

EVERYONE HAS THE RIGHT  
TO A NATIONALITY

NO ONE SHOULD BE  
ARBITRARILY  
DEPRIVED OF THEIR  
NATIONALITY

WOMEN HAVE EQUAL  
RIGHTS WITH MEN TO  
ACQUIRE, CHANGE  
OR RETAIN THEIR  
NATIONALITY

EVERY CHILD HAS THE RIGHT  
TO ACQUIRE NATIONALITY

THERE ARE OVER 12 MILLION STATELESS PEOPLE  
AROUND THE WORLD. THEY ARE NOT CITIZENS  
OF ANY COUNTRY AND LIVE, THEREFORE,  
IN A LEGAL LIMBO

EVERY CHILD HAS THE RIGHT  
TO BE REGISTERED AT BIRTH

# QUESTIONS OF NATIONALITY AND STATELESSNESS IN ARMENIA

**UNHCR Armenia**  
**March 2013**

EXCLUSIONARY POLICIES  
ARE AT THE ROOT OF MANY  
STATELESSNESS SITUATIONS

UNHCR IS THE INTERNATIONAL AGENCY WITH THE  
MANDATE TO PROTECT STATELESS PERSONS

THE PROBLEM OF STATELESSNESS CAN BE PREVENTED THROUGH ADEQUATE NATIONALITY  
LEGISLATION AND UNIVERSAL BIRTH REGISTRATION



# **QUESTIONS OF NATIONALITY AND STATELESSNESS IN ARMENIA**

Yerevan, March 2013



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## FOREWORD

The international community has long recognized that every individual, no matter where in the world the person finds himself or herself, should hold a legal bond of nationality to a State. Yet, there are today an estimated 15 million stateless people worldwide living on the margins of society deprived of many of their most basic human rights and personal freedoms.

There is an international legal framework in place both to prevent people from becoming stateless, and to properly identify those who are stateless and allow them to live in security and dignity until they can find a durable solution often by way of naturalization. This is set out in the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

The Republic of Armenia was one of the first republics of the former Soviet Union to ratify the two UN Statelessness Conventions, in 1994. How far has Armenia gone in giving effect to the key principles and standards enshrined in the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness? This is essentially the question the present study has sought to address.

The principal focus of the study was, therefore, to analyze the extent to which the scope and content of Armenia's nationality legislation has been informed and guided by the international rules and standards set out in these treaties. It has also looked at the legislative work of the Council of Europe in the areas of nationality and statelessness.

The original research and draft of this report was prepared by Marine Antonyan, a consultant retained by UNHCR for this study. I am sincerely grateful to Ms. Antonyan for her thorough analysis and presentation of the issues in a systematic and thought-provoking way. Jorunn Brandvoll, Edina Slipicevic-Dziho and Inge Sturkenboom, all of UNHCR, provided valuable comments and insight in reviewing the report and I am deeply grateful to them. I profoundly appreciate the contributions of officials from the Police of the Republic of Armenia, the Passport and Visa Department of the Police, the Ministry of Justice,

the National Security Services, the Ministry of Territorial Administration and the State Migration Service in reviewing and commenting on the report.

I very much hope that policy-makers as well as advocates for stateless persons in Armenia will find in this study food for thought for how to effectively prevent statelessness from occurring, resolve those cases that do occur and better protect the human rights of stateless persons.

**Damtew Dessaagne**  
**Representative, UNHCR Armenia**  
**Yerevan, March 2013**



## EXECUTIVE SUMMARY

This report is a result of a research on citizenship and statelessness in Armenia commissioned by UNHCR Armenia. While the bulk of the research work was carried out during the period July-August 2011, new developments that have taken place up to the end of 2012 have also been reflected in the report.

The principal aims of the research were:

- to analyse the compatibility of the nationality/citizenship legislation of Armenia with the norms and standards provided by major international and regional instruments related to statelessness;
- to identify legislative amendments necessary to bring Armenian legislation in line with these standards; and
- to elaborate specific recommendations addressed to the Government, international organizations and civil society on actions to be taken to realize these reforms.

The research shows that statelessness-related legislation in Armenia is in general consistent with the standards set out by international treaties. There are, however, gaps with respect to the acquisition and loss of Armenian citizenship, as well as the treatment of stateless persons. For example, Armenian legislation governing the acquisition of nationality at birth, being heavily based on the *jus sanguinis* principle, does not fully incorporate safeguards aimed at preventing statelessness at birth. More specifically, the legislation does not ensure that all children born in the territory of the State who would otherwise be stateless are granted Armenian citizenship. Furthermore, the legislative provisions allowing for loss, renunciation and termination of nationality do not provide sufficient safeguards against statelessness.

Other problematic areas identified by the research include:

- The definition of a stateless person in Armenian legislation is not consistent with that provided under the 1954 Convention relating to the Status of Stateless Persons;

- There is no national statelessness determination procedure in place;
- Certain categories of stateless persons are excluded from the legal regime governing residence and documentation. These include persons coming or staying in Armenia irregularly or those who have arrived with a valid travel document of a stateless person issued by another State;
- No provision is made in the legislation of Armenia for the issuance of identity documents to any stateless person in the territory of Armenia;
- The travel documents issued to stateless persons in Armenia do not meet the requirements of the Schedule to the 1954 Convention relating to the Status of Stateless Persons.

The break-up of the Soviet Union did not result in significant stateless population in Armenia mainly owing to the inclusive definition of the initial body of citizens of Armenia. The fact that over 90 per cent of Armenia's population at the time of independence were ethnic Armenians has largely contributed to this.

It appears, though, that a small number of non-ethnic Armenian holders of old USSR passports may be stateless in Armenia. The main problem is that there is no proper registration of and statistical information pertaining to stateless persons in the country. Generally, there is very little national awareness on the statelessness phenomena. It is recommended, therefore, that civil society and international organizations active in Armenia should put the issue of statelessness on their agenda, undertake research, and become involved in the shaping of the Government's policy on the issue. The Council of Europe should actively promote Armenia's accession to the Council of Europe nationality conventions. In an attempt to bring the national legal framework relating to statelessness into line with the requirements of the statelessness Conventions, the Government should consider the recommendations listed under Chapter 6 below.

## INTRODUCTION

The present report is a result of a two-month study on the problem of statelessness in Armenia and the protection of stateless persons. The study examined the national legal framework related to citizenship and statelessness in terms of its compatibility with Armenia's international obligations in this field as contained, in particular, in the 1954 Convention relating to the Status of Stateless Persons (hereinafter referred to as "the 1954 Convention") and 1961 Convention on the Reduction of Statelessness (hereinafter also referred to as "the 1961 Convention"). It sought to identify gaps in the legal and policy framework which need to be filled to ensure that statelessness is, to the extent possible, prevented and reduced, and that stateless persons who are entitled to protection receive it.

The information contained in this report is derived from desk research of the relevant legal provisions and available literature, examination of the national case law and interviews with a number of stakeholders, including government agencies dealing with stateless or potentially stateless persons,<sup>1</sup> non-governmental organizations (NGOs) representing the interests of refugees and national minorities, legal aid providers, attorneys, international organizations,<sup>2</sup> the Office of the Human Rights Defender (Ombudsman) of Armenia, persons known to be stateless and those who are potentially stateless.

The official statistical data displayed in the report has been provided by the National Statistical Service of Armenia.

It should be noted that the present research did not aim to exhaustively identify the number and profile of stateless population in the country or of those potentially stateless. Rather, it attempted to collect and present background information which would allow authorities to

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1 Passport and Visa Department under the Police of Armenia, State Migration Service under the Ministry of Territorial Administration of Armenia, Border Guard Troops under the National Security Service of Armenia, Civil Status Acts Registration Agency under the Ministry of Justice of Armenia.

2 UNICEF, Council of Europe Office in Armenia, and OSCE office in Yerevan.

identify such groups.

The report is divided into six chapters.

Chapter 1 offers background information on legislative developments in post-Soviet Armenia, including the country's accession to international treaties on statelessness.

Chapter 2 covers the legislative framework pertaining to the acquisition and loss of Armenian citizenship in terms of its compatibility with the requirements of the 1961 Convention.

Chapter 3 discusses situations having caused or with the possibility of causing statelessness, by addressing, in particular, legislative deficiencies leading to statelessness, the practical implications of such deficiencies, existing gaps in the administrative practice having a bearing on statelessness. Situations of different groups of persons who may be stateless due to individual circumstances are also presented in this chapter.

Chapter 4 presents in summary form the treatment accorded to stateless persons in Armenia in comparison with the rights set out in the 1954 Convention relating to the Status of Stateless Persons.

Chapter 5 contains an assessment of the citizenship status of refugees from Azerbaijan and of their children.

Chapter 6 concludes the report with a summary of findings and specific recommendations to amend the legislative framework and administrative practices.

## CHAPTER 1:

# Armenian Citizenship Legislation and International Treaties

### 1.1. Armenian citizenship before independence

The Republic of Armenia is a successor State of the Armenian Soviet Socialist Republic which formed part of the Union of Soviet Socialist Republics (USSR) from the time of its establishment in 1920 until its dissolution in 1991. The 1936 and 1977 USSR Constitutions<sup>3</sup> as well as the Soviet citizenship laws of 1978 and 1990<sup>4</sup> incorporated the concept of a single Union citizenship, each citizen of a Union Republic being also a citizen of the USSR.

Since republican citizenship under the Soviet regime had little practical relevance, most Union Republics did not issue laws or decrees establishing the criteria for acquisition and loss of their nationality. The common understanding is that, in the absence of laws, it could be inferred from former Soviet practice that permanent residence was the decisive criterion for acquiring the nationality of a Soviet Republic. According to the Armenian practice, citizens of the Armenian Soviet Socialist Republic were those who were issued a USSR passport by the passport authorities of the Armenian Soviet Socialist Republic or a birth certificate by its civil registries.<sup>5</sup>

### 1.2. Independence and the Constitution

On 23 August 1990 the Supreme Soviet of Armenia adopted a declaration of sovereignty. In a referendum held on 21 September 1991, 99.3 % of the population voted in favour of an independent Armenia.

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3 Article 21 of the Constitution of the USSR of 1936 and Article 33 of the Constitution of the USSR of 1977.

4 Article 1 of the Soviet citizenship law of 1978, as well as Articles 1 and 5 of the Soviet citizenship law of 1990.

5 Interview with the Head of the Passport and Visa Department of 28 July 2011.

The Constitution of independent Armenia, adopted on 5 July 1995, addressed for the first time issues pertaining to the citizenship of the State. The initial body of citizens of Armenia was not, however, defined until the adoption of the Citizenship Act of Armenia on 6 November 1995.<sup>6</sup> Passports of the Republic of Armenia “in exchange” for USSR passports began being issued from September 1994 in accordance with Government Decree No 473 of 1992. USSR passports remained valid in Armenia until 1 July 2000.

The basic principles underlying Armenia’s citizenship policy are laid down in the Constitution which (as amended by the referendum of 27 November 2005) states:

*“A child born to citizens of the Republic of Armenia shall be a citizen of the Republic of Armenia. Every child — one of whose parents is a citizen of the Republic of Armenia — shall have the right to the citizenship of the Republic of Armenia”.*<sup>7</sup>

The Constitution thus enshrines the doctrine of *jus sanguinis* as an unequivocal ground for the acquisition of Armenian citizenship. In addition, Article 11.3 of the Constitution provides that ethnic Armenians shall acquire Armenian citizenship through a simplified procedure.

Furthermore, Article 30.1 of the Constitution prescribes that:

*“No one may be deprived of the citizenship of the Republic of Armenia, nor of the right to change the citizenship.”*

The only exception to this right set out in Article 30.1 is the general provision under Article 43 which provides for restrictions on the enjoyment of Constitutional rights “... where it is necessary in a democratic society for the protection of state security, public order, for the prevention of crimes, for the protection of public health and morals, constitutional rights and freedoms, honour and good reputation of others.” Article 43 of the Constitution further provides that “[r]estrictions of

6 Law of Armenia on the Citizenship of the Republic of Armenia.

7 Article 30.1 of the Constitution.

*fundamental human and citizen's rights and freedoms may not exceed the scope laid down under international commitments of the Republic of Armenia.”*

Article 30.1 of the Constitution makes provision for dual citizenship in Armenia. The relevant Constitutional amendment lifting the ban on dual citizenship was made in 2005. However, the regime of dual citizenship became effective only after an implementing provision was introduced into the Citizenship Act in 2007 stating that “[f]or the Republic of Armenia a dual citizen of the Republic of Armenia shall be recognized only as a citizen of the Republic of Armenia”.<sup>8</sup> Dual citizens enjoy the same rights and have the same responsibilities as other citizens of Armenia, except for cases provided for by law or international treaties of Armenia.<sup>9</sup>

Those Armenian citizens and their children who had acquired the citizenship of another country since 1 January 1995 and had not renounced their Armenian citizenship in accordance with the established procedure, or had renounced it unilaterally, are still recognized as citizens of Armenia.<sup>10</sup>

The Constitutional provisions on citizenship have been further reinforced by the Citizenship Act of 1995.

Article 1 of the Citizenship Act prescribes that:

*“Every person shall have the right to acquire the citizenship of the Republic of Armenia as prescribed by law” and that “renunciation of the citizenship of the Republic of Armenia or accepting the citizenship of another State shall not per se entail loss of the citizenship of the Republic of Armenia.”*

Article 3 of the Citizenship Act provides for the equality of the Armenian citizens by laying down that:

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8 Article 13 of the Citizenship Act.

9 Ibid.

10 Ibid.

*“Citizens of the Republic of Armenia shall be equal before the law, irrespective of the grounds for acquiring the citizenship of the Republic of Armenia, national origin, race, sex, language, belief, political or other opinions, social origin, property or other status, and shall have all the rights, freedoms and responsibilities prescribed by the Constitution and laws.”*

Finally, Article 8 of the Citizenship Act provides that:

*“The Republic of Armenia encourages the acquisition of the citizenship of the Republic of Armenia by stateless persons residing in the Republic of Armenia and shall not hinder acquisition of the citizenship of another State by them.”*

### **1.3. The initial body of citizens**

#### **1.3.1. Citizens of the former Armenian Soviet Socialist Republic**

The citizens of the former Armenian Soviet Socialist Republic were included into the initial body of citizens of independent Armenia under Article 10(1) of the Citizenship Act, which states:

*“The following shall be recognized as citizens of the Republic of Armenia:*

*(1) Citizens of the former Armenian SSR habitually residing in the Republic of Armenia, who had not acquired the citizenship of another State before the entry into force of the Constitution or had renounced it within one year following the day of entry into force of this Law”.*

Unlike other provisions of the Citizenship Act, this provision has not been amended since its enactment in 1995 and has caused disagreement and complaints by some citizens as to the acquisition of the Arme-



nian citizenship without their voluntarily expressed consent.<sup>11</sup>

### 1.3.2. Citizens of other former Soviet Republics

The citizens of other former Soviet Republics were included into the initial body of citizens under Article 10(2) of the Citizenship Act, which initially, as enacted in 1995, stated:

*“The following shall be recognized as citizens of the Republic of Armenia [...]*

*(2) Stateless persons or citizens of other Republics of the former USSR, who are not foreign citizens and who have been habitually resident in the Republic of Armenia for the last three years preceding the entry into force of this Law, who apply for acquiring the citizenship of the Republic of Armenia within one year following the entry into force of this Law”.*

Between 1997 and 2010 the Citizenship Act was amended seven times and all amendments, except for one, included a modification of Article 10(2), which at present reads as follows:

*“The following shall be recognized as citizens of the Republic of Armenia [...]*

*(2) Stateless persons habitually residing in the Republic of Armenia, or citizens of other Republics of the former USSR, who are not foreign citizens and who apply for acquiring the citizenship of the Republic of Armenia before 31 December 2012”.*

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11 See the 2006-2007 Report of the Sakharov Armenian Human Rights Center, at page 11. It refers to two persons who don't want to be citizens of Armenia and think that they have to have consented to its acquisition. Consequently, they have not received an Armenian passport. In addition, the Head of the Passport and Visa Department (OVIR) also stated in an interview of 20 July 2011, that the Department receives, from time to time, applications by Armenian citizens for being documented as stateless because they think they could not have acquired Armenian citizenship after the collapse of the USSR without their express consent.

