

STATELESSNESS:
PREVENTION AND REDUCTION OF STATELESSNESS AND
PROTECTION OF STATELESS PERSONS
Follow-up Paper

1. Following initial discussions on the topic of Statelessness at the 35th Meeting of the Standing Committee (7-9 March), the purpose of the 30 March Informal Consultative Meeting was to enable delegations to air ideas and identify some key issues which might form the basis of an Executive Committee conclusion on statelessness.

2. Focus of discussions: Issues of concern for further elaboration and discussion included the implications for States of having to review national legislation on this topic and what research activities were envisaged on the topic. One delegation suggested a focus on accession; another disagreed. One observer delegation believed the scope of the conclusion should be limited to stateless refugees, but this was rejected by other delegations. One delegation was not convinced of the need for a conclusion at all while others considered it important to progress carefully to ensure the best possible outcome given the complexity of the subject, even if that meant delaying adoption of the conclusion to 2007. Any conclusion should be practical and operationally oriented, with input from the Field and NGOs, building on previous conclusions and take into account other developments in international law, including the new Council of Europe Convention on Avoidance of Statelessness in relation to State succession. The need to work closely with other United Nations entities was noted.

3. Outcome: It was further agreed the Conference Room Paper (CRP) provided a good framework for further consideration of the topic and that UNHCR would provide a short follow-up paper in advance of the 4 May ICM elaborating on the different elements which might form the basis for an ExCom conclusion. The Council of Europe Convention on Avoidance of Statelessness in relation to State Succession was circulated as well as a "reading list" on the topic, including all ExCom conclusions referring to statelessness.

4. Based on the CRP, the thematic structure could be maintained as follows: focusing on Identification of Statelessness (A), Prevention of Statelessness (B), Reduction of Statelessness (C), and Protection of Stateless Persons (D).

A. Identification of Statelessness

5. In the identification of statelessness, some important initiatives could include:

- a) Within the framework of their national programmes, renewed efforts by States to identify stateless populations and populations with unclear nationality residing in their territory, with the assistance of UNHCR in cooperation with other United Nations agencies.

These could include:

- UNFPA in assisting States to organize population census;
 - UNICEF in assisting States to further engage in birth registration;
 - with other Departments of the United Nations, in assisting States to prepare for elections and identifying nationals who are enrolled in voters' lists.
- b) an increase in UNHCR's capacity to undertake research in partnership, where appropriate, with relevant academic institutions or experts, so as to assist States to better identify stateless populations and understand reasons which led to statelessness, as a basis for crafting strategies to assist them to acquire a citizenship or, at a minimum, to have access to basic rights as stateless persons;
- c) encourage States to provide yearly statistics on stateless persons or individuals with undetermined nationality to UNHCR;
- d) UNHCR to promote a common understanding of the problem of statelessness and a platform for dialogue between States at a universal and regional level;
- e) co-operation with the Inter-Parliamentary Union (IPU) in the field of nationality and statelessness, including to further disseminate the 2005 *Nationality and Statelessness: a Handbook for Parliamentarians* in national and regional parliaments to raise awareness and build capacity among State administrations and civil society.

B. Prevention of Statelessness

6. While recalling the right of States to establish laws governing the acquisition, renunciation or loss of nationality, initiatives with regard to the prevention of statelessness could include:

- a) States to ensure systematic birth registration and issuance of birth certificates as a means to provide a legal identity to children; UNHCR and UNICEF to cooperate to assist interested States in such registration and documentation at birth as provided in Article 7 (1) of the Convention on the Rights of the Child;
- b) States to consider examining nationality law and any other relevant legislation, with a view to preventing the occurrence of statelessness for instance, as a result of automatic loss of citizenship for prolonged residence abroad, legislation imposing an automatic change in nationality status by virtue of marriage or dissolution of marriage, women's right to pass on nationality;
- c) States to ensure the adoption and systematic use of safeguards in national legislation protecting against statelessness arising as a result of deprivation, renunciation or loss of nationality and UNHCR to provide technical and advisory support to this end;
- d) further efforts by States, in cooperation with UNHCR and other concerned organizations, to promote the adoption of national systems with consistent and clearly identifiable mechanisms aimed at the avoidance of statelessness in the event of State succession. Reference could be made to principles prepared by the International Law Commission and contained in the Annex to UN General

Assembly Resolution 55/153 of 2001⁶ as well as principles developed by the Council of Europe in the 1997 European Convention on Nationality and the recent Convention on avoidance of statelessness in relation to state succession.

