access to State funded legal aid in the law, but ineffective in practice.	Rests with the applicant, though shared in practice upon the applicant's request.	Yes.
Italy (administrative procedure): Article 17 of Presidential Decree 572/1993 ; Regolamento di esecuzione della legge 5 febbraio 1992, n.91, recante nuove norme sulla cittadinanza .						
Ministry of Interior. Unrelated to the asylum authority.	Applicants must have legal residence and a birth certificate to access the procedure. Submission to be made in writing. Decentralized procedure.	No.	No.	No State funded legal aid at the stage of the administrative procedure but available at the appeal stage if the applicant has no means.	Law is silent; but rests with the applicant in practice.	Yes.

Legal basis	Conditions for access Submission in writing/ orally Central/ decentralized	Suspensive effect of removal order Right to stay during the procedure	Interview	Legal aid	Burden of proof	Right to appeal
Italy (judicial procedure): No specific legal basis. The procedure is based on the Civil Code that regulates proceedings on legal status.						
Ordinary litigious procedure available only – the applicant must appear before the Court in Rome with the Ministry of the Interior as defendant. Unrelated to the asylum authority.	No conditions for access. Submission to be made in writing. Decentralized procedure.	At the discretion of the judge.	At the discretion of the judge.	State funded legal aid if the applicant has no means.	Based on jurisprudence; the burden of proof is shared.	Yes.
Latvia: Law on Stateless Persons.						
Office of Citizenship and Migration Affairs. Same as the asylum authority but the two procedures are unrelated.	Those who are subject to the <i>Law On the Status of Those Former U.S.S.R. Citizens Who do not Have the Citizenship of Latvia or That of any Other State</i> (a 'non-citizen') cannot apply for statelessness status. Submissions to be made in writing. Centralized procedure.	No, suspensive effect generally. Only available if an administrative court suspends deportation order. No legal right to stay during the procedure.	No.	No State funded legal aid.	Rests with the applicant, shared in practice.	Yes.
Kosovo (Security Council Resolution 1244 (1999)); Law No 04/L-215 on citizenship of Kosovo. Administrative Instruction (MIA) No.05/2015.						
Division for Citizenship within Department of Citizenship, Asylum and Migration (DCAM); Ministry of Internal Affairs. Unrelated to the asylum authority.	No conditions for access to the procedure. Submissions to be made in person and in writing using the preliminary application form. Centralized procedure.	In line with the Law on Foreigners, the applicant shall be issued with a document serving as proof that he/she applied for statelessness status and legal temporary residence.	Yes, mandatory.	No State funded legal aid.	Shared.	Yes.
Mexico: Migration Law (2011) , Regulations to the Migration Law (2012) .						
The National Migration Institute, under the <i>Secretaria de Gobernación</i> (Ministry of Interior) is the determining authority. The opinion of the Mexican Refugee Commission (COMAR) is to be considered in the determination procedure.	No conditions for access to the procedure. Submissions to be made in writing. Centralized procedure.	Yes.	Yes.	Free legal aid available mainly through UNHCR partners; other legal professional services also available but not free.	Shared.	Yes.
Republic of Moldova: Chapter X^o of the 2010 Law on the Regime of Foreigners in the Republic of Moldova.						
Statelessness and Information Unit under the Refugee Directorate within the Bureau for Migration and Asylum of the Ministry of Internal Affairs. Same as the asylum authority.	No conditions for access to procedure. Submissions to be made orally or in writing. Centralized procedure.	The applicant has a right to stay during the procedure and receives a certificate confirming his/her status as applicant. The applicant may only be removed for reasons of national security and public order.	Yes, mandatory.	Legislation provides for State-funded free legal aid during the administrative phase but this is not available in practice. State funded legal aid is available on appeal if the applicant has no means.	Shared.	Yes.

Legal basis	Conditions for access Submission in writing/ orally Central/ decentralized	Suspensive effect of removal order Right to stay during the procedure	Interview	Legal aid	Burden of proof	Right to appeal
Philippines: Department Circular No. 058 Establishing the Refugee and Stateless Status Determination Procedure.						
Refugees and Stateless Persons Protection Unit (RSPPU) headed by the Chief State Counsel and within the legal staff of the Department of Justice.	No conditions to access procedure. Submissions to be made in writing. Centralized procedure, however off-site interviews by the Chief State Counsel Staff may be undertaken if applicant cannot travel to Manila.	Yes.	Yes, mandatory.	Yes.	Shared.	Yes.
Spain: Article 34.1 of the Aliens Law (Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social); Royal Decree N° 865/2001 (Real Decreto N° 865/2001, de 20 de julio, por el que se aprueba el Reglamento de Reconocimiento del Estatuto de Apátrida).						
Office for Asylum and Refuge (OAR). Same as asylum authority, but the procedures are entirely separate.	Applications may be refused if person received an expulsion order or if the application is submitted later than 30 days after entering the country (although the latter is not applied in practice). Applications can be submitted throughout the country but decisions and interviews take place centrally.	A temporary residence card which suspends the expulsion procedure can be granted at the discretion of the authorities. If the applicant does not receive a temporary residence card, s/he can apply for suspension within the framework of the expulsion procedure.	Yes, but not mandatory.	No State funded legal aid.	Law is silent. In practice, shared.	Yes.
Turkey: Law No. 6458 on 2013 of Foreigners and International Protection , April 2013. Implementation regulation on the Law on Foreigners and International Protection , March 2016.						
Directorate General for Migration Management. Separate from the asylum authority.	Applications of persons who hold statelessness IDs or passports from other countries are not accepted. Submission to be made in writing. Applications can be submitted throughout the country, interviews take place at provincial level and decisions are taken centrally.	Stateless persons not to be deported unless they pose a serious threat to public order or public security. Applicants have a right to stay until the decision is made and receive document.	Yes, mandatory.	Free legal aid provided by the Bar Association if applicants do not have the means.	Shared.	Yes.
United Kingdom: Immigration Rules, Part 14: Stateless People (2014) . Asylum Policy Instruction. Statelessness and applications for leave to remain.						
Complex Casework Directorate, Home Office. Unrelated to the asylum authority.	Applications will not be considered if an asylum claim is still under consideration or if there are further submissions outstanding; people who have leave to remain in another capacity should apply up to 28 days before their leave expires. Submission to be made in writing, using the standard application form. Centralized procedure.	No.	Not mandatory.	No State funded legal aid.	On applicant, but caseworkers may assist with inquiries with national authorities.	No statutory right of appeal to an independent body but the applicant can apply for an administrative review to be undertaken by the Home Office. The applicant can also seek judicial review of negative decisions.