Article 10(2) has thus been amended to provide for more liberal provisions for stateless persons and citizens of other Republics of the USSR who have not acquired the citizenship of any other State. In particular, the requirement for being habitually resident in Armenia for three years immediately preceding the entry into force of the Law has been lifted, thus expanding the initial body of citizens to include those who are habitually resident in Armenia, even if they have taken up residence in Armenia after the adoption of the Citizenship Act. Also, the time limit for applying for Armenian citizenship has been extended several times. This inclusive definition of the initial body of citizens, if properly applied, could be quite effective in reducing statelessness within the Republic of Armenia.

No data is available on the number of citizens of other former Soviet Republic that were present in Armenia immediately prior to or following the dissolution of the USSR.<sup>12</sup> Armenian Soviet Socialist Republic was one of the most ethnically homogenous republics among all fifteen former Soviet Republics.<sup>13</sup> According to the results of the 1989 Soviet Union population census, ethnic Armenians comprised 93.3 per cent of the republic's population.<sup>14</sup> It is likely that part of the remaining 6.7 per cent of the total population of the Armenian Soviet Socialist Republic who were of non-Armenian ethnicity were nevertheless citizens of the Armenian Soviet Socialist Republic and acquired Armenian citizenship under Article 10(1) of the Citizenship Act cited above.

No statistics are maintained with respect to the acquisition of Armenian citizenship through recognition under Article 10(2) of the Citizenship Act, nor on the number of persons who have not taken advantage

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12 Interview with the Head of the Population Census and Demography Division of the National Statistical Service of Armenia of 19 September 2011.

13 Anderson, B. A. & Silver B. D. (1989), 'Demographic Sources of the Changing Ethnic Composition of the Soviet Union', *Population and Development Review*, vol. 15, no. 4, pp. 609-656, cited in EUDO Citizenship Observatory, Country Report: Armenia by Shushanik Makaryan, available at <http://eudo-citizenship.eu/docs/CountryReports/Armenia.pdf>.

14 As per the results of 2001 population census, 97.3 per cent of Armenia's population is ethnic Armenian.

of the procedure and who still hold USSR passports.<sup>15</sup>

### 1.3.3. Armenians in other former Soviet Republics

According to the results of the last Soviet population census held in 1989, there were over one million persons of Armenian descent living in other republics of the former Soviet Union.<sup>16</sup>

The citizens of the former Armenian Soviet Socialist Republic residing in other Soviet Republics were included into the initial body of citizens of Armenia under the initial Article 10(3) of the 1995 Citizenship Act which stated:

*“The following shall be recognized as citizens of the Republic of Armenia [...]*

*(3) Former Armenian SSR citizens who reside outside the Republic of Armenia after 21 September 1991 and have not acquired the citizenship of another State, as well as former Armenian SSR citizens who have been residing outside Armenia prior to that, are Armenian by descent, have not acquired the citizenship of another State and have filed for consular registration before the entry force of this Law”.*

This provision was, however, amended to limit the scope of persons entitled to be recognized as Armenian citizens. Currently, Article 10(3) recognizes as citizens of Armenia only ethnic Armenian citizens of the former Armenian SSR who reside abroad and have not acquired another citizenship. It should be noted that Article 10 of the Law appears to be unduly restrictive when attributing citizenship under paragraph 3 to ethnic Armenians only.

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15 Interview with the Head of the Passport and Visa Department of 20 July 2011.

16 Anderson, B. A. & Silver B. D. (1989).

## **1.4. International obligations of Armenia in the field of nationality and statelessness**

### **1.4.1. United Nations**

Armenia became a member of the United Nations (UN) soon after its independence – on 2 March 1992. The Supreme Council of Armenia ratified the two UN conventions specifically addressing statelessness, i.e., the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, on 16 March 1994. They entered into force on 16 August 1994.<sup>17</sup>

Armenia is also a State Party to a number of UN treaties containing provisions relevant for nationality and statelessness issues. These include the 1966 Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1966 Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 1989 Convention on the Rights of the Child.

Pursuant to the Constitution of Armenia, international treaties are an integral part of the legal system of the Republic of Armenia. In the event that a ratified international treaty defines norms other than those provided for by national laws, the norms of the international treaties will prevail.<sup>18</sup> However, practice shows that if not properly incorporated into the national law, full and effective implementation of norms of international treaties remains merely an illusion.

### **1.4.2. Council of Europe**

Armenia has been a member of the Council of Europe since 25 January 2001 and has ratified some 54 instruments and has signed – but not yet ratified – some 12 instruments.<sup>19</sup> Armenia has not yet acceded to the main European legal instruments in the area of nationality: the 1997 European Convention on Nationality and the Convention on the Avoidance of Statelessness in relation to State Succession.

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17 Information provided by the Ministry of Foreign Affairs of Armenia by a letter of 9 August 2011.

18 Article 6 of the Constitution.

19 See [http://coe.am/index.php?cat\\_id=37](http://coe.am/index.php?cat_id=37).

Although the Passport and Visa Department of the Police of the Republic of Armenia is the competent authority in the field of citizenship issues and is thus authorized under the Law on International Treaties of the Republic of Armenia to take up initiatives for the signature of international treaties<sup>20</sup> covering issues of nationality and statelessness, the issue of accession to the Council of Europe nationality conventions is not on their agenda.<sup>21</sup> Armenia's accession to these Conventions appears not to be a pressing matter for the Council of Europe Office in Armenia either. The Council of Europe Office in Armenia and the Council of Europe Treaty Office are not aware as to whether accession to these Conventions has been discussed with the Armenian authorities and whether the authorities plan to sign onto these Conventions <sup>22</sup> in the foreseeable future.

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20 Articles 8 and 20 of the Law of Armenia on International Treaties of the Republic of Armenia of 22 February 2007.

21 Interview with the Head of the Department of 20 July 2011, when he, in reply to the question on the intention to accede to the Conventions, asked to address the question to the Ministry of Foreign Affairs of Armenia.

22 Information provided by the Council of Europe Office in Armenia.

## CHAPTER 2:

### Acquisition and Loss of Armenian Citizenship

#### 2.1. Key Elements of the 1961 Convention

The international obligations of Armenia as regards the prevention of statelessness are provided for under the 1961 Convention. Armenia has made no reservations to any of its articles.

Articles 1 to 4 of the 1961 Convention cover the prevention of statelessness among children, requiring States to grant their nationality to children who would otherwise be stateless and have ties with the respective State either through birth on the territory or descent. Nationality shall be granted either automatically at birth or upon application. Conferral of nationality may be subject to certain conditions, such as habitual residence for a certain period. Article 2 of the Convention requires States to grant their nationality to foundlings.

Articles 5 to 7 of the Convention address issues pertaining to loss or renunciation of nationality, requiring, in particular, a prior possession or assurance of acquiring nationality before a nationality can be lost or renounced. Two exceptions to this general rule include withdrawal of nationality from naturalized persons who reside abroad for seven years or more and fail to express their intention to preserve their nationality, as well as from nationals born abroad who do not reside in the respective State when they attain majority, provided certain other conditions are met.

Articles 8 and 9 of the Convention deal with deprivation of nationality. The Convention prohibits the deprivation of nationality if such deprivation would render the person concerned stateless. Deprivation of nationality on racial, ethnic, religious and political grounds is not permitted. There are, though, exceptional situations where a person may be deprived of his/her nationality. These include cases of acquisition of nationality through misrepresentation or fraud, commission of acts inconsistent with a duty of loyalty or taking an oath or making formal declaration of allegiance to another State. Except for misrepresentation

and fraud, a State may only apply the other deprivation grounds if it has declared its wish to retain these grounds in its nationality legislation at the time of signature, ratification or accession to the Convention.

## **2.2. Acquisition of Armenian Citizenship**

According to Article 9 of the Citizenship Act, citizenship of the Republic of Armenia is acquired:

- (1) through recognition of citizenship;
- (2) by birth;
- (3) through obtaining citizenship (naturalization);
- (4) through restoring citizenship;
- (5) through collective acquisition of citizenship;
- (6) on the grounds provided for by the international treaties signed by the Republic of Armenia;
- (7) on other grounds provided for by Law.

### **2.2.1. Acquisition of citizenship at birth**

Article 11 of the Citizenship Act sets out the provisions for the acquisition of citizenship at birth by descent:

*"A child whose parents are citizens of the Republic of Armenia at the time of his or her birth shall acquire the citizenship of the Republic of Armenia, regardless of the place of birth.*

*A child one of whose parents is a citizen of the Republic of Armenia at the time of his or her birth and whose other parent is unknown or is a stateless person shall acquire the citizenship of the Republic of Armenia.*

*Where at the time of a child's birth one of the parents is a citizen of the Republic of Armenia and the other parent is a foreign citizen the citizenship of the child shall be determined upon a written consent of the parents.*

*In the absence of consent, the child shall acquire the citizenship of the Republic of Armenia if he or she was born in the Republic*

*of Armenia or if, in case of not acquiring the citizenship of the Republic of Armenia, the child becomes a stateless person, or if the parents habitually reside in the Republic of Armenia.”*

### **Stateless children born in Armenia**

Article 1 of the 1961 Convention requires that Contracting States grant their nationality to a person born on their territory who would otherwise be stateless.

Article 12 of the Citizenship Act states that:

*“A child born in the Republic of Armenia, whose parents are stateless persons, shall acquire the citizenship of the Republic of Armenia.”*

Other categories of children who may become stateless at birth are not covered by this provision, thus creating inconsistencies between the Citizenship Act and the 1961 Convention. Such categories include, in particular, children born to foreign nationals who are unable to pass on their nationality to their child. In particular, there are States which confer their nationality on the basis of registration of the child with the State’s consular authorities or return to the country of nationality, and others which do not permit women to pass on their nationality to their children.<sup>23</sup> The impossibility of the parents to confer nationality, the lack of possibilities to register the child or to return to the country of nationality may lead to statelessness.

### **Foundlings**

Article 2 of the 1961 Convention provides that a foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of

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23 For example, Iran, Lebanon, Senegal and Malaysia. Further information on this issue can be found in UNHCR Background Note on Gender Equality, Nationality Laws and Statelessness, 8 March 2012, available at <http://www.unhcr.org/refworld/docid/4f59bdd92.html>.



parents possessing the nationality of that State. Article 20 of the Citizenship Act states that a child in the Republic of Armenia, whose parents are unknown, shall be a citizen of the Republic of Armenia. Thus Article 20 of the Citizenship Act achieves the aim of Article 2 of the Convention of ensuring that children whose place of birth and parents are unknown acquire Armenian citizenship.

### **Birth on a ship or an aircraft**

Article 3 of the 1961 Convention states that birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be. There is no similar provision in the Citizenship Act.

### **2.2.2. Acquisition of citizenship by naturalization**

Article 13 of the Citizenship Act sets out the general conditions for naturalization as follows:

*“Any person not holding the citizenship of the Republic of Armenia who has attained the age of 18, has active legal capacity, resides (stays) in a foreign State or lawfully resides (stays) in the Republic of Armenia shall have the right to file an application for being granted the citizenship of the Republic of Armenia, if he or she:*

- (1) has been permanently residing<sup>24</sup> in the Republic of Armenia for the last three years as prescribed by law;*
- (2) may express himself or herself in the Armenian language;*  
*and*
- (3) is familiar with the Constitution of the Republic of Armenia.”*

The Citizenship Act provides for preferential conditions for naturalization for certain categories of persons by waiving the residence and

24 It should be noted that the requirement of a three-year permanent residence does not refer to residence based on a permanent residence permit (acquisition of which would require initial three-year residence in Armenia) but to residence for three years in total.

language requirements. These are:<sup>25</sup>

- (1) those who have married a citizen of the Republic of Armenia or have a child who is a citizen of the Republic of Armenia;*
- (2) those who have at least one parent who has previously held citizenship of the Republic of Armenia or was born in the Republic of Armenia, and who apply for obtaining the citizenship of the Republic of Armenia within three years after attaining the age of 18;*
- (3) those who have given up the citizenship of the Republic of Armenia after 1 January 1995 upon their request.*

All the conditions for naturalization are waived for ethnic Armenians as well as for persons who have provided outstanding services to the Republic of Armenia.

Before the ban on dual nationality set out by the Constitution was lifted by the amendments made in 2005, citizens of other States could file a naturalization application only after furnishing proof that they have renounced their citizenship. After incorporating the respective amendment into the Citizenship Act in 2007, this is no more required of applicants for naturalization. Thus, citizens of other States may become dual citizens of Armenia.

Applications for naturalization are submitted to, and processed by,

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25 Before 2007, only the three years residency requirement was fully waived if the person met any of those criteria. Since the 2007 amendment, both the three years residency and the language proficiency requirements were waived for all eligible persons. Moreover, two new categories of people have also qualified for this waiver: persons whose ancestors are Armenians by ethnic origin and former Armenian citizens who since 1 January 1995 had renounced Armenian citizenship by their own application. By the amendment of 8 December 2011, all three requirements were waived for ethnic Armenians.

the Passport and Visa Department of the Police.<sup>26</sup> The decisions on granting nationality are, however, taken by the President of the Republic upon the recommendation of the Presidential Commission on Citizenship Issues. Under a Presidential Decree of 1999, the Commission is headed by the Minister of Justice. The other members of the Commission are the Head of the Pardons, Citizenship, Awards and Titles Department under the Staff of the President of the Republic (who is also the Secretary of the Commission), a representative from the Government of the Republic, Deputy Minister of Foreign Affairs, Deputy Minister of Defense, First Deputy Director of the National Security Service and First Deputy Head of the Police.<sup>27</sup> Members of the Commission serve on a pro bono basis.<sup>28</sup>

The Commission is an advisory body adjunct to the President of the Republic. Under its Statute<sup>29</sup>, the Commission carries out initial examination of naturalization applications, applications on restoring citizenship, group acquisition of citizenship, termination of Armenian citizenship, and submits those applications to the President of the Republic together with its recommendations. Decisions in the Commission are taken by a majority vote of the attending members. In the event of a tie, the vote of the President is decisive. The Pardons, Citizenship, Awards, and Titles Department under the Staff of the President of the Republic is tasked with preparing documentation for deliberations of the Commission.<sup>30</sup>

In the course of the present research, the Consultant was not able to establish contacts either with the Commission or the Pardon, Citizen-

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26 Those persons who qualify for facilitated naturalization and do not have to meet the residency and the language proficiency requirements can file their applications in the Armenian embassies abroad.

27 Point 1 of the Decree No NH-349 of 23 July 1999 of the President of the Republic of Armenia.

28 Point 6 of the Decree No NH-350 of 23 July 1999 of the President of Armenia.

29 Approved by the Decree No NH-350 of 23 July 1999 of the President of Armenia.

30 Ibid, points 3, 7, and 10.

ship, Awards, and Titles Department.<sup>31</sup> It was not possible, therefore, to elaborate on the actual role of the Commission in the decision-making processes pertaining to the granting of Armenian citizenship and, particularly, on how much deference the President of the Republic makes to the position of the Commission in specific cases.

The application fee for naturalization is 1,000 Armenian Drams.<sup>32</sup> A naturalized person reads a loyalty oath in the Armenian language.<sup>33</sup>

If the citizenship application is denied, the person may reapply one year after the date the first application was denied.<sup>34</sup>

The Citizenship Act provides that an application for obtaining the citizenship of the Republic of Armenia shall be rejected if the person concerned endangers, by his or her activities, state security and public safety, public order, public health and morals, others' rights and freedoms, honour and good reputation.

