



**UNHCR**  
The UN Refugee Agency



**GOOD PRACTICE PAPERS**  
**ACTION 6**

Establishing Statelessness  
Determination Procedures for the  
Protection of Stateless Persons

July 2020

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UNHCR is publishing a series of Good Practices Papers to help States, with the support of other stakeholders, achieve the goals of its Campaign to End Statelessness within 10 Years. These goals are to:

Resolve the major situations of statelessness that exist today

Prevent the emergence of new cases of statelessness

Improve the identification and protection of stateless populations

Each Good Practices Paper corresponds to one of the 10 Actions proposed in UNHCR's *Global Action Plan to End Statelessness: 2014 – 2024* and highlights examples of how States, UNHCR and other stakeholders have addressed statelessness in a number of countries. Solutions to the problem of statelessness must be tailored to suit the particular circumstances prevalent in a country; as such, these examples are not intended to serve as a blueprint for strategies to counter statelessness everywhere. However, governments, NGOs, international organizations and UNHCR staff seeking to implement the *Global Action Plan* will be able to adapt the ideas they find in these papers to their own needs.

## Background

Action 6 of the Global Action Plan calls on States to grant protection status to stateless migrants through the establishment of statelessness determination procedures (SDPs), and facilitate their naturalization. A statelessness determination procedure serves to identify stateless persons to ensure that they enjoy the rights to which they are entitled until they acquire a nationality. For stateless populations in a non-migratory context who remain in their “own country”, often referred to as in situ populations, SDPs for the purpose of obtaining status as stateless persons are not optimal because of their long-established ties to these countries. Based on existing international standards and State practice in the area of reduction of statelessness, such ties include long-term habitual residence or residence at the time of State independence or succession. Depending on the circumstances of these populations, States are encouraged to undertake targeted nationality campaigns or nationality verification efforts rather than to establish statelessness status through use of an SDP.<sup>1</sup>

In 2014, UNHCR published its Handbook on Protection of Stateless Persons. This doctrinal tool is intended to help governments, policy makers, administrative adjudicators, the judiciary, NGOs, legal practitioners, UNHCR staff and others to interpret and apply the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) and to facilitate the identification and proper treatment of such persons.<sup>2</sup> Part Two of the Handbook covers the modalities for creating SDPs that enable States to recognize and grant protection status to stateless persons, including questions of evidence that arise in the course of such procedures.<sup>3</sup> Part Three of the Handbook discusses the status of, or minimum protection to be afforded to, stateless persons under national law.<sup>4</sup>

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1 UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, paragraph 58, available at: <http://www.refworld.org/docid/53b676aa4.html>

2 UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.htm>

3 The content of Part Two of the Handbook was first published in UNHCR, Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012, HCR/GS/12/02, (“UNHCR Procedures Guidelines”), available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html>

4 The content of Part Three of the Handbook was first published in UNHCR, Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level, 17 July 2012, HCR/GS/12/03, available at: <http://www.refworld.org/docid/5005520f2.htm>

This Good Practices Paper complements the Handbook by presenting a brief overview of the key elements of SDPs and illustrating these with good practices from selected countries that are among a growing number to have established such procedures to date. The first Good Practices Paper on establishing statelessness determination procedures was published in 2016. In this second edition, the Good Practices Paper has been expanded and updated to reflect recent developments, most notably the establishment of SDPs in an additional nine countries. The table in the Annex has been updated and provides an overview of current practice in most of the countries that have a mechanism in place to identify stateless persons. The Handbook remains UNHCR's authoritative guidance on the issue and should be disseminated and cited as such.

### **The international legal basis for the creation of Statelessness determination procedures**

States Parties to the 1954 Convention need to be able to identify stateless persons within their jurisdiction in order to provide them with appropriate treatment in compliance with the Convention. Establishing a procedure or mechanism to identify stateless persons is thus an implicit obligation of the 1954 Convention.

The 1954 Convention establishes the international legal definition of a “stateless person” but is silent on how States are to determine whether an individual is stateless.

Establishing an SDP is the most efficient means for States Parties to the 1954 Convention to identify the beneficiaries of that Convention.

## Overview of existing statelessness determination procedure

Only about twenty States worldwide have established dedicated SDPs. France has the oldest mechanism, one that has recognized and protected stateless persons since the 1950s. Italy, Hungary, Latvia and Spain followed suit some decades later. Some States have established SDPs through legislative or sub-legislative acts, while others do not provide a specific legal basis for the procedure.

There is a growing interest among States in establishing SDPs. At UNHCR's December 2011 Ministerial Meeting to commemorate the 60th and 50th anniversaries of the 1951 Convention relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness, respectively, ten States pledged to establish SDPs. These were **Australia, Belgium, Brazil, Costa Rica, Georgia, Moldova, Peru, the Philippines, Uruguay**, and the **United States of America**. **Hungary** pledged to improve its existing procedure.<sup>5</sup>

**Moldova** became the first State to fulfill its pledge, adopting an SDP at the end of 2011. The SDP is established through legislation and as one of the most detailed, serves as an example for other States to follow. In 2012, **Georgia** and the **Philippines** fulfilled their pledges to establish SDPs; they were followed by **Costa Rica** in 2016, **Brazil** in 2017 and **Uruguay** in 2018. Nine countries that did not pledge to introduce SDPs but have since done so are: the **United Kingdom** in 2013, **Kosovo** (S/RES/1244 (1999)) in 2015, **Turkey** in 2016, **Bulgaria** and **Ecuador** in 2017, **Montenegro** and **Paraguay** in 2018, and **Panama** and **Argentina** in 2019.

In the context of the High-Level Segment on Statelessness that took place in October 2019 a further 21 States pledged to establish SDPs by the end of the #IBelong Campaign in 2024.<sup>6</sup> **Ukraine**, while not having submitted a pledge at the High-Level Segment, established an SDP in June 2020.

<sup>5</sup> A summary of pledges is presented in UNHCR, Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011), available at: <http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf>.

<sup>6</sup> The full list of pledges made at the 2019 High-Level Segment on Statelessness is available at: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

**Greece** and **Slovakia** have provisions for the protection of stateless persons in their laws but have not yet established procedures to determine statelessness. In **Switzerland**, the State Secretariat for Migration conducts procedures to determine statelessness. The Federal Administrative Procedure Act applies, meaning fundamental procedural safeguards are guaranteed.<sup>7</sup> However, **Switzerland** does not have legal provisions specifically establishing a statelessness determination procedure. In **Belgium**, although a person can be determined to be stateless by one of the five family courts established in the seat of a court of appeal, there are no specific procedural safeguards in place for the determination of statelessness, and the person recognized as stateless does not derive any rights from this recognition.<sup>8</sup> UNHCR encourages these and other States to adopt dedicated mechanisms to determine statelessness that include the procedural safeguards set out in the Handbook and provide a legal status for stateless persons.<sup>9</sup>

## The lead-up to the establishment or improvement of a statelessness determination procedure

A number of initiatives and developments may contribute to building the necessary political will to establish an SDP or to improve the situation of stateless persons.

One such development is the increase in the number of States Parties to the 1954 Convention. Some countries have been States Parties for years, without establishing any mechanism for the application of its provisions. Others, such as **Georgia**, **Moldova**, **Spain** and **Turkey**, have seen accession to the 1954 Convention and establishment of an SDP go hand in hand.

Research into the scope of statelessness and the profile of the stateless population in a number of countries has increased awareness of the problem and of the necessity of establishing an SDP to fully implement obligations under the 1954 Convention.<sup>10</sup>

7 UNHCR, Summary and recommendations: Statelessness in Switzerland, November 2018, available at: [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/04/CH\\_UNHCR-Statelessness\\_in\\_Switz-Summary-ENG-screen.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/04/CH_UNHCR-Statelessness_in_Switz-Summary-ENG-screen.pdf)

8 UNHCR, Mapping Statelessness in Belgium – Summary Report, October 2012, available at: <http://www.refworld.org/docid/5100f3412.html>

9 The procedures in Switzerland and Belgium are not considered as dedicated statelessness determination procedures.

10 See for example UNHCR, Mapping Statelessness in Malta, August 2014, available at: <http://www.refworld.org/docid/546dae5d4.html>; UNHCR, Mapping Statelessness in the Netherlands, November 2011, available at: <http://www.refworld.org/docid/4eef65da2.html>; UNHCR, Mapping Statelessness in Norway, October 2015, available at: <http://www.refworld.org/docid/5653140d4.html>; UNHCR, Mapping Statelessness in The United Kingdom, 22 November 2011, available at: <http://www.refworld.org/docid/4ecb6a192.html>

This has led a number of governments to improve the identification and protection of stateless persons. For instance, the **United Kingdom** established a procedure in April 2013 following research and advocacy conducted by UNHCR and civil society organizations, in particular, Asylum Aid (now known as Consonant).

Research by UNHCR in the **Netherlands** in 2011 drew attention to issues relating to the implementation of the 1954 Convention and the situation of more than 80,000 individuals in the country who were registered as being of undetermined nationality. It became clear that an SDP would help to clarify the number of stateless persons within this group. UNHCR's report helped to galvanize academia and civil society, including the universities of Tilburg, Amsterdam, Leiden and Maastricht as well as the Netherlands Institute of Human Rights, to focus on the issue in the Netherlands. In 2013, the Advisory Committee on Migration Affairs submitted its report and recommendations on statelessness<sup>11</sup> to the Dutch Government, which includes a recommendation to establish an SDP. A decision of the Council of State in May 2014 also highlighted the absence of an SDP. As a consequence of these developments, in 2014 the State Secretary of Security and Justice agreed to examine how to establish an SDP in the Netherlands.

Following the publication of a UNHCR mapping study in 2012 on statelessness in **Belgium**<sup>12</sup>, which highlighted gaps in the existing mechanisms, the Government of Belgium reiterated its commitment to improve the protection of stateless persons in principle. In **Italy**, research and advocacy by UNHCR, the Association for Juridical Studies on Immigration - ASGI, Comunita' di Sant'Egidio, the Italian Council for Refugees and other NGOs have drawn attention to statelessness, particularly among the Roma population, and deficiencies in the existing judicial and administrative SDPs. In 2016, UNHCR facilitated the creation of a network of specialized NGOs and experts on statelessness named *Tavolo Apolidia*, which is actively engaged in promoting enhanced awareness and advocating for the protection of stateless people in Italy.<sup>13</sup>

In the Americas, there has been regional support for the establishment of SDPs since the launch of the #IBelong Campaign and the Global Action Plan in 2014. In December 2014, twenty-eight countries and three territories of Latin America and the

11 ACVZ, Geen land te bekennen, December 2013, summary in English on page 108, available at: <http://goo.gl/d5KX6W>

12 UNHCR, Mapping Statelessness in Belgium, October 2012, available at: <https://www.refworld.org/docid/5100f4b22.htm>

13 The website of Tavolo Apolidia is available at: [www.tavoloapolidia.org](http://www.tavoloapolidia.org)

Caribbean adopted the Brazil Declaration and Plan of Action.<sup>14</sup> The Plan of Action includes establishing effective SDPs and facilitating naturalization in the list of actions required to eradicate statelessness in Latin America and the Caribbean over ten years. The Organization of American States General Assembly has also adopted a series of resolutions on human rights protections calling on States Parties to establish SDPs.<sup>15</sup> The Inter-American Court enacted an Advisory Opinion on the ‘Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection’, finding that Member States have a duty to identify statelessness and should adopt procedural mechanisms to determine the nationality of a child, or, where appropriate, his or her statelessness.<sup>16</sup> In 2017, UNHCR issued ‘Draft Articles on the Protection of Stateless Persons and the Facilities of their Naturalisation’ which was a key tool in the establishment of SDPs in the Americas.<sup>17</sup> Most of the States that established SDPs used it as a guide for their draft bills. This regional momentum contributed to seven countries in the Americas establishing SDPs between 2016 and 2019.

