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GUIDELINES ON STATELESSNESS NO. 3:
The Status of Stateless Persons at the National Level

UNHCR issues these Guidelines pursuant to its mandate responsibilities to address statelessness. These responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6 (A) (II) of the UNHCR Statute and Article 1 (A) (2) of the 1951 Convention relating to the Status of Refugees. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, UNHCR's mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR**:** the identification, prevention and reduction of statelessness and the protection of stateless persons.

These Guidelines result from a series of expert consultations conducted in the context of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness and build in particular on the *Summary Conclusions of the Expert Meeting on Statelessness Determination Procedures and the Status of Stateless Persons*, held in Geneva, Switzerland in December 2010. These Guidelines are to be read in conjunction with the *Guidelines on Procedures for Determining whether an individual is a Stateless Person* and the *Guidelines on the Definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*. This set of Guidelines will be published in due course as a UNHCR Handbook on Statelessness.

These Guidelines are intended to provide interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff and other UN agencies involved in addressing statelessness.

I. INTRODUCTION

1. Stateless persons are generally denied enjoyment of a range of human rights and prevented from participating fully in society. The 1954 Convention relating to the Status of Stateless Persons ("1954 Convention") addresses this marginalisation by granting stateless persons a core set of rights. Its provisions, along with applicable standards of international human rights law, establish the minimum rights and the obligations of stateless persons in Contracting States of the 1954 Convention. The status of a stateless person in a Contracting State, that is the rights and obligations of stateless persons under national law, must reflect these international standards.

2. These Guidelines are aimed at assisting States to ensure that stateless persons receive such status in their jurisdictions. They address the treatment of persons determined to be stateless by a State under the 1954 Convention, the position of individuals awaiting the outcome of a statelessness determination procedure, as well as the appropriate treatment of stateless persons in States that do not have statelessness determination procedures.[1] The Guidelines also examine the position of stateless persons in countries not party to the 1954 Convention as well as those considered to be *de facto* stateless.[2]

3. The 1954 Convention has received relatively little attention and literature on State practice regarding implementation of the Convention is rare. These Guidelines nevertheless consider existing practice of States party to the 1954 Convention.

4. Statelessness arises in a variety of contexts. It occurs in migratory situations, for example among expatriates and/or their children who might lose their nationality without having acquired the nationality of a country of habitual residence. Most stateless persons, however, have never crossed borders and find themselves in their "own country". Their predicament exists *in situ*, that is in the country of their long-term residence, in many cases the country of their birth.[3] For these individuals, statelessness is often a result of discrimination on the part of authorities in framing and implementing nationality laws.

5. While all stateless persons must be treated in line with international standards, their status can vary to reflect the context in which statelessness arises. These Guidelines therefore first address the relevant international law standards and then examine separately the scope of stateless person status for individuals in a migratory context and for those in their "own country".[4]

II. INTERNATIONAL LAW AND THE STATUS OF STATELESS PERSONS

a) Parallels Between the Status of Refugees and Stateless Persons

6. The status set out for stateless persons in the 1954 Convention is modelled on that established for refugees in the 1951 Convention relating to the Status of Refugees ("1951 Convention"). Comparison of the texts of the two treaties shows that numerous provisions of the 1954 Convention were taken literally, or with minimal changes, from the corresponding provisions of the 1951 Convention. This is largely because of the shared drafting history of the 1951 and 1954 Conventions which both emerged from the work of the Ad Hoc Committee on Statelessness and Related Problems that was appointed by the Economic and Social

[1] The considerations involved in setting up and operating a determination procedure are addressed in UNHCR, *Guidelines on Procedures for Determining whether an Individual is a Stateless Person* ("*Procedures Guidelines*") available at: http://www.unhcr.org/refworld/docid/4f7dafb52.html.

[2] The term *de facto* stateless is considered further in paragraph 48 below. The definition of stateless person in the 1954 Convention is examined in UNHCR, *Guidelines on the Definition of "Stateless Person" in Article 1(1) of the 1954 Convention on the Status of Stateless Persons* ("*Definition Guidelines*") available at: http://www.unhcr.org/refworld/docid/4f4371b82.html.