The Armenian legal framework on naturalization suffers from a number of shortcomings:

- i. Legally incompetent persons may not apply for naturalization in Armenia.
- ii. Refusal of citizenship applications need not be substantiated and is not subject to judicial review.
- iii. The one year time period for the consideration of naturalization applications may be unreasonably lengthy.
- iv. It follows from the Government decree on establishing the procedure for testing the knowledge of the Armenian Constitution and the Armenian language<sup>35</sup> that even those for whom the lan-

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31 The Head of the Pardon, Citizenship, Awards, and Titles Department under the Staff of the President of the Republic advised to approach the Passport and Visa Department. The meeting with the President of the Commission did not take place due to time constraints of the research.

32 Article 13 of the Law on State Fees.

33 Article 13 of the Citizenship Act.

34 Article 29 of the Citizenship Act.

35 Armenian Government Decree No 1040-N of 30 August 2007.

guage requirement is waived are required to complete a test — in the Armenian language — on the knowledge of the Armenian Constitution. On the other hand, no reasonable accommodation, such as use of services of a translator and the procedure for this, has been provided for in law.

### *Inability of legally incompetent persons to naturalize*

The 2006 UN Convention on the Rights of Persons with Disabilities<sup>36</sup> (“the Disability Convention”) sets out, inter alia, the obligations of the State parties in respect of nationality of persons with disabilities. Under Article 5 of the Disability Convention State parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. Article 18(1)(a) of the same Convention provides that State parties shall recognize the rights of persons with disabilities to [...] a nationality, on an equal basis with others, including by ensuring that persons with disabilities have the right to acquire a nationality.

In addition, Article 26 of the 1966 International Covenant on Civil and Political Rights and Article 14 of the European Convention on Human Rights prohibit discrimination on any ground.

Currently legal capacity is a requisite element of eligibility for filing a naturalization application under Article 13 of the Citizenship Act. Moreover, a legally incompetent person may not apply for naturalization via his/her legal guardian. This seems not to be consistent with the right of persons with disabilities to non-discrimination as enshrined under the Disability Convention and other international human rights instruments.

### *Lack of substantiated refusals and judicial review*

Although naturalization has always been considered to be the prerogative of the Sovereign, the unlimited power of the State in this respect which excludes the possibility of judicial review of the action of the executive, is contrary to the Constitution of Armenia and international best practices in the field.

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36 This Convention entered into force for Armenia on 22 October 2010.

In particular, the Armenian Constitution enshrines that everyone shall — for the protection of his or her rights and freedoms — have the right to effective judicial remedies and effective legal remedies before other state bodies.<sup>37</sup>

The European Convention on Nationality of 1997 provides that decisions on naturalization should be reasoned in writing, and that these decisions should be open to administrative or judicial review.<sup>38</sup>

According to the information provided by the Passport and Visa Department of the Police, 1,735 persons were granted Armenian citizenship during 1997-2007; 1,554 persons in 2008; 4,323 persons in 2009; and 9,588 persons in 2010. These are all people who acquired Armenian citizenship by naturalization. No statistics are maintained on the number of persons who acquired citizenship on other grounds (recognition, recovery, etc.), or on how many of those granted citizenship were stateless (the only exception probably being statistics on the number of refugees from Azerbaijan who acquire citizenship under Article 10(2) of the Citizenship Act). The rapid increase in citizenship applications would appear to be due to the introduction of dual nationality after the ban on it was lifted by the constitutional referendum of 2005. Most of the persons who were granted Armenian citizenship are dual citizens of Armenian descent. No statistics are maintained on the countries of origin of the applicants.<sup>39</sup>

According to the Passport and Visa Department, the ratio of those refused citizenship is less than 0.1 per cent of those applying. As a rule, the reason for rejection is the negative opinion of the National Security Service. This has been the “justification” for rejections in two cases of political activists Mr. Zh. S. and S. H. (both are participants in the Nagorno-Karabakh conflict). Mr. Zh. S. has been living in Armenia for more than 20 years and has not left the borders of Armenia for

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37 Article 18 of the Constitution.

38 Articles 11 and 12 of the European Convention on Nationality of 1997.

39 According to the information provided by the Passport and Visa Department, persons from more than 30 countries, including Argentina, Brazil, Australia, Russia, Kazakhstan, and many others, apply for Armenian citizenship.

12 years. He is a citizen of Lebanon, but his Lebanese passport has expired. He has filed naturalization applications three times and was rejected on grounds that “granting of citizenship to him is not found appropriate for reasons of national security”.<sup>40</sup>

### *One year time limit for consideration of applications*

The one year time limit for considering naturalization applications appears to be lengthy in light of the best practices in several other countries, especially when facilitated procedure for naturalization is concerned.<sup>41</sup> In this respect, it is interesting to mention the practices in Georgia where the time limit for considering naturalization applications in general may not exceed three months,<sup>42</sup> of Russian Federation where the said time limit in a facilitated procedure may not exceed six months,<sup>43</sup> and of Kyrgyzstan where the general time limit may not exceed six months, while the time limit in a facilitated procedure may not exceed three months.<sup>44</sup>

### *Knowledge of the Armenian Constitution*

The Citizenship Act waives the requirement of knowledge of the Armenian language for certain categories of persons. These persons, however, are still required to pass a written test on the knowledge of the Armenian Constitution in the Armenian language. Neither the law nor its implementing regulations set out a procedure on how these persons are to complete the test and in, particular, how they shall use the services of a translator to complete a written test. The same concerns

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40 Interview of 4 August 2011 with his lawyer Mr V. Grigoryan who has counselled his two applications for naturalization.

41 It should be noted that while this report was still being drafted, the Police of Armenia put into circulation a draft law suggesting shortening the time-limit for considering naturalization applications from one year to six months. By the time this report was finalized, the mentioned draft was still being considering by the Government of Armenia.

42 Article 38 of the Citizenship Law of Georgia.

43 Article 35(4) of the Citizenship Law of the Russian Federation.

44 Article 37 of the Citizenship Law of Kyrgyzstan.

may be raised also with respect to the loyalty oath that must be read in Armenian.<sup>45</sup>

## **Facilitated naturalization of refugees and stateless persons**

Article 34 of the 1951 Convention relating to the Status of Refugees (“the 1951 Convention”) and Article 32 of the 1954 Convention contain identical obligations for the facilitation of naturalization of refugees and stateless persons respectively. In particular, Contracting States are required to make every effort to expedite naturalization proceedings for refugees and stateless persons and to reduce as far as possible the charges and costs of such proceedings.

Currently, the Armenian legal framework for naturalization does not contain specific provisions for the naturalization of refugees and stateless persons. However, stateless persons residing in Armenia are included into the initial body of citizens of Armenia under Article 10(2) of the Citizenship Act as amended, which provides that:

*Stateless persons habitually residing in the Republic of Armenia [...], who apply for acquiring the citizenship of the Republic of Armenia before 31 December 2012,<sup>46</sup> are recognized as citizens of Armenia.*

This means that a simple declaration of intention submitted to the competent authorities before the date indicated in the Law will be sufficient for a stateless person to be recognized as an Armenian citizen

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45 Article 13 of the Citizenship Act.

46 It should be noted that at the time of drafting this report the State Migration Service under the Ministry of Territorial Administration of Armenia put into circulation a draft Law on Making an Amendment to the Citizenship Law of the Republic of Armenia. The draft law suggests extending the deadline under Article 10(2) of the Citizenship Act till 31 December 2014. At the time of the report finalization the draft has been approved by the Government of Armenia but still needs to be adopted by the National Assembly of Armenia.



without any further approval.

However, considering that Article 10(2) of the Citizenship Act contains a time limitation, the legislature should consider amending the Act in the future to provide for facilitated procedure for the naturalization of stateless persons.

The Citizenship Act should also be amended to provide for facilitated naturalization of refugees in accordance with Article 34 of the 1951 Convention.

## **2.3. Loss of Armenian citizenship**

### **2.3.1. Loss of citizenship as a consequence of change in personal status, recognition of affiliation and loss of citizenship of a parent or spouse**

As regards the loss of citizenship resulting from marriage or a change in the spouse's citizenship status, Article 6 of the Citizenship Act states:

*“Marriage of a citizen of the Republic of Armenia to a foreign citizen shall not per se entail a change of the citizenship. A change of the citizenship by one of the spouses shall not per se entail a change of the citizenship of the other spouse.”*

Similarly, the law does not entail loss of citizenship in case of termination of marriage.

The Citizenship Act sets out the following regulations with respect to loss of citizenship of children in connection with a change in the citizenship status of their parent(s), of children under guardianship or curatorship, and of children who are adopted by a foreign citizen:

Article 17 of the Citizenship Act stipulates:

*“A child of parents having lost the citizenship of the Republic of Armenia shall lose the citizenship of the Republic of Armenia, provided that he or she acquires the citizenship of another State.”<sup>47</sup>*

This provision, which refers to cases when both parents lose the citizenship of Armenia, is in line with the requirement of Article 6 of the 1961 Convention as it makes the loss of Armenian citizenship conditional upon acquisition of another nationality.

However, no similar safeguard exists when referring to cases where only one of the parents loses his or her Armenian citizenship:

*“Where one of the parents has lost the citizenship of the Republic of Armenia while the other is a citizen of the Republic of Armenia, their child shall lose the citizenship of the Republic of Armenia, if the consent of the parents is available or if the child resides outside the Republic of Armenia and the consent of the parent holding the citizenship of the Republic of Armenia is available.”*

The same gap exists in Article 21 of the Citizenship Act, which provides:

*“A child holding the citizenship of the Republic of Armenia who is under the guardianship or curatorship of citizens of the Republic of Armenia shall retain the citizenship of the Republic of Armenia, notwithstanding his or her parents’ giving up the citizenship of the Republic of Armenia. In such a case, the child may give up the citizenship of the Republic of Armenia upon the application of his or her parents, provided that they are not deprived of parental rights.”*

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<sup>47</sup> With respect to children at the age of 14-18, Article 17 of the Citizenship Act stipulates that they shall lose Armenian citizenship upon their written consent.

Here also, the loss of Armenian citizenship is not made conditional upon possession or acquisition of another nationality.

With respect to children adopted by a foreign citizen, Article 19 of the Citizenship Act provides:

*“A child holding the citizenship of the Republic of Armenia who has been adopted by foreign citizens or by spouses one of whom is a citizen of the Republic of Armenia while the other is a foreign citizen shall retain the citizenship of the Republic of Armenia. In such a case, the child may change the citizenship only upon the application of the adopters.*

*A child holding the citizenship of the Republic of Armenia who has been adopted by stateless persons or by spouses one of whom is a stateless person while the other is a citizen of the Republic of Armenia, shall retain the citizenship of the Republic of Armenia.”*

Thus, the Law does not entail automatic loss of nationality as a consequence of adoption. However, the risk of statelessness still exists because of the possibility for the adoptive parents to file an application for changing the child’s citizenship, and there is no safeguard in place in the form of making the loss conditional upon possession or acquisition of another nationality consistent with Article 7(1)(a) of the 1961 Convention.

No provision allowing for loss of nationality of a child born out of wedlock in consequence of recognition of affiliation exists in the Citizenship Act. Moreover, it does not make any difference between children born out of wedlock and children born in wedlock in matters related to acquisition, retention, recovery, or loss of citizenship.

### **2.3.2. Renunciation of nationality**

Regulations governing renunciation of Armenian nationality are set out in Article 24 of the Citizenship Act, which provides:

*“Any citizen of the Republic of Armenia who has attained the age of 18 shall have the right to change the citizenship, i.e., to give up the citizenship of the Republic of Armenia and to acquire the citizenship of another State.*

*The application of a citizen on giving up the citizenship of the Republic of Armenia shall be rejected if:*

- (1) criminal prosecution has been initiated against him or her;*
- (2) a criminal or civil judgment of a court has been entered against him or her, which has taken legal effect and is subject to enforcement;*
- (3) his or her giving up the citizenship of the Republic of Armenia contravenes the national security interests of the Republic of Armenia;*
- (4) he or she has unfulfilled obligations towards the State.”*

It is evident from the above-stated provision that renunciation of Armenian citizenship is not made conditional upon acquisition of another citizenship or a formal assurance from another State that citizenship will be granted consistent with Article 7(1)(a) of the 1961 Convention which particularly provides that renunciation may not take place unless the person concerned possesses or acquires another nationality.

In an apparent effort to address this shortcoming, the Government of Armenia issued a decree<sup>48</sup> in November 2012 which stipulates that persons who want to renounce their Armenian nationality must submit a document issued by the competent authority of a foreign country confirming the legal possibility for acquisition of the nationality of that country. Legal possibility of citizenship acquisition particularly means that the person is eligible under the law to acquire nationality.

This governmental decree is a laudable interim measure aimed at filling the existing gap until the revision of the Citizenship Act. Since the grounds for refusal to release from citizenship are set out in the Citizenship Act, legal certainty would require that the requirement of submitting an assurance of acquisition of another citizenship is also set

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48 Decree of the Government of the Republic of Armenia No 1552-N of 29 November 2012.

out in the Citizenship Act.

Under Article 7(1) of the 1961 Convention, loss of citizenship should not be effective unless the person concerned acquires another citizenship. Armenia's Citizenship Act and the implementing legislation should incorporate this essential safeguard to ensure that renunciation of Armenian citizenship is without effect where another citizenship is not actually acquired or possessed. There have been situations where persons who did not acquire the citizenship of another State following renunciation of Armenian citizenship, were later documented as stateless by the Passport and Visa Department.

### **2.3.3. Deprivation/termination of nationality**

As stated above, Article 30.1 of the Armenian Constitution prescribes that no one may be deprived of the citizenship of the Republic of Armenia. The only exception to this prescription is provided for under Article 43 of the Constitution which provides for the general restrictions on the enjoyment of Constitutional rights.

Article 23 of the Citizenship Act provides that Armenian citizenship may be terminated:

- “(1) In case of changing the citizenship of the Republic of Armenia;*
- (2) In case of acquiring citizenship based on forged documents or false data;*
- (3) On grounds provided for by international treaties of the Republic of Armenia.”*

The provision in the Citizenship Act allowing termination of Armenian nationality obtained fraudulently has two worrisome drawbacks: firstly, there is no time limitation for deprivation of nationality; secondly, the gravity of the misrepresentation is not taken into account.

This is not consistent with the fundamental principle of proportionality as enforced in international jurisprudence. In a judgment of the European Court of Justice of 2 March 2010 in the *Rottmann* case, the

Court concluded that State parties are not prohibited under Article 8(2) of the 1961 Convention from depriving a person of his/her nationality, even if he/she thus becomes stateless, when that nationality was acquired by means of fraudulent conduct, false information or concealment of relevant fact attributable to that person. However, the principle of proportionality must be observed.

In addition, procedural safeguards concerning termination of citizenship as contained in Article 8(4) of the 1961 Convention are not incorporated into the Citizenship Act. Article 8(4) particularly provides that a Contracting State shall not exercise a power of deprivation of citizenship due to misrepresentation or fraud except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body. “Right to a fair hearing” in this context particularly means that when making a determination on whether an individual has acquired citizenship through misrepresentation or fraud, the individual concerned should be given an opportunity to be heard and have his/her arguments presented before a court or other independent body. The laws of Russian Federation and Tajikistan, for example, have incorporated this requirement in the form of a provision stating that the fact of willful provision of forged documents or false data shall be established in a judicial procedure. “Right to a fair hearing” has also been widely accepted to mean the right to judicial review of decisions on termination/deprivation of citizenship.

As a conclusion to this Chapter it should be noted that Armenian legislation does not provide for sufficient guarantees required under the 1961 Convention with respect to the prevention of statelessness in the context of the loss of nationality as well as the prevention of statelessness at birth. In addition, the lack of transparency and reasoned decisions in naturalization proceedings, as well as the absence of an administrative or judicial review of a negative decision may negatively affect the naturalization possibilities of stateless persons. Procedural safeguards for deprivation/termination of citizenship due to misrepresentation or fraud as required by Article 8(4) of the 1961 Convention have also not been included in the Citizenship Act. In order to address these gaps, specific recommendations made under Chapter 6 should be considered.

