UNHCR
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# SMALL CHANGES – BIG GAINS

## An Action Plan to Prevent and Reduce Statelessness in the Kyrgyz Republic

Bishkek 2010

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Dear Reader,

The Representation of the United Nations High Commissioner for Refugees (UNHCR) in Kyrgyzstan is pleased to present you with our second publication on the prevention and reduction of statelessness. It comes as part of a comprehensive national and regional process seeking to help Kyrgyzstan in managing citizenship problems in line with applicable international experiences, norms and models.

In 2009, we published the results of field surveys undertaken by civil society partners in 18 districts of Batken, Chui, Jalalabad and Osh provinces upon government's request and with strong support from local authorities *(A Place to Call Home: The Situation of Stateless People in the Kyrgyz Republic,* UNHCR, Bishkek, September 2009). These surveys identified some 13,000 stateless people, illustrated and analysed the causes and consequences of statelessness and even suggested possible solutions.

In the summer of 2009, an inter-ministerial expert working group on citizenship and statelessness started to analyse the findings of these surveys and other information to derive at concrete recommendations on how to advance the prevention and reduction of statelessness in the Kyrgyz Republic. On 22 September 2009, the Administration of the President and UNHCR co-chaired a High-Level Steering Meeting, which as its Concluding Statement adopted a National Action Plan to Prevent and Reduce Statelessness in the Kyrgyz Republic. This ground-breaking National Action plan is at the heart of the present publication.

Associate Professor of Law Chinara Musabekova presented an analysis to the Steering Committee, showing that accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness would not require substantive changes to the legislation or practice of the Kyrgyz Republic. We are happy to herewith publish this expertise, as well as a comprehensive study on Statelessness in the Kyrgyz Republic commissioned by UNHCR's Regional Project on the Development of a Strategy for the Prevention and Reduction of Statelessness in Central Asia.

UNHCR's regional process commenced with a Regional Conference on the Prevention and Reduction of Statelessness and the Protection of Stateless People, which we co-hosted with the OSCE on 9-10 December 2009 in Ashgabad, Turkmenistan. Having shared best practices in the identification of stateless people, in solving citizenship problems and in preventing their occurrence, government officials, parliamentarians and civil society experts who participated in this conference also presented a set of recommendations on how to address remaining problems and gaps related to statelessness in the nations of Central Asia.

In 2010, together with our partners, we conducted participatory assessments among stateless people in Kyrgyzstan regarding their problems and needs. The summary results of these assessments - herewith published - shed light on the often dire situation of stateless people and underline the urgent need to improve their situation. The data, collected through sex, age and diversity sensitive methodology, clearly illustrates a worrying gender and age dimension of citizenship problems in Kyrgyzstan. Particularly affecting the most vulnerable segments of society, lack of citizenship or documents to prove it further increases the vulnerability of these women, children, and men within their families, communities and the nation as a whole.

The tragic outbreak of violence in southern Kyrgyzstan in June 2010 both increased the number of people at risk of becoming stateless and led to a deterioration in the situation of others who had faced prior citizenship problems: the identity documents of thousands of people were lost or burnt, while many *de-jure* Kyrgyz nationals were left without a real opportunity to obtain new passports. In its emergency response the UN Refugee Agency quickly assisted in the creation of mobile registration groups in which officers of the passport and civil registration departments of the State Registration Services, together with civil society lawyers, assisted effected communities. By the end of 2010, such mobile teams had already helped over 900 people to restore identity documents.

While UNHCR partners continue providing individual legal assistance to stateless people and those at risk of becoming stateless in villages or urban neighbourhoods, the implementation of other important recommendations of the National Action Plan and the Regional Conference will require attention by the Parliament and the Government.

We hope that this publication will assist Kyrgyzstan also in progressing in its accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. As the analyses demonstrate, and considering the Kyrgyz Republic's comparatively advanced respective legislation and practice, this goal is in easy attainable. The 50th anniversary of the 1961 Convention, culminating in a Global Ministerial Meeting and Accession Pledging event in early December 2011 in Geneva, can promote the commencement, if not conclusion of accession.

Stateless people, those at risk of becoming stateless and all women, children and men, who because of documentation problems cannot enjoy their rights and duties as humans and citizens, need attention and support. Clarifying and properly documenting their legal status is a first and vital step to the solution of their problems. This publication contains a number of important observations and recommendations on how legislation and practice in Kyrgyzstan could be further improved to reach that aim. UNHCR remains strongly committed to supporting this process.

***Hans Friedrich Schodder***
*Representative of the UNHCR*
*in the Kyrgyz Republic*

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# PART I. ACTION PLAN

The Administration of
the President of the Kyrgyz Republic

UNHCR
United Nations Hign Commissioner for Refugees
Haut Commissariat des Nations Unies pour les refugies

The UNHCR Representation in the Kyrgyz Republic

# Concluding Statement

High-Level Steering Meeting
on the Reduction and Prevention of Statelessness in the Kyrgyz Republic

We, the participants,

*Understanding* the significance of citizenship as a main instrument for ensuring human rights and security,

*Confirming* the necessity to reduce cases of statelessness and take measures to prevent statelessness,

*Lauding* the attention and efforts by the parliament, government, authorities, and civil society of the Kyrgyz Republic in identifying the causes of statelessness and in fulfilling its obligations to prevent and reduce statelessness and to provide stateless persons with access to all their due rights and duties,

*Welcoming* the support received for this efforts by UNHCR and other international organizations on the local, national, regional and international level,

*Greeting* the election of the Kyrgyz Republic as a member of the Human Rights Council;

**Have agreed to the following action plan:**

1. To accelerate exchange of old 1974 standard Soviet passports by the Department of Passport and Visa Control of the Ministry of Interior of the Kyrgyz Republic (with support of UNHCR);
2. To bring relevant by-laws and instructions in compliance with the 2007 Law on Citizenship of the Kyrgyz Republic (the Parliament, Ministry of Interior and Ministry of Justice with support of the working group on citizenship and statelessness);
3. To adopt an Instruction on the procedure for the determination of status of stateless persons (Ministry of Interior with support of the working group on citizenship and statelessness);
4. To introduce accelerated procedures for the naturalization of spouses of Kyrgyz citizens originating from CIS countries (Citizenship Commission, Ministry of Interior with support of the working group on citizenship and statelessness);
5. To prepare implementing comments to the Law on Citizenship of the Kyrgyz Republic (Ministry of Interior with support of academicians and the working group on citizenship and statelessness);
6. To recommend and promote accession of the Kyrgyz Republic to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness including through a public hearing at Parliament;
7. To continue supporting the activities of the working group on citizenship and statelessness;
8. To again meet in the spring of 2010 to take stock of the implementation, revise and update this joint work plan.

*22 September 2009*
*Bishkek City*

The Administration of
the President of the Kyrgyz Republic

UNHCR
United Nations Hign Commissioner for Refugees
Haut Commissariat des Nations Unies pour les refugies

The UNHCR Representation in the Kyrgyz Republic

# Agenda

High-Level Steering Meeting
on the Reduction and Prevention of Statelessness in the Kyrgyz Republic

| | |
|---|---|
| 09:00-09:30 | Arrival and registration of participants* |
| 09:30-10:00 | Opening by Deputy Head of the Administration of the President of the Kyrgyz Republic, Chairperson of the Citizenship Commission of the President of the Kyrgyz Republic, and by UNHCR Representative in the Kyrgyz Republic (Mr. Hans Friedrich Schodder) |
| 10:00-10:15 | Ms. Marjorie Farquharson, International Consultant: Introduction to the 1954 and 1961 Conventions |
| 10:15-10:30 | Ms. Chynara Musabekova, Constitutional Court Judge: Kyrgyz domestic legislation and international instruments on citizenship and statelessness |
| 10:30-10:45 | Mr. Keymir Orazov, Regional Consultant: Summary findings of the country study on the Kyrgyz Republic |
| 10:45-11:00 | Discussion |
| 11:00-11:15 | Tea/coffee break |
| 11:15-11:30 | Mr. Azizbek Ashurov, Executive Director, Ferghana Valley Lawyers Without Borders: Findings of the survey on statelessness in the south of Kyrgyzstan |
| 11:30-11:40 | Mr. Abylmajin Akmashev, Senior Inspector, Passport and visa service of the Ministry of Interior: Problems identified by the working group on citizenship and statelessness |
| 11:40-11:50 | Ms. Muhabat Pratova, Inspector, Passport and visa service Osh Province: Passport issues in southern regions |
| 11:50-12:00 | Ms. Anna Nee, UNHCR Assistant Protection Officer: Recommendations of the working group on citizenship and statelessness |
| 12:00-12:15 | Discussion |
| 12:15-12:45 | Discussion and adoption of the concluding statement |
| 12:45-13:00 | Wrap up and next steps |
| 13:00-14:00 | Lunch |

*22 September 2009*
*The Hyatt Regency Bishkek Hotel*

** Thirty four participants of the High-Level Steering Meeting were experts from the following organizations: Zhogorku Kenesh (Parliament), Constitutional Court, Administration of the President/Citizenship Commission, Ministry of Interior, Office of the Prosecutor General, Ministry of Justice, Ministry of Foreign Affairs, State Committee for National Security, State Committee for Migration and Employment, Human Rights Ombudsman, UNDP, UNHCHR, UNICEF, IOM,OSCE, Centre for Support of International Protection, Ferghana Valley Lawyers without Borders, Counterpart-Sheriktesh, Legal Clinic Adilet, UNHCR.*

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les refugies

OSCE Organization for Security and Co-operation in Europe
Centre in Ashgabat

# Regional Conference on Prevention and Reduction of Statelessness and Protection of Stateless Persons in Central Asia

*Ashgabat, 9-10 December 2009*

**Summary Overview**

Introduction

In Central Asia, statelessness was one of several challenges successor States had to deal with following the break-up of the Soviet Union. These problems have been compounded in recent years by a combination of complex laws and procedures as well as international migration. Although significant progress has been made in resolving the situation of stateless persons by granting them an effective nationality, tens of thousands of individuals in the region remain stateless or with undetermined nationality. In recognition of these challenges, during 2009 UNHCR organized a regional process with governments, which included a series of national roundtables and culminated in a Regional Conference in Ashgabat, Turkmenistan on 9-10 December 2009.

The Regional Conference on Prevention and Reduction of Statelessness and Protection of Stateless Persons in Central Asia was organised by UNHCR in cooperation with the Organization for Security and Cooperation in Europe and the Government of Turkmenistan. Among the goals of the Conference were the sharing of best practices related to the identification of stateless persons and solutions to statelessness, including legislative reform to bring nationality laws into line with international standards and thereby prevent new cases of statelessness. The Conference also sought to reach agreement among the government representatives present on a set of recommendations on how to address remaining problems and gaps related to statelessness in the region.

The Conference followed national roundtables held in Kyrgyzstan, Tajikistan, Kazakhstan and Turkmenistan. In these roundtables, governments demonstrated a commitment to the identification of stateless persons through population census and surveys. Governments also indicated a willingness to consider amending legislative provisions in order to eliminate gaps which cause statelessness. They also expressed willingness to work to ensure that stateless persons and persons of undetermined nationality can acquire or confirm nationality and enjoy basic rights. On the basis of these discussions, action plans on statelessness are being developed with participating governments. The prevention of statelessness and resolution of existing situations generally require the joint efforts of several government agencies – and at times even the cooperation of other States. It was thus recognized that a regional conference may serve as a forum to engender greater information exchange and cooperation between States in matters relating to nationality and statelessness.

This overview summarizes the discussions and presentations at the Regional Conference in Ashgabat. During the Conference, presentations were made by government participants from Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan, experts from UNHCR

and the Office of the United Nations High Commissioner for Human Rights, as well as government experts from Ukraine and the Slovak Republic who explained how they had tackled statelessness in their own countries. Representatives of UNFPA, UNICEF and NGOs from each of the four Central Asian states also participated in the discussions, which were also attended by representatives from the diplomatic community in Ashgabat. The summary which follows has been structured along the lines of the four main themes of the Conference: identification, prevention and reduction of statelessness and the protection of stateless persons. Each topic was introduced by UNHCR which shared the preliminary findings on identification, prevention and reduction of statelessness and protection of stateless persons of the regional project on statelessness. For each topic, the office underlined best practices and progress made in the field of legislative and administrative reform in Central Asia.

I. Identification of Statelessness

After the hosts from the Government of Turkmenistan, UNHCR and OSCE had welcomed the participants, UNHCR introduced its mandate on the prevention and reduction of statelessness and protection of stateless persons. Implementing this mandate requires that stateless persons are identified and that factors which create statelessness are well understood. UNHCR's Executive Committee has instructed the Organization to support the effort of governments to identify stateless persons and to cooperate with other UN agencies on programmes which could be used for this purpose, including population census and use of data from birth and voter registration.

Participants from Turkmenistan shared the experience gained in identifying persons with undetermined nationality and stateless persons through a registration program carried out by the State Migration Service of Turkmenistan. The delegation from the Kyrgyz Republic explained how three NGO surveys supported by UNHCR in Kyrgyzstan had permitted the identification of approximately 10,000 stateless persons. No similar registration campaign or survey has thus far been carried out in Kazakhstan or in Tajikistan. Nonetheless, the Kazakhstan delegation explained that 8,730 persons are registered by the government in Kazakhstan as stateless, the majority of them (7,006 persons) hailing from other CIS countries. The representative of the State Statistical Committee in Tajikistan mentioned, however, that 2,300 persons identified themselves as stateless in the last census in Tajikistan in 2000, while 326 persons are officially registered as stateless in the country.

Participants underlined the joint efforts which have been undertaken by governments and specialized UN agencies in the region to implement national population census. UNFPA mentioned the joint agreement between UNFPA, UNICEF, UNDP and UNHCR to support the preparations for the national census in Turkmenistan in 2012 as a good example of inter-agency cooperation in this area.

It was noted that census questions may be formulated in such a way that they can serve to identify stateless persons. In other situations targeted surveys can be carried out with this aim after the census has been completed. The Deputy Chairperson of the State Committee on Statistics in Tajikistan made a concrete proposal to the UN agencies present to undertake such a survey jointly with the Government of Tajikistan after the national census has been carried out in late 2010.

At the same time, participants noted that identification of statelessness on an ad-hoc basis and inadequate standing procedures to identify stateless persons in the countries of Central Asia mean that not all cases are identified. Participants agreed that identification

of stateless persons and persons with undetermined nationality is the first step towards solutions to statelessness. National population census, government registration programs and surveys not only help to uncover cases of undocumented persons but can also be the starting point for efforts to clarify whether these persons hold a nationality and to regularise their stay in the country.

**Recommendations:** In the area of identification of statelessness, participants recommended the following:

- to continue efforts to identify stateless persons, including through population census, surveys and registration campaigns;

- to strengthen cooperation between States to confirm the identify and nationality of specific individuals;

- to ensure that individuals who lack valid identity documents, including holders of expired USSR passports, are issued with documentation,[1] thereby confirming their legal status in the State.

II. Prevention of Statelessness

Statelessness can be prevented by ensuring that nationality laws and related procedures prevent statelessness from occurring either at birth or as a result of change, loss or deprivation of nationality. Birth registration is also important because it constitutes a key form of proof of the link between an individual and a State and thus it is essential in ensuring the right of every child to acquire a nationality.

The only country in Central Asia which has undertaken a major reform of its nationality legislation since independence is Kyrgyzstan. The new nationality law in 2007 recognizes stateless persons who used to be USSR citizens and have been permanently resident in Kyrgyzstan for the last five years as citizens and also introduced a partial safeguard against statelessness occurring from renunciation of citizenship. Both provisions are regional best practices.

The government representatives from Kazakhstan described the bilateral and multilateral agreements concluded with the states which seek to avoid statelessness when persons change nationality. Also in Kazakhstan, special conditions for acquisition of nationality apply for ethnic Kazakhs, *Oralman*, who arrive for permanent residence in the country. These include a waiver of the residence requirement, the obligation to prove financial solvency and the requirement to renounce other nationalities before applying for Kazakhstan nationality.

The delegation from Tajikistan highlighted that home births remain quite common in rural areas, although the number has dropped since the 1990s. In many cases these children are not registered at birth. The government is working intensively on measures to address this problem and to simplify the procedures for birth registration, including by issuing the medical certificate and birth certificate simultaneously when the child is born in hospital. Under its mandate to prevent statelessness, UNHCR has offered technical advice to governments with the aim to close gaps in legislation which could lead to statelessness. In the four Central Asian states, it has cooperated either bilaterally or through inter-agency work-

1 National passport, passport of a foreign State or identity document for stateless persons.

ing groups with relevant government authorities on improvement of nationality legislation and administrative practices.

Government experts from Ukraine and the Slovak Republic shared experiences related to the prevention and reduction of statelessness. The Ukrainian expert explained how his country had resolved numerous cases of statelessness by ensuring acquisition of Ukrainian nationality by persons who had been deported from Ukraine during the Soviet era and their descendants, in particular the Crimean Tatars. Steps to prevent new cases of statelessness in this situation included the conclusion of a bilateral agreement with Uzbekistan, where many of the Crimean Tatars were residing. Ukraine also introduced a series of amendments to its nationality law, which removed the requirement to renounce the previous nationality before applying for Ukrainian citizenship. Ukraine also simplified its procedures. The Slovak expert spoke about how statelessness was avoided in the Slovak Republic after the dissolution of Czechoslovakia by allowing all citizens of Czechoslovakia the right to opt for either Slovak or Czech citizenship. There was no requirement that persons who were citizens of the Czech Republic had to renounce their nationality to become Slovak citizens. Slovakia also avoided problems because it generally permits dual nationality. Slovakia also became party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in 2000, after a compatibility study between the Conventions and Slovak legislation had found that the legislation was generally in line with the Convention obligations. The Slovak expert also explained how these Conventions have been implemented.

Participants agreed that procedures for acquisition of nationality at birth and proper birth registration, as well as guarantees against statelessness when persons migrate from one nationality to another are good practices which serve to prevent statelessness. It was recommended that States consider accession to the 1961 Convention on the Reduction of Statelessness and to introduce these standards into domestic laws to avoid statelessness and resolve existing statelessness situations in the region.

**Recommendations:** In the field of prevention of statelessness, participants recommended the following:

- to ensure that all children born on the territory of the State are registered at birth;

- to reform legal provisions and administrative practices which cause statelessness in Central Asia, specifically provisions and practices under which:

  **a**. some children born on the territory of the State or to nationals abroad are at risk of statelessness due to lack of adequate legal safeguards to prevent statelessness at birth;

  **b**. a citizen is permitted to renounce his/her citizenship without possessing another citizenship or the assurance of acquiring one;

  **c**. prolonged residence abroad without consular registration can lead to loss of citizenship.

- to consider accession to the 1961 Convention on the Reduction of Statelessness.

III. Reduction of Statelessness

In their presentations, government participants referred to efforts that have been made by Central Asian states to reduce statelessness through naturalization of stateless persons,

as well as current statistics of people who recently acquired nationality. In Turkmenistan, 10,158 stateless refugees from Tajikistan were granted nationality by presidential decree in 2005 and more than 2,000 persons received permanent residence rights. In the Kyrgyz Republic, the new citizenship law adopted in 2007 recognized stateless individuals (former USSR citizens) who had arrived in the Republic after independence as citizens if they had resided there permanently for at least last five years. Approximately 6,000 individuals have thus been confirmed on this basis as Kyrgyz citizens. In Kazakhstan, 1,120 decrees have been adopted to grant nationality to approximately 658,000 individuals since 1992, many of whom were stateless. Some 60,000 Oralman of various other citizenships have been granted citizenship of the country to date.

The government delegation from Tajikistan highlighted that problems relating to lack of valid identity documents affect women in rural areas disproportionately. The network of women's committees has thus been engaged in identifying cases of women who possess expired USSR passports and assisting them to acquire new documents.

Participants agreed that granting nationality to persons who are stateless and have been residing in the country for several years is an effective way to reduce existing instances of statelessness. However, several cases referred to during the conference indicated that the particular requirement that stateless persons who apply for citizenship need to show proof that they do not possess any other nationality often poses a serious obstacle to acquisition of nationality. Many practical problems may be associated with acquiring such a certificate from another state, in particular when the state has no diplomatic representation in the country of residence. Some States also fail to respond or respond only after a long delay.

**Recommendations:** In the area of reduction of statelessness, participants recommended the following:

- to reform legal provisions and administrative practices which pose obstacles to the reduction of statelessness in Central Asia, specifically provisions and practices under which stateless persons applying for residence permits or citizenship are required to submit a certificate to confirm they do not possess the nationality of other States with which they have links, without providing for exceptions for situations where the States concerned fail to reply;

- facilitating acquisition of nationality for stateless persons through simplified procedures, including through reduced residency and documentation requirements and waiving of fees.

IV. Protection of Stateless Persons

The speaker from the Office of United Nations High Commissioner for Human Rights noted the importance of universal and regional human rights instruments, which apply to every human being, regardless of nationality or statelessness. It was emphasized, however, that statelessness and lack of proper identity and travel documents often prevent persons from enjoying basic rights, such as education, health care, property ownership and formal employment. Efforts should thus be made by governments to remove administrative obstacles and grant stateless persons a legal status which enables them to enjoy all basic human rights and freedoms.

During the Conference, several delegations spoke about the national legal regimes applicable to stateless persons. They stressed that stateless persons are either treated on the same footing as nationals of the countries with respect to certain rights and freedoms or

treated similarly as other foreigners in the same circumstances. This implies that national standards of protection of stateless persons in many respects are in compliance with international standards in this field and reflected in international instruments such as the 1954 Convention Relating to the Status of Stateless Persons.

UNHCR concurred that the legislation governing the legal status of aliens, including stateless persons, in the four Central Asian states is close to the standards of relevant international instruments. However, it was also noted that enjoyment of the rights and freedoms of domestic laws in the four countries often is subject to formal possession of statelessness status and identity documents issued by the state of residence. Those who have not been documented as stateless persons face much greater obstacles enjoying these rights and freedoms. The procedures for recognizing statelessness status are not always fair and efficient. Moreover, persons applying for residence registration as stateless persons are usually required to submit proof that they do not possess any other nationality, and face the same problems obtaining it as persons applying for acquisition of nationality.

**Recommendations:** In the field of protection of stateless persons, participants recommended the following:

- to work further on establishing formal procedures for the determination of statelessness status;

- to grant a legal status, basic rights and identity documentation to stateless persons for an interim period until they are able to acquire a nationality;

- to consider accession to the 1954 Convention Relating to the Status of Stateless Persons.

Conclusion

Participants noted that the Conference had been a useful forum for sharing best practices and discussing remaining problems in the areas of identification, prevention and reduction of statelessness and protection of stateless persons in the Central Asian region. Many of the government participants also expressed a desire to broaden their cooperation on these issues with international and non-governmental organisations, as well as among themselves. At the close of the Regional Conference, the participants welcomed the upcoming 50th anniversary of the 1961 Convention on the Reduction of Statelessness and agreed to review the progress to address the areas outlined in the Conference report and conclusions after one year.

The Conference was funded by the European Commission

# PART II. ANALYSES AND STUDIES

# Participatory Assessment in Operations: Overview of Issues Related to Stateless Persons

The Representation of UNHCR in Kyrgyzstan

October 2010

Age Gender and Diversity Mainstreaming (AGDM) is based on the understanding that people of concern must be involved in decision-making and the identification of solutions to their problems. Since 2006 the United Nations High Commissioner for Refugees (UNHCR) in the Kyrgyz Republic has been employing AGDM through regular Participatory Assessment (PAs) meetings conducted by Multi-Functional Teams (MFT), comprised of representatives of governmental and non-governmental partners and UNHCR in various locations in the north and south of Kyrgyzstan where persons of concern reside.

During 2008-2009, UNHCR commissioned surveys identified over 13,000 stateless persons[1] in the Kyrgyz Republic[2]. In 2009 UNHCR's operation in the Kyrgyz Republic was the first to engage in PA's with stateless persons. Its objective was to review and deepen findings of the surveys by engaging separate age, gender and ethnic groups of stateless persons into an inter-active dialogue on their particular situation and needs. Again in 2010, focus group discussions took place on 19-20 October in Issyk-Ata, Moscow and Sokuluk Districts of Chui Province in the North of Kyrgyzstan and on 22 October in Kara-Suu District of Osh Province in the South of Kyrgyzstan. Stateless persons chose the following topics as the most relevant for these discussions: protection risks due to absence of valid identity documents (IDs) and citizenship as well as subsequent problems with employment, access to medical services, social benefits and education. The outcome was as follows:

**In general, all age, gender and ethnic groups** expressed their concern about their absence of valid IDs as preventing them from traveling and obtaining marriage or birth certificates. Many are restricted in or deprived of social benefits (pension, child allowance, sick pay); they are more vulnerable to economic hardships and prone to lower protection from unemployment, do not have full access to education and medical services. Especially women and children suffer a lot from lacking citizenship or personal status as they are refused medical services and education or charged much higher prices like foreign citizens. Very often stateless persons cannot afford to pay for new passports and/or fines accrued after expiration of their IDs. Some stateless persons still have problems with local registration, so-called "propiska", or lack of de-registration from former country of residence in order to apply for residence permit in Kyrgyzstan.

**Many stateless men in the north** reported that they lost passports, or carry only expired or old Soviet passports. They face problems of acquiring of Kyrgyz citizenship due to economic problems, disabilities and complexity of rules. Many of them are at the retirement age and in vulnerable situation as lack of valid IDs or work record cards prevents them from claiming for pension. Some deliberately did not apply for Kyrgyz citizenship and/or passports to save money in order to help with documents to their children instead. Problems to obtain birth certificates by stateless people due to high cost were also reported. Sometimes,

1 "Stateless persons" in these *Summary Results …* denotes all individuals who are *de jure* or *de facto* stateless, as well as those whose nationality is not established or whose affiliation with any nationality is not properly documented.

2 *A Place to Call Home. The Situation of Stateless persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR, UNHCR, Bishkek 2009.*

local registry offices do not issue marriage certificates when one spouse does not hold Kyrgyz citizenship, which in turn creates more stateless persons. Many reported that stateless persons face economic problems and wish to go to Russia for migrant labour but cannot do so due to lack of valid passports.

**Stateless women in the north** voiced similar problems. There are stateless women who still live with expired Soviet passports and do not have de-registered from their previous residency in Tajikistan, Russia or Uzbekistan. They cannot receive child allowances and pensions due to lack of valid IDs. There were incidents of police harassment and extortion. Some stateless women are afraid to leave their villages. Due to absence of passports, women cannot register immovable property, protect their rights in civil cases (employment, divorce). This further increases their vulnerability in their families and communities. Stateless persons have to pay higher fees for medical services.

The majority of **stateless persons in the south are women** from Uzbekistan who married nationals of Kyrgyzstan. They have expired Uzbekistan passports and/or have not de-registered from home country since many years and failed to legalize their stay in Kyrgyzstan. Some women do not have any valid documents or still possess old Soviet passports. Many stateless persons have professional education to make their living themselves, but they were not able to work officially due to lack of valid documents. Leasing land plots for farming is also not possible without proper legal status. Most of the women are hired to work for local farmers in the field or are involved with household activities. The group noted their concerns with rise of nationalism after June events. Problems with documents deprives many women of receiving social benefits (child allowances, pensions) and restrains their access to medical services, especially in situations requiring stationary treatment in hospital. In some maternity houses stateless women cannot receive birth certificates for their children without paying unofficial fees. Some women admitted that continuous problems with documents were reason for problems and harassment within the families.

**Stateless men in the South** are mainly ethnic Kyrgyz people who have moved in Kyrgyzstan after the collapse of the USSR with old Soviet passports or Statelessness IDs. According to them, they have failed to exchange their expired IDs to Kyrgyz passports. Some were just unable to return to previous country of residence to renew or extend IDs in due time and found themselves in a situation without any legal document to legalize their stay in Kyrgyzstan. After many years, they applied for Kyrgyz citizenship: a very time consuming process. Stateless men raised problem of local registration ("propiska") with authorities as well as lack of de-registration from their previous country of residence. Absence of citizenship and valid IDs makes them limited in freedom of movement within Kyrgyzstan and abroad. Also, as a result of statelessness they are unable to get official employment, rely on occasional work, lack protection from law enforcement organs.

UNHCR is most grateful to all the stateless persons who participated in the focus group discussions as well as to Ministry of Labour, Employment and Migration (MoLEM), Mandatory Health Insurance Fund (MHIF), State Registration Service (SRS), Citizenship Commission under the Presidential Administration, Counterpart Sheriktesh, Legal Clinic Adilet, Ferghana Valley Lawyers without Borders and Center for Support of International Protection who agreed to nominate their staff to participate in these PAs with UNHCR.

# Comparative Analysis of Provisions in the 1961 Convention on the Reduction of Statelessness, the 1954 Convention Relating to the Status of Stateless Persons and Legislation of the Kyrgyz Republic Regulating Issues of Nationality and Statelessness

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## Introduction

The relevance of research into issues of nationality has risen with the adoption of Law 70 On Citizenship of the Kyrgyz Republic of 21 May 2007. Despite changes to the law, a number of problems related to nationality and statelessness remain unresolved.

Research into issues of citizenship and statelessness is extremely topical, from both a theoretical and a practical point of view, as these issues are closely tied with ensuring the rights, freedoms and duties of citizens. The development of citizenship in modern times has led to problems of statelessness, and this proves the relevance of this study and possible further analysis, for improving the legal regulation of citizenship with the aim of reducing and preventing cases of statelessness.

The need for this research also stems from that fact that, despite measures taken at international and national levels in this field, there are still many disputed issues, and a number of questions have still not adequately been addressed.

There are international treaties that protect the right to nationality and to fair treatment if a person remains without a nationality. These are the 1954 UN Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Provisions in the first treaty ensure fundamental rights and freedoms to stateless persons in Contracting States. At the same time these states are encouraged to assist with the integration and naturalization of these persons. The second agreement reinforces the first and includes provisions to prevent the emergence of new cases of statelessness. At present, about 70 states are party to these international agreements. The United Nations High Commissioner for Refugees is mandated to promote prevention and reduction of statelessness and protection of stateless persons throughout the world.