[3] The phrase "own country" is taken from Article 12(4) of the International Covenant on Civil and Political Rights ("ICCPR") and its interpretation by the UN Human Rights Committee.

[4] Please see paragraph 23 below which examines the nature of an individual's right to remain in his or her "own country".

Council in 1949.[5] As a result, the *travaux préparatoires* of the 1951 Convention are particularly pertinent in interpreting the 1954 Convention.[6]

7. As with the 1951 Convention, the rights set out in the 1954 Convention are not limited to individuals who have been recognised as stateless following a determination made by a State or UNHCR. A person is stateless from the moment he or she satisfies the criteria in the 1954 Convention definition, any determination of this fact being merely declaratory. Instead, the rights afforded to an individual under the Convention are linked to the nature of that person's presence in the State, assessed in terms of degree of attachment to the host country.

8. Despite sharing the same overall approach, the 1954 Convention nevertheless contains several significant differences from the 1951 Convention. There is no prohibition against *refoulement* (Article 33, 1951 Convention) and no protection against penalties for illegal entry (Article 31, 1951 Convention). Moreover, both the right to employment and the right of association provide for a lower standard of treatment than the equivalent provisions in the 1951 Convention.[7] The scope of protection against expulsion also differs between the treaties.

9. A stateless person may simultaneously be a refugee.[8] Where this is the case, it is important that each claim is assessed and that both statelessness and refugee status are explicitly recognised. Similarly, where standards of treatment are provided for a complementary form of protection, including protection against *refoulement*, States must apply these standards to stateless individuals who qualify for that protection.[9]

b) Overview of the Standard of Treatment Required by the 1954 Convention

10. Articles 12-32 of the 1954 Convention establish a broad range of civil, economic, social and cultural rights for States to accord to stateless persons. The 1954 Convention divides these rights into the following categories:

- juridical status (including personal status, property rights, right of association, and access to courts);
- gainful employment (including wage-earning employment, self-employment, and access to the liberal professions);
- welfare (including rationing, housing, public education, public relief, labour legislation, and social security); and
- administrative measures (including administrative assistance, freedom of movement, identity papers, travel documents, fiscal charges, transfer of assets, expulsion, and naturalization).

11. The 1954 Convention establishes minimum standards. Like the 1951 Convention, the 1954 Convention requires that States provide its beneficiaries with treatment along the following scale:

- treatment which is to be afforded to stateless persons irrespective of the treatment afforded to citizens or other aliens;

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[5] Resolution 248 (IX) (B) of 8 August 1949. Although the protection of stateless persons was initially intended to be addressed in a Protocol which would apply *mutatis mutandis* most of the substantive rights set out in the Refugee Convention, it was subsequently decided to adopt a standalone instrument, the Convention relating to the Status of Stateless Persons. For additional information on the drafting history, please see Nehemiah Robinson's detailed account of the *travaux préparatoires* of the 1954 Convention, *Convention Relating to the Status of Stateless Persons: Its History and Interpretation – A Commentary*, 1955, available at: http://www.unhcr.org/refworld/pdfid/4785f03d2.pdf ("*Robinson Commentary to the 1954 Convention*").

[6] Please see in particular, paragraphs 13-20 below on the scale of rights accorded to stateless persons depending on their level of attachment to a Contracting State under the 1954 Convention.

[7] However, like the 1951 Refugee Convention, the 1954 Convention calls on States to "give sympathetic consideration to assimilating the rights of all stateless persons with regards to wage-earning employment to those of nationals…". Please see Article 17(2) of the 1954 Convention.

[8] The definitions of stateless person under the 1954 Convention and that of refugees under the 1951 Convention are not mutually exclusive. Please see the *Definition Guidelines* at paragraph 7.

[9] For further information about how refugee, complementary protection, and statelessness claims are to be assessed in statelessness determination procedures, as well as necessary confidentiality guarantees, please see paragraphs 26-30 of the *Procedures Guidelines.*

- the same treatment as nationals;
- treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances; and
- the same treatment accorded to aliens generally.

12. States have discretion to facilitate greater parity between the status of stateless persons and that of nationals and indeed may also have an obligation to do so under international human rights treaties. The responsibility placed on States to respect, protect and fulfil 1954 Convention rights is balanced by the obligation in Article 2 of the same treaty that stateless persons abide by the laws of the country in which they find themselves.