## CHAPTER 3: Causes of Statelessness in Armenia

### 3.1. Statistical data on statelessness

The most recent source for statistical data on statelessness in the country is the 2001 national population census. According to its results, 13,951 persons in Armenia identified themselves as stateless. Out of this, 574 persons have never changed their place of residence, but have always lived in Armenia. A total of 12,679 persons have come to Armenia from other countries/places: 698 from Karabakh; 11,702 from Azerbaijan; 66 from Georgia; 118 from Russia. The remaining 698 persons did not specify their former place of residence. As to the ethnic background of those having identified themselves as stateless during the census, 13,733 were Armenians, 75 Russians and 74 Bulgarians. Only 69 persons did not specify their ethnicity. Persons having identified themselves as stateless during the 2001 census were located within the country as shown in the table on the right.<sup>49</sup>

| Census 2001 data |               |
|------------------|---------------|
| Region           | Persons       |
| Armavir          | 613           |
| Ararat           | 3902          |
| Aragatsotn       | 312           |
| Gegharkunik      | 1840          |
| Lori             | 608           |
| Kotayk           | 512           |
| Shirak           | 199           |
| Syunik           | 1876          |
| Vayots Dzor      | 332           |
| Tavush           | 751           |
| Yerevan          | 2344          |
| <i>Total</i>     | <i>13,951</i> |

It is difficult to draw any reliable conclusions based on the above census results as these were based on self-identification of the persons questioned, and no actions have been taken by the authorities to verify their actual status. Incorrect self-identification may be conditioned by different reasons. For example, a person may not correctly understand the terms “stateless person” and “citizen/national”, or may not have a

<sup>49</sup> As per the data available on the Internet website of the National Statistical Service at <http://armstat.am/am/?nid=52>.

clear idea of whether he or she is in fact stateless or not.<sup>50</sup> In addition, many of those who have self-identified themselves as stateless in 2001 are likely to have already acquired Armenian nationality. Furthermore, part of those people is likely to have emigrated from Armenia or is no more alive.

It is also difficult to unambiguously establish links between causes of alleged statelessness and peoples' former place of habitual residence. An assertion can be made that most of the self-identified stateless persons from Azerbaijan, Georgia and Russia found themselves in Armenia as a result of the regional conflicts in the late 1980s and early 1990s. This refers, in particular, to the Nagorno-Karabakh conflict resulting in the population flow from Azerbaijan and Karabakh, the Georgian-Abkhazian conflict resulting in the flow of ethnic Armenians from Abkhazia to Armenia, as well as the two wars in the Russian Republic of Chechnya.

The main drawback of the questionnaire applied during the 2001 census is the absence of questions which would permit the use of the census results to gain a better understanding of the size and profile of Armenia's stateless population and the reasons for this statelessness. The 2011 national census tried, to some extent, to remedy those shortcomings by including certain specific questions following recommendations made by UNHCR Armenia. In particular, an additional question on main reasons for changing the place of residence was included for persons who have changed their place of residence. Among the options for reply are "military operations in other countries", "well-founded fear of being persecuted for reasons of race, ethnicity, religion, membership to a particular social group or for political opinion", "family reasons", "repatriation", and "other". The results of the 2011 census as regards data on statelessness will be published only towards the end of 2013.

Besides the unreliable 2001 population census results, the only official data available on stateless persons indicate that there were eleven

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50 See *Measuring Statelessness through Population Census*, Note by the Secretariat of the United Nations High Commissioner for Refugees, 13 May 2008.



persons documented as stateless in Armenia as of January 2012. No research addressing statelessness in the country conducted by the other divisions of the National Statistical Service, sociological organizations, academic institutions, international organizations or individuals were discovered in the course of the present research.

### **3.2. Statelessness resulting from gaps in the legislation**

One of the most crucial shortcomings of the Armenian law concerning the acquisition of Armenian citizenship is the lack of safeguards against statelessness for every child born in Armenia. This has already been discussed in point 2.2.2 above.

No statistics is available on children who have become stateless as a result of this gap. The Passport and Visa Department does not see any gap as such because in actual practice if a child born in Armenia to foreigners is not able to acquire the citizenship of the country of his or her parent's citizenship, he or she will acquire Armenian citizenship.<sup>51</sup> However, the Department did not recall any case when a child has thus acquired Armenian citizenship under these circumstances. Furthermore, the Department did not specify what would be the basis for such acquisition, whether it would be acquisition *ex lege* or through application, what procedure would apply and what requirements would have to be met.

The provisions of the Citizenship Act governing renunciation of citizenship are also very problematic in that they might lead to situations of statelessness. According to information provided by the Passport and Visa Department,<sup>52</sup> 1,194 persons terminated their Armenian citizenship during the period from 2009 to July 2011, of which 236 during the first six months of 2011. It is not clear how many of these persons had possession of another nationality at the time of renouncing their Armenian citizenship.

According to the Passport and Visa Department, only eleven persons hold residence certificate of a stateless person in Armenia as of

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51 Interview with the Head of the Department of 20 July 2011.

52 Interview with the Head of the Department of 28 July 2011.

January 2012.<sup>53</sup> All of them have reportedly once been citizens of Armenia and have renounced their citizenship in pursuit of another country's citizenship. None have subsequently acquired the citizenship of any State and all were documented as stateless by the Passport and Visa Department notwithstanding the requirement of the 1961 Convention that the loss of citizenship should not be effective unless the person concerned acquires another citizenship.<sup>54</sup>

It was possible to contact only one person out of these eleven. He is a resident of Yerevan and had applied for the termination of his Armenian citizenship in 1999. To the question "which country's citizenship are you to acquire?" in his application to terminate his Armenian citizenship, he answered "the citizenship of the country which will agree to grant citizenship to me". When the Passport and Visa Department staff refused to accept his application without him indicating the nationality he wished to obtain, he replaced that entry with "US Citizenship" although he had no intention whatsoever to pursue acquisition of American citizenship.<sup>55</sup>

His application to renounce his Armenian citizenship was accepted in 2000. He has since not applied to acquire the citizenship of any other country. He reportedly lives in conditions of extreme poverty; his apartment in the centre of Yerevan was expropriated for "the needs of the State and society", and he was evicted before the relevant judicial act took effect. He also stated that he was not given an opportunity to collect his belongings, and all his documents were destroyed. As a re-

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53 According to the information provided by a Senior Specialist at the Department of International Legal Affairs of the Ministry of Justice of Armenia, there were also 19 persons who had been issued a residence certificate of a stateless person. The validity of their certificate has, however, expired, and they have not filed an application for extending it. No information is available on whether they have acquired any nationality. It should be noted, however, that the Ministry of Justice of Armenia is not the competent authority to provide official information on stateless persons in Armenia.

54 Article 7(1) of the Convention.

55 See the 2006-2007 Report of the Sakharov Armenian Human Rights Center.

sult, he has not been able to apply for, and receive, state benefits. He is 59 years old now, in poor health, and able to survive only with the support of relatives. He has an application pending before the European Court of Human Rights seeking legal remedies against the expropriation of his property. He is also preparing his second application to the Constitutional Court of Armenia (his first application was satisfied by the Constitutional Court but has not been complied with by the public authorities).<sup>56</sup> He did not, however, specify whether his situation was a direct or indirect consequence of his statelessness. In addition, he has never applied and had no intention to apply for recovery of his Armenian citizenship although such possibility exists under Article 14 of the Citizenship Act.

The second person officially documented as stateless is registered in Gyumri (Shirak Marz). She was not reachable but her neighbors informed us that she resided in Germany for many years. No information was available about her current citizenship status.

The third stateless person is registered in Kapan (Syunik Marz). According to her brother, she left Armenia for Germany many years ago and returned to Armenia to renounce her Armenian citizenship. Following this she was issued with a residence certificate of a stateless person and has again left Armenia for Germany and successfully acquired German citizenship.

The fourth is a resident of Yerevan who gave up his Armenian citizenship in 1998<sup>57</sup> and was issued a residence certificate of a stateless person in 2009 but has not taken it from the Passport and Visa Department because he thinks it is not in line with the requirements set out in the 1954 Convention. According to his statements made before the Administrative Court of Armenia, he considered that he has not

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56 This information is merely a representation of the information provided by the person during an interview held on 8 August 2011.

57 It was not possible to contact him but some information about the circumstances of his case became known from the judgment of the Administrative Court of Armenia of 3 October 2008 rendered upon his claim on refuting the information contained in a reply of the Ministry of Foreign Affairs to his request of information.

acquired Armenian citizenship because he has never consented to the acquisition of such citizenship. He wanted to get a Convention Travel Document for stateless persons in order to acquire British citizenship. He has not acquired the citizenship of any State so far.

The fifth documented stateless person is from Akhouryan village (Shirak Marz). According to her cousin, she resides in the Russian Federation. She renounced her Armenian citizenship in order to acquire Russian citizenship but has not been able to do so because of “changes to the Russian law”. She intends to return to Armenia when her visa expires.

A neighbor of the sixth stateless person residing in Masis (Ararat Marz) informed us that he had left for Poland many years ago. He was issued a residence certificate of a stateless person in March 2011.

The mother of the seventh documented stateless person informed that her son currently resides in the Russian Federation and his application for acquiring the citizenship of the Russian Federation is pending.

It was not possible to contact or obtain any information about the remaining four documented stateless persons, all of them residents of Yerevan.

### **3.3. Administrative practices that may lead to statelessness**

There is a number of faulty administrative practices which could delay or prevent the exercise of individuals’ right to acquire Armenian citizenship and, in some cases, could create a risk of statelessness. For example,

1. in the absence of implementing legislation on recognition of citizenship (inclusion into the initial body of citizens), staff of territorial passport units are unaware of their exact responsibilities and the procedures they must follow. This creates a situation where some persons residing in Armenia and eligible for inclusion into the initial body of citizens are not able for 20 years to have an official recognition of such inclusion and receive a passport of an Armenian citizen.

2. citizens without a permanent place of residence in Armenia are not able to get passports due to an absence of clear-cut instructions on how to deal with their situation.
3. male citizens face difficulties in obtaining national passports because the passport division staff requires of everyone to submit military registration documents, although this applies only to conscripts.<sup>58</sup>

In what follows below, each of the above problematic issues are discussed in greater detail.

### **Initial body of citizens**

As stated above, Article 10 of the Citizenship Act defines the categories of persons eligible to be recognized as citizens of Armenia but does not define how this eligibility is to be established. Article 28(3) of the Citizenship Act delegates the authority to lay down requisite procedure to the Government by stipulating that the Government shall define the list of documents necessary for the acquisition of citizenship of Armenia. While this refers to the acquisition of citizenship on any ground (inclusion into the initial body, naturalization, etc.), the Government has to date issued only one relevant regulation, which makes reference to Article 28(2) of the Citizenship Act but covers only the acquisition of nationality through naturalization.<sup>59</sup>

The absence of a relevant regulation was explained by the Passport and Visa Department by the existence of another Government Decree on the regulations of the passport system of Armenia. The latter in turn refers to the procedure for issuing passports to Armenian citizens and is based on another provision of the Citizenship Act requiring the Government to lay down the procedure for the formulation of documents confirming Armenian citizenship and for delivering them to citizens.<sup>60</sup> Thus, there exists no implementing legislation setting out detailed procedures on the determination of eligibility for inclusion in the initial

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58 Point 11 of the Armenian Government Decree No 821 of 25 December 1998.

59 Armenian Government Decree No 1390-N of 23 November 2007.

60 Article 28(2) of the Citizenship Act.

body of citizens under Article 10 of the Citizenship Act. This begs the questions:

- Who is considered as habitual resident in Armenia and how must this be proved?<sup>61</sup>
- Who is considered to be a citizen of the former Armenian Soviet Socialist Republic?<sup>62</sup>
- What documents a person must submit or what actions must he/she take in order to prove his/her eligibility for recognition as a citizen?
- What are the time limits for processing applications under Article 10 of the Citizenship Act?<sup>63</sup>
- What standards are applied in cases when a person is not able to fulfil a certain requirement for reasons beyond his control?

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61 As per the information provided by the Passport and Visa Department, in practice this is corroborated by the fact of being registered in a place of residence in Armenia or by a statement from the local authorities.

62 As per the information provided by the Passport and Visa Department, those are persons who have been issued a USSR passport by the passport authorities of the Armenian Soviet Socialist Republic, or a birth certificate by the civil registry authorities of the Armenian Soviet Socialist Republic. The last factor, however, is not always a basis for acquiring Armenian citizenship. See, in particular, the 2006-2007 Report of the Sakharov Armenian Human Rights Center, at page 22, for the case of a refugee from Azerbaijan who was born in Azerbaijan, came to Armenia several days after his birth, and was issued a birth certificate by the civil registry authorities of Armenia. Thus, as per the definition applied by the Passport and Visa Department, he is a citizen of the former Armenian Soviet Socialist Republic, but he is nevertheless not considered as a citizen of Armenia because he is a refugee.

63 As per the Passport and Visa Department, Government Decree of 11.12.2008 defines a five-day time limit for issuing a passport to a citizen of Armenia. But again, these regulation refers to issuing a passport to someone who is already known to be a citizen, and leaves undefined the period during which the competent authority has to decide on the eligibility of a person to be recognized as a citizen under Article 10 of the Citizenship Act, a process which evidently requires more time in certain cases than five working days.

The following examples illustrate the challenges:

Case 1: The passport authorities refused to accept for consideration documents of a former USSR citizen who moved to Armenia in the early 1990s during the Georgian-Abkhazian conflict. Later, they failed to reply to the application filed by the person via mail. The oral justification for not accepting the documents from the person residing in Armenia for almost 15 years was that he has to go to Abkhazia in person to have his name removed from the local registry of his former place of residence. Such a requirement is not stipulated by any normative act but was nevertheless applied in practice. Moreover, the person was not able to comply with the requirement because he had no valid document to cross an international border. Only after the intervention of the Ombudsman the Passport and Visa Department filed an enquiry with the competent authority in Abkhazia for removing the person off the local registry.<sup>64</sup>

Case 2: A person born in the Armenian Soviet Socialist Republic left the country before the dissolution of the USSR. She took up residence in Armenia in 1998. She had no identity documents and was not able to have her citizenship status determined and issued a national passport until the intervention of the Ombudsman in 2007.<sup>65</sup>

Case 3: A person issued with a USSR passport by the authorities of the Armenian Soviet Socialist Republic left Armenia for Abkhazia. She returned to take up residence in Armenia in 1991. She had lost her USSR passport. She was able to have her status clarified and issued a national passport only in 2009 after her case was taken up by a human rights NGO. The passport authorities had again required that she go to Abkhazia in person to get her name off the local registry.<sup>66</sup>

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64 See statements of information at <http://ombuds.am/main/am/9/34/>.

65 Ibid.

66 See 2008-2009 Report of the Sakharov Human Rights Center.

Case 4: A person issued with a USSR passport in the Russian Federation later took up residence in Armenia in 1998. He was able to obtain an Armenian passport only in 2009. This delay was due to the difficulties he faced in having his name removed from the registry in Russia through the Russian Embassy in Armenia.

## **Persons without permanent place of residence**

Pursuant to Armenian Government Decree of 1998 on approving passport regulations of Armenia, citizens of Armenia are issued passports as per their permanent, temporary, or factual place of residence.<sup>67</sup> If a person resides in a certain place not on a permanent basis, and the owner of that accommodation objects to his or her registration at that place of residence or the area is not a residential area, a regional police inspector makes a note that a particular person in fact resides in the given place and this place becomes the basis for the registration of that person in the population register (without which he may not be issued a passport). Human rights NGOs and the Office of the Ombudsman reported that they constantly deal with cases of malpractice on the part of inspectors, including their failure to inspect a site; the inspection of a site, without prior notice, during working hours when no one is at home; and instances where inspectors refuse to make a note on an individual's factual residence claiming that they are not sure that the person will not move to some other place following the inspection. As a result, some citizens are not able to obtain passports until such time as an NGO or the Ombudsman's office intervenes.<sup>68</sup> Although not necessarily stateless, lack of documentation proving citizenship leaves the discussed group of persons at risk of becoming stateless at some point in the future. The same is true also about the group discussed below.

