

# Stateless People

## Statelessness: An Analytical Framework for Prevention, Reduction and Protection



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**UNHCR**

**2008**



## **Acknowledgements**

Appreciation goes to those UNHCR colleagues in the field who piloted use of the Framework and to colleagues in the Division of International Protection Services and Office for Organizational Development and Management whose collective expertise enriched the text.

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This document along with further information on statelessness is available on UNHCR's Refworld website:

<http://www.unhcr.org/refworld/statelessness.html>

and UNHCR's homepage on statelessness:

[www.unhcr.org/statelessness](http://www.unhcr.org/statelessness)

The "Protection Gaps Framework for Analysis" for refugee situations and the inter-agency tool "Protection of Conflict-Induced IDPs: Assessment for Action" are also available on Refworld:

<http://www.refworld.org>

Cover photo: Formerly stateless Indian origin plantation worker picking tea on an estate in Sri Lanka, UNHCR, G. Amarasinghe, 2007

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# Foreword

Fundamental human rights are guaranteed by law to all men, women and children, regardless of their nationality. Nevertheless, the stark reality is that many millions of people around the world are denied the exercise of their most basic human rights because they are not recognized as citizens of any country. The plight of 'stateless persons' is under-appreciated, inadequately documented and badly in need of more robust and effective responses.

Because no country considers them citizens, stateless persons often do not have access to the rights that citizens take for granted. Statelessness frequently means living without identity documents conferring legal personality and the rights that go with them – access to health care, education, property rights, and the ability to move freely. Births and deaths may not be registered with the result that stateless persons legally can be invisible: their existence experienced, yet never legally recognized.

Sixty years ago the Universal Declaration of Human Rights confirmed the right of everyone to a nationality. Two additional international instruments have since been promulgated to enhance protection and reduce statelessness: *the 1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. Their still too limited ratification is a source of concern, stemming in part as it does from a lack of understanding as to the extent of the problem and the severity of the consequences. Moreover, even where these issues may be appreciated, there are still the sovereignty concerns to overcome.

This Framework should help on each of these scores. Specifically, it is intended to assist States, UNHCR and partners to better understand the causes of statelessness, the consequences and the protection needs of the affected persons. It should also stimulate creative approaches to minimizing the risks in specific contexts and to strategizing to progressively and concretely reduce the causes of statelessness and to meet the needs and protect the rights of the stateless.

While UNHCR has a specific mandate to contribute to the prevention and reduction of statelessness and to the protection of stateless people, effective responses require collaboration with States, partners and those most at risk. This Framework is one contribution to this collective effort.



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# Gaps Analysis Framework: A User's Guide

This publication is intended to assist in the prevention and reduction of statelessness and the protection of stateless persons by providing a framework for analysing situations where persons are stateless or are at risk of becoming stateless.

The Framework is designed to identify causes of statelessness, obstacles to acquisition of nationality and the risks faced by stateless persons as well as to highlight the capacities of all concerned stakeholders to minimize those risks. Identifying risks and causes of statelessness as well as gaps in the protection of stateless persons is a necessary first step to prioritizing and developing measures to guarantee enjoyment of the full range of human rights including the right to an effective nationality. The gaps analysis produced using this Framework should comprehensively map gaps in citizenship law and practice as well as unmet needs. It should serve as a basis for the collaborative development of short and long-term strategies that support States in preventing and reducing statelessness and ensuring the rights of stateless persons.

## Focus of the Analysis: Nationality and Statelessness at a Glance

Nationality<sup>1</sup> is a legal bond between a State and an individual, and statelessness refers to the condition of a person not considered as a national by any State under the operation of its law. This definition is usually considered to describe a particular type of statelessness, characterised by the formal, legal lack of a nationality and also known as *de jure statelessness*.<sup>2</sup> The problem of statelessness is broader in scope and also extends to persons who *formally* hold a nationality but are nonetheless in a situation similar to statelessness because that nationality is ineffective. Such individuals are commonly referred to as *de facto stateless*.

Nationality facilitates the enjoyment of all human rights, and is obviously essential for full participation in society. It entitles an individual to political rights, to obtain and travel on a national passport, and to the unrestricted right to enter and reside in his or her own country. As a result, numerous international treaties and resolutions have reiterated the basic principle that statelessness is to be avoided.

1 Note that this Framework uses the terms “nationality” and “citizenship” as synonyms.

2 Users of this Framework who seek a fuller explanation of the issues covered in this section may wish to consult the UNHCR/Inter-Parliamentary Union *Handbook for Parliamentarians: Nationality and Statelessness*, available online at [www.unhcr.org/statelessness](http://www.unhcr.org/statelessness).

The first step towards addressing statelessness is to **identify** stateless populations, determine how they became stateless and understand how the legal, institutional and policy frameworks relate to those causes and offer possible solutions.

The best means of addressing statelessness is to **prevent it from occurring**. States are the principal actors responsible for the prevention of statelessness because they are responsible for determining how nationality can be acquired, changed and lost. Nonetheless, in determining who their nationals are, States must act within the limits imposed by international law. International legal standards recommend the adoption of safeguards in the nationality legislation of States in order to prevent statelessness from occurring, either at birth or later in life. Human rights treaties contain a number of safeguards but the most comprehensive set of standards in this domain is contained in the 1961 Convention on the Reduction of Statelessness. The Convention establishes, for example, that children should acquire the nationality of the State in which they are born if they would otherwise be stateless, that individuals cannot renounce their nationality without having acquired another and that they cannot be deprived of nationality on discriminatory grounds.

Despite these efforts, statelessness has continued to occur, often in situations of State succession or in the context of migration. UNHCR's Executive Committee has therefore emphasized that action by States is needed to **reduce** statelessness, that is, to find a durable solution for existing cases of statelessness. Reduction of statelessness requires formal, legal integration in the State through the confirmation or attribution of nationality. But it also requires increased social and economic participation.

Until such time as nationality is acquired, stateless persons must enjoy economic, social, cultural and civil rights. The 1954 Convention relating to the Status of Stateless Persons sets out a framework for the **protection** of stateless persons which is complemented by international human rights law.

The broad issues which relate to the identification (or mapping) of statelessness are addressed in Chapter 1 of the Framework, entitled Favourable Protection Environment. Prevention and reduction of statelessness are addressed in Chapter 2. Issues relating to the protection of stateless persons are addressed in the following four chapters: Chapter 3 examines Fair Protection Processes and Documentation, Chapter 4 focuses on Security from Violence and Exploitation, Chapter 5 on Basic Needs and Essential Services, and Chapter 6 on Community Participation, Self Management and Self-Reliance.

## **Standards Underpinning the Framework**

The Framework is informed by the specialized standards on statelessness and international human rights law. As set out above, two treaties adopted by the United Nations specifically address statelessness, the *1954 Convention relating to the Status of Stateless Persons* which focuses on consequences of statelessness and the *1961 Convention on the Reduction of Statelessness* which seeks to prevent it from occurring to begin with. These two instruments have attracted a growing number of accessions and the obligations and rights they contain are increasingly recognized in the practice of States. The Framework also reflects universal standards of international human rights law including regional standards. These standards are equally applicable to citizens and stateless persons and include a number of safeguards against statelessness. The Framework also reflects the detailed guidance on statelessness provided in a series of Conclusions of the Executive Committee of the United Nations High Commissioner for Refugees' Programme (ExCom).

Rather than referring to these standards directly in the text, users of the Framework are advised to consult the Annex with Authoritative Sources and Guidance.

## **Methodology**

The Framework employs a methodology which uses questions that focus on the principal issues which arise in the context of statelessness. These questions are designed to help determine to what extent the standards of public international law relating to the prevention and reduction of statelessness and the protection of stateless persons are respected. Where the reality falls short of international standards, a protection gap exists.

The Framework does not stop at the identification of gaps however, for it is also intended to bring to light the capacities of national and local authorities, other actors as well as stateless communities themselves to address protection gaps. This then can form the basis for identifying the support that would be needed to prevent and reduce statelessness risks.

## **When to use the Framework**

The first step towards an effective response to statelessness is to fully understand the nature of the problem. The challenges which arise in the context of statelessness are often complex and impact large numbers of people. Effective responses require applying standards set out in international law. Many of the issues may also be transnational in character. A range of actors will therefore need to be involved in efforts to address statelessness and it is therefore crucial that they all develop an understanding of the protection gaps that need to be addressed. These actors include States, stateless persons, civil society organizations, United

Nations agencies including UNHCR, UNICEF, OHCHR, UNFPA and UNDP and other international organizations. **This Framework can be used by any actor involved in the prevention and reduction of statelessness or the protection of stateless persons.**

The experience of UNHCR and its partners shows that protection gaps analysis is most constructive when linked to a clear process of planning, programme development and strategy formulation. The findings resulting from the gaps analysis should form the basis of **consultations between all concerned actors** on challenges and capacities in addressing statelessness and enhancing enjoyment of rights.

For UNHCR, the Framework can be used to structure assessments relating to statelessness as part of the planning cycle. It has been designed to facilitate analysis of the problems and causes of statelessness in line with UNHCR's results based management framework.

The results of gaps analysis can be used by the multifunctional team in each UNHCR office to plan for the needs of stateless persons and those at risk of statelessness as part of the Global Needs Assessment process. Working with partners, UNHCR should map all the needs highlighted through the gaps analysis, define responsibilities for addressing them and prioritize interventions aimed at addressing them.

In addition to playing a central role in planning interventions to address statelessness issues, the benefits of gaps analyses are expanded when used to regularly assess and monitor situations of statelessness. This Framework therefore can be used as part of a continuous process of assessment, planning, monitoring and evaluation.

## **How to use the Framework**

The Framework is not intended to be an instrument to gather statistics, nor is it a substitute for existing international standards or guidance provided by UNHCR on the prevention and reduction of statelessness and the protection of stateless persons. Rather, it serves as a tool to draw together available documentary information, such as annual reports, monitoring reports and legal information.

### *Participatory assessments*

Stateless persons are often not included in decision-making that affects them. Without an effective nationality their participation is frequently limited in all spheres of economic, social and cultural life. A comprehensive analysis of the causes and consequences of statelessness should therefore build upon a participatory assessment with stateless persons to identify their specific protection

risks and to understand the capacities of stateless persons and the broader community to find solutions.

Holding focused discussions with groups of stateless women, men, girls and boys, including those with specific needs will ensure full and complete coverage of their distinct concerns in the assessment. The results will also contribute to the identification of appropriate solutions to remedy protection gaps.

*Interviews with relevant authorities, NGOs and international organizations*

Effective strategies to prevent and reduce statelessness and ensure enjoyment of universally recognized human rights rely on the positive engagement of local and national authorities, civil society organizations as well as UNHCR, and other international organizations such as UNICEF, OHCHR, UNFPA and UNDP.

Since the Framework and resulting analysis are intended to highlight the views and capacities of all stakeholders, their contributions are important to ensure a holistic approach. Their participation at the outset of an assessment will help to promote collaborative work to strengthen capacity and address gaps.

### **Presentation of the analysis**

The gaps analysis can usefully be presented in the form of a report which uses the chapter headings and sub-headings in the Framework to guide the presentation. The questions contained in the Framework should serve as a guide to focus assessment and analysis on relevant issues. Short sentences, plain language and concise paragraphs, and a recommended length of no more than 25 pages will enhance the readability of the report and will serve the aim of the report: namely to ensure that it becomes a central reference document for prioritizing gaps and developing strategies to remedy these gaps.

### **Useful Supporting Texts**

An annex to the framework contains the following useful supporting texts:

- ▶ References to relevant legal authorities, standards and guidance, organized according to the Chapter headings and sub-headings in the Framework.
- ▶ ExCom Conclusion (No. 106 (LVII) - 2006) on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons in full text.
- ▶ Relevant extracts from human rights instruments and general comments and recommendations of UN Human Rights treaty bodies.

Additional information is available on UNHCR's website:

**[www.unhcr.org/statelessness](http://www.unhcr.org/statelessness)**.

# List of Abbreviations

<b>1951 Convention</b>	Convention relating to the Status of Refugees, 1951
<b>1954 Convention</b>	Convention relating to the Status of Stateless Persons, 1954
<b>1961 Convention</b>	Convention on the Reduction of Statelessness, 1961
<b>AIDS</b>	Acquired immune deficiency syndrome
<b>CAT</b>	Convention against Torture, 1984
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women, 1979 / Committee on the Elimination of Discrimination against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CRC</b>	Convention on the Rights of the Child, 1989 / Committee on the Rights of the Child
<b>e.g.</b>	For example
<b>Etc.</b>	Et cetera
<b>ExCom</b>	Executive Committee of the United Nations High Commissioner for Refugees' Programme
<b>HIV</b>	Human immunodeficiency virus
<b>ICRC</b>	International Committee of the Red Cross
<b>ICCPR</b>	International Covenant on Civil and Political Rights, 1966
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination, 1965

<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights, 1966
<b>NGO</b>	Non-governmental organization
<b>SGBV</b>	Sexual and Gender-based Violence
<b>UDHR</b>	Universal Declaration of Human Rights, 1948
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees

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**Hadzi (centre, red shorts) and Maksum (grey shorts) with some of their friends. The two boys were not registered at birth and had no proof of identity or nationality. They are now recognised as Serbian nationals thanks to a legal assistance programme run by UNHCR.**



# 1. Favourable Protection Environment



*A favourable protection environment is one where the causes and demographics of statelessness are well known; the legal and administrative framework incorporates mechanisms to reduce and prevent instances of statelessness; the rights of stateless persons are recognized in national law; the administrative capacity to oversee affairs regarding stateless persons is adequate; protection issues are jointly addressed by all relevant stakeholders; positive attitudes towards stateless persons are promoted and where the needs and potential contributions of stateless persons are acknowledged and form part of national and regional development strategies.*

## 1.1 Demographic profile

- ▶ Briefly describe the stateless population.<sup>3</sup> Include information on:
  - *De jure* stateless persons and *de facto* stateless persons, including persons with undetermined nationality or who have difficulty establishing their citizenship;
  - Reasons for statelessness;
  - Duration of statelessness;
  - Their demographic and socio-economic profile disaggregated by age, sex, ethnicity, religion, political or other opinion, national or social origin, association with an ethnic, religious or linguistic minority, property, birth or other status.
  - Their location within the country.
- ▶ Briefly describe what kind of data or information is available on stateless populations in the country (e.g. census or registration data, official reports, academic research or studies by organizations such as UNHCR or NGOs).
- ▶ Do census and other demographic surveys include stateless persons?
  - If so, are they reliable?
  - If not, are there other sources of reliable data and if not why?
- ▶ Do stateless persons (including *de jure* stateless persons, *de facto* stateless persons and persons who have difficulties establishing their citizenship) reside lawfully in the country of habitual residence?
  - Is there a difference in the treatment of distinct categories of stateless groups?
- ▶ Are there any notable trends or political developments which are likely to have an impact on citizenship or create statelessness in the future?

