

UNHCR's ACTIVITIES IN THE FIELD OF STATELESSNESS:  
PROGRESS REPORT

I. INTRODUCTION

1. The purpose of this update is to outline various activities and developments which have taken place in the field of statelessness since the last reporting exercise.<sup>1</sup> It also identifies key areas in which work toward the prevention and reduction of statelessness is tied to the implementation of the Agenda for Protection. The main development has been the global expansion of UNHCR's activities in respect of stateless persons, in line with the conclusion on international protection adopted by the Executive Committee at its fifty-second session in 2001<sup>2</sup>, and as recommended that year in the review of the statelessness programme undertaken by the Evaluation and Policy Analysis Unit<sup>3</sup>, as well as the working paper on UNHCR 2004 issued in January this year. The geographical focus has now broadened from central and eastern Europe to other parts of the world where statelessness is a problem, including Africa, Asia and the Middle East. UNHCR's efforts have focused on providing technical and advisory services, including on appropriate legal frameworks, to States and relevant organizations, and on encouraging States to find equitable solutions, including in individual cases.

II. ACTIVITIES CONCERNING STATELESSNESS

A. Implementation of the Agenda for Protection

2. Statelessness is often an underlying factor of displacement and of refugee flows, not least because it marginalizes and stigmatises individuals and often deprives them of access to basic rights. Likewise, the avoidance and reduction of statelessness are key elements in securing protection-oriented solutions for refugees. Addressing issues of statelessness thus plays a direct role in avoiding displacement and refugee flows, in promoting solutions to protracted situations, and in ensuring that these solutions can be durable for both the States and the individuals concerned.

3. In view of these links, UNHCR has been requested under the Agenda for Protection<sup>4</sup> to undertake a survey on steps taken by States to reduce statelessness and to protect stateless persons, in keeping with conclusion No. 78 (XLVI) (1995) adopted by ExCom at its 46<sup>th</sup> session

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<sup>1</sup> UNHCR reports biennially on statelessness activities under Conclusion No.78(XLVI) (A/AC/96/860) and General Assembly Resolution A/RES/50/152. Three progress reports have been presented to the Standing Committee at its 8<sup>th</sup>, 15<sup>th</sup> and 21<sup>st</sup> meetings respectively.

<sup>2</sup> A/AC.96/959, para. 22 (o) - (s)

<sup>3</sup> *Evaluation of UNHCR's Role and Activities in Relation to Statelessness Issues*, EPAU/2001/09, July 2001.

<sup>4</sup> A/AC.96/965Add.1, Goal 1, objective 12, action 6.

in 1995<sup>5</sup>. The Office has already forwarded to all States a questionnaire on Statelessness. Questions were drafted in light of emerging issues encountered by UNHCR, and are designed to provide a solid basis on which to assess the scope of the problem and measures in place to address statelessness. Areas covered by the questionnaire include the experience of States with cases of statelessness, approaches to the acquisition and loss of nationality, approaches to family unity and special issues concerning women and children, mechanisms for the identification and protection of stateless persons, steps concerning accession to and implementation of the statelessness Conventions of 1954 and 1961, and areas of collaboration with UNHCR. Responses received to date have been comprehensive, proving useful information on steps taken by States. UNHCR has been asked by several States to provide further clarification as to issues such as how to identify cases of statelessness, how to implement the statelessness Conventions, and details on UNHCR's activities in this field. The survey offers a valuable opportunity for States to indicate the challenges faced as well as mechanisms of cooperation which could assist in avoiding and resolving cases. This exercise will result in an analytical report with recommendations, outlining the nature of the problems, ways to resolve them and areas where international cooperation needs to be reinforced.

#### B. Technical and Advisory Services

4. In the last decade, the Office has directly participated with over 60 States in drafting new nationality laws or amendments to laws to avoid and reduce cases of statelessness. During the reporting period, UNHCR made its expertise available around the world, both in relation to nationality legislation as well as in individual cases, including rejected asylum-seekers, to determine if a person is stateless and to provide guidance on how to find a solution in such cases. Further to the independence of East Timor, for instance, UNHCR provided technical advice in the drafting of the country's first nationality law, helping to identify the initial body of citizens. In another development, UNHCR provided technical expertise to the Transitional Government of Afghanistan on approaches to nationality, which is particularly challenging given the many years of displacement, marriages and births abroad. Consultations in this context were also undertaken with the Governments of the Islamic Republic of Iran and of Pakistan to promote legal mechanisms for the identification of Afghan nationals and family members. In circumstances such as these, the overlap between the avoidance of statelessness and durable solutions for refugees is particularly visible.

5. Legal advice was also provided to a number of States in south-east Asia on approaches to nationality for populations which have migrated, and who are currently without a nationality either in their country of origin or their country of residence. In central Asia, technical advice on nationality laws was provided to address cases resulting from the dissolution of the former Soviet Union and complicated, in many instances, by cross-border movements due to conflicts or return of populations to their place of origin. As a result of this advice, concrete steps have been taken to naturalize refugees and to normalize the stay of stateless persons. Legal support was also provided with respect to a number of specific populations, such as the Roma, Meskhetians, and Bedoon, where lack of clarity on nationality status arises at the cross-regional level.