## **Military registration documentation**

To be issued a passport, conscripts must submit military registration

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67 Point 10 of Government Decree No 821 of 25 December 1998.

68 Interviews with the lawyer of the Sakharov Human Rights Center and staff of the Ombudsman's Office of 19 July 2011.



documents together with other required documentation. The definition of a “conscript” is provided for in the Law of Armenia on Conscription:

*conscripts are male citizens of pre-draft (16-18) or draft age (18-27) as well as those registered in the military reserve and female citizens of military profession or having undergone military service.*<sup>69</sup>

Notwithstanding this definition, territorial passport units require military registration documents of all male citizens,<sup>70</sup> even if the reason for non-possession of such documentation by them is the fact that the competent military authorities have failed to register them for military service and, consequently, they have not served in the army. If this is the case, and the person concerned does not fall under the definition of a conscript any more (in particular, is above 27 years of age), the requirement of submitting military registration documents should not apply to him. Under Article 4 of the Law of Armenia on Conscription, military registration is the duty of the competent military authorities. Thus, if they fail for some reason to register a citizen for military service, the citizen should in no way later bear any negative consequences of such failure.

### **3.4. Statelessness resulting from individual circumstances**

#### **3.4.1. Citizens of former Soviet Socialist Republics**

There is no information available from official sources on the number of persons still holding expired USSR passports. However, non-official sources, including human rights NGO reports,<sup>71</sup> specialized birth

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69 Article 3 of the Law of Armenia on conscription.

70 See the judgment of the Administrative Court of Armenia of 10 November 2010 in the case VD2/0285/05/10.

71 See the 2006-2007 Report of the Sakharov Armenian Human Rights Center, at page 11. It refers to two persons who don't want to be citizens of Armenia and think that they have to have consented to its acquisition.

registration survey results,<sup>72</sup> as well as statements by NGOs representing national minorities of Armenia, suggest that there may still be persons whose only identity document is an invalid USSR passport.

An interesting case dealt with by a human rights NGO and the Office of the Human Rights Defender<sup>73</sup> concerns a boy born in the Georgian Soviet Socialist Republic who was issued a birth certificate there before coming to Armenia with his family. He was sent to a boarding school without any identity documents. After attaining majority age, he was conscripted to the Army, though he had no Armenian citizenship. After his return from the army he was not able to obtain an Armenian passport, nor a residence certificate of a stateless person. Although the Passport and Visa Department accepted that he had no Georgian citizenship, they refused to issue a residence certificate of a stateless person because of the fact that he had served in the Armenian Army. Only after the intervention of the Human Rights Defender did the Department agree to issue the certificate. However, the young man refused to take it at the last moment because the grounds for issuing it “would be fake”.<sup>74</sup> He is still without any identity document and without his citizenship status clarified.

Unlike the citizens of the former Armenian Soviet Socialist Republic, those from other former Soviet Republics are not granted Armenian citizenship automatically. Rather, they have to declare their intention to acquire Armenian nationality by 31 December 2012.<sup>75</sup> However, there were cases when they have been reportedly required to undergo

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72 As stated by the President of the Armenian Relief Society, a research conducted in 2009 aimed at discovering children without birth registration revealed parents still holding USSR passports, this being the cause of non-registration of their children’s births. This was mentioned as a cause of non-registration of children’s births also by Children’s Rights Protection Units of Marzpaetarans of some Marzes.

73 Both had dealt with the same case.

74 It seems that he has been taken to the Army instead of someone else.

75 Article 10(2) of the Citizenship Act.

naturalization proceedings under Article 13 of the Citizenship Act.<sup>76</sup> Such cases particularly concerned persons who had acquired the citizenship of other former Soviet Republics, and as such were made to renounce their citizenship and proceed with naturalization proceedings under Article 13 of the Citizenship Act.<sup>77</sup> However, even if they had acquired another citizenship, it seems that they were still eligible to be recognized as Armenian citizens under Article 10(2) of the Citizenship Act after renunciation of their other nationalities.

### 3.4.2. National minorities

Most of the national minority NGOs contacted in the course of the present research have shown little or no understanding of the issue of statelessness. Many stated that they had never encountered a case of a stateless person in their community. Thus, no indication that a particular national minority is stateless or at risk of statelessness was present in the statements of the NGOs contacted. An NGO representing the Greek Community mentioned the case of a woman holding a USSR passport issued in Russia. She was born in Armenia and lives in Lori Marz. She was told several times by the local passport authority that she was not eligible for automatic Armenian citizenship but could apply for the acquisition of Armenian citizenship through the process of naturalization.<sup>78</sup>

An NGO representing the Assyrian community referred to the case of an Assyrian woman who had acquired Russian citizenship in 2000 based on her USSR citizenship. She came to Armenia in 2003 for a short period of time but could not return home due to allegations that her Russian passport was issued without valid grounds. She now resides in the Verin Dvin village of Artashat region and is currently attempting to secure a residence certificate of a stateless person to enable her to return to Russia where her family is residing.

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76 Armine Karakhanyan, "Acquisition of citizenship in the Republic of Armenia after the dissolution of USSR", at page 9. Available at <http://law.aa.am/files/2012/02/acquisition.pdf>.

77 Ibid.

78 Interview with the sister of the woman.

An NGO representing Ukrainians referred to several cases of persons who had renounced their Armenian citizenship to acquire Ukrainian citizenship, and others who had renounced their Ukrainian citizenship in order to acquire Armenian citizenship (renunciation of the existing nationality was prerequisite to applying for Armenian citizenship under Article 13 of the Citizenship Act prior to the inception of the dual nationality regime). The NGO, however, stated that according to the information it had, those persons had managed to obtain the nationality they sought.

Two Kurdish NGOs brought up the situation of seven Kurds (two of them women), allegedly members of the Kurdistan Worker's Party, who were prosecuted and imprisoned for illegally crossing the Armenian border in 2011. They applied for asylum while in detention but their claims were rejected. The NGOs stated that the Kurds had no identity documents and belonged to no State. But according to the State Migration Service, some presented themselves as Turkish citizens and others claimed to be from Iraq.<sup>79</sup>

An NGO called Yezidi-Kurdish Community stated that around 20 members of their community currently residing in Russia have turned to them seeking assistance in acquiring Russian citizenship. They were born in the Armenian SSR but never applied for acquiring Armenian passports. The NGO was also aware of the case of a person holding a USSR passport currently residing in Armenia who is not able to acquire Armenian citizenship because he is registered in the Russian Federation.

In addition to the national minorities mentioned above, there are also other minorities in Armenia, including Lithuanians, Central Asians, Azerbaijanis, Tartars, Persians, Indians, Afghans and Arabs. Most live in Armenia by virtue of marital relations with Armenians which gives them

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79 The State Migration Service does not undertake steps to verify the citizenship status of asylum-seekers. Thus the citizenship of the asylum seekers is stated in their files according to their statements, unless otherwise proved based on the information furnished by the National Security Service and/or Police. Source: interview with the representative of the State Migration Service of 19 July 2011.

the right to be naturalized in Armenia through a facilitated procedure, i.e. without meeting the residence and language requirements.<sup>80</sup> Some have acquired residence permits as immigrants or businessmen.<sup>81</sup>

There are also sub-ethnic groups such as the Armenian Roma population having a special ethnonym “Bosha”. They came to Armenia around the 11th – 13th century as part of a large Roma migration from East India. Eventually, they assimilated into the Armenian nation. By the early 19th century they already had an Armenian identity.<sup>82</sup> Thus, they are not distinguishable in any manner from Armenians.<sup>83</sup>

According to information provided by the Border Guard Troops, there has been no influx of Roma into Armenia in recent years and the few individual cases all had travel documents from Moldova or Romania.<sup>84</sup>

There was media report of a Roma woman who was born in South Sakhalin and came to Armenia in 1976. She has no birth certificate and, consequently, has not been able to acquire Armenian citizenship. She has two children and four grandchildren whose citizenship status was not clear from the report.<sup>85</sup>

### **3.4.3. Persons who fled to Armenia from Abkhazia**

Many ethnic Armenians came to Armenia during the first Georgian-Abkhazian conflict of 1992-1993. An unspecified number of them holding former USSR passports have acquired Armenian citizenship under Article 10 of the Citizenship Act after the passport authorities verified

80 Point 1 of the second paragraph of Article 13 of the Citizenship Act

81 The ethnic minorities of Armenia, Yerevan 2002, Garnik Asatryan, Victoria Arakelova.

82 Ibid.

83 None of the specialists contacted (ethnographer at the Armenian National Academy of Sciences, Mr Haroutyun Marutyan, professor of eastern sciences Mr Garnik Asatryan) engaged in the studies of this sub-ethnic group had ever come across a problem of statelessness or unregistered births among the Armenian-Roma community.

84 Interview held with a representative on 8 August 2011.

85 Publication available at <http://www.168.am/am/articles/3103-pr>.

with the Georgian authorities that they did not hold Georgian citizenship. According to the 2001 National Census, 66 persons who identified themselves as stateless mentioned Georgia as their country of former habitual residence. It is quite possible that more ethnic Armenians who came from Abkhazia could be stateless.

Under Article 3(a) of the Organic Law of Georgia on Citizenship of Georgia of 25 March 1993 amended as of 31 March 2012, a person who has been permanently residing in Georgia at least for 5 years and was residing in Georgia by the date of entry into force of the Law shall be considered as citizen of Georgia unless he or she declared refusal to be a Georgian citizen in writing within six months. What seems to follow from this provision is that only those ethnic Armenians who fled Abkhazia during the first Georgian-Abkhazian conflict of 1992-1993 and who were residing in Georgia as of 25 March 1993 (the date of entry into force of the Law) and the preceding 5 years are recognized as Georgian citizens under the Georgian Law.

#### **3.4.4. Stateless persons who arrive in Armenia as migrants**

Under Article 6 of the Law of Armenia on State Population Register, the Register should contain data on persons having been granted a residence permit in Armenia as well as on stateless persons permanently residing in Armenia (those who have been issued a Stateless Residence Certificate in Armenia). According to the information provided by the Passport and Visa Department,<sup>86</sup> they do not maintain statistics on stateless persons who have been granted a residence permit in Armenia and are registered in the State Population Register. Thus, the Department was not able to provide information on how many (if any) stateless persons from abroad have obtained residence status in Armenia and are registered in the Population Register. According to the Passport and Visa Department, there is no possibility to process such data from the information system unless one knows the name of the person with respect to whom information is requested.

To an official letter addressed to the Passport and Visa Department requesting information on stateless persons from abroad registered in the State Population Register, the Department replied indicating the

<sup>86</sup> Interview with the Head of the Department held on 28 July 2011.

number of the persons who were issued a residence certificate of a stateless person in Armenia.

### **3.4.5. Children without birth registration**

State registration of birth is regulated by the Republic of Armenia Law on Civil Status Acts and the Republic of Armenia Minister of Justice Decree 97-N dated 14 May 2007 “On Approving the Instructions related to the Registration of Civil Status Acts.” No state fee is collected for the purpose of birth registration. The legislation ensures the registration of births regardless of the nationality or immigration status of the parents. However, no sufficient mechanisms are in place to ensure the mandatory registration of each birth.

In addition, birth registration is linked to a number of requirements which may create difficulties in registering child birth especially for vulnerable groups such as undocumented persons. In particular, Article 7 of the Law of Armenia on Civil Status Acts requires that a person applying for state registration of a birth submits an identity document. As per the Armenian Government Decree No 767 of 22 December 1999, in the Republic of Armenia identity documents of Armenian citizens are their passport, military record book, and identity document issued provisionally by police authorities. Travel documents are the identity documents of refugees. Passports of a foreign State, internationally recognized identity papers, as well as the special passport of the Republic of Armenia (issued to those granted a special residence permit in Armenia) and residence certificates serve as identity documents for foreign nationals and stateless persons. Neither the law nor practice allows for exceptions to the requirement of possession of valid identity documents for the purpose of birth registration. In addition, Article 7 of the Law of Armenia on Civil Status Acts also places a burden on foreign nationals and stateless persons of consular legalization of documents — submitted for the purpose of birth registration — issued by competent authorities of foreign States.

It should be mentioned here that the UN Committee on the Rights of the Child (CRC) has, on several occasions, expressed its concerns with regard to the negative impact of the national legislations of dif-

ferent countries providing that parents must be duly documented in order to register their children born within the territory of the State concerned.<sup>87</sup> The Committee has also recommended States to facilitate birth registration for children born to undocumented migrants.<sup>88</sup>

Furthermore, inaccessibility of the administrative system and lack of mobile birth units also seem to hamper effective registration practices. These were also mentioned as possible obstacles to ensuring the registration of all children in the 2004 CRC Concluding Observations on the report submitted by the Government of Armenia.<sup>89</sup>

Thus, while considerable progress has been made in addressing the issue of unregistered births in the country through various legislative measures,<sup>90</sup> eradicating the problem requires strengthened monitoring and guidance by the Government and more legislative reform.

The main reasons for unregistered births as reported by NGOs and Children's Rights Protection Units are as follows:

- Parents not in possession of valid identity documents;
- Lack of any document confirming child's birth because of birth at home or loss of such documents (especially problematic when the child was born abroad);
- Indifference of certain parents;

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87 CRC/C/VEN/CO/2, 5 October 2007, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION, Concluding observations: VENEZUELA, at paragraphs 39.

88 Concluding observations of the Committee on the Rights of the Child: Netherlands Antilles. 06/07/2002. CRC/C/15/Add.186. (Concluding Observations/Comments), at paragraph 35 as well as *ibid* at paragraph 40.

89 CRC/C/15/Add.225, 30 January 2004, Concluding Observations of the Committee on the Rights of the Child: ARMENIA, at paragraph 27.

90 Such as lifting of the state fee for the registration, providing for the community heads' obligation to take steps towards identifying unregistered births in the community and to file a declaration on a child's birth if its filing is otherwise impossible, as well as providing for the obligation of the Children's Rights Protection Units under Marzpetarans (regional governors' offices) to assist to the process of registration of births in the Marz (region), etc.



- Practices in some communities (e.g. the Yezidi population) which discourage birth registration, especially of girls.

Among parents having problems with documentation, a distinguishable group comprises ethnic Armenian women who moved to Armenia from Samtskhe-Javakheti region in southern Georgia. Some of them came with their families in the aftermath of the Nagorno-Karabakh conflict and have taken up residence mostly in the bordering communities of Shirak and Lori Marzes, occupying the houses of ethnic Azeris who had left the country. Others moved to Armenia recently as a result of marriages with those who came earlier.<sup>91</sup> In this community, early marriages of girls, especially involuntary marriages through kidnapping, are very common. Home births as a result of such “marriages” when the mother is still a minor and has no passport yet are also common.

There is no precise information available on the number of ethnic Armenians who have come from the Samtskhe-Javakheti region of Georgia and who are now living in bordering settlements in Armenia. The issue of a lack of documentation has come to light only in the context of unregistered births of children as dealt with by the Armenian Relief Society as well as Children’s Rights Protection Units under Marzpetarans.

Lori Marzpetaran has so far dealt with 12 cases of women from Georgia, who are presumably Georgian citizens but have no passport. According to the statement of those women, they have either lost their passports or had never been issued one. Seven cases out of this 12 have been resolved, mainly as a result of these women having acquired Armenian citizenship. Five cases remain unresolved.<sup>92</sup> This includes a woman with six children and one grand-child, all of whom without birth registration document because she herself has had no document of her own. As reported by the Head of the Children’s Rights Protection Unit of Lori Marzpetaran,<sup>93</sup> their enquiries with the Georgian authori-

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91 Interview with the Head of the Local Self-Governance and Community Service Unit of Shirak Marzpetaran, Mr R. Harutyunyan.