The conventions are useful guidance for interested states, and suggest solutions which can be based on national legislation. Therefore, the aim of this research is to undertake comparative legal analysis of the legislation of the Kyrgyz Republic in this field in order to establish to what extent it corresponds or does not correspond with the provisions of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

## PART 1. THE CONSTITUTION OF THE KYRGYZ REPUBLIC AND NORMS OF INTERNATIONAL LAW ON THE RIGHT TO A NATIONALITY AND THE PROBLEM OF STATELESSNESS

Nationality is one of the forms of interaction between individuals and the state, and is expressed in legal and state links between them. Nationality is an integral part of state sovereignty but international law does place limits on the discretion of the State in this area. The main logical basis for the institution of citizenship is the fact that it means that persons are recognised by the state as not just legally significant individuals within their jurisdiction and territory, but also those physical persons who “make up” the state. The importance of this institution cannot be overemphasised. The right to nationality has a special place among the basic human rights in Kyrgyzstan. This is primarily because the bulk of the rights, freedoms and duties of individuals enshrined in the Constitution and legislation in force in the country are directly connected to citizenship. Only citizens of the state can enjoy these in full.

Thus, Article 20 of the Constitution of the Kyrgyz Republic states:

1. *Citizenship determines whether a person is affiliated to the Kyrgyz Republic and his/her status.*
2. *A citizen of the Kyrgyz Republic, as a result of citizenship, has rights and obligations.*
3. *No citizen of the Kyrgyz Republic can be deprived of his/her citizenship or the right to change his/her citizenship. For persons who are citizens of the Kyrgyz Republic, citizen-*

*ship of another state is recognised in accordance with laws and international agreements of the Kyrgyz Republic.*

4. *Kyrgyz who live beyond the borders of the Kyrgyz Republic, regardless of whether or not they are citizens of another state, have the right to acquire citizenship of the Kyrgyz Republic under a simplified procedure. The procedure and conditions for acquiring citizenship of the Kyrgyz Republic are defined in law.*
5. *A citizen of the Kyrgyz Republic cannot be expelled from the country or extradited to another state.*
6. *The Kyrgyz Republic guarantees protection to its citizens beyond its borders.*

This constitutional norm established the main principles of citizenship of the Kyrgyz Republic. More concrete grounds, conditions and procedures for acquiring and terminating citizenship of the Kyrgyz Republic are established in Law of the Kyrgyz Republic 70 On Citizenship of the Kyrgyz Republic of 21 May 2007. Thus, in accordance with Article 5 of this Law, citizens of the Kyrgyz Republic are:

1. *Persons with citizenship of the Kyrgyz Republic on the day that this Law came into force;*
2. *Persons who were citizens of the USSR who have lived permanently for the last five years (from the moment of applying to internal affairs' bodies) on the territory of the Kyrgyz Republic and have not made a statement of affiliation to another state; and*
3. *Persons who have obtained citizenship of the Kyrgyz Republic in accordance with this Law.*

Issues of citizenship are matters for the domestic jurisdiction of every state. However the application of domestic state decisions can be limited by analogous actions of other states or international law. The first attempt by the international community to ensure citizenship for all was the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which was held under the auspices of the League of Nations. Article 1 of the Convention states:

"*It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.*"

In other words, how a State exercises its right to determine its citizens should conform to the relevant provisions in international law. Throughout the 20th century, those provisions gradually developed to favour human rights over claims of state sovereignty.

Article 15 of the 1948 Universal Declaration of Human Rights declares:

*"Everyone has the right to a nationality. No one should be arbitrarily deprived of his nationality nor denied the right to change his nationality."*

This right is founded on the existence of a genuine and effective link between an individual and a state.

In this way, nationality is characterised as a basic human right. Nationality guarantees a lawful connection between individuals and the state, and serves as the basis for application of other rights, including the right to diplomatic protection and representation of the citizen in the international arena, as well as the right to return to one's country of citizenship.

The obligation to follow the norms of international law is also enshrined in the Constitution of the Kyrgyz Republic. Article 12, point 3 states:

*"International treaties and agreements to which the Kyrgyz Republic is a Party that have come into force, and also general principles and norms of international law are component parts of the legal system of the Kyrgyz Republic."*

The same norm is included in the Preamble of Law 89 of the Kyrgyz Republic *On International Agreements of the Kyrgyz Republic of 21 June 1999:*

*"International agreements are the legal basis for international relations of the Kyrgyz Republic.*

*"International treaties and agreements to which the Kyrgyz Republic is a Party that have come into force and general principles and norms of international law are component parts of the legal system of the Kyrgyz Republic."*

*The Kyrgyz Republic advocates for complete observance of the norms of international law and supports its pre-eminence as the basic principle of international law – the principle of fulfilling international obligations in good faith."*

In this way, the following international legal sources are parts of the legal system of the Kyrgyz Republic:

1. Universally recognised principles and norms of international law;

2. International treaties and agreements to which the Kyrgyz Republic is a Party.

Universally recognised principles and norms of international law: The Constitution of the Kyrgyz Republic introduces universally recognised principles of international law into the legal system of the Kyrgyz Republic. International law does not include documents which make exhaustive lists of universally recognised principles. Such principles are enshrined in the UN Charter, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations of 24 October 1970, the Final Helsinki Act of the Conference on Security and Cooperation in Europe of 1 August 1975, and other documents. It is important to note that there is no full agreement on which principles of international law are universally recognised. Therefore, the Constitution of the Kyrgyz Republic only includes in its legal system those universally recognised principles that the country accepts as such.

Universally recognised (customary) norms of international law are created as the result of repeated practice of states and become international legal norms for those countries that accept them as such. An example of this is the 1948 Universal Declaration of Human Rights, adopted by a UN General Assembly resolution, the articles of which became customary international law as a result of its adoption.

International agreements: In accordance with Article 5 of the Law On International Agreements of the Kyrgyz Republic, agreement of the Kyrgyz Republic to obligations under an international agreement can be indicated in the following ways:

- signing of an agreement;
- exchange of notes or letters, resulting from the agreement;
- ratification of the agreement;
- approval of the agreement;
- accession to the agreement;
- in any other way indicating acceptance of the requirements agreed to by the parties to the agreement.

The relationship between international agreements and the Constitution of the Kyrgyz Republic is the most important issue in defining the place of international norms among the sources of law of the Kyrgyz Republic. Analysis of the text of the Constitution of the Kyrgyz Republic, the Law On International Agreements of the Kyrgyz Republic and other laws testifies to the fact that the Constitution of the Kyrgyz Republic "has supreme juridical force" on the territory of the Kyrgyz Republic. International agreements that have not come into force, whose provisions do not correspond to the Constitution, should not come into force and application.

In various laws[1] there are articles which state that international law has priority if it is in conflict with internal legal norms. In most laws of the Kyrgyz Republic this is formulated in the following way:

1 See: Article 6 of the Civil Code of the Kyrgyz Republic (Part 1) of 8 May 1996 no.15; Article 3 of the Labour Code of 4 August 2004 no.106; Article 5 of the Customs Code of the Kyrgyz Republic of 12 July 2004 no. 87; Article 7 of the Air Code of the Kyrgyz Republic of 15 April 1994 no. 1483-XII; Article 1 (point 3) of the Civil Process Code of the Kyrgyz Republic of 29 December 1999 no. 146; Article 7 of the Family Code of the Kyrgyz Republic of 30 August 2003 no. 201; Article 52 of the Law of the Kyrgyz Republic On Education of 30 April 2003 no. 92; Article 3 (2) of the Criminal –Executive Code of the Kyrgyz Republic of 13 December 1999 no. 142 and others.

"If international agreements of the Kyrgyz Republic establish different rules than those set out in this law, then the rules of the international agreement are applied."

This fact that international agreements have supremacy in no way changes any norms in the internal law of the state. It means that this norm of internal law does not have primacy over a particular international agreement of Kyrgyzstan. In regulating the relationship with other foreign States, the norms of internal State law continue to apply.

In this way, constitutional norms reveal that international legal norms are recognised in internal activities and can be directly applied by courts and other state bodies, economic actors, officials and citizens. Such a conclusion can be made by reading Article 12 Point 3 of the Constitution of the Kyrgyz Republic in the context of other constitutional norms and numerous other legislative acts of the Kyrgyz Republic considered along with the application of international norms.

However, despite significant developments on nationality in international law and practice, the international community is today faced with numerous situations where cases of statelessness appear and there is a lack of opportunity to ascertain citizenship.

For example, as a result of the dissolution of the Soviet Union in December 1991, "Soviet citizenship" became meaningless. At that time, the majority of the new-formed states already had their own legislation on issues of citizenship and had defined the initial composition of their citizenry. However, differing criteria for defining eligibility for citizenship; different dates of coming into force of laws and, consequently, different ways of determining the period of settlement, habitual or permanent residence; as well as discrimination on ethnic grounds in the laws of some of the new-formed states, led to the phenomenon of statelessness.

Resolving issues of nationality and preventing the spread of statelessness is complicated by the fact that in all countries of the CIS, population migration continues, and the citizenship of these migrants is not always defined. Therefore there is indisputably a need to have an ongoing policy for the prevention and reduction of statelessness. Resolution of this problem is important to ensure the equality of all persons living in individual states, as dividing people into citizens and non-citizens often leads to conflict. Stateless persons are not in possession of full political and civil rights in any state. Therefore their legal capacities are always limited to some extent.

But problems do not just arise because of laws of succession in states where legislation accordingly changes, but also in regions where there have not been changes in legislation in recent years, and where there has been no transfer of territory. Problems arise for persons who have resided for a long period on the territory of a state, for representatives of ethnic minorities, and for a small number of women and children who become stateless because their husbands or parents are stateless.

Thus, the factors or circumstances which can lead or have led to statelessness are as follows[2]:

1. Conflict of laws (for example, State A, in which the individual is born, grants nationality by descent (*jus sanguinis*) and State B, in which the parents hold nationality, grants nationality by birth (*jus soli*) resulting in statelessness for the individual;
2. Transfer of territory (including issues such as post-colonialism, state independence, dissolution, succession or restoration).
3. Laws relating to marriage and birth registration.
4. Administrative practice.
5. Discrimination.
6. *Jus sanguinis* (nationality based solely on descent, often only of the father, which in some regions results in the inheritance of statelessness).
7. Loss and deprivation of nationality.

2 See UNHCR Division of International Protection, Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, November 1998.

8. Renunciation of nationality without acquiring another nationality.
9. Automatic loss of nationality by operation of law (through loss of a genuine and effective link or connection with the state which the individual does not expressly indicate the wish to maintain. May be associated with faulty administrative practices which fail to notify the individual of this obligation).

These factors indicate the wide range of legal issues relating to nationality and statelessness. Therefore, with the aims of eliminating the risk of statelessness and ensuring that persons who nevertheless are stateless enjoy a wide range of fundamental human rights, the international community concluded two basic agreements: the 1954 UN Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the analysis of which is the topic of this research. In addition to these Conventions, the right to nationality is enshrined in other treaties, such as the 1957 Convention on the Nationality of Married Women, the 1966 International Covenant on Civil and Political Rights, the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child and many regional treaties.

## PART 2. COMPARATIVE ANALYSIS OF PROVISIONS IN THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS, AND LEGISLATION OF THE KYRGYZ REPUBLIC REGULATING ISSUES OF NATIONALITY AND STATELESSNESS

### 2.1 Brief summary of the main provisions in the 1961 Convention on the Reduction of Statelessness

In August 1950, ECOSOC Resolution 319 B III (XI) requested that the International Law Commission (ILC) prepare a draft international Convention or Conventions for the elimination of statelessness. The ILC drafted two Conventions for consideration, both addressing the problem of statelessness resulting from conflicts of laws. One Convention, on the elimination of future statelessness, contained provisions that went much further than those contained in the second draft Convention, which focused on reducing the incidence of statelessness in the future. The participants in a conference which was convened in 1959 to consider the issue determined that the former Convention was too radical and elected to work with the draft Convention on the Reduction of Future Statelessness. The instrument that finally emerged from this process is the 1961 Convention on the Reduction of Statelessness.

Thus, the basic document which deals with the problem of statelessness is the 1961 Convention on the Reduction of Statelessness. The main aim of the Convention is to ensure conditions for obtaining or preserving nationality for those individuals who otherwise would be stateless.

The Convention also contains a provision about the creation of a body to which persons who fall under the jurisdiction of the Convention can apply with requests to examine their case and provide them with assistance in presenting their claim to the appropriate authorities. In 1974, the General Assembly of the United Nations requested UNHCR to play this role.

In seeking to reduce the incidence of statelessness, the 1961 Convention requires that signatory states adopt nationality legislation that reflects prescribed standards relating to the acquisition and loss or deprivation of nationality. Should disputes arise concerning interpretation or application of the Convention between Contracting States which are not resolved by other means, they can be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

The basic provisions contained in the 1961 Convention may be summarised as follows:

**I) Granting of Nationality** (Articles 1-4). Nationality shall be granted to those, who would otherwise be stateless, who have an effective link with the State through either birth or descent.

Nationality, under the terms of the 1961 Convention, can be classified by person and by the means of acquisition. By person, it can be conditionally divided into two categories:

- persons born in the territory of a Contracting State;
- persons born elsewhere.

By the means of acquisition, under the 1961 Convention, nationality is assignable by birth or by application.

1) Nationality is granted to persons born on the territory of the Contracting State who would otherwise be stateless in the following circumstances:
    a) At birth by operation of law;
    b) Upon application to the appropriate authorities by the interested person or in his/her name as prescribed by national law. No such application may be rejected but Contracting States may make the grant of nationality subject to the following conditions:
    I) Establishment by the state of a fixed period in which the application may be made (between the ages of 18 and 21),
    II) Requirement of habitual residence within the territory of the state for a period set by the state, but not more than 5 years immediately before making the application, and in total not more than 10 years,
    III) A lack of conviction for a crime against state security or a sentence of loss of liberty for five years or a longer period on criminal charges,
    IV) That the individual has always been stateless.
    c) At birth to a legitimate child, whose mother has the nationality of the State in which the child was born;
    d) To foundlings found on the territory of the contracting State.
2) Nationality is given to persons born elsewhere, who would otherwise be stateless, if at the moment of birth one of the parents was a citizen of the State in question:
    a) At birth, by operation of law;
    b) Upon application to the appropriate authorities by the interested person or on his/her behalf as prescribed by national law. No such application may be rejected.

    Grant of nationality under a) or b) may be made subject to one or more of the following conditions:
    I) A fixed time-frame in which the application must be lodged, within the limits of the applicant reaching a defined age, which should not be less than 23;
    II) Has habitually resided in the State for not be more than 3 years immediately before lodging the application;
    III) Has not been convicted for a crime against state security;
    IV) That the individual has always been stateless.

**II) Loss/Renunciation of Nationality** (Articles 5, 6 and 7). Loss or renunciation of nationality should be conditional upon the prior possession or assurance of acquiring another nationality, i.e. loss of nationality should not render a person stateless. An exception may be made in the case of naturalised persons who, despite notification of formalities and time-limits, reside abroad for not less than seven years and fail to express an intention to retain their nationality. In this specific context, a naturalised person refers only to a person who has acquired nationality upon an application which the Contracting State concerned could have refused. Retention of nationality for persons born outside the territory of a Contracting State one year after they reach the age of majority may also be made conditional

upon residence at that time in the territory of the State or registration with the appropriate authority.

**III) Deprivation of Nationality** (Articles 8 and 9). No deprivation of nationality should take place if it will result in statelessness. The following exceptions are made:

a) Nationality obtained by misrepresentation or fraud;
b) Acts inconsistent with a duty of loyalty either in violation of an express prohibition of providing services to another state, or by personal conduct seriously prejudicial to the vital interests of the State;
c) Oath or formal declaration of allegiance to another State or evidence of determination to repudiate the allegiance to the Contracting State;
d) Loss of effective link to the Contracting State of naturalised citizens who, despite notification, fail to express an intention to retain nationality, as well as for children born outside the territory of the State one year after they reach the age of majority, referred to under point II) above.

The Contracting State has the right to deprive nationality from an individual under grounds b) and c) above only if it specifies its retention of such a right at the moment of signing, ratifying or acceding to the Convention and if the grounds already exist in national law.

Deprivation of nationality may take place only in accordance with the law and accompanied with full procedural guarantees, such as the right to a fair hearing by a court or other independent body. A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

**IV) Transfer of Territory** (Article 10). Treaties should ensure that statelessness does not occur as the result of a transfer of territory. When no treaty is signed the Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on those who would otherwise become stateless as a result of the transfer or acquisition of territory.

**V) International Agency** (Article 11). The Convention provides for the establishment, within the framework of the United Nations, a body to which a person claiming the benefit of the Convention may apply for examination of his/her claim, and for assistance in presenting it to the appropriate authority. The United Nations General Assembly has entrusted this function to UNHCR.

**VI) Resolution of Disputes** (Article 14). Disputes between Contracting States concerning the interpretation or application of the Convention, which have not been resolved by any other means, may be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

**VII) Reservations** (Article 17). Reservation may be made, at the time of signature, ratification or accession, in respect only of Articles 11 (Agency), 14 (Referral of disputes to ICJ) or 15 (territories for which the Contracting State is responsible).

**VIII) Final Act.** The final act recommends that persons who are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality.

## 2.2 Analysis of the provisions in the 1961 Convention on the Reduction of Statelessness and legislation of the Kyrgyz Republic

The following legal documents are part of the legislative base for regulation of issues of nationality and statelessness today in the Kyrgyz Republic.

1) Constitution of the Kyrgyz Republic – edition of 23 October 2007;
2) Law of the Kyrgyz Republic On Citizenship of the Kyrgyz Republic of 21 May 2007, no. 70;
3) Law of the Kyrgyz Republic On State Guarantees for Ethnic Kyrgyz Returning to their Historical Homeland of 26 November 2007, no. 175;
4) Statute on the procedure for considering issues of citizenship of the Kyrgyz Republic, approved by Decree of the President of the Kyrgyz Republic of 25 October 2007, no. 473;
5) Statute on the procedure for registering and awarding temporary and permanent residence to foreign citizens and stateless persons in the territory of the Kyrgyz Republic, approved by Regulation of the Government of the Kyrgyz Republic of 13 November 2008, no. 626;
6) Statute on the Commission on Issues of Nationality under the President of the Kyrgyz Republic, approved by Decree of the President of the Kyrgyz Republic of 25 October 2007, no. 473;
7) Statute on simplifying the procedure for obtaining citizenship of the Kyrgyz Republic by citizens of the Republic of Tajikistan, approved by Regulation of the Government of the Kyrgyz Republic of 25 May 2004, no. 380;
8) Statute on simplifying the procedure for obtaining citizenship of the Kyrgyz Republic by citizens of the Republic of Tajikistan, approved by Regulation of the Government of the Kyrgyz Republic of 3 April 2006, no. 220;
9) Statute on simplifying the procedure for obtaining citizenship of the Kyrgyz Republic by citizens of the Russian Federation arriving for permanent residence in the Kyrgyz Republic, and renunciation of citizenship of the Kyrgyz Republic by citizens of the Kyrgyz Republic arriving for permanent residence in the Russian Federation, approved by Regulation of the Government of the Kyrgyz Republic of 4 May 1999, no. 128;
10) Statute on simplifying the procedure for obtaining citizenship of the Kyrgyz Republic by citizens of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, approved by Regulation of the Government of the Kyrgyz Republic of 12 December 1999, no. 684;
11) Statute on the procedure for registering and making inserts into birth certificates, confirming the holding of citizenship of the Kyrgyz Republic of the child, approved by Regulation of the Government of the Kyrgyz Republic of 2 May 2008, no. 201.

### 2.2.1 Granting of nationality

In accordance with Article 11 of the Law On Citizenship of the Kyrgyz Republic, citizenship of the Kyrgyz Republic is obtained on the following grounds:

1) By birth;

2) As a result of being granted citizenship of the Kyrgyz Republic;

3) As a result of having citizenship restored;

4) Grounded in, or under a procedure established by, an interstate agreement that has come into force.

We will consider to what extent each of these accords with the provisions of the 1961 Convention.

In Article 12 of the Law On Citizenship of the Kyrgyz Republic two grounds for acquiring citizenship of the Kyrgyz Republic are considered: by birth or by descent. There are two principles that form the grounds for acquiring citizenship by birth:

1. Citizenship by the principle of jus soli means that a child becomes a citizen of the state in which she was born. The citizenship of the parents is irrelevant. The principle of jus solis, which is also known as the territorial principle, is usually applied in Latin American countries, including Argentina. Therefore, for example, a child born to citizens of Kyrgyzstan in Argentina at the same time as acquiring Kyrgyz citizenship also acquires Argentinean citizenship (in this way becomes a dual citizen), while at the same time a child born to citizens of Argentina abroad – that is, outside the territory of Argentina, is recognised as a foreigner. At the same time, it should be noted that the jus solis principle in its pure form is not applied anywhere.

2. Citizenship by the principle of jus sanguinis – here the child acquires citizenship from the parents independent of the place of birth. There are two understandings of jus sanguinis. The first of these is based on the principle of "family unity", through a male-headed household. The logic is that if parents have different nationalities, the child takes the nationality of the father, and only children born outside marriage acquire the mother's nationality. The second understanding is based on the equal rights of the parents, and this way a child with parents of different nationalities acquires the nationality of the father or the mother. The second principle has gradually become the dominant principle in nationality laws worldwide with the growing recognition of the principle of gender equality.

However, in realising the principle of jus sanguinis certain difficulties can arise, which are resolved in different ways in the nationality legislation of different states. In particular, this relates to cases where the child's parents are citizens of different countries.

The principles of jus sanguinis and jus solis are both found in the legislation of many States, including that of the Kyrgyz Republic.

Thus, Article 12, Point 1 of the Law On Citizenship of the Kyrgyz Republic establishes general rules for acquiring citizenship on the basis of jus sanguinis – that is, a child is a citizen of the Kyrgyz Republic if at the time of birth his/her parents were citizens of the Kyrgyz Republic, independent of his or her place of birth.

Article 12, Point 2 of the Law On Citizenship of the Kyrgyz Republic establishes that if the parents have different citizenships, if one of them is a citizen of the Kyrgyz Republic, the citizenship of the child, independent of place of birth, is defined by written agreement of the parents. This provision of the Law in general is consistent with the requirements of Articles 1 and 4 of the 1961 Convention, that a Contracting State shall grant its nationality to a person born in its territory or abroad if at the time of the person's birth one of the person's parents was a citizen of the Contracting State, if the person would otherwise be stateless. However, the provision of the Article of the Law, which leaves the parents to determine the nationality of the child, is not quite appropriate. The parents may not agree and the process

may take a long time, which could leave the child in a situation of statelessness. Therefore, there may be sense in creating a more concrete norm, based on the interests of the child. For example, if there is no agreement between the parents, it could be recommended to give the child citizenship of the Kyrgyz Republic on the conditions that the child was born in the territory of the Kyrgyz Republic, and there is a threat of the child becoming a stateless person.

The provisions of Articles 1 and 4 of the 1961 Convention are more accurately met by Article 12, Point 3 of the Law On Citizenship of the Kyrgyz Republic, which states that a child, independent of place of birth, is a citizen of the Kyrgyz Republic if one of the parents at the time of birth is a citizen of the Kyrgyz Republic and the other a stateless person or unknown.

Article 12, Point 4 of the Law On Citizenship of the Kyrgyz Republic recognises as a citizen of the Kyrgyz Republic a child born on the territory of the Kyrgyz Republic whose parents are stateless persons living on the territory of the Kyrgyz Republic. This norm partly meets the requirements of Article 1, Point 1(a) of the 1961 Convention, in which the Contracting State is obliged to bestow its nationality on a person born on its territory who otherwise would be a stateless person at birth under law. It does not, however, cover all situations where a child otherwise becomes stateless, such as situations where a child is born to two foreign parents who are both unable to transmit their nationality to the child, as well as children born to one such parent and a stateless person. Moreover, the norm only covers children born to stateless persons who are permanently resident in Kyrgyzstan.

Article 12, Point 5 of the Law On Citizenship of the Kyrgyz Republic states that a child located on the territory of the Kyrgyz Republic, both of whose parents are unknown, is a citizen of the Kyrgyz Republic. This is the 'foundling' located on the territory of a Contracting Party that is covered in Article 2 of the 1961 Convention. Such a person acquires citizenship if his/her place of birth is not ascertained and it is presumed that the child was born on this territory to parents with citizenship of this state.

Conditions for acquiring citizenship of the Kyrgyz Republic in general procedures are covered by Article 13 and in simplified procedures in Article 14 of the Law on Citizenship of the Kyrgyz Republic, for naturalisation.

Naturalisation is the acquisition (granting) of nationality to a foreigner on their request. The idea is that any foreign citizen or stateless person can become a citizen of the state in question. There exist provisions in international practice under which ordinary naturalisation can take place after longer or shorter periods of residence by the foreigner on the territory of the state in question.

It should be borne in mind that every state independently determines the conditions for granting nationality. They usually refer to a defined period of residence in the state, knowledge and respect of its laws and so on.

Thus, in accordance with Article 13 of the Law On Citizenship of the Kyrgyz Republic, foreign citizens and stateless persons who have reached 18 years of age can apply to be granted citizenship of the Kyrgyz Republic regardless of descent, social position, race or nationality, sex, education, language, religious affiliation, political or other beliefs, under defined conditions. These conditions for granting citizenship of the Kyrgyz Republic are usually permanent residence on the territory of the Kyrgyz Republic for foreign citizens and stateless persons of five uninterrupted years directly before the application. This period is reduced to three years or to one year under conditions specified by the law.

In addition to the residential qualification, qualifications prescribed include language, possession of a source of funding for survival and the obligation to adhere to the Constitution and legislation of the Kyrgyz Republic.

The 1961 Convention recommends to states which chose to adopt the application approach in Art. 1(b) that granting of nationality can be made dependent on one the condition of lack of conviction for committing:

1. An offence against national security or a sentence to imprisonment for a term of five years or more on a criminal charge with regard to any person born on its territory (Article 1, Point 2(c);
2. An offence against national security with regard to any person not born on its territory (Article 4, Point 2(c)).

The Law On Citizenship of the Kyrgyz Republic does not make such a distinction and in Article 16 it allows for eight grounds for refusing to grant citizenship of the Kyrgyz Republic. One of these is conviction and imprisonment for committing a crime which qualifies in the Kyrgyz Republic as serious or very serious. Articles 12 and 13 of the Criminal Code of the Kyrgyz Republic state that serious crimes are intentional acts for which the law makes provision for imprisonment for terms of more than ten years or life imprisonment. The main criterion in this case is the degree of punishment. In the Convention's norm, the issue is not just of degree of punishment, but also the concrete type of crime committed and the place of birth of the individual.

With regard to individuals not born on the territory of the Contracting Party, it is enough to not have a conviction for committing a crime against national security. But under the Law On Citizenship of the Kyrgyz Republic they fall into a general category of people dependent on the gravity of the punishment, and not of people who have committed a specific type of crime, as is foreseen in the 1961 Convention. They are thus limited in their right to acquire citizenship of the Kyrgyz Republic. Based on reasoned consideration of the provisions of the Convention, in our opinion, if the Kyrgyz Republic accedes to the 1961 Convention, legislation will need to respect the criteria for granting citizenship allowed under the Convention.

In practice, naturalisation can be distinguished between family and non-family acquisition of citizenship. The non-family procedure is the ordinary (usual) procedure for acquiring citizenship. The family procedure regulates acquisition of citizenship on marriage, adoption, recognition or legitimation. In this context, the Law On Citizenship of the Kyrgyz Republic, in our opinion, goes further than what is required under the Convention. In particular, Articles 17, 18, 19 and 20 of the Law On Citizenship of the Kyrgyz Republic also provide for situations of acquiring and preserving citizenship of the Kyrgyz Republic for adopted children, or those in foster or guardian care, who can acquire citizenship of the Kyrgyz Republic through one of their parents on the same principles as through birth.

The Law On Citizenship of the Kyrgyz Republic and inter-governmental agreements of which the Kyrgyz Republic is a party also contain norms concerning restoration of citizenship, and acquisition of citizenship through simplified procedures designed to reduce incidence of statelessness.

### 2.2.2 Renunciation of nationality, loss and deprivation of nationality

The legal frameworks of many states contain a number of ways of ending nationality. These include renunciation of nationality; withdrawal of nationality; deprivation of nationality; and ending nationality on the grounds of international agreements.

The 1961 Convention envisages ways to end nationality such as "loss of nationality" (Articles 5 and 6), "renunciation of nationality" (Article 7), and "deprivation of nationality" (Articles 8 and 9).

In Article 4, Paragraph 1, point (b) the possibility of granting of nationality as a result of an application being lodged by or on behalf of the person concerned is envisaged. The same procedure is also possible for renunciation of nationality. Renunciation of nationality takes place by application lodged by or on behalf of the person concerned of his/her own free will – that is, the application for renunciation of nationality is made directly by the citizen. However, such a renunciation should not result in loss of nationality unless the per-

son concerned possesses or acquires another nationality. This understanding arises from Article 7 of the 1961 Convention. However, it is established procedure that grounds and conditions for renunciation of nationality are in the exclusive competence of the State in question. A State which intends to recognise obligations under the 1961 Convention should honour these grounds and conditions in its legislation.