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<sup>5</sup> A/AC.96/860 para. 20 (a) - (e).

### C. Promotion of the Statelessness Conventions

6. The 1961 Convention on the Reduction of Statelessness offers a legal framework through which future cases of statelessness can be avoided, incorporating approaches of *jus soli* and *jus sanguinis* generally adopted by States to determine nationality. The 1961 Convention does not require a State to change its approach to nationality determination per se, providing that in cases where a child would otherwise be stateless, he/she acquires either the nationality of the country of birth, or the nationality of a parent. The Convention also outlines certain steps States can take to protect nationality once acquired, in order to avoid instances of statelessness in cases of State succession, renunciation, loss or deprivation of nationality. As such, the 1961 Convention is a tool of prevention, and a primary reference for promoting more resolute responses to root causes of refugee movements. It is also an instrument which can help to promote a legal framework within which durable solutions can be implemented. Since the last reporting period in 2001, three more accessions to the 1961 Convention have been registered.<sup>6</sup> Despite the new accessions, the total number of States parties to this instrument is currently only 26.

7. For the many cases of statelessness that cannot be resolved, some of them lingering for years and possibly decades, at a minimum, certain basic needs must be met, including a secure legal status and the rights that flow from this. UNHCR has identified many instances throughout the world in which individuals may be physically present in a country, even for generations, but cannot normalize their stay nor establish lawful residence. This, in turn, means they can never aspire to full integration through naturalization. The 1954 Convention relating to the Status of Stateless Persons provides a legal framework designed to identify cases of statelessness and to bring individuals into “legal existence” through the grant of lawfully recognized stay as appropriate. While the only durable solution to statelessness *per se* is the acquisition of a nationality, the grant of lawful stay is a basis on which individuals can begin to integrate, and may potentially acquire nationality. Consultations were held with several States in relation to accession to and implementation of the 1954 Convention, including Austria, Spain, Belgium, Mexico, Canada, New Zealand, the Philippines, Albania, and the United Kingdom. Two additional ratifications have been recorded since the last reporting period<sup>7</sup> bringing the total number of States parties to the 1954 Convention to 54. UNHCR will continue its endeavours to promote accession to both Statelessness Conventions, which is also in the interest of preventing and resolving causes leading to refugee flows.

### D. Collaboration with partners

8. UNHCR continued its cooperation with other interested actors such as the Council of Europe and the OSCE, and expanded these efforts geographically to include, for example, the former Organization of African Unity and the Organization of American States. The Office cooperated closely with the OAU in the adoption, by the OAU, of a resolution on the avoidance and reduction of statelessness in the African context.<sup>8</sup> This resolution was incorporated into the Comprehensive Implementation Plan (CIP) which focused on addressing root causes of refugee

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<sup>6</sup> The Czech Republic, Guatemala, and Uruguay.

<sup>7</sup> Hungary and the Republic of Serbia and Montenegro.

<sup>8</sup> CONF.P/OAU 30<sup>th</sup>/REPORT - Annex IV

flows, enhancing national protection capacities, and finding durable solutions.<sup>9</sup> Follow-up included a joint African Union/UNHCR mission to review country-specific activities under the CIP.<sup>10</sup>

9. In other regions, UNHCR has had a close partnership for several years with the Council of Europe, actively participating in the Committee of Experts on Nationality to draft new instruments and recommendations with provisions aimed at avoiding and reducing statelessness. UNHCR has also continued to provide technical advice on new laws promulgated throughout central, eastern and southern Europe. In the last reporting period, joint workshops took place to discuss nationality laws in the Republic of Serbia and Montenegro, the Russian Federation, Bosnia and Herzegovina, Georgia, Azerbaijan, and The former Yugoslav Republic of Macedonia. In June 2002, UNHCR delivered a full-day briefing and technical exchange on statelessness to the OSCE Permanent Council, in cooperation with the High Commissioner on National Minorities, ODIHR, and the Centre for Conflict Prevention. This briefing, which included a set of recommendations for follow-up activities, was followed by consultations during the OSCE Human Dimension Implementation Meeting in Warsaw, and cooperation is ongoing in relation to specific populations. Partnership with the European Commission was strengthened during the Spanish Presidency of the European Union in 2002. UNHCR shared perspectives on the problem of statelessness and outlined legal frameworks for protection at the invitation of the Spanish Government during a meeting of Member States held in Madrid. These consultations led to various joint initiatives, including a study on statelessness that UNHCR is currently undertaking with funding by the European Commission. This study is reviewing implementation of the 1954 Convention relating to the Status of Stateless Persons within the 15 Member States, and will contain recommendations on how best to harmonize approaches. It will be published in 2003 and could play an important role within the European context and beyond, in promoting a clear understanding of the 1954 Convention as well as mechanisms for its full implementation.