92 Information provided by the Children’s Rights Protection Unit under Lori Marzpetaran.

93 Telephone interview with the Head of the Unit.

ties and attempts to resolve the issue through the Embassy remained unanswered. It would appear that the only way for these children to acquire documentation would be for the mother to go back to Georgia and file an application, but she is unable to do this as she has no valid document with which to travel. In the case of another woman, we have been informed that her identification is not possible because the archive of the civil registry had been destroyed. There were also two cases of undocumented women (parents from Samtskhe-Javakheti) in Shirak Marz.<sup>94</sup>

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94 Information provided by the Children's Rights Protection Unit under Shirak Marzpetaran.

## CHAPTER 4:

### Treatment of Stateless Persons in Armenia

#### 4.1. Key elements of the 1954 Convention

The international obligations of Armenia as regards the treatment of stateless persons are provided for in the 1954 Convention relating to the Status of Stateless Persons. Armenia has made no reservations to any of its articles.

The 1954 Convention provides for a protection regime for stateless persons and defines in its Article 1 the persons who benefit from such regime. Thus, in order to give effect to the rights set out in the Convention, national legislation of a State Party should provide for the following:

- a definition of a “stateless person” in accordance with the 1954 Convention;
- a formal identification procedure for the recognition of a person as stateless;
- a statelessness-specific protection regime in compliance with the requirements of the 1954 Convention.

The provisions of the 1954 Convention can be divided into two groups on the basis of the kind of treatment stateless persons receive: either “treatment as favourable as that accorded to nationals” or “treatment no less favourable than that accorded to aliens”.

Under the Convention, Contracting States are required to accord to stateless persons lawfully present or lawfully staying in their territories treatment as favourable as that accorded to their nationals with respect to freedom to practise their religion (Article 4); protection of artistic rights and industrial property (Article 14); access to the courts (Article 16(2 and 3)); rationing (Article 20); elementary education (Article 22(1)); public relief and assistance (Article 23); labour legislation (Article 24) and fiscal charges (Article 29).

Stateless persons who are lawfully present or lawfully staying in a

Contracting State's territory are accorded treatment as favourable as possible and, in any event, no less favourable than that accorded to aliens in the same circumstances with regard to the following rights: acquisition of movable and immovable property (Article 13); right of association (Article 15); right to engage in wage-earning employment (Article 17), self-employment (Article 18) and liberal professions (Article 19); housing (Article 21) and education other than elementary education (Article 22(2)); administrative assistance (Article 25); right to freely move in the territory (Article 26); right to a travel document (Article 28); and right not to be expelled, save on grounds of national security or public order (Article 31).

Certain rights under the Convention are *not* dependent on the stateless person's "lawful presence" or "lawful stay" in the territory of the Contracting State. These include the right to non-discrimination (Article 3); rights relating to personal status (Article 12); the right to identity papers (Article 27) and naturalization (Article 32); and rights relating to assets (Article 30).

#### **4.2. Definition of a "stateless person" under Armenian law**

The Citizenship Act and the Aliens Act set out two divergent definitions of a stateless person: Article 8 of the Citizenship Act defines a stateless person as:

*"a person residing in the Republic of Armenia, who does not hold the citizenship of the Republic of Armenia and has no proof of holding the citizenship of another State"*

Article 2 of the Aliens Act defines a stateless person as:

*"a person who does not hold the citizenship of any State."*

The 1954 Convention relating to the Status of Stateless Persons defines a stateless person as "a person who is not considered as a national by any State under the operation of its law". The Convention's definition thus encompasses only what some commentators refer to as

*de jure* stateless persons who in fact do not possess the nationality of any State granted either automatically or under an individual executive order adopted pursuant to its law.

While the definition of a stateless person as provided by the Aliens Act of Armenia is almost identical with the one provided in the 1954 Convention, the same is not true with respect to the definition contained in the Citizenship Act. Under the Convention's definition, attaching the status of a stateless person implies that a person does not actually possess the nationality of any State with whom it has some type of link, in particular by birth on the territory, descent, marriage, or habitual residence.<sup>95</sup>

The definition provided by the Citizenship Act (“a person residing in the Republic of Armenia, who does not hold the citizenship of the Republic of Armenia and *has no proof of holding the citizenship of another State*<sup>96</sup>”) does not thus conform to the Convention's definition. Although the definition of the Citizenship Act may seem, at a first sight, to be broader than that of the Convention, such a definition may be problematic for several reasons.

First, according to the Citizenship Act, a person does not have to prove that he/she does not hold the nationality of any State; i.e. the mere fact that he/she has no proof of nationality may qualify the person for the status of a stateless person. The wording of the definition of a stateless person in the Citizenship Act suggests that it may encompass persons who are not stateless at all. Having no proof of nationality may mean that a person is stateless but could also mean that the person only lacks proof of possessing a nationality. Attaching the status of a stateless person to a person who is not in fact stateless does not aid in the reduction of statelessness in general.

It should be noted here that as per the Passport and Visa Department<sup>97</sup>, the Department does not interpret the definition of a stateless person provided in the Citizenship Act according to its plain meaning

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95 Ibid, paragraph 11

96 Emphasis added.

97 Interview held on 20 July 2011.

and in fact does require a proof of lack of relevant nationality from persons seeking to be recognized as stateless, or the Department files enquiries with the relevant States to verify the absence of the link. However, it is suggested to bring the definition in line with the definition provided in Article 1(1) of the 1954 Convention for the sake of clarity as well as quality of the law in terms of predictability of its effects for those covered by its terms.

Secondly, for the very purpose of avoiding differences in decisions as to who is covered by the 1954 Convention, it was decided at the Conference of Plenipotentiaries to provide for a uniform definition in the Convention as regards stateless persons. This firm collaborative intent of the Conference is further supported by the fact that the proposal put forward by the Norwegian representative at the Conference and supported by the Yugoslav representative which suggested that Article 1 be so drafted as to cover persons not found to be nationals of any state (meaning that if the State of residence has no proof that the person seeking recognition as a “stateless person” actually possessed a nationality) was not adopted and the “universal” definition as well as the negative aspect (“not considered as a national [...]”) was maintained.<sup>98</sup>

Thirdly, the definition of a stateless person in the Citizenship Act refers only to “a person residing in the Republic of Armenia”. According to this definition, if a person does not hold the nationality of any State and does not reside in the Republic of Armenia, he or she is not a stateless person. This is at odds with the definition provided for in the 1954 Convention which contains no reference to residence in a State and does not, in addition, provide in Article 1(2) for the exclusion from its definition of persons not residing in the respective State. Thus, whether a person resides or not in the territory of the State concerned is irrelevant in terms of making a determination as to the statelessness of that person. For example, undocumented migrants who arrive at a border checkpoint without valid documentation and later are found as not possessing the nationality of any State.

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98 Convention relating to the Status of Stateless Persons. Its History and Interpretation, Commentary by Nehemiah Robinson (Institute of Jewish Affairs, World Jewish Congress), 1955 (re-printed by the Division of International Protection, 1997).

Finally, the existence of divergent definitions of the term “stateless persons” in the Citizenship and Aliens Acts may lead to inconsistent practices. Although under Article 24(3) of the Law of Armenia on Legal Acts the earlier adopted and enacted act (the Citizenship Act in this case) prevails in the event of conflicting provisions, harmonised approach in the legislation is always recommended. Thus, the definitions provided in both the Citizenship Act and the Aliens Act should be amended to make them in line with the definition set out in Article 1(1) of the 1954 Convention.

### **4.3. Formal procedures for identification of stateless persons**

Although the 1954 Convention does not stipulate a procedure for identifying stateless persons, it is implicit in the Convention that States must have a procedure to determine those who benefit from the standard of treatment provided by the Convention.<sup>99</sup>

There is no formal procedure in force in Armenia for the identification of stateless persons. There are two legal acts which provide for the granting of a residence status to stateless persons: the Aliens Act which makes provision for three types of residence permits (temporary, permanent, and special) granted to aliens, and the Stateless Residence Certificate Decree which makes reference to the 1954 Convention and states that the Decree is adopted having regard to its provisions. While the latter is intended for stateless persons who have resided in Armenia for 183 or more days during a year or whose vital interests are central-

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99 UN High Commissioner for Refugees, Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012, HCR/GS/12/02, paragraph 1, available at: <http://www.unhcr.org>.

ized in Armenia,<sup>100</sup> the Aliens Act covers persons who arrive in Armenia with a valid travel document and visa (if required) and file an application for one of the residence statuses provided for under the Act.

Both of these regimes have two drawbacks. First, neither provides for a formal procedure for determining statelessness, thus leaving room for arbitrary decisions to that effect. Secondly, neither addresses the situation of those persons who are not habitually resident in Armenia (have vital interests there) or do not satisfy the requirements for being granted a residence status under the Aliens Act, including the situation of those who have entered the country illegally and/or reside there unlawfully. Each of these issues is addressed separately in the following paragraphs.

Although the Law of Armenia on the Fundamentals of Administrative Action and on Administrative Proceedings lays down the basic norms for the conduct of administrative proceedings by State agencies, the specificity of the statelessness determination requires the adoption of rules tailored for it. As per the information provided by the Passport and Visa Department,<sup>101</sup> the existing administrative practice consists of the following: a person applying for the Stateless Residence Certificate must furnish proof of lack of nationality. This is generally a statement by the competent authority(ies) of States with which the person has a relevant link. If he or she fails to do so, or if the Department is not satisfied with the furnished proof, it files an enquiry with the authorities of the relevant State in order to clarify the citizenship status of the individual.

The inception of a formal statelessness determination proceeding

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100 The Decree applies to persons who have stayed in Armenia for 183 or more days within a 12-month period, or whose vital interests are centralized in Armenia. The Decree does not specify the notion of “vital interests”; by way of analogy with the definition of this term given in other legal acts, it may be inferred that it is used to denote a place where the major part of a person’s property is located, where a person’s family lives, or where a person mainly carries out his or her economic (professional) activities.

101 Interview with the Head of the Department held on 20 July 2011.



will enhance the State's capacity to fulfill its obligations under the 1954 Convention. A statelessness determination proceeding may be linked to proceedings for granting a residence permit. As some stateless persons may also be refugees, States may consider combining statelessness and refugee determination in the same procedure. Confidentiality requirements for applications by asylum-seekers and refugees must be respected regardless of the form or location of the statelessness determination procedure.<sup>102</sup> Factors to be considered when deciding on the placement of statelessness determination procedures include administrative capacity, existing expertise on statelessness matters, as well as expected size and profile of the stateless population.<sup>103</sup>

Armenia should seek the assistance of UNHCR in its efforts to establish a statelessness determination procedure, as well as in training all relevant staff.

Armenia could also look to the experience of Hungary, Spain, France, Moldova and Georgia where formal procedures for determining statelessness exist.

As stated above, the Stateless Residence Certificate Decree makes possible the granting of a residence permit only to persons habitually residing in Armenia and to persons whose vital interests are centralized in Armenia. It should be noted that the Decree does not specifically require that the residence be lawful. However, it can be inferred that those who arrive or stay unlawfully in the country are excluded from the scope of the Decree and from the possibility to apply for a statelessness status. This is because under the Aliens Act all aliens who lack a legal basis for staying in Armenia are subject to expulsion except for certain cases. The exceptions do not include persons filing a stateless status application.

The Aliens Act, on the other hand, makes the granting of residence permit conditional upon the fulfillment of certain requirements. These are discussed in more detail later in this Chapter.

It can be concluded that the prevailing Armenian legal regime fails

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102 GUIDELINES ON STATELESSNESS NO. 2, paragraph 14.

103 Ibid, paragraph 12.

to address the situation of the following two categories of stateless persons:

- those arriving or staying unlawfully in the country; and
- those arriving in the country with a valid travel document of a stateless person, however failing to meet the requirements provided by the Aliens Act for obtaining a residence permit.

Under the 1954 Convention, not all rights are linked to lawful presence in the territory of a Contracting State.<sup>104</sup> Moreover, lawful stay is not an element of the definition of a stateless person provided in the Convention or unlawful stay an exclusion ground provided in Article 1(2) of the Convention. Similarly, the 1954 Convention does not make a stay for a specific period or existence of vital interests of a person in the relevant State a prerequisite for the recognition of statelessness. Any stateless person in the country should have access to statelessness determination procedures even when they are not lawfully in the country.<sup>105</sup> Such a construction is supported by the practical impossibility for stateless persons who are presumed to be lacking valid identity documents to enter lawfully or be present in a country.

As to persons arriving in Armenia with a valid travel document of a stateless person issued by another State, they should also be afforded an opportunity to apply for statelessness status. There is no basis in the 1954 Convention for States to refuse access to statelessness status determination procedures on ground that they have been determined to be stateless in another State. The only clause in the Convention, which is of relevance, refers to cases where the country of residence recognizes stateless persons as having the rights and obligations which attach to the *possession of nationality* of the respective country.<sup>106</sup>

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104 See, for example, Articles 4 and 27 of the 1954 Convention.

105 GUIDELINES ON STATELESSNESS NO. 2, paragraph 17.

106 Article 1(2)(ii) of the 1954 Convention.

## **Status of a person awaiting a determination of statelessness**

To ensure that statelessness determination procedures are fair and effective, States are advised not to remove a person from their territory pending the outcome of the determination process.<sup>107</sup> In case of lack of any other immigration status, persons awaiting determination on the issue of their statelessness should be granted a temporary leave to remain in the country concerned,<sup>108</sup> and statelessness determination procedures are to have suspensive effect on removal.

UNHCR has taken the view that in countries with a determination procedure, an individual awaiting a decision is entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as rights which are triggered based on lawful presence in the country.<sup>109</sup> Thus, an applicant's status must guarantee, *inter alia*, identity papers, the right to self-employment, freedom of movement, and protection against expulsion. As the aforementioned Convention rights are formulated almost identically to those in the 1951 Convention, it is recommended that individuals awaiting a determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered in the same State.

### **4.4. Residence status**

Although the 1954 Convention does not explicitly require States to grant a person recognized as stateless a right of residence, granting such permission would fulfill the object and purpose of the Convention<sup>110</sup> since the majority of rights provided for flow from the grant of some form of legal stay.

107 See paragraph 20 of the UNHCR Guidelines on Statelessness No 2.

108 Other procedural safeguards as well as evidentiary standards to be followed during the procedures may be found in UNHCR Guidelines on Statelessness No 2.

109 On why an individual awaiting a determination is considered to be lawfully in the country, see footnote 11 of the UNHCR Guidelines on Statelessness No. 3.

110 Please see paragraph 28 of the UNHCR Guidelines on Statelessness No. 3.

Thus, recognition of statelessness should result in the issuance of a residence permit except for cases when the individual concerned enjoys it in another State where he/she can return and live with full respect for his/her human rights.<sup>111</sup>

As stated above, there are two regimes available in Armenia for granting residence permit to stateless persons. The first is stipulated under the Stateless Residence Certificate Decree and is granted to persons habitually residing in Armenia as well as to persons whose “vital interests” are centralized in Armenia. The other regime is stipulated by the Aliens Act and covers stateless persons who arrive in Armenia with a valid travel document of a stateless person issued by other States and who meet certain requirements set out in the Act.

The residence certificate under the Stateless Residence Certificate Decree is issued by the Passport and Visa Department for a period of five years, with a possibility of renewal for an additional five-year period. A holder of the certificate enjoys the same rights and bears the same obligations as aliens generally under the Aliens Act and other relevant legislation of Armenia. In particular, Article 5(1) of the Aliens Act provides that aliens in Armenia shall enjoy the same rights and freedoms and bear the same obligations as citizens of Armenia unless otherwise is provided for by the Constitution, laws, other legal acts or international treaties ratified by Armenia.

The Aliens Act provides for three types of residence permits: temporary, permanent, and special. The procedure for the examination of application for a residence permit is laid down by Government Decree No 134-N of 7 February 2008, which also sets out the list of the required documents to be submitted together with the application.