Ending nationality by means of renunciation is provided for in the legislation of the Kyrgyz Republic. It is envisaged in Article 24 of the Law On Citizenship of the Kyrgyz Republic and is termed "exiting from citizenship". Exiting from citizenship of the Kyrgyz Republic takes place based on free will in ordinary or simplified procedures, depending on the place of residence, with the exception of cases where renunciation of the citizenship of the Kyrgyz Republic is not premitted or cases of loss of citizenship (Articles 25 and 26 of the Law On Citizenship of the Kyrgyz Republic.) Persons living in the Kyrgyz Republic can renounce citizenship in the ordinary procedure, while persons living in foreign states can use the simplified procedure. Renunciation of a child's citizenship can be made, depending on the citizenship of the parents, in simplified procedure. These various procedures for ending citizenship of the Kyrgyz Republic are defined in Article 3 of the Law On Citizenship of the Kyrgyz Republic:

*"The general procedure for acquiring or ending citizenship of the Kyrgyz Republic is the procedure for considering issues of citizenship and making decisions on it by the President of the Kyrgyz Republic with regard to persons to whom the general conditions stipulated in this Law apply;*

*…*

*"The simplified procedure for acquiring or ending citizenship of the Kyrgyz Republic is the procedure for considering issues of citizenship and making decisions on it by the President of the Kyrgyz Republic with regard to persons to whom the preferential conditions stipulated in this Law and that have been established in law by force of interstate agreements apply."*

However, the Law stipulates neither general nor preferential conditions for ending citizenship of the Kyrgyz Republic. This is a real problem. Such conditions are only envisaged with regard to acquiring citizenship. In the Regulation on the procedure for considering issues of citizenship of the Kyrgyz Republic, as established in Presidential Decree 473 of 25 October 2007, the conditions are also not set out. What is more, the Regulations also do not differentiate between general and simplified procedures for ending citizenship, but establish a single procedure, both for people living on the territory of the Kyrgyz Republic, and for people living abroad. With regard to the conditions for possessing or acquiring another nationality, which is essential on loss of nationality in Contracting States in accordance with Article 7, points 1(a) and 2 of the 1961 Convention, the Law On Citizenship of the Kyrgyz Republic does not stipulate these requirements. Instead, the condition is included in the Regulation mentioned above. In particular, point 33 envisages that a citizen of the Kyrgyz Republic, among other necessary documents, should have a document from an authorised body of a foreign state about possession of that nationality by the applicant, or confirmation of the possibility to acquire that nationality if nationality of the Kyrgyz Republic is lost. However, it should be noted that the Regulation is an act of secondary legislation, which has a lower legal status than a law. Therefore we believe that if the Kyrgyz Republic takes on obligations under the 1961 Convention it would be necessary to include this condition in the Law On Citizenship of the Kyrgyz Republic itself.

In the 1961 Convention, particular attention is paid to the sub-issues of loss and deprivation of nationality. This is explained by the fact that an initiative to end citizenship in such situations fully belongs to state, i.e. individuals lose their citizenship not just because of the will of the state, but also on the state's initiative. In case of arbitary application it would be a violation of universal human and citizen rights and freedoms. Therefore, there is a range of

international legal documents addressing such ways of ending citizenship. First of all, the Universal Declaration of Human Rights of 10 December 1948 should be noted, which in Article 15, Point 2, enshrines the position that no one should be deprived of their nationality or the right to change their nationality.

The problem of deprivation of citizenship is regulated in the 1961 Convention, under which the conditions according to which citizenship can be deprived from a citizen are limited. In particular, Article 9 of the Convention establishes a direct prohibition on deprivation of any person or group of persons of their nationality on racial, ethnic, political or religious grounds. Nevertheless, Article 8 of the Convention allows the deprivation of nationality by Contracting States in certain conditions. In particular, Article 8, Point 2 establishes that a person can be deprived of nationality:

1) Firstly, in the circumstances in which, under paragraphs 4 and 5 of Article 7, it is possible that a person should lose his nationality;
2) Secondly, where the nationality has been obtained by misrepresentation or fraud.

In Article 8 Point 3 of the Convention, the right of a Contracting State to deprive a person of nationality may also be retained if at the time of signature, ratification or accession it specifies its retention of such a right on one or more of the following grounds, being grounds existing in national law at that time:

1) That the person, in disregard of a direct prohibition, rendered or continued to render services to another state, or received or continued to received emoluments from another State; conducted him or herself in a manner seriously prejudicial to the vital interests of the State;
2) That the person took an oath or made a formal declaration of allegiance to another State or gave direct evidence of his/her determination to repudiate his/her allegiance to the Contracting State.

In the legislation of the Kyrgyz Republic, the understanding of “deprivation of citizenship” is not used. However, “loss of citizenship” as provided for in Article 26 of the Law On Citizenship of the Kyrgyz Republic, in practice refers to deprivation of nationality under the understanding of the 1961 Convention rather than to loss of nationality.

Thus, citizenship of the Kyrgyz Republic is lost, but in the understanding of the 1961 Convention deprived, in two cases:

1) As a result of the person undertaking military or intelligence service for a foreign state, with the exception of cases provided for in established legal procedures in force under international agreements, and the situations where a person is not permitted to renounce the citizenship of the Kyrgyz Republic;
2) If citizenship of the Kyrgyz Republic was acquired as a result of knowingly providing false evidence or forged documents.

These two cases relate to issues of deprivation of citizenship (1961 Convention, Article 8, Points 2)(b) and 3)(a)), which are referred to above. From this it follows that in the legislation of the Kyrgyz Republic, only two grounds for deprivation of citizenship are provided for out of a possible 4 allowed for in Article 8 of the 1961 Convention, and this means that the Kyrgyz Republic has significant guarantees for the preservation of citizenship. At the same time it should be noted that if Kyrgyzstan accedes to the 1961 Convention, it should indicate that it retains the right to deprive citizenship in the first case, as this is already provided for in Law, to fulfil the requirement of Article 8, Point 3 of the 1961 Convention.

Loss of nationality according to Articles 5 and 6, and points 4 and 5 of Article 7 of the 1961 Convention could be a consequence of changes in personal status (marriage, termination of marriage, legitimation, recognition, adoption, possession of familial ties) which is not connected to guilty conduct against the state of nationality. Such loss of nationality should only occur after acquisition or an assurance to acquire another nationality. Exceptions can be made in cases of naturalized persons who reside for not less than 7 uninterrupted years abroad without informing the appropriate authorities about the desire to preserve one's nationality, or in the case of persons born outside the boundaries of the territory of the state of nationality after one year has passed after attaining the age of majority.

The legislation of the Kyrgyz Republic does not provide for any of these Conventional conditions for loss of citizenship except for voluntary renunciation of citizenship by means of delivering a personal request to the President of the country. This all suggests that a citizen of the Kyrgyz Republic without clearly expressed free will cannot lose his/her citizenship based on any changes either of personal status or of place of residence. What is more, acquiring citizenship of another state by a citizen of the Kyrgyz Republic does not lead to an ending of citizenship of the Kyrgyz Republic (Article 6, point 2 of the Law On Citizenship of the Kyrgyz Republic).

Another ground for ending citizenship of the Kyrgyz Republic is provided for in Article 23 of the Law On Citizenship of the Kyrgyz Republic. This ground comes into force on the basis of an interstate agreement of which the Kyrgyz Republic is a party. Such an agreement of the Kyrgyz Republic with other states plays an important role in regulating issues of citizenship. Examples of this type of document are the Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on simplified procedures for obtaining citizenship of 26 February 1999 (which came into force on 4 November 2000) and the Agreement between the Kyrgyz Republic and the Republic of Tajikistan on simplified procedures for obtaining citizenship of 26 May 2004.

Based on the above, the conclusion can be made that the legal framework of the Kyrgyz Republic provides minimum grounds for ending of the citizenship of the Kyrgyz Republic and gives greater guarantees to citizens for preserving citizenship of the country than the 1961 Convention.

### 2.2.3 Other issues

This section looks at provisions of the 1961 Convention such as transfer of territory, international organisation, dispute resolution, reservations and the final provisions, and what they would mean for the Kyrgyz Republic if it acceded to the Convention.

These Convention provisions concern general procedural questions and should be borne in mind when acceding to the 1961 Convention.

Article 10 of the Convention requires that Contracting States on changes to their territory (transfer or acquisition of territory) include provisions in treaties designed to secure that no person shall become stateless as a result of the transfer.

Article 11 of the Law On Citizenship of the Kyrgyz Republic states that citizenship of the Kyrgyz Republic can also be acquired based on procedures provided for under interstate agreements that have come into force. This article, which foresees the conclusion of international agreements on issues of citizenship and the supremacy of such agreements over the norms of national law, allows the conclusion to be made that the Kyrgyz Republic is ready for regulating issues of citizenship on the basis of agreements and treaties concluded. This is testified to by the Agreement of 26 March 1996 between the Kyrgyz Republic and the Russian Federation on simplified procedures for acquiring citizenship for citizens of the Kyrgyz Republic permanently residing in the Russian Federation, and for citizens of the Russian Federation permanently residing in the Kyrgyz Republic, and ending their previous citizenship. The existence of such a Kyrgyzstani-Russian Agreement testifies to

the fulfilment of 1961 Convention recommendations and preparedness for dialogue with other CIS states.

Article 14 of the Convention provides for the possibility for disputing parties concerning the interpretation or application of the Convention to submit the dispute to the International Court of Justice for settlement. This protection mechanism is extremely effective, and the International Court is one of the most authoritative international juridical bodies acceptable for the Kyrgyz Republic.

Article 17 of the Convention is about reservations. This names specific articles of the Convention with regard to which the State can make reservations. These are Article 11 (Organisation), Article 14 (Disputes) and Article 15 (Territory for which the Contracting Party is responsible). Kyrgyzstan does not need to make reservations under this Article.

### 2.3 Conclusions and recommendations

Based on the above, this part of the study can make the following recommendations and conclusions:

1) The research has demonstrated that the legal framework of the Kyrgyz Republic on citizenship is in general compliance with the 1961 Convention on the Reduction of Statelessness, and recommends that the Kyrgyz Republic accedes to the Convention. The possibility of such a step is envisaged in Article 16 of the 1961 Convention for any member state of the United Nations, or another state invited to do so by the General Assembly of the United Nations. The Convention is of great significance for the Kyrgyz Republic, as it can serve to unify legislation, resolving conflicts in the legal framework.

2) Review of the basic provisions of the 1961 Convention clearly indicates that it is a document intended to defend human rights and enshrine principles of equality; non-discrimination; protection of minority ethnic groups, the rights of the child, territorial integrity, and the right to citizenship; and prevention of statelessness. All of these principles are enshrined in the legal framework of the Kyrgyz Republic, which testifies to the latter's democratic nature and universality.

Comparative analysis of Kyrgyz Republic legislation on citizenship with the main provisions of the 1961 Convention leads to the conclusion that the legal basis for citizenship of the Kyrgyz Republic is democratic and adheres to international law in general and the norms of the 1961 Convention in particular. At the same time, it should be noted that certain provisions in the legislative framework of the Kyrgyz Republic on citizenship should be improved taking into account the recommendations in the Convention. In particular:

- <u>Acquiring citizenship</u>
    a) Article 12, Point 2 of the Law On Citizenship of the Kyrgyz Republic establishes that if parents have different citizenships, if one of the parents is a citizen of the Kyrgyz Republic, the citizenship of the child, independent of place of birth, is defined in a written agreement between the parents. In order to prevent statelessness, it is essential to add to this point the procedure if no agreement is made between the parents on the citizenship of the child. For example, in such circumstances, it could be recommended to grant the child citizenship of the Kyrgyz Republic if the child was born in the territory of the Kyrgyz Republic, or if there is a threat of the child becoming stateless.
    b) Based on the sense of Article 1, Point 2)(c) and Article 4, Point 2)(c) of the Convention, which recommend to states that one condition for granting citi-

zenship is a lack of conviction for committing crimes, if the Kyrgyz Republic accedes to the 1961 Convention legislation must ensure that criteria for acquisition of citizenship fall within those permissible under the Convention.

• Renunciation, loss and deprivation of citizenship

a) A general conclusion from analysis of the Kyrgyz Republic's legislation on this issue is that the legal system of the Kyrgyz Republic provides minimum grounds for ending citizenship of the Kyrgyz Republic, and gives more guarantees to citizens for preserving their citizenship than the 1961 Convention.
b) Legislation of the Kyrgyz Republic does not use a concept of "deprivation of nationality". The process of "loss of citizenship", as envisaged in Article 26 of the Law On Citizenship of the Kyrgyz Republic in practice contains deprivation of nationality in the sense of the 1961 Convention, rather than loss of nationality. The abovementioned Law envisages just two scenarios for deprivation of citizenship out of the four allowed under Article 8 of the 1961 Convention, which means there are strong guarantees of preserving citizenship of the Kyrgyz Republic. Here it should be borne in mind that if Kyrgyzstan accedes to the 1961 Convention, it should state that it retains the right to deprive citizenship in the first scenario, as is already provided for in Law, as is required by Article 8, Point 3 of the 1961 Convention. Otherwise this would not have legal force.
c) Legislation of the Kyrgyz Republic does not envisage any of the conditions in the Convention for loss of citizenship, except for voluntrary renunciation of citizenship by means of a personal application to the President of the country. This indicates that a citizen of Kyrgyz Republic without a clearly expressed freely made decision cannot lose his/her citizenship based on any changes either in personal status or in place of residence. What is more, if a citizen of the Kyrgyz Republic acquires another citizenship, this does not imply a loss of citizenship of the Kyrgyz Republic (Article 6, Point 2 of the Law On Citizenship of the Kyrgyz Republic).

• Other issues

a) The Convention provisions concerning such issues as transfer of territory, international agency, disputes, reservations and the Final Act mainly concern general procedural questions which need to be taken into account on accession of Kyrgyzstan to the Convention.
b) The content of Article 11 of the Law On Citizenship of the Kyrgyz Republic envisages the conclusion of international agreements on issues of citizenship and the supremacy of these agreements over the norms of national law. This indicates that the Kyrgyz Republic is prepared for regulation of issues of citizenship through international agreements and treaties. The existence of an Agreement between the Kyrgyz Republic and the Russian Federation on a simplified procedure for acquiring citizenship by citizens of the Kyrgyz Republic with permanent residence in the Russian Federation, and by citizens of the Russian Federation with permanent residence in the Kyrgyz Republic, and exiting from their previous citizenship, as well as willingness to dialogue with other CIS States, underlines that the policy of Kyrgyzstan is to prevent statelessness in such situations, consistent with the object and purpose of the 1961 Convention.
c) The protection mechanism established under Article 14 of the Convention through the International Court of Justice is extremely effective, as this is one of the most authoritative international juridical bodies, and thus acceptable for the Kyrgyz Republic.
d) With regard to the articles of the 1961 Convention to which reservations are allowed, there is no need for Kyrgyzstan to make these.

## PART 3. COMPARATIVE ANALYSIS OF PROVISIONS IN THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS, AND LEGISLATION OF THE KYRGYZ REPUBLIC ON THE RIGHTS OF STATELESS PERSONS

### 3.1 Brief summary of the main provisions in the 1954 Convention Relating to the Status of Stateless Persons

The 1954 Convention Relating to the Status of Stateless Persons (henceforward the 1954 Convention) is the primary international instrument approved in modern times that aims to regulate and improve the status of stateless persons and ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination. The Convention was approved with the aim of expanding its provisions to people without citizenship who are not refugees and therefore are not protected by the 1951 Convention on the Status of Refugees. Initially, the 1954 Convention was originally intended to be as a Protocol to the 1951 Convention.

Provisions in the 1954 Convention do not replace documents used to be stow citizenship on people who were born and usually live on the territory of a state. There are existing international legal principles which consider this issue. The widening of rights and improving the status of persons without citizenship in accordance with the conditions of this Convention does not therefore lessen the necessity to receive citizenship.

The main provisions of the 1954 Convention can be summarised as follows:

#### 1. Definition of a stateless person

Article 1 states:

For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

This is a strictly legal definition. It does not speak of the quality of nationality, of the manner on which nationality is ascribed, or of access to a nationality. The definition is one simply of legal fact, an operation of law by which the State’s nationality legislation defines automatically who has nationality. There are, however, principles involved in the acquisition, bestowal, loss and renunciation of nationality, which are important in the determination of who should have access to nationality even in cases where by operation of law they do not acquire it.

#### 2. Persons excluded from the 1954 Convention

The Convention does not apply to:

a) Those who were, at the time the Convention came into force, receiving assistance from United Nations agencies, with the exception of UNHCR;
b) Persons who already have rights and obligations attached to the possession of nationality in the country in which they reside. In other words, where the individual has already attained the maximum legal status possible (status equivalent to that of nationals), the accession of that State to the Convention, with provisions less extensive than those already granted to stateless persons under national law, will not jeopardise those rights. The importance of nationality itself, however, must be borne in mind;

c) Persons with respect to whom there is serious reason for considering that:
   - they have committed a crime against peace, a war crime, or a crime against humanity;
   - they have committed a serious non-political crime outside the country of their residence prior to their admission to that country; or
   - they have been guilty of acts contrary to the purposes and principles of the United Nations.

**3. Eligibility**

The decision as to whether a person is entitled to the benefits of this Convention is taken by each Contracting State in accordance with its own established procedures and may be made subject to the grant of lawful residence. UNHCR is available to play an advisory role in these procedures if requested in view of its experience with issues relating to statelessness and nationality.

**4. Provisions relating to the status of stateless persons**

The Convention contains provisions regarding the stateless person's rights and obligations pertaining to their legal status in the country of residence. These rights include access to courts, property rights and freedom to practise their religion. Obligations include conformity to the laws and regulations of the country. The Convention further addresses a variety of matters which have an important effect on daily life, such as gainful employment, public education, labour legislation and social security. Contracting States are encouraged to accord stateless persons lawfully resident on their territory a standard of treatment comparable, in some instances, to that accorded to nationals of the State or otherwise to aliens generally in the same circumstances.

**5. Identity and travel documents**

The Convention stipulates that a stateless person lawfully staying in the territory of a Contracting State should be issued a travel document. The issuance of a travel document does not imply a grant of nationality, does not alter the status of the individual more generally, and does not grant a right to diplomatic protection or confer an obligation of such protection on the authorities. These documents are, however, particularly important to stateless persons in facilitating travel to other countries for purposes of study, employment, health or immigration. In accordance with the Schedule to the Convention, each Contracting State undertakes to recognise the validity of travel documents issued by other Contracting States. UNHCR is ready to offer technical advice on the issuance of such documents. The Convention also stipulates that Contracting States shall issue identity papers to any stateless person in their territory (i.e. regardless of residence status or whether their presence in the State is lawful) who does not possess a valid travel document.

**6. Expulsion**

Stateless persons are not to be expelled save on grounds of national security or public order. Expulsions are subject to due process of law unless there are compelling reasons of national security. The Final Act indicates that non-refoulement in relation to danger of persecution is a generally accepted principle. The drafters, therefore, did not feel it necessary to enshrine this in the articles of a Convention geared towards regulating the status of de jure stateless persons.

**7. Naturalisation**

The Contracting State shall as far as possible facilitate the assimilation and naturalisation of stateless persons. The State shall in particular make every effort to expedite naturalisation proceedings including reduction of charges and costs wherever possible.

**8. Dispute settlement**

All disputes between States parties which cannot be settled by other means may be referred to the International Court of Justice at the request of a party to the dispute.

**9. Reservations**

In acknowledgement of special conditions prevailing in their respective States at the time of ratification or accession, the Convention allows Contracting States to make reservations to certain of its provisions. Regulations may be made with respect to any of the Convention's provisions with the exception of those which the drafters of the Convention determined to be of a fundamental nature. No reservations may be made, therefore, in the cases of Articles 1 (definition/exclusion), 3 (non-discrimination), 4 (freedom of religion), 16(1) (free access to courts) and 33 to 42 (Final Clauses).

**10. Final act**

The Final Act recommends that each Contracting State, when it recognises as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to the person the treatment which the Convention accords to stateless persons. This recommendation was included on behalf of de facto stateless persons who, technically, still held a nationality but did not receive any of the benefits generally associated with nationality, such as diplomatic protection.

### 3.2 Analysis of the provisions in the 1954 Convention on the Reduction of Statelessness and legislation of the Kyrgyz Republic

#### 3.2.1 Definition of a stateless person

Article 3 of the Law *On Citizenship of the Kyrgyz Republic gives the following definition of a stateless person:*

*A stateless person is a person who is not a citizen of the Kyrgyz Republic and does not have evidence of affiliation with citizenship of another state.*

In general, this definition overlaps with the definition in the Convention, of a person who is not considered as a national by any state under the operation of its law. The status of citizen under the operation of law means that this person is automatically considered a citizen under the operation of law as formulated in the laws in force in the state with regard to issues of citizenship, or that citizenship was granted to that person based on a decision made by a competent authority. Persons who did not receive the citizenship of any State automatically or on the basis of an individual decision in accordance with the law of the relevant State, are considered stateless persons de jure. In the absence of evidence to the contrary, a person is considered to have a citizenship. However, sometimes states cannot come to a decision about which of them should grant a person its citizenship. Such a person cannot demonstrate that de jure s/he does not have citizenship, but s/he does not have

a citizenship and cannot benefit from the protection of a state. Such people are considered stateless persons de jure.

On the other hand, this definition would appear to be wider than the international definition. All people who are not citizens of the Kyrgyz Republic under the Law On Citizenship of the Kyrgyz Republic and do not have documents that confirm their affiliation to citizenship of another State are recognised as stateless.

### 3.2.2 Persons excluded from the 1954 Convention

The Preamble of the 1954 Convention states that stateless refugees fall under the 1951 Convention on the Status of Refugees and therefore do not require protection under the 1954 Convention. Kyrgyzstan has acceded to the 1951 Convention,[3] and therefore stateless refugees located on the territory of the Kyrgyz Republic are covered by the 1951 Convention.

Besides defining stateless persons, Article 1 of the 1954 Convention defines persons to whom the Convention does not apply (despite the fact that they do not have citizenship) for defined reasons, either because they do not need such protection, as they already receive international protection or internal assistance, or because they do not have the right to international protection because of crimes they have committed.[4] Nevertheless, if stateless persons have been ensured legal residence in the state and have been granted more rights than those provided under the 1954 Convention, in particular full economic and social rights equivalent to those enjoyed by citizens of the State, and they are protected from deportation and expulsion, it is not necessary to apply the provisions of the Convention to such persons, though in practice they are stateless persons.

Thus, in accordance with the Constitution of the Kyrgyz Republic, the Law On Citizenship of the Kyrgyz Republic, and Law 175 On State Guarantees to Ethnic Kyrgyz Returning to their Historical Homeland of 26 November 2007, ethnic Kyrgyz who are foreign citizens or stateless persons, who voluntarily chose to return to their historical homeland, are granted the status of kayrylman until they acquire citizenship of the Kyrgyz Republic. The State provides subsidies for resettlement, allocates land plots for free immediate use, with subsequent transfer of the property when they become citizens of the Kyrgyz Republic. They are also allocated interest free loans for building houses, receive citizenship of the Kyrgyz Republic in a simplified procedure, have quotas for entering higher and secondary specialised educational institutions, schools and pre-school institutions, and are given assistance to find jobs and improve their qualifications, as well as receiving medical assistance, pensions and social allowances, and other benefits. In this way, the legislation of the Kyrgyz Republic gives the above persons greater rights than those envisaged under the Convention. The main criterion for this is Kyrgyz ethnicity.

The legislation of the Kyrgyz Republic does not make exceptions for persons who receive protection or assistance from organs or agencies of the United Nations. Such an organ, falling under this provision of the Convention, and the only United Nations institution at the current time is the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

In accordance with Article 39, point 2 of the Law On Citizenship of the Kyrgyz Republic, persons living in the Kyrgyz Republic who are not citizens of the Kyrgyz Republic are given residence permits by internal affairs bodies as foreign citizens or stateless persons. Residence permits can be refused based on the grounds envisaged in Articles 16 and 34 of Law 61 On External Migration of 17 July 2000 (with the latest amendments).

3 *The Kyrgyz Republic acceded by lower parliamentary chamber regulation 241-1 of 30 October 1995 and upper chamber regulation 255-1 of 6 March 1996. The Convention came into force for the Kyrgyz Republic on 6 January 1997.*

4 These categories have already been discussed in a previous paragraph.

Thus, the legislation of the Kyrgyz Republic does not automatically exclude anybody from being recognized as a stateless person, but in accordance with procedures that have been established in it, a person could be refused a residence permit.

### 3.2.3 Eligibility

Though the 1954 Convention gives a definition of statelessness, it does not establish how it is to be determined who is a stateless person. Therefore, it is in the interests both of states, and of persons to whom the Convention may apply, that legislation is passed by states to establish procedures for determining who is a stateless person. Such legislation should also establish who makes the determination, and what the consequences are for the individual of the determination.

If the individual has made an application to be recognised as stateless, or if the authorities have taken measures to determine if the individual is stateless, then it may be necessary to provide for temporary stay while the process is underway. The Convention does not oblige states to grant a legal stay to an individual while his/her request for recognition as a stateless person is being assessed. The practical realisation of such procedures depends on the state in question. In this connection, in accordance with the principle of due process, the applicant should be provided with certain guarantees, including:

- the right to individual examination of the claim in which the applicant may participate;
- the right to objective treatment of the claim;
- a time limit on the length of the procedure;
- access to information about the procedure in language which the claimant can understand;
- access to legal advice and an interpreter;
- the right to confidentiality and data protection;
- delivery of both a decision and the reasons that underlie the decision; and
- the possibility to challenge the legality of that decision.

In the Kyrgyz Republic, as in some other countries, there is no special procedure for recognising stateless persons. However, there is a procedure for determining and recognising eligibility for citizenship of the Kyrgyz Republic. Articles 29 and 30 of the Law On Citizenship of the Kyrgyz Republic gives a mandate to internal affairs bodies to determine the eligibility of persons permanently resident in the territory of the Kyrgyz Republic, and to the Ministry of Foreign Affairs, diplomatic representations and consular departments that of persons permanently resident outside the territory of the country.

The procedure for determining and recognising eligibility for citizenship of the Kyrgyz Republic for persons permanently resident in the territory of the Kyrgyz Republic is established in the Regulation on the Procedure for Considering Issues of Citizenship of the Kyrgyz Republic, approved by Presidential Decree 473 of 25 October 2007. Based on a personal application addressed to the territorial passport department of the internal affairs body, checks are carried out to determine if the individual is eligible or ineligible for citizenship of the Kyrgyz Republic. This determination is approved by the head of the passport department. The applicant is informed of the results. No time limit is established for the procedure. The Department of Passport and Visa Control under the Ministry of Internal Affairs and its territorial subdivisions has conflict commissions which make determinations regarding persons who wish to clarify their eligibility for citizenship of the Kyrgyz Republic. These are authorised to repeat the consideration of any application, and if an incorrect decision has been made, to change the determination (Articles 29 and 30 of the Regulation on the Procedure for Considering Issues of Citizenship).

Based on the above, we believe it would be essential on accession to the 1954 Convention to add to the mandates of passport and visa control bodies of the Ministry of Internal Affairs, and also the diplomatic representations and consular services of the Ministry of Foreign Affairs, the function of determining the status of stateless persons based on due process.

### 3.2.4 Provisions relating to the status of stateless persons

There are basic human rights enjoyed by all persons independent of their status and their type of stay in an individual country. These include, for example, prohibition of torture and the principle of non-discrimination. The 1954 Convention essentially confirms the application of these provisions to stateless persons "without discrimination as to race, religion of country of origin" (Article 3). The Constitution of the Kyrgyz Republic, in Article 13, Point 3 establishes such guarantees, including for stateless persons, using inclusive language such as "all people" and "no-one".

Article 7(1) of the Convention establishes the basic level of protection which should be provided to stateless persons. This envisages that, except when the Convention contains more favourable provisions, "a Contracting State shall accord to stateless persons the same treatment as accorded to aliens generally."

With regard to the majority of rights established in the 1954 Convention, stateless persons should have at least equal access to the rights and privileges guaranteed to foreigners, in particular with regard to movable and immovable property (Article 13), right of association (Article 15), employment (Articles 17, 18 and 19), public education (Article 22), housing (Article 21) and freedom of movement (Article 26). With regard to other specific rights, Contracting States are recommended to provide these to stateless persons legally resident on their territory to standards equal to those ensured for citizens. These include freedom of religion (Article 4), artistic rights and industrial property (Article 14), access to courts (Article 16), rationing (Article 20), elementary education (Article 22) public relief (Article 23) and labour legislation and social security (Article 24). Most of the rights in the 1954 Convention are only accorded to stateless persons lawfully staying in the territory of the State, however no such requirement is attached to the freedom of religion, right to movable and immovable property, access to courts, rationing, and education, which should be enjoyed by all stateless persons, regardless of their legal status in the country.

Thus, under Article 24 of Law 1296-XII *On the Legal Situation of Foreign Citizens in the Kyrgyz Republic* of 14 December 1993, the provisions of this Law cover, in addition to foreign citizens, stateless persons, if the latter are not covered by other Kyrgyz Republic legislation. They have the same rights, freedoms and obligations as citizens of the Kyrgyz Republic, unless otherwise stipulated in this Law and other legislation of the Kyrgyz Republic; and are equal before the law independent of origin, social status, property holdings, race, nationality, sex, education, language, religious beliefs, type and character of work and other circumstances (Article 3 of the Law *On the Legal Situation of Foreign Citizens in the Kyrgyz Republic)*. This Law has a whole section guaranteeing basic rights and freedoms for foreign citizens in the Kyrgyz Republic, including stateless people, which guarantees all the rights provided for in the Convention.

Based on the above, it can be concluded that the legal situation of stateless persons on the territory of the Kyrgyz Republic meets the standards established in the Convention.

### 3.2.5 Identity and travel documents

The Convention envisages provision by Contracting States of identity documents for all stateless persons located on their territory who do not have valid travel documents. Article 28 states that Contracting States should provide travel documents to stateless persons

legally resident on their territory unless compelling reasons of national security or public order otherwise require. Provision of such documents does not recognise the recipients as citizens, does not change the status of the individuals, and does not give them the right to diplomatic protection.

The second part of Article 28 suggests that states can provide travel documents to all stateless persons living on their territory even if they are not lawfully resident. The Convention suggests that States in particular consider issues of giving travel documents to those stateless persons living on their territory who are unable to obtain a travel document from the country of their legal residence. This provision is extremely important, as many stateless persons may not be lawfully resident. Travel documents, on the one hand, allow for the identification of stateless persons, and on the other allow them the right to enter the territory of other states.

Travel documents are particularly important for stateless persons to simplify travel to other countries with the aims of study, seeking employment, healthcare or resettlement. The Appendix to the Convention states that every Contracting State agrees to recognise the validity of travel documents issued by other states.

Under legislation currently in force in the Kyrgyz Republic identity documents are provided to stateless persons with permanent residence in the Kyrgyz Republic if they need to leave the country. In other words, they are given only to stateless persons who are permanent residents of the Kyrgyz Republic (Article 24 of Regulation 626 on the Procedure for Drawing Up and Granting Temporary and Permanent Residence for Foreign Citizens and Stateless Persons on the Territory of the Kyrgyz Republic of 13 November 2008). Thus, it is not envisaged that other stateless persons, including those with temporary residence permits, are to be provided with travel documents under the legislation of the Kyrgyz Republic. Therefore, if the country were to accede to the 1954 Convention, legislators should consider the possibility of providing identity documents in accordance with Articles 27 and 28 of the Convention to all stateless persons located in the territory of the Kyrgyz Republic, regardless of their type of residence permit.