3 Note on Terminology: Except where otherwise indicated, this Framework uses the term “stateless person” to refer to persons who are *de jure* stateless or *de facto* stateless, including persons with undetermined nationality or who experience difficulties establishing their nationality.

## 1.2 Identification of statelessness

- ▶ Are any steps taken to identify stateless populations and populations with undetermined citizenship? If yes,
  - Who undertakes identification?
  - Is identification linked to other national procedures and programmes such as birth registration, voter registration or population censuses and surveys?
  - Are all stateless persons systematically and individually identified?
  - Do identification exercises identify risks of statelessness?
- ▶ How is identification undertaken?
  - Has research been undertaken on statelessness in the country, including magnitude of the stateless population, causes of statelessness, protection issues faced by stateless persons, etc.?
  - Is basic data collected, including name, date of birth, sex, marital status, and children?
  - Are the causes of statelessness and the socio-economic situation covered?  
[Note that sections 5 and 6 address aspects of the socio-economic situation in depth.]
  - Are statistics and other relevant information shared between relevant national and international actors?
- ▶ Are there obstacles to effective identification?

## 1.3 International and regional instruments

- ▶ Is the State concerned party to the 1954 Convention relating to the Status of Stateless Persons?
  - If not, explain why.
  - If yes, note any reservations.
- ▶ Is the State concerned party to the 1961 Convention on the Reduction of Statelessness?
  - If not, explain why.
  - If yes, note any reservations.
- ▶ Is the State concerned party to other international and/or regional instruments relating to citizenship and statelessness?
  - Explain any relevant reservations.
  - Have these treaties been incorporated into national law?

### Universal Declaration of Human Rights, Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

- ▶ Has advocacy for the accession to relevant treaties and/or the lifting of reservations relevant to statelessness been conducted?
  - If so, by whom?
  - What are the obstacles to ratification/accession to these Conventions?
  - What are the obstacles to the lifting of reservations?

#### **1.4 National legal framework**

- ▶ Briefly describe the principal legislation and major policy declarations that have a bearing on prevention and reduction of statelessness and protection of stateless persons.  
[Note that more detailed information on prevention and reduction is requested in Chapter 2.]

#### **1.5 Definition of a Stateless Person**

- ▶ Does national legislation provide a definition of a stateless person?
  - If so, describe any differences between this definition and that contained in Article 1 of the 1954 Convention.

#### **1.6 National administrative framework**

- ▶ Identify the administrative institutions with significant responsibilities for the prevention and reduction of statelessness and protection of the rights of stateless persons?
  - Briefly describe any existing shortcomings in their capacity to uphold these responsibilities.  
[Note that more detailed information on prevention and reduction is requested in Chapter 2.]

#### **1.7 Partnerships**

- ▶ Do any partnerships exist between national authorities, donor countries, UNHCR, other UN agencies, NGOs, civil society and stateless persons to strengthen statelessness response capacities and who are the actors involved?
  - What are the reasons and underlying interests for these partnerships?
  - To what extent are they actively engaged in joint assessments, planning, advocacy and evaluation exercises?

## 1.8 Relationship between government and UNHCR

- ▶ Has the government sought advice from UNHCR on the drafting of nationality legislation and other legislation pertaining to statelessness as well as relevant administrative procedures?

## 1.9 National and regional development policies

- ▶ Are stateless persons and persons who recently acquired or re-acquired citizenship included in, or impacted by, regional or national poverty reduction and development strategies?
- ▶ Do existing development strategies include stateless communities and persons who recently acquired or re-acquired citizenship?

## 1.10 Public attitudes towards stateless persons

- ▶ How are stateless persons perceived by other sectors of the population?
- ▶ Are certain groups of stateless persons treated or perceived differently for reasons of their sex, age, religion, ethnicity, political or other opinion, national or social origin, association with an ethnic, religious or linguistic minority, property, birth or other status?
- ▶ Is the general population well informed on the issue of statelessness?
- ▶ Are public awareness programmes in place which promote understanding of the situation of stateless persons and foster their integration (e.g. for schools and media)?

## UNHCR Global Strategic Objectives for 2007 - 2009

Objective 2: Advocate for and support governments in the development and maintenance of an international protection regime including its implementation at the national level with priority given to:

[...]

2.3. Addressing situations of statelessness more effectively.

Stateless former refugee Su Mai, who says he is 100 years old, with his daughter and granddaughter, wants to acquire Vietnamese citizenship so that he can get a passport and travel legally.



## 2. Prevention and Reduction of Statelessness



*Addressing statelessness involves responding to existing situations and acting to prevent new situations of statelessness from occurring. Strategies to prevent and reduce statelessness are grounded in an understanding of its root causes and recognition of risks which specific individuals and groups, as well as the wider population face.*

*“Prevention” includes the identification of domestic laws and practices that may lead to the creation of statelessness and the introduction of concrete measures to prevent statelessness from occurring or from perpetuating across generations.*

*“Reduction” requires finding durable solutions for stateless persons by facilitating the acquisition, reacquisition or confirmation of nationality. It also involves issuing identity documents and promoting full social and economic participation so that citizenship becomes fully effective.*

## **2.1 Comprehensive strategies to prevent and reduce statelessness**

- ▶ Is there a national policy to prevent and to reduce statelessness?
  - If not, is advocacy being undertaken to promote the prevention and reduction of statelessness?
    - What support do the authorities need to develop laws, policies and procedures to prevent and reduce statelessness?
  - Is new nationality legislation being considered and if so does it ensure that statelessness is not created and provide solutions for existing cases?
  - Are any of the following actors involved in efforts to find solutions to the problem of statelessness:
    - Other countries in the region?
    - Donor countries?
    - Regional organizations?
    - UN agencies, in particular UNICEF, UNFPA, OHCHR, UNDP and UNESCO, or other international organizations?
  - To what extent does UNHCR engage with these actors in its statelessness activities?

## **Prevention of Statelessness**

### **2.2 Acquisition of citizenship**

- ▶ Briefly outline the basis in national legislation for the acquisition of citizenship at birth. In particular, outline provisions for acquisition of nationality at birth by descent (*jus sanguinis*) and birth on the territory (*jus soli*).

▶ Is a safeguard in place to grant nationality to:

- Foundlings?
- Children born on the territory who would otherwise be stateless?
  - In such cases, is nationality granted automatically at birth or only subsequently upon application (or both)? If granted upon application, what conditions are applied?
- Children born abroad to a national who would otherwise be stateless?
  - In such cases, is nationality granted automatically at birth or only subsequently upon application, or both? If granted upon application, what conditions are applied?

▶ Are children born on ships, planes or otherwise while in transit included in provisions governing the acquisition of nationality by birth on the territory?

**1961 Convention on the Reduction of Statelessness, Article 1(1)**

A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. [...]

## 2.3 Gaps in citizenship law leading to statelessness

### *Acquisition*

- ▶ Do women and men have equal rights to pass on their citizenship to their children born both inside and outside the country?
- ▶ Do children born out of wedlock have the same rights to acquire the nationality of the State as children born in wedlock?

### *Renunciation*

- ▶ Does national law allow for the voluntary renunciation of citizenship? If so,
  - Is renunciation conditioned on acquisition of another citizenship or a formal assurance from another State that citizenship will be granted?
  - What occurs if renunciation of nationality is permitted based on the expectation that another nationality will be acquired but the second nationality is never actually acquired in practice?

### *Loss and deprivation*

- ▶ Do women automatically lose their nationality if they marry a foreign national?
  - Do they automatically lose the nationality of their husband's State in the case of divorce, death of the husband or a change in his nationality?

**ExCom Conclusion No. 78  
para. (b)**

Calls upon States to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality, and by eliminating provisions which permit the renunciation of a nationality without the prior possession or acquisition of another nationality;

- ▶ Does prolonged residence abroad lead to loss of nationality? If so,
  - Under what circumstances does this occur?
- ▶ Does failure to perform compulsory military or civil service or desertion lead to deprivation of citizenship?
- ▶ Does national law allow for the deprivation of nationality on the basis of misrepresentation or fraud? If so,
  - Is there a time limit beyond which revocation of nationality is no longer allowed?
  - Is the gravity of the misrepresentation or fraud taken into account?
  - Are other relevant circumstances taken into account including the nature of links with the country concerned (e.g. length of residence, birth there)?
- ▶ Does deprivation of nationality of a parent lead to deprivation of the same nationality of his or her children? If so,
  - Is there a safeguard against statelessness?
- ▶ Can an individual lose or be deprived of nationality under circumstances other than those listed above? If so,
  - What are these circumstances?
  - Are people who acquired nationality by birth and those who acquired it by other means treated equally?

*General*

- ▶ Do other provisions in the citizenship law discriminate or have discriminatory effect, causing groups or individuals to be deprived of or denied citizenship (on account of race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status)?
- ▶ Are there other gaps in the law that lead or potentially lead to statelessness?
- ▶ Do provisions of the citizenship law or constitution conflict with other relevant legislation with the effect of causing statelessness?

## **2.4 Administrative procedures that may lead to statelessness**

- ▶ Are there any administrative or other practices which lead, or may lead, to statelessness?

- ▶ Are procedures relating to acquisition, loss, deprivation and change of nationality and confirmation and proof of nationality:
  - set out in writing and well publicised?
  - conducted efficiently within a reasonable timeframe?
  - affordable and, if not, can fees be waived?
- ▶ Is legal assistance available to those people who need it?
- ▶ Are there discriminatory practices which may lead to statelessness?

## 2.5 Birth registration

- ▶ What is the estimated percentage of children under the age of 5 who have been registered at birth?
- ▶ Are there established domestic procedures for birth registration?
- ▶ Does domestic law require parents to register all children immediately after birth?
  - Is the duty to register births well publicised?
  - Is birth registration time-limited? If so,
    - What procedures, if any, are in place for birth registration at a later date?
- ▶ Is birth registration free of charge? If so,
  - Specify if there is any cost beyond a time limit.
- ▶ Can parents register the birth of their children if they are not lawfully residing in the country or if they do not possess valid identity documents?
- ▶ Are birth registration facilities physically accessible to the entire population?
  - Is birth registration facilitated by automatic registration in hospitals or by mid-wives or through use of mobile registration?
  - If not all children born on the territory are registered at birth, are efforts being made by the government and /or other actors to ensure that more children access birth registration?
- ▶ What data is provided in the birth register (e.g. name, sex, date of birth, place of birth, parents' names, parents' nationality(ies) and address, name and signature of the registrar)?

### Convention on the Rights of the Child, Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

- If the authorities indicate a child's nationality in the birth registry, how do they determine that the child holds the nationality indicated? (e.g. declaration by parents, passport or citizenship certificate of parent)?
- If the authorities indicate the parents' nationality in the birth registry, how do they determine that parents hold the nationality or nationalities indicated (e.g. self declaration, passport, citizenship certificate)?
- ▶ Are children issued with birth certificates? If not:
  - Do hospitals issue some other form of proof to children at birth?
  - If births take place at home, do midwives issue attestations of birth?
  - Are other forms of birth attestation provided?

## 2.6 Statelessness as a root cause of refugee movements

- ▶ Does the existence or creation of instances of statelessness lead to refugee movements?

## 2.7 Prevention of statelessness in the migratory context

*Migrants from abroad who are present in the country of analysis*

- ▶ Do the national authorities have procedures in place to assist migrants who have difficulties in establishing their identity, including their nationality (e.g. migrants who have no genuine travel or other identity documents)?
- ▶ Do national authorities actively seek the cooperation of other countries for the verification of the nationality of migrants?

*Migrants from the country of analysis who are abroad*

- ▶ Do the national authorities cooperate with other countries for verification of identities of persons abroad who appear to be their nationals? If so,
  - Is there a policy to assist such persons in exercising the rights which flow from nationality, including the right to obtain a passport and to return?
- ▶ Is the right to return or the right to a passport withheld from certain categories of nationals abroad?

## 2.8 Preventing statelessness upon State succession

- ▶ If state succession<sup>4</sup> has recently occurred, what criteria are used for attribution of nationality to the affected population?

4 The International Law Commission in its *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States* (annexed to United Nations General Assembly resolution 55/153) has defined state succession as follows: "‘Succession of States’ means the replacement of one State by another in the responsibility for the international relations of territory".