Rights on a gradual, conditional scale

13. The rights provided for in the 1954 Convention are extended to stateless persons based on their degree of attachment to the State. Some provisions are applicable to any individual who satisfies the definition of "stateless person" in the 1954 Convention and are either subject to the jurisdiction of a State party or present in its territory. Other rights, however, are conferred on stateless persons, conditional upon whether an individual is "lawfully in", "lawfully staying in" or "habitually resident" in the territory of a Contracting State. States may thus grant individuals determined to be stateless more comprehensive rights than those guaranteed to individuals awaiting a determination. Nevertheless, the latter are entitled to many of the 1954 Convention rights. This is similar to the treatment of asylum-seekers under the 1951 Convention.

14. Those rights in the 1954 Convention which are triggered when an individual is subject to the jurisdiction of a State party include personal status (Article 12), property (Article 13), access to courts (Article 16(1)), rationing (Article 20), public education (Article 22), administrative assistance (Article 25) and facilitated naturalization (Article 32). Additional rights that accrue to individuals when they are physically present in a Contracting State's territory are freedom of religion (Article 4) and the right to identity papers (Article 27).

15. The 1954 Convention foresees that stateless persons who are "lawfully in" a Contracting State (in French "*se trouvant régulièrement*"), are entitled to an additional set of rights. The "lawfully in" rights include the right to engage in self-employment (Article 18), freedom of movement within a Contracting State (Article 26) and protection from expulsion (Article 31).

16. For stateless persons to be "lawfully in" a Contracting State, their presence in the country needs to be authorized by the State. The concept encompasses both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all personal circumstances of the individual.[10] The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention,[11] applicants for statelessness status

[10] The1951 Convention also makes the enjoyment of specific rights to refugees conditional upon various degrees of attachment to the State, please see UNHCR, Note on International Protection, 7 September 1994, A/AC.96/830, at paragraph 29, available at: http://www.unhcr.org/refworld/docid/3f0a935f2.html. According to the *Robinson Commentary to the 1954 Convention*, note 5, above: "It is to be assumed that the expression 'lawfully in the country' as used in [the 1954 Convention] has the same meaning as the one in the Refugee Convention". The concept of "lawful" stay for the purposes of the 1951 Convention has been interpreted as follows and, in light of the shared drafting history of the 1951 and 1954 Conventions, also applies in interpreting the 1954 Convention: "…'lawful' normally is to be assessed against prevailing national laws and regulations; a judgment as to lawfulness should nevertheless take into account all the prevailing circumstances, including the fact that the stay in question is known and not prohibited, i.e. tolerated, because of the precarious circumstances of the person". Please see in this regard UNHCR, *"Lawfully Staying" – A Note on Interpretation*, 1988, in particular paragraph 23, available at: http://www.unhcr.org/refworld/docid/42ad93304.html. The UN Human Rights Committee has decided that an individual with an expulsion order that was not enforced, who was allowed to stay in Sweden on humanitarian grounds was "lawfully in the territory" for the purposes of enjoying the right to freedom of movement protected by Article 12 of the ICCPR. Please see *Celepli v. Sweden*, CCPR/C/51/D/456/1991 at paragraph 9.2 (26.7.1994).

[11] Please see the *Robinson Commentary to the 1954 Convention*, note 5 above, in particular in relation to Articles 15, 18 and 31, 1997, available at: http://www.unhcr.org/refworld/docid/4785f03d2.html. Given the shared drafting history

who enter into a determination procedure are therefore "lawfully in" the territory of a Contracting State.[12] By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not "lawfully in" the country.

17. The 1954 Convention grants another set of rights to stateless persons who are "lawfully staying" in a Contracting State (in French "*résidant régulièrement*"). The "lawfully staying" rights in the 1954 Convention include the right of association (Article 15), right to work (Article 17), practice of liberal professions (Article 19), access to public housing (Article 21), right to public relief (Article 23), labour and social security rights (Article 24), and travel documents (Article 28).[13]

18. The "lawfully staying" requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorised by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category.[14] It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be "lawfully staying". Individuals recognised as stateless following a determination procedure but to whom no residence permit has been issued will generally be "lawfully staying" in a Contracting State by virtue of the length of time already spent in the country awaiting a determination.

