

EFFECTIVE PROTECTION OF STATELESS PERSONS IN FIVE STEPS

Strategic steps and recommendations based on the 1954 Statelessness Convention and other international legal instruments, soft law and best practices

I. INTERNATIONAL OBLIGATIONS

I.1 Accession and implementation

- States should accede to the relevant international legal instruments dealing with statelessness.
- States should implement these provisions in their national legislation and practice.

I.2 Soft law and higher standards

- As the mandatory provisions in international law are often limited in scope and do not always respond to actual protection needs, states are encouraged to implement soft law principles (including UNHCR guidelines) and recommendations for higher standards, as well as they should follow best practice examples.

II. VISIBILITY

Stateless persons are often invisible “legal ghosts”. This is a key reason why this phenomenon is frequently under-estimated and disregarded. Three key areas to improve the visibility of statelessness and support the creation of an effective protection mechanism:

II.1 Statistics

- States should produce reliable statistics on stateless asylum-seekers and stateless persons living on their territory (regardless of their legal status). Statistics and mapping initiatives should cover persons “at risk of statelessness” and persons of unknown nationality as well.

II.2 Statelessness legislation

- Specific regulation should be adopted on statelessness determination and the protection of stateless persons, preferably as a separate legal act, or as a separate chapter of asylum, immigration or nationality legislation.
- The status and rights of stateless person should be clearly regulated by this act/chapter, rather than just referring to general rules in other pieces of legislation (on social security, labour code, etc.).

II.3 Training – mainstreaming

- Statelessness should be integrated into the mainstream of both academic and practice-oriented education for lawyers, state officers, social workers, police staff, media, etc. All courses on refugee, migration, anti-discrimination and nationality law should have a component dedicated to statelessness.

III. IDENTIFICATION

An **effective and protection-oriented stateless status determination procedure** should be in place which is regulated by specific legal provisions, in order to identify stateless persons in need of protection.

III.1 Definition

- The statelessness legislation should contain the clear definition of statelessness and should consider it a protection ground *per se*.

III.2 Access to procedure

- Stateless persons should be aware of the possibility of obtaining protection and the submission of protection claims should be facilitated through:
 - Legislative measures (immigration, nationality and asylum authorities should be obliged to provide information about the statelessness-specific protection regime in certain situations, the application should be accepted in both written and oral form in any language, etc.); as well as
 - Non-legislative measures (multilingual information leaflets and on-line information, proper training for lawyers, social workers and immigration detention staff, etc.).
- A temporary legal status should be created for applicants for stateless status (until a final decision is taken) as in the case of asylum-seekers, expulsion measures should be suspended.
- Authorities should be enabled to initiate statelessness determination procedures *ex officio* in relevant cases (e.g. unaccompanied minors).

III.3 Decision-making body

- A specialised and preferably centralised unit of protection-oriented, trained, and dedicated decision-makers should be appointed to conduct stateless status determination (instead of delegating this task to immigration, alien policing, naturalisation or asylum officers with a general profile).
- Stateless determination can be performed by asylum, immigration or nationality/civil registry authorities, the adequate model should be determined on the basis of the local situation and challenges (e.g. profile of the stateless population, administrative traditions, etc.).

III.4 Procedural rules

- The statelessness legislation should set specific preferential rules for such procedures, copying diverse characteristics from refugee status determination, given the humanitarian character of the procedure, and the great difficulty in establishing such a "negative statement":
 - Lower/reasonable standard of proof (e.g. "substantiate", instead of "prove");
 - Shared burden of establishing facts in practice;
 - Mandatory hearing of applicants, access to interpreters free of charge;
 - Facilitated access to legal counselling, NGOs;
 - Supervisory role of the UNHCR;
- The circle of "countries of interest" in statelessness determination should be explicitly determined, preferably by:
 - Country of birth;
 - Country of former residence;
 - Country of nationality of parents and family members.

III.4 Review procedures

- Effective and preferably centralised judicial mechanisms should be established in order to ensure the review of statelessness determination procedures.
- The specific preferential rules stated above should apply to review procedures as well.

IV. PROTECTION STATUS

Statelessness is usually an enduring problem; therefore stateless persons should be granted a protection status that enables them to conduct a normal, dignified and productive life in the country of residence **on a long-term basis**. With a well-defined, clearly regulated stateless status (ensuring lawful residence), all rights stipulated by the 1954 Convention should be granted to stateless persons (including those foreseen for "lawfully residing" stateless persons).

- The protection status of stateless persons should include (non-exhaustive list):
 - Residence (under a scheme similar to that applied to refugees);
 - Identity document (similar to the scheme applied to refugees);
 - Unrestricted access to the labour market;
 - Unrestricted access to primary, secondary, and higher education (similar to the scheme applied to nationals);
 - Access to public relief and social care (similar to the scheme applied to nationals);
 - Travel document;
- States should consider applying the recommendations of the UNHCR and higher non-binding standards of the 1954 Convention in this respect, instead of the mere application of the binding norms of the latter instrument.

V. DURABLE SOLUTION

In contrast to the problems of refugees, statelessness has only one durable solution: the **acquisition of a nationality**. Stateless persons should therefore have facilitated access to the nationality of the country of residence. Preferable conditions may include:

- Shorter required time of residence before application for citizenship;
- Reduced or no costs;
- Exemption from examinations (language, constitutional studies, etc.), if relevant;
- Exemption from demonstrating the loss of previous nationality, if relevant;
- Flexible interpretation of material conditions (livelihood, accommodation, etc.), if relevant.
- Effective administrative and/or judicial mechanisms should be established in order to ensure the review of naturalisation procedures.