### 3.2.6 Expulsion

Under the Convention, stateless persons legally resident in the country are not to be expelled save on grounds of national security or public order. Expulsions are subject to due process of law unless there are compelling reasons of national security. On the strength of this, procedural guarantees should be implemented that would allow stateless persons to respond to accusations and present evidence to clear themselves, to use the services of lawyers, and to make appeals.

The legislation of the Kyrgyz Republic meets the abovementioned Convention requirements on expulsion. Thus, in accordance with Article 19 of the Law On External Migration, internal affairs bodies and national security bodies should order foreign citizens and stateless persons whose visas or residence permits have expired or have been annulled to leave the country. Foreign citizens are required to leave the territory of the Kyrgyz Republic within the period stated in this exit order. If the foreign citizen or stateless person does not obey the order, the individual is deported from the Kyrgyz Republic.

Foreign citizens or stateless persons can be deported:

1. If their actions contradict the interests of state security or public order;

2. If this is necessary to preserve the health and morals of the population, or to protect the rights and legal interests of citizens of the Kyrgyz Republic and other persons;

3. If they clearly and seriously violated the legislation of the Kyrgyz Republic but there are no grounds for bringing them to criminal responsibility.

Administrative deportation from the territory of the Kyrgyz Republic of foreign citizens and stateless persons as a measure of administrative penalty is established and prescribed by a judge (court). Along with the order to leave the country or administrative deportation, the Ministry of Internal Affairs or the State Committee for National Security can place temporary or permanent barring orders on entry to the Kyrgyz Republic, with mandatory notification of the Ministry of Foreign Affairs and the Border Service of the Kyrgyz Republic.

The Final Act of the Convention indicates that non-refoulement is a generally accepted principle. Non-refoulement, the principle of non-return of an individual to a territory where that person is at risk of persecution, is clearly confirmed and interpreted in the provisions of a number of international agreements, including Article 33 of the Convention on the Status of Refugees, Article 3 of the Convention against Torture and Article 7 of the International Covenant on Civil and Political Rights, as well as a number of regional human rights documents.

This Convention provision also appears in the legislation of the Kyrgyz Republic. Article 11 of Law 44 On Refugees of 25 March 2002 states that individuals who have received notification of refusal to be granted refugee status, or of withdrawal of refugee status, cannot be deported to countries where their lives or freedom are in danger because of their race, nationality, religion, citizenship, membership of a particular social group or political convictions, or to countries where they could become victims of torture or subjected to inhuman treatment.

### 3.2.7 Naturalisation

The Convention states the Contracting States should as far as possible facilitate the assimilation and naturalisation of stateless persons. In this context, assimilation does not mean loss of concrete identification of persons, but their integration into the economic, social and cultural life of the country. In particular, the State should make every effort to expedite naturalisation proceedings including, where possible, reduction of charges and costs.

In many countries, including the Kyrgyz Republic, citizenship legislation envisages reduced length of legal residence in the country for refugees and stateless persons who apply for naturalisation. Thus, in Article 13, point 2 of the Law On Citizenship of the Kyrgyz Republic, the five year period of foreign citizens and stateless persons to be resident in the territory of Kyrgyz Republic in order to be naturalised under point 1, part 1 of the same Article, is reduced to three years, under the following conditions:

1) Marriage with a citizen of the Kyrgyz Republic;
2) High achievements in the fields of science, technology or culture, or a profession or qualification in demand in the Kyrgyz Republic;
3) Investment in priority areas of the economy of the Kyrgyz Republic;
4) Recognition as refugees under the legislation of the Kyrgyz Republic.

This term is reduced to one year, if (Article 14, point 1):

1) The person has at least one relative who is a citizen of the Kyrgyz Republic and lives on the territory of the Kyrgyz Republic;
2) The person was born in the Kyrgyz SSR and was a citizen of the former USSR;
3) The person is restoring citizenship of the Kyrgyz Republic.

There is also a separate Law On State Guarantees to Ethnic Kyrgyz Returning to their Historical Homeland, which allows for preferential terms for naturalisation of Ethnic Kyrgyz, which has been discussed in earlier sections.

In addition, there are interstate agreements which provide for even quicker acquisition of citizenship. Thus, under point 2 of the Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on a simplified procedure for acquisition of citizenship by a person with citizenship of one of the Parties independent of the length of residence in the territory of the Party of which citizenship is to be acquired. *This Agreement is implemented in the Kyrgyz Republic by means of the Regulation On Simplified Procedure for Acquisition of Citizenship of the Kyrgyz Republic by Citizens of the Republic of Belarus, the Republic of Kazakhstan, and the Russian Federation,* brought into law by Government Decree 684 of 13 December 1993. There are also analogous separate agreements with the Russian Federation and the Republic of Tajikistan.

Based on the above, it can be concluded that the legislation of the Kyrgyz Republic with regard to naturalisation of stateless persons is quite good.

### 3.2.8 Other issues

a) Resolution of disputes

Like the 1961 Convention, the 1954 Convention envisages that all disputes between Contracting States which cannot be settled by other means may be referred to the International Court of Justice at the request of a party to the dispute. This does not harm the interests of Kyrgyzstan.

b) Reservations

Unlike the 1961 Convention, under which reservations can only be made to certain provisions, under the 1954 Convention, reservations can be made to any provisions, with the exception of recognition by Contracting States of the fundamentals, in particular Article 3 (non-discrimination), Article 4 (freedom of religion), Article 16(1) (free access to courts) and Articles 33-42 (final clauses).

c) Final clauses

The final clauses recommend to all Contracting States that when they recognise as valid the reasons for which a person has renounced the protection of the state of which he/she is a national, they consider sympathetically the possibility of according the person the treatment which the Convention accords to stateless persons. This recommendation was included on behalf of de facto stateless persons who, technically, still hold a nationality but do not receive any of the benefits generally associated with nationality, and first of all diplomatic protection.

As already stated, such provisions do not exist in the legislation of the Kyrgyz Republic, and therefore if the Kyrgyz Republic accedes to the Convention, the country should honour these recommendations of the Convention.

### 3.3 Conclusions and recommendations

Based on the above, this part of the research leads to the following conclusions and recommendations:

1) The legal analysis carried out has shown that the relevant legislation of the Kyrgyz Republic on citizenship, the legal status of foreigners and external migration is in accordance with the 1954 Convention on the Status of Stateless Persons and that therefore a recommendation can be made that the Kyrgyz Republic accedes to the

Convention. The possibility of accession is envisaged in Article 35 of the 1954 Convention for any member state of the United Nations or other state invited to accede by the General Assembly of the United Nations. This Convention is important for the Kyrgyz Republic, as it can serve to unify legislation, reducing conflicts in the legal framework.

2) The definition of stateless persons given in Article 3 of the Law On Citizenship of the Kyrgyz Republic on the whole reflects the definition in the Convention of a person who is not considered as a national by any State under the operation of its law. However, the interests of de facto stateless persons are not taken into account in the legislation of the Kyrgyz Republic. Therefore, if Kyrgyzstan accedes to the 1954 Convention, their interests should be included in the country's legislation.

3) The legal status of stateless persons in the territory of the Kyrgyz Republic meets the standards established in the 1954 Convention. In addition, in certain cases, the legislation of the Kyrgyz Republic gives stateless persons greater rights than envisaged under the Convention. This applies in particular to ethnic Kyrgyz.

4) The Kyrgyz Republic does not have special procedures to determine if persons are stateless, but there is a procedure for determining eligibility for citizenship of the Kyrgyz Republic. Therefore, we recommend that if the Kyrgyz Republic accedes to the 1954 Convention, the passport and visa control bodies of the Ministry of Internal Affairs, and also diplomatic representations and consular services of the Ministry of Foreign Affairs should be given the additional function of determining whether persons are stateless taking into account the due process of law.

5) In accordance with legislation in force in the Kyrgyz Republic, identity documents for stateless persons are bestowed if there is a necessity for a stateless person with permanent residence in the Kyrgyz Republic to leave the country. That is, it is given only to stateless persons with permanent residence in the Kyrgyz Republic (Article 24 of Regulation 626 on the Procedure for Drawing Up and Granting Temporary and Permanent Residence for Foreign Citizens and Stateless Persons on the Territory of the Kyrgyz Republic of 13 November 2008). The legislation of the Kyrgyz Republic does not envisage providing travel documents to other stateless persons, including those with temporary residence in the Kyrgyz Republic. Therefore, if the country were to accede to the 1954 Convention, legislators should consider the possibility of providing identity documents in accordance with Articles 27 and 28 of the Convention to all stateless persons located in the territory of the Kyrgyz Republic, regardless of their type of residence permit.

6) The legislation of the Kyrgyz Republic concerning naturalisation, and expulsion (non-refoulement) of stateless persons is adequate, and the recommendations of the Convention in this field are fully met.

## Bibliography:


1. Ajibraimova A.M., Kh.Z. Makhaddinova, Ch.A. Musabekova and M.A. Davletova, Права человека (учебно-практическое пособие для судей) [Human Rights (study and practical handbook for judges)], Bishkek, 2006.

2. Baglay M.V., Конституционное право Российской Федерации. Учебник для вузов [Constitutional Law of the Russian Federation. Textbook for Higher Educational Institutions, 3rd edition, Moscow, 2001.

3. Baymuratov, M.A., Международное публичное право [International Public Law]. Kiev, 1999.

4. Musabekova, Ch.A. (ed.), Обеспечение прав и свобод человека в деятельности органов внутренних дел Кыргызской Республики [Ensuring Human Rights and Freedoms in the Activities of Internal Affairs Bodies of the Kyrgyz Republic]. Handbook for higher educational institutions, Bishkek, 2004.

5. Soodanbekov, S.S. and M.K. Ukushev, Конституционное право Кыргызской Республики [Constitutional Law of the Kyrgyz Republic], Bishkek, 1999.

6. UNHCR Division of International Protection, Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, November 1998.

7. UNHCR and Inter-Parliamentary Union, Nationality and Statelessness: A Handbook for Parliamentarians 2005, number 11.

8. Regional Project on Development of Comprehensive Strategy on Prevention and Reduction of Statelessness in Central Asia.

# Statelessness in the Kyrgyz Republic: Prevention, Reduction and Protection

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# UN Conventions and Treaties

- Convention Relating to the Status of Stateless Persons, 360 U. N. T. S. 117, entered into force June 6, 1960 (the “1954 Convention”).

- Convention on the Reduction of Statelessness, 989 U. N. T. S. 175, entered into force Dec. 13, 1975 (the “1961 Convention”).

- Convention on the Rights of the Child, G. A. res. 44/25, annex, 44 U. N. GAOR Supp. (No. 49) at 167, U. N. Doc. A/44/49 (1989), entered into force Sept. 2 1990 (the “CRC”).

- International Covenant on Civil and Political Rights, G. A. res. 2200A (XXI), 21 U. N. GAOR Supp. (No. 16) at 52, U. N. Doc. A/6316 (1966), 999 U. N. T. S. 171, entered into force Mar. 23, 1976 (the ICCPR).

- International Covenant on Economic, Social and Cultural Rights, G. A. res. 2200A (XXI), 21 U. N. GAOR Supp. (No. 16) at 49, U. N. Doc. A/6316 (1966), 993 U. N. T. S. 3, entered into force Jan. 3, 1976.

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G. A. res. 39/46, [annex, 39 U. N. GAOR Supp. (No. 51) at 197, U. N. Doc. A/39/51 (1984)], entered into force June 26, 1987.

- International Convention on the Elimination of All Forms of Racial Discrimination, G. A. res. 2106 (XX), Annex, 20 U. N. GAOR Supp. (No. 14) at 47, U. N. Doc. A/6014 (1966), 660 U. N. T. S. 195, entered into force Jan. 4, 1969.

- Convention on the Elimination of All Forms of Discrimination against Women, G. A. res. 34/180, 34 U. N. GAOR Supp. (No. 46) at 193, U. N. Doc. A/34/46, entered into force Sept. 3, 1981.

- Convention on the Nationality of Married Women, G. A. res 1040 (XI) dated jan 29, 1957 and entered into force on Aug 11, 1958.

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G. A. Res. 54/263, Annex I, 54 U. N. GAOR Supp. (No. 49) at 7, U. N. Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002.

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G. A. Res. 54/263, Annex II, 54 U. N. GAOR Supp. (No. 49) at 6, U. N. Doc. A/54/49, Vol. III (2000), entered into force January 18, 2002.

- Convention Relating to the Status of Refugees, 189 U. N. T. S. 150, entered into force April 22, 1954.

## Acknowledgement

The following study was undertaken with the financial support of the European Commission in 2009 and reflects the governmental structure and national legislation at that time. The views expressed in this report are those of the author and do not necessarily reflect those of the European Commission. The report was edited by Wathira Kamoji.

UNHCR would like to thank, the government of Kyrgyzstan for its collaboration on this project. It would also like to thank the following implementing partners Legal Clinic Adilet, Fergana Lawyers without Borders, Centre for Support to International Protection, Counterpart Sheriktesh, and Help Refugees, for their contribution to the results of this study.

## Introduction

The Kyrgyz Republic is one of a number of republics located in Central Asia; it is nestled between Kazakhstan, China, Tajikistan and Uzbekistan. In 1990, the Kyrgyz Republic declared its sovereignty and independence from the former USSR through the Declaration on State Sovereignty dated 15 December 1990. Since independence, the newly formed republic has faced many challenges including issues related to cessation, succession and delineation of borders with new neighbouring and similarly independent states. The succession of a state carries with it the implication that a legal transfer occurs between the predecessor and successor state; this involves laws, rights and obligations as well as property in terms of borders and most importantly people. Border demarcation, presented challenges for these newly formed states, most crucial among them was the recognition and loss of citizenship which inevitably rendered some stateless and many at risk of statelessness.

The process of border demarcation often distributed neighbours, friends and relatives between two or more countries. People in mixed marriages and their children became threatened with statelessness as it became difficult to determine their nationality. In addition, internal and external migration generated new categories of people for example, labour migrants and their family members, whose nationality was not always appropriately documented. The Kyrgyz Republic's approach to undetermined nationality was often on a case by case basis (as there were no established procedures) which was sometimes inadequate or ineffective in preventing or solving statelessness. Many of these situations are further worsened by the absence of required documentation by the concerned individuals.

A majority of the people who are stateless or at risk of becoming stateless were nationals of the former USSR who could have opted for the nationality of the newly independent Kyrgyz Republic, but failed to meet the required deadlines. The rest of the population who are stateless or at risk of becoming stateless are people who are former nationals of neighbouring CIS countries.

The purpose of this study is to explore the scale of statelessness in the Kyrgyz Republic using the relevant administrative practices and legal frameworks for the protection, prevention and reduction of statelessness. It will also look at the effectiveness of in country multi-level partnerships in addressing statelessness in the Kyrgyz Republic. It seeks to contribute to the development of country-level and regional strategies to prevent and reduce statelessness.

The study will examine the various categories of people residing in the Kyrgyz Republic from UNHCR's perspective, and analyse the legal and administrative frameworks which relate to the reduction and prevention of statelessness and protection of stateless persons in the Kyrgyz Republic. It has been prepared under UNHCR's Regional Project on Development of Comprehensive Strategy on Prevention and Reduction of Statelessness in Central Asia.

## Definition of Terms

Article 1 of the 1954 Convention defines a stateless person as any person "who is not considered as a national by any state under the operation of its law". Nationally, statelessness is defined as: "a person who is not a citizen of the Kyrgyz Republic and does not have any proof of affiliation to the nationality of any other foreign state", this is covered by the 2007 Citizenship Law in Article 3, as well as the 2000 External Migration Law in Article 1.

For the purpose of this study, both de jure[1] and de facto[2] stateless persons, including individuals with difficulties establishing their nationality are hereinafter referred to as stateless persons/populations. The study will also refer to persons at risk of statelessness, which for instance includes, but not limited to, persons whose nationality is not properly documented (persons at risk of statelessness).

## Methodology

A document entitled "Statelessness: An Analytical Framework for Prevention, Reduction and Protection" (the "Framework") published by UNHCR in 2008, has been adopted as the main methodological tool for this study.

Most of the information presented in this paper is based on three surveys conducted by UNHCR's implementing partners throughout the country ("the surveys"),[3] as well as the results from sessions with stateless persons conducted by Multifunctional Teams of staff members of UNHCR, the State Committee on Migration and Employment, the Department of Passport and Visa Control of the Ministry of Interior (UPVK MVD) and NGOs in the northern and southern part of the country (the "Focus Group"). The study was complimented by other documents produced by UNHCR, other UN agencies and partners, publicly available laws and regulations. Representatives of state agencies dealing with stateless persons such as passport offices of territorial Internal Affairs Departments, the State Committee on Migration and Employment, members of the Working Group on Statelessness led by UNHCR, as well as UNHCR's implementing partners and NGOs, namely, Legal Clinic Adilet, Fergana Lawyers without Borders, Centre for Support to International Protection, Counterpart Sheriktesh, and Help Refugees, also contributed materials.

1 As per Article 1 of the Convention relating to the Status of Stateless Persons, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law (Convention relating to the Status of Stateless Persons, 360 U. N. T. S. 117, entered into force 6 June 1960 (the 1954 Convention).

2 An individual who has "no state to turn to for protection" though considered to be a national of a certain state(s) under operation of its law. See: the Convention Relating To The Status Of Stateless Persons: Its History and Interpretation. a commentary by Nehemiah Robinson Institute of Jewish Affairs World Jewish Congress 1955, Reprinted by the Division of International Protection of the United Nations High Commissioner for Refugees 1997, p. 7.

3 Local NGOs in the North, the Public Association Counterpart Sheriktesh, Chi Murgab, Adab, Sairon, Help Refugees, and the Civil Society Support Centre of Karabalta with the support of UNHCR conducted a situational analysis of the stateless population in Ysykatinskiy, Moskowskiy, Zhaylskiy Districts of Chui Province from August until October 2007, and in Chuiskiy, Panfilovskiy and Sokulukskiy Districts of Chui Province in April and May 2008 (the "Northern surveys"). In the South, Centre for International Protection and Ferghana Valley Lawyers Without Borders undertook a study of the statelessness situation between September 2008 and January 2009 in the border districts of Aravansky, Karasujsky, Nookatsky and Uzgensky of Osh Province; Kadamzhajsky, Batkensky and Lejleksky Districts of Batken Province; Suzaksky, Nookensky, Bazarkorgonsky, Aksyjsky and Alabukinsky Districts of Jalalabat Province, as well as in districts with lower level of trans-border migration, such as Alajsky, Karakuldzhinsky, Chonalajsky Districts of the Osh province and Chatkalsky, Toguztorunsky and Toktogulsky Districts of Jalalabat province (the "Southern survey"). The surveys focused on areas with known concentrations of stateless populations, but did not cover urban areas and all the provinces of the Kyrgyz Republic. These surveys represent the relevant parts of the publication of UNHCR, A PLACE TO CALL HOME: The situation of Stateless Persons in the Kyrgyz Republic: Findings of the survey Commissioned by UNHCR, Bishkek, 2009. Retrieved 2 Mar 2010 from: http://www. un. org. kg/en/publications/publications/list/publications/un-agencies/54-united-nations-high-commissioner-for-refuges-unhcr.

## 1. FAVOURABLE PROTECTION ENVIRONMENT

### 1.1 Demographic profile

The population of stateless persons and persons at risk of statelessness in the Kyrgyz Republic is not localized but rather is scattered around the country. This population has various demographic and socio-economic profiles, and different causes and durations of statelessness or the risk thereof. According to figures provided by the Ministry of Internal Affairs of the Kyrgyz Republic to UNHCR, there are more than 23,500 people (as of 1st January 2009) in Kyrgyz Republic whose nationality is undetermined or whose nationality has not been properly documented and these individuals are therefore at risk of statelessness.

The national population census undertaken in March/April 2009 attempted to collect data on the stateless population in the country. Information gathered during the census is now being processed and should be published in 2010. It is however not clear how accurate the information on stateless persons is, as it is entirely dependent on whether participants identified and declared themselves (or their family members) as stateless.

There is a small group of about 100 individuals that have been officially documented by the Government of the Kyrgyz Republic and therefore hold residence permits for stateless persons.

Although precise statistics have yet to be gathered and full scale statelessness identification strategies and activities have yet to be implemented by the government, the surveys conducted in the Northern and Southern provinces of the country give an approximate idea of current demographic and socio-economic indicators of statelessness in the country.

*Demographic breakdown between Northern and Southern Kyrgyz:*

Out of 11,655 individuals identified by the Southern Survey 57 percent were female (6629) and 43 percent were male (5026). 4.5 percent were male (278) and 3.3 percent were female (244) of those that were 60 years or older. 34 percent were males (1,722) and 64 percent were female (3,324), between the ages of 18 and 59. Boys and girls between 12 and 17 comprised of 13.8 percent were boys (701) and 10.2 percent of girls (677). Of those between 5 and 11, 26.4 percent (1,327 boys) and 22.1 percent (1,471 girls). Finally, 19.8 percent (998 boys) and 13.7 percent (913 girls), were younger than five years old.

Among survey respondents and their family members in the North, around 3.7 percent were 60 years of age or older. 41-59 year olds constituted around 15 percent of respondents, 19-40 year olds 40 percent. Children aged 7-18 represent around 23 percent and those aged 0-6 12 percent. A similar breakdown was unavailable for respondents in the South.

The population is multicultural, multi-ethnic and multi-religious. Most individuals whose nationality is not established or documented are Kyrgyz (over 50 percent in the North and South), Uzbek (approximately 45 percent in the South and four percent in the North) or Tajik (approximately 10 percent in the North and three percent in the South). There are also individuals from other CIS ethnicities including Ukrainian, Russian, Belarus, Kazakh, Azeri, Turkmen, Tatar and Chechen, as well as Chinese, Uyghur, Kurd and German, who, in aggregate, represent less than 10 percent of the population identified as stateless or at risk of statelessness.

As most of the population concerned are of rural background, many, especially in the South of the country, are engaged in agriculture (crop and livestock sectors). However, the North Survey and the Focus Group sessions, which covered the different groups from the northern and southern provinces, identified day labour and agricultural works as the main source of income for the majority of individuals concerned. Many of them alluded to a lack of proper documentation as a reason for limited employment opportunities.

The three surveys conducted by UNHCR's implementing partners identified several categories of people who are either stateless or at risk of statelessness. In total, the surveys identified close to 13,000 stateless persons and their family members. The following are three of the major categories of stateless persons and persons at risk of statelessness in the Kyrgyz Republic.

*Former USSR citizens:*

The largest group of stateless persons consist of former USSR citizens, who weren't covered by Article 1 of the old Law On Citizenship of the Kyrgyz Republic as of 18 December 1993 (the "1993 Citizenship Law"). They were neither nationals of the country before the adoption of the Declaration of Sovereignty of the Kyrgyz Republic of 15 December 1990 nor nationals of the country by the date of entry into force of the 1993 Citizenship Law, i.e. by 18 February 1994 and therefore had to acquire the nationality of the country through naturalization. While they permanently reside in the Kyrgyz Republic, they face difficulties such as lack of all or some of the documents required for claiming Kyrgyz nationality, lack of a residential stamp commonly known as a *propiska* in the Kyrgyz Republic, or failure to annul a *propiska* in the country of their previous residence.

Others, have been recognized as nationals of the Kyrgyz Republic as per the 1993 Citizenship Law, but failed to change their USSR passports and obtain new passports of the Kyrgyz Republic[4] due to either unawareness of all requirements for replacement of passports, or an unwillingness to deal with complicated administrative procedures, or unaffordable fees.

The surveys identified more than 4,450 adult former USSR citizens who still possess only USSR passports. However, the Southern survey, referring to data provided to UNHCR by the Ministry of Internal Affairs in January 2008, indicated that there were 12,268 holders of former USSR passports living in the three Southern provinces (Osh, Batken and Jalal-Abad provinces) alone. In addition, there were adults whose only documentation were birth certificates issued in the former USSR republics.

According to the latest available data from the Ministry of Internal Affairs approximately 11,270 persons exchanged their former USSR passports to national passports of the Kyrgyz Republic in 2009.

*CIS Passport Holders:*

Holders of invalid national passports of a CIS country most of whom possess expired foreign passports, which are unrenewable as they failed to register their residence abroad with consular authorities within the allotted time,[5] and therefore cannot return to their countries with invalid passports. It also includes their family members who are undocumented

4 The deadline (31 December 2005), for replacement of USSR passports to new Kyrgyz Republic passports was set by the Decree of the Government No557 dated 27 July 2004.

5 Thus, for example, the Law on Citizenship of the Republic of Tajikistan of 4 November 1995 (Article 29) and the Law on Citizenship of the Republic of Uzbekistan of 2 July 1992 (Article 21) provide for the loss of nationality of these countries by nationals who reside abroad but failed to register with consular authorities within five years.
It should however be noted that neither of the Laws provide for automatic loss of nationality and require either a decision of the consular authorities on the failure to register or a Presidential Edict to be adopted to effect such a loss.

as either Kyrgyz nationals or as nationals of the country their parent(s) are legally affiliated with (these are generally spouses of Kyrgyz nationals who reside in border areas).

The Southern survey identified approximately 1,880 people and the Northern surveys identified 1,600 people as holders of national passports of neighbouring CIS countries whose national laws provide for the loss of nationality after a given time period, if their nationals fail to register with a consulate while residing abroad. These individuals are therefore at risk of statelessness, though they may legally be nationals of their countries of previous residence or birth, as the application for loss of nationality is not automatic and requires a decision in each individual case. Some consular authorities of countries of previous residence can decline applications for renunciation of or certification of loss of nationality.

*Children of Labour Migrants:*

The third group are children of labour migrants from the Kyrgyz Republic who acquired a new nationality without claiming it for their children and whose children remain permanent residents in the Kyrgyz Republic. The risk of statelessness for these children is connected to possible arbitrary practice of implementation of the relevant by-laws. The children are nationals of the Kyrgyz Republic under the Law On Citizenship of Kyrgyz Republic of 27 May 2007 (the "*2007 Citizenship Law*") since they were either nationals of the country before the date of entry into force of the new Citizenship Law or became nationals because their parents were nationals of the Kyrgyz Republic at the time of the children's birth.[6] The surveys report, demonstrated that the children risk being rejected when they apply for national passports because the authorities request that they provide proof of their parents' nationality by submitting copies of the parents' national passports. This means that the parents should be nationals of the Kyrgyz Republic not at the time of the child's birth as required by law, but by the time when the children apply for national passports. If the children cannot provide this evidence, they could be prevented from receiving a national passport as a confirmation of their citizenship, which could result in statelessness.

In addition, to the aforementioned three categories of stateless persons or those at risk of statelessness, the Southern survey mentioned another separate group of around 2,500 individuals of the "Luli community" who reside, in an isolated district, in Osh province. Reportedly, most Luli are undocumented and this may increase their risk of statelessness. The Southern survey recommends a separate study for documenting the issues faced by this community.

### 1.2 Reasons for statelessness

Among the main reasons for statelessness or the risk of statelessness are the following considerations. Firstly, there were no clear safeguards in the law adopted in the Kyrgyz Republic at the time of state succession to ensure that a person should be granted nationality at their place of habitual residence, if they would otherwise be stateless as a result of state succession.[7] According to the 1993 Citizenship Law, three categories of people were recognized as nationals of the country. They included those who:

(a) were nationals of the Kyrgyz Republic on the date of adoption of the Declaration on State Sovereignty of the Kyrgyz Republic (15 December 1990) and did not make a statement of affiliation to another country;

6 See Articles 5 and 12 in the 2007 Citizenship Law.

7 Relevant international standards, which set the safeguards against statelessness as a result of state succession, are found in Article 10 of the 1961 Convention (in the event where state succession involves transfer of territory) and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession No. 200, Strasbourg, 19 May 2006, entered into force on 1st May 2009 (the "Council of Europe Convention No 200").

(b) were Kyrgyz nationals after the adoption of the Declaration on State Sovereignty in the manner set forth in the law, and who had not lost their nationality by the time the 1993 Citizenship Law (18 February 1994) went into force;
(c) acquired nationality of Kyrgyz Republic as per the 1993 Citizenship Law.

Thus, people in the Kyrgyz Republic, who failed to meet the above criteria or fulfil relevant administrative requirements and otherwise become stateless, were not provided Kyrgyz citizenship.

Although the 2007 Citizenship Law of the Kyrgyz Republic largely addresses the situation of former USSR citizens, who permanently resided in the Kyrgyz Republic, similar to the previous Citizenship Laws, it overlooks a guarantee to grant nationality to a person who would otherwise become stateless as a result of state succession in the Kyrgyz Republic.

Existing laws and practices were not always consistent or applied in a unified manner by all relevant implementing authorities. Thus, for example, many holders of former USSR passports are recognized as Kyrgyz citizens under the 2007 Citizenship Law,[8] but nevertheless have to go through a 'Conflict Commission' to determine their eligibility for documentation and in effect confirm their nationality. In different districts, the 'Conflict Commission' may apply different eligibility sub-criteria which are not in the 2007 Citizenship Law, such as the possession of a valid propiska in the Kyrgyz Republic or a valid de-registration of residential stamp (vypiska) in the country, or place of origin, or previous permanent residency.

These discrepancies have been highlighted by both implementing authorities and NGOs currently working in the country. Both actors refer to internal inconsistencies and conflicting provisions of laws when it comes to the confirmation or acquisition of nationality by stateless persons under the 2007 Citizenship Law. A person who is stateless cannot formally be documented as such, i.e. receive a residence permit of stateless person,[9] and apply for Kyrgyz citizenship on the basis of their statelessness status, unless they first obtain another form of legal status, known as the status of immigrant, which was introduced by the Law on External Migration of 17 July 2000 (the "2000 External Migration Law"), which is applicable to all foreigners who wish to permanently reside in the country except for refugees and asylum-seekers. At the same time, many stateless persons remain in the country without a valid visa or passport, which prevents them from submitting a formal application to acquire immigration status and consequently residence permits.

Some people have remained stateless or with undetermined nationality since 1991, while others became stateless or at risk of statelessness more recently because of possessing expired and non-renewable passports and identity documents from other CIS countries. The legality of residence may also depend on the possession of valid identity documents and permits to stay and reside in the country, especially since former USSR passport are no longer considered valid identity documents in the Kyrgyz Republic.[10] The legitimacy of residency of such people, who comprise the largest group of stateless persons/persons at risk of statelessness in the Kyrgyz Republic, is further jeopardised. Currently, national legislation requires every non-national who stays or resides in its territory for more than six months to hold either a valid visa or a residence permit.