19. A final set of rights foreseen by the 1954 Convention are those to be accorded to stateless persons who are "habitually resident" or "residing" in a Contracting State. The rights accruing to those who are "habitually resident" are protection of artistic rights and intellectual property (Article 14) and rights pertaining to access to Courts, including legal assistance and assistance in posting bond or paying security for legal costs (Article 16(2)).

20. The condition that a stateless person be "habitually resident" or "residing" indicates that the person resides in a Contracting State on an on-going and stable basis. "Habitual residence" is to be understood as stable, factual residence. This covers those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of on-going residence there.

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of the 1951 and 1954 Conventions and the extent to which specific provisions of the 1954 Convention mirror those of the 1951 Convention, it is important to note the statement of the delegate of France in explaining the meaning of the term "lawfully in" as used in the text proposed by France which was later accepted by the drafting committee: "Any person in possession of a residence permit was in a regular position. In fact, the same was true of a person who was not yet in possession of a residence permit but who had applied for it and had the receipt for that application. Only those persons who had not applied, or whose application had been refused, were in an irregular position". UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Fifteenth Meeting Held at Lake Success, New York, on 27 January 1950,* 6 February 1950, E/AC.32/SR.15, available at: http://www.unhcr.org/refworld/docid/40aa1d5f2.html.

[12] Please see the *Procedures Guidelines*, which set out in paragraph 20 that statelessness determination procedures are to have suspensive effect on removal proceedings for the individual concerned for the duration of the procedure until a determination is reached. The length of time an individual would be considered as "lawfully in" a country as a result of being in a statelessness determination procedure will often be short. As established in the *Procedures Guidelines* at paragraphs 22-23, manifestly well-founded applications may only require a few months to reach a final determination, with first instance decisions generally to be issued no more than six months from the application.

[13] Since 1 April 2010, all travel documents issued by States, including travel documents for stateless persons pursuant to the 1954 Convention must be machine readable in accordance with International Civil Aviation Organization ("ICAO") standards. Please see ICAO, *Annex 9 to the Convention on International Civil Aviation, Facilitation*, July 2005 and *Document 9303, Machine Readable Travel Documents*, 2006.

[14] The concept of "stay" has been interpreted in the context of the 1951 Convention and is applicable to interpreting the 1954 Convention as follows: "'stay' means something less than durable residence, although clearly more than a transit stop". Please see paragraph 23, UNHCR, *"Lawfully Staying" – A Note on Interpretation*, 1988, available at: http://www.unhcr.org/refworld/docid/42ad93304.html.

c) International Human Rights Law

21. The status of a stateless person under national law must also reflect applicable provisions of international human rights law. The vast majority of human rights apply to all persons irrespective of nationality or immigration status, including to stateless persons.[15] Moreover, the principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status.[16] Legitimate differentiation may be permitted for groups who are in a materially different position.[17] Thus, States may explore affirmative action measures to help particularly vulnerable groups of stateless persons in their territory.

22. International human rights law supplements the protection regime set out in the 1954 Convention.[18] Whilst a number of provisions of international human rights law replicate rights found in the 1954 Convention, others provide for a higher standard of treatment or for rights not found in the Convention at all.[19]

23. Of particular importance to stateless persons is the right enshrined in Article 12(4) of the International Covenant on Civil and Political Rights ("ICCPR") to enter one's "own country". This goes beyond a right of entry to one's country of nationality.[20] It also guarantees the right of entry, and thus the right to remain, of individuals with special ties to a State. This includes, for instance, stateless persons long-established in a State as well as stateless persons who have been stripped of their nationality in violation of international law or who have been denied nationality of a State which has acquired through State succession the territory in which they habitually reside.