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14 Brazil Declaration and Plan of Action, 3 December 2014, available at: <https://www.refworld.org/docid/5487065b4.html>

15 See e.g. 4 June 2014, AG/RES. 2826 (XLIV-O/14) at [4], ‘To urge member states, without prejudice to their ratification of or accession to the international instruments on statelessness, to consider amending or adopting, as applicable, domestic laws to comprehensively regulate all matters relating to the identification and protection of stateless people and their appropriate documentation’; 14 June 2016, AG/RES. 2887 (XLVI-O/16), ‘to invite member states to establish fair and efficient procedures for determining statelessness and grant facilities for the naturalization of stateless persons’ at p. 150; 21 June 2017, AG/RES. 2908 (XLVII-O/17), ‘to urge all member states to establish fair and efficient procedures deemed appropriate for determining statelessness, grant facilities for the naturalization of stateless persons... To recommend that member states consider the possibility of including, in their domestic laws, fair and efficient procedures for determining statelessness, in keeping with the applicable international instruments, in order to deal with those cases through an approach based on human rights that allows such persons access to a nationality, in accordance with the domestic law of each member state’ at p. 92; 28 June 2019, AG/RES. 2941 (XLIX-O/19), ‘To invite member states that have not yet done so... to adopt or amend their internal legislation, as required, to establish fair and efficient procedures to determine statelessness and grant facilities for the naturalization of stateless persons in accordance with the domestic law of each country’, at p. 132. Resolutions available at: <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp>.

16 Inter-American Court of Human Rights, Advisory Opinion Oc-21/14 of August 19 2014, requested by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, available at: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf), see [86, [94]-[95]].

17 UNHCR, February 2017, Draft Articles on the Protection of Stateless Persons and the Facilities for their Naturalisation, available at: <https://www.refworld.org/docid/59ad4e784.html>.



**Will the establishment of a statelessness determination procedure create a “pull factor”?**

It is unlikely that the establishment of SDPs will create a “pull factor” (i.e. draw persons to countries with SDPs for the purpose of receiving benefits). Countries that have established an SDP have not seen large numbers of people applying for statelessness status. France, the State with the longest tradition of recognizing and protecting stateless persons, received an average of 224 applications for statelessness status between 2010 and 2016.<sup>18</sup> In 2018, France received 420 applications for statelessness status and made 71 findings of statelessness status and 122 findings of statelessness refugee status. Although the number of applications increased, OFPRA, the determining authority, states that the admission rate is stable.<sup>19</sup> Hungary received 284 applications in total between the establishment of the procedure in 2007 and 30 July 2019. In Moldova, 1,144 persons applied for statelessness status between the establishment of the procedure in 2012 and December 2019. In the United Kingdom, in 2018, a total of 1,195 persons applied to the SDP and there were 27 grants of leave to remain in the United Kingdom as a stateless person (stateless leave).

<sup>18</sup> For more details please see: <https://www.ofpra.gouv.fr/fr/apatridie/quelques-chiffres>

<sup>19</sup> OFPRA, A l'écoute du monde, Rapport d'activité 2018, page 26, available at: [https://www.ofpra.gouv.fr/sites/default/files/atoms/files/ofpra\\_ra\\_2018\\_web\\_pages\\_hd.pdf](https://www.ofpra.gouv.fr/sites/default/files/atoms/files/ofpra_ra_2018_web_pages_hd.pdf)

## Elements of statelessness determination procedures

Statelessness determination is a specialized field with specific procedural considerations. Key elements to include in SDPs are explained below, as are a number of good practices emerging from the experience of States undertaking formal statelessness determination. To the extent that statelessness determination presents similarities with refugee status determination, there are a number of procedural guarantees that have been developed in asylum systems that are relevant to SDPs.<sup>20</sup> In the following section, the following elements of statelessness determination procedures will be explained: 1. The institutional location of statelessness determination procedures; 2. Access to procedures; 3. Coordinating refugee status and statelessness determinations; 4. Evidentiary considerations; 5. Procedural guarantees; 6. Rights granted to recognized stateless persons; and 7. Facilitating naturalization of stateless persons.

### 1. The institutional location of statelessness determination procedures

Where to situate SDPs institutionally is a matter of State discretion and can vary from one country to the next. Regardless of where SDPs are located within a State's legal or administrative framework, it is important that examiners develop expertise on statelessness determination while ensuring that the procedures are accessible to the concerned population. This requires a balance between the centralization of expertise to conduct statelessness determination within a specialized administrative or judicial unit of government and providing individuals the opportunity to lodge applications with government representatives dispersed across a country. The SDP in **Spain** strikes a balance in this regard, allowing individuals to submit applications through a number of governmental bodies throughout the country, but concentrating the examination and analysis of statelessness applications within a centralized body. In **Brazil**, an application can be submitted to any unit of the Federal Police, which will then forward it to the Ministry of State for Justice and Public Security, the centralized decision-making body. In **Italy**, statelessness determination can take place through an administrative procedure or a judicial procedure. In 2017, the judicial procedure was decentralized to the 26

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<sup>20</sup> Extensive guidelines on how to conduct refugee status determination are compiled in UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status (reissued 2019), available at: <https://www.refworld.org/docid/5cb474b27.html>.

Specialized Sections for International Protection, Migration and Statelessness of the Civil Courts. The purpose was to enhance the specialization of judges hearing such matters, as previously migration, international protection and statelessness cases were all dealt with by civil judges who were not specialized in those areas.

Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. The practice in **Hungary** provides an example. Training sessions for officials take place on a regular basis, allowing for an exchange of information and discussion of trends and common challenges.

## 2. Access to procedures

For procedures to be fair and efficient, and to ensure that all stateless persons benefit from the implementation of the 1954 Convention, access to the SDP must be guaranteed and not subject to time limits.<sup>21</sup> Information on the procedure and counselling services must be available to potential applicants in a language they understand.

The ability to submit both written and oral applications is provided for in the SDPs in **Argentina, Costa Rica, Ecuador, Hungary, Moldova, Panama, Paraguay** and **Uruguay**. Further promoting accessibility, in **Argentina, Costa Rica, Panama, Paraguay** and **Uruguay** applications can be made through a legal representative. In **Panama**, applications can also be made through a UNHCR representative or NGO. In **Latvia**, applicants receive assistance from the competent authority when filling out the application form.

As many individuals are not aware that they might be stateless, it is recommended that governmental authorities be authorized to initiate these procedures ex officio when approached by individuals who present as potentially stateless, especially unaccompanied children. The legislation establishing the procedure in **Ecuador, Moldova, Panama, Spain** and **Hungary** foresees such an ex officio initiation of the

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21 None of the SDPs established impose time limits until which persons can no longer apply for statelessness status

procedure by the competent authority. In **Costa Rica**, the immigration authorities are obliged to immediately notify the Legal Directorate of the Ministry of Foreign Affairs and Worship in the event that they identify a potential stateless person. The Directorate will inform the person of the possibility to apply for statelessness status.

Another option is that the authorities who are in contact with people who may be stateless inform them that they could apply for statelessness status. This duty to inform has been explicitly included in the Hungarian legislation establishing the SDP. According to the regulations in **Spain**, those with a potential statelessness claim identified in the course of the asylum procedure should be informed of the possibility of initiating the SDP.

Access to the procedure needs to be open to anyone who claims to be stateless, regardless of whether or not that person already has lawful stay or residence in the country. **Georgia's** Ordinance No. 523 on the Approval of the Procedures for Determining the Status of a Stateless Person in Georgia states explicitly that the procedure is open to any stateless person, regardless of the legality of the person's stay in Georgia. Similarly, there are no conditions for accessing the procedure in **Argentina, Brazil, Ecuador, Panama, Paraguay** and **Uruguay**. Although **Hungary's** law establishing the SDP included a requirement of lawful stay in the country, a landmark decision by the Hungarian Constitutional Court in February 2015 struck down this requirement, finding it inconsistent with national law.<sup>22</sup> In **Bulgaria**, the legislation establishing the SDP originally stated that an application could be refused on the grounds that the applicant entered Bulgaria irregularly, was staying or transiting through Bulgaria irregularly, or had resided lawfully in Bulgaria for less than five years. The legislation was amended in 2019 so that an application may no longer be refused on the aforementioned grounds.

In **Bulgaria**, UNHCR launched a website for stateless persons with the aim to provide information about the SDP, how to access the procedure, the required level of proof and other elements of the procedure.<sup>23</sup> The website is available in Bulgarian, Russian, English and Arabic. In addition to information about the rights granted upon recognition of statelessness status, there is also a special section on provision of legal assistance.

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<sup>22</sup> See Resolution 6/2015 (II.25.) of the Constitutional Court on the determination whether the term "lawfully" in Section 76(1) of Act II of 2007 on the conditions of Entry and Stay of Third-Country Nationals is contrary to the Fundamental Act and the annulment thereof, Hungary: Constitutional Court, 25 February 2015, available: <http://www.refworld.org/docid/5542301a4.html>

<sup>23</sup> The website can be accessed at: <http://statelessness.bg/>.

### **Good practices on the continuation of SDPs and the protection of applicants during a health crisis**

At the time of publishing this paper, the COVID-19 virus is affecting most countries in the world and most governments are taking measures to limit the spread of the virus. In a number of countries, these measures include suspending or modifying administrative procedures that are deemed non-critical. The complete suspension of SDPs is likely to result in significant application backlogs and, more importantly, an extended period in which stateless persons will remain in limbo and without access to the rights afforded to recognized stateless persons. A number of good practices have been identified that allow for the continuation of at least parts of the procedure during the public health crisis.

To avoid gatherings of applicants and staff, procedures allowing for the written or electronic submission of statelessness applications are encouraged. Good practices can be found in Costa Rica, Ecuador and the United Kingdom, among other countries, where applications can be submitted online. The introduction of new ways to apply for statelessness status will increase the accessibility of the procedure and should be considered to continue after the crisis has ended. Subsequent steps in the process of statelessness status determination, including the provision of legal advice and guidance, may also take place by phone or online.

