

ROUNDTABLE ON STATELESSNESS DETERMINATION PROCEDURES AND LAW REFORM IN CENTRAL ASIA

**2–3 October 2013
Almaty, Kazakhstan**

SUMMARY CONCLUSIONS

On 02 and 03 October 2013, the Office of the United Nations High Commissioner for Refugees (UNHCR) organized a Roundtable on Statelessness Status Determination Procedures and Law Reform, held in Almaty, Kazakhstan. Participants included 33 experts, representing various Government departments in Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, NGOs and UNHCR. A Concept Note, produced by UNHCR, provided an update on the work to address statelessness in Central Asia and background to the discussion. The roundtable aimed to informally exchange legislative and administrative practices concerning statelessness and nationality determination procedures and to take stock of ongoing law reform initiatives for the prevention and reduction of statelessness in the region.

The following summary does not necessarily represent the individual views of participants or of UNHCR, but reflects broadly the themes, issues and understandings emerging from the discussion.

Cooperation and Coordination

1. The interaction and sharing of experiences during the roundtable was rich. Participants actively engaged in sharing best practices related to their national law reform processes. It was felt that such interaction, for example in the form of a roundtable, could become a regular practice.
2. Several delegations pointed to the need to further explore multi- and bilateral agreements, including with the Russian Federation, to facilitate sharing of information relating to applicants for statelessness status or nationality determination, between the States concerned.
3. Collaboration between various Government departments involved in the process of statelessness status or nationality determination and documentation, including creation of referral mechanisms, was recognized as essential for timely and efficient processing of applications and the grant of an appropriate legal status to persons recognized as stateless. The responsible departments for determining statelessness and issuance of documents

need to harmonize their practices to ensure that individuals are treated in a consistent manner by different Government entities and avoid unnecessary delays and bureaucracy.

4. Participants expressed the need for support from UNHCR to conduct information and outreach campaigns, registration exercises, as well as technical advice on law reform and dissemination of related by-laws. They also expressed appreciation for the support provided by UNHCR throughout the region, including in relation to the ongoing law reform processes.

Procedures for Statelessness or Nationality Determination

5. The importance of allowing access to statelessness or nationality determination procedures for individuals who committed administrative offences, including individuals who have not been able to regularize their stay, in the territory of the State, was expressed. Some participants suggested providing amnesty for those individuals in order that they can apply for statelessness or nationality determination without being penalized. People should be able to apply regardless of their legal status.

6. Participants recognized the importance of providing applicants, whose applications for statelessness status are rejected, the reasons for the rejection in writing. This is an important procedural safeguard which assists applicants with appeals. Participants acknowledged as a good practice, decisions which include a reference to available legal assistance in the event an applicant wishes to appeal the decision.

7. Stipulating deadlines for the different stages of the statelessness and nationality determination, including decision-making, was also seen as an important procedural safeguard. For example, some States issue decisions based on available information within a six-month period that starts from submission of the application for statelessness determination (with the possibility of extending the period for another six months, if necessary).

8. Participants noted that as not all applicants will be able to present documentary evidence of their nationality status, flexibility regarding the required evidence is needed. Verbal testimonies should be considered and taken into account, giving the applicant the benefit of the doubt where applicable. Some participants acknowledged that if there is no response from the country of former residence or citizenship, a decision needs to be made on the basis of all available evidence, oral and written, regarding an individual's claim.

9. Participants affirmed that health status and financial solvency, which in some States in the region are requirements linked to the issuance of residence permits, should not play a role in the decision to recognize an individual as a stateless person or have an impact on the admission to statelessness determination procedures.

Prevention and Reduction of Statelessness

10. All participants highlighted recent or ongoing law reform initiatives which have or will result in the introduction of important safeguards to prevent statelessness and/or facilitated procedures for acquisition of citizenship by stateless persons.

11. Participants agreed that residence abroad should not lead to loss or deprivation of citizenship, including when nationals fail to register with a consular service abroad.

12. Participants recognized the risk of statelessness associated with renunciation of nationality. Some delegations referred to safeguards they have incorporated (or are incorporating) in their laws to prevent statelessness occurring from such renunciation, conditioning it on the possession or acquisition of a foreign nationality. A good practice would be for laws to provide for a lapse of the renunciation if a foreign nationality is not acquired.

13. Participants expressed the importance of preventing statelessness resulting from a naturalization requirement to renounce a foreign nationality. This may be ensured through mechanisms for bridging the gap between the renunciation of the foreign nationality and the acquisition of nationality through naturalization. Some participants expressed support for introducing ways of solving this issue, for example, by providing applicants for citizenship with a guarantee letter that the new citizenship will be acquired upon confirmation of renunciation of the previous citizenship. Another way is to grant the applicant citizenship on the condition to renounce the foreign citizenship within a certain time limit, otherwise the citizenship acquired through naturalization is lost.

14. It was noted that certain nationals (Afghans, for example) are unable by law or practice to renounce their nationality. In other situations, they may be unable to contact their countries of nationality, which is the case for persons who have a well-founded fear of persecution vis-à-vis their country of nationality. Currently, however, there are no provisions in the laws and regulations of the Central Asian States which exempt refugee applicants or persons who are unable to renounce their citizenship from the requirement to renounce a foreign citizenship in order to acquire citizenship through naturalization.

15. Participants acknowledged that children are at a particular risk of becoming stateless. Concerns were expressed that several provisions still exist in the national legislation resulting in children becoming stateless due to limitations of grant of citizenship to children born to stateless parents who are permanent residents. Participants referred to recent law reform initiatives aiming to broaden the grant of citizenship to other categories of children who would be otherwise stateless. States have obligations under international human rights law, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights to guarantee the right of every child to acquire a nationality.

16. Participants further noted that procedures for the granting of citizenship can be simplified in certain situations. Eligible applicants should not have to go through the process of being determined as stateless or obtaining migrant status, but ought to be able to acquire citizenship in a facilitated manner. Recent law reform initiatives provide for facilitated acquisition of citizenship by stateless persons in general or for certain categories of stateless persons, for example, by reducing the requirement for the period of residency.

17. They also acknowledged the need to consider additional measures to ensure stateless persons can confirm or acquire nationality, with the aim to eliminate all cases of statelessness in Central Asia by 2023.

Expulsion of Stateless Individuals

18. Participants recognized that the expulsion of stateless people can cause an individual to be sent back and forth between States. This may lead to tension in international relations and further efforts are needed to ensure that such individuals are not left in transit.

19. Stateless persons who are lawfully in the territory of a State can only be expelled on grounds provided for by law and relating to national security or public order. The term “public order” needs to be narrowly interpreted and stateless persons should not be deported unless there are reasons for considering that they have committed a serious crime. UNHCR offered to provide further guidance to States on the interpretation of Article 31 of the 1954 Convention relating to the Status of Stateless Persons (hereinafter the “1954 Convention”) and the meaning of “public order”.

Accession to the Statelessness Conventions

20. Intentions were expressed to initiate discussions on accession to the 1954 Convention and the 1961 Convention on the Reduction of Statelessness. Costs of accession to the Conventions are minimal according to the experience of some State Parties in the wider region. Participants reiterated they would look further into considering accession.