24. Even considering these developments in international human rights law, the 1954 Convention retains its significance as it addresses matters specific to statelessness that are not addressed elsewhere, notably the provision of identity papers and travel documents and administrative assistance to stateless persons. Moreover, the provisions of the Convention do not allow for derogation in times of public emergency unlike some human rights treaties and it

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[15] Please see Human Rights Committee, *General Comment No.15 (The Position of Aliens under the Covenant)*, 1986, available at: http://www.unhcr.org/refworld/pdfid/45139acfc.pdf, and Human Rights Committee, *General Comment No. 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant)*, 2004, available at: *http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f?Opendocument*. Please see also the UN Sub-Commission on the Promotion and Protection of Human Rights, Special Rapporteur on the rights of non-citizens, *Final Report (E/CN./Sub.2/2003/23)*, 2003, available at: http://www.unhcr.org/refworld/pdfid/3f46114c4.pdf. Please note though that full enjoyment of human rights is facilitated by the possession of a nationality, hence the need for specific protection for stateless persons in the form of the 1954 Convention.

[16] Please see, for example, Articles 2(1) and 26 of the ICCPR.

[17] Please see Human Rights Committee, *General Comment No. 18 (Non-discrimination),* 1989, at paragraph 13, available at: http://www.unhcr.org/refworld/pdfid/453883fa8.pdf. Please see also Executive Summary and paragraph 23 of UN Sub-Commission Special Rapporteur on the rights of non-citizens, *Final Report (E/CN./Sub.2/2003/23)*, 2003, above at note 15.

[18] It also provides an alternate regulatory framework in countries that have not acceded to the 1954 Convention. This is considered further in paragraph 47 below.

[19] For example, protection against arbitrary detention as found in Article 9(1) of the ICCPR. Regional human rights treaties are also pertinent.

[20] Please see Human Rights Committee, *General Comment No.27 (Freedom of Movement)*, at paragraph 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". 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".

sets out a number of standards that are more generous than their counterparts under human rights law.[21]

III. INDIVIDUALS IN A MIGRATORY CONTEXT

a) Individuals Awaiting Determination of Statelessness

25. Although the 1954 Convention does not explicitly address statelessness determination procedures, there is an implicit responsibility for States to identify stateless persons in order to accord them appropriate standards of treatment under the Convention.[22] The following paragraphs consider the appropriate status for individuals awaiting the determination of their statelessness both in countries that have established determination procedures and in those without.

26. In countries with a determination procedure, an individual awaiting a decision is entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as "lawfully in" rights.[23] Thus, his or her status must guarantee, *inter alia*, identity papers, the right to self-employment, freedom of movement and protection against expulsion.[24] As the aforementioned Convention rights are formulated almost identically to those in the 1951 Convention, it is recommended that individuals awaiting a determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered in the same State.

27. The status of those awaiting statelessness determination must also reflect applicable human rights such as protection against arbitrary detention and assistance to meet basic needs.[25] Allowing individuals awaiting statelessness determination to engage in wage-earning employment, even on a limited basis, may reduce the pressure on State resources and contributes to the dignity and self-sufficiency of the individuals concerned.

b) Individuals Determined to Be Stateless – Right of Residence

28. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.

29. It is therefore recommended that States grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interests of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.

30. If an individual recognised as stateless subsequently acquires or re-acquires the nationality of another State, for instance because of a change in its nationality laws, he or she will cease to be stateless in terms of the 1954 Convention. This may justify the cancellation of a residence permit obtained on the basis of statelessness status, although proportionality considerations in relation to acquired rights and factors arising under international human

[21] For example, protection against expulsion for persons "lawfully in" the territory is confined under Article 13 of the ICCPR to procedural safeguards, whereas Article 31 of the 1954 Convention also limits the substantive grounds on which expulsion can be justified.
[22] Please see the *Procedures Guidelines* at paragraph 1.
[23] As set out in paragraphs 15-16 above. This would also apply in States without dedicated determination procedures when an individual raises a statelessness claim in a different context.
[24] The importance of protection against expulsion for fair and efficient determination procedures is discussed in the *Procedures Guidelines* at paragraph 20. Specifically, statelessness determination procedures are to have suspensive effect on removal.
[25] Please see paragraphs 21-22 above.

rights law, such as the degree to which the individual has established a private and family life in the State, need to be taken into account.

31. Recognition of an individual as a stateless person under the 1954 Convention also triggers the "lawfully staying" rights,[26] in addition to a right to residence. Thus the right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.