- Are all individuals with an appropriate connection to the State granted the nationality of a successor State if they would otherwise be stateless (such a connection may be habitual residence, birth on territory, legal bond to a territorial unit of a predecessor state or other criteria)?
- Can individuals retain the nationality of a predecessor state if a person would otherwise be rendered stateless?
- ▶ If state succession is likely to occur, are measures being taken to avoid the risk of statelessness including revision of citizenship law, negotiation of agreements regulating nationality, registration and documentation of persons lacking civil and/or birth registration?

## 2.9 Voluntary return of refugees

*Note that other aspects of voluntary return are addressed in the Protection Gaps Framework for Analysis on refugees*

- ▶ Are there any legal, policy or administrative grounds or procedures which could result in refugees losing their nationality or which prevent refugee children from acquiring their parents' nationality?
- ▶ Do existing tripartite agreements between the governments concerned and UNHCR confirm nationality of returnees and their foreign-born children? Do they provide for facilitated naturalization of foreign spouses?
- ▶ Do returnees face obstacles to reintegration because their nationality is questioned or because they were formerly stateless?
- ▶ Is return being monitored to assess and address problems?
- ▶ Are rights to civil documentation re-established in the place of origin?
- ▶ Can returnees access them in practice?

## 2.10 Reduction of statelessness

*General*

- ▶ How many stateless persons have acquired citizenship in the previous year?
- ▶ Are there special measures in place to address protracted situations of statelessness (e.g. proposals to change legislation, information campaigns on procedures, mobile citizenship campaigns)?

*Naturalization*

- ▶ Briefly describe the procedures and conditions for naturalization of stateless persons.
- ▶ Is the naturalization of stateless persons facilitated in citizenship law?

- ▶ If so, does the facilitation of naturalization relate to:
  - A reduced duration of residence as precondition for naturalization?
    - Are the residence rights granted to stateless persons recognized when considering residence criteria linked to naturalization?
  - Simplified procedures?
  - Reduced fees?
  - Waiver of language or other knowledge requirements?
  - Other criteria (please specify)?

#### *Other means of acquiring nationality*

- ▶ Briefly describe any other procedures and conditions for acquisition of citizenship by stateless persons (e.g. by declaration of a right of option, change of criteria in legislation to grant nationality to persons on the basis of birth or habitual residence).

#### *Information about procedures for acquisition of citizenship*

- ▶ Is information about acquisition (and reacquisition) of citizenship, including facilitated naturalization procedures actively disseminated?
  - Are procedures relating to acquisition of nationality set out in writing?
  - Are information activities undertaken to inform stateless persons and populations of these procedures?
    - Is information disseminated using media which are accessible to the stateless persons concerned and in their own language?

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

- ▶ Are the above procedures unnecessarily complex?
- ▶ Are they unnecessarily lengthy?
- ▶ Are costs affordable and, if not, can they be waived?
- ▶ Is legal assistance available to those people who require it?

#### *Effective remedies*

- ▶ Are effective remedies available to persons who have been arbitrarily denied or deprived of nationality? If so,
  - If the country has concluded readmission agreements with other States, is provision made for acquisition or reacquisition of nationality by returned stateless migrants where statelessness resulted from arbitrary denial or deprivation of nationality?

## 2.11 Reduction of statelessness due to State succession

- ▶ If statelessness has persisted since the time of state succession (including independence), briefly describe how citizenship was initially defined in law and in practice.
- ▶ Was nationality of the successor State granted on the basis of:
  - Habitual residence or previous habitual residence on territory which now forms part of the successor State?
  - Birth on its territory?
  - A legal bond to a territorial unit of the predecessor State (e.g. republic of a federal State, province or state)?
- ▶ Were safeguards in place to guarantee that persons would be granted nationality on the basis of such links if they would otherwise be left stateless? If not,
  - Can people who were left stateless now apply for nationality based on such links?

## 2.12 International resettlement of stateless persons

- ▶ Are stateless persons considered in programmes for resettlement to another country? If so,
  - What mechanisms are in place to determine resettlement needs?
  - Which actors are involved in identifying cases?
  - What resettlement criteria are used?
  - Is it easy to obtain necessary travel documents and visas? If not, what are the obstacles?

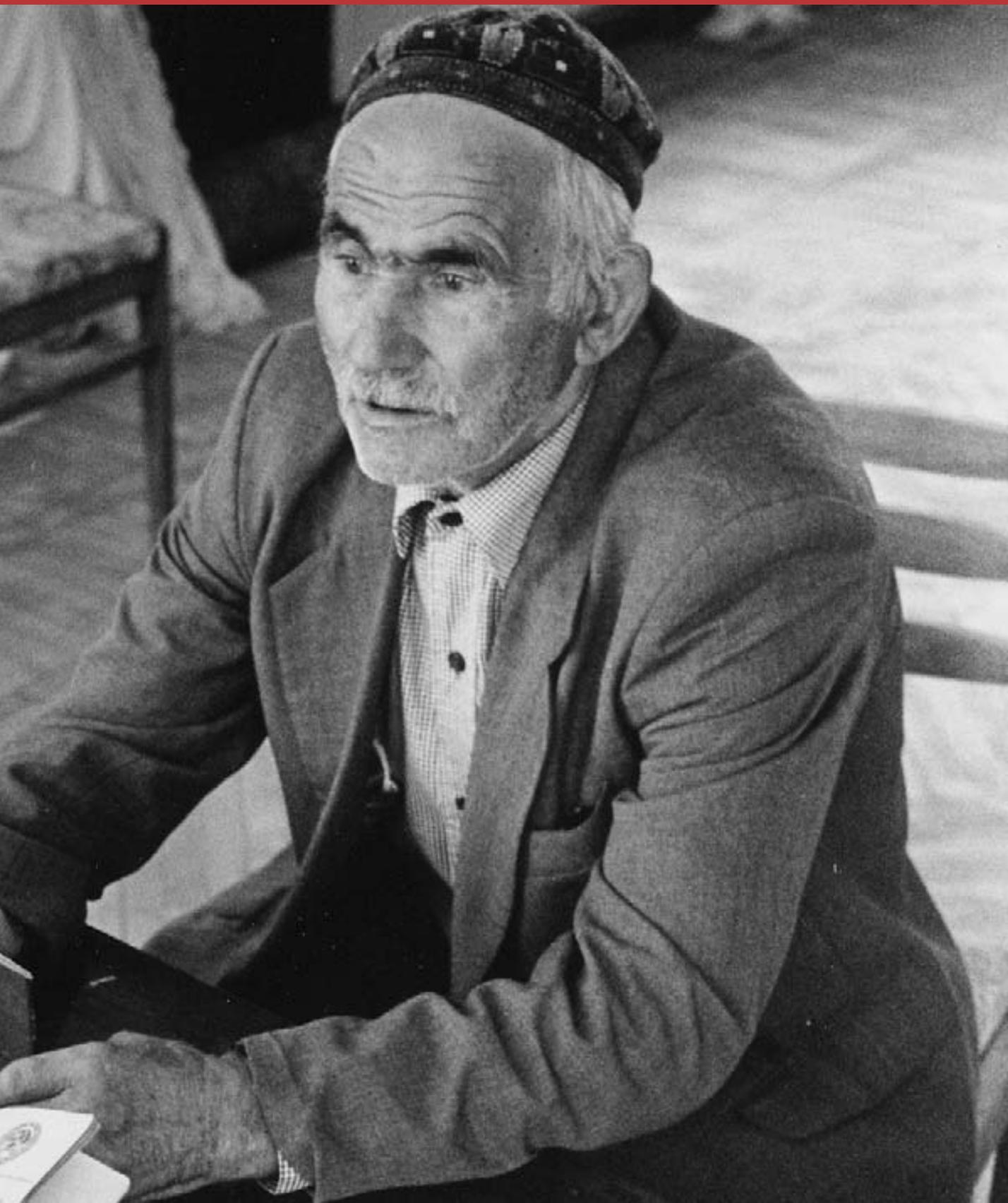
## 2.13 Exercise of nationality in practice

- ▶ Is personal identity documentation issued without delay following acquisition of nationality?
- ▶ Are formerly stateless persons able to exercise the range of rights which generally flow from nationality, including:
  - Right to reside in and return to the country?
  - Right to a passport?
  - Right to vote and to stand for office as well as participate in public affairs?
  - Right to employment in public service?
  - Other entitlements which are reserved to nationals?
- ▶ Do formerly stateless persons face discrimination in the exercise of other economic, social, cultural, civil or political rights linked to their previous statelessness?
- ▶ Are formerly stateless persons included in national and international development programmes?

UNHCR's assistance programme helps Crimean Tartars, who were deported to Central Asia during the Second World War, to acquire Ukrainian citizenship.



### 3. Fair Protection Processes and Documentation



*While individual determination of statelessness may not be appropriate in all instances<sup>5</sup> in many cases it is the first step towards an effective response as it enables States, UNHCR and other actors to act to ensure the protection of stateless persons. By examining the links of an individual with one or more States a determination procedure may also lead to a conclusion that a person possesses an effective nationality. Procedures are therefore relevant also for the prevention of statelessness. Status determination is not only relevant for persons outside their country of habitual residence. On the one hand a person may be aggrieved by a finding that he or she is stateless although she sought confirmation of nationality in the country of habitual residence; on the other hand, whether in the country of habitual residence or abroad, recognition of statelessness status is often particularly important because it is frequently the gateway to the enjoyment of certain rights, such as residence. Identity documents and documents confirming civil status such as marriage certificates provide valuable proof of key aspects of identity and for the determination of nationality. They also have an important protection dimension as they facilitate the enjoyment of a number of rights such as freedom of movement and education.*

### **3.1 Procedures for determination of statelessness status**

- ▶ Is there a formal national procedure as a result of which it is determined whether or not a person is stateless?
  - If yes, is the determination made through:
    - Special procedures to determine statelessness?
    - Nationality determination, for instance in national asylum procedures?
    - Other (please describe)?
- ▶ If no formal procedure exists to determine statelessness, please describe any other means by which statelessness status is legally recognized.

### **3.2 Fair and efficient status determination**

- ▶ Where a formal procedure to determine statelessness status exists, does it provide for:
  - Legal advice?
  - Impartial and qualified interpretation?
  - Written reasons for a decision?
  - An effective opportunity to appeal to an independent authority (with notice of the right provided in a timely manner)?

5 *E.g. in large-scale situations where a population has historic ties to the country of residence, it may be more appropriate to seek a solution which addresses the situation of all members of the group.*

- Where the decision can have an impact on the lawfulness of stay, does the person have a right to remain in the country pending a final decision in the determination process?
- ▶ Do legal mechanisms exist to challenge second instance decisions?
  - If yes, briefly describe these mechanisms.
- ▶ Is the burden of proof in determination proceedings on the applicant or the decision maker?
- ▶ What kind of evidence is required to establish whether the applicant is a citizen of any country to which he has an appropriate connection (e.g. review of citizenship laws, birth certificate, citizenship certificate, passport, confirmations by diplomatic representations, declarations by witnesses)?
- ▶ Are there provisions to meet specific needs of women, older persons, girls and boys which arise in determination procedures?
- ▶ Are decisions rendered in a timely manner?
- ▶ Does UNHCR have an advisory, observer or operational role?
- ▶ Is training provided to decision makers, lawyers and legal counsellors?
  - If so, by whom and how can their capacities be further supported?

### 3.3 Residence status

- ▶ What residence rights are enjoyed by stateless persons?
  - How do the residence rights of stateless persons compare to those of nationals and to those of other non-citizens?
  - Is there a difference in the treatment of distinct categories of stateless groups?
- ▶ Are family members of persons who are recognized as stateless accorded the same status if they do not have effective access to citizenship?
  - If not, what are the consequences for the family members?
- ▶ Under what circumstances can the residence rights of stateless persons be withdrawn?
  - Are stateless persons able to adequately appeal withdrawal of residence rights?
- ▶ Are stateless persons with lawful residence eligible for family reunification with family members who live in other countries?
  - If so, is the regime applicable to stateless persons the same as that for refugees or other non-citizens in similar circumstances?

**ExCom Conclusion No. 106  
para. (I)**

*Encourages States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status, while fully respecting the international human rights of these individuals as well as relevant national laws;*

### **3.4 Individual documentation**

- ▶ Are all stateless persons (including women, accompanied, unaccompanied and/or separated children) provided with individual identity documents?
  - Who issues them and under what procedures?
  - Are identity documents recognized by all government agencies and relevant private actors (e.g. police, housing authorities, health care providers, private sector employers, banks, landlords)?
- ▶ Do stateless persons face obstacles accessing individual identity documentation?
  - If so, describe these obstacles and how they can be overcome.
  - What are the consequences in terms of their recognition as a person before the law?

### **3.5 Civil documentation**

*Note that birth registration is addressed in Chapter 2.*

- ▶ Are married couples issued marriage certificates?
  - Who issues them and under what procedure?
- ▶ Do stateless persons who marry a citizen acquire the same rights as their spouse?
  - Are common law or informal marriages recognized? If not, does this affect family unity?
- ▶ Are death certificates issued and, if so, by whom?
- ▶ Do stateless persons face obstacles in receiving civil documentation?
  - If so, what are they and how can they be overcome?
- ▶ What protection risks arise due to the lack of documentation?