As a matter of good practice, the submission of an application for statelessness determination should have a suspensive effect on removal orders and provide the right to stay for the duration of the procedure. This becomes even more important in times of a public health crisis that has led many governments to put in place measures to restrict access to, and movement within the territory, to nationals. However, not all countries that have established SDP grant such a right to stay. Countries should consider lifting removal orders and allowing for the right to stay for the duration of the crisis.

Of the countries that have SDPs in place, the laws of at least 14 contain a provision providing for a right to stay for the duration of the procedure.<sup>24</sup>

In May 2020, UNHCR published the paper “The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices”<sup>25</sup> which includes some of the above-mentioned good practices.

### 3. Coordinating refugee status and statelessness determinations

Where applicants raise both a refugee and a statelessness claim, it is important that each claim is assessed and both types of status are explicitly recognized. This is for a number of reasons: protection under the 1951 Convention Relating to the Status of Refugees generally gives rise to a greater set of rights at the national level than that provided under the 1954 Convention. Furthermore, in some cases substantiating a statelessness claim may require consulting with foreign authorities. However, under no circumstances should contact be made with authorities of a State where an individual alleges a well-founded fear of persecution unless it has definitively been concluded that he or she is neither a refugee nor entitled to a complementary form of protection. A number of States coordinate refugee status determination and statelessness determination by suspending the SDP until the final decision on the application for international protection has been made. For instance, in **Bulgaria**, the SDP is suspended until the final ruling on any application for international protection, unless it is possible to determine the applicant’s statelessness without consulting the authorities in the country of origin or habitual residence. Then, in the case of a final decision of refusal, withdrawal or cessation of refugee or humanitarian status, or discontinuation of the international protection procedure, the SDP may be resumed after the applicant requests it in writing.

<sup>24</sup> These include: Argentina, Brazil, Costa Rica, Ecuador, Georgia, Kosovo (S/RES/1244 (1999)), Mexico, Moldova, Montenegro, Panama, Paraguay, the Philippines, Turkey and Uruguay.

<sup>25</sup> UNHCR, 11 May 2020, The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices, available at: <https://www.refworld.org/docid/5eb2a72f4.html>

## 4. Evidentiary considerations

Authorities undertaking statelessness determination procedures need to consider all available evidence, oral and written, regarding an individual's claim. Given the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence.

UNHCR recommends that SDPs provide for a shared burden of proof between the applicant and the examiners. This means that both the applicant and the State share the responsibility of proving the applicant's statelessness claim by making efforts to establish whether the applicant is considered as a national of a country. The applicant has a duty to be truthful, provide as full an account of his or her position as possible and to submit all evidence reasonably available. Similarly, the determination authority is required to obtain and present all relevant evidence reasonably available to it to allow for an objective determination of the applicant's status.

As with the burden of proof, the standard of proof necessary to determine statelessness must take into consideration the difficulties inherent in proving statelessness, particularly in light of the consequences of incorrectly rejecting an application. States are therefore advised to adopt the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a "reasonable degree" that an individual is not considered as a national by any State under the operation of its law.<sup>26</sup>

Although in many administrative or judicial proceedings the claimant bears the initial responsibility of substantiating his or her claim, the practice among the States with established SDPs, such as **France, Hungary, Moldova**, the **Philippines** and **Spain**, is that the burden of proof is shared. States with SDPs in the Americas (**Argentina, Brazil, Costa Rica, Ecuador, Panama, Paraguay** and **Uruguay**) all consistently provide in the relevant legislation that the burden of proof is shared between the decision-maker and the applicant. Where the burden of proof is shared, the applicant is generally required to provide all evidence in their possession or that they could reasonably obtain and also

<sup>26</sup> For further guidance on the appropriate burden and standard of proof in statelessness determination procedures, please see UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, Part Two: Procedures on the Determination of Statelessness, Section D (3) and (4) (paragraphs 89-93).

cooperate with the decision-maker. On the part of the State, discharging its responsibility for proving the applicant's claim may involve contacting the authorities of countries with which the applicant has a link. In **Kosovo** (S/RES/1244 (1999)) and **Moldova**, for instance, legislative provisions allow the competent authority to take the necessary steps to collect documents to substantiate the application by contacting the authorities of the countries with which the applicant has a link. In **Uruguay**, the responsible authority will produce all evidence deemed relevant to determine the merit of the application, especially evidence relating to the way in which foreign authorities interpret and apply their nationality laws. In **Bulgaria**, the legislation stipulates that the applicant must 'prove or substantiate' their statelessness status. This obligation is balanced at least in part by the requirement that a decision be issued by the Director of the Directorate of Migration after 'establishing all relevant facts and circumstances' *ex officio*.

In addition, examiners in most countries with an SDP have been found to apply an appropriate standard of proof, i.e., where statelessness is established "to a reasonable degree", consistent with the objective of ensuring that stateless persons receive protection.

## 5. Procedural guarantees

SDPs should be formalized in law so as to ensure fairness and transparency and must include basic procedural guarantees. Part Two of the Handbook on Protection of Stateless Persons outlines a comprehensive list of procedural guarantees to be respected.<sup>27</sup> Some of the most fundamental guarantees reflected in current State practice include:

- access to an interview;
- interpretation assistance;
- legal aid;

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<sup>27</sup> Please see UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, Part Two: Procedures on the Determination of Statelessness. Section B (3) (paragraphs 71 - 77).



- respect for the specific protection needs presented by women, children and people with disabilities;
- a time limit for a decision following submission of a statelessness status application;
- a right to receive a decision in writing with an explanation of the grounds on which it was made; and
- a right to appeal a first-instance rejection of an application on the basis of fact or law.

In addition, State practice also reflects rights to liberty and freedom of movement by avoiding detention of those seeking recognition of their statelessness status. The laws of **Moldova** and **Montenegro** explicitly grant the applicant a right to stay during the procedure. The relevant law in **Paraguay** states that any administrative sanctioning procedure for irregular entry or stay (such as detention or deportation) is suspended. A number of States in the Americas enshrine the principle of no sanction for irregular entry or stay (**Brazil, Costa Rica, Ecuador** and **Panama**). All the States in the Americas with SDPs grant the applicant a provisional document conferring the right to stay.

SDP frameworks should take into consideration the particular needs of applicants, particularly when the applicant is a minor or a person with disabilities which affects the individual's ability to participate in an SDP on an equal basis. A good example in this respect exists in **France** where minors are interviewed in the presence of a legal representative (either a person with parental authority or an individual granted guardianship rights via a legal procedure). In the case of an unaccompanied minor, an ad-hoc administrator is appointed by the public prosecutor. In **Paraguay**, legal representatives are appointed for children, adolescents and individuals with disabilities who are in need of such an arrangement.

### **An example of legal aid provision - Liverpool Law Clinic**

In October 2013, within six months of the establishment of the United Kingdom's new SDP, the Liverpool Law Clinic (part of the Law Department at the University of Liverpool) launched a project to advise and represent stateless persons in relation to their applications for a residence permit, and for stateless children to register as British citizens. Since then it has offered a free service nationwide service to stateless clients. The Clinic is run by specialist lawyers assisted by law students. There is very limited, exceptional legal aid funding in England and Wales for advice and representation in relation to a statelessness application. Clients are referred by organizations such as the Red Cross and UNHCR, or they find the Clinic through an internet research or word of mouth. Most of the clients would not be able to pay for a private lawyer to represent them.

Though the clinic deals with a relatively small number of clients, it quickly established its expertise. It has secured some significant changes of approach by the Home Office by making strategic applications and innovative arguments, to ensure the United Kingdom follows best practice as closely as possible. Two staff members authored a Best Practice Guide for legal representatives who advised on the statelessness leave procedure and provided legal training throughout the United Kingdom. The clinic's lawyers support other legal representatives making statelessness applications on behalf of their clients, foster contacts with many partners in this field and participate in international meetings to exchange experiences and encourage best practice. The lawyers, together with legal representatives from other organizations, push for policy change through regular meetings with the Home Office.

Through their involvement in the work of the clinic, some 350 University of Liverpool students have developed in-depth, practical knowledge about the situation of stateless people, encouraging them to specialize in this field. From June 2016, the clinic received funding for a project to develop its strategic legal work on statelessness, initially focused on vulnerable young stateless migrants aged 25 and under. The clinic hosted an international

conference in London in July 2018 on statelessness, bringing together academics, practitioners and campaigners. At the conference, the clinic presented a report on the strategic legal work it had done in the project to 90 participants. In addition, some 10,000 people, both prospective students and their guests, have learned about statelessness and UNHCR's #IBelong Campaign by attending talks on University of Liverpool open days. The Law Clinic is now UNHCR's partner in maintaining the UK 'Index on Statelessness' hosted by the European Network on Statelessness.

## 6. Rights granted to recognized stateless persons

Stateless persons should be able to enjoy their rights under the 1954 Convention. Although the Convention does not explicitly require States to grant a person determined to be stateless a right of residence, affording such permission would help to fulfil the purpose of the treaty. Currently, almost all States with SDPs grant residence rights to recognized stateless persons, though some deny this right if the person is considered to be a danger to national security or public order, or if the person is admissible to another country. Recognized stateless persons in France receive a renewable residence permit for four years. In Turkey, a stateless person receives a renewable Stateless Person Identification Card entitling him or her to lawful residence, valid for two years. In the United Kingdom, a stateless person can be granted leave to remain for 30 months. In March 2019, the United Kingdom Home Office announced that those who have been granted leave to remain can apply to extend their leave and become eligible for settlement after five years' lawful residence.<sup>28</sup> A subsequent grant of leave to remain, including for an indefinite period, may also be given as long as certain conditions are met. In **Brazil**, a stateless person receives a residence permit for an indefinite period.

<sup>28</sup> Explanatory memorandum to the statement of changes in immigration rules presented to Parliament on 7 March 2019, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/784060/CCS207\\_CCS0319710302-002\\_HC\\_1919\\_Immigration\\_Rules\\_EXPLANATORY\\_MEMO\\_PRINT\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784060/CCS207_CCS0319710302-002_HC_1919_Immigration_Rules_EXPLANATORY_MEMO_PRINT_.pdf)

To be consistent with the standards set out in the 1954 Convention, the grant of a residence permit to a stateless person should be accompanied by the right to work, access to health care and social assistance, and the issuance of identity papers and a travel document. For example, legislation in **Spain** provides for the right to work for those recognized as stateless.

Family reunification is not expressly provided for under the 1954 Convention but is a principle that is recognized in a number of international human rights instruments. States are encouraged to facilitate family reunion for individuals determined to be stateless in their territory. An example of good practice in this respect is **Brazil**, where residence permits are granted for the purpose of family reunion, including to family members not already in Brazil.

In **Argentina**, family members can obtain the same type of residence permit and on the same terms as a recognized stateless person unless they can obtain another Argentine residence permit under more favorable conditions. Family members do not need to already be living in Argentina. In **Uruguay**, family members of foreign nationality have the right to obtain legal residence in Uruguay and an identity document.