32. Although the 1954 Convention does not address family unity, Contracting States are nevertheless encouraged to facilitate the reunion of those with recognised statelessness status in their territory with their spouses and dependents.[27] Indeed, some States have obligations arising under relevant international or regional human rights treaties to do so.[28]

33. The two provisions in the Convention that are restricted to individuals with "habitual residence" would not automatically flow from recognition as stateless.[29] These may be activated, though, if the individual can be considered to be living in the country on a stable basis.

c) Where Protection is Available in Another State

34. Where an individual recognised as stateless has a realistic prospect, in the near future, of obtaining protection consistent with the standards of the 1954 Convention in another State, the host State has discretion to provide a status that is more transitional in nature than that described in paragraphs 29-33 above. Separate considerations apply for those who voluntarily renounce their nationality as a matter of convenience or choice.[30]

35. In these cases, care must be taken to ensure that the criteria for determining whether an individual has a realistic prospect of obtaining protection elsewhere are narrowly construed.[31] In UNHCR's view protection can only be considered available in another country when a stateless person:

- is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality; or
- enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.

36. With respect to acquisition or reacquisition of nationality, individuals must be able to avail themselves of a procedure that is easily accessible, both physically and financially, as well as one that is simple in terms of procedural steps and evidentiary requirements. Moreover, the acquisition/reacquisition procedure must be swift and the outcome guaranteed because it is non-discretionary where prescribed requirements are met.[32]

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[26] Please see paragraphs 17-18 above.
[27] For an explanation of family unity in the context of the 1951 Convention, please see UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (reissued 2011), paragraphs 181-188, available at: http://www.unhcr.org/refworld/docid/4f33c8d92.html. Whether dependents of a stateless person would be entitled to statelessness status is subject to an inquiry into the national status of each dependent to verify qualification as a "stateless person" under the 1954 Convention. Facilitating family unity, however, could also be achieved by granting residence rights to dependents of a stateless person in the territory of a Contracting State, even where the dependents are not stateless.
[28] For more on how international human rights obligations supplement those that arise from the 1954 Convention, please see paragraphs 21-24 above.
[29] Please see paragraphs 19-20 above.
[30] Please see further paragraphs 42-43 below.
[31] Moreover, safeguards are necessary to prevent the individual being left without a legal status anywhere and to ensure that any special circumstances justifying a residence permit are properly examined.
[32] An example would be a procedure through which former nationals can reacquire their nationality by simply signing a declaration at the nearest consular authority following production of their birth certificate or cancelled/expired passport, where the competent authority is then obliged to restore nationality. Similar procedures may also involve registration or the exercise of the right of option to acquire nationality.

37. By contrast, other procedures for acquisition of nationality may not present a sufficiently reliable prospect of obtaining protection elsewhere and would therefore not justify providing merely a transitional status to stateless persons. For example, it would not suffice that the individual has access to naturalization procedures which, as a general rule, leave discretion in the hands of officials and have no guaranteed outcome. Similarly, procedures with vague requirements for the acquisition of nationality or those that would oblige an individual to be physically present in a country of former nationality where legal entry and residence are not guaranteed would also not suffice.

38. As for an individual's ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted it upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that State.[33] Permission to return to another country on a short-term basis would not suffice.

Where statelessness results from loss/deprivation or good-faith voluntary renunciation of nationality

39. In many cases an individual will cooperate in attempting to acquire or restore nationality or to make arrangements for return to a country of previous habitual residence. This might arise where an individual involuntarily renounced or lost his or her nationality. This could also arise where an individual renounced his or her former nationality consciously and in good faith with a view to acquiring another nationality. In some cases, on account of poorly drafted nationality laws such individuals must renounce their nationality in order to apply for another but are then unable to acquire the second nationality and are left stateless.

40. The best solution in such cases is reacquisition of the former nationality. Where a State determines that such individuals are stateless, but have the possibility of reacquiring their former nationality, the State would not need to provide them with a residence permit. Rather, they can be provided with some form of immigration status to allow the individuals concerned to remain briefly in the territory while making arrangements to move to the other State. Such temporary permission could be for as short a period as a few months and the rights to be enjoyed need not match those required when a residence permit is issued. Indeed, a status closer to that provided during the determination process may be justifiable.