### 3.6 Travel documents

- ▶ Are *de jure* stateless persons issued travel documents as per Article 28 of the 1954 Convention or other travel documents?
  - Who issues such documents?
  - Are these documents recognized by other government departments in the country of habitual residence and by foreign embassies?
  - Do they have security features which prevent them from being forged?
- ▶ Are there obstacles or constraints to obtaining these documents?
  - Is there a fee for obtaining them?
  - Do they have a time and/or geographic limitation?
  - Can they be extended or renewed abroad?
- ▶ Are travel documents issued to *de facto* stateless persons and persons with undetermined citizenship?
- ▶ Are stateless persons required to apply for an exit visa to leave, and a re-entry visa to return to the country of habitual residence?
- ▶ Do national institutions need support to issue identification and travel documents? If so, what kind of support?

A group of stateless Feili Kurds discuss their concerns at a meeting with UNHCR staff.



## 4. Security from Violence and Exploitation



*Protection includes not being arbitrarily deprived of liberty and being safe from violent acts, abuse and exploitation. A secure environment is one where adequate law enforcement mechanisms are accessible, equality before the law is guaranteed and action is taken to prevent and respond to instances of violence and exploitation of women and children.*

## 4.1 Law enforcement

### ExCom Conclusion No. 90 para. (s)

*Strongly condemning the trafficking of persons, especially women and children, which represents a grave violation of their human rights; expressing concern that many victims of trafficking are rendered effectively stateless due to an inability to establish their identity and nationality status; calls upon States to cooperate in the establishment of identity and nationality status of victims of trafficking so as to facilitate appropriate resolutions of their situations, respecting the internationally recognized human rights of the victims.*

- ▶ Are stateless persons at risk of being discriminated against or abused by the authorities or other actors?
- ▶ Does approaching law enforcement agents or other national authorities entail risks for stateless persons?
  - Are these risks different from those experienced by citizens and other non-citizens?
  - Is protection and prosecution for crimes against some groups less than for others (e.g. depending on ethnicity, religion, age, gender, political or other opinion, national or social origin, association with a national minority, property, birth or other status)?
- ▶ How do stateless persons view law enforcement agents?
  - Have law enforcement agents in areas where large numbers of stateless persons reside received training on fundamental human rights principles, including in women's and children's rights?
  - How can law enforcement capacities be improved?
- ▶ Are stateless men, women, boys and girls at greater risk of trafficking than citizens and other residents, including for reasons of sexual exploitation, forced labour or services, slavery and servitude?

## 4.2 Sexual and gender-based violence

- ▶ Are stateless women, girls, men and boys subject to sexual and gender-based violence (SGBV)? If so,
  - Which types of SGBV and who are the alleged perpetrators?
  - Where do most SGBV incidents take place and who is most targeted?
  - Do stateless persons face more or different risks compared to the rest of the population?
- ▶ What is the minimum age of sexual consent?
- ▶ Are the following recognized in law as criminal offences:
  - Rape, sexual abuse and exploitation, sexual harassment, trafficking, forced prostitution, and domestic violence (regardless of the victim's gender)?
  - Forced marriage, female genital mutilation and other harmful traditional practices?
- ▶ Do any existing national programmes to prevent and respond to SGBV ensure:
  - Awareness-raising exercises and training for officials, humanitarian workers and communities?
  - Physical safety, medical support, psycho-social support, legal counselling and access to justice for survivors?
- ▶ Do survivors face obstacles in accessing support ?
  - If so, what are they?
  - Are they related to traditional or cultural attitudes?
  - Are some groups disproportionately affected due to their ethnicity, nationality, political or other identity?
- ▶ What longer-term solutions are available to SGBV survivors?
- ▶ What could be done to improve SGBV prevention and response at the local authority and community level?

### 4.3 Protection of children

- ▶ Does the legal and administrative framework promote the welfare of stateless boys and girls on an equal basis to citizens?
  - Note any key inconsistencies of the national legal system with the Convention on the Rights of the Child;
- ▶ Are national and community child protection mechanisms sufficient to:
  - Monitor the security and well-being of stateless boys and girls?
  - Effectively respond to child protection risks and incidents?
  - Provide appropriate follow-up and support to children and families?
  - Include assistance to children with mental and/or physical disabilities?
- ▶ What is the minimum age for work?
- ▶ Are stateless boys and girls compelled to perform work that is hazardous, interferes with their education or is otherwise harmful to the health or development?
  - What measures are in place to minimize and address these risks?
  - What support does the community indicate it needs to further address this?
- ▶ Do stateless girls and boys enjoy their right to rest and leisure?
  - Do they have access to recreational activities and sport facilities?
  - Are boys and girls involved in the development of programmes that benefit them?

### 4.4 Freedom of movement, including right to return

- ▶ What law or regulation governs the movement of stateless persons?
  - Which authority administers it?
- ▶ Does it restrict freedom to move within the territory and/or to choose the place of residence? If so;
  - What are the restrictions?
  - Do they apply to other non-citizens?
  - Are they necessary to protect national security or public order?
- ▶ Do stateless persons encounter any formal or practical obstacles to free movement or choice of residence within the territory including:
  - Risks of harassment and discrimination by authorities or other actors?
  - Documentation that is difficult for stateless persons to obtain?
  - Risks of detention and/or expulsion?

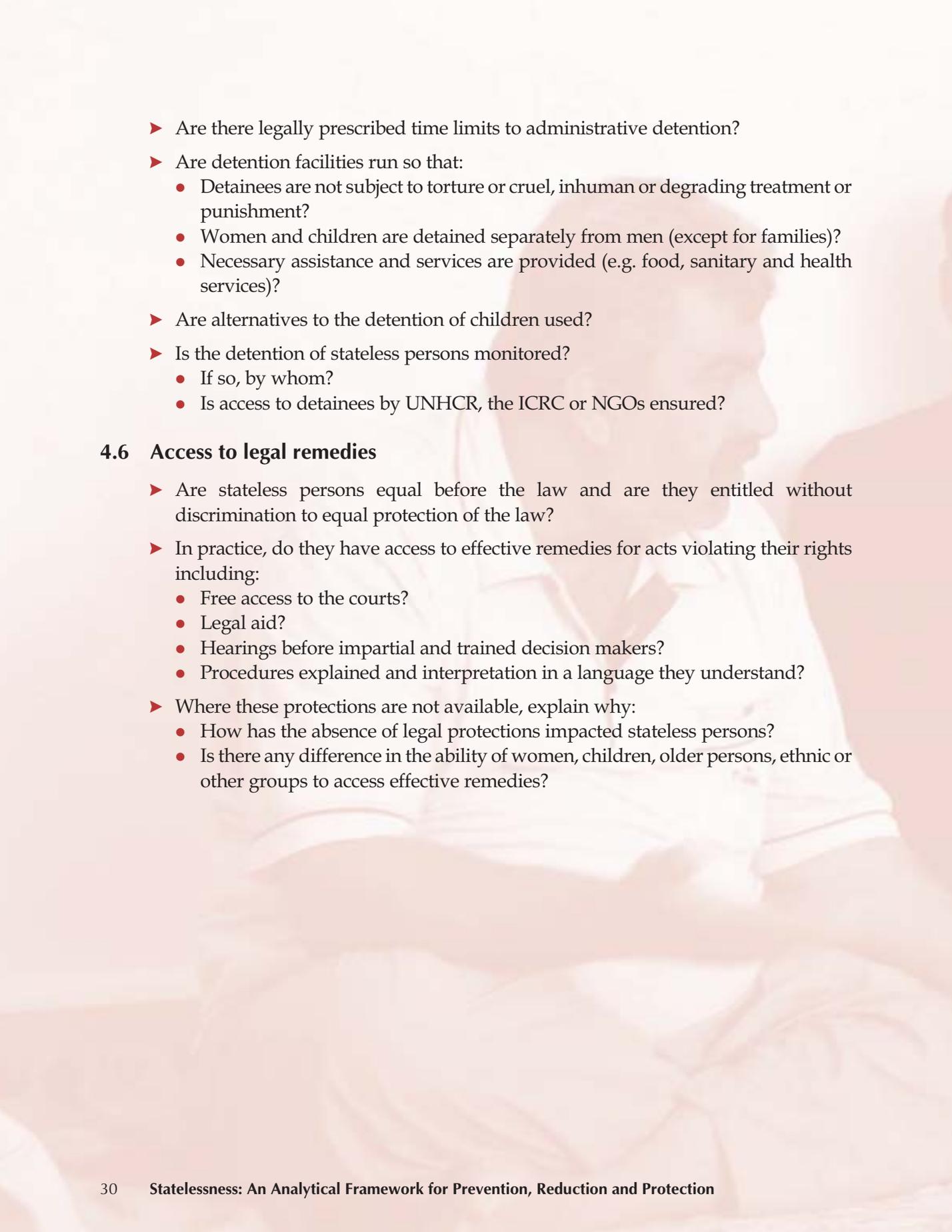
- ▶ What are the consequences of restricted movement (e.g. access to employment, land, markets) and do they impact differently on women, men and/or different age groups?
- ▶ Is advocacy for freedom of movement of stateless persons undertaken?
- ▶ Are stateless persons who habitually resided in the State able to return from abroad?
  - What are the restrictions and how are they applied?
  - Is family unity taken into account in addressing such cases?

## 4.5 Detention

- ▶ Are stateless persons detained on grounds of irregular residence, lack of identity documents or for other reasons relating to their situation of statelessness?
  - If so, by which authorities or actors?
  - What are the most common reasons for detention?
    - Are people detained for prolonged periods solely because they cannot be returned to their country of nationality (for *de facto* stateless persons) or former habitual residence (if they are *de jure* stateless) because that country will not accept them back or provide them with a passport or other assistance?
  - Where are detainees held (include international zones at border points, and administrative detention facilities)?
  - Is there reliable data on the number and reasons for detention? Is it disaggregated by gender and age?
  - How and to whom are these incidents reported?
- ▶ Are stateless persons who are detained promptly:
  - Informed of the reason of arrest in a language that they understand?
  - Brought before a judicial authority for review?
  - Permitted to correspond and to receive visits?
  - Provided access to a lawyer and granted free legal assistance?

### ExCom Conclusion No. 106 para. (w)

*Calls on States not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law and also calls on States Parties to the 1954 Convention relating to the Status of Stateless Persons to fully implement its provisions;*

- 
- ▶ Are there legally prescribed time limits to administrative detention?
  - ▶ Are detention facilities run so that:
    - Detainees are not subject to torture or cruel, inhuman or degrading treatment or punishment?
    - Women and children are detained separately from men (except for families)?
    - Necessary assistance and services are provided (e.g. food, sanitary and health services)?
  - ▶ Are alternatives to the detention of children used?
  - ▶ Is the detention of stateless persons monitored?
    - If so, by whom?
    - Is access to detainees by UNHCR, the ICRC or NGOs ensured?

#### **4.6 Access to legal remedies**

- ▶ Are stateless persons equal before the law and are they entitled without discrimination to equal protection of the law?
- ▶ In practice, do they have access to effective remedies for acts violating their rights including:
  - Free access to the courts?
  - Legal aid?
  - Hearings before impartial and trained decision makers?
  - Procedures explained and interpretation in a language they understand?
- ▶ Where these protections are not available, explain why:
  - How has the absence of legal protections impacted stateless persons?
  - Is there any difference in the ability of women, children, older persons, ethnic or other groups to access effective remedies?

## 4.7 Expulsion

- ▶ Are stateless persons, including those without a regularized status, protected against expulsion? If so,
  - On what grounds may stateless persons be expelled and what are the circumstances of expulsion?
  - Are decisions based on law?
  - Are they taken by a competent authority?
  - Do they respect due process including the right of the individual to present information on the case, to appeal and to be represented by legal counsel?

## 4.8 Effects of armed conflict

- ▶ Are stateless persons disproportionately affected by the effects of armed conflict when compared to citizens and other non-citizens?
- ▶ Are stateless persons at risk of displacement?
  - If so, have preventive steps been taken by the authorities to minimize this risk?

A child at school in Sri Lanka's Hill Country. Hundreds of thousands of formerly stateless Hill Country Tamils are better integrated in Sri Lankan society following a citizenship campaign in 2003.



## 5. Basic Needs and Essential Services



*In addition to security from violence, protection involves safeguarding other fundamental rights. This includes access to adequate housing, clean water and sanitation, sufficient food to maintain good health, primary health care, and education.*

### **Preamble of the 1954 Convention relating to the Status of Stateless Persons**

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

## **5.1 Food security and nutrition**

- ▶ Do stateless persons have physical and economic access to food or means for its procurement? If not,
  - What problems do communities report relating to access to food?
  - What do they suggest to overcome these problems?
  - Do stateless persons have access to public assistance in meeting food and nutritional needs on an equal basis to citizens?

## **5.2 Water and sanitation**

- ▶ Do stateless persons have access to potable water for drinking, cooking, sanitation and health services on an equal basis to citizens?
- ▶ Is scarcity of water, or access to water a concern for the stateless community, and/or the host community? If so,
  - What is being done to resolve the problems?

### 5.3 Shelter

- ▶ Do stateless persons have access to housing that provides:
  - Physical protection against the elements, including adequate heating?
  - Sufficient space for basic household activities?
  - Essential non-food items, including fuel for cooking?
  - Family unity and privacy?
  - Reasonable proximity to essential services?
  - Accommodation that takes into account individual circumstances (e.g. single women, women heads of household, older single persons, grandparents and persons with disabilities)?
  - Recreational space available for children?
- ▶ Do stateless persons face obstacles in securing adequate housing? If so,
  - Are these obstacles greater than those faced by citizens and other non-nationals?
- ▶ Are stateless persons included in social housing policies and programmes?
- ▶ What proportion of stateless persons reside in informal housing or settlements?
  - Are stateless persons subject to forced evictions?
  - If so, are these unlawful, arbitrary or otherwise discriminatory?