8 See Article 5 of the 2007 Citizenship Law.
9 The 2000 External Migration Law differentiates between temporary and permanent residence permits. Temporary residence permit is a purposeful permit for residence and maybe issued to a person who arrives and stays in the Kyrgyz Republic for a period over six months either under an employment contract or a work permit, or is enrolled in an institute of higher education (application should be supported by an institution), or is involved in implementing an investment project in the territory of the country (Article 26). Individuals who return to or permanently reside in the Kyrgyz Republic and whose nationality of the Kyrgyz Republic was terminated in accordance with the law or who have not yet acquired nationality of the Kyrgyz Republic, as well as foreigners and stateless persons (upon attaining the age of 18) who permanently reside in the country maybe granted permanent residence permit (para. 6, 2008 Residence Permit Regulation).
10 Initially, former USSR passports had to be fully replaced with new passports of the Kyrgyz Republic by 2002 under the Governmental Decree dated 24 December 1997. However the replacement period was extended until 31 December 2005 by another Decree of the Government No 557 dated 27 July 2004.

At a meeting of the Working Group on reduction and prevention of statelessness in the Kyrgyz Republic ("the Working Group") held on 15 July 2009, which gathered representatives of authorities dealing with nationality issues, UNHCR and legal NGO's, it was noted that a visa may not be put on USSR passports because they are invalid. The only valid document for all undocumented but permanently residing non-national's, is a residence permit, which, in turn, is as difficult to obtain as Kyrgyz citizenship, due to the need to apply and be granted the status of immigrant prior to the issuance of residence permits. At the same time, many former USSR passport holders have propiska stamps in their passports, which serve as legal proof of residency in the place/districts in which it was stamped. Former USSR nationals who have resided in the Kyrgyz Republic for last five or more years and hold a propiska are allowed by authorities to stay in the country and apply for Kyrgyz national passport as per the new 2007 Citizenship Law. This practice suggests that some former USSR passport holders could be naturalized without going through the process of obtaining residence permits or the status of immigrant. A similar arrangement for other categories of stateless persons or persons at risk of statelessness does not exist.

Holders of expired passports belonging to a CIS country are in a weaker position as far as the legality of their residence in the Kyrgyz Republic is concerned. Many cannot renew their passports, due to a failure to comply with legal requirements of their countries of origin such as, consular registration within a definitive period of time while residing overseas, and are therefore stateless. Authorities in the Kyrgyz Republic may not legally issue a visa or accept expired passports as valid identification as required for residence permits to legalize residency in the Kyrgyz Republic. Those with expired CIS or foreign passports depend fully on the will of the authorities to allow them to stay beyond the existing legal residency terms; as they are technically foreigners and their residential status is subject to visa or residence permit requirements. During field missions in the South of the country, where a majority of individuals with expired passports reside, it was noted that the internal affairs bodies in Osh province do not usually punish them for unlawful residence. Instead, they tend to assist such individuals to renew documents by approaching the respective authorities in the country of origin.

### 1.3 Identification of statelessness

Although there is no legal act that describes separate processes for identifying stateless persons, some residency and nationality related rules and procedures may partially fill the void for statelessness identification. The Regulation "On Manner of Execution and Issuance of Temporary and Permanent Residence Permit to Foreign Citizens and Stateless Persons in the Territory of the Kyrgyz Republic" adopted on 13 November 2008 (the "2008 Residence Permit Regulations") to further strengthen the 2000 External Migration Law refers to the Opinion on recognition of an individual as a stateless person issued by the territorial passport and visa control subdivision of the Department of Internal Affairs (para. 7 in the 2008 Residence Permit Regulations). However, the 2008 Residence Permit Regulations do not refer to any procedure on how such an Opinion can be concluded. In addition, the Regulations only refer to individuals from CIS countries as subjects of formal recognition as stateless persons through this Opinion.

As previously mentioned, according to information provided by the Ministry of Interior, only about 50 individuals have benefited from residence permits for stateless persons and stateless person's cards. No outreach campaigns to identify holders of former USSR passports, expired passports or any other categories of stateless persons/persons at risk of statelessness have been undertaken by the government. Thus far, the only efforts to identify stateless persons in the Kyrgyz Republic were the three UNHCR-funded surveys in the North and South which were aimed at assessing the situation of those with undetermined

nationality or those who are undocumented. The intent of the surveys was to provide general information on the causes of statelessness and figures on the populations surveyed. They however did not attempt to identify every single person at risk of statelessness in these regions. The findings of the surveys were published and shared with local officials and experts dealing with statelessness and humanitarian issues during the spring and summer of 2009.

A lack of clear guidelines and identification procedures for stateless persons leads to an inaccurate assessment of the statelessness situation in the country. Resulting in an inability to properly document and account for stateless individuals and guarantee their right to acquire a nationality, as is set out in national legislation and under international law. In a recent session, the Working Group underlined the need to introduce specific status determination measures, which could be utilized to address the situation of undocumented individuals whose foreign passports have expired and are not renewable. The process would involve amending existing laws and/or creating new ones in order to introduce an identification and documentation process for stateless persons; it would however be lengthy and cumbersome and require parliamentary approval. In an effort to remedy the lack of status determination laws, the Working Group began exploring the possibility of adopting a by-law, which would further elaborate on the process and procedures for formal recognition of stateless persons under the 2008 Residence Permit Regulations and enable territorial subdivisions in the Department of Internal Affairs to identify stateless individuals. Such an approach would not only address the situation of the existing stateless population, but would also allow for a smooth transition from statelessness to acquisition of Kyrgyz nationality as guaranteed by the 2007 Citizenship Law.

### 1.4 International and regional instruments

In the context of international treaty law relating to statelessness, the Kyrgyz Republic is neither party to the 1954 nor the 1961 Conventions. Nevertheless, it is party to a number of other international human rights treaties which refer the right to nationality including:

- the 1966 International Covenant on Civil and Political Rights including its Protocols 1 and 2;
- 1969 International Convention on the Elimination of All Forms of Racial Discrimination;
- the 1989 Convention on the Rights of the Child;
- the 1957 Convention on the Nationality of Married Women;
- the 1979 Convention on the Elimination of all Forms of Discrimination against Women;
- the 1966 International Covenant on Economic, Social and Cultural Rights;
- the 984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.

At least six bilateral or regional instruments have influence on national legislation:

- The treaty between the Kyrgyz Republic and the Russian Federation on Legal Status of Permanent Residents (13 October 1995);

- the agreement between the Kyrgyz Republic and the Russian Federation on the Simplified Procedures of Acquisition of Citizenship for Russian Citizens Permanently Residing in the Kyrgyz Territory and Vice-versa (28 March 1996);
- the multilateral agreement between the Kyrgyz Republic and others CIS States "On Simplified Manner of Acquisition of Citizenship between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation", concluded in Moscow (26 February 1999).

Of these, the instrument that had been of most significance in the application of simplified procedures regarding the acquisition and loss nationality was obtained through agreements between the Republic of Tajikistan and the Kyrgyz Republic on Simplified Manner of Acquisition of Citizenship (of 7 June 2002 and 26 May 2004). These regional agreements have aided approximately 10,000 stateless refugees from Tajikistan attain Kyrgyz citizenship.

In addition, the Kyrgyz Republic is party to the CIS Convention on Human Rights and Fundamental Freedoms ("the Minsk Convention"). The Minsk Convention provides for all basic civil, political, economic and social human rights and freedoms contained in international human rights treaties, including the right to a nationality and freedom from arbitrary deprivation of nationality, as well as the right to change nationality (Article 24).

The Constitution of the Kyrgyz Republic of 23 October 2007 (the "Constitution") provides that international treaties, to which the Kyrgyz Republic is party to, as well as universally accepted principles and norms of international law are an integral part of the domestic legal system. In practice, however, authorities as well as the legal system including the courts tend to implement provisions based on national legislation and domestic regulatory frameworks rather than the obligations of the Kyrgyz Republic under international law.

UNHCR representatives in conjunction with members of the Working Group are developing recommendations on measures to document all aforementioned categories of statelessness. In addition, UNHCR is working on the promotion of accession to the 1954 Convention and the 1961 Convention) by the Kyrgyz Government.

### 1.5 National legal framework

The Constitution vests the President with the authority to grant Kyrgyz nationality (Article 46.3(5)). Furthermore, Article 20.4 of the Constitution guarantees the right to acquire Kyrgyz nationality to any ethnic Kyrgyz in a simplified manner, whether or not they have any other nationality. The Law "On the Legal Status of Aliens in the Kyrgyz Republic" of 14 December 1993 (the "1993 Aliens Law") has a general provision on equality of rights, freedoms and responsibilities of aliens and nationals unless otherwise provided for in relevant legislation (Article 3). Furthermore, Article 24 of the 1993 Aliens Law extends the application of its provisions to include stateless persons.

The adoption of the new Citizenship Law in 2007 significantly improved the nationality legislation in the Kyrgyz Republic. For example, considering the irregular status of many former USSR citizens, who failed to obtain Kyrgyz citizenship under the previous Citizenship Laws of 1990 and 1993, the new 2007 Citizenship Law eliminated any deadline obstacles and made these residents Kyrgyz nationals provided that they had permanently resided in the territory of the Kyrgyz Republic for the last five years and applied for national passports. If fully implemented, this provision alone could significantly reduce the number of stateless persons and individuals at risk of statelessness by more than 70 percent amongst former

USSR citizens who resides in Kyrgyzstan and previously had not established their nationality. Such provisions in the 2007 Citizenship Law represent good legislative practice and lead to the reduction of statelessness.

### 1.6 Definition of a stateless person

Both the 2007 Citizenship Law (Article 3) and the 2000 External Migration Law (Article 1) provide identical definitions of a stateless person within the national context and read as follows: “a person who is not a citizen of the Kyrgyz Republic and does not have any proof of affiliation to the nationality of any other foreign state”. In other words, according to the definition all that is required from an individual is the absence of evidence of legal affiliation with a state. Therefore, status determination is not based on the evidence of lack of nationality but rather on the lack of evidence of possessing a nationality in order to be recognized as a stateless person in Kyrgyzstan. Thus, one does not have to legally prove that no state considers them as a national, but instead the burden of proof of whether a person is stateless or not, is placed on the authority which has the power to recognize a person as stateless under the law.

Although the wording of this definition is different from that contained in international law, it is in general compliance with its international twin. Article 1 of the 1954 Convention defines a stateless person as any person who is not considered as a national by any state under the operation of its law. The 1954 Convention’s definition sets the test at being free from having any legal bond to any state. The Convention’s definition refers to a possession or lack thereof of a nationality by operation of law of any other state, i.e. no law should recognize them as its citizen; whereas the domestic Kyrgyz definition does not have such a reference. In practice, however, to satisfy both definitions action must be taken to provide evidence of statelessness based on the law, whether submitted by a person claiming a stateless situation or sought by public authorities involved in the identification of status.

Nevertheless, the broader definition in domestic law leaves authorities with a wider margin of discretion. For example, passport authorities in Osh province, referred to a number of cases where they sought confirmation of citizenship from the authorities of neighbouring countries for individuals whose national passports had expired. If there was no response to an enquiry, they deemed it as lack of evidence of nationality, and therefore proceeded with an application for naturalization. This practice serves to grant legal status to those who otherwise maybe in limbo indefinitely with undetermined nationality. On the other hand, the practice may in some cases cause a person to be found stateless before all reasonable means have been exhausted to determine their nationality.

### 1.7 National administrative framework

In the Kyrgyz Republic, internal affairs bodies have been vested with the authority to control migration and regulate nationality issues. The Regulation on the Manner of Examination of Issues concerning the Nationality of the Kyrgyz Republic (the “2007 Citizenship Regulations”) as approved by Presidential Edict No 473 of 25 October 2007 creating the Conflict Commissions at the Department of Passport and Visa Control of the Ministry of Interior, as well as provincial Divisions of Internal Affairs including in the cities of Bishkek and Osh (para. 29).

The Conflict Commissions have right for examination of applications by people who would like to establish whether they belong to the body of Kyrgyz citizens or not according

to the 2007 Citizenship Law,[11] i.e. some categories of former USSR passport holders, falls under the jurisdiction of the Conflict Commission. More recently, similar Conflict Commissions were created at the district level, to facilitate and accelerate the process of examination of applications for recognition of Kyrgyz nationality and ensure easier access to the citizenship process. Nevertheless, the Conflict Commissions only deal with cases of those who are confirmed as Kyrgyz nationals in accordance with the 2007 Citizenship Law and do not cover other means of acquisition of Kyrgyz nationality through naturalization.

For those applying for Kyrgyz citizenship by naturalization, the Ministry of Internal Affairs at their place of residence (provincial), or an embassy consular section for applicants residing outside of the Kyrgyz Republic, accept application packages and undertake preliminary screening. Accepted application packages are then forwarded to the President's Citizenship Commission via the Department of Passport and Visa Control of the Ministry of Internal Affairs.[12] If the Commission so recommends, the President issues an edict granting nationality. Naturalization, generally serves to reduce statelessness by granting stateless persons a nationality. However, agencies responsible for accepting naturalization applications may only do so if a person is properly and formally documented either as a foreigner or as a stateless person (para. 13 of the 2007 Citizenship Regulations). Thus, for example, internal affairs bodies in Osh province face difficulties in accepting the naturalization application packages of individuals from CIS countries whose foreign passports have expired. At the same time, the authorities in the country of origin often reject passport renewal due to individuals' failure to fulfil the rules of residents abroad via consular registration.

### 1.8 Partnerships

As previously mentioned, a formal Working Group was established to deal with the issue of statelessness in Kyrgyz Republic. It is composed of representatives from the Ministry of Interior, the Commission on Citizenship Issues at the President of the Kyrgyz Republic, the NGOs Legal Clinic Adilet, Center for International Protection, Fergana Lawyers without Borders and Counterpart Sheriktesh, along with UNHCR.

A good level of cooperation and interaction has been established between UNHCR in Bishkek, its field office in Osh, the national authorities, civil society organizations and persons of concern, on matters relating to the reduction and prevention of statelessness and protection of stateless persons. Regular meetings of the Working Group are held, and have resulted in the drafting of concrete recommendations to minimize the gaps in administrative practices of documenting individuals without established nationalities. The Working Group also assisted in promoting, at a ministerial and civil society level, an action plan towards the legal and administrative facilitation of documenting such individuals. It is now considering developing and drafting concrete instructions, which would allow internal affairs bodies to formally identify stateless persons within the existing legal and administrative frameworks. If successful, it would avert the need to create new laws and legal mechanisms.

In addition as aforementioned, the Focus Group with stateless people in the North (July 2009) and South (August 2009) of the Kyrgyz Republic were conducted by UNHCR rep-

11 In addition to the general category of former USSR passport holders who have resided in the territory of Kyrgyz Republic within the last five years (and have permanent propiska to prove it), the following are the other three categories which fall under the operation of Conflict Commissions:
- USSR passport holders who had temporary propiska in the Kyrgyz Republic because of the lack of their own accommodation in the territory of the country, temporarily registered in accommodation of their relatives or acquaintances, but who resided in the Kyrgyz Republic for the last five years and do not have stamps of affiliation to the nationality of any other country;
- individuals who lost their USSR passports though are registered (have temporary or permanent propiska) and permanently reside in the Kyrgyz Republic;
- individuals who could not obtain passports due to unforseen circumstances (or did not fall under the operation of 1993 Citizenship Law, or did not have parents and were brought up by relatives or acquaintances), but permanently resided in the territory of the country.

12 Provisions of the Commission on Issues of Citizenship have been approved by the Presidential Edict No 473 dated 25 October 2007.

resentatives and field staff, who teamed up with the State Committee on Migration and Employment, the Department of Passport and Visa Control of the Ministry of Internal Affairs and NGO partners Legal Clinic Adilet, Counterpart Sheriktesh, Help Refugees, Sairon, Ferghana Valley Lawyers without Borders, and the Centre for International Protection.

### 1.9 Relationship between the Government and UNHCR

UNHCR Representation in the Kyrgyz Republic, directly as well as with implementing partners, have succeeded in maintaining regular and positive dialogue with the Kyrgyz Parliament and government, and in securing broad-based political and technical support for initiatives to improve citizenship legislation and administration. UNHCR, in collaboration with NGO Legal Clinic Adilet - contributed to the most recent amendment of the citizenship legislation, and their combined comments were taken into account in the drafting of the 2007 Citizenship Law.

In September 2009, UNHCR and the administration of the President held a high level meeting with representatives of key ministries and governmental agencies, including: the Ministry of Foreign Affairs, Ministry of Interior, the State Committee on Migration and Employment, the Citizenship Commission of the President, and Parliamentarians. The main purpose of the meeting was to discuss statelessness issues including existing legal and administrative frameworks. The meeting also evaluated the recommendations developed by the Working Group over the summer of 2009 with the aim of reaching an agreement on a comprehensive action plan for the prevention and reduction of statelessness in the Kyrgyz Republic. Promotion of accession to the UN Statelessness Conventions was also discussed. It was agreed by participants at the meeting that it was necessary to study the experiences of other countries that have ratified the UN Statelessness Conventions in order to determine whether it has assisted in the reduction and prevention of statelessness.

### 1.10 National and regional development policies

There are no specific nationally development programs that target stateless persons in particular. However, there are other development programs as carried out by the government that address some of the needs of the population concerned. For example, the State Program on Realisation of the Rights of Children in the Kyrgyz Republic “New Generation”, which was approved by the government of the Kyrgyz Republic on 14 August 2001, revised on 30 September 2004 and runs until the end of this year, declares as one of its actions under the civil rights and freedoms section: “to secure the free and timely registration of births of all newborns”. Birth registration is an important measure to prevent children from statelessness. No distinction is made between nationals and foreigners in programs that cover social issues rather such government programs encompass the whole population in general, for example, the State Program on Development of Land and Immovable Market in Rural Areas which was adopted on 11 February 2005, and runs until 2010. However, it is difficult to determine the precise influence of each of these programs on the everyday lives of the stateless population or on individuals whose nationality has not yet been established as such an assessment has not been conducted.

The outcomes of the Focus Group meetings UNHCR organized in the North and South of the country, as well as discussions held with NGOs, such as Counterpart Sheriktesh, Help Refugees and Sairon, in the North; and the Centre for International Protection, and Fergana Lawyers without Border in the South, revealed that, in general, the identified individuals who are stateless or at risk of statelessness have access to national public programs but face administrative obstacles related to lack of proper documentation that often

jeopardize their access for example to housing, or other immovable property and land. Acquisition of Kyrgyz nationality and proper documentation, whether by birth, an act of law or naturalization, would however enable such individuals to enjoy equal access to national programs.

### 1.11 Public attitudes towards stateless persons

Public awareness campaigns for all categories of stateless persons and populations at risk of statelessness have not been organized by central or local authorities. Some efforts, however, have been made by representatives of the above-mentioned NGOs and the the Department of Passport and Visa Control of the Ministry of Internal Affairs to disseminate information and facilitate the access of stateless persons and individuals at risk of statelessness to confirmation of nationality and naturalization procedures, as previously mentioned in this paper.

None of the stateless children that partook in the Focus Group in the North of the country[13] reported incidences of xenophobia when interacting with local populations; the results in the South of the country were similar. Differences in treatment by local communities were not reported by the adults that attended the Focus Groups either. Based on the above, one can conclude that stateless persons and persons at risk of statelessness are well integrated into their communities and are not perceived as a burden. Generally this is because they share the same language, social (rural), cultural, religious and ethnic traits and background as those in the local communities that they inhabit.

## 2. PREVENTION AND REDUCTION OF STATELESSNESS

### 2.1 Prevention and reduction of statelessness due to state succession

State succession occurred in the Kyrgyz Republic in 1991, when the Declaration on State Sovereignty of the Kyrgyz Republic was adopted and the country gained independence after the collapse of the Soviet Union as aforementioned. The main criteria for attribution of nationality under the 1993 Citizenship Law was nationality of the Kyrgyz Soviet Socialist Republic for those that did not declare themselves as citizens of any other state and permanently resided in the territory of the Kyrgyz Republic on the day of adoption of the Declaration on State Sovereignty of the Kyrgyz Republic, i.e. 15 December 1990. In addition, all those who were nationals of the Kyrgyz Republic after the Declaration on State Sovereignty but did not lose their nationality at the time that the 1993 Citizenship Law went into force on 18 February 1994, were automatically recognized as nationals of the Kyrgyz Republic. As mentioned elsewhere in this paper, the 2007 Citizenship Law eliminated deadlines, and holders of USSR passports who had not claimed the nationality of any other state and permanently resided in the country for the last five years were now considered as nationals of the Kyrgyz Republic (Article 5). According to the southern survey, in 2008 approximately 1,229 holders of former USSR passports were documented as nationals of the Kyrgyz Republic. The work of documenting this category continues, as more than a half of stateless persons are former USSR passport holders as previously mentioned.

### 2.2 Comprehensive strategies to prevent and reduce statelessness

There was no comprehensive national policy to prevent and reduce statelessness in the Kyrgyz Republic. The existing legal frameworks do not comprehensively respond to differ-

13 The Northern Focus Group targeted ethnic Kyrgyz groups (including some mix marriages) mainly from Tajikistan. The gender and age groups presented at the assessment have been divided between 4-13 years of age (children group), women between 18 -40 years of age (one elderly woman of 84 years old) and men between 41-60 years of age.

ent situations of statelessness. The non-accession to the UN Statelessness Conventions of 1954 and 1961 further weaken the legal basis for statelessness reduction and prevention in the country. Nevertheless, significant progress has been made as a result of the new citizenship law in 2007 which included some categories former USSR citizens who had yet to acquire Kyrgyz citizenship.

In 2009, UNHCR and the Working Group drafted the action plan which comprehensively encompasses measures on prevention and reduction of statelessness, as well as protection of stateless persons. It includes, actions on developing legal tools for identification of stateless persons and their formal recognition, an improvement of legislation so as to introduce a guarantee that a person should be granted nationality if they become stateless, as well as ensures access to identified stateless persons to naturalization in the country. The action plan was presented and agreed at the roundtable held in September 2009.

### 2.3 Prevention of statelessness through acquisition of citizenship

Provisions governing the acquisition of Kyrgyz nationality in the 2007 Citizenship Law are mainly based on the application of the jus sanguinis (law of blood) principle. Kyrgyz ethnicity is also used as an eligibility factor for acquisition of nationality by naturalization (the 2007 Citizenship Law, Article 14.2). There are four general channels for acquisition of nationality under the current legislation of the Kyrgyz Republic, which are by:

a) birth;
b) admission to the country's nationality (naturalization);
c) restoration of Kyrgyz nationality;
d) the basis of an international treaty legally effective in the Kyrgyz Republic (the 2007 Citizenship Law, Article 11).

Although the restoration of nationality has been singled out by the law as a separate procedure for acquisition of Kyrgyz citizenship, people applying to have their citizenship restored are required to follow the simplified procedure of naturalization. This pertains to individuals who previously held Kyrgyz citizenship, lost it, but remained as residents continuously and legally in the country.

The country's legislation does not recognize any other nationality of its citizens other than that of the Kyrgyz Republic. According to Article 6 of the 2007 Nationality Law, a national of the Kyrgyz Republic that also has another nationality is deemed by the Kyrgyz Republic as it's national only unless otherwise provided by the law or an international treaty entered into force with that country. Thus, if the attainment of the nationality of another state does not contradict with the legislation of both countries; or if the nationality of the foreign country is acquired in accordance with an inter-state treaty on dual nationality, then an individual, being a national of the Kyrgyz Republic, can accept the nationality of another state (Article 22.1). However, dual nationality in the Kyrgyz Republic is not recognized in case of nationals of countries bordering the Kyrgyz Republic and in case of individuals who fall under Article 16 of the 2007 Citizenship Law.[14] Acquisition of another nationality does not entail the termination of the nationality of the Kyrgyz Republic (Article 6.2).

The following legal analysis of the provisions on acquisition of citizenship under Kyrgyz legislation will look at substantive and procedural rules of acquisition and their compliance with international standards and domestic legislation.

14 Persons who (i) act for forcible change of foundations of constitutional system or carry out activities threatening state security, or (ii) persons who submitted forged documents or misrepresented, or (iii) were expelled from the country with temporary (five years) or permanent ban on entering the Kyrgyz Republic, (iv) persons who are military servants or law enforcement or state security servants of a foreign state, (v) persons prosecuted in accordance with the laws of the Kyrgyz Republic or laws of a foreign state (until a final decision of relevant law enforcement bodies or courts of the Kyrgyz Republic is reached, or (vi) defendants in civil law proceedings (until final decision of courts of the Kyrgyz Republic is reached), or (vii) persons who were sentenced and are serving their sentences in prison (until the punishment ended), or (viii) sentenced to imprisonment for crimes classified as grave and extremely grave crimes (Article 16, 2007 Citizenship Law).

*Prevention through acquisition at birth:*

**Substantive Law:** As mentioned above, legislation of the Kyrgyz Republic employs the jus sanguinis principle and grants nationality to any child whose parent(s) are Kyrgyz nationals at the time of the child's birth, irrespective of the place of birth (the 2007 Citizenship Law, Article 12.1). A child of a Kyrgyz and foreign parent maybe granted Kyrgyz nationality upon submission of a written consent of both parents, irrespective of the place of the child's birth (Article 12.2). If one of the child's parents was a Kyrgyz national at the time of the child's birth and the other stateless or of unknown nationality, the child is granted nationality of the Kyrgyz Republic irrespective of their place of birth (Article 12.3). A child born in the Kyrgyz Republic whose parents are stateless but permanently residing in the Kyrgyz Republic is recognized as a national of the country (Article 12.4). Finally, a child who is found in the Kyrgyz Republic and whose parents are unknown is also considered a national of the country (Article 12.5).

The 2007 Citizenship Law does not differentiate between genders and both parents have an equal right to pass on citizenship to their children. If a child is eligible for nationality at birth under the laws of the Kyrgyz Republic, it is granted whether they were born in or out of wedlock. It should, however, be mentioned that Article 12.3 of the 2007 Citizenship Law, which guarantees the attainment of nationality at birth by a child whose parent is a Kyrgyz national and the other a stateless person, may require evidence of legal affiliation of the child to the Kyrgyz parent in order to obtain citizenship if they were born out of wedlock.

The Law on Acts of Civil Status of 12 April 2005 (the 2005 Civil Status Acts Law), provides all the necessary legal measures related to familial affiliations, in addition to the Rules on the Manner of Registration of Civil Status Acts in the Kyrgyz Republic as approved by the Order of the Ministry of Justice of the Kyrgyz Republic No 91 dated 13 June 2001 (the 2001 Civil Status Registration Rules). According to Article 50, of the 2005 Civil Status Law, affiliation is made either upon an application by the parents or by a court decision. The 2001 Civil Status Registration Rules further enhance the procedure by referring to the need for a submission of a written application and a copy of the child's birth certificate, in order to register affiliation (Section 6, para. 2). No specific inconsistencies exist with regard to the procedures of affiliation of a child to a parent.

**Procedural issues and internal consistency:** The three provisions of Article 12 of the 2007 Citizenship Law which pertain to the acquisition of nationality in the Kyrgyz Republic by a child whose parents have different nationalities (Article 12.2), or whose parents are stateless (Article 12.3 and 12.4) may present procedural and internal inconsistencies that could result in facing the risk of statelessness. Article 12.2 requires a written consent to be submitted by the parents with different nationalities for a child to be recognized as a Kyrgyz national. Although, neither the 2007 Citizenship Law, nor the 2007 Citizenship Regulations adopted to implement the Law, provide legal protection to the child if the parents fail to reach an agreement on the nationality of their child. While the provision is not inconsistent, it may increase the risk of statelessness if the child cannot acquire the nationality of either parent.

Articles 12.3 and 12.4 grant Kyrgyz citizenship to children born to a stateless person and a citizen, as well as to children born to stateless parents. However, procedural obstacles related to the formal recognition of a stateless person under the Kyrgyz legislation could jeopardize the implementation of Articles 12.3 and 12.4 of the 2007 Citizenship Law and put a child, to whom these provisions are applicable, at risk of statelessness. According to the 2007 Citizenship Regulations, a person whose affiliation to Kyrgyz nationality has yet

to be established is required to submit an identity document along with an application for establishing nationality in the Kyrgyz Republic.

As mentioned above, the only statelessness status determination procedure currently in the legislation of the Kyrgyz Republic is the general provision under the 2008 Residence Permit Regulations, which confer the internal affairs bodies with the authority to make decisions on the statelessness status for individuals applying for residence permits for stateless persons. Thus para. 7 of the 2008 Residence Regulations requires a stateless applicant for residence permit to submit a document which can prove termination of any other previous citizenship, along with other application documents. However, for stateless persons from CIS countries the document could be replaced by a formal 'opinion of the territorial subdivision of passport and visa control of Department of Internal Affairs' recognizing the person as being stateless. Moreover, the 2000 External Migration Law and the 2008 Residence Permit Regulations require that the individual concerned obtain a status of immigrant document issued by the State Committee on Migration and Employment in order to be eligible for a residence permit for stateless persons (para. 24). The lack of valid identity documentation which is often the case for many stateless persons in the Kyrgyz Republic may result in further procedural obstacles or lead to failure of acquiring nationality by a child of a stateless person(s).

Compliance with International Standards: While the provisions on acquisition of Kyrgyz nationality at birth prevent many instances of statelessness, some deviations remain with regard to Articles 1 and 4 of the 1961 Convention which cover the governing of issues of acquisition of nationality by any person either born on the territory who would otherwise be stateless or outside the territory to a national and would otherwise be stateless.

Article 1 of the 1961 Convention sets forth a standard that a person born in the territory of a country should be granted that nationality at birth or by application if they otherwise would be stateless. The standard requires a procedure where the state has no discretion to turn down an applicant but where the claimant maybe required to fulfil specific requirements set out in the Convention. It should be noted that granting nationality at birth is in the best interest of a child and is in line with the right of each child to gain a nationality at birth under Article 7 of the CRC and Article 24.3 of the ICCPR. However, not all children born in the territory who would otherwise be stateless have a right to Kyrgyz nationality, for example in the case of foreign nationals residing in the Kyrgyz Republic, who under that state's legislation cannot confer their nationality to their children. Similarly, as previously discussed, where stateless persons are not recognized as permanently residing in the Kyrgyz Republic.