Temporary residence status may be granted to any foreigner if he or she substantiates that there are circumstances justifying his or her residence in the territory of the Republic of Armenia for one year and a longer term. Such circumstance include:

- study;

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111 For more guidance on this, please see paragraphs 34-38 as well as 42-43 of the UNHCR Guidelines on Statelessness No. 3.

- possession of work permit in accordance with Chapter 4 of the Law;
- being the spouse, parent or a child of a foreigner holding temporary residence status in the Republic of Armenia;
- being the spouse or a close relative (parent, child, brother, sister, grandmother, grandfather, grandchild) of a citizen of the Republic of Armenia or of a foreigner holding permanent or special residence status in the Republic of Armenia;
- engagement in entrepreneurial activities;
- being an ethnic Armenian.

Temporary residence permit is granted by the Passport and Visa Department for up to one year, with a possibility of extension for an additional year each time following an application for extension.<sup>112</sup>

Permanent residence permit is granted to a foreigner, if he or she:

- proves the existence of a spouse or close relatives (parent, child, brother, sister, grandmother, grandfather, grandchild) in the Republic of Armenia, who are citizens of the Republic of Armenia or hold special residence status; and
- has an accommodation and means of subsistence in the Republic of Armenia; and
- has resided in the Republic of Armenia as prescribed by law for at least three years [on the basis of a temporary residence permit] prior to filing an application for obtaining permanent residence status.

Permanent residence status may be granted also to an ethnic Armenian foreigner as well as to a foreigner carrying out entrepreneurial activities in the Republic of Armenia.

The conditions referring to accommodation and means of subsistence are considered sufficient, where the alien has the means necessary to cover his or her subsistence expenses and the subsistence expenses of his or her family members under his or her care, or has a family member or members who are able and have undertaken to

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112 Article 15 of the Aliens Act.

provide means for his or her living.

Permanent residence permit is granted for five years, with the possibility of extension for the same term upon each application for extension.<sup>113</sup> Decisions refusing to grant temporary or permanent residence permit may be appealed in court.

Special residence permit is granted to ethnic Armenian aliens. It may also be granted to other aliens who carry out economic or cultural activities in the Republic of Armenia. Special residence status is granted for a term of ten years. It may be granted more than once. Apart from being an ethnic Armenian or carrying out economic or cultural activities in Armenia, the Aliens Act does not set out any other conditions for potential applicants of a special residence permit.

In the territory of the Republic of Armenia, an application for obtaining special residence permit must be filed with the Passport and Visa Department. Where a person intends to file the application in a foreign State, this may be lodged with the diplomatic representation or the consular office of the Republic of Armenia in that foreign state.

The decision to grant or refuse a special residence permit is taken by the President of the Republic of Armenia. This decision is final and cannot be appealed.<sup>114</sup>

Under the Aliens Act, stateless persons who arrive in Armenia with a valid travel document of a stateless person issued by other States enjoy the same treatment with respect to the granting and withdrawal of residence permits as foreign nationals.

#### **4.5. Family reunification**

Although the 1954 Convention does not address family unity, Contracting States are nevertheless encouraged to facilitate the reunion of those with recognized statelessness status in their territory with their spouses and dependants.<sup>115</sup> Indeed, the right to family unity is a princi-

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113 Article 16 of the Aliens Act.

114 Article 18 of the Aliens Act.

115 Please see paragraph 32 of the UNHCR Guidelines on Statelessness No. 3.

ple covered under the right to respect for one's private and family life enshrined under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Aliens Act provides for very limited family reunification provisions. Those provisions stipulate that the following may serve as grounds for granting temporary residence status in Armenia:

- being the spouse, parent or a child of a foreigner holding temporary residence status in the Republic of Armenia;
- being the spouse or a close relative (parent, child, brother, sister, grandmother, grandfather, grandchild) of a foreigner holding permanent or special residence status in the Republic of Armenia.<sup>116</sup>

Thus, the Aliens Act does not provide for an automatic right to family reunification, but only for a possibility for family members to be granted a residence status under the general terms which does not sufficiently meet the protection needs of stateless persons since no arrangements are made for the entry into Armenia for those family members who do not hold valid travel documents.

#### **4.6. Individual documentation**

According to the Passport and Visa Department, the residence certificate issued under the Stateless Residence Certificate Decree serves as an identity document, travel document and a document certifying the residence status of the stateless person at the same time. There is no other legal act which provides for the issuance of identity documents to stateless persons. The document issued to stateless persons under the Decree can be accepted as a valid identity document. However, by making the habitual residence or existence of "vital interests" in Armenia a mandatory requirement for the issuance of that document, the obligations stemming from the 1954 Convention are not fulfilled. The Convention, in particular, provides that "Contracting States shall issue identity papers to any stateless person [emphasis added] in their

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116 Article 15 of the Aliens Act.

territory who does not possess a valid travel document.”<sup>117</sup>

#### **4.7. Travel documents**

As noted above, the residence certificate issued under the Stateless Residence Certificate Decree is also meant to serve as a travel document as per the interpretation of the Passport and Visa Department. This position was upheld by the Administrative Court of Armenia in its judgment of 26 March 2010 rendered in a lawsuit brought by Mr. R. G., a stateless person who was issued a residence certificate under the Decree in 2009. Mr. R.G. claimed that his residence certificate did not meet the internationally accepted requirements for Convention Travel Documents issued to stateless persons<sup>118</sup> under the 1954 Convention and that foreign embassies refuse to recognize it and to affix a visa therein.

The residence certificate is a bilingual (Armenian-English) document comprising 32 pages. Its actual title is “REPUBLIC OF ARMENIA NON-CITIZENSHIP CERTIFICATE”. It says that “THIS CERTIFICATE IS VALID FOR ALL COUNTRIES”, and that “THE HOLDER OF THIS CERTIFICATE IS UNDER THE PROTECTION OF THE REPUBLIC OF ARMENIA”. Holders of the document need to obtain an exit visa to leave the country (under the same conditions as nationals). No re-entry visa is required.

The Administrative Court of Armenia in the R.G. case ruled that the residence certificate issued to him was a valid travel document issued under the 1954 Convention because the Decree makes a reference to the Convention (but the certificate itself makes no such references) and because the certificate contains the above-mentioned sentences on being valid in foreign countries, thus ensuring the opportunity of its holder to travel outside the country, which is the only purpose of the Convention’s requirement to issue travel documents to stateless persons.<sup>119</sup>

The stateless residence certificate issued to stateless persons in Ar-

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117 Article 27 of the Convention.

118 See the Judgment.

119 Ibid.



menia contains some positive elements such as the validity period of five years and the statement that the holder is under the protection of the Republic of Armenia, which provide a higher standard of treatment than what the 1954 Convention prescribes. However, it is not consistent with the terms set out in the Schedule to the 1954 Convention in certain respects. In particular:

- According to the Schedule, the travel document referred to in Article 28 of the Convention shall indicate that the holder is a stateless person under the terms of the Convention of 28 September 1954.<sup>120</sup> There is no such indication in the residence certificate issued under the Stateless Residence Certificate Decree.
- According to the Schedule, the fees charged for issuance of a Convention Travel Document shall not exceed the lowest scale of charges for national passports.<sup>121</sup> Currently, according to the Law of Armenia on State Fees, the fee for the issuance of a national passport is AMD 1000, while the fee for issuing a residence certificate of a stateless person is AMD 1500.<sup>122</sup>

#### **4.8. Freedom of movement**

The freedom of stateless persons lawfully residing in Armenia to move freely within the national territory and to choose a place of residence in the country is guaranteed by the Constitution. The Constitution also guarantees the right of every citizen of Armenia and stateless person within Armenia to leave the country and to return thereto.<sup>123</sup> However, this freedom of movement is guaranteed only to those who are lawfully in the country.

#### **4.9. Wage-earning employment and self-employment**

The Aliens Act provides that aliens shall have the right to freely

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120 Paragraph 1 of the Schedule.

121 Paragraph 3 of the Schedule.

122 Article 14 of the Law of Armenia of 27 December 1997 on State Fees.

123 Article 25 of the Constitution.

manage their working skills, choose their profession and activities, be engaged in economic activities not prohibited by the law. The principle of equal rights of the parties to employment relationships established by the Labour Code shall be guaranteed irrespective of their sex, race, national origin, language, citizenship, and other circumstances not related to the employee's practical skills.<sup>124</sup>

Under the Aliens Act, foreigners are required to obtain a work permit in order to be employable in Armenia.

Employers are entitled to enter into employment contract (service contract) with a foreign worker and use his or her work based on the work permit issued to the foreign worker by the authorised body. When issuing a work permit for a foreign worker, the public administration body authorised in the field of employment and occupation of aliens shall take into account the needs and developments of the labour market of the Republic of Armenia.

With a view to assessing the needs of the labour market, a time-limit is established for the employer upon the decision of the Government, during which period he shall be obliged to fill all available vacancies from among the citizens of the Republic of Armenia.

Where the republican employment services do not nominate any candidate meeting their requirements within the established time-limit, the employer may find an alien who meets those requirements and apply to the authorised body for issuing a work permit for a specific alien for a specific term, by submitting the necessary documents prescribed upon the decision of the Government.

The Aliens Act provides also for exceptions to the requirement to obtain a work permit, which extend to persons holding permanent and special residence statuses, refugees, persons having obtained permanent residence status on particular grounds, and others.<sup>125</sup>

It should be noted that at the time of writing this report, the requirement of the Aliens Act for aliens to obtain work permit was not effective due to the absence of an implementing regulation which needs

124 Article 22 of the Act.

125 Article 23 of the Act.

to be enacted by the Government.

#### **4.10. Access to education**

As regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships, stateless persons are accorded the same treatment as foreign nationals since neither the Aliens Act nor the relevant government decrees make a distinction between them with respect to the rights they enjoy in Armenia.

Pursuant to the Armenian Constitution as well as the Law on Public Education, primary education is compulsory in Armenia and secondary education is free-of-charge in public educational institutions.<sup>126</sup> Free post-secondary education (including technical and vocational education) and higher education are guaranteed only to the citizens of Armenia.

#### **4.11. Social security and property ownership**

Under the Constitution and labour legislation, all employees, whether citizens of Armenia, foreign nationals, or stateless persons, enjoy the same rights with respect to employment standards such as remuneration for work, hours of work, health and safety, etc.<sup>127</sup> Likewise, everyone, whether nationals, foreign citizens or stateless persons, has the right to social security in cases of old-age, disability, sickness, loss of bread-winner, unemployment and other cases provided for by law.<sup>128</sup>

The only limitation as regards the right for stateless persons to own property in Armenia concerns the right to own land. Under the Constitution and the Land Code, foreign nationals and stateless persons do not enjoy the right to own land.<sup>129</sup> Persons holding special residence status in Armenia<sup>130</sup> are exempted from this restriction.

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126 Article 39 of the Constitution and Article 1 of the Law on Public Education.

127 Article 32 of the Constitution.

128 Article 37 of the Constitution.

129 Article 31 of the Constitution and Article 4 of the Code.

130 Article 4 of the Land Code.

#### **4.12. Freedom of religion**

The right to freedom of religion is secured for everyone under the Armenian Constitution, Article 26 of which states that “everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to change religion or belief, and freedom — either individually or in community with others — to manifest them in preaching, church ceremonies and other rites of worship.”

#### **4.13. Exemption from reciprocity**

Article 7 of the Convention states that after a period of three years’ residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States and that they shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.

“Exemption from reciprocity” means that a person is to be granted rights which ordinarily are accorded on the basis of reciprocity, without requiring reciprocity. The justification for applying the exemption from reciprocity to stateless persons lies in the fact that they do not enjoy the protection of a foreign country. Consequently, they could not qualify under the rule of reciprocity.

This provision has been incorporated neither in the Aliens Act of Armenia nor in the specific legislation referring to the principle of reciprocity.

#### **4.14. Exemption from exceptional measures**

Article 8 of the Convention provides that with regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. This provision has not been incorporated in the Armenian legislation.

#### **4.15. Personal status**

Article 12 of the Convention provides that the personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

Article 1262 of the Civil Code of Armenia provides that the personal law of a stateless person shall be the law of the State where that person habitually resides.

Article 12.2 provides that rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless. With this respect Article 1271 of the Civil Code of Armenia is relevant, which particularly states that documents issued by competent authorities of foreign States proving the civil status acts conducted with respect to Armenian citizens, foreign citizens as well as stateless persons under the laws of that State shall be valid in Armenia upon availability of consular legalization unless otherwise is provided for by international treaties ratified by Armenia.

#### **4.16. Artistic rights and industrial property**

Article 14 of the Convention provides that in respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 71 of the Law of Armenia of 15 June 2006 on Copyright and Related Rights states that nationals or residents shall benefit from the rights provided for in the Law in accordance with international treaties or based on the principle of reciprocity. Article 4 of the Law of Armenia

of 10 June 2008 on Inventions, Utility Models and Industrial Designs as well as Article 4 of the Law of Armenia of 29 April 2010 on Trade Marks also provide that foreign persons shall enjoy the rights provided for by these laws in accordance with international treaties or based on the principle of reciprocity. None of these acts makes provision for the respective rights of stateless persons on an equal footing with citizens.

#### **4.17. Right of association**

Article 15 of the Convention provides that as regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances. This right is secured under the Armenian Constitution which states in Article 28 that Everyone shall have the right to form associations with other persons, including the right to form and join trade unions.

#### **4.18. Access to courts**

Under Article 16 of the Convention, a stateless person shall have free access to the courts of law on the territory of all Contracting States. Furthermore, a stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.

This right is secured under the Constitution of Armenia Article 19 of which states that everyone shall have the right to a public hearing of his or her case by an independent and impartial court within a reasonable time, in equal conditions, meeting all the demands of justice, for restoring his or her violated rights, as well as determining the grounds for the charge brought against him or her.

As regards legal assistance, under Article 165 of the Armenian Criminal Procedure Code, free legal assistance is guaranteed to all suspects and defendants who meet the requisite requirements. In addition, Article 41 of the Law on the Profession of Advocate also secures the right to free legal assistance in civil, administrative, and constitu-

tional cases for everyone who meets the relevant requirements.

#### **4.19. Liberal professions**

Under Article 32 of the Armenian Constitution, everyone shall have the freedom to choose occupation. Furthermore, neither the Law of Armenia on medical Assistance and Services to the Population nor the Law on the Profession of Advocate set any limitations on the rights of aliens to practice the relevant professions.

#### **4.20. Administrative assistance**

There is no implementing legislation in Armenia with respect to Article 25 of the Convention. The only relevant provision is point 7(9) of the Statute of the State Migration Service which states that the Service shall render to foreign nationals and stateless persons legal, social and other assistance provided by the legislation of the Republic of Armenia. However, in practice this provision is interpreted as requiring the provision of assistance to refugees from Azerbaijan only.

#### **4.21. Rationing and housing**

The research carried out did not find any legislation pertinent to the issues of rationing and housing. Thus, it appears that the matters are not regulated by law nor are they under the control of public authorities.

#### **4.22. Public relief**

According to the Constitution and Law on Medical Care and Services to the Population, every person has the right to free-of-charge basic healthcare services, which are approved each year upon a public healthcare target program.<sup>131</sup> Thus, stateless persons are accorded the same treatment as nationals in terms of access to state-guaranteed basic healthcare.

Under Article 6 of the Law of Armenia on Social Aid, Armenian citizens, foreign nationals holding a residence permit as well as stateless

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<sup>131</sup> Article 38 of the Constitution and Article 4 of the Law.

persons shall have the right to receive social aid. A similar provision is contained also in Article 2 of the Law of Armenia on State Benefits.



## CHAPTER 5:

### Refugees from Azerbaijan and their Children

During 1988-1992, Armenia accepted around 360,000 ethnic Armenian refugees from neighboring Azerbaijan. According to the State Migration Service, around 85,000 of the refugees have since acquired Armenian citizenship.