#### Preamble of ExCom Conclusion No. 106

Expressing concern at the serious and precarious conditions faced by many stateless persons, which can include the absence of a legal identity and non-enjoyment of civil, political, economic, social and cultural rights as a result of non-access to education; limited freedom of movement; situations of prolonged detention; inability to seek employment; non-access to property ownership; non-access to basic health care,

### 5.4 Basic domestic and hygiene items

- ▶ Do stateless persons have access to public assistance in meeting basic clothing, domestic and hygiene needs on an equal basis to citizens?
  - Does the lack of adequate clothing and/or other personal items lead to protection risks (e.g. harassment, impeded access to education, impeded access to health services)?

## 5.5 Healthcare

- ▶ Do stateless men, women, boys and girls have access to public primary curative and preventative health care services on an equal basis to citizens including:
  - Emergency services?
  - Psychological services?
  - Reproductive health services and family planning?
  - Immunizations?
  - Treatment for chronic medical conditions?
  - Post-rape medical care and treatment (prophylaxis for sexually transmitted infections, emergency contraceptives within 120 hours of incident and HIV post exposure prophylaxis within 72 hours after incident)?
- ▶ Are there obstacles to accessing health services (e.g. insufficient number of care providers overall and an insufficient number of female staff, sub-standard care, fees for services, language barriers, documentation requirements, discrimination)?
  - Are health services equally available to stateless women and men?

## 5.6 HIV / AIDS

- ▶ Do stateless men, women, boys and girls living with or concerned about HIV/AIDS have access to:
  - Voluntary HIV/AIDS testing and counselling programmes on a non-discriminatory basis?
  - National health care services and treatment protocols (including anti-retroviral treatment; provision of condoms and training) on an equal basis with citizens?

## 5.7 Primary and secondary education

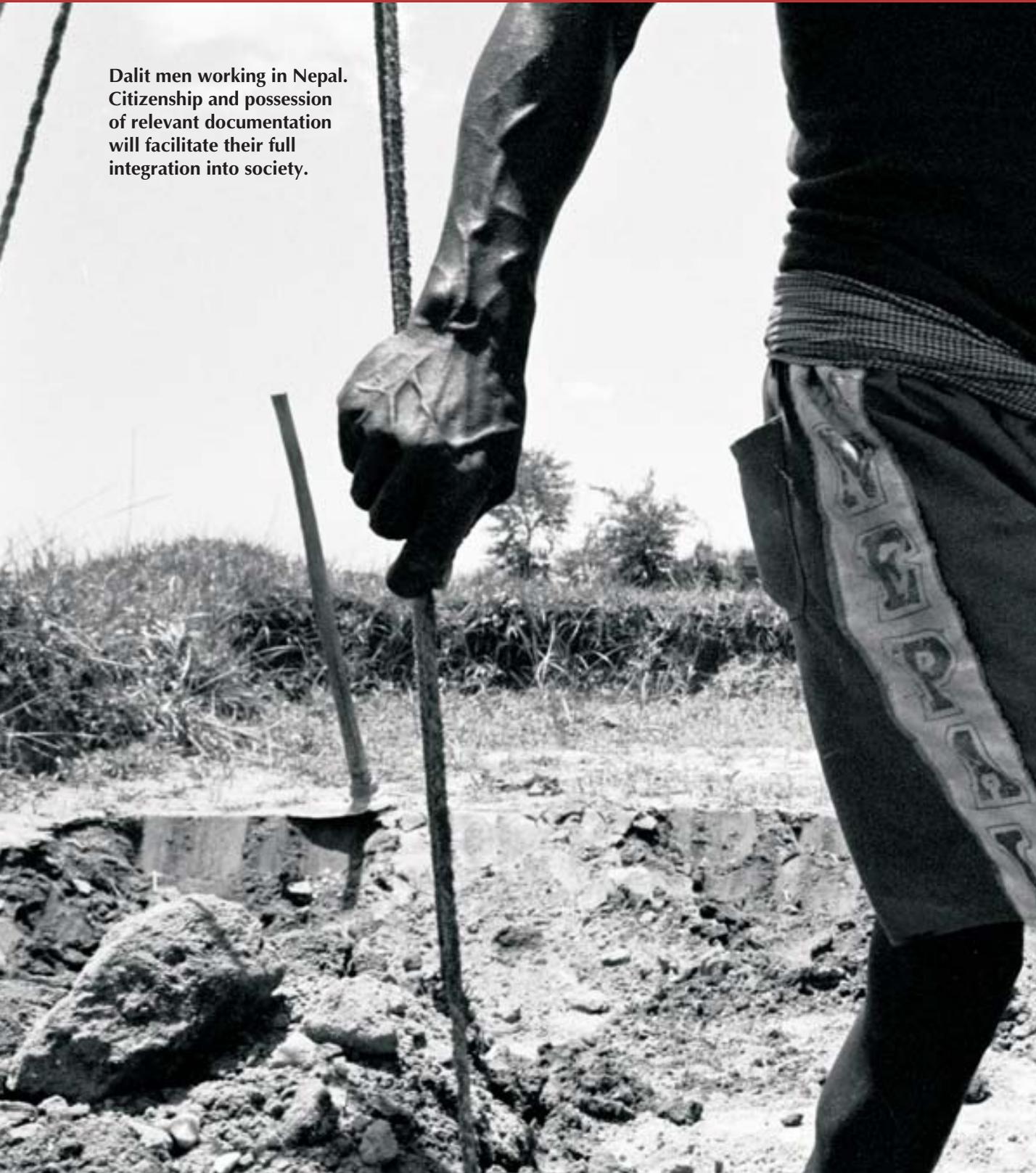
- ▶ Do stateless girls and boys have access to free primary education on an equal basis with citizens?
  - Is it compulsory?
- ▶ Is secondary education in different forms, including technical and vocational, generally available and accessible to stateless persons?
  - If not, why not?
- ▶ What is the percentage of stateless children between 5-17 years of age that are enrolled in primary and lower secondary education?
  - What percentage of stateless children successfully completed the school year?
  - Are girls disproportionately represented in drop-out rates?

- ▶ Do stateless children encounter any formal or practical obstacles to school enrolment and/or completion including:
  - Lack of materials such as uniforms, clothing, school supplies; fees?
  - Risks en route to school and/or risks of harassment and violence in the schools by staff or other students?
  - Documentation requirements that are difficult for stateless girls and boys to satisfy?
  - Language?
  - Quality of teaching, class size? and/ or
  - Lack of community support for education, language difficulties?
- ▶ How do these obstacles impact on girls and boys?

### **5.8 Higher education, language and vocational training**

- ▶ Do stateless persons have access to higher education, language and vocational training?
  - Are such opportunities equally available to men, women and youth?
- ▶ Is there a demonstrable need for language training of stateless persons to enable them to communicate in the language of the country of habitual residence?
  - Who offers such courses?
  - Are there obstacles to accessing language training?

**Dalit men working in Nepal.  
Citizenship and possession  
of relevant documentation  
will facilitate their full  
integration into society.**



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



*Community participation is an important protection principle, for it helps to enable stateless persons to live constructive and dignified lives, while enhancing their social and economic integration and reducing their overall vulnerability to protection risks.*

## **6.1 Rights and responsibilities**

- ▶ Is information provided to stateless persons on their rights and responsibilities in a form and language they can understand? If so,
  - Who provides such information and how is it disseminated?
  - Are there measures to ensure it is received by women, children and the most marginalized?
- ▶ Do stateless communities take part in developing and communicating the information?

## **6.2 Participatory assessment and community mobilization**

- ▶ How do stateless persons participate in the planning and management of services in their local community?
  - Is there regular, structured dialogue with stateless men, women, boys and girls of diverse ages and backgrounds to hear their views and proposed solutions?
  - Are the findings incorporated into planning processes? If so, how?
  - Are women and men (including adolescent girls and boys) equally involved in making decisions?
- ▶ Are leaders and associations recognized by the stateless community, local authorities and other actors as legitimate interlocutors?
- ▶ Do stateless persons have the right to form and join non-political and non-profit making organizations on an equal basis to other non-citizens?
- ▶ Do national laws allow stateless persons to freely practice their own religion and cultural practices without fear of discrimination?
  - Are they able to establish places of worship or access facilities where they can freely practice their religion?

### 6.3 Self-reliance and livelihoods

- ▶ Have any studies been done on the:
  - Socio-economic profile of stateless persons?
  - Types of work and employment opportunities that exist for them?
  - Skills training and other support needed to seize such opportunities?
- ▶ Do local livelihoods strategies include stateless persons?
  - Do they take into account age, gender and diversity? (e.g. address the needs of specific groups such as single women, women heads of household, older single persons, youth, and persons with disabilities?)
- ▶ What problems do stateless communities report regarding participation in livelihood/self-reliance strategies?
  - What do they suggest to overcome these problems?

### 6.4 Trade and self-employment

- ▶ Are stateless persons able to lawfully engage in trade and self-employment?
  - If not, why not?
  - What restrictions are applicable and do they apply to citizens and other non-citizens?
  - What are the consequences of such restrictions?
- ▶ Do stateless persons have access to programmes supporting small businesses (e.g. grants, loans, business development services, technical assistance)?
  - If not, why not?
  - If so, do they benefit women and men equally?
- ▶ Do stateless persons have access to productive arable land and markets?
  - If not, why not?

#### ExCom Conclusion No. 106 para. (p)

Encourages States, where appropriate and while taking note of the United Nations General Assembly Resolution 60/129 of 2005, to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies;

## 6.5 Wage earning employment

- ▶ Are stateless persons permitted to seek and enter into wage earning employment?
  - If restrictions are applied, what are they and what are the reasons for their imposition?
  - Are they imposed on other non-citizens?
  - Are there other barriers that prevent stateless persons from enjoying employment rights (e.g. work permits, identity/residence cards, quotas, freedom of movement)?
- ▶ What are the consequences of such restrictions for stateless persons?

## 6.6 Social security and just and favourable conditions of work

- ▶ Do stateless persons benefit from laws and or regulations governing social security (e.g. state benefits such as unemployment insurance, old age and disability benefits) and employment standards (e.g. remuneration, hours of work, health and safety)?
  - If so, do they receive the same treatment as citizens?
  - If not, what are the consequences for them? Is the impact different for certain groups on the basis of age, sex, or other category?

## 6.7 Right to own property

- ▶ Do stateless persons have the right to acquire and to own movable and immovable property?
  - If restrictions apply, are they the same as those for other non-citizens?
  - What are the consequences of such restrictions?
  - Are women, older persons, or other groups disproportionately affected?
  - If stateless persons do not enjoy this right, is there opposition to acquisition of nationality by stateless persons owing to fear that they will compete for property with citizens or seek restitution of property which is now controlled by citizens.
- ▶ Do stateless persons have to pay higher property taxes or charges on their property than citizens?
- ▶ Where deprivation of nationality has occurred, has this led to confiscation or other loss of property?
  - Are there mechanisms for restitution of property in such cases?

A girl from the Bihari/Urdu-speaking population of Bangladesh. This protracted situation of statelessness was recently resolved following confirmation of their Bangladeshi nationality and registration to vote.



# Annexes



# Selective Authoritative Sources and Guidance

*As human rights law is constantly evolving, and this list is selective only, readers are advised to check for new developments. RefWorld, published by the UNHCR is available on the Internet at <http://www.refworld.org>. RefWorld is a valuable resource for comprehensive information on statelessness and human rights.*

## 1. Favourable Protection Environment

### 1.1 Demographic profile

- Practical Guide to the Systematic Use of Standards and Indicators in UNHCR Operations, UNHCR, 2006
- UNHCR Manual, UNHCR, 2005
- UNHCR Handbook for Registration, UNHCR, 2003, in particular section 8.3.4
- Statistical Information Reports published annually by UNHCR on individual countries, available on <http://www.unhcr.org>

### 1.2 Identification of statelessness

#### **ExCom Conclusion No. 106 (LVII) – 2006, para. (b)**

*Calls on UNHCR to continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality residing in their territory, in cooperation with other United Nations agencies, in particular UNICEF and UNFPA as well as DPA, OHCHR and UNDP within the framework of national programmes, which may include, as appropriate, processes linked to birth registration and updating of population data;*

*See also*

- ExCom Conclusions:
  - No. 74 (XLV) – 1994, para. (ee)
  - No. 78 (XLVI) – 1995, para. (e)
  - No. 99 (LV) – 2004, para. (aa)
  - No. 106 (LVII) – 2006, para. (b) – (g)
- Resolution of the Asian African Legal Consultative Organization on “Legal Identity and Statelessness”, para. 4

## 1.3 International and regional instruments

### International instruments

#### **United Nations General Assembly, Resolution A/Res/61/137**

*The General Assembly, [...]*

4. ... encourages States that have not done so to give consideration to acceding to [the Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness]

*See also regarding accession to international instruments*

- ExCom Conclusions:
  - No. 50 (XXXIX) – 1988, para (l)
  - No. 65 (XLII) – 1991, para (r)
  - No. 68 (XLIII) – 1992, para (y)
  - No. 74 (XLV) – 1994, para (ee)
  - No. 78 (XLVI) – 1995, para (c)
  - No. 79 (XLVII) – 1996, para (g)
  - No. 81 (XLVIII) – 1997, para. (o)
  - No. 85 (XLIX) – 1998, para. (m)
  - No. 87 (L) – 1999, para. (s)
  - No. 90 (LII) – 2001, para. (p)
  - No. 99 (LV) – 2004, para. (z)
  - No. 106 (LVII) – 2006, para. (n) and (s)
- Resolution of the Asian-African Legal Consultative Organization on “Legal Identity and Statelessness”, para. 6

### **Stateless persons and refugees**

- Convention relating to the Status of Stateless Persons, 1954
- Convention on the Reduction of Statelessness, 1961
- Convention relating to the Status of Refugees, 1951
- Protocol to the Convention relating to the Status of Refugees, 1967

### **Human rights**

- Universal Declaration of Human Rights, 1948 (UDHR)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962
- Convention on the Nationality of Married Women, 1957
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD)
- International Covenant on Civil and Political Rights, 1966 (ICCPR)

- Optional Protocol to the International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999
- Convention on the Rights of the Child, 1989 (CRC)
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
- Convention on the Rights of Persons with Disabilities, 2006

### **International humanitarian law**

- Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949
- Protocol Additional to the Geneva Conventions of 12 August 1949 and, relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977
- Protocol Additional to the Geneva Conventions of 12 August 1949 and, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 2005

### **International criminal law**

- Rome Statute of the International Criminal Court, 1998
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol of 2003), 2003
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol of 2004), 2004

## Regional instruments

### Statelessness

- Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, 2006
- European Convention on Nationality, 1997
- Council of Europe: Committee of Ministers, Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness, 15 September 1999.
- Asian-African Legal Consultative Organization (AALCO), Resolution on the Half-Day Special Meeting on “Legal Identity and Statelessness”, 8 April 2006. RES/45/SP.I.