C. Reduction of Statelessness: Finding solutions to protracted situations of statelessness

7. One of the main challenges faced by the international community remains how to bring to an end protracted statelessness situations which prevent millions of people from enjoying an effective citizenship, and how to prioritize situations where stateless persons are absolutely destitute. Some of these longstanding situations have recently been resolved, due to strong political commitment to do so and the underpinning of State action by operational support from UNHCR, with the active engagement of civil society, mainly local NGOs.

- a) UNHCR to promote a consistent United Nations inter-agency response to protracted statelessness situations, particularly in cooperation with the United Nations Office of the High Commissioner for Human Rights, UNICEF and UNIFEM, as well as to assist, where necessary, concerned States to integrate or reintegrate marginalized communities by developing programmes in the field of education, housing, and income generation, in partnership with UNDP and ILO;
- b) States to ensure the right of every child to citizenship at birth, including through access to citizenship through legislation to children born on their territory who would otherwise be stateless, as foreseen by Article 7 (2) of the Convention on the Rights of the Child (CRC); UNHCR to cooperate with UNICEF to promote full implementation of this CRC provision;
- c) UNHCR to assist States willing to organize citizenship information campaigns and other measures enabling stateless persons to acquire citizenship;
- d) States to cooperate in the establishment of identity and nationality status of victims of trafficking, many of whom, especially women and children, are rendered effectively stateless due to an inability to establish such status, so as to facilitate appropriate solutions to their situations, respecting the internationally recognized human rights of the victims.

D. Protecting Stateless Persons

8. The 1954 Convention on the Status of Stateless Persons is the international instrument which provides a definition of a stateless person and sets out a set of minimum rights and obligations for stateless persons. Despite UNHCR's efforts to promote the accession to the 1954 Convention, only 59 States have done so. There is a need for renewed efforts to ensure stateless persons are able to have access to basic rights in their country of residence.

⁶ ILC principles are the following:

- all States concerned should take appropriate measures so that persons who, on the date of the succession of States, had the nationality of the predecessor state do not become stateless as a result of the succession;
- a person whose habitual residence was located in the territory affected by succession is presumed to acquire the nationality of the successor State on the date of succession;
- a successor State should not attribute its nationality to persons whose habitual residence was in another State against the will of the persons concerned unless they would otherwise become stateless;
- a successor State should consider the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States. Each concerned State shall grant the right to opt for nationality of that State for to persons who have appropriate connections with that State if those persons would otherwise become stateless;
- States concerned shall not deny concerned persons the right to retain or acquire a nationality or the right of option to a nationality through discrimination on any ground.

9. Possible initiatives in this area might be:

- a) States giving renewed consideration to acceding to the 1954 Convention on the Status of Stateless Persons and consider lifting reservations;
- b) UNHCR actively disseminating information and training government counterparts on appropriate mechanisms for identifying, recording, and resolving cases of statelessness and furthering the protection of stateless persons;
- c) UNHCR implementing programmes, as necessary, which contribute to protecting and assisting stateless persons;
- d) UNHCR assisting stateless persons to access legal remedies to redress statelessness, in particular statelessness which results from arbitrary deprivation of nationality by, *inter alia*, ensuring the availability of legal counselling, including through tangible support to NGOs providing this legal advice;
- e) States to give consideration to facilitating access to nationality for habitual and lawfully resident stateless persons;
- f) State Parties to the 1954 Convention reviewing national legislation and administrative practice so as to ensure full implementation of this instrument; and,
- g) UNHCR providing technical advice to States Parties on the implementation of the 1954 Convention and promoting a consistent understanding of its provisions.

DIPS
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