In **Costa Rica**, the statelessness status of family members who do not have a nationality will be recognized by extension. Other family members who do have a nationality can get their stay regularized in Costa Rica.

## **7. Facilitating naturalization of stateless persons**

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In accordance with Article 32 of the 1954 Convention, it is recommended that States Parties facilitate, as far as possible, the naturalization of stateless persons. Indeed, SDPs are a pathway to ultimately resolving a person's statelessness through the acquisition of a nationality. Facilitating naturalization involves adjusting requirements and procedures for naturalization to make it easier for stateless persons to acquire nationality. This may be achieved, for example, by creating expedited procedures, reducing or waiving residence, income and language requirements for applicants and by exempting them from fees or the obligation to provide documentary evidence. There should be effective

access to naturalization procedures. Accordingly, information on naturalization requirements should be easily accessible to the public.

Of the countries that provide for facilitated naturalization of stateless persons, a number have set a lower number of years that a stateless person needs to have resided in the country to be naturalized as compared with foreigners who are not stateless. In **Brazil**, the length of residency is two years for stateless persons as opposed to four years for foreigners. In **Ecuador**, it is two years as opposed to three years for foreigners; in **Bulgaria** it is three years rather than five; in **Hungary** it is also three years rather than five; and in **Italy** it is five years rather than ten. The law of **Argentina** also provides that naturalization applications submitted by stateless persons will receive priority treatment from the competent authority.

A number of States also exempt stateless persons from paying fees to initiate the process and provide for free legal aid. These things are both expressly included in the laws of **Argentina** and **Paraguay**, for example.

In a number of States the facilitation of naturalization of stateless persons also includes an exemption from submitting certain documents that would otherwise be required when applying for naturalization or assistance in acquiring the necessary documentation. In **Argentina**, stateless persons are exempted from submitting documentation of country of origin or residence that they do not have or cannot reasonably obtain, including birth certificates and criminal records from the country of origin. In **Paraguay**, the Supreme Court of Justice will as far as possible assist applicants to obtain missing documents. In **Uruguay**, applicants are exempt from the requirement to present a birth certificate of their country of origin or other documentation issued by foreign authorities where it is manifestly impossible to do so.

In the law of **Uruguay** it is expressly stipulated that stateless persons do not need to prove legal entry into the country. In **Montenegro**, stateless persons are exempt from requirements to acquire citizenship such as language proficiency and proof of livelihood.

**Draft articles on the protection of Stateless persons and the facilities for their naturalization**

UNHCR has developed draft articles for regulating the rights and duties of stateless persons who are not refugees, establishing a statelessness determination procedure and providing facilities for the naturalization of stateless persons.<sup>29</sup>

The draft articles reflect the recommendations from the “Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons”, the standards developed by the Inter-American System for the Protection of Human Rights (IAHRS), and the best practices of States in the Americas.

The draft articles were produced in 2017 in consultation with various Latin American States developing regulations for the protection and naturalization of stateless persons, as well as with human rights and civil society organizations.

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29 UNHCR, Draft Articles on the Protection of Stateless Persons and the Facilities for their Naturalization, February 2017, available at: <https://www.refworld.org/docid/59ad4e784.html>.

## Selected country examples

### France

- Centralized administrative SDP conducted by the French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, or OFPRA).
- The protection of stateless persons was included in the French Asylum Law of 1952. Article L812 of the Code de l'entrée et du séjour des étrangers et du droit d'asile (amendments of 29 July 2015) sets out the details of the procedure.
- Good practices include:
  - *an application procedure accessible to all individuals in France, without any legal stay requirement or time limits;*
  - *a shared burden of proof, in practice;*
  - *interviews, in practice;*
  - *access to interpretation;*
  - *the right to appeal a negative first-instance decision though not with automatic legal stay until the end of the procedure; and*
  - *the availability of judicial review.*
- Statelessness and asylum determination procedures are implemented by separate divisions within OFPRA. However, if an individual raises claims for both refugee and statelessness status, the two determination procedures are combined and the asylum authorities can grant a combined “stateless refugee” status. Refugee status provides more comprehensive protection than statelessness status from which “stateless refugees” benefit.

Since 1952, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) has been mandated to provide for the juridical and administrative protection of stateless persons. This makes France the country with the longest-established SDP. The precise modalities for this procedure have been elaborated through administrative and jurisprudential practice,<sup>30</sup> rather than through legislative or sub-legislative acts.

To initiate the procedure, an individual must write to OFPRA to request an application form. The request must be drafted in French and contain personal details such as date and place of birth, as well as the reason for wishing to apply for statelessness status. Once received, the application form must be filled out and submitted with all the supporting documents to the centralized, specialized statelessness authority within OFPRA located in Paris. The application is free of charge. After the claim is submitted, a certificate of registration is issued; however, this does not grant applicants any particular legal status, such as temporary residence, while an application is pending.

The French SDP does not explicitly have a suspensive effect on immigration enforcement activities, such as deportation orders, at the initial stage. However, applicants can submit an urgent administrative appeal for this purpose. If an individual presents claims for both asylum and statelessness status, OFPRA will combine the two claims and responsibility for ruling on them will be conducted by OFPRA's asylum division, which has the authority to recognize the combined status of "stateless refugee." The application for international protection is assessed first.<sup>31</sup> There is strong collaboration between the divisions in charge of refugee status and statelessness determination procedures. In practice, applicants who apply for refugee status determination and are found to be ineligible are referred to the SDP by the refugee status determination division when it identifies elements indicating potential statelessness.

Although under the French administrative and legal frameworks an applicant bears the burden of proof, in the French SDP the burden of proof is, in practice, shared.

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30 Information regarding the procedural rules for the French statelessness determination procedure is accessible on the OFPRA website, available at: <https://www.ofpra.gouv.fr/fr/apatriodie/procedure>.

31 OFPRA, Guide des Procédures à l'OFPRA, 2018, page 45, available at: [https://ofpra.gouv.fr/sites/default/files/atoms/files/guide\\_des\\_procedures\\_ofpra\\_-\\_juillet\\_2018.pdf](https://ofpra.gouv.fr/sites/default/files/atoms/files/guide_des_procedures_ofpra_-_juillet_2018.pdf).



A claim of statelessness will be established on the basis of all available evidence that is “sufficiently precise and serious.”<sup>32</sup>

Interviews are not mandatory. OFPRA will not interview the applicant where a decision can be reached on the basis of the application. In practice, the majority of applicants are invited for an interview, which either takes place at the OFPRA premises or is conducted by audiovisual means. If needed, interpretation for the interviews is provided by OFPRA free of charge. Minors are to be interviewed in the presence of a legal representative (either a person with parental authority or an individual granted guardianship rights via a legal procedure). In the case of an unaccompanied minor, an ad-hoc administrator is appointed by the public prosecutor. The examiner will explore which States the individual may have ties with and whether he or she would be considered a national of any of them.

The examiner has access to relevant nationality legislation from the OFPRA research division. OFPRA also has the authority to investigate applicants’ claims. In some instances, OFPRA contacts French consular offices in relevant countries for advice about the legal links of the applicant to that country. Where an applicant does not claim any fear of persecution, OFPRA can contact the official representation of relevant foreign authorities, either in France or through French consular missions abroad, for additional information regarding an individual.

There is no time limit specified for OFPRA to issue decisions on statelessness status applications. In practice, statelessness determination typically takes several months, although it can take longer when OFPRA contacts foreign authorities for additional information. When an applicant for statelessness status can acquire French nationality (for example, if he or she was born stateless in France) or a foreign nationality, OFPRA informs the applicant of this possibility and directs the person to the relevant authorities.

Individuals who receive a negative decision on their statelessness applications are notified in writing and provided with the reason for the decision. The notification specifies the procedure and time limit for appealing the decision.<sup>33</sup> Applicants can

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32 « La qualité d’apatride ne se présume pas. Elle doit être établie dans tous les éléments qui la déterminent par des preuves suffisamment précises et sérieuses. ».

33 Loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d’asile, Article 6, available at: [https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=DD467A870AFAE085AAA859A9FFF6EC04.tpdila12v\\_2?idArticle=JORFARTI0000309](https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=DD467A870AFAE085AAA859A9FFF6EC04.tpdila12v_2?idArticle=JORFARTI0000309)

submit an appeal within two months before the administrative tribunal in the province or region where they live. The decision of the administrative tribunal can be appealed in turn to the Administrative Court of Appeal, and then the highest administrative court of appeal, the Conseil d'Etat. All appeals are conducted on the written record of the initial administrative application conducted by OFPRA. Applicants can apply for legal aid at the appeals stage.<sup>34</sup> Pending appeals of SDPs do not have a suspensive effect, which means that expulsion orders can be enforced while appeals are pending.

Until 2019, individuals were granted a temporary residence permit valid for one year and renewable for three years. To give applicants a more stable status and alleviate the administrative burden linked to the renewal of documents, the government increased the length of the provisional residence permit to four years in 2019.<sup>35</sup> After the four-year period, the temporary residence permit is converted into a residence permit valid for ten years, which is renewable.<sup>36</sup>

Recognized stateless persons in France receive a brochure, also available online, which sets out their rights and obligations, including the kind of residence permit to which stateless persons are entitled, and the implications for family members.<sup>37</sup> Spouses and children under the age of 19 of recognized stateless persons can submit a request for family reunification with the French consulate in their country of residence. Recognized stateless persons have the right to work and access education and can also request a travel document.

If a recognized stateless person in France does not have civil status documentation from the country of origin, such as a birth certificate, and cannot obtain such documents, OFPRA can issue them. This allows stateless persons to exercise other rights, for example, to get married in France, as a birth certificate is required for such a step.

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[49518&cidTexte=JORFTEXT000030949483&dateTexte=29990101&categorieLien=id.](#)

34 Loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique, Article 3, available [here](#)

35 Code de l'entrée et du séjour des étrangers et du droit d'asile, art L313-26, available [here](#)

36 Ibid.

37 OFPRA, Livret d'accueil pour les personnes reconnues apatrides, available at: [https://www.ofpra.gouv.fr/sites/default/files/atoms/files/livret\\_dinformations\\_apatrides.pdf](https://www.ofpra.gouv.fr/sites/default/files/atoms/files/livret_dinformations_apatrides.pdf)

In 2018, OFPRA received 420 applications for statelessness status.<sup>38</sup> 40.7 percent of the applications was submitted by people from Africa, 23.8 percent by people from the Asian continent and 34.8 percent from European countries. 31.4 percent were submitted by Saharawi people and 11 percent by Bidouns from Kuwait. 13 percent were submitted by former Soviet citizens. Only three applications were submitted by persons born in the Americas (0.7 percent). OFPRA made 327 decisions, of which 71 resulted in a finding of statelessness. In addition, 122 adults were recognized as stateless refugees; the slight increase in number from 2017 is linked to the situation of Palestinian and Kurdish communities in Syria.