These refugees are granted Armenian citizenship by recognition, under Article 10(2) of the Citizenship Act, as “stateless persons or citizens of other Republics of the former USSR who are not foreign citizens and who have been habitually resident in the Republic of Armenia for the last three years preceding the entry into force of this Law, who apply for acquiring the citizenship of the Republic of Armenia within one year following the entry into force of this Law”.<sup>132</sup> Refugees who satisfy the stated requirements are granted Armenian citizenship without individual determination as to the possible acquisition of another citizenship at the time of applying for Armenian citizenship. It would appear, therefore, that this group of persons is treated, by both the Passport and Visa Department and the State Migration Service, as stateless on a *prima facie* basis.

There are three main categories of children of refugees from Azerbaijan:

- Children born in the Armenian Soviet Socialist Republic, that is, before 21 September 1991;
- Children born in the independent Republic of Armenia after 21 September 1991; and
- Children who were born outside Armenia and whose parents have subsequently acquired Armenian citizenship.

The first category of persons are recognized as citizens of Armenia under Article 10(1) of the Citizenship Act of Armenia, which recognizes

<sup>132</sup> Article 10(2) of the Citizenship Act as enacted in 1995. The time-limitation for applying to acquire Armenian citizenship under this provision has been extended several times, the last one until 31 December 2012. The three-year residency requirement was removed in 1999.

as citizens of the Republic of Armenia “citizens of the former Armenian Soviet Socialist Republic habitually residing in the Republic of Armenia, who had not acquired the citizenship of another State before the entry into force of the Constitution”.

If persons belonging to the second category are born to parents both of whom are ethnic Armenian refugees who fled Azerbaijan during 1988-1992, they acquire Armenian citizenship by birth by operation of Article 12 of the Citizenship Act (children born in the Republic of Armenia to stateless persons). If they are born to parents one of whom is a citizen of Armenia and the other is a refugee from Azerbaijan, the child acquires Armenian citizenship by birth under the operation of part two of Article 11 of the Citizenship Act, which specifically provides that a child, one of whose parents is a citizen of the Republic of Armenia at the moment of his or her birth, and whose other parent is unknown or is a stateless person, shall acquire the citizenship of the Republic of Armenia.

As regards to the third category, Article 16 of the Citizenship Act provided that children under the age of 14 years, whose parents have acquired Armenian citizenship, automatically acquire Armenian citizenship. Until the amendment made to the Citizenship Act in December 2011, children at the age of 14-18 years were left in a legal limbo as the Citizenship Act did not regulate their status.<sup>133</sup> Consequently, they did not have the possibility to acquire Armenian citizenship following their parents. With the amendment of December 2011, those children may acquire Armenian citizenship upon their written consent.

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<sup>133</sup> Article 22 of the Citizenship Act was the only Article which referred to the citizenship status of children at the ages of 14-18, but it addressed only the situations when there was the issue of changing a child’s citizenship as a result of a change of citizenship of his or her parents and not the acquisition of citizenship by the child when his or her parents acquired Armenian citizenship. Article 22 of the Citizenship Act provided, in particular, that in case of a change of the citizenship of the parents, the citizenship of children at the age of 14-18 shall change in accordance with the Citizenship Act, where the children’s consent is available.

## CHAPTER 6:

### Conclusions and Recommendations

#### 6.1. Protection of stateless persons

- Armenia has acceded to the 1954 Convention relating to the Status of Stateless Persons. However, the international legal obligations assumed under this treaty are not fully incorporated into national law. There is no procedure set out in law or policy for the determination of statelessness. The definition of a stateless person contained in the Citizenship Act does not conform to the definition provided by the 1954 Convention. Moreover, the Citizenship Act and the Aliens Act provide for two different definitions of a stateless person. Under the existing framework, persons coming or staying in Armenia irregularly or even those who have arrived with a valid travel document of a stateless person issued by another State may not enjoy the benefits of the 1954 Convention.
- Other protection gaps identified include lack of provisions for family reunification of stateless persons, non-issuance of identity documents to all stateless persons in Armenia, non-conformity of the travel document issued in Armenia with the requirements of the Schedule to Article 28 of the 1954 Convention, requirement to obtain a work permit to be able to have access to the labor market, non-incorporation in the national legislation of principles of exclusion from reciprocity and from exceptional measures, non-designation of a body responsible for rendering administrative assistance to stateless persons as well as non-provision to stateless persons of the same protection as to nationals in respect of industrial property and artistic rights.
- Finally, there are no comprehensive and up-to-date statistics available on statelessness in the country.

## Recommendations

1. The definition of a stateless person contained in the Citizenship Act should be brought in line with the definition provided for in Article 1 of the 1954 Convention. Harmonisation of the definitions in the Citizenship and Aliens Acts should be ensured.
2. A formal statelessness determination procedure should be enacted with due consideration of advice of UNHCR and international best practices.
3. No person (except for those individuals coming within one or more of exclusion clauses of the 1954 Convention) should be excluded from eligibility to be recognized as a stateless person. In particular, persons who have arrived or are staying in Armenia unlawfully and those who have arrived with a valid travel document of a stateless person issued by another State should have unhindered access to statelessness determination proceedings. The requirements set out in the Stateless Residence Certificate Decree, such as those relating to stay for a certain period or the existence of “vital interests” in Armenia, should be removed.
4. The law should be amended to provide that an applicant for stateless status enjoys all rights based on jurisdiction or presence in the territory as well as “lawfully in” rights. His or her status must guarantee, *inter alia*, the right to identity papers, the right to self-employment, freedom of movement, and protection against expulsion.
5. The law should be amended to ensure that recognition of statelessness results in the issuance of a residence permit except for cases when the individual concerned enjoys it in another State where he/she can return and live with full respect for his/her human rights.
6. The Aliens Act should be amended to provide for the automatic right to family reunification to stateless persons granted residence permit. Furthermore, arrangements should be made for the entry into Armenia for those family members who do not hold valid travel documents.
7. Armenian law should be amended to ensure the issuance of identity documentation to all stateless persons in Armenia in accordance with Article 27 of the 1954 Convention.

8. To ensure full compliance with Article 28 of the 1954 Convention and its Schedule, and considering that under the 1954 Convention Contracting States have an obligation to recognize only travel documents issued under its Article 28, it is recommended that a specific provision be made in the Armenian law for the issuance of Convention Travel Documents to stateless persons.<sup>134</sup> In addition, the Law of Armenia on State Fees should be amended to set the amount of the fee for issuing travel documents to stateless persons at the most the amount charged for issuing national passports.
9. In the light of the recommendation contained in the 1954 Convention with respect to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, it is recommended to exempt stateless persons from the requirement to obtain a work permit. In addition, the Aliens Act should be amended to include the principles of exemption from reciprocity and from exceptional measures and to designate a body responsible for rendering administrative assistance to stateless persons as provided in Article 25 of the 1954 Convention. The relevant legislation should be amended to expressly equate rights pertaining to industrial property and artistic rights of stateless persons habitually resident in Armenia to those of Armenian citizens.

## **6.2. Prevention of statelessness**

Armenia has acceded to the 1961 Convention on the Reduction of Statelessness. However, as in the case with regards to the 1954 Convention, not all of the requirements contained in the 1961 Convention have been incorporated into Armenia's domestic legislation. The gaps identified include the following:

- There is no provision in Armenian legislation providing for acquisition of its nationality by everyone born on its territory who would otherwise be stateless, as required by Article 1 of the 1961 Convention.
- There is no provision in the Citizenship Act with regard to births

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<sup>134</sup> It is also recommended to seek UNHCR's advice on how to ensure the Convention Travel Documents meet ICAO standards.

on a ship flying the flag of Armenia or aircraft registered there.

- No safeguard against statelessness is provided for adopted children whose adoptive parents file an application for changing their citizenship.
- The Citizenship Act (Article 17) does not provide a safeguard for children whose parent loses Armenian nationality. A child under guardianship or curatorship may also lose his or her Armenian nationality upon the application of his or her parents (Article 21).
- The Armenian Citizenship Act does not make renunciation of Armenian nationality conditional upon possession or guarantees of acquisition of another nationality.

The provisions in the Armenian law on termination of nationality for misrepresentation or fraud do not contain a time limitation for such termination; nor do they expressly require for the principle of proportionality to be observed. The procedural safeguards concerning termination of citizenship as contained in Article 8(4) of the 1961 Convention are not incorporated into the Citizenship Act.

As regards the prevention of the risk of statelessness, no sufficient safeguards are in place to ensure that the birth of all children is registered.

In addition, citizens face difficulties in obtaining passports because of the malpractice on the part of police inspectors in registering the required information about their factual residence in a certain place.

Furthermore, male citizens face difficulties in obtaining a passport because of the established practice of passport issuing authorities to require military registration documents of every male citizen and not only of “conscripts”.

## Recommendations

10. The Citizenship Act should be amended to incorporate the requirement of the 1961 Convention that citizenship must be granted to children born on Armenian territory who would otherwise be stateless, i.e. including children who are born to foreign parents who are unable to confer their nationality to the child.
11. It is recommended to stipulate in the Citizenship Act that birth on a ship flying the flag of Armenia or on an aircraft registered in Armenia shall be deemed to have taken place in the territory of Armenia.
12. The Citizenship Act should be amended to make loss of Armenian citizenship by an adopted child based on his or her adoptive parents' application conditional upon possession or acquisition of another nationality.
13. Article 24 of the Citizenship Act should be amended so as to make the renunciation of Armenian citizenship conditional upon acquisition of another citizenship or a formal assurance from another State (a certificate from the competent authorities) that citizenship will be granted. In addition, the Citizenship Act should also stipulate that loss of Armenian citizenship in this case should not be effective unless the person concerned acquires another citizenship as required by Article 7 of the 1961 Convention.
14. Articles 17.2 and 21 of the Citizenship Act should be amended to make loss of Armenian citizenship of a child conditional upon their possession or acquisition of another nationality in accordance with Article 6 of the 1961 Convention.
15. The Citizenship Act should be amended to provide for a time limitation for terminating a person's nationality due to acquisition of nationality by misrepresentation or fraud. Likewise, the Act should require decision-makers to take into account the gravity of such misrepresentation or fraud when deciding upon termination of nationality. A provision should be inserted in Article 23 of the Law to the effect that the fact of deliberate provision of forged documents or false data by the person concerned shall be established in a judicial procedure and that decisions terminating Armenian citizenship shall be subject to judicial review.

16. To ensure the unimpeded access of citizens to the issuance of documentation confirming their identity and nationality, clear-cut instructions should be issued as regards the procedures territorial police inspectors are to follow as well as on their responsibilities when making an inspection and a note on factual residence of a citizen in a certain place.
17. Clear instructions should be issued to the passport issuing as well as military authorities of Armenia to clarify that military registration documents may be required only of conscripts as defined under Article 3 of the Law of Armenia on Conscription and that military registration is the duty of the competent military authorities.
18. The following steps should be implemented to address the phenomena of unregistered births more effectively:
  - Legislative amendments should be enacted to ensure that every child is registered immediately after birth irrespective of whether his/her parents possess valid identity documentation.
  - The Children's Rights Protection Units under Marzpetarans should be equipped with appropriate administrative powers to be able to take initiatives and have a really productive input especially in the resolution of cases when the parents or other interested parties are practically unable to resolve the issue themselves;
  - Steps must be taken to improve the physical accessibility of birth registration facilities to the entire population. In addition, consideration should be given to facilitation of birth registration in hospitals or otherwise outside the civil registries;
  - Legislative amendments should be considered to expedite court proceedings on establishment of the fact of the birth of a child;
  - Steps should be taken, including through mass media and community outreach programmes, to raise and enhance public awareness of the importance and need of birth registration.
  - While most of the Children's Rights Protection Units contacted possessed up-to-date data with respect to the situation in the respective Marz, there were some which did not. Therefore, it is recommended to strengthen monitoring and provide further



guidance and support to the community heads and Children's Rights Protection Units.

### **6.3. Reduction of statelessness**

- Article 10(3) of the Citizenship Act is unduly restrictive as it grants Armenian citizenship only to ethnic Armenian citizens of the former Armenian SSR.
- The Armenian framework for naturalization lacks transparency due to absence of reasoning for refusals and the possibility of judicial review. A one year period for the consideration of applications appears to be lengthy in light of the best practices in several other countries (namely Georgia, Russian Federation, and Kyrgyzstan), especially when facilitated procedure for naturalization is concerned.
- Currently, legal capacity is a requisite element of eligibility for filing a naturalization application in Armenia. Moreover, a legally incompetent person may not apply for naturalization via his/her legal guardian.
- Although the law waives knowledge of Armenian language requirement for certain categories of persons, these persons are still required to pass a written test on the knowledge of the Armenian Constitution in the Armenian language. However, neither the law nor its implementing regulations set out a procedure on how these persons are to complete the test and in, particular, how they shall use the services of a translator to complete a written test.
- No implementing legislation has been enacted by the Government as required by the Citizenship Act (Article 28(3)) to regulate the procedure for the determination of eligibility of a person to be recognized as an Armenian citizen.
- The recent amendment to the Citizenship Act making possible acquisition of Armenian citizenship by children between the ages 14-18 years following such acquisition by their parents has not been given retroactive effect. This means that children between the ages 14-18 years of parents who acquired Armenian

citizenship before 1 January 2012 (the date of entry into force of the amendment) do not have the possibility to acquire citizenship of Armenia based on their parents' acquisition of citizenship.

- The Citizenship Act does not provide for facilitated naturalization of refugees.

## **Recommendations**

19. Article 10(3) of the Citizenship Act should be amended to provide for the grant of Armenian citizenship to all former Armenian SSR citizens and not to ethnic Armenians only.
20. Naturalization should become a standard administrative procedure with mandatory reasoning of negative decisions and a possibility of judicial review. In addition, the one-year lengthy consideration period should be reduced by at least 6 months.
21. The Citizenship Act should be amended so as to enable legally incompetent persons to file a naturalization application via a legal guardian and be represented by him/her in naturalization proceedings. In addition, legally incompetent persons should be exempt from language and constitution tests.
22. The Citizenship Act and/or its implementing regulations should be amended to provide for a reasonable accommodation for persons who are exempt from the language test for naturalization to be able complete the test on the knowledge of the Armenian Constitution.
23. Article 10(2) of the Citizenship Act extends Armenian citizenship to stateless persons and citizens of other former USSR Republics who apply for its acquisition before 31 December 2012. Whenever the legislature decides not to further extend this time limit, specific provisions facilitating the naturalization of stateless persons should be included in the Citizenship Act. Such provisions should, in particular, provide for the following:
  - Waiver of the residence requirement. Alternatively, reduced residence requirement for naturalization, which should be counted from the moment stateless persons are granted lawful stay in Armenia.

- Waiver of the requirement for the knowledge of the Armenian language.
24. The amendment of 8 December 2011 to Article 16 of the Citizenship Act making provision for acquisition of Armenian citizenship by children at the age of 14-18 in case their parents do so should be given retroactive effect.
  25. As required by Article 28(3) of the Citizenship Act, the Government should put in place procedures for determining eligibility for Armenian citizenship under Article 10 of the Act. The regulation establishing such procedures should, in particular, stipulate who is considered as a habitual resident in Armenia and how this must be proved; who is considered to be a citizen of the former Armenian Soviet Socialist Republic; what documents have to be submitted or actions taken by an individual to confirm eligibility for recognition as a citizen; the time-limits for processing applications under Article 10 of the Citizenship Act. In accordance with the international best practices, it should also make provision for a lowered standard of proof in cases when a person is not able to fulfil certain requirements for reasons beyond his/her control such as when he/she is not able to obtain a document from an embassy of a State, because the latter does not respond to his requests within an unreasonably long period of time.<sup>135</sup>
  26. The Citizenship Act should be amended to provide for facilitated naturalization of refugees in accordance with Article 34 of the 1951 Convention.

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135 See in particular Article 8(1) of the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession: "A successor State shall not insist on its standard requirements of proof necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements."

## ANNEX

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