The migration legislation of the Kyrgyz Republic distinguishes between stateless persons who temporarily reside in the country and stateless persons who are permanent residents in the country (2000 External Migration Law, Article 15). The 'permanent residence' test to be met by stateless parents whose children were born in the Kyrgyz Republic excludes stateless persons who fall under the category of temporarily residing aliens. A child born to a stateless person on Kyrgyz territory whose permanent residency is in a different country or who has not yet received a permanent residence permit for stateless persons in the Kyrgyz Republic is considered stateless. As already outlined above, if a child has a Kyrgyz and a foreign parent who are in disagreement about the child's nationality, such children could be rendered stateless. These gaps in the legislation would need to be addressed in order to ensure compliance with Article 1 of the 1961 Convention, as well as with existing obligations under Article 7 of the CRC and Article 24.3 of the ICCPR.

Article 4 of the 1961 Convention requires granting nationality to children born abroad to a national where the child would otherwise be stateless. Similarly Article 1, states that nationality can be granted at birth or at a later stage upon application (i.e. a procedure where the state has no discretion if requirements are fulfilled). However, not all children in such situations who would otherwise be stateless acquire Kyrgyz nationality under the present legislation especially in instances of disagreement between a national and foreign which can result in cases of statelessness. A safeguard to prevent statelessness in such cases is therefore necessary.

The provision on children born to unknown parents in Kyrgyz legislation is in line with Article 2 of the 1961 Convention which uses the term 'foundling', to refer to children who are not only born of unknown parents, but whose country of birth is also unknown.

*Prevention of statelessness in the migratory context:*

The 2000 External Migration Law provides that permanent residence permits and status of immigrant maybe granted to stateless persons arriving in the Kyrgyz Republic (Article 15 and 31). However, the law does not have any set procedure to establish the identity and nationality of such individuals, the only reference to this effect is the above-mentioned opinion on the stateless status of individuals which is to be issued by internal affairs bodies under the 2008 Residence Permit Regulations with respect to CIS residents (para. 7). In practice, the fact that every stateless person, who intends to permanently reside in the Kyrgyz Republic, has to acquire the status of immigrant (even if the person has not immigrated into the country), lengthens the process of documenting stateless persons residing in the country. In addition, in most cases, the burden of proof of nationality or lack thereof is placed on applicants, who have to apply to the authorities in their country of previous residence. Currently, there is no instituted policy which requires government authorities to co-operate with those of other countries for verification of identity.

### 2.4 Reduction of statelessness through acquisition of citizenship

The Kyrgyz Republic did not statistically track how many stateless persons acquire citizenship annually. The situation of USSR passport holders that are at risk of statelessness, has improved under the provisions of the new 2007 Citizenship Law, as previously mentioned. The situation of residents from CIS countries (mainly living in mixed marriages), whose national passports have expired, however remains tenuous due to their invalid identity documents, and the need for valid ones in order to apply for naturalization. As mentioned, the Working Group is currently working to develop status determination procedures and advocating for their introduction at the level of by-laws such as regulations, instructions and orders of certain ministries and state institutions, in order to simplify the issuance of documents to individuals in this category.

The 2007 Citizenship Law grants Kyrgyz citizenship to a child whose parents, at the time of the child's birth, were nationals of the country (Article 12). The 2007 Citizenship Law recognizes children who permanently reside in the country and are officially under the patronage or guardianship of a national of the Kyrgyz Republic as nationals of the country (Article 19). The resolution of situations such as those where children have reached the age of 16 and have not obtained a national passport ending up as de-facto stateless contributed to the reduction of stateless persons or persons at risk of statelessness.

Although information on acquisition of citizenship is available in writing, no specific campaigns or outreach measures using mass media have been undertaken by the government

to actively disseminate such information amongst the stateless populations. Instead this information is distributed by UNHCR and NGOs during field missions.

*Acquisition of Citizenship through Naturalization:*

**Substantive Law:** The nationality legislation of the Kyrgyz Republic establishes two processes, for naturalization of foreigners and stateless persons (the 2007 Citizenship Law, Article 13 and 14). They are ordinary and simplified procedures, which require an applicant to be 18 years or older when applying for naturalization (Article 13.1 and 14.1).

Within the ordinary procedure for naturalization, the following criteria must be met by the applicant:

a) a minimum of five years of permanent and continuous residence in the Kyrgyz Republic;[15]
b) communication-level command of the state (Kyrgyz) or official (Russian) language;
c) a commitment to respect the Constitution and laws of the country; and
d) a legitimate source of income are required from any applicant (Article 13.1).

The minimum term of permanent residence for foreign nationals and stateless persons maybe reduced to three years provided that the applicant either:

a) is married to a national of the Kyrgyz Republic;
b) demonstrates outstanding achievements in science, technology, culture, as well as possesses a profession or qualification demanded in the Kyrgyz Republic;
c) invests in priority branch of the economy of the country;
d) is recognized as a refugee according to the laws of the Kyrgyz Republic.

Three categories in which individuals may enjoy simplified naturalization (Article 14), which reduces the minimum permanent residency requirement to one year for the first two categories and withdraws all naturalization requirements for the third one include:

1) Applicants who meet one of the following criteria:
   a) have at least one parent who is a Kyrgyz national and resides on the territory of the Kyrgyz Republic;
   b) was born in the Kyrgyz Soviet Socialist Republic and held the nationality of the former USSR;
   c) are restoring their nationality of the Kyrgyz Republic.
2) Ethnic Kyrgyz who are nationals or residents of a foreign state.

Applicants under these two categories should have legitimate sources of income and must commit to respecting the constitution and laws of the Kyrgyz Republic (14. 1 and 14.4).

3) Applicants in this category are granted a waiver from all requirements of naturalization under the ordinary procedure, are generally children whose:

(I) one parent that is a Kyrgyz citizen (a formal application by such a parent and the written consent of the other parent for acquisition of the country's nationality by the child is required when the child resides outside of the Kyrgyz Republic); or
(II) only parent is a Kyrgyz citizen (formal application of the parent is required); or

15 The law indicates that "continuous" should be interpreted as not being absent from the country for more than three months of one year.

(III) legal guardian or caretaker is a Kyrgyz citizen (this provision also includes mentally disabled children whose legal guardian or caretaker is a national of the country). In such instances, the formal application of the legal guardian or caretaker is required (Article 14.3).

Section five of the Citizenship Law deals with naturalization procedures. A person files an application with the territorial divisions of internal affairs bodies at their place of residence or with the consular section of the Kyrgyz embassy if they reside overseas (Article 31). The 2007 Citizenship Regulations provide that if a person whose application for citizenship is not accepted by the internal affairs bodies and an explanation of the reasons for rejection is requested in writing, the internal affairs bodies has to grant such a request (para. 15). Rejection to accept an application for nationality by the internal affairs bodies or consulate maybe appealed to superior officials or the courts (para. 72, the 2007 Citizenship Regulations).

Internal affairs bodies or consular sections of embassy's conduct preliminary check of the application and supporting documents and forward it along with the application file, to the Ministry of Internal Affairs or the Ministry of Foreign Affairs. The Ministries conduct full examination of the documents, issue an opinion in writing and forward the file to the Citizenship Commission of the President of the Kyrgyz Republic; at which point the applicant is notified in writing that her/his application has been forwarded to the Commission (para. 19, the 2007 Citizenship Regulations). The review of the application by internal affairs bodies and the consular section should take no more than 90 days for an application under the ordinary procedure, and 30 days for an application under simplified procedure (Article 34). Once the application file and opinion of the internal affairs bodies or consular sections have been examined, the Commission submits a written opinion on each individual applicant to the President advising on the eligibility for admission or non-admission (Article 36). The final decision is made by the President of the Kyrgyz Republic and is executed as a presidential edict (Article 37 and 38). Decisions on citizenship can be appealed in court within six months of the date a decision was made (Article 41, the 2007 Citizenship Law). It further sets a nine-month period for making decisions on naturalization through the ordinary procedures and a four-month one for those based on simplified procedures (para. 20).

Readmission agreements of the Kyrgyz Republic with other states do not stipulate the acquisition or reacquisition of nationality by returning stateless migrants. However, nationality restoration maybe employed as an option for reacquisition of citizenship. Article 15 of the 2007 Citizenship Law allows former nationals of the Kyrgyz Republic, including stateless persons, to restore their nationality. Nonetheless, the restoration procedure is not a separate process: the simplified procedure for acquisition of nationality by naturalization as described above is followed for restoration (the 2007 Citizenship Regulations, para. 24). In addition, the nationality of the Kyrgyz Republic maybe acquired under bilateral or multilateral international treaties to which the Kyrgyz Republic is party to with other countries (the 2007 Citizenship Law, Article 11). Special manners of nationality acquisition as provided in treaties or separate legal statutes of the Kyrgyz Republic (the 2007 Citizenship Regulations, para. 22 and 23) are adopted for domestic implementation.[16] In other words, some treaties or domestic legal acts may have rules and procedures relating to certain categories of people, which can be applied beyond the realm of the citizenship acquisition provisions of the 2007 Citizenship Law.

16 For example, a number of regulations such as the regulation on simplified manner of acquisition of nationality of Kyrgyz Republic by nationals of Tajikistan approved by the Decree of the Government of Kyrgyz Republic No 220 dated 3 April 2006; or the regulation on simplified manner of acquisition of nationality of Kyrgyz Republic by nationals of the Russian Federation approved by the Government of Kyrgyz Republic on 4 March 1999 №128, and others, set the manner for renunciation of previous nationality and acquisition of nationality of Kyrgyz Republic in a simplified manner.

**Procedural Issues and Internal Consistency:** There are a number of procedural considerations to be taken into account regarding provisions on naturalization of stateless persons. Thus, the 2007 Citizenship Regulations require an identity document to be submitted by the applicant with an application package, which, for stateless persons, is a residence permit of stateless persons (para. 10 and 13). As has already been mentioned above the existing process of obtaining residence permits of stateless person are quite limited.

Another troublesome point is documenting permanent residents, which, according to the 2007 Citizenship Regulations is proven either through a passport with a residential stamp or a residence permit of stateless person with the residential stamp in it (para 10). However, there are a number of undocumented persons who would not be able to meet the criteria, such as individuals with expired foreign passports or with no identity documents at all.

Problems may also arise for the children of undocumented individuals as the latter are required to submit marriage and birth certificates in order to include their minor children in their naturalization applications (para 10). Many undocumented individuals cannot obtain marriage certificates for themselves or birth certificates for their children because the relevant laws and procedures require them to submit valid identity documents. The 2007 Citizenship Regulations provide that a written explanation for the failure to submit any of the documents listed in the law should be provided by the applicant if the reasons are beyond the applicant's control (para. 15). UNHCR's implementing partners, who assist stateless persons in compiling and submitting applications confirmed that the deficiency of proper identity documents frequently makes it difficult for applicants to proceed with an application, since in most cases the internal affairs bodies will not review an application without proper identity documents.[17]

The 2007 Citizenship Regulations list a number of documents, which may serve as evidence of a legitimate source of income (para. 10 and 13). Moreover, it permits for income to be derived from activities or assets in the Kyrgyz Republic but more importantly from outside of the country as well, which increases the possibility of stateless persons to meet the criterion for naturalization.

In the 2007 Citizenship Law, provisions on naturalization of children according to the simplified procedure under Article 14.3 maybe in conflict with Article 12 and 17, which deal with the acquisition of nationality at birth or by adoption by a Kyrgyz national. All of the aforementioned articles may deal with the same category of people, but in some circumstances they are not mutually exclusive according to the letter of the law. So for example, a child with a Kyrgyz parent is [emphasis added] eligible for naturalization in a simplified manner (Article 14.3); yet according to Article 12.3, a child whose parent was [emphasis added] a Kyrgyz national at the time of the child's birth and the other stateless or unknown, is a national of the Kyrgyz Republic automatically at birth. The reasons behind the stipulations in these two provisions maybe interpreted as: the acquisition of nationality by birth grants nationality to a child whose parents **were nationals** [emphasis added] at the time of the child's birth, but who may no longer be at the time of application, the acquisition by naturalization, may enable a child, whose one parent **was not a national** [emphasis added] of the country at the time of the child's birth but who **has since become a national** [emphasis added], to obtain the nationality of the parent's country. However, the mutual exclusiveness of application of these provisions is not directly clear from the 2007 Citizenship Law and may leave the application of one of the other provisions to the discretion of the authorities. As an example, stateless persons who hold former USSR passports, and who have permanently resided in the country for last five years, are technically nationals of

17 The Southern survey refers to the problem of invalid passport make it unable for undocumented stateless persons to enjoy the naturalization procedures. Supra n. 2, p. 13

the Kyrgyz Republic, though some of them are not yet documented as nationals and may have children born between 2007 and 2009. In such a situation, the children's parents were legally nationals of the country by an act of law at the time of the birth, however, were not documented as nationals. The absence of a provision in the 2007 Citizenship Law on mutually exclusive application of nationality acquisition for children at birth or by naturalization provides authorities with a wide margin of discretion to apply either method of citizenship acquirement.

**Compliance with International Standards:** Kyrgyz legislation provides a broad framework for citizenship and allows for the facilitated naturalization of different groups. The assistance in the naturalization of refugees through reduced residency requirements is good practice in line with Article 34 of the 1951 Convention relating to the Status of Refugees. The 1954 Convention similarly prescribes the following: ". . . the contracting states shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings". In view of this standard, the Kyrgyz government should consider introducing grounds for facilitated naturalization for stateless persons, through a reduced residency requirement at a lower cost, which would decrease an obstacle to naturalization for stateless persons in Kyrgyz. The duty stamp that is required for a naturalization application currently costs 2,000 Kyrgyz Som (KS) (approximately $44 USD) except for ethnic Kyrgyz, refugees and forced migrants pay 100 KS (approximately $2. 20 USD). The Southern survey reported that many stateless persons consider the fee unaffordable.

As a corollary to the right to a nationality, states must make an effort to avoid perpetuating statelessness. The requirement to renounce nationality in order to apply for naturalization always renders applicants temporarily stateless and if denied leads to permanent statelessness. Bilateral or multilateral agreements can help circumvent this type of statelessness by determining that a person loses the nationality of a state only once they have acquired the nationality of the Kyrgyz Republic.[18] Legislative provisions that allow for a grace period after naturalization in which one must renounce their other nationality (as is done in the Ukraine) is another way of addressing this gap.

### 2.5 Renunciation

**Substantive Law:** The 2007 Citizenship Law establishes ordinary procedures for renunciation of Kyrgyz citizenship for adults and a simplified procedure of voluntary renunciation for children through written application by the parents (Article 24). A person, who renounces their Kyrgyz citizenship but fails to acquire another nationality, may restore their nationality (the 2007 Citizenship Law, Article 15 and the 2007 Citizenship Regulations, para. 24).

**Procedural Issues and Internal Consistency:** The 2007 Citizenship Law itself does not place a condition of renunciation on the acquisition of another citizenship or require a formal assurance from another state that citizenship will be granted. However, the 2007 Citizenship Regulations require a document from an empowered state agency of a foreign country to confirm that the applicant, who seeks to renounce Kyrgyz citizenship, has acquired nationality of that country. Alternatively, a written confirmation of the possibility of granting the applicant the nationality of that state should be submitted by the applicant prior to renouncing the nationality of the Kyrgyz Republic (para. 33). It would be worth includ-

18 Thus, for example, the Agreements between the Republic of Tajikistan and the Kyrgyz Republic on Simplified Manner of Acquisition of Citizenship of 7 June 2002 and 26 May 2004 provide for the safe transition from one nationality to the other by preserving the nationality of one country unless a positive decision on granting nationality is made by the other state (Article 3).

ing this provision in the Citizenship Law itself in order to ensure a safe transition from one nationality to another without the risk of becoming stateless.

A person who renounces their Kyrgyz nationality but does not acquire another one can apply to have their Kyrgyz nationality restored. The process is similar to the one for simplified procedure of naturalization and requires one year of permanent residence in the Kyrgyz Republic before restoration (Article 14 and 15 the 2007 Citizenship Law). This could in effect cause a person who renounced Kyrgyz nationality and did not acquire another one, to be stateless for a certain a period of time.

**Compliance with International Standards:** A submission of written confirmation of the possibility of granting the nationality of another state to the applicant, if they renounce the nationality of Kyrgyz Republic, as required by para. 33 of the Citizenship Regulations, does not seem to be a sufficient guarantee that nationals of the Kyrgyz Republic would not become stateless. Therefore, the renunciation provisions of the 2007 Citizenship Law and Regulations are in partial compliance with the standard of Article 7 of the 1961 Convention which prevents the loss of nationality if another nationality is not possessed or acquired.

### 2.6 Loss and deprivation

**Substantive Law:** The 2007 Citizenship Law provides two grounds for loss or deprivation of Kyrgyz citizenship apart from voluntary renunciation. According to Article 26, the nationality of the Kyrgyz Republic is deemed lost if:

(I) a person has either joined the military or intelligence services of a foreign state except in instances governed by international treaties to which the Kyrgyz Republic is party to; and
(II) the nationality of the Kyrgyz Republic was acquired as a result of misrepresentation or fraud.

Neither a marriage contract with a foreign national or a stateless person nor the dissolution of a marriage results in the loss of Kyrgyz citizenship (the 2007 Citizenship Law, Article 8). A change in nationality of one of the spouses does not automatically lead to a change in the nationality of the other (ibid). Divorce does not lead to the loss of nationality for children born or adopted within such a marriage (ibid).

The Citizenship Law does not refer to loss of Kyrgyz citizenship due to a prolonged residency abroad or failure to perform compulsory military or civil service or desertion. Equal treatment of all nationals is guaranteed irrespective of the method used to obtain nationality, whether by birth, through marriage or naturalization (ibid, Article 4.4).

**Procedural Issues and Internal Inconsistency:** Procedures for the loss of nationality due to disloyalty (joining a military or intelligence services of a foreign state except for instances governed by international treaties to which the Kyrgyz Republic is party) or misrepresentation and fraud are governed by the 2007 Citizenship Regulations. Therefore, if there is evidence or information that a national of the Kyrgyz Republic joined the military or intelligence services of a foreign state without the permission of competent authorities of the Kyrgyz Republic, who are diplomatic representatives of the country (for nationals who reside permanently outside the country), or internal affairs bodies (for nationals who reside permanently in the country); an investigation is initiated then the results of the findings are sent to the Ministry of Foreign Affairs or the Ministry of Interior who accordingly, make a decision, in consultation with the Defence Ministry and National Security, on deprivation of

nationality (para. 37). Decisions on recognition of loss of nationality are accompanied by a file of documents confirming disloyalty or misrepresentation and fraud, including interview notes, certificates from place of residence and place of work, as well as copies of identity documents and other relevant materials as required (para. 38).

If citizenship was acquired as a result of misrepresentation or fraud, it is deemed as rescinded from the moment of its acquisition. The law does not establish a time limit after which revocation of nationality as a result of misrepresentation or fraud is no longer permitted and nationality in such cases is deemed invalid from the its acquisition (The 2007 Citizenship Regulations, para. 42). Legislation does not take into account the gravity of misrepresentation or the nature of links established by the offender to the Kyrgyz Republic.

The 2007 Citizenship Regulations provide that the decision is made by the Ministry of Interior, or the Ministry for Foreign Affairs and its diplomatic representatives regarding loss of nationality shall indicate whether the loss of Kyrgyz citizenship also affects any underage children, 'in cases provided by law'. However, the 2007 Citizenship Law does not include any specific provision to this effect and is also unclear as to which 'cases provided by law' the 2007 Citizenship Regulations refer to. For children aged 14 and above, the 2007 Citizenship Law requires their written consent for their nationality to be changed if their parents choose to change their nationality ( Citizenship Law, Article 21).

**Compliance with International Standards:** The Kyrgyz Citizenship Law does not contain any provision referring to 'deprivation of nationality'. However, Article 26 refers to grounds for loss of Kyrgyz nationality which generally coincide with the grounds for deprivation of nationality listed in Article 8 of the 1961 Convention.[19]

Article 6 of the 1961 Convention requires states to condition the loss or deprivation of nationality by a person's spouse or children as a result of that person losing or being deprived of their nationality but based on their possession or acquisition of another nationality. When a person is deprived of his/her Kyrgyz citizenship due to military service in a foreign country or misrepresentation, it is not clear from current Kyrgyz legislation whether their dependants also lose their citizenship. Compliance with the above-mentioned standard of the 1961 Convention is therefore not established. It is necessary for the government to clarify in legislation whether a dependent automatically loses nationality if the spouse or parent is striped of theirs; in particularly in order to prevent statelessness.

### 2.7 Exercise of nationality in practice

The 2007 Citizenship Regulations set a time period of one month within which an individual whose application has received a positive decision shall be informed (para. 54). After which a Kyrgyz passport is issued either by the internal affairs bodies or the consular section of the embassy overseas (2007 Citizenship Law, Article 39). The Southern survey, referring to discussions with internal affairs bodies' staff, drew attention to the scarcity of human resources available to process nationality documents as the foremost obstacle to documenting eligible individuals with national passports efficiently.

According to Kyrgyz law, stateless persons who have been confirmed or have acquired Kyrgyz nationality enjoy the same range of rights as other nationals of the country, including the right to reside in and return to the country, right to a passport, right to vote, to stand for office, participate in public affairs, and seek employment in public service. The 2007 Citizenship Law clearly provides that citizens of the Kyrgyz Republic have equal rights,

19 Article 7 and Article 8 of the 1961 Convention on Reduction of Statelessness refer to loss and deprivation of nationality respectively, a distinction drawn on the basis of withdrawal ex lege (automatically) or through executive act.

freedoms and obligations in accordance with the Constitution of the country regardless of how their nationality was obtained, as previously mentioned (Article 4).

However, one issue arose at the Focus Groups in both Northern and Southern Kyrgyzstan, there were some children of naturalized Tajik refugees identified who reached the age of 16, and had not received national passports of the Kyrgyz Republic. Authorities referred to the fact that these children were not specifically listed in the decree of the President granting citizenship of the Kyrgyz Republic.

## 3. FAIR PROTECTION PROCESSES AND DOCUMENTATION

### 3.1 Procedures for the determination of stateless status

The status of individuals who have been recognized and documented as stateless persons by the Kyrgyz Republic is determined indirectly through the issuance of residence permits. In other words, there is no system of status determination specifically designed for stateless people. Apart from meeting the general criteria required for the issuance of residence permits, existing status determination is limited to confirmation by embassies or internal affairs bodies in the country of former residence that the person concerned is not a national of that country. Often such requests are not responded to and the decision to recognize a person as stateless is left to the discretion of authorities, as mentioned previously.

Therefore, one can only be accorded with the status of a stateless person if they first qualify for a residence permit, (which is common for all aliens who wish to, or already reside in the country); or secondly, if they can prove to have established affiliation to the nationality of the Kyrgyz Republic and meet the requirements. Although not explicitly written, the two mentioned measures help partially address a legal loophole by providing a statelessness status determination method; they however do not address individuals who maybe stateless but who do not meet the general criteria of the procedures. Thus for instance, a stateless person who may possess a certificate from the authorities of a foreign state demonstrating that they are not their national maybe rejected the issuance of a residence permit and consequently a stateless persons' card if they fail to show a legitimate source of income in the Kyrgyz Republic. Consequently, a person is not identified and documented as stateless, despite all legal evidence indicating that they are stateless.

As noted earlier, the development of fair and efficient statelessness status determination procedures is one of the priority areas for the Working Group on nationality issues. Existing legislation and administrative regulations are being examined by the Working Group to explore the possibility of creating statelessness determination procedures without engaging the general law-making process.

### 3.2 Residence status

According to the 2008 Residence Permit Regulations (para. 7) a formal conclusion by the internal affairs bodies is required before a person[20] can be granted a residence permit of stateless persons. Although the documents issued to stateless persons are identified and referred to in the law, no established procedures are in place to determine how decisions on issuance or rejection of such documents should be made.

20 According to Article 15 of the 2000 External Migration Law, residence permits in Kyrgyz Republic may either be temporary (give up to 6 months of residence right without a visa) or permanent (over 6 months) even when issued to stateless persons. It follows from this Article that any of these two forms of residence permits maybe issued to a stateless person. However, a stateless persons who obtained temporary residence permit has to leave the country once the validity of the term has expired (ibid. , Article 19). In addition to temporary residence permits, a single or multiple entry visa process is also in place and valid for up to 6 six months of residence in the country.

The conflicting process of obtaining *status of immigrant* in order to obtain a residence permit, which gives one the right to permanently reside in the country, creates an additional obstacle. Internal affairs bodies forward applications for permanent residence permits to the SCME, which decides on granting *status of immigrant.* According to Article 31 of the 2000 External Migration Law, up to one year is given for the review of an application for *status of immigrant.* A similar period is provided for a permanent residence permit (para. 5 in the 2008 Residence Permit Regulations). The 2000 External Migration Law is unclear as to whether a person, who does not have a valid visa, has the right to remain lawfully in the Kyrgyz Republic pending a decision on residency. Authorities can choose to interpret the absence of a valid visa as an illegal stay, which is subject to administrative punishment. Neither the 2000 External Migration Law, nor the 2008 Residence Permit Regulations provide for an appeal process if an application for residence is denied.

NGOs and individuals concerned noted that, in practice, due to the lengthy duration of the process and high rates of rejection by the SCME, as well as a non-transparent decision-making processes, very few individuals succeed in obtaining permanent residence permits for stateless persons. This method is therefore not popular among stateless individuals attempting to regularize their status. Furthermore, an appeal mechanism does not exist for stateless persons who are denied residency to seek recourse.

The 1993 Aliens Law provides for equal access to rights and freedoms, non-discrimination to stateless persons (and foreigners) and nationals unless otherwise stated by law (Article 3). It grants stateless persons permanently residing in the Kyrgyz Republic equivalent rights to nationals in employment, rest, healthcare, social security, education, property, association, freedom of religion, marriage, family, personal security, fiscal charges, and in judicial proceedings (Articles 7-17 and 19-20). The only differentiations are that stateless persons (and foreigners) are not subject to military conscription and do not have the right to vote or stand for public office (Articles 21-22).

It should however be mentioned that only individuals whose statelessness status has been formally determined and conferred may enjoy the above rights under the law. Stateless persons who are not recognized as such and are improperly or insufficiently documented face some restrictions in utilizing the rights and freedoms provided for in the law. So for example, a number of individuals who attended the Focus Groups in the North and South of the country described difficulties in acquiring housing, employment or registering their residence.

### 3.3 Individual documentation

According to the 2008 Residence Permit Regulations, a separate application must be filed with internal affairs bodies for every individual aged 18 and above to obtain a residence permit document (para. 6). Children under 18 are written into the residence permits of their parents (para. 24). Prior to obtaining one, every stateless individual aged 18 and above needs to go through the procedure of obtaining the status of immigrant. The Southern survey identified several individuals of undetermined nationality who possess residence permits; the Northern survey did not report any such cases. Undocumented attendees at the Focus Group in the North doubted the possibility of obtaining a residence permit in this manner. They referred to the lack of proper documenting procedures that result in problems of acquiring immigrant status, which is required for a residence permit. In the South, attendees, whose national passports were expired, reported difficulties in obtaining residence permits. Lack of valid identification prevented them from obtaining the necessary documentation from the authorities of their country/countries of previous resi-

dence which is required for residence permits of stateless persons in Kyrgyz Republic to be issued. The requirement to deal with multiple processes to obtain the status of immigrant has been identified as a factor impeding the acquisition of residency.

### 3.4 Civil documentation

*Birth:*

The Kyrgyz Republic must ensure that any child born in its territory is registered immediately after birth both according to its international obligation under the CRC, the ICCPR and the domestic 2006 Code of the Kyrgyz Republic on Children. Procedures for birth registration are provided in the 2005 Civil Status Acts Law and the 2001 Civil Status Registration Rules. Parents are required to submit an application for birth registration within one month, for which there is no associated cost (the 2005 Civil Status Law, Article 16.1 and 16.5, the Civil Status Registration Rules, section 2, para. 1 and section 1, para. 5). Birth registration cannot be rejected due to the failure of registering within the recommended one-month period.[21] Identity documents of the parent(s) are required for a birth to be registered (the Civil Status Law, Article 14). Hospitals and midwives provide medical attestations of births. Birth registration is carried out by the offices of Registration of Civil Status Acts, commonly known as ZAGS, at the place of residence of the parents (Article 14) and the registration includes data such as: name, sex, date of birth, place of birth, parents' names, ethnicities, nationalities, and address; it also includes the address, name seal and signature of the registrar (the Civil Status Law, Article 22 and 23).

The 2001 Civil Status Registration Rules provide that registration of civil status acts concerning foreigners and stateless persons who reside in the Kyrgyz Republic, including the registration of birth, should be carried out as per the current legislation. As for birth registration of stateless persons children, the only reference in the 2001 Civil Status Registration Rules, appears in section 2, para. 23, which states that a child whose parent is a Kyrgyz national and the other a foreigner or a stateless person is registered upon the joint application of the parents.

Stateless people who attended the Focus Groups reported that it is impossible to receive a birth certificate if proper identity documents are not submitted to the registration authority. However, in the South, the survey showed that approximately 97 percent of children of stateless persons that partook in the survey have been issued birth certificates. The survey found that families where a parent is a national of the Kyrgyz Republic and the other is stateless did not face any specific problems when registering the birth of their children, whereas families where both parents were stateless and therefore lack valid documentation do.[22]

*Marriage:*

Nationals and stateless persons' right to marry, is guaranteed by the 1993 Aliens Law and incorporated in the procedures set forth in the 2001 Civil Status Registration Rules. Marriage certificates are issued to couples after the registration of their marriage to the bodies for recording of civil status acts (para. 1. 14 in the 2001 Civil Status Registration Rules).

21 Ibid.
22 Supra n. 2, p. 23

A residence permit for stateless persons or a valid foreign passport is required for marriage registration (para. 3. 2 in the 2001 Civil Status Registration Rules). The lack of proper identification was reported by stateless persons as the primary reason for failed marriage registration. Thus, for example, the Southern survey illustrated that the marriages of approximately 12 percent of those surveyed (478 people out of 4,042 married couples) were not registered. One of the main reasons of that: attempts to register marriage were rejected.