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38 OFPRA, A l'écoute du monde, Rapport d'activité 2018, page 26, available at: [https://www.ofpra.gouv.fr/sites/default/files/atoms/files/ofpra\\_ra\\_2018\\_web\\_pages\\_hd.pdf](https://www.ofpra.gouv.fr/sites/default/files/atoms/files/ofpra_ra_2018_web_pages_hd.pdf)

## Hungary

- An administrative SDP is conducted by the regional directorates of the National Directorate-General for Aliens Policing (NDAP).
- The SDP was established under Chapter VIII of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals of 1 July 2007, and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.
- Good practices include:
  - *applications accepted at any one of seven regional directorates of the NDAP;*
  - *applications accepted whether made orally or in writing and in any language;*
  - *applicants provided a temporary residence certificate if needed;*
  - *mandatory preliminary and detailed personal interviews;*
  - *the availability of legal assistance and interpretation and no requirement of certified translation in case of documents submitted in a foreign language;*
  - *in practice, a shared burden of proof;*
  - *UNHCR participation in proceedings, including access to files;*
  - *the availability of judicial review of negative first-instance decisions;*
  - *quality assurance in the form of in-house and joint UNHCR/NDAP audits of interview records;*
  - *decisions based on parameters specified by a Quality Assurance Manual for the SDP (October 2012).*
- Refugee status determination is conducted by the Asylum Directorate of the NDAP and is a separate procedure from statelessness determination, which is conducted by the Alien Policing Directorates of the same agency.

In 2007, Hungary amended its Aliens Act,<sup>39</sup> thereby establishing a dedicated SDP falling within the jurisdiction of the alien policing authorities. The Act provided that any individual lawfully staying in Hungary could initiate the procedure. However, the requirement that applicants were to have lawful stay undermined the object and purpose of the 1954 Convention. A landmark decision by the Hungarian Constitutional Court in February 2015 struck out this requirement, finding it in breach of international law.<sup>40</sup>

The procedure can be initiated by the applicant through the submission of a written or oral application at one of seven regional directorates of the National Directorate-General for Aliens Policing (NDAP), depending on the individual's place of accommodation or residence in Hungary. If the application is made orally and the applicant do statelessness determination cannot be initiated ex officio, the Aliens Act allows the Hungarian authorities to inform individuals who have brought forward indications of potential statelessness that they may apply for statelessness status. The application is free of charge.

In principle, separate claims for statelessness and refugee status can be considered in parallel. However, up to the moment of publishing this paper, all individuals who presented claims for both asylum and statelessness status have had their statelessness claim suspended and the asylum claim assessed first.

Following the submission of a claim, a preliminary interview is conducted during which the applicant is informed of his or her rights and obligations during the procedure. Basic personal data and information, including, inter alia, place and date of birth, marital/family status, relevant information on family members, habitual residence, accommodation in Hungary, and possession of identity and/or travel documents, are recorded at this stage. The applicant is subsequently invited for a detailed interview. In the exceptional case where an applicant submits evidence that sufficiently substantiates a claim for statelessness status during the first interview, the authority can conduct the preliminary

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39 Chapter VIII, Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals [Hungary], Act II of 2007, (Aliens Act), 1 July 2007, available at: <http://www.unhcr.org/refworld/docid/4979cae12.html>

40 Please see Resolution 6/2015 (II.25.) of the Constitutional Court on the determination whether the term “lawfully” in Section 76(1) of Act II of 2007 on the conditions of Entry and Stay of Third-Country Nationals is contrary to the Fundamental Act and the annulment thereof, Hungary: Constitutional Court, 25 February 2015, available at: <http://www.refworld.org/docid/5542301a4.html>. The Constitutional Court annulled the contested legal provisions as of 30 September 2015

and detailed interviews concurrently. During the interviews, applicants have access to interpretation services. If the claimant is an unaccompanied child, a case guardian is appointed who represents the child's interests in the hearing. The applicant receives a temporary residence certificate for the duration of the procedure if the person does not have authorization to reside in the country. In practice, however, the immigration authority does not issue temporary residence certificates for the purposes of conducting the SDP to all persons in immigration detention or subject to expulsion proceedings.

The applicant is required by law to "prove or substantiate" his or her statelessness status by, inter alia, establishing place of birth, place of prior permanent or habitual residence, and the nationality of parents and family members. The term "substantiate" indicates a lower standard of proof than is the case in, for example, criminal procedures. The case worker will take into consideration documents shared by the applicant without requesting that these documents are officially translated and certified, as would usually be the case in other administrative procedures under the Aliens Act.

The burden of proof in establishing statelessness is shared in that the Hungarian authorities are to provide administrative assistance to establish relevant facts if the applicant so requests, for example, by contacting foreign authorities to supplement the facts provided by the applicant. UNHCR may participate at any stage of the proceedings, at the request or with the consent of the applicant. UNHCR may provide administrative assistance to the applicant and the immigration authority shares both the administrative and the court decisions with UNHCR.

The examiners are to reach a decision on a statelessness status application within 60 days. This can be extended by an additional 21 days by the head of the alien policing authority. However, the law allows the proceeding authority to suspend, without limitation, the procedure if another authority (e.g., the Ministry of Foreign Affairs or a foreign body) needs to be contacted for further information. As this is common in SDPs, it often takes longer than the stipulated number of days in practice.

Individuals who are recognized as stateless are granted a humanitarian residence permit that is valid for a maximum of three years and which can be extended by one-year periods. After five years, or in specific cases after three years, the stateless person is eligible to apply for permanent residence status and can thereby establish a domicile.

After three years of permanent residence with established domicile, the stateless person can apply for naturalization, which is favorable treatment compared to foreign nationals seeking naturalization. Foreign nationals need to prove eight years of permanent residence. Upon request, the immigration authority may issue a travel document, which is valid for one year.

Individuals whose application for statelessness status is rejected can lodge a request for judicial review of the negative decision with the Budapest Administrative and Labor Court within 15 days of the communication of the decision. Rejections are supported with reasoning and applicants can submit a further appeal to the Budapest Regional Court of Appeal and in some cases to the Curia (highest court) at third instance.

In 2011 Hungary pledged to improve its SDP by introducing a quality assurance mechanism similar to the mechanism that operates for refugee status determination. To that end, the predecessor of the NDAP signed an agreement with UNHCR in 2012 to review the effectiveness of the implementation of the procedure. This project resulted in the establishment of a quality assurance mechanism within NDAP, including a Quality Assurance Manual for the Statelessness Determination Procedure and templates for interviews and decisions to be used by case workers. The regular exchanges and training sessions in which the NDAP and UNHCR participate help to harmonize decision-making and identify and address issues in the implementation of the SDP.

From 2008 to 2019, 285 applications for statelessness status were received. The overall recognition rate was 68 percent. By December 2019, 146 individuals had been recognized as stateless in Hungary. Most of the accepted applications were submitted by applicants from the former Soviet Union and the former Yugoslavia.

## Mexico

- A formal SDP was established pursuant to the Migration Law (2011) and its Regulations (2012).
- Good practices include:
  - *the same definition of a stateless person as in the 1954 Convention;*
  - *equality under the law for those whose nationality is deemed ineffective;*
  - *the right to be informed of 1) the right to seek asylum as well as recognition of statelessness status and 2) the right to appeal a negative decision;*
  - *waiver of 1) visa requirements to enter the country and 2) time limits to apply for a residency card;*
  - *the explicit requirement that issues relating to the SDP are dealt with per the relevant international treaties to which Mexico is a party, including the 1954 Convention and the American Convention on Human Rights; and*
  - *the grant of permanent residence following recognition of statelessness status.*

In 2011, Mexico adopted its Migration Law<sup>41</sup> and its regulation, creating a formal SDP which began functioning in 2012.<sup>42</sup>

The SDP is mainly regulated by Article 150 of the Regulations to the Migration Law (Regulations). Pursuant to these Regulations, applications for statelessness status are received by the National Migration Institute (INM). On the next business day following receipt of the application, the INM must request a legal opinion from the Mexican Refugee Commission (COMAR), a body primarily focused on refugee status adjudication. COMAR then has 45 business days to deliver its legal opinion to INM, for which purpose it may gather the necessary information.

41 Available in Spanish at: [http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra\\_301014.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_301014.pdf)

42 Available in Spanish at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5270615&fecha=28/09/2012](http://www.dof.gob.mx/nota_detalle.php?codigo=5270615&fecha=28/09/2012).



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COMAR is required to undertake at least one interview with the applicant and to use interpreters if the applicant is unable to communicate in Spanish. Once COMAR delivers its opinion, INM makes a formal statelessness status determination in writing and, where the person concerned is found to be stateless, immediately issues a certificate to this effect. A person recognized as stateless is issued a permanent residence card between five days and one month after the certificate of statelessness is issued. He or she may subsequently apply for other identity and travel documents.

If the applicant is found not to be stateless, he or she may appeal that decision or apply for a different legal status under the law, such as that provided by the temporary visitor card given for humanitarian reasons. These reasons include being an unaccompanied child, having a close family member with a serious medical condition in Mexico, being the victim of or witness to a crime in Mexico, family reunification etc. Following the SDP, and independent of its conclusions, the person may apply for refugee status.

## The Republic of Moldova

- Moldova established its SDP on 28 December 2011 by introducing Chapter X (1) in the Law on the Regime of Foreigners.
- Centralized, administrative SDP is conducted by the Statelessness and Information Unit within the Asylum and Integration Directorate under the Bureau for Migration and Asylum of the Ministry of Internal Affairs (the competent authority for foreigners).
- Good practices include:
  - *applications initiated ex officio by authorities;*
  - *applications accepted orally or in writing and in any language;*
  - *mandatory interviews conducted within 15 days of submission of an application;*
  - *the right to legal representation;*
  - *the right to interpretation;*
  - *special protection considerations for unaccompanied children and those with mental disabilities requiring a legal guardian;*
  - *the right to stay pending an application;*
  - *a shared burden of proof;*
  - *decisions rendered in writing within six months with the possibility of one-month extensions not to exceed an additional six months;*
  - *the availability of judicial review of a negative first-instance decision; and*
  - *UNHCR access to applications and decisions.*

In 2011, the Republic of Moldova adopted legislation establishing an SDP by introducing Chapter X (1) to the Law on the Regime of Foreigners (Moldovan Law).<sup>43</sup> This legislation contains detailed provisions on how the procedure is to be conducted. An application for statelessness status can be initiated either by an individual or ex officio by the Bureau for Migration and Asylum of the Ministry of Internal Affairs (Bureau for Migration and Asylum). There is a specialized administrative unit dealing with statelessness and information within the Asylum and Integration Directorate under the Bureau for Migration and Asylum.