### Human rights

- African Charter on Human and Peoples’ Rights, 1981
- Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003
- Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights
- African Charter on the Rights and Welfare of the Child, 1990
- American Convention on Human Rights, “Pact of San Jose, Costa Rica”, 1969
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador”, 1988
- Arab Charter on Human Rights, 1994
- Cairo Declaration on Human Rights in Islam, 1990
- Covenant on the Right of the Child in Islam, 2005
- CIS Convention on Human Rights and Fundamental Freedoms, 1995
- Charter of Fundamental Rights of the European Union, 2000
- European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, and protocols to the convention

## 1.4 National legal framework

### **United Nations General Assembly, Resolution A/Res/61/137**

*7. Emphasizes that prevention and reduction of statelessness are primarily the responsibility of States, in appropriate cooperation with the international community;*

### **United Nations General Assembly, Resolution A/Res/50/152**

*16. Calls upon States to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions that permit the renunciation of a nationality without the prior possession or acquisition of another nationality, while at the same time recognizing the right of States to establish laws governing the acquisition, renunciation or loss of nationality.*

### **ExCom Conclusion No. 106 (LVII) – 2006, para. (i)**

*Encourages States to consider examining their nationality laws and other relevant legislation with a view to adopting and implementing safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality; and requests UNHCR to continue to provide technical advice in this regard;*

#### ***See also***

- United Nations General Assembly Resolutions:
  - UNGA A/RES/50/152, paras. 15 – 16
  - UNGA A/RES/49/169, para. 20
- ExCom Conclusions:
  - No. 50 (XXXIX) – 1988, para (l)
  - No. 65 (XLII) – 1991, para (r)
  - No. 68 (XLIII) – 1992, para (y)
  - No. 78 (XLVI) – 1995, para (b)
  - No. 85 (XLIX) – 1998, para. (m)
  - No. 99 (LV) – 2004, para. (z)
  - No. 106 (LVII) – 2006, in particular paras. (i), (j), (k), (q) and (u)
- Resolution of the Asian-African Legal Consultative Organization on “Legal Identity and Statelessness”, para. 3

## **1.5 Definition of a Stateless Person**

### **1954 Convention, Article 1**

*1. For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.*

### **1961 Convention, Final Act**

*The Conference recommends that persons who are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality.*

## 1.7 Partnerships

### **ExCom Conclusion No. 106 (LVII) – 2006, para. (a)**

*Urges UNHCR, in cooperation with governments, other United Nations and international as well as relevant regional and non-governmental organizations, to strengthen its efforts in this domain by pursuing targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons;*

#### **See also**

- ExCom Conclusions:
  - No. 78 (XLVI) – 1995, para. (d)
  - No. 79 (XLVII) – 1996, para. (n)
  - No. 81 (XLVIII) – 1997, para. (o)
  - No. 90 (LII) – 2001, para. (o) and (q)
  - No. 95 (LIV) – 2003, para. (v) and (y)
  - No. 99 (LV) – 2004, para. (bb)
  - No. 102 (LVI) – 2005, para. (y)
  - No. 106 (LVII) – 2006, para. (a),(b), (h), (o) and (v)

## 1.10 Public attitudes towards stateless persons

### **UDHR, Article 2**

*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

#### **See also**

- ICCPR, Articles 2, 4, 20(2), 26 and Human Rights Committee General Comments No. 15 (The position of aliens under the Covenant), 1986, paras. 1 – 3, General Comment No. 18 (Non-discrimination), 1989, and No. 31 (The nature of the general legal obligation imposed on States parties), 2004, para. 10
- CEDAW, Article 2
- ICERD, Articles 2, 4 and CERD General Recommendation No. 30: Discrimination Against Non Citizens, 2004
- CRC, Article 2
- 1954 Convention, preamble
- American Convention on Human Rights, Article 1

## 2. Prevention and Reduction of Statelessness

### **Universal Declaration of Human Rights, Article 15**

1. *Everyone has the right to a nationality.*
2. *No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

### **1961 Convention, preamble**

*The Contracting States ... Considering it desirable to reduce statelessness by international agreement*

### **Prevention of Statelessness**

#### **2.2 Acquisition of citizenship**

### **Convention on the Rights of the Child, Article 7**

1. *The child ...shall have ... the right to acquire a nationality...*
2. *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

### **1961 Convention**

#### *Article 1*

1. *A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. ...*

#### *Article 2*

*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 parents possessing the nationality of that State.*

#### *Article 4*

1. *A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. ...*

### **African Charter on the Rights and Welfare of the Child, Article 6(3)**

*Every child has the right to acquire a nationality.*

### **American Convention on Human Rights, Article 20(1), (2)**

1. *Every person has the right to a nationality.*
2. *Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.*

## **CIS Convention on Fundamental Rights and Freedoms, Article 24**

*1. Everyone shall have the right to citizenship.*

## **European Convention on Nationality, Article 6(1), (2)**

*1. Each State Party shall provide in its internal law for its nationality to be acquired ex lege by the following persons:*

*a) children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law;*

*b) foundlings found in its territory who would otherwise be stateless.*

*2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality....*

### **See also**

- International Covenant on Civil and Political Rights, Article 24(3)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 29
- Convention on the Rights of Persons with Disabilities, Article 18
- 1961 Convention, Articles 1 – 4
- American Declaration of the Rights and Duties of Man, Article XIX
- Human Rights Committee General Comment No. 17 (Article 24 (Rights of the child)), 1989, para. 8
- ExCom Conclusion No. 106 (LVII) – 2006, para. (q) and (r)

## **2.3 Other gaps in citizenship law leading to statelessness**

### **ExCom Conclusion No. 106 (LVII) – 2006, para. (j)**

*Notes that statelessness may arise as a result of restrictions applied to parents in passing on nationality to their children; denial of a woman's ability to pass on nationality; renunciation without having secured another nationality; automatic loss of citizenship from prolonged residence abroad; deprivation of nationality owing to failure to perform military or alternative civil service; loss of nationality due to a person's marriage to an alien or due to a change in nationality of a spouse during marriage; and deprivation of nationality resulting from discriminatory practices; and requests UNHCR to continue to provide technical advice in this regard;*

### *See also*

- Convention on the Reduction of Statelessness, Articles 5 – 9
- Convention on the Elimination of All Forms of Discrimination Against Women, Article 9
- Convention on the Nationality of Married Women, Articles 1 – 3
- International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (d) (iii)
- European Convention on Nationality, Article 7 – 9
- Human Rights Committee General Comment No. 28 (Article 3 (The equality of rights between men and women)), 2000, para. 25
- Human Rights Committee General Comment No. 19 (Article 23 (The family)), 1990, para. 7
- CERD General Recommendation No. 27: Discrimination Against Roma, 2000, para. 4
- Human Rights Council, Resolution A/HRC/7/L.27 on Human Rights and Arbitrary Deprivation of Nationality, 25 March 2008
- UN Commission on Human Rights, Resolution 2005/45 on Human Rights and Arbitrary Deprivation of Nationality, 19 April 2005
- Council of Europe: Committee of Ministers, Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness
- ExCom Conclusions:
  - No. 106 (LVII) – 2006, para. (i) and (j)
  - No. 78 (XLVI) – 1995, para. b

## **2.4 Administrative procedures that may lead to statelessness**

### **Vienna Convention on the Law of Treaties, 1969, Articles 26 and 31(1)**

#### *Article 26*

*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

#### *Article 31*

*A treaty shall be interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

*See also*

- CERD General Recommendation No. 30: Discrimination against Non Citizens, 2004, paras. 14 – 15.

## **2.5 Birth registration**

### **Convention on the Rights of the Child, Article 7(1)**

*The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

*See also*

- International Covenant on Civil and Political Rights, Article 24(2)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 29
- Convention on the Rights of Persons with Disabilities, Article 18(2)
- African Charter on the Rights and Welfare of the Child, Article 6(2)
- Covenant on the Rights of the Child in Islam, Article 7
- Human Rights Committee General Comment No. 17 (Article 24 (Rights of the child)), 1989, para. 7
- ExCom Conclusions:
  - No. 85 (XLIX) – 1998, para. (m)
  - No. 90 (LII) – 2001, para. (r)
  - No. 95 (LIV) – 2003, para. (x)
  - No. 106 (LVII) – 2006, para. (h)

## **2.6 Prevention of statelessness in the migration context**

ExCom Conclusion No. 96 (LIV) – 2003, para. (j)

ExCom Conclusion No. 106 (LVII) – 2006, para. (l) and (m)

## **2.7 and 2.10 Preventing statelessness upon State succession and reduction of statelessness due to State succession**

### **International Law Commission, Draft Articles on Nationality of Natural Persons in relation to the Succession of States, Article 1**

*Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present draft articles.*

*See also*

- 1961 Convention, Article 10
- European Convention on Nationality, Article 18 – 20
- Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, 2006
- UN General Assembly, Nationality of natural persons in relation to the succession of States, 16 December 2004. A/RES/59/34
- International Law Commission, Draft Articles on Nationality of Natural Persons in relation to the Succession of States with Commentaries
- CERD General Recommendation No. 30: Discrimination Against Non Citizens, 2004, para. 17
- ExCom Conclusion No. 106 (LVII) – 2006, para. (k)

## 2.8 Voluntary return of refugees

### **UNHCR Handbook on Voluntary Repatriation: International Protection, UNHCR, 1996**

*Where refugees have lost their nationality, the country of origin should arrange for its restoration as well as for its granting to children born outside the territory and, as appropriate, to non-national spouses.*

### **ICCPR, Article 12(4)**

*No one shall be arbitrarily deprived of the right to enter his own country.*

### **ExCom Conclusion No. 101 (LV) of 2004 on Legal Safety Issues, para. (l)**

*Notes also the importance of providing under national law for the recognition of the civil status of returning refugees and changes thereto, including as a result of births, deaths, adoptions, marriage and divorce, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere, taking into account the special situation of returning refugee women who may not have documentation proving their civil status or who may face difficulties securing recognition of documentation issued by the authorities of the country of asylum;*

*See also*

- UNHCR Statute, Articles 8-9
- Cartagena Declaration on Refugees, Articles II(f-g, l, n-p), III(12)
- Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 5
- UDHR, Article 13(2)
- ICERD, Article 5(d)(ii)

- CRC, Article 10(2) and General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 84-88
- Human Rights Committee General Comment No. 27 (Article 12 (Freedom of movement)), 1999, paras. 19 and 20
- ExCom Conclusions:
  - No. 101 (LV) – 2004
  - No. 69 (XLIII) – 1991
  - No. 65 (XLII) – 1991, para. (q)
  - No. 56 (XL) – 1989
  - No. 40 (XXXVI) – 1985
  - No. 18 (XXX) – 1980
- Agenda for Protection Goal 5, Objective 2: Improved conditions for voluntary repatriation
- Agenda for Protection Goal 5, Objective 3: Strengthened cooperation to make repatriation sustainable
- Voluntary Repatriation, Global Consultations on International Protection, EC/GC/02/5, 25 April 2002

## 2.9 Reduction of statelessness

### **1954 Convention, Article 32**

*The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*

### **European Convention on Nationality, Article 6(4)**

*Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons: ...*

*g) stateless persons and recognised refugees lawfully and habitually resident on its territory.*

### **CERD General Recommendation No. 30: Discrimination against Non Citizens, 2004, para. 13**

*13. Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;*

*See also*

- ExCom Conclusions, in particular on protracted situations of statelessness  
No. 99 (LV) – 2004, para. (bb)  
No. 102 (LVI) – 2005, para. (y)  
No. 106 (LVII) – 2006, paras. (n) – (r), (u)
- CERD General Recommendation No. 30: Discrimination against Non Citizens, 2004, paras. 13 and 16

## **2.11 International resettlement of stateless persons**

**ExCom Conclusion No. 95 (LIV) – 2003, para. (v)**

*Encourages States to co-operate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person's situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious;*

*See also*

- Resettlement Handbook, UNHCR, 2004
- CRC General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 92-94