Common law marriage is not recognized as a legal form of marriage in the Kyrgyz Republic. However, most couples reported they had a traditional Muslim marriage ceremony, known as a Nikah. A traditional marriage that is not formally registered increases the risk of statelessness for children born into such unions which can deny them from exercising certain rights. For example, a woman from Uzbekistan residing in the Kyrgyz Republic is married to a Kyrgyz citizen but she has lost her Uzbek nationality because she did not register with the Uzbekistan consulate within the prescribed timeframe. If she were married traditionally, and does not possess a legal marriage certificate, it may result in the father of the child being excluded from the birth certificate unless a relationship with the father is legally established upon the joint application of the parents. The omission of a parent who is a Kyrgyz national in the birth certificate may also result in Kyrgyz nationality not being passed on to a child, which further puts the child at risk of statelessness.

*Death:*

The 2001 Registration Rules do not explicitly refer to nationality matters in death registration procedures. They more importantly do make reference to the withdrawal of a residence permit of a stateless person in case of death (Section 8.17). It is not therefore clear if the possession of a residence permit for stateless persons is necessary for a death of a stateless person to be registered and documented. There were no reports of failed death registrations among the population concerned during the Focus Groups.

### 3.5 Travel documents

In order to freely leave and return to the Kyrgyz Republic, a stateless person requires a stateless person's card which is issued by internal affairs bodies (the 2008 Residence Permit Regulations, para. 24). However, such a document may only be issued to a holder of a residence permit for stateless persons and therefore, is not accessible to most of the population concerned for reasons previously explained in section 3.3. NGO experts, in the South of the country referred to scenarios where stateless person's cards were issued by relevant authorities to stateless individuals who were permanently living in Kyrgyz Republic. None of the surveys or reports refer to the issuance of stateless person's cards to individuals with former USSR passports, or expired CIS passports or passports of other countries. A duty stamp has to be paid for both residence permits of stateless persons and stateless persons cards (the 2008 Residence Permit Regulations, para. 44).

The issue of travel documents is directly linked to the need for a clearer statelessness determination process, which would ensure a legal basis for relevant public authorities to issue statelessness documents and increase the possibility of the enjoyment of rights and freedoms by stateless persons.

## 4. SECURITY FROM VIOLENCE AND EXPLOITATION

### 4.1 Law enforcement

In meetings and Focus Group sessions some stateless persons claimed not to have confidence in law enforcement authorities and for this reason they avoid contact with them.

However, this is not purely based on being a stateless person per-se which they think puts an individual at risk of discrimination or abuse, but is mainly due to their lack of legal status. The absence of a formally recognized status and life without valid documentation is the main reason for problems with law enforcement authorities. In this context, approaching law enforcement authorities may appear risky for stateless persons, as they would be requested to present legal identification. No specialized training is provided to sensitize law enforcement authorities to the plight of stateless persons. UNHCR in the Kyrgyz Republic has incorporated a statelessness component into its training and capacity building activities for law enforcement authorities in an attempt to address this gap.

### 4.2 Sexual and gender-based violence

There were no reports of sexual and gender-based violence (SGBV) towards stateless persons raised during the Focus Group in the North. Although the surveys did not report any SGBV cases among stateless populations, the Focus Groups indicated an unmistakable vulnerability amongst undocumented women in mixed marriages. Women married to Kyrgyz nationals, living in the Kyrgyz Republic either as undocumented or with expired passports that attended the Focus Group in the South, discussed their full financial and social dependence on their spouses or in-laws. In particular, discussions with stateless women by UNHCR and the NGO team in the Southern border districts underlined an increased potential risk for SGBV. They reported that a lack of nationality and proper documentation creates difficulties for undocumented stateless women. They cannot formally approach authorities for assistance due to invalid identity documents. In addition, in the absence of established nationality and proper documentation, these women have limited opportunities to be gainfully employed and therefore are fully dependant on their national family members. The absence of the appropriate form of documentation for instance limits married women from seeking a divorce which is further complicated by a difficulty in finding potential housing or employment; and worse off, not being able to return to their country of birth due to the expiration of their national passports. Women in this situation are often afraid of being ejected from family homes and therefore keep the lowest profile in the household. Furthermore, they are not entitled to receive any social allowance for their children. Therefore, they are often considered to be a burden on the family and are believed to be unable to contribute to the prosperity of the overall family.

Currently a national programme aimed at raising awareness and prevention of SGBV does not exist. Nor are there any government ran programs to train law enforcement and executive authorities to respond and prevent SGBV. UNHCR and other UN agencies include SGBV components in their workshops and trainings for public officials, law enforcement and implementing partners.

### 4.3 Protection of children

The Kyrgyz Republic has been party to the CRC since 1994, and has its own national law the Child Code (of 7 August 2006). Stateless children are not specifically targeted in the administrative and legal framework of the country, and they therefore enjoy the same protection, social, educational and medical services on a general basis.

During the Focus Group in the North, stateless children did not report any differentiation in treatment from nationals. Thus, all children confirmed that their attendance at school and access to educational facilities is equivalent to nationals. Children and their parents confirmed that they are covered for all immunization and vaccination programs undertaken in their places of residence. None of the children faced restriction in accessing extracurricular activities such as school sports etc. The only problem raised by parents was the difficulty

they sometimes faced in registering undocumented children (without birth certificates) in medical facilities, which resulted in a denial of access to certain medical services such as diagnostics and operations.

In the South, the findings of the Focus Group revealed a high level of truancy among children after third grade since parents require their children to work with them in the fields in order to increase family earnings. Parents in this area consider the expenses associated with education to be burdensome and costly (books, notebooks, shoes, clothes, school fees etc).

### 4.4 Freedom of movement, including right to return

The freedom of movement and residence of stateless persons in the Kyrgyz Republic is guaranteed by the 1993 Aliens Law. As previously mentioned, movement and residence maybe restricted on the ground of national security, protection of public order, public health-care and morals, protection of rights and legitimate interests of the population (Article 18). However, the law does not define the scope of national security or public order grounds, nor has any official interpretation been adopted of the law.

The regulatory functions with respect to the movement of individuals within the country (internal migration), as well as to and from the Kyrgyz Republic (external migration) fall under the competence of the State Committee for Migration and Employment of the Kyrgyz Republic, the Ministry of Internal Affairs, the Ministry for Foreign Affairs, the State Committee for National Security and the State Border-guard Service of the Kyrgyz Republic.[23] In order to travel from and return to the Kyrgyz Republic, domestic legislation requires a stateless person to have a stateless person's card as afore-mentioned.

The survey conducted in the South of the country made reference to restrictions placed on the movement of individuals who reside in the territory of the country with expired passports. Reports on constraints of movement for undocumented individuals in the North and South of the country were recorded during the Focus Group meetings. Undocumented individuals expressed a fear of being detained if caught by police while travelling. However, holders of former USSR passports with propiska do not experience such restrictions.

### 4.5 Detention

Detention of individuals with an undetermined nationality in the Kyrgyz Republic is not well documented and monitored. There is no information on numbers or reasons for detention that law enforcement authorities employ for stateless persons. Nor is there reliable information on services such as legal assistance and free translation rendered to detained stateless individuals, or on the treatment that they receive while in detention. According to representatives of district law enforcement bodies, although former USSR passports are no longer legally valid documents, their holders in rural areas are rarely detained, since they are known to authorities as residents of those areas and registered with local administrators. Nevertheless, individuals that attended the Northern and Southern Focus Groups confirmed that their lack of proper documentation puts them at increased risk of detention.

### 4.6 Access to legal remedies

The 1993 Aliens Law guarantees general rights of access to the courts and protection under the law. This also includes equal rights for stateless people and nationals in judicial proceedings (Article 20). In the absence of an official interpretation of the above provision

23 Articles 5 of the 2000 External Migration Law and the Law of Kyrgyz Republic On Internal Migration dated 16 October 2002.

by law-makers or the courts, it is unclear if the guarantee encompasses equality before the law as per the standards laid out in international human rights treaties. Attendees at the Focus Group in the North did not refer to any restrictions in access to legal aid, though the unavailability of quality legal assistance in rural areas was noted by representatives of local NGOs. In the South, participants pointed out that the cost of legal services is unaffordable to them. Legal NGO clinics operating in the field, including UNHCR's implementing partners, remain the most effective means of delivering free legal aid to stateless populations.

### 4.7 Expulsion

The Code on Administrative Violations of the Kyrgyz Republic provides for the administrative expulsion of foreigners and stateless persons for the breach of residence and sojourn rules in the Kyrgyz Republic (Article 39). The 2000 External Migration Law also includes an administrative expulsion for a person who does not comply with an order from internal affairs or national security agencies to leave the Kyrgyz Republic after the expiration of their visa or an annulment of their residence permit (Article 19). It further lists the following additional grounds for which an administrative expulsion can be issued: if the person concerned acted against the interests of national security or the protection of public order; or if it is necessary for the protection of public healthcare and public morals, rights and legitimate interests of Kyrgyz citizens and other persons. An administrative expulsion could likewise be ordered in cases of repeated and severe violation of Kyrgyz law but it does not invoke a criminal liability and is used as an administrative penalty. A decision is made by the courts and executed by either internal affairs or national security agencies (Article 19).

Statistics on the number of violations of residence rules drawn from the survey in the South indicate an infrequent number of administrative expulsions. During 2008, for instance 7 cases of administrative expulsion out of 218 violations of residence rules by aliens were reported by internal affairs bodies in Osh province. However, as recognized by the NGO groups who prepared the Southern survey, the law does not take into account the specific rights which must be regarded in cases of administrative expulsion of stateless persons such as, the principle of family unity.

## 5. BASIC NEEDS AND ESSENTIAL SERVICES

### 5.1 Food security and nutrition and water and sanitation

The legislation of the Kyrgyz Republic does not contain any provisions that specifically focus on access of stateless persons to food, water and sanitation. During the Focus Groups in the North and South of the country stateless individuals did not report any restrictions in availability to food, water and sanitation; accessibility therefore seems to be on par with the national population.

### 5.2 Housing

Although the right to housing is not stipulated among the rights stateless persons specifically enjoy under the 1993 Aliens Law, the rate of access to housing is quite high. Thus, the survey in the South showed that some 77 percent of individuals surveyed have accommodation in either their own property or that of family members, while the remainder rent. The survey indicated the difficulties faced by stateless persons in the South in owning property due to lack of status. 80 percent of home-owners among the population concerned in the North responded that they did not face difficulties in enjoying their right to property however only 40 percent of them actually owned property.

### 5.3 Healthcare

The 1993 Aliens Law guarantees the right to healthcare for stateless persons that are documented and permanently residing in the Kyrgyz Republic similar to nationals. Stateless persons temporarily residing in the country are given treatment similar to foreigners in the same circumstances (Article 9). Since most stateless persons do not have recognized documentation, they reported difficulties receiving medical services. Specifically 25 percent of survey participants in the three districts in the North and similar problems were reported by individuals who attended the assessments in the South, however precise numbers were unavailable.

### 5.4 Education

Equal treatment to nationals before the law is guaranteed for stateless persons to enjoy the right to education (the 1993 Aliens Law, Article 12). The standard provided in national legislation generally complies with the international standard provided in Article 22 of the 1954 Convention. In addition, equal consideration under Kyrgyz law is given to stateless persons not only with respect to elementary education but also to secondary education which represents good legal practice. However, lack of proper documentation prohibits enrolment in institutions of higher education which require valid identification. The survey in the North reported that 70 percent of individuals concerned have completed primary education, nine percent have advanced to secondary school, and three percent have attained higher education. In the South, 94 percent attended school, and six percent did not attend due to financial constraints. There were no reports of any administrative obstacles to attending elementary and secondary schools by the stateless persons surveyed.

## 6. COMMUNITY PARTICIPATION, SELF-MANAGEMENT AND SELF-RELIANCE

As referred to earlier, the majority of the stateless population co-exist with local communities, and share the same ethnicity, culture and language. As well as have similar social backgrounds and cohabitation patterns with local populations; which have facilitated a much more effortless integration process in the community.

Stateless persons who permanently reside in the country may lawfully be employed including in trade, self-employment and any other type of employment, similar to nationals (the 1993 Aliens Law, Article 7). Stateless persons who temporarily reside in the country may enjoy similar employment rights, but have to obtain work permits that are issued by internal affairs bodies (Article 7). Restrictions are only applicable to positions which, according to domestic legislation, are reserved for Kyrgyz nationals (Article 7). Access to employment in Kyrgyzstan legislation is comparable to the international standard on gainful employment contained in the 1954 Convention. However, the practical realization of employment rights under the legislation of the Kyrgyz Republic is often subject to possession of valid documents in order to be officially employed in the wage-earning sector. For example, employers require documentation, for bookkeeping and taxation purposes. The main means of employment for those in the North and the South was as agricultural day-labourers on plantations or on self-owned plots. Individuals that attended the sessions in the North underlined that scarce employment opportunities are linked to the general economic situation in the country, but not necessarily to the lack of documentation, while stateless persons in the South referred specifically to the lack of valid and proper documentation as the main obstacle for better employment opportunities. However, the majority of stateless persons present in both sessions reported having a source of income.

Social security disbursements for stateless persons permanently residing in the Kyrgyz Republic are similar to those of nationals (the 1993 Aliens Law, Article 10); which is in general compliance with the international standards referred to in Article 24 of the 1954 Convention. Elderly individuals that attended the Focus Group in the North reported that they receive state issued pensions, but pointed out the associated difficulties for undocumented individuals to receive pensions. Only one woman complained about a denial of pension provisions due to insufficient documentation. Elderly people, who attended the Focus Group in the South underlined that the lack of proper and valid documentation often leads to the refusal of provisions of pension.

Although property rights are guaranteed for stateless persons under the 1993 Aliens Law (Article 11), in practice, valid documentation in recognition of stateless persons is required to exercise these rights. The realization of property rights is as a rule linked to execution of civil law deeds and contracts, a valid document is required to authenticate the deal. This problem was specifically raised during the Focus Group and was also reported in the survey results. Equal treatment is provided for stateless persons for the purpose of fiscal charges unless otherwise specifically provided for in law, which is in line with the standards of 1954 Convention.

Generally, Kyrgyz domestic legislation grants legal coverage to stateless persons, equivalent to the standards of the 1954 Convention. However, two considerations should be taken into account with respect to the legality. Firstly, as mentioned above in the context of rights provided for stateless persons under domestic legislation, such rights are only fully exercised by stateless persons who are documented as such. Secondly, the lack of an official interpretation of the 1993 Aliens Law and scarce information on its implementation limits a sufficient assessment of the effectiveness of existing protection regime for stateless persons in the Kyrgyz Republic from being conducted.

## Conclusion

The findings presented in this study are a starting point- in researching and understanding the complex situation of stateless persons in the country, which is a relatively new challenge. Further in depth research is required and should focus on some of the administrative and legal frameworks related to the identification, prevention and reduction of statelessness as well as protection of stateless persons that exist in the Kyrgyz Republic raised in this overview.

Administrative and legal systems that do exist in the country allow for the mapping of statelessness problems through the use of population census tools or granting of residence status. These assist in identifying some statelessness situations or establishing the risk thereof through verifying the nationality of people who seek permanent residence in the country. However, these tools and procedures alone are not enough to identify and determine every case of statelessness. They fail to recognize and determine the status of those, who might have certificates of non-affiliation to the nationality of another state but still do not meet some of the residence requirements, such as, for example, solvency or possession of status of immigrants, and therefore are rejected as being documented. As a result, individuals who were denied in obtaining a residence permit maybe left beyond the existing identification and status determination procedures in spite of having poof of statelessness.

The laws of the country have a number of clauses that grant nationality to an alien or stateless child and therefore eliminate the risk of statelessness in certain instances. However, existing provisions of acquisition of nationality fail to comply with all international standards and therefore do not prevent certain situations of statelessness from occurring in the earlier stage.

Thus, for example, a child of foreigners who permanently reside in the Kyrgyz Republic but who may be unable to pass their nationality on to their child is ineligible for the nationality of Kyrgyzstan even if they become stateless. Moreover, a child of stateless parents who do not have legal status as permanent residents may not be entitled to nationality at birth even though they were born in the Kyrgyz Republic. Bringing Kyrgyz law in full compliance with the standards set by the 1961 Convention will help eliminate such gaps and decrease the risk of becoming stateless.

With the introduction of the new Citizenship Law in 2007, the Kyrgyz Republic took a decisive step towards reducing the stateless population in the country. In particular, for former USSR citizens who have resided in the country for the last five or more years but have not acquired the citizenship of any other country are now recognized as citizens of the Kyrgyz Republic. With the majority of existing statelessness cases being those of former USSR citizens, the significance of this step cannot be underestimated. However, other categories of stateless persons or persons at risk of statelessness need to be similarly addressed by authorities as they otherwise have no way of acquiring Kyrgyz citizenship. Although the law provides an opportunity to acquire citizenship, i.e. through naturalization, the issue of valid identity documents or established nationality or statelessness status excludes them from the possibility of these provisions of the law. In addition, the lack of formal recognition in the country and the associated conferral of definite status impede the ability of exercising a number of rights and freedoms. Despite legal recognition of equality before the law, stateless persons are limited in exercising rights and freedoms set forth in the law due to the requirement of the possession of valid identity documentation and more importantly, the formal recognition of a person's status.

It is evident that an improvement in one aspect, i.e. identification or protection, prevention or reduction, will not solve the complicated problem of statelessness. All aspects are interrelated, interdependent and equally important and only a comprehensive approach to address all four components will improve the situation of statelessness in the Kyrgyz Republic.

Insufficient information on the socio-demographic situation of the stateless population combined with imprecise data and vague legal frameworks governing the issue of statelessness perpetuate and hinder the ability to attain quick and effective solutions. Nevertheless, the current political will that the country is demonstrating in attempting to resolve the situation of stateless persons and person at risk, including initiatives to improve domestic legislation and bring it in compliance with international standards; revisions of existing laws to reduce gaps that increase the risk of statelessness for former USSR citizens who have not acquired any citizenship; as well as increasing regional and international cooperation in finding solutions to statelessness. If such initiatives are adopted they will help dramatically reduce the occurrences of statelessness in the Kyrgyz Republic particularly the type associated with the collapse of the Soviet Union and the resulting border demarcation between new states that were previously neighbouring provinces.

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# The Concept of Stateless Persons under International Law

## Summary conclusions

*Expert meeting organized by the Office of the United Nations High Commissioner for Refugees*
*Prato, Italy, 27-28 May 2010*

This was a first of a series of Expert Meetings convened by UNHCR in the context of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness with the purpose of drafting guidelines under UNHCR's statelessness mandate on (i) the definition of a "stateless person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons; (ii) the concept of de facto statelessness; (iii) determination of whether a person is stateless; (iv) the status in national law to be granted to stateless persons and; (v) the prevention of statelessness among persons born on the territory or to nationals abroad.

The discussion was informed by two background papers. The first was "The definition of 'Stateless Person' in the 1954 Convention relating to the Status of Stateless Persons: Article 1(1) – The Inclusion Clause" which was drafted by a UNHCR consultant, Ms. Ruma Mandal. The second paper was entitled "UNHCR and De Facto Statelessness" and was authored by Hugh Massey of UNHCR. Professor Guy Goodwin-Gill of Oxford University also provided a written contribution, the conclusions of which were presented in summary form during the meeting. The twenty four participants came from 16 countries and included experts from governments, NGOs, academia, the judiciary, the legal profession and international organizations.

The meeting allowed for a wide-ranging discussion which focused on stateless persons as defined in Article 1(1) of the 1954 Convention (sometimes termed de jure stateless persons), before turning to the concept of de facto statelessness. The meeting reviewed principles of customary international law, general principles of international law and treaty standards, national legislation, administrative practice and judgments of national courts. It also took into account decisions of international tribunals and treaty monitoring bodies as well as scholarly writing.

The following summary conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the understandings emerging from the discussion.

### I. Stateless persons as defined in the 1954 Convention and international law

#### A) General considerations

1. In interpreting the statelessness definition in Article 1(1) of the 1954 Convention, it is essential to keep in mind the treaty's object and purpose: securing for stateless people the widest possible enjoyment of their human rights and regulating their status.

2. The International Law Commission has observed that the definition of a stateless person contained in Article 1(1) is now part of customary international law.

3. The issue under Article 1(1) is not whether or not the individual has a nationality that is effective, but whether or not the individual has a nationality at all. Although there may sometimes be a fine line between being recognized as a national but not being treated as such, and not being recognized as a national at all, the two problems are nevertheless conceptually distinct: the former problem is connected with the rights attached to nationality, whereas the latter problem is connected with the right to nationality itself.

4. The definition in Article 1(1) applies whether or not the person concerned has crossed an international border. That is, it applies to individuals who are both inside and outside the country of their habitual residence or origin.

5. Refugees (under the 1951 Convention relating to the Status of Refugees or the extended definitions in relevant regional instruments and under UNHCR's international protection mandate) may also, and frequently do, fall within Article 1(1). If a stateless person is simultaneously a refugee, he or she should be protected according to the higher standard which in most circumstances will be international refugee law, not least due to the protection from refoulement in Article 33 of the 1951 Convention.

6. While the definition of a "stateless person" should be interpreted and applied in a holistic manner, paying due regard to its ordinary meaning, it may also be helpful to examine its constituent elements.

7. When applying the definition it will often be prudent to look first at the question of "State" as further analysis of the individual's relationship with the entity under consideration is moot if that entity does not qualify as a "State". In situations where a State does not exist under international law, the persons are ipso facto considered to be stateless unless they possess another nationality.

**B) Meaning of "not considered as a national…under the operation of its law"**

8. "National" should be given its ordinary meaning of representing a legal link (nationality) between an individual and a particular State.

9. For the purposes of the 1954 Convention, "national" is to be understood by reference to whether the State in question regards holders of a particular status as persons over whom it has jurisdiction on the basis of a link of nationality. Several participants were of the view that in practice it is difficult to differentiate between the possession of a nationality and its effects, including, at a minimum, the right to enter and reside in the State of nationality and to return to it from abroad, as well as the right of the State to exercise diplomatic protection. Otherwise, according to this view, nationality is emptied of any content.

10. Article 1(1) does not require a "genuine and effective link" with the State of nationality in order for a person to be considered as a "national". The concept of "genuine and effective link" has been applied principally to determine whether a State may exercise diplomatic protection in favour of an individual with dual or multiple nationalities, or where nationality is contested. It is therefore possible to be a "national" even if

the State of nationality is one in which the individual was neither born nor habitually resides. The relevant criterion is whether the State in question considers a person to be its national.

11. A State may have two or more categories of "national" not all necessarily enjoying the same rights. For the purposes of the definition in Article 1(1), these persons would still be regarded as nationals of the State and therefore not stateless.

12. Whether an individual actually is a national of a State under the operation of its law requires an assessment of the viewpoint of that State. This does not mean that the State must be asked in all cases for its views about whether the individual is its national in the context of statelessness determination procedures.

13. Rather, in assessing the State's view it is necessary to identify which of its authorities are competent to establish/confirm nationality for the purposes of Article 1(1). This should be assessed on the basis of national law as well as practice in that State. In this context, a broad reading of "law" is justified, including for example customary rules and practices.

14. If, after having examined the nationality legislation and practice of States with which an individual enjoys a relevant link (in particular by birth on the territory, descent, marriage or habitual residence) – and/or after having checked as appropriate with those States – the individual concerned is not found to have the nationality of any of those States, then he or she should be considered to satisfy the definition of a stateless person in Article 1 (1) of the 1954 Statelessness Convention.[1]

15. "Under the operation of its law" should not be confused with "by operation of law", a term which refers to automatic (ex lege) acquisition of nationality[2]. Thus, in interpreting the term "under the operation of its law" in Article 1(1), consideration has to be given to non-automatic as well as automatic methods of acquiring and being deprived of nationality.

16. The Article 1(1) definition employs the present tense ("who is…") and so the test is whether a person is considered as a national at the time the case is examined and not whether he or she might be able to acquire the nationality in the future.

17. In the case of non-automatic modes of acquisition, a person should not be treated as a "national" where the mechanism of acquisition has not been completed.

18. The ordinary meaning of Article 1(1) requires that a "stateless person" is a person who is not considered a national by a State regardless of the background to this situation. Thus, where a deprivation of nationality may be contrary to rules of international law, this illegality is not relevant in determining whether the person is a national for the purposes of Article 1(1) – rather, it is the position under domestic law that is relevant. The alternative approach would lead to outcomes contrary to the ordinary meaning of the terms of Article 1(1) interpreted in light of the Convention's object and purpose. This does not, however, prejudice any obligation that States may have not to recognize such situations as legal where the illegality relates to a violation of jus cogens norms.[3]

1 Foundlings are an exception. In the absence of proof to the contrary, foundlings should be presumed to have the nationality of the State in whose territory they are found as set out in Article 2 of the 1961 Convention on the Reduction of Statelessness.

2 See, for example, 1961 Convention on the Reduction of Statelessness, Articles 1, 4 and 12.

3 A jus cogens norm (or a peremptory norm of general international law) is a rule of customary international law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. Examples of such norms are the prohibition on the use of

19. There is no requirement for an individual to exhaust domestic remedies in relation to a refusal to grant nationality or a deprivation of his/her nationality before he or she can be considered as falling within Article 1(1).

20. The definition in Article 1(1) refers to a factual situation, not to the manner in which a person became stateless. Voluntary renunciation of nationality does not preclude an individual from satisfying the requirements of Article 1(1) as there is no basis for reading in such an implied condition to the definition of "stateless person". Nonetheless, participants noted that diverging approaches have been adopted by States. It was also noted that the manner in which an individual became stateless may be relevant to his or her treatment following recognition and for determining the most appropriate solution.

21. The consequences of a finding of statelessness for a person who could acquire nationality through a mere formality are different from those for a person who cannot do so and a distinction should be drawn in the treatment such persons receive post-recognition. On the one hand, there are simple, accessible and purely formal procedures where the authorities do not have any discretion to refuse to take a given action, such as consular registration of a child born abroad. On the other hand, there are procedures in which the administration exercises discretion with regard to acquisition of nationality or where documentation and other requirements cannot reasonably be satisfied by the person concerned.

**C) Meaning of "by any State"**

22. Given that Article 1(1) is a negative definition, "by any State" could be read as requiring the possibility of nationality to be ruled out for every State in the world before Article 1(1) can be satisfied. However, the adoption of an appropriate standard of proof would limit the States that need to be considered to those with which the person enjoys a relevant link (in particular by birth on the territory, descent, marriage or habitual residence).

23. The meaning of "State" should be based on the criteria generally considered necessary for a State to exist in international law. As such, relevant factors are those found in the Montevideo Convention on Rights and Duties of States (permanent population, defined territory, government and capacity to enter into relations with other States) coupled with other considerations that have subsequently emerged (effectiveness of the entity in question, right of self-determination and the consent of the State which previously exercised control over the territory in question).

24. Whether or not an entity has been recognised as a State by other States is indicative (rather than determinative) of whether it has achieved statehood.

25. Where an entity's purported statehood appears to have arisen through the use of force, its treatment under Article 1(1) will raise issues regarding the obligations of third States with regard to breaches of jus cogens norms.

26. In keeping with the current state of international law, whilst an effective central government is critical for a new State to emerge, an existing State that no longer has such a government because of civil war or other instability can still be considered as a "State" for the purposes of Article 1(1).

force by states and the prohibition on racial discrimination.

27. The position of so-called “sinking island States” raises questions under Article 1(1), as the permanent disappearance of habitable physical territory, in all likelihood preceded by loss of population and government, may mean the “State” will no longer exist for the purposes of this provision. However, the situation is unprecedented and may necessitate progressive development of international law to deal with the preservation of the identity of the communities affected.

## II. *De facto* stateless persons

The participants broadly agreed that some categories of persons hitherto regarded as de facto stateless are actually de jure stateless, and therefore particular care should be taken before concluding that a person is de facto stateless rather than de jure stateless. This is particularly important as there is an international treaty regime for the protection of stateless persons as defined in Article 1(1) of the 1954 Convention and to prevent and reduce statelessness (most notably the 1954 and 1961 Statelessness Conventions). However, there is no similar regime for de facto stateless persons. A number of participants referred to gaps in the existing international protection regime that affect de facto stateless persons in particular. On the other hand, some participants expressed the view that the concept of de facto stateless persons is problematic. Reference was made in particular to some extremely broad interpretations of the term.

### A) Definition of “*de facto* statelessness”

1. *De facto* statelessness has traditionally been linked to the notion of effective nationality[4] and some participants were of the view that a person’s nationality could be ineffective inside as well as outside of his or her country of nationality. Accordingly, a person could be *de facto* stateless even if inside his or her country of nationality. However, there was broad support from other participants for the approach set out in the discussion paper prepared for the meeting which defines a de facto stateless person on the basis of one the principal functions of nationality in international law, the provision of protection by a State to its nationals abroad.

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

3. It was agreed that there are many *de facto* stateless persons who are not refugees, contrary to the presumption that was widely held in the past. While refugees who formally possess a nationality are *de facto* stateless, participants indicated that it was not useful to refer to them as such because this could create confusion.

4. It was also agreed that a person who is stateless in the sense of Article 1(1) of the 1954 Convention cannot be simultaneously de facto stateless.

4 The Final Act of the 1961 Convention links the two when it recommends that “persons who are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality”.

### B) Valid reasons for being unwilling to avail oneself of protection

5. The existing universal and regional refugee protection instruments reflect the current consensus of States on what constitute "valid reasons" for refusing the protection of one's country of nationality.[5] Persons who refuse the protection of the country of their nationality when it is available and who do not fall under one or more of the aforementioned instruments are not de facto stateless.
6. Persons who do fall within the scope of the aforementioned instruments should be granted the protection foreseen by those instruments, rather than any lesser form of protection that a particular State may decide to accord to de facto stateless persons generally.

### C) Inability to avail oneself of protection

7. Being unable to avail oneself of protection implies circumstances that are beyond the will/control of the person concerned. Such inability may be caused either by the country of nationality refusing its protection, or by the country of nationality being unable to provide its protection because, for example, it is in a state of war and/or does not have diplomatic or consular relations with the host country.