An application can be submitted orally or in writing and is free of charge. Applicants who are unable to speak the State language will be provided with an interpreter and applicants have the right to legal representation. The application must contain a clear and detailed description of the facts, including evidence to substantiate a claim for statelessness, and must indicate an individual's place of birth, parentage and countries of habitual residence. If the applicant is not able to submit any documents for reasons beyond their control, the competent authority for foreigners will make a decision on their stateless status based on the available documents (Article 87(6)). Upon submitting the application, the competent authority for foreigners will verbally advise the applicant of his or her rights and obligations during the procedure.

The Moldovan Law requires that applicants are granted an interview within 15 working days following the submission of an application. The interview must be recorded in writing and include information on the applicant's identity; the type of evidence submitted; details regarding any submitted documents, such as validity, place of issuance and issuing authority; civil status; employment; education; and place of residence in the Republic of Moldova. During the interview, the applicant is required to explain the reasons for submitting a statelessness application and present any additional available evidence.

Applicants for statelessness status will be granted the right to stay in the Republic of Moldova during the examination of their claim and can only be removed from the territory for reasons of national security and public order. Applicants have the right to

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43 Law on Amendment and Completion of Certain Legislative Document, adopted by the Parliament of the Republic of Moldova on 28 December 2011, available at: <http://www.unhcr.org/refworld/docid/4fbdf662.htm>

work. Employed applicants are automatically enrolled in the compulsory medical insurance system and social protection system.

The Moldovan Law takes particular consideration of the special protection concerns of unaccompanied children and persons with mental disabilities, both of whom are to be represented by a legal guardian. At the conclusion of the interview, an interview note will be signed by the applicant and the examiner, indicating whether an interpreter or a guardian took part in the interview.

Whilst the application is being processed, the applicant may submit additional evidence to substantiate their claim for statelessness (Article 87(1)). The examiner renders a decision based on all available evidence within a period of six months from the date an application is registered. This deadline can be extended by successive periods of one month, but must not exceed a total of an additional six months.

In practice, the burden of proof to establish statelessness is shared. Applicants are obliged to cooperate fully with the authorities by submitting all available evidence regarding their status and presenting themselves to the authorities for as many interviews as may be required. The examiner is obliged to collect additional information regarding an applicant's case, including through contacts with foreign authorities or with Moldovan embassies and consulates abroad. In particular, the competent authority for foreigners is to undertake the necessary steps to collect information from the applicant's place of birth, place of residence or former domicile, and request information from the foreign State of which the applicant's family members are nationals. The legislation does not establish a standard of proof for the SDP but in practice the standard is the same as for asylum procedures, that is, when statelessness is established to a 'reasonable degree'. A person is considered stateless unless and until evidence is received confirming that they are a citizen of a country. If there is no reply from the foreign authorities to a request for information from the Moldovan authorities, this is interpreted as meaning that the applicant is not considered a national by that State. If information is received confirming nationality after statelessness status is granted, the Moldovan Law allows for the cancellation of statelessness status.

A decision recognizing or rejecting an application for statelessness status must be communicated to the concerned individual within three working days after the decision

was issued. Reasons for negative decisions must be communicated to the applicant. A negative decision can be appealed in a court of law in accordance with Moldovan legal procedures.

Individuals with recognized statelessness status are granted permanent residence, and given appropriate identity documents, which vary in length of validity depending on the age of the person. For example, identity documents for children are valid from birth to ten years of age (and can then be renewed), while identity documents for persons aged 45 and above are issued as a permanent document. Upon request, a travel document is also issued. Persons with recognized statelessness status will be entitled to enjoy all the rights, freedoms and obligations specified in Moldovan law. They can also benefit from dedicated social integration activities offered by the Ministry of Culture and language classes offered to foreigners by the Ministry of Education, Culture and Research, which are free of cost. Stateless persons are entitled to family reunification on an equal basis as Moldovan citizens.

Article 87(11) of the Moldovan Law provides that UNHCR may request access to information regarding applications for the recognition of stateless status, applicant interviews and issued decisions, subject to the consent of the applicant. UNHCR also identifies and counsels potential stateless persons and refers them to the Bureau for Migration and Asylum or the partner NGO that assists individuals with preparing their applications.

Stateless persons can apply for naturalization if they have legally resided in Moldova for more than eight years. Legal residence is counted from the time of application for statelessness status. This is a shorter period of residence than is required for foreigners, which is a minimum of ten years.

Between the establishment of the SDP in 2011 and December 2019, 1,144 persons submitted applications out of which 355 applications resulted in the recognition of statelessness status. It is noteworthy that among the 279 individuals whose applications were rejected, some were rejected on the basis that they were eligible to apply for Moldovan citizenship and were therefore subsequently directed to the appropriate government institution. Many of these applicants were ultimately granted Moldovan nationality.

## Paraguay

- Paraguay established its SDP on 19 September 2018 by adopting Law number 6.149 on the Protection and Facilitation of Naturalization of Stateless Persons.
- The process to determine statelessness is conducted by the National Commissions for Refugees (CONARE).
- Good practices include:
  - *applications can be initiated orally or in writing, in person or through a legal representative;*
  - *free, specialized legal assistance is provided;*
  - *applicants have the right to be interviewed as many times as necessary to resolve applications;*
  - *the procedure is age and diversity sensitive;*
  - *a shared burden of proof;*
  - *recognized stateless persons and family members are issued identity and travel documents;*
  - *a possibility of appeal; and*
  - *procedures for facilitated naturalization for persons with recognized statelessness status.*

After acceding to the 1954 Convention in July 2014 and subsequently adopting the Brazil Plan of Action, Paraguay made a commitment to establish an SDP in December 2014. In 2016, Paraguay also accepted a recommendation made at the Universal Periodic Review to implement an SDP to ensure the protection of stateless persons who are not refugees.<sup>44</sup> In 2017, UNHCR provided Paraguay with technical assistance to draft a bill establishing an SDP and introducing procedures for facilitated naturalization, which was adopted in September 2018.<sup>45</sup>

The provisions establishing the SDP are based on UNHCR's Draft Articles on the Protection of Stateless Persons and the Facilities for their Naturalization. The Draft Articles refer to the Brazil Plan of Action's recommendation to include the procedure of determining statelessness among the areas of competency of the National Commissions for Refugees (CONARE) or an equivalent body. The Paraguayan legislation followed this approach. One of its provisions expanded the name of the National Commission on Refugees to the 'National Commission for Stateless Persons and Refugees' (CONARE). Thus, the body that has experience in refugee status determination is also responsible for statelessness status determination.

An application can be initiated orally or in writing, in person or through a legal representative. However, the essential content of a verbal request is to be recorded in writing. The applicant has the right to be represented by a lawyer at all stages of the procedure. For those without financial means, CONARE will facilitate access to free legal assistance services specialized in the international protection of refugees and stateless persons. The application is free for the applicant and their family. Once an application has been submitted, the Executive Secretariat is required to inform the applicant of their rights and obligations as an applicant, and the criteria and procedures for being recognized as stateless.

Any public authority that identifies a potentially stateless person is to immediately refer the case to the Executive Secretariat of CONARE (Article 40). CONARE will interview the person and ask him or her whether they want to apply for statelessness status.

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44 Report of the Working Group on the Universal Periodic Review – Paraguay, A/HRC/32/9, 12 April 2016, available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/32/9](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/9)

45 Ley N° 6.149 - Protección y Facilidades para la Naturalización de las Personas Apátridas, 19 September 2018, available at: <https://www.refworld.org/es/topic,57f5047260,57f50920b9,5bac0bc84,0,,LEGISLATION,.html>

Migratory authorities are to send CONARE an application for recognition of statelessness status on behalf of any person who appears before the migratory authority at the border and does not possess the required documentation within 24 hours (Article 39). The Directorate General of Migration must then authorize the person's entry into the country and inform the applicant for statelessness status to appear before the Executive Secretariat of CONARE within 48 hours of their authorization to enter the country, in order to formalize the application.

Both refugee and statelessness status are recognized if the person meets the relevant criteria. If at any stage of the SDP the applicant requests recognition of refugee status or if the Executive Secretariat considers that the person could qualify as a refugee, CONARE processes the application in accordance with the rules and procedure for the determination of refugee status. If CONARE determines that the applicant does not possess a birth certificate from the country where the person was born, the procedure will be suspended and the case referred to the competent authority for late birth registration. If the referral concludes without the person having been registered as a national, the decision shall be communicated to CONARE to resume the SDP.

The applicant has the right to be interviewed as many times as necessary to resolve the application. The Executive Secretariat shall provide the assistance of a qualified translator or interpreter when the language of the applicant is not Spanish. Children are to be interviewed by specialized interviewers.

Applicants are issued with an identity document and a temporary residence document for the duration of the procedure. While their application is in process, applicants are also entitled to work and access basic health and education services within the National Public Administration.

The legislation provides that no criminal, migratory or administrative sanctions will be imposed on applicants on the basis of irregular entry or presence in Paraguay (Article 10). The principle of non-refoulement is also enshrined in legislation which states that the applicant or recognized stateless person will not be returned, expelled or extradited to a place where their life, personal safety or freedom is in danger (Article 12). Furthermore, the applicant or recognized stateless person will not be expelled from Paraguay except for reasons of national security or public order (Article 12).



The SDP framework takes into account the particular needs of applicants in circumstances of vulnerability. The National Secretariat for Children and Adolescents will determine whether a child or adolescent is unaccompanied or separated from his or her family immediately upon arrival into Paraguay or as soon as it becomes aware of the child's presence in the country. Legal representatives are appointed for children, adolescents and individuals with disabilities that affect their ability to participate in an SDP on an equal basis. CONARE prioritizes the best interests of the child and applications submitted by stateless children or adolescents are given priority. CONARE is required to adopt reasonable measures to ensure that applicants with disabilities have access to facilities to present their case and comply with the requirements of the SDP.

The applicant and CONARE share the burden of proof to establish statelessness. The applicant must cooperate with the Executive Secretariat to determine the facts justifying their request for statelessness status and present all evidence in their possession or that they could reasonably obtain. If the applicant cannot obtain the necessary documents from foreign authorities, CONARE will support the applicant in acquiring them. CONARE can consult with any State with which the applicant may have a relevant connection on the basis of place of birth, ancestry, residence, marriage or other condition, to confirm whether the State considers the applicant as its national. Consultations with foreign authorities are done by the Executive Secretariat and only when the applicant does not have a need for refugee protection or other forms of complementary protection. CONARE may not share more information than is strictly necessary for the consulted State to respond within a reasonable period of time.

Once the relevant evidence has been collected, the Executive Secretariat prepares a technical report on the merits of the application and submits it to CONARE within ninety days. Where a relevant fact cannot be proved, CONARE will interpret the evidence in favor of the applicant if the overall application indicates that the applicant's statement is credible. A determination of statelessness status will be made when evidence establishes statelessness to a 'reasonable degree'.

The legislation requires that an application is resolved within six months of submission, except where the complexity of the case requires an extension of an additional maximum period of six months.