41. States can extend temporary permission to stay where admission/readmission or reacquisition of nationality does not materialise through no fault of the individual. However, extensions can be limited in duration in order to strike a fair balance between facilitating the completion of admission/readmission or reacquisition efforts and providing a degree of certainty for the affected stateless person. If the time limit is reached and admission/readmission or reacquisition has not yet materialised despite the good faith attempts of the individual, it is then the responsibility of the Contracting State to grant the individual the status generally accorded upon recognition as a stateless person; that is, a renewable residence permit with a complement of rights, including the right to work and receive a travel document.

Where statelessness results from voluntary renunciation of nationality as a matter of convenience or choice

42. Some individuals voluntarily renounce a nationality because they do not wish to be nationals of a particular State or in the belief that this will lead to grant of a protection status in

[33] Paragraphs 20-22 of UNHCR, *Position on the return of persons not found to be in need of international protection to their countries of origin: UNHCR's Role*, 2010, available at: http://www.unhcr.org/refworld/pdfid/4cea23c62.pdf, are to be read in light of the criteria set forth in these Guidelines.

another country.[34] Re-admission to the State of former nationality, coupled with re-acquisition of that nationality, is the preferred solution in such situations. Where cooperation from the individual for readmission to another State or for reacquisition of nationality is lacking, the authorities are entitled to pursue their own discussions with the other State to secure admission of the individual concerned. In this context, other international obligations of the State of former nationality will be relevant, including those relating to prevention of statelessness upon renunciation of nationality and the right to enter one's own country.[35]

43. A Contracting State need not necessarily grant or renew permission for stay to such individuals. Nor would they be entitled to all of the rights foreseen by the 1954 Convention. Bar any other protection obstacles, involuntary return cannot be excluded in such cases, for example, where the former State of nationality is also the country of previous habitual residence and its authorities are prepared to grant permanent residence to the individual concerned.

Consideration of local ties

44. Where an individual has developed close ties with a host State as a result of long-term residence and family links, conferral of the status normally granted upon recognition as a stateless person, that is a renewable residence permit with a complement of rights, would be appropriate, even where protection may be available in another State.[36] In some cases, this approach may be required to satisfy human rights obligations such as refraining from unlawful or arbitrary interference with privacy, family or home.[37]

IV. INDIVIDUALS IN THEIR "OWN COUNTRY"

45. As noted in paragraph 23 above, certain stateless persons can be considered to be in their "own country" in the sense envisaged by Article 12(4) of the ICCPR. Such persons include individuals who are long-term, habitual residents of a State which is often their country of birth. Being in their "own country" they have a right to enter and remain there with significant implications for their status under national law. Their profound connection with the State in question, often accompanied by an absence of links with other countries, imposes a political and moral imperative on the State to facilitate their full integration into society. The fact that these people are stateless in their "own country" is often a reflection of discriminatory treatment in the framing and application of nationality laws. Some will have been denied nationality despite being born and resident solely in that State; others may have been stripped

[34] International law recognises that every individual has a right to a nationality, but this does not extend to a right for individuals to choose a specific nationality. There is widespread acceptance of automatic conferral of nationality by States based on factors outside an individual's control, such as descent, birth on the territory, or residence in the territory at the moment of State succession.

[35] Please see, in particular, Article 7(1) of the 1961 Convention on the Reduction of Statelessness and Article 12(4) of the ICCPR. In addition, friendly relations and cooperation between States based on the principle of good faith require re-admission in such circumstances. Numerous agreements between States now facilitate this by providing for re-admission of stateless persons, including former nationals and former habitual residents. UNHCR may be able to play a role in this regard, please see paragraph (j) of UNHCR Executive Committee Conclusion No. 96 (LIV) of 2003 on the return of persons found not to be in need of international protection, available at: http://www.unhcr.org/refworld/docid/3f93b1ca4.html, in which the Executive Committee:

> *"Recommends*, depending on the situation, that UNHCR complement the efforts of States in the return of persons found not to be in need of international protection by:
>
> (i) Promoting with States those principles which bear on their responsibility to accept back their nationals, as well as principles on the reduction of statelessness;
>
> (ii) Taking clear public positions on the acceptability of return of persons found not to be in need of international protection;
>
> (iii) Continuing its dialogue with States to review their citizenship legislation, particularly if it allows renunciation of nationality without at the same time ensuring that the person in question has acquired another nationality and could be used to stop or delay the return of a person to a country of nationality".