## **2.12 Exercise of nationality in practice**

See non-discrimination provisions referred to in section 1.9

### 3. Fair Protection Processes and Documentation

#### 3.1 Procedures for determination of statelessness status

**ExCom Conclusion No. 96 (LIV) – 2003, para. (h)**

*...urges States to take steps to avoid cases of statelessness as well as to adopt measures leading to the grant of a legal status to stateless persons;*

*See also*

- ExCom Conclusions:  
No. 90 (LII) – 2001, para. (s)  
No. 106 (LVII) – 2006, para. (t)

#### 3.2 Fair and efficient status determination

**ICCPR, Article 14**

*In the determination of ... his rights and obligations ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

*See also*

- UDHR, Article 10
- CRC, Article 22(1) and General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 33-38
- American Convention on Human Rights, Article 8(1)
- European Convention on Nationality, Article 10 – 13
- ICCPR General Comment No. 32 (Article 14: Right to equality before courts and tribunals and to a fair trial), 2007, in particular para. 9
- UNHCR Guidelines on Formal Determination of the Best Interests of the Child, UNHCR, May 2006 (provisional release)
- ExCom Conclusion No. 106 (LVII) – 2006, para. (l)

#### 3.3 Residence status

- ExCom Conclusions:  
No. 96 (LIV) – 2003, para. (h)  
No. 106 (LVII) – 2006, para. (t)

### 3.4 Individual documentation

#### 1954 Convention, Article 27

*The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.*

#### *See also*

- CRC, Articles 7, 8
- ICCPR, Article 24(2)
- Resolution of the Asian-African Legal Consultative Organization on “Legal Identity and Statelessness”, para. 4
- UNHCR Handbook for Registration: Procedures and Standards for Registration, Population Data Management and Documentation, UNHCR, 2003
- Practical Guide to the Systematic Use of Standards and Indicators in UNHCR Operations, UNHCR, 2006
- ExCom Conclusions:
  - No. 90 (LII) – 2001, para. (r) and (s)
  - No. 95 (LIV) – 2003, para. (x)
  - No. 106 (LVII) – 2006, para. (h), (m)

### 3.5 Civil documentation

#### CRC, Article 7(1)

1. *The child shall be registered immediately after birth ...*

#### *See also*

- ICCPR, Article 24(2)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 3
- Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, Article 6
- UNHCR Handbook for Registration: Procedures and Standards for Registration, Population Data Management and Documentation, UNHCR, 2003
- ExCom Conclusions:
  - No. 90 (LII) – 2001, para. (r)
  - No. 95 (LIV) – 2003, para. (x)

### 3.6 Travel documents

#### **1954 Convention, Article 28**

*The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory...*

#### **See also**

- UNHCR Handbook for Registration: Procedures and Standards for Registration, Population Data Management and Documentation, UNHCR, 2003
- ExCom Conclusion No. 106 (LVII) – 2006, paras. (l) and (m)

## 4. Security from Violence and Exploitation

### **UNGA A/RES/50/152, preamble**

*The General Assembly, [...] Concerned that statelessness, including the inability to establish one's nationality, may result in displacement, and stressing, in this regard, that the prevention and reduction of statelessness and the protection of stateless persons are important also in the prevention of potential refugee situations,*

### **Human Rights Committee General Comment No. 15 (The position of aliens under the Covenant, 1986), para. 7**

*Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.*

### **See also**

- ExCom Conclusion No. 106 (LVII) – 2006, para. (u)
- Resolution of the Asian-African Legal Consultative Organization on “Legal Identity and Statelessness”, para. 5

## 4.1 Law enforcement

### **UDHR, Article 3**

*Everyone has the right to life, liberty and security of person.*

*See also*

- ICCPR, Article 6, 7, 9
- ICERD, Article 5(b)
- International Convention for the Protection of All Persons from Enforced Disappearance, Article 25
- Resolution of the Asian-African Legal Consultative Organization on “Legal Identity and Statelessness”, para. 4

## 4.2 Sexual and gender-based violence

### **Declaration on the Elimination of Violence against Women, Article 4(c)**

*States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: ...*

*(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.*

### **ExCom Conclusion 90 (LII) - 2001, para. (s)**

*Strongly condemning the trafficking of persons, especially women and children, which represents a grave violation of their human rights; expressing concern that many victims of trafficking are rendered effectively stateless due to an inability to establish their identity and nationality status; calls upon States to cooperate in the establishment of identity and nationality status of victims of trafficking so as to facilitate appropriate resolutions of their situations, respecting the internationally recognized human rights of the victims.*

*See also*

- CAT
- Protocol on the Rights of Women in Africa, Articles 4, 11(3)
- ExCom Conclusions:
  - No. 90 (LII) - 2001, para. (s)
  - No. 106 (LVII) - 2006, para. (l) and (m)
  - No. 107 (LVIII) - 2007, preamble
- Code of Conduct and Explanatory Notes, UNHCR, 2004

### 4.3 Protection of children

#### **ExCom Conclusion 90 (LII) – 2001, para. (r)**

*Takes note with particular concern that problems of statelessness can impact disproportionately on women and children, due to the particular operation of nationality and birth registration laws; underlines the importance, notably for women, of identity documentation and proper registration of births and marriages; and calls upon States to adopt all necessary measures in this regard;*

*See also*

- CRC, Articles 3, 6, 11, 19, 20, 32, 34-38 and General Comment No.s 5 (General measures of implementation for the Convention on the Rights of the Child), 2003, and 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 16, 23-24, 31-32, 39-40, 50-53
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- International Labour Organisation Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182)
- Inter-Agency Guiding Principles on Unaccompanied and Separated Children, International Committee of the Red Cross, UNHCR, UNICEF, International Rescue Committee, Save the Children/UK, World Vision International, 2004
- ExCom Conclusion No. 107 (LVIII) - 2007, preamble

### 4.4 Freedom of movement, including the right to return

#### **UDHR, Article 13**

*1. Everyone has the right to freedom of movement and residence within the borders of each state.*

*2. Everyone has the right to leave any country, including his own, and to return to his country.*

#### **1954 Convention, Article 26**

*Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.*

#### **Human Rights Committee General Comment No. 27 (Article 12 (Freedom of movement)), 1999, para. 20**

*The scope of “his own country” is broader than the concept “country of his nationality”. It is not limited to nationality in a formal sense, that is, nationality*

*acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence....*

**See also**

- ICCPR, Article 12(1) and 12(4) and Human Rights Committee General Comments No. 15 (The position of aliens under the Covenant), 1986, and No. 27 (Article 12 (Freedom of movement)), 1999, Articles 17 and 23
- ICERD, Article 5(d)(i)
- CEDAW, Article 15(4)
- CRC, Articles 3, 5, 9(1) and 10
- African Charter on Human and Peoples' Rights, Article 12(1)
- ECHR, Article 8
- ExCom Conclusion No. 106 (LVII) – 2006, preamble

## **4.5 Detention**

### **ICCPR, Article 9**

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

**See also**

- UDHR, Article 9
- CRC, Article 37
- CAT
- ICCPR, Article 10
- ExCom Conclusion No. 106 (LVII) – 2006, preamble, para. (w)

## **4.6 Access to legal remedies**

### **UDHR, Article 8**

*Everyone has the right to an effective remedy in the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

### **1954 Convention, Article 16**

1. *A stateless person shall have free access to the courts of law on the territory of all Contracting States.*

2. *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.*

3. *A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.*

### **1961 Convention, Article 8 para. 4**

*A Contracting State shall not exercise a power of deprivation [of nationality] permitted by paragraphs 2 or 3 of this article 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.*

#### **See also**

- UDHR, Articles 6-7, 10-11
- ICCPR, Articles 2, 13, 14, 16, 26
- CEDAW, Articles 2, 15(1) and General Recommendation No. 21, (Equality in marriage and family relations), 1994, para. 8
- ICERD, Article 5(a), 6
- European Convention on Nationality, Article 10 – 13
- American Convention on Human Rights, Article 25
- European Convention on Human Rights, Article 13
- ExCom Conclusions:
  - No. 102 (LVI) – 2005, para. (y)
  - No. 106 (LVII) – 2006, para. (v)

## **4.7 Expulsion**

### **1954 Convention, Article 31**

1. *The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.*

2. *The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. ...*

#### **See also**

- Human Rights Committee General Comment No. 27 (Article 12 (Freedom of movement)), 1999, paras. 19, 20

- Human Rights Committee General Comment No. 15 (The position of aliens under the Covenant), 1986, paras. 9 – 10

#### **4.8 Effect of Armed Conflict**

- CRC, Articles 38-39; Optional Protocol to the CRC on the involvement of children in armed conflict and General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), paras. 54-60
- Rome Statute of the International Criminal Court, 1998
- Security Council resolution 1612 on children affected by armed conflict, S/RES/1612, 26 July 2005

## 5. Basic Needs and Essential Services

### **ExCom Conclusion No. 106 (LVII) – 2006, para. (p)**

*Encourages States, where appropriate and while taking note of the United Nations General Assembly Resolution 60/129 of 2005, to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies;*

### **CERD General Recommendation No. 30: Discrimination Against Non Citizens**

*Recommends, Based on these general principles, that the States parties to the Convention, as appropriate to their specific circumstances, adopt the following measures [...] 15. Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles;*

#### **See also**

- ExCom Conclusion No. 106 (LVII) – 2006, para. (u)
- Resolution of the Asian African Legal Consultative Organization on “Legal Identity and Statelessness”, para. 5

### **5.1 and 5.2 Food security and nutrition and water and sanitation**

#### **ICESCR, Article 11**

*The States Parties to the present Convention recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food ...*

#### **CESCR General Comment No. 12 (The right to adequate food (art. 11)), 1999, para. 14**

*Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.*

#### **1954 Convention, article 23**

*The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.*

#### **See also**

- UDHR, Article 25

- ICCPR, Article 6(1); General Comment No. 6 (Article 6 (Right to life)), 1982, para. 5
- CRC, Article 27(1, 3); General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 44-45

### 5.3 Shelter

#### **ICESCR, Article 11**

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including ... adequate housing. ...*

#### **CESCR, General Comments No. 4 (The right to adequate housing), 1991, para. 13**

*For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction.*

#### **1954 Convention, Article 21**

*As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, 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*

#### **See also**

- CESCR, General Comments No. 4 (The right to adequate housing), 1991, and No. 7 (The right to adequate housing: Forced evictions, Article 11 (1)), 1997
- UDHR, Article 25(1)
- CEDAW, Articles 14(2), 16(1)(h)
- ICERD, Article 5(e)(iii)
- CRC, Article 27(3) and General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 44-45
- ExCom Conclusion No. 106 (LVII) – 2006, para. (p)

## 5.4 Basic domestic and hygiene items

### ICESCR, Article 11

*The States Parties to the present Convention recognize the right of everyone to an adequate standard of living for himself and his family, including adequate ... clothing ... and to the continuous improvement of living conditions.*

*See also*

- UDHR, Article 25(1)
- CRC, Article 27(1, 3) and General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 44-45

## 5.5 and 5.6 Healthcare and HIV/AIDS

### ICESCR, Article 12

*The Contracting States to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

### CESCR, General Comments No. 14 (The right to the highest attainable standard of health (art. 12)), 2000, para. 12

*...health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.*

*See also*

- UDHR, Article 25
- ICCPR, Article 6(1) and General Comment No. 6 (Article 6 (Right to life)) 1982, para. 5
- CEDAW, Article 12
- ICERD, Article 5(e)(iv)
- CRC, Articles 23-24 and General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 46-49
- 1954 Convention, Article 23  
ExCom Conclusion No. 106 (LVII) – 2006, preamble and para. (p)

## 5.7 Primary and secondary education

### ICESCR, Article 13

*The Contracting States to the present Covenant recognize the right of everyone to education.*

**CESCR, General Comments No. 14 (The right to education (art. 13)), 1999, para. 6**

*...education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds [see paras. 31-37 on non-discrimination]*

**1954 Convention, Article 22**

1. *The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.*

2. *The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, 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.*

**See also**

- UDHR, Article 26
- CEDAW, Article 10
- ICERD, Article 5(e)(v)
- CRC, Articles 28, 32 and General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, paras. 41-43
- UNHCR Education: Field Guidelines, UNHCR, 2003
- ExCom Conclusion No. 106 (LVII) – 2006, preamble and para. (p)

## **5.8 Higher education, language, and vocational training**

**ICESCR, Article 6(2)**

*The steps to be taken by a State Party to the present Covenant to achieve the full realization of [the right to work] shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

**CESCR, General Comments No. 14 (The right to education (art. 13)), 1999, para. 52**

*In relation to article 13 (2) (b)-(d), a State party has an immediate obligation “to take steps” (art. 2 (1)) towards the realization of secondary, higher and fundamental education for all those within its jurisdiction.*

## 1954 Convention, Article 22

[...]