Once a finding of statelessness status is made, the person is issued with the same identity card that is given to permanent residents, and a travel document. The legislation provides for family reunification. Members of the stateless person's family who are nationals of another country have the right to be issued with an identity document and to obtain permanent residence. CONARE will adopt all necessary measures to facilitate family reunification in Paraguay.

A decision can be appealed for reconsideration by CONARE within ten days. Article 67 provides that "the resolutions of the appeals contemplated in the previous article shall exhaust the administrative route and leave open the possibility of access to ordinary justice." Whilst an appeal is pending, any legal enforcement activity to expel an applicant from the country is suspended (Article 67).

To facilitate naturalization for stateless persons, CONARE and the Supreme Court provide applicants with information on the criteria and requirements for naturalization in a language the person can understand. The person is entitled to free legal assistance at all stages of the naturalization procedure. Stateless persons are exempt from the payment of fees, taxes or costs associated with obtaining documents required for naturalization.

As of December 2019, no cases had yet been submitted to CONARE.



## Annex 1: Overview of national procedures for determining Statelessness

<b>Argentina:</b> <a href="#">Ley General de Reconocimiento y Protección de Las Personas al Apátridas</a>	
<b>Legal Basis/Determining Authority</b>	Comisión Nacional para los Refugiados (National Commission for Refugees).
<b>Conditions for access</b>	No conditions for access to procedure.
<b>Submission in writing/orally</b>	Submissions can be made orally or in writing.
<b>Centralized/decentralized</b>	Centralized procedure.
<b>Suspensive effect of removal order</b>	No sanction for irregular entry or stay, provided the person presents to authorities without delay and provides a justified reason for their irregular entry or presence.
<b>Right to stay during the procedure</b>	Applicant may only be expelled for reasons of national security or public order.  Temporary document is issued to the applicant giving right to stay.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Yes.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Brazil: Chapter III, section 2 of the [New Law on Migration, No. 13.445](#); Chapter V, Art 96(8) of [Decree No. 9.199](#), November 2017; [Ministerial Ordinance, No. 5](#)

<b>Legal Basis/Determining Authority</b>	<p>Ministro de Estado da Justiça e Segurança Pública (Minister of State for Justice and Public Security).</p> <p>Unrelated to the asylum authority. However the procedure proceeds after consultation with the National Committee for Refugees (CONARE).</p> <p>Where an applicant for stateless status also applies for refugee status, CONARE can give a non-binding opinion on statelessness status.</p>
<p><b>Conditions for access</b></p> <p><b>Submission in writing/orally</b></p> <p><b>Centralized/decentralized</b></p>	<p>Applicant must submit proof of address in Brazil or declaration on current location of housing.</p> <p>Submissions to be made in writing using the application form.</p> <p>Centralized.</p>
<p><b>Suspensive effect of removal order</b></p> <p><b>Right to stay during the procedure</b></p>	<p>Suspensive effect of removal order on grounds of irregular entry during procedure and appeal procedure.</p> <p>Temporary residence permit is issued to applicant giving right to stay until final decision.</p>
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Yes.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

<b>Bulgaria: Chapter two “a” of <a href="#">Law on Foreigners in the Republic of Bulgaria</a>; Chapter two “a” Regulation on the Implementation of the Law on Foreigners</b>	
<b>Legal Basis/Determining Authority</b>	Director of the Migration Directorate within the Ministry of the Interior.  Unrelated to the asylum authority.
<b>Conditions for access</b>	No conditions for access to procedure.
<b>Submission in writing/orally</b>	Submissions to be made in writing using the application form.
<b>Centralized/decentralized</b>	Decision-making process is centralized but applications can be submitted before any of the regional directorates of the Ministry of Interior.
<b>Suspensive effect of removal order</b>	No.
<b>Right to stay during the procedure</b>	
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Yes.
<b>Burden of proof</b>	Shared (burden of proof on the applicant but balanced by requirement for the administrative authority to assess facts and circumstances).
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Costa Rica: Executive Decree no. 39620, <a href="#">Reglamento para la declaratoria de la Condición de Persona Apátrida</a>	
<b>Legal Basis/Determining Authority</b>	Ministro de Relaciones Exteriores y Culto (Minister of Foreign Affairs and Worship).  Unrelated to the asylum authority.
<b>Conditions for access</b>	No conditions for access to procedure.
<b>Submission in writing/orally</b>	Submissions can be made orally or in writing.
<b>Centralized/decentralized</b>	Centralized.
<b>Suspensive effect of removal order</b>	Suspensive effect of removal order for irregular entry.
<b>Right to stay during the procedure</b>	Applicants receive a renewable permit with right to stay. They also acquire a provisional document.  Suspensive effect of removal order for irregular entry during appeal.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	No.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.  Right to appeal to decision-making body.
<b>Facilitated naturalization</b>	Yes.

Ecuador: Chapter V, Section V of the <a href="#">Organic Act of Human Mobility</a> ; Chapter V, Section IV of the <a href="#">Regulations to the Organic Act of Human Mobility</a> ; <a href="#">Instructivo para el proceso de determinación de la condición de refugiados y apátridas en el Ecuador</a> , nº 156.	
<b>Legal Basis/Determining Authority</b>	Comisión de Refugio y Apatridia (Commission on Refugee and Statelessness)  Same as the asylum authority. Procedures are separate but in appropriate cases, the Commission will assess whether the person qualifies for refugee and stateless status.
<b>Conditions for access</b>	No conditions for access.
<b>Submission in writing/orally</b>	Submissions can be made orally or in writing.
<b>Centralized/decentralized</b>	Centralized.
<b>Suspensive effect of removal order</b>	Yes.
<b>Right to stay during the procedure</b>	
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Yes.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.  Right to appeal to decision-making body.
<b>Facilitated naturalization</b>	Yes.



France: Article L812 of the [Code de l'entrée et du séjour des étrangers et du droit d'asile](#); Article 23 of the [Décret n° 2015-1166 du 21 septembre 2015 pris pour l'application de la loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile](#)

<b>Legal Basis/Determining Authority</b>	French Office for Refugees and Stateless Persons (OFPRA). Same as asylum authority at the first instance.
<b>Conditions for access</b>	No conditions for access to procedure.
<b>Submission in writing/orally</b>	Submissions in writing in standard form provided by OFPRA.
<b>Centralized/decentralized</b>	Centralized procedure.
<b>Suspensive effect of removal order</b>	Suspensive effect available through urgent administrative request.
<b>Right to stay during the procedure</b>	No independent right to stay during the procedure.
<b>Interview</b>	Yes, but not mandatory.
<b>Legal aid</b>	State funded legal aid is available at the appeals stage.
<b>Burden of proof</b>	Law is silent; in practice, shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No.

<p>Georgia: <a href="#">Law of Georgia on Citizenship of Georgia</a>; <a href="#">Law of Georgia on Aliens and Stateless Persons</a>; <a href="#">Ordinance N. 523 of the Government of Georgia on Approving the Procedures for Determining the Status of Stateless Persons in Georgia</a>; <a href="#">Decree No. 237 of the President of Georgia (10.06.2014) on Approval of the Regulations of Consideration and Decision of Citizenship Issues.</a></p>	
<p><b>Legal Basis/Determining Authority</b></p>	<p>Legal Entity of Public Law (LEPL) - Public Service Development Agency (PSDA) under the Ministry of Justice of Georgia.</p> <p>Unrelated to the asylum authority.</p>
<p><b>Conditions for access</b></p> <p><b>Submission in writing/orally</b></p> <p><b>Centralized/decentralized</b></p>	<p>Procedure open to anyone unless a decision of expulsion from Georgia has been issued.</p> <p>Submissions in writing.</p> <p>Centralized procedure, however written applications are received by all branches countrywide.</p>
<p><b>Suspensive effect of removal order</b></p> <p><b>Right to stay during the procedure</b></p>	<p>Suspensive effect of removal order on grounds of irregular entry or lack of legal grounds of stay, for the duration of the procedure.</p> <p>Temporary ID card is issued to the applicant to facilitate stay.</p>
<p><b>Interview</b></p>	<p>Yes, but not mandatory.</p>
<p><b>Legal aid</b></p>	<p>No State funded legal aid.</p>
<p><b>Burden of proof</b></p>	<p>Shared.</p>
<p><b>Right to appeal</b></p>	<p>Yes.</p>
<p><b>Facilitated naturalization</b></p>	<p>No.</p>

<b>Hungary: <a href="#">Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and Government Decree 114/2007 (V.24.) on the Implementation of Act II of 2007 on the Admission and Rights of Residence of Third-Country Nationals</a></b>	
<b>Legal Basis/Determining Authority</b>	Alien Policing Directorates of the National Directorate-General for Aliens Policing (NDAP).  Separate from the asylum authority.
<b>Conditions for access</b>	No conditions for access to procedure.
<b>Submission in writing/orally</b>	Submissions can be made orally or in writing.
<b>Centralized/decentralized</b>	Decentralized procedure.
<b>Suspensive effect of removal order</b>	The law requires the issuance of a certificate of temporary residence for the duration of the procedure, if the applicant does not have authorization to reside in the country.
<b>Right to stay during the procedure</b>	A suspensive effect of removal orders is not explicitly provided in the law.  In practice, certificate of temporary residence is not necessarily issued to stateless applicants who are subject to immigration detention and/or to expulsion proceedings.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Provision for access to State funded legal aid in the law, but ineffective in practice.
<b>Burden of proof</b>	Rests with the applicant, though shared in practice upon the applicant's request.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Italy (administrative procedure): <a href="#">Article 17 of Presidential Decree 572/1993</a> ; Regolamento di esecuzione della legge 5 febbraio 1992, n.91, recante nuove norme sulla cittadinanza.	
<b>Legal Basis/Determining Authority</b>	Ministry of Interior.  Unrelated to the asylum authority.
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	Applicants must have legal residence and a birth certificate to access the procedure.  Submission to be made in writing.  Decentralized procedure
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	No.
<b>Interview</b>	No.
<b>Legal aid</b>	No State funded legal aid at the stage of the administrative procedure but available at the appeal stage if the applicant has no means.
<b>Burden of proof</b>	Law is silent; but rests with the applicant in practice..
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

<b>Italy (judicial procedure): No specific legal basis. The procedure is based on the Civil Code that regulates proceedings on legal status.</b>	
<b>Legal Basis/Determining Authority</b>	Specialized sections for international protection, migration and statelessness of the Civil Courts.
<b>Conditions for access</b>	No conditions for access.
<b>Submission in writing/orally</b>	Submission to be made in writing.
<b>Centralized/decentralized</b>	Decentralized procedure
<b>Suspensive effect of removal order</b>	At the discretion of the judge.
<b>Right to stay during the procedure</b>	
<b>Interview</b>	At the discretion of the judge.
<b>Legal aid</b>	State funded legal aid if the applicant has no means.
<b>Burden of proof</b>	Based on jurisprudence, the burden of proof is shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Kosovo (Security Council Resolution 1244 (1999)): <a href="#">Law No 04/L-215 on citizenship of Kosovo</a> . <a href="#">Administrative Instruction (MIA) No.05/2015</a>	
<b>Legal Basis/Determining Authority</b>	Division for Citizenship within Department of Citizenship, Asylum and Migration (DCAM); Ministry of Internal Affairs.  Unrelated to the asylum authority
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	No conditions for access to the procedure.  Submissions to be made in person and in writing using the preliminary application form.  Centralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	In line with the Law on Foreigners, the applicant shall be issued with a document serving as proof that he/ she applied for statelessness status and legal temporary residence..
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	No State funded legal aid.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Latvia: Law on Stateless Persons	
<b>Legal Basis/Determining Authority</b>	Office of Citizenship and Migration Affairs. Same as the asylum authority but the two procedures are unrelated.
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	Those who are subject to the <i>Law on the Status of Those Former U.S.S.R. Citizens Who do not Have the Citizenship of Latvia or That of any Other State</i> (a 'non-citizen') cannot apply for statelessness status.  Submissions to be made in writing.  Centralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	No suspensive effect generally.  Only available if an administrative court suspends deportation order.  No legal right to stay during the procedure.
<b>Interview</b>	No.
<b>Legal aid</b>	No State funded legal aid.
<b>Burden of proof</b>	Rests with the applicant, shared in practice.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No.