10. Given the overlap between the right to a nationality, as set out in human rights instruments, and statelessness, and in the context of international law developments more generally, UNHCR has shared on a regular basis perspectives with UN treaty bodies, the International Law Commission, and the Commission on Human Rights on how statelessness can be avoided in practice. Another important development is the increased cooperation with UN agencies where UNHCR has provided legal inputs in the context of border demarcations, reunification of States, and transfer of territory in the Horn and West Africa, the Caucasus, and in southern Europe.

#### E. Training and dissemination of information

11. Since 1995, 42 full-scale staff training sessions on statelessness have taken place involving over 1300 participants. During the last reporting period, statelessness workshops were held for UNHCR staff in southern Europe, central Asia, and south-east Asia. These training sessions included the development of action plans at the country and regional levels, thus leading to an internal capacity to identify problems and a framework for promoting dialogue and

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<sup>9</sup> Special OAU/UNHCR Meeting of Government and Non-Government Technical Experts at the 30<sup>th</sup> Anniversary of the 1969 OAU Refugee Convention held in Conakry, 27 – 29 March 2000.

<sup>10</sup> Report of the African Union/UNHCR Mission on Implementation of Recommendation 3 of the Comprehensive Implementation Plan to the African Union, December 2002.

solutions with States. Staff thus trained are enabled to undertake capacity-building initiatives, including the dissemination of information to government officials, implementing partners, and practitioners. They can follow legal developments concerning nationality and establish dialogue with States on how to avoid cases of statelessness. General statelessness training has also been incorporated into UNHCR's Protection Learning Programme, ensuring an ongoing development of staff skills in this field.

12. As regards training initiatives with governments, a training and briefing session was provided for the first time to Caribbean States at a Regional Workshop in Miami last year, to raise awareness of the problem and of the solutions available to States in approaching cases which have increasingly come to the fore in this sub-region. Workshops were also held at the national level for government staff and practitioners in Canada, Thailand, Vietnam, and Turkmenistan. In the case of Vietnam and Turkmenistan, technical exchanges in the capital as well as in the provinces furthered the opportunity to advise those implementing nationality laws and to discuss with them practical cases and challenges faced in administering the law. UNHCR also provided presentations at seminars in cooperation with institutions, including the 2001 International Metropolis Conference on Contemporary Developments in Transnationalism and Citizenship Policy and the 2003 York University Refugee Summer Studies Programme.

13. Information dissemination has also been furthered through a section devoted to statelessness on UNHCR's website where ready access is provided to documents such as General Assembly resolutions, Standing Committee progress reports, and information packages and brochures concerning the statelessness Conventions. Widely broadcast radio interviews for the BBC and UN Radio New York also helped to disseminate information to individuals as well as to institutions. These activities for training and information dissemination have served to raise awareness of statelessness, an often hidden problem, and to inform States, individuals and civil society of steps to take in identifying and resolving cases.

#### F. Global Mapping Exercise: Defining the Scope of the Problem

14. A major issue of concern remains proper and systematic analyses of the scope and magnitude of the statelessness problem in every part of the world. To date it has proven impossible to introduce a statistical mechanism for identifying cases of statelessness globally, in part because very few States have a means of registering stateless persons. At the same time, virtually every State responding thus far to the questionnaire referred to in paragraph 3 above, has requested further information on how to identify stateless persons. In an effort to address this issue, UNHCR will review how information concerning cases of statelessness could be appropriately gathered. In this regard, the Office will cooperate closely with interested States in furthering registration and documentation efforts with a view to identifying cases of statelessness. Special attention will be paid to issues impacting women and children, in particular in follow-up to the 2001 ExCom Conclusion adopted by the Executive Committee at its fifty-second session which underlined the importance of identity documentation and proper registration of births and marriages.<sup>11</sup>

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<sup>11</sup> A/AC.96/959, para. 22 (o) - (s)

### III. OUTLOOK

15. In undertaking the activities outlined above, UNHCR has identified key areas for future action:

- a) Continue to provide technical and advisory services concerning statelessness to all interested States and partners, and identify instances where increased dialogue would be useful, paying particular regard to expanding this important aspect of UNHCR's role globally;
- b) Cooperate with States in the development of national legal frameworks designed to identify cases of statelessness and in outlining mechanisms which can assist in determining the magnitude of the problem of statelessness globally and in resolving such cases;
- c) Renew dialogue concerning the 1954 and 1961 statelessness Conventions as tools of prevention for both the problem of statelessness and of refugee flows, as well as tools in implementation of durable solutions, seeking additional accessions;
- d) Enhance technical and information exchanges with partners and States globally, in particular in response to requests for follow-up noted in replies by States to the questionnaire and with special regard to those regions where such exchanges may not yet have been held;
- e) Provide an analytical report on issues outlined by States under the questionnaire, noting any gaps remaining in addressing the problem of statelessness and making recommendations accordingly;
- f) Further to information exchanged in the Questionnaire on statelessness, as well as in review of refugee operations, provide an outline of nationality issues impacting women and children in the context of nationality law and practice;
- g) Develop additional information tools for use by States and partners outlining approaches to issues of statelessness and disseminating best practices.