[36] This is particularly so where the link with the other State is relatively tenuous. This is to be distinguished, however, from ties that are so profound that the individual is considered to be in his or her "own country".

[37] Please see paragraphs 21-24 above.

of their nationality because of membership of a section of the community that has fallen out of political or social favour.[38]

46. The appropriate status for such individuals in their "own country" is nationality of the State in question. As set out in the *Procedures Guidelines*, in these cases the correct mechanism for determining an individual or a population group's status is one that is concerned with the restoration or conferral of nationality.[39] Recourse to a statelessness determination procedure will not generally be appropriate. If, however, individuals are expected to seek protection through such a mechanism, the status awarded on recognition shall include, at the very least, permanent residence with facilitated access to nationality.[40]

V. STATUS FOR STATELESS PERSONS NOT COVERED BY THE 1954 CONVENTION

47. Many individuals who meet the stateless person definition in the 1954 Convention live in countries that are not party to this treaty. Nevertheless, the standards in the Convention and the practice of Contracting States may prove helpful to such countries in devising and implementing strategies to address statelessness in their territories, and regulating the status of stateless persons. In particular, States which are not yet party to the Convention may take note of the practice of providing identity papers and travel documents to stateless persons, measures which have already been adopted in several other non-Contracting States. In addition, all States would need to comply with their obligations under international human rights law, such as protection against arbitrary detention (Article 9(1) of the ICCPR) and, in the case of persons stateless *in situ*, the right to enter and remain in one's "own country" (Article 12(4) of the ICCPR).[41]

48. *De facto* stateless persons also fall outside of the protection of the 1954 Convention.[42] Nevertheless, as *de facto* stateless persons are unable to return immediately to their country of nationality, providing them at the very minimum with temporary permission to stay promotes a degree of stability. Thus, States may consider giving them a status similar to that recommended above in paragraph 40 for stateless persons who have the possibility of securing protection elsewhere. In many cases an interim measure of this nature will prove sufficient as return will become possible through, for example, improved consular assistance or a change in policy with regard to consular assistance for such individuals.

49. Where the prospects of national protection appear more distant, it is recommended to enhance the status of *de facto* stateless persons through the grant of a residence permit similar to those granted to persons who are recognised as stateless pursuant to the 1954

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[38] Of relevance in this regard are the prohibition on arbitrary deprivation of nationality found, *inter alia*, in Article 15(2) of the Universal Declaration of Human Rights and the prohibition against discrimination found in international human rights law, in particular the *jus cogens* prohibition on racial discrimination. A *jus cogens* norm is a principle of customary international law considered to be peremptory in nature, that is, it takes precedence over any other obligations, whether customary or treaty in nature, is binding on all States and can only be overridden by another peremptory norm.

[39] Please see the *Procedures Guidelines* at paragraphs 6-9.

[40] Where States have created stateless populations in their territory, they may well be unwilling to introduce statelessness determination procedures or grant stateless persons the status recommended. In such cases UNHCR's efforts to secure solutions for the population in question may go beyond advocacy to technical advice and operational support for initiatives aimed at recognising the link between such individuals and the State through the grant of nationality.

[41] Please see further paragraphs 45-46 above.

[42] There is no internationally accepted definition of *de facto* statelessness, although there is an explicit reference to this concept in the Final Act of the 1961 Convention and an implicit reference in the Final Act of the 1954 Convention. According to recent efforts to define the term, *de facto* stateless persons possess a nationality, but are unable, or for valid reasons are unwilling, to avail themselves of the protection of a State of nationality. Please see further Section II.A. of United Nations High Commissioner for Refugees, *Expert Meeting on the Concept of Stateless Persons under International Law (Summary Conclusions),* 2010, which proposes the following operational definition for the term:

> "*De facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality".

The full text of the Conclusions is available at: http://www.unhcr.org/refworld/pdfid/4ca1ae002.pdf.

Convention. In general, the fact that *de facto* stateless persons have a nationality means that return to their country of nationality is the preferred durable solution. However, where the obstacles to return prove intractable, practical and humanitarian considerations point towards local solutions through naturalization as the appropriate response.