*2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, 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.*

### *See also*

- UDHR, Article 26
- CEDAW, Articles 10(a), 11(1)(c), 14(2)(d)
- ICERD, Article 5(e)(v)
- CRC Article 28(1)(b), (d)
- UNHCR Education: Field Guidelines, UNHCR, 2003
- ExCom Conclusion No. 106 (LVII) – 2006, preamble and para. (p)

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

### 6.2 Participatory assessments and community mobilization

- UNHCR Tool for Participatory Assessment in Operations, UNHCR, 2005
- CRC, Article 12, General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin), 2005, para. 25
- Reinforcing a Community Development Approach, Division of Operations, EC/51/SC/CRC.6, 15 February 2001
- A Practical Guide to Empowerment, UNHCR, 2001

### 6.3 Self-reliance and livelihoods

#### UDHR, Article 23

1. *Everyone has the right to work [and] to free choice of employment ...*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity. ...*

#### CESCR, General Comments No. 14 (The Right to work (art. 6)), 2005, para. 12

*...The labour market must be open to everyone under the jurisdiction of States parties. ...*

#### *See also*

- ICESCR, Articles 2(3), 6
- ICERD, Article 5(e)(i)
- CEDAW, Articles 11, 14
- 1954 Convention, Article 17
- Handbook for Self-Reliance, UNHCR, 2005
- ExCom Conclusion No. 106 (LVII) – 2006, preamble and para. (p)

### 6.4 Trade and self-employment

#### ICESCR, Article 6(1)

*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate safeguards to protect this right.*

#### 1954 Convention, Article 18

*The Contracting States shall accord to a stateless person lawfully 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, as regards the right to*

*engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.*

**See also**

- CEDAW, Articles 11, 13-14
- ICERD, Article 5(e)(i)
- ExCom Conclusion No. 106 (LVII) – 2006, preamble and para. (p)

## **6.5 Wage earning employment**

**UDHR, Article 23**

1. *Everyone has the right to work [and] to free choice of employment ...*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity. ...*

**1954 Convention, Article 17**

1. *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, as regards the right to engage in wage-earning employment.*
2. *The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.*

**See also**

- ICESCR, Articles 2(3), 6
- ICERD, Article 5(e)(i)
- CEDAW, Articles 11, 14
- Handbook for Self-Reliance, UNHCR, 2005
- ExCom Conclusion No. 106 (LVII) – 2006, preamble and para. (p)

## **6.6 Social security and just and favourable conditions of work**

**UDHR, Article 23**

1. *Everyone has the right to ... just and favourable conditions of work and to protection against unemployment.*

**1954 Convention, Article 24**

1. *The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:*

(a) [...] remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

[...]

**See also**

- UDHR, Article 22
- ICESCR, Articles 6-7, 9
- CEDAW, Articles 11(1)(e-f), 14(2)(c)
- ICERD, Article 5(e)(iv)

## **6.7 Right to own property**

**UDHR, Article 17**

*1. Everyone has the right to own property alone as well as in association with others.*

**1954 Convention, Article 13**

*The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.*

**See also**

- CEDAW, Articles 15(1-3), 16(1)(h)
- ICERD, Article 5(d)(v)
- ExCom Conclusion No. 106 (LVII) – 2006, preamble

# Executive Committee Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons

(No. 106 (LVII) - 2006)

The Executive Committee,

Remaining deeply concerned with the persistence of statelessness problems in various regions of the world and the emergence of new situations of statelessness,

Recognizing the right of States to establish laws governing the acquisition, renunciation or loss of nationality and noting that the issue of statelessness is already under consideration by the United Nations General Assembly within the broad issue of State succession,<sup>6</sup>

Expressing concern at the serious and precarious conditions faced by many stateless persons, which can include the absence of a legal identity and non-enjoyment of civil, political, economic, social and cultural rights as a result of non-access to education; limited freedom of movement; situations of prolonged detention; inability to seek employment; non-access to property ownership; non-access to basic health care,

Noting that despite some progress, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness have only been ratified or acceded to by a limited number of States, sixty and thirty-two States respectively,

Recalling the right of every person to a nationality and the right not to be arbitrarily deprived of one's nationality as enunciated by the Universal Declaration of Human Rights and referenced in human rights instruments such as the Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child,

Recalling that all human beings are born free and equal in dignity and they are entitled to the rights and freedoms enshrined in the Universal Declaration of Human Rights, without distinction of any kind,

6 Resolution 55/153 of 2000, Nationality of natural persons in relation to the succession of States.

Reaffirming the responsibilities given to the High Commissioner by the United Nations General Assembly to contribute to the prevention and reduction of statelessness and to further the protection of stateless persons,

Recalling its Conclusion No 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons as well as Conclusions 90 (LII), 95 (LIV), 96 (LIV), and Conclusions 99 (LV) and 102 (LVI) with regard to solving protracted statelessness situations,

(a) Urges UNHCR, in cooperation with governments, other United Nations and international as well as relevant regional and non-governmental organizations, to strengthen its efforts in this domain by pursuing targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons;

### **Identification of Statelessness**

(b) Calls on UNHCR to continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality residing in their territory, in cooperation with other United Nations agencies, in particular UNICEF and UNFPA as well as DPA, OHCHR and UNDP within the framework of national programmes, which may include, as appropriate, processes linked to birth registration and updating of population data;

(c) Encourages UNHCR to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem;

(d) Encourages those States which are in possession of statistics on stateless persons or individuals with undetermined nationality to share those statistics with UNHCR and calls on UNHCR to establish a more formal, systematic methodology for information gathering, updating, and sharing;

(e) Encourages UNHCR to include in its biennial reports on activities related to stateless persons to the Executive Committee, statistics provided by States and research undertaken by academic institutions and experts, civil society and its own staff in the field on the magnitude of statelessness;

(f) Encourages UNHCR to continue to provide technical advice and operational support to States, and to promote an understanding of the problem of

statelessness, also serving to facilitate the dialogue between interested States at the global and regional levels;

(g) Takes note of the cooperation established with the Inter-Parliamentary Union (IPU) in the field of nationality and statelessness, and notes further the 2005 Nationality and Statelessness Handbook for Parliamentarians which is being used in national and regional parliaments to raise awareness and build capacity among State administrations and civil society;

## **Prevention of Statelessness**

(h) Calls on States to facilitate birth registration and issuance of birth or other appropriate certificates as a means to providing an identity to children and where necessary and when relevant, to do so with the assistance of UNHCR, UNICEF, and UNFPA;

(i) Encourages States to consider examining their nationality laws and other relevant legislation with a view to adopting and implementing safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality; and requests UNHCR to continue to provide technical advice in this regard;

(j) Notes that statelessness may arise as a result of restrictions applied to parents in passing on nationality to their children; denial of a woman's ability to pass on nationality; renunciation without having secured another nationality; automatic loss of citizenship from prolonged residence abroad; deprivation of nationality owing to failure to perform military or alternative civil service; loss of nationality due to a person's marriage to an alien or due to a change in nationality of a spouse during marriage; and deprivation of nationality resulting from discriminatory practices; and requests UNHCR to continue to provide technical advice in this regard;

(k) Stresses that in the event of State succession, the concerned States put in place appropriate measures to prevent statelessness situations from arising as a result and take action to address such situations;

(l) Encourages States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status, while fully respecting the international human rights of these individuals as well as relevant national laws;

(m) Calls upon States Parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, to respect their obligation to assist in verifying the nationality of the persons referred to them who have been smuggled or trafficked with a view to issuing travel and identity documents and facilitating the return of such persons; and, encourages other States to provide similar assistance;

### **Reduction of Statelessness**

(n) Encourages States to give consideration to acceding to the 1961 Convention on the Reduction of Statelessness and, in regard to States Parties, to consider lifting reservations;

(o) Encourages UNHCR to reinforce its cooperation with other relevant United Nations agencies to assist States to reduce statelessness, particularly in protracted statelessness situations;

(p) Encourages States, where appropriate and while taking note of the United Nations General Assembly Resolution 60/129 of 2005, to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies;

(q) Encourages States to safeguard the right of every child to acquire a nationality, particularly where the child might otherwise be stateless, bearing in mind Article 7 of the Convention on the Rights of the Child (CRC), and further encourages UNHCR to cooperate with UNICEF and UNFPA to provide technical and operational support to this end;

(r) Encourages States to actively disseminate information regarding access to citizenship, including naturalization procedures, through the organization of citizenship information campaigns with the support of UNHCR, as appropriate;

### **Protection of Stateless Persons**

(s) Encourages States to give consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons and, in regard to States Parties, to consider lifting reservations;

(t) Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons;

- (u) Encourages States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons to treat stateless persons lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation;
- (v) Encourages UNHCR to implement programmes, at the request of concerned States, which contribute to protecting and assisting stateless persons, in particular by assisting stateless persons to access legal remedies to redress their stateless situation and in this context, to work with NGOs in providing legal counselling and other assistance as appropriate;
- (w) Calls on States not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law and also calls on States Parties to the 1954 Convention relating to the Status of Stateless Persons to fully implement its provisions;
- (x) Requests UNHCR to further improve the training of its own staff and those of other United Nations agencies on issues relating to statelessness to enable UNHCR to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions.

# Extracts relating to nationality and statelessness from selected universal and regional human rights instruments

## **Universal Declaration of Human Rights (10 December 1948)**

### *Article 15*

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

## **International Covenant on Civil and Political Rights (16 December 1966)**

### *Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant. [...]

### *Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### *Article 24*

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

### *Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **Convention on the Rights of the Child (20 November 1989)**

#### *Article 7*

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### *Article 8*

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

### **Convention on the Elimination of All Forms of Discrimination Against Women (18 December 1979)**

#### *Article 9*

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

## **International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965)<sup>7</sup>**

### *Article 1*

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

### *Article 5*

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(c) Political rights, in particular the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular: (...)

(iii) The right to nationality;

7 These provisions should be interpreted taking into account the General Recommendations of the Committee on the Elimination of Racial Discrimination and in particular General Recommendation 30 on Discrimination Against Non Citizens.

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990)**

*Article 29*

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

**Convention on the Rights of Persons with Disabilities (13 December 2006)**

*Article 18*

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

**Convention on the Nationality of Married Women (29 January 1957)**

*Article 1*

Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.

*Article 2*

Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.

### *Article 3*

1. Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.
2. Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.

### **African Charter on the Rights and Welfare of the Child (11 July 1990)**

#### *Article 6: Name and Nationality*

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

### **Covenant on the Rights of the Child in Islam (June 2005)**

#### *Article 7: Identity*

A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined and to know his/her parents, all his/her relatives and foster mother.

States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

The child of unknown descent or who is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title and nationality.

## **American Declaration of the Rights and Duties of Man (2 May 1948)**

### *Article XIX*

Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.

## **American Convention on Human Rights (22 November 1969)**

### *Article 1: Obligation to Respect Rights*

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. [...]

### *Article 20: Right to Nationality*

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

## **Resolution of the Asian-African Legal Consultative Organization on "Legal Identity and Statelessness" (8 April 2006)**

3. Encourages the Member States to review nationality legislation with a view to reducing and avoiding statelessness, consistent with fundamental principles of international law;
4. Also encourages the Member States to raise awareness about the problem of statelessness and to actively cooperate in the identification of problems of statelessness paying particular regard to establishing identity and acquiring relevant documentation for women, children and families in instances of displacement, migration or trafficking;
5. Urges Member States in general and those Member States, which have the presence of stateless persons in particular, to take the necessary legal and institutional measures to ameliorate the precarious situation of stateless persons;
6. Invites Member States to consider the possibility of acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness to address the plight of stateless persons in an effective way;

# Extracts of selected General Comments and Recommendations of the United Nations Human Rights Treaty Bodies relating to nationality and statelessness

## Human Rights Committee

### ***General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004)***

10. States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. As indicated in General Comment 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.

### ***General Comment No. 28: Equality of rights Between Men and Women (Article 3 of the International Covenant on Civil and Political Rights) (2000)***

25. To fulfil their obligations under article 23, paragraph 4, States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to the custody and care of children, the children's religious and moral education, the capacity to transmit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States parties should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary. Also, States parties should ensure that no sex-based discrimination occurs in respect of the

acquisition or loss of nationality by reason of marriage, of residence rights, and of the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name. Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.

***General Comment No. 27: Freedom of movement (Art. 12 of the International Covenant on Civil and Political Rights) (1999)***

The right to enter one's own country (para. 4)

19. The right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets. It implies the right to remain in one's own country. It includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality). The right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries.

20. The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country".<sup>8</sup> The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence. Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence.

21. In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is

<sup>8</sup> See communication No. 538/1993, *Stewart v. Canada*.

intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.

***General Comment No. 19: The Family (Article 23 of the International Covenant on Civil and Political Rights) (1990)***

7. With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage. Likewise, the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name should be safeguarded.

***General Comment No. 17: The Rights of the Child (Art. 24 of the International Covenant on Civil and Political Rights) (1989)***

7. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.

8. Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born

out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

***General Comment No. 15: The Position of Aliens Under the Covenant (1986)***

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to “all individuals within its territory and subject to its jurisdiction” (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (art. 25), while article 13 applies only to aliens. However, the Committee’s experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.

[...]

9. Many reports have given insufficient information on matters relevant to article 13. That article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (arts. 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally an alien who is expelled must be allowed to leave for any country

that agrees to take him. The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (art. 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of article 13.

## **Committee on the Elimination of all Forms of Discrimination against Women**

### ***General Recommendation No. 21: Equality in Marriage and Family Relations (1994)***

6. Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

## **Committee on the Elimination of Racial Discrimination**

### ***General Recommendation No. 30: Discrimination Against Non Citizens (2004)***

#### **I. Responsibilities of States parties to the Convention**

1. Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2 provides for the possibility of differentiating between citizens and non-citizens. Article 1, paragraph 3 declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality;

2. Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

3. Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;

4. Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. Differentiation within the scope of article 1, paragraph 4, of the Convention relating to special measures is not considered discriminatory;

[...]

#### **IV. Access to citizenship**

13. Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;

14. Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;

15. Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles;

16. Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children;

17. Regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State party;

***General Recommendation No. 27: Discrimination Against Roma (2000)***

1. Measures of a general nature

[...]

4. To ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities.