Mexico: <a href="#">Migration Law</a> , <a href="#">Regulations to the Migration Law</a>	
<b>Legal Basis/Determining Authority</b>	The National Migration Institute, under the Secretaria de Gobernación (Ministry of Interior) is the determining authority. The opinion of the Mexican Refugee Commission (COMAR) is to be considered in the determination procedure.
<b>Conditions for access</b>	No conditions for access to the procedure.
<b>Submission in writing/orally</b>	Submissions to be made in writing.
<b>Centralized/decentralized</b>	Centralized procedure.
<b>Suspensive effect of removal order</b>	Yes.
<b>Right to stay during the procedure</b>	
<b>Interview</b>	Yes.
<b>Legal aid</b>	Free legal aid available mainly through UNHCR partners; other legal professional services also available but not free.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No.



Republic of Moldova: <a href="#">Chapter X(1) of the 2010 Law on the Regime of Foreigners in the Republic of Moldova</a>	
<b>Legal Basis/Determining Authority</b>	Statelessness and Information Unit under the Asylum and Integration Directorate within the Bureau for Migration and Asylum of the Ministry of Internal Affairs. Same as the asylum authority.
<b>Conditions for access</b>	No conditions for access to procedure.
<b>Submission in writing/orally</b>	Submissions can be made orally or in writing.
<b>Centralized/decentralized</b>	Centralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	The applicant has a right to stay during the procedure and receives a certificate confirming his/her status as applicant. The applicant may only be removed for reasons of national security and public order.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Legislation provides for State-funded free legal aid during the administrative phase but this is not available in practice.  State funded legal aid is available on appeal if the applicant has no means
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No.

<b>Montenegro: Articles 59 – 60 of the <a href="#">Law on Foreigners</a>; <a href="#">Rulebook on the Procedure Initiated upon Request for Statelessness Determination</a></b>	
<b>Legal Basis/Determining Authority</b>	Branch Office of the Ministry of the Interior in the applicant's place of residence. Separate to asylum authority.
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	Persons who have applied for asylum or have been granted international protection in Montenegro cannot initiate the SDP.  Submissions to be made in writing using the application form.  Decentralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	Yes.
<b>Interview</b>	Yes.
<b>Legal aid</b>	No State-funded legal aid. The state-funded legal aid scheme covers judicial procedures only. Applicants can access the legal aid scheme provided by UNHCR.
<b>Burden of proof</b>	On applicant.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Panama: Chapter VI of the <a href="#">Decreto Ejecutivo N° 10, de 16 de enero de 2019</a>	
<b>Legal Basis/Determining Authority</b>	Ministerio de Relaciones Exteriores (Ministry of Foreign Affairs).  Unrelated to the asylum authority.
<b>Conditions for access</b>	No conditions for access to the procedure.
<b>Submission in writing/orally</b>	Submissions can be made orally or in writing.
<b>Centralized/decentralized</b>	Centralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	Suspensive effect of removal order on grounds of irregular entry or lack of legal grounds of stay, for the duration of the procedure.  A temporary residence permit is issued to the applicant giving right to stay during the procedure.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	State-funded legal aid.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No.

Paraguay: Ley N° 6.149 - <a href="#">Protección y Facilidades para la Naturalización de las Personas Apátridas</a>	
<b>Legal Basis/Determining Authority</b>	Comisión Nacional para Apátridas y Refugiados - CONARE (National Commission for Stateless Persons and Refugees) Same as the asylum authority, but the procedures are separate.
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	No conditions for access to procedure.  Submissions can be made orally or in writing.  Centralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	Suspensive effect on any action (such as detention or expulsion from the country) for irregular entry or stay for duration of the procedure and appeal procedure.  A document granting temporary residence is issued to the applicant granting right to stay until the final decision.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	CONARE will facilitate access to free legal assistance service specialized in the international protection of refugees and stateless persons. The procedure is free for applicant and their family.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Philippines: <a href="#">Department Circular No. 058 Establishing the Refugee and Stateless Status Determination Procedure</a>	
<b>Legal Basis/Determining Authority</b>	Refugees and Stateless Persons Protection Unit (RSPPU) headed by the Chief State Counsel and within the legal staff of the Department of Justice.
<b>Conditions for access</b>	No conditions to access procedure.
<b>Submission in writing/orally</b>	Submissions to be made in writing.
<b>Centralized/decentralized</b>	Centralized procedure, however off-site interviews by the Chief State Counsel Staff may be undertaken if applicant cannot travel to Manila.
<b>Suspensive effect of removal order</b>	Yes.
<b>Right to stay during the procedure</b>	
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Yes.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No.

Spain: Article 34.1 of the <a href="#">Aliens Law</a> ; <a href="#">Royal Decree N° 865/2001</a>	
<b>Legal Basis/Determining Authority</b>	Office for Asylum and Refuge (OAR).  Same as asylum authority, but the procedures are entirely separate.
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	Applications may be refused if person received an expulsion order or if the application is submitted later than 30 days after entering the country (although the latter is not applied in practice).  Submissions to be made in writing.  Applications can be submitted throughout the country but decisions and interviews take place centrally.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	A temporary residence card which suspends the expulsion procedure can be granted at the discretion of the authorities. If the applicant does not receive a temporary residence card, s/he can apply for suspension within the framework of the expulsion procedure.
<b>Interview</b>	Not mandatory. At discretion of the OAR.
<b>Legal aid</b>	No State funded legal aid.
<b>Burden of proof</b>	Law is silent. In practice, shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No. Access under the same conditions as legal immigrants, application after ten years of effective legal residence.

<b>Turkey: <a href="#">Law No. 6458 on 2013 of Foreigners and International Protection</a>; <a href="#">Implementation regulation on the Law on Foreigners and International Protection</a></b>	
<b>Legal Basis/Determining Authority</b>	Directorate General for Migration Management. Separate from the asylum authority.
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	Applications of persons who hold statelessness IDs or passports from other countries are not accepted.  Submission to be made in writing.  Applications can be submitted throughout the country, interviews take place at provincial level and decisions are taken centrally.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	Stateless persons not to be deported unless they pose a serious threat to public order or public security.  Applicants have a right to stay until the decision is made and receive a document serving as proof that he/she applied for statelessness status and conferring temporary right to stay.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Free legal aid provided by the Bar Association if applicants do not have the means.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	No.

Ukraine: <a href="#">the law on Amendments to Certain Legislative Acts of Ukraine Concerning Recognition as a Stateless Person</a> (The information provided below is subject to provisions of the by-law which is to be adopted within three months after proclamation of the law)	
<b>Legal Basis/Determining Authority</b>	State Migration Service of Ukraine
<b>Conditions for access</b>	No conditions for access set by law.
<b>Submission in writing/orally</b>	Submission in writing.
<b>Centralized/decentralized</b>	Mixed procedure: applications are submitted to district departments and are reviewed by the central State Migration Service.
<b>Suspensive effect of removal order</b>	No suspensive effect of removal order.
<b>Right to stay during the procedure</b>	Applicants receive certificates with photo, confirming the submission of their application and their lawful stay on the territory during the SDP.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Free legal aid in the application process, for the duration of the procedure and at the stage of appeal.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.



United Kingdom: <a href="#">Immigration Rules, Part 14: Stateless People. Asylum Policy Instruction.</a> <a href="#">Statelessness and applications for leave to remain</a>	
<b>Legal Basis/Determining Authority</b>	Complex Casework Directorate, Home Office.  Unrelated to the asylum authority.
<b>Conditions for access</b> <b>Submission in writing/orally</b> <b>Centralized/decentralized</b>	Asylum and statelessness applications may proceed in parallel in circumstances where it is determined that the stateless leave application can be decided such that any enquiries with relevant national authorities would not breach the Home Office duty of confidentiality.  Submission to be made in writing, using the standard application form.  Centralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	No.
<b>Interview</b>	Not mandatory.
<b>Legal aid</b>	No State funded legal aid.
<b>Burden of proof</b>	On applicant, but caseworkers may assist with inquiries with national authorities.
<b>Right to appeal</b>	No statutory right of appeal to an independent body but the applicant can apply for administrative review to be undertaken by the Home Office. The applicant can also seek judicial review of negative decisions.
<b>Facilitated naturalization</b>	Generally no. However, stateless children who meet very specific criteria can register as a British citizen (or British Overseas Territories citizen) with a reduced residency requirement.

Uruguay: <a href="#">Ley N° 19.682, Reconocimiento y Protección al Apátrida</a>	
<b>Legal Basis/Determining Authority</b>	Comisión de Refugiados (Refugee Commission) Same as asylum authority. Procedures are separate but in appropriate cases, the Refugee Commission will assess whether the person qualifies for refugee and stateless status.
<b>Conditions for access</b>	No conditions to access the procedure.
<b>Submission in writing/orally</b>	Submissions can be made orally or in writing.
<b>Centralized/decentralized</b>	Centralized procedure.
<b>Suspensive effect of removal order</b> <b>Right to stay during the procedure</b>	Suspensive effect of removal order on grounds of irregular entry or stay during procedure and appeal procedure.  A temporary identity document is issued to the applicant giving right to stay during the procedure.
<b>Interview</b>	Yes, mandatory.
<b>Legal aid</b>	Access to State funded legal aid is not expressly legislated, however procedure is free of charge.
<b>Burden of proof</b>	Shared.
<b>Right to appeal</b>	Yes.
<b>Facilitated naturalization</b>	Yes.

Cover Image: Anastasia was formally recognized as stateless in 2008 pursuant to the French SDP and acquired French citizenship six years later, after having been stateless for 29 years © UNHCR/ Benjamin Loyseau



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