8. Some persons who are unable to avail themselves of the protection of the country of their nationality may qualify for protection under the 1951 Refugee Convention/1967 Protocol[6] or one of the three regional refugee or subsidiary protection instruments.[7] However, there may also be situations where denial of protection does not constitute persecution.[8]

9. Inability to avail oneself of protection may be total or partial. Total inability to avail oneself of protection will always result in de facto statelessness. Persons who are unable to return to the country of their nationality will also always be *de facto* stateless even if they are otherwise able in part or in full to avail themselves of protection of their country of nationality while in the host country (i.e. diplomatic protection and assistance). On the other hand, persons who are able to return to their country of nationality are not *de facto* stateless, even if otherwise unable to avail themselves of any form of protection by their country of nationality in the host country.

### D) Undocumented migrants

10. Irregular migrants who are without identity documentation may or may not be unable or unwilling to avail themselves of the protection of the country of their nationality. As a rule there should have been a request for, and a refusal of, protection before it can be established that a person is *de facto* stateless. For example, Country A may make a finding that a particular individual is a national of Country B, and may seek to return that individual to Country B. Whether or not the individual is *de facto* stateless

5 See, in particular, the 1951 Convention/1967 Protocol relating to the Status of Refugees, the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1984 Cartagena Declaration on Refugees, and Council Directive 2004/83/EC of the European Union on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

6 example, as stated in paragraph 98 of UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status, lack of protection may sometimes itself contribute to fear of persecution: "denial of protection [by the country of nationality] may confirm or strengthen the applicant's fear of persecution, and may indeed be an element of persecution."

7 See note 6, above.

8 As stated in paragraph 107 of UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status regarding applicants for refugee status who have dual nationality: "There will be cases where the applicant has the nationality of a country in regard to which he alleges no fear, but such nationality may be deemed to be ineffective as it does not entail the protection normally granted to nationals. As a rule, there should have been a request for, and a refusal of, protection before it can be established that a given nationality is ineffective. If there is no explicit refusal of protection, absence of reply within reasonable time may be considered a refusal."

may depend on whether or not Country B is willing to cooperate in the process of identifying the individual's nationality and/or permit his or her return. Thus, prolonged non-cooperation including where the country of nationality does not respond to the host country's communications can also be considered as a refusal of protection in this context.

### E) Treatment of *de facto* stateless persons

11. While de facto stateless persons are covered by international human rights law, there is no specific treaty regime addressing the international protection needs of those who do not fall within the universal and regional refugee protection instruments. Certain recommendations as to the treatment of de facto stateless persons have been made in the Final Acts of the 1954 and 1961 Statelessness Conventions[9] and in Recommendation CM/Rec(2009)13 on the Nationality of Children adopted by the Committee of Ministers of the Council of Europe.[10]

### F) *De facto* stateless persons and UNHCR's mandate

12. The extent to which de facto stateless persons who do not fall within its refugee mandate qualify for the Office's protection and assistance is largely determined by UNHCR's mandate to prevent statelessness. It was noted that unresolved situations of *de facto* statelessness, in particular over two or more generations, may lead to *de jure* statelessness.

9 The Final Act of the 1961 Convention "Recommends that persons who are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality". Note that the Recommendation in the Final Act of the 1954 Convention does not apply to all de facto stateless persons, but only to those persons who are de facto stateless because they are considered as having valid reasons for renouncing the protection of the State of which they are a national.

10 The Recommendation reads as follows "With a view to reducing statelessness of children, facilitating their access to a nationality and ensuring their right to a nationality, member states should: […] 7. treat children who are factually (de facto) stateless, as far as possible, as legally stateless (de jure) with respect to the acquisition of nationality.
Timing is indicative and subject to modification based on progress in discussions.

Expert Meeting on
the Concept of Stateless Persons in International Law

Monash University Prato Centre
27 and 28 May 2010

**Agenda***

*Thursday, 27 May 2010*

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|---|---|
| 09:00 – 09:30 | Registration |
| 09:30 – 10:00 | Opening remarks<br>*UNHCR will briefly outline why it is focusing on development of guidance on the definition of stateless persons as contained in article 1(1) of the 1954 Convention relating to the Status of Stateless Persons and on the concept of de facto stateless persons. UNHCR will, in particular, set out why a common understanding of the meaning of statelessness in international law is central to the Office's mandate to prevent and reduce statelessness and to protect stateless persons.* |
| 10:00 – 11:00 | Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons<br>• National |
| 11:00 – 11:30 | Break |
| 11:30 – 12:15 | Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons<br>• National (cont.) |
| 12:15 – 13:00 | Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons<br>• State |
| 13:00 – 14:15 | Lunch break |
| 14:15 – 16:30 | Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons<br>• "Not considered as…under the operation of its law" |
| 16:30 – 17:00 | Break |
| 17:00 – 18:00 | Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons<br>• "Not considered as…under the operation of its law" (cont.) |

**Timing is indicative and subject to modification based on progress in discussions.*

Expert Meeting on
the Concept of Stateless Persons in International Law

Friday, 28 May 2010

| | |
|---|---|
| 09:00 – 11:00 | *De facto* statelessness<br>• What is the basis for establishing de facto statelessness?<br>• Persons who do not enjoy the rights attached to their nationality<br>• Persons devoid of protection and whether they can be inside their State |
| 11:00 – 11:30 | Break |
| 11:30 – 13:00 | *De facto* statelessness<br>• Persons unable to establish their nationality or of undetermined nationality |
| 13:00 – 14:15 | Lunch break |
| 14:15 – 16:00 | *De facto* statelessness<br>• Persons unable to establish their nationality or of undetermined nationality (cont.) |
| 16:00 – 16:30 | Break |
| 16:30 – 17:00 | Concluding remarks and closure of the meeting |

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# ANNEXES

*Bishkek, 21 May 2007*

# Law of the Kyrgyz Republic On Citizenship of the Kyrgyz Republic

CHAPTER 1. GENERAL PROVISIONS
CHAPTER 2. OBTAINING CITIZENSHIP OF THE KYRGYZ REPUBLIC
CHAPTER 3. TERMINATION OF CITIZENSHIP OF THE KYRGYZ REPUBLIC
CHAPTER 4. AUTHORISED AGENCIES AND OFFICIALS THAT DEAL WITH CITIZENSHIP OF THE KYRGYZ REPUBLIC
CHAPTER 5. LEGAL PROCEDURES ON ISSUES OF CITIZENSHIP OF THE KYRGYZ REPUBLIC
CHAPTER 6. FINAL PROVISIONS

## CHAPTER 1
## GENERAL PROVISIONS

### Article 1. Scope of this Law

This Law establishes the grounds, conditions and procedure for acquiring and terminating citizenship of the Kyrgyz Republic, and also regulates other issues related to citizenship of the Kyrgyz Republic.

### Article 2. Legislation on citizenship of the Kyrgyz Republic

Citizenship of the Kyrgyz Republic is regulated by the Constitution of the Kyrgyz Republic, international treaties in force in the country, this Law, and Regulations of the Kyrgyz Republic adopted in accordance with these.

### Article 3. Main definitions

The following main definitions are used in this Law:

Citizenship of the Kyrgyz Republic is an ongoing legal connection of a person with the Kyrgyz Republic reflected in a combination of mutual rights and obligations;

Other citizenship is the citizenship of another state;

Dual citizenship is the fact of citizenship of another state in addition to citizenship of the Kyrgyz Republic;

A foreign citizen is a person who is not a citizen of the Kyrgyz Republic and possesses evidence of his/her citizenship of another state;

A stateless person is a person who is not a citizen of the Kyrgyz Republic and who has no evidence of citizenship of another state;

A residence permit is a document that authorises a foreign citizen or stateless person to permanent or temporary residence in the Kyrgyz Republic;

An applicant is an able-bodied citizen of the Kyrgyz Republic that has reached the age of majority, a foreign citizen or a stateless person;

The general procedure for acquiring or terminating citizenship of the Kyrgyz Republic is the procedure for consideration of issues of citizenship and adoption of decisions on them by the President of the Kyrgyz Republic in relation to persons covered by the general conditions envisioned by this Law;

Authorised agencies are state agencies of the Kyrgyz Republic which play roles in resolving issues of citizenship;

The simplified procedure for acquiring or terminating citizenship of the Kyrgyz Republic is the procedure for consideration of issues of citizenship and adoption of decisions on them in relation to persons to whom privileged conditions envisioned under this Law and international treaties legally in force are applied;

A child is a person under 18 years of age.

**Article 4. Principles of citizenship of the Kyrgyz Republic**

1. Every person in the Kyrgyz Republic has the right to citizenship.
2. No citizen of the Kyrgyz Republic can be deprived of his/her citizenship or the right to change his/her citizenship.
3. The Kyrgyz Republic guarantees protection and patronage to its citizens outside its borders.
4. Citizens of the Kyrgyz Republic, regardless of the legal basis and the procedure by which they have obtained citizenship of the Kyrgyz Republic, have equal rights, freedoms and obligations in accordance with the Constitution of the Kyrgyz Republic.

**Article 5. Citizens of the Kyrgyz Republic**

Citizens of the Kyrgyz Republic are:

1) persons who are citizens of the Kyrgyz Republic on the day this Law comes into effect;
2) persons who were formerly citizens of the USSR and who have lived continuously for the last five years (from the moment of making an application to internal affairs agencies) on the territory of the Kyrgyz Republic and who have not made any statement regarding obtaining citizenship of another state;
3) persons who obtained citizenship of the Kyrgyz Republic in accordance with this Law.

**Article 6. Other citizenship**

1. A citizen of the Kyrgyz Republic who has another citizenship is considered by the Kyrgyz Republic only to be a citizen of the Kyrgyz Republic, with the exception of cases envisioned under Law and international treaties, which have come into force in accordance with law.
2. Obtaining of citizenship of another sate by a citizen of the Kyrgyz Republic shall not result in termination of citizenship of the Kyrgyz Republic.

**Article 7. Protection by the state of the rights, freedoms and legal interests of citizens of the Kyrgyz Republic located outside the Kyrgyz Republic**

1. The rights, freedoms and legal interests of citizens of the Kyrgyz Republic located outside the Kyrgyz Republic shall be protected through diplomatic representations and consular agencies of the Kyrgyz Republic.
2. State authorities, diplomatic representations, and consular agencies of the Kyrgyz Republic, and their office holders must undertake measures to ensure to citizens of the

Kyrgyz Republic the possibility to enjoy the full rights and freedoms enshrined by the legislation of the state of residence and interstate agreements which are in force. In accordance with the procedure set forth by the legislation they must protect the legal interests of such persons and, if necessary, undertake measures to redress any rights of citizens of the Kyrgyz Republic that have been violated.

3. If there is no diplomatic representation or consular agency of the Kyrgyz Republic in the state of residence, protection of the rights, freedoms and legal interests of citizens of the Kyrgyz Republic may be implemented by appropriate agencies of other states in accordance with interstate agreements.

**Article 8. Citizenship of the Kyrgyz Republic in marriage and divorce**

1. Conclusion of marriage of a citizen of the Kyrgyz Republic with a foreign citizen or a stateless person and also termination of such a marriage does not change their citizenship.

2. Change of citizenship by one of the spouses shall not cause a change in the citizenship of the other spouse.

3. Divorce shall not result in a change of citizenship of children born to or adopted by the couple.

**Article 9. Documents certifying citizenship of the Kyrgyz Republic**

All types of national passports of citizens of the Kyrgyz Republic, the birth certificate of a citizen and other documents certifying the identity of a citizen of the Kyrgyz Republic shall serve as documents which confirm citizenship of the Kyrgyz Republic.

**Article 10. Ban on exclusion or deportation of a citizen of the Kyrgyz Republic from the Republic**

A citizen of the Kyrgyz Republic cannot be excluded from the Kyrgyz Republic or deported to another state, except for cases envisioned by interstate agreements, which are in force in accordance with the law.

## CHAPTER 2
## OBTAINING CITIZENSHIP OF THE KYRGYZ REPUBLIC

**Article 11. Grounds for obtaining citizenship of the Kyrgyz Republic**

Citizenship of the Kyrgyz Republic is obtained:

1) as a result of birth;
2) as a result of being accepted as a citizen of the Kyrgyz Republic;
3) as a result of restoration of citizenship;
4) under grounds or in accordance with procedure envisioned by interstate agreements which are legally in force.

**Article 12. Obtaining citizenship of the Kyrgyz Republic**

1. A child, the parents of whom at the moment of birth are citizens of the Kyrgyz Republic, is a citizen of the Kyrgyz Republic regardless of place of birth.

2. If the citizenship of the parents is different and if one parent has citizenship of the Kyrgyz Republic, the citizenship of the child regardless of the place of birth shall be defined with the written consent of the parents.

3. A child, one of whose parents at the moment of birth was a citizen of the Kyrgyz Republic, and whose other parent was a stateless person or unknown, is a citizen of the Kyrgyz Republic regardless of place of birth.

4. A child born on the territory of the Kyrgyz Republic, whose parents are stateless persons permanently residing in the Kyrgyz Republic, is a citizen of the Kyrgyz Republic.

5. A child located on the territory of the Kyrgyz Republic, both of whose parents are unknown, is a citizen of the Kyrgyz Republic.

**Article 13. Conditions for acquiring citizenship of the Kyrgyz Republic in accordance with the general procedure**

1. Foreign citizens and stateless persons who have reached the age of 18 have the right to make a petition for citizenship of the Kyrgyz Republic in accordance with the general procedure if they:

a) have continuously and uninterruptedly lived in the territory of the Kyrgyz Republic for the last five years at the moment of filing the application. The term of residence is considered uninterrupted if a person was outside the Kyrgyz Republic for no longer than three months in a year;

b) can speak the state or official language to a level sufficient for communication - the procedure for identifying the level of knowledge of the state or official language is set forth by the regulation on the procedure for considering issues of citizenship;

c) undertake to comply with the Constitution and legislation of the Kyrgyz Republic; and

d) have a source of subsistence.

2. The period of residence of foreign citizens and stateless persons on the territory of the Kyrgyz Republic set forth by clause 1 of this Article, shall be reduced to three years if one of the following grounds exists:

a) marriage with a citizen of the Kyrgyz Republic;

b) high achievements in science or culture, or a profession or qualification which is in high demand in the Kyrgyz Republic;

c) investing in top priority sectors of the economy of the Kyrgyz Republic. The procedure for the investment and the amount of the investment shall be established by the Government of the Kyrgyz Republic;

d) in case of recognition as refugees in accordance with the legislation of the Kyrgyz Republic.

**Article 14. Acquisition of citizenship of the Kyrgyz Republic under a simplified procedure**

1. Foreign citizens and stateless persons who have reached 18 years of age have the right to file an application for citizenship of the Kyrgyz Republic under a simplified procedure. The time requirement for residence on the territory of the Kyrgyz Republic, set forth by clause 1 of part 1 of Article 13, shall be reduced to one year, unless otherwise specified by an interstate agreement legally in force, if they:

a) have at least one parent with citizenship of the Kyrgyz Republic who resides on the territory of the Kyrgyz Republic;

b) were born in the Kirgizskaya Soviet Socialist Republic and were citizens of the former USSR;

c) are being restored to citizenship of the Kyrgyz Republic.

2. A person of Kyrgyz ethnicity with citizenship of a foreign state or residing on the territory of a foreign state has the right to acquire citizenship of the Kyrgyz Republic in a simplified procedure under this Law.

3. The following persons shall be granted citizenship of the Kyrgyz Republic in a simplified procedure despite not complying with the conditions envisioned under part 1 of Article 13 of this Law:

a) a child, one of whose parents has citizenship of the Kyrgyz Republic – by the application of this parent and with written consent of the other parent for acquisition of citizenship of the Kyrgyz Republic by the child. Such consent shall not be required if the child resides on the territory of the Kyrgyz Republic;

b) a child, whose only parent is a citizen of the Kyrgyz Republic – by application of this parent;

c) a child or a disabled person under custody or trusteeship - by the application of a custodian or trustee with citizenship of the Kyrgyz Republic.

4. For persons listed in parts 1 and 2 of this Article, the requirements envisioned by clauses 3 and 4 of part 1 of article 13 shall be applied.

**Article 15. Restoration of citizenship of the Kyrgyz Republic**

A person who was previously a citizen of the Kyrgyz Republic, and who has resided continuously and legally on the territory of the Kyrgyz Republic, may have citizenship of the Kyrgyz Republic restored on the basis of a personal application and in compliance with the procedure envisioned by Article 14 of this Law.

**Article 16. Grounds for refusal to grant citizenship of the Kyrgyz Republic**

Citizenship of the Kyrgyz Republic shall not be granted to persons:

1) advocating for violent change to the foundations of the constitutional system, carrying out activities which represent a threat to the security of the Kyrgyz Republic;

2) who intentionally provided false documents or reported false facts;

3) who have been deported from the Kyrgyz Republic with a temporary five year or permanent prohibition to enter the Kyrgyz Republic, in accordance with the legislation of the Kyrgyz Republic;

4) who are in the military service, or the service of law-enforcement agencies or security agencies of a foreign state;

5) who are being criminally prosecuted in accordance with the legislation of the Kyrgyz Republic or in accordance with the legislation of a foreign state – until a final decision is made by the law-enforcement agencies or courts of the Kyrgyz Republic;

6) who are acting as defendants in a civil case – until the final decision has been made by the courts of the Kyrgyz Republic;

7) who are convicted and serving a sentence of imprisonment – until the expiration of the sentence;

8) who have been convicted to imprisonment for committing crimes that are considered grave crimes or felonies in the Kyrgyz Republic.

**Article 17. Obtaining of citizenship of the Kyrgyz Republic by a child in the case of adoption and establishment of custody or trusteeship**

1. A child who is a foreign citizen or a stateless person adopted by a citizen of the Kyrgyz Republic, or who is taken into the custody or trusteeship of citizens of the Kyrgyz Republic shall become a citizen of the Kyrgyz Republic.

2. A child who is a foreign citizen or a stateless person adopted by a citizen of the Kyrgyz Republic, or who is taken under the custody or trusteeship by persons, one of who is a citizen of the Kyrgyz Republic, shall become a citizen of the Kyrgyz Republic.

3. A child who is a foreign citizen adopted by a married couple or who is taken into custody or trusteeship by persons, one of whom is a citizen of the Kyrgyz Republic and the other is a citizen of a foreign state, shall become a citizen of the Kyrgyz Republic with the written consent of both adoptive parents, custodians or trustees.

4. A child who is a stateless person adopted by a married couple or who is taken into the custody or trusteeship of persons, one of whom is a citizen of the Kyrgyz Republic, shall become a citizen of the Kyrgyz Republic.

**Article 18. Retention of citizenship of the Kyrgyz Republic by a child in case of his/her adoption**

A child who is a citizen of the Kyrgyz Republic adopted by foreign citizens or by stateless persons, or by a married couple, one of who is a citizen of the Kyrgyz Republic and the other is a foreign citizen or a stateless person, retains citizenship of the Kyrgyz Republic.

**Article 19. Retention of citizenship of the Kyrgyz Republic by a child who is taken into custody or trusteeship**

If the parents or single parent of a child, who resides on the territory of the Kyrgyz Republic, terminate their citizenship of the Kyrgyz Republic, or lose it and are not taking part in the child's upbringing, and if that child is taken into custody or trusteeship by citizens of the Kyrgyz Republic, the child retains citizenship of the Kyrgyz Republic based on an application from a custodian or trustee.

**Article 20. Acquisition of citizenship of the Kyrgyz Republic by a child if one of the parents has acquired citizenship of the Kyrgyz Republic**

1. If one of a child's parents becomes a citizen of the Kyrgyz Republic and the other parent remains a foreign citizen, the child may obtain citizenship of the Kyrgyz Republic by an application from the parent who has obtained citizenship of the Kyrgyz Republic, with the written consent of the other parent.

2. If one of the parents becomes a citizen of the Kyrgyz Republic and the other remains a stateless person, their child residing on the territory of the Kyrgyz Republic becomes a citizen of the Kyrgyz Republic.

3. If one parent becomes a citizen of the Kyrgyz Republic, and the other parent remains a stateless person, a child residing outside the Kyrgyz Republic may obtain citizenship of the Kyrgyz Republic by application of the parent obtaining citizenship of the Kyrgyz Republic.

**Article 21. The necessity of agreement of children to changing their citizenship**

A change of citizenship of children between the ages of 14 and 18 years, in case of their parents changing their citizenship and also in the case of adoption, shall be allowed only with the consent of the children certified by notary.

**Article 22. Recognition of citizenship of another state for a citizen of the Kyrgyz Republic**

1. A citizen of the Kyrgyz Republic may acquire citizenship of another state while remaining a citizen of the Kyrgyz Republic in the following cases:

a) if obtaining the citizenship of another state is not in contradiction with the legislation of the Kyrgyz Republic and the legislation of the foreign state;

b) if interstate agreements are legally in force between the states on issues of dual citizenship.

2. Dual citizenship in the Kyrgyz Republic shall not be recognised:

1) for a citizen of a state bordering the Kyrgyz Republic;

2) for persons listed in Article 16 of this Law.

3. A citizen of the Kyrgyz Republic with dual citizenship cannot be President of the Kyrgyz Republic, a deputy of the Jogorku Kenesh of the Kyrgyz Republic, a judge of the Kyrgyz Republic, an employee of law-enforcement agencies, an employee of the Ministry of Defence of the Kyrgyz Republic or occupy managerial positions in government agencies.

4. Termination, restoration and renouncing of dual citizenship shall be carried out in accordance with the procedures set forth by this Law for termination, restoration and renouncing the citizenship of the Kyrgyz Republic.

5. A person who becomes a dual citizen in the Kyrgyz Republic shall undergo registration in accordance with the procedure set forth by this Law as a citizen of the Kyrgyz Republic.

6. Dual citizenship in the Kyrgyz Republic shall unilaterally be void if facts listed in Article 23 of this Law are established.

## CHAPTER 3
## TERMINATION OF CITIZENSHIP OF THE KYRGYZ REPUBLIC

### Article 23. Grounds for termination of citizenship of the Kyrgyz Republic

Citizenship of the Kyrgyz Republic shall be terminated as a result of:

1) renouncing citizenship of the Kyrgyz Republic;

2) loss of citizenship of the Kyrgyz Republic;

3) other grounds envisioned by this Law, which became effective in accordance with the procedure set forth by international agreements to which the Kyrgyz Republic is a party.

### Article 24. Renouncing citizenship of the Kyrgyz Republic

1. Renouncing citizenship of the Kyrgyz Republic by a person residing on the territory of the Kyrgyz Republic shall be carried out based on a voluntary expression of will of such a person in accordance with due procedure, except for cases envisioned by Article 26 of this Law.

2. Renouncing citizenship of the Kyrgyz Republic by a person residing on the territory of a foreign state shall be made based on a voluntary basis by such a person in a simplified manner, except for cases envisioned in Article 25 of this Law.

3. Renouncing citizenship of the Kyrgyz Republic by a child, one of whose parents is a citizen of the Kyrgyz Republic and whose other parent is a foreign citizen, or the only parent of whom is a foreign citizen, shall be made in a simplified manner, based on an application from both parents or based on an application from the single parent.

### Article 25. Grounds for refusal of renunciation of citizenship of the Kyrgyz Republic

Renunciation of citizenship of the Kyrgyz Republic shall not be allowed if the citizen of the Kyrgyz Republic:

1) has unfulfilled obligations to the state or property obligations, related to the interests of legal entities and individuals on the territory of the Kyrgyz Republic;

2) has been accused in a criminal case by law-enforcement agencies of the Kyrgyz Republic, or who is facing a legal and implementable court sentence.

**Article 26. Loss of citizenship of the Kyrgyz Republic**

Citizenship of the Kyrgyz Republic shall be lost:

1) as a result of the person's military or espionage service for a foreign state except for cases envisioned by interstate agreements in legal force and Article 25 of this Law;
2) if the citizenship of the Kyrgyz Republic was obtained as a result of intentionally false information or false documents.

## CHAPTER 4
## AUTHORISED AGENCIES AND OFFICIALS THAT ADDRESS ISSUES OF CITIZENSHIP OF THE KYRGYZ REPUBLIC

**Article 27. Authorised agencies and officials that address issues of citizenship of the Kyrgyz Republic**

1. The authorised agencies and officials that address issues of citizenship of the Kyrgyz Republic are:
   The President of the Kyrgyz Republic;
   Internal affairs agencies;
   The Ministry of Foreign Affairs of the Kyrgyz Republic;
   Diplomatic representations and consular agencies of the Kyrgyz Republic abroad.
2. The powers of agencies that address issues of the Kyrgyz Republic citizenship shall be defined by this Law.

**Article 28. Powers of the President of the Kyrgyz Republic**

1. The President of the Kyrgyz Republic makes decisions in accordance with this Law on issues of:
   1) granting citizenship of the Kyrgyz Republic to foreign citizens and stateless persons;
   2) restoration of citizenship of the Kyrgyz Republic;
   3) renunciation of citizenship of the Kyrgyz Republic and loss of citizenship of the Kyrgyz Republic.
2. The President of the Kyrgyz Republic issues decrees on issues of citizenship of the Kyrgyz Republic.
3. Regulations on the procedure for consideration of issues of citizenship of the Kyrgyz Republic shall be approved by the President of the Kyrgyz Republic.

**Article 29. Powers of internal affairs agencies of the Kyrgyz Republic**

Internal affairs agencies of the Kyrgyz Republic:

1) Accept applications on issues of citizenship of the Kyrgyz Republic from persons residing on the territory of the Kyrgyz Republic, and verify facts and documents provided as evidence to accompany such applications;
2) Forward materials on applications to obtain citizenship and renounce citizenship for the consideration of the President of the Kyrgyz Republic;
3) Define the eligibility of persons permanently residing on the territory of the Kyrgyz Republic for citizenship of the Kyrgyz Republic;
4) Prepare materials on issues of citizenship concerning persons permanently residing on the territory of the Kyrgyz Republic;

5) Register the loss of citizenship of the Kyrgyz Republic by persons permanently residing on the territory of the Kyrgyz Republic;

6) Process materials for renunciation of citizenship in cases envisioned by parts 1 and 3 of Article 24 of this Law;

7) Accept materials on issues of restoration of citizenship of the Kyrgyz Republic;

8) Keep a record of persons in relation to whom decisions are made to change their citizenship status of the Kyrgyz Republic;

9) Implement decisions made by the President of the Kyrgyz Republic on issues of citizenship of the Kyrgyz Republic in relation to persons residing on the territory of the Kyrgyz Republic.

### Article 30. Powers of the Ministry of Foreign Affairs of the Kyrgyz Republic, diplomatic representations and consular agencies of the Kyrgyz Republic

1. The Ministry of Foreign Affairs of the Kyrgyz Republic, diplomatic representations and consular agencies of the Kyrgyz Republic:

a) accept applications on issues of citizenship of the Kyrgyz Republic from persons permanently residing outside the Kyrgyz Republic together with the necessary documents, and forward them for review by the President of the Kyrgyz Republic;

b) define the eligibility of persons permanently residing abroad for citizenship of the Kyrgyz Republic;

c) register the loss of citizenship of the Kyrgyz Republic by persons permanently residing abroad;

d) process renunciation of citizenship in cases envisioned by part 2 of Article 24 of this Law;

e) keep a consular record of citizens of the Kyrgyz Republic permanently residing abroad;

f) implement decisions on citizenship of the Kyrgyz Republic made by the President of the Kyrgyz Republic in relation to persons residing outside the Kyrgyz Republic;

g) keep a record of persons in relation to whom decisions are made to change their citizenship status of the Kyrgyz Republic.

2. In case of absence of diplomatic representation or consular agency of the Kyrgyz Republic in a country, the functions of these agencies are performed by diplomatic representations and consular agencies of other states based on interstate agreements in force.

## CHAPTER 5
## LEGAL PROCEDURES ON ISSUES OF CITIZENSHIP OF THE KYRGYZ REPUBLIC

### Article 31. Procedure for making applications on issues concerning citizenship of the Kyrgyz Republic

1. Applications on issues concerning citizenship of the Kyrgyz Republic shall be addressed to the President of the Kyrgyz Republic and deposited with internal affairs agencies of the Kyrgyz Republic in the place of a petitioner's residence.

2. Persons permanently residing outside the Kyrgyz Republic, deposit applications with diplomatic representations and consular agencies of the Kyrgyz Republic.

3. An application is made in person by the applicant.

4. If an applicant is unable to make the application in person due to exceptional circumstances which are documented, the application and the necessary documents may be submitted for review through another person or sent by mail. In that case the veracity of the

signature of the person who signed the application and the authenticity of copies of documents attached to the application shall be certified by a notary.

5. An application to change the citizenship of a child or a disabled person shall be made by their parents or other legal representatives in the place of residence of the child or disabled person.

### Article 32. The procedure for processing documents on issues of citizenship of the Kyrgyz Republic

1. An application for granting citizenship of the Kyrgyz Republic, restoration of it or renunciation of it shall be reviewed based on a written application from the applicant. Applications from persons who have not reached the age of 18 shall be reviewed based on applications from their legal representatives certified by a notary and, outside the Kyrgyz Republic, by diplomatic representations or consular agencies of the Kyrgyz Republic.

2. In making applications for granting of citizenship, restoration or renunciation of citizenship of the Kyrgyz Republic of children between the ages of 14 and 18, it is necessary to provide their agreement in writing certified by a notary. Outside the Kyrgyz Republic, their written consent shall be certified by a diplomatic representation or consular agency of the Kyrgyz Republic.

3. In making an application for renunciation of citizenship of the Kyrgyz Republic for a minor child, one of whose parents remains a citizen of the Kyrgyz Republic, the written consent of the latter agreeing to renunciation of citizenship of the Kyrgyz Republic by the minor child is required. Such applications should be authorised by notary or, outside the Kyrgyz Republic, by a diplomatic representation or a consular agency of the Kyrgyz Republic.

4. If a petitioner cannot sign the petition due to his/her physical defects, the petition shall be signed on his/her behalf by another person and notarised. Outside the Kyrgyz Republic, the signature of a petitioner shall be certified by an official of a diplomatic representation or consular agency of the Kyrgyz Republic.

### Article 33. The list of documents to be submitted to authorised agencies of the Kyrgyz Republic

1. A foreign citizen or a stateless person submits the following documents to internal affairs agencies or diplomatic representations and consular agencies:

a) the application form for granting citizenship of the Kyrgyz Republic in two copies;

b) an original and copies of documents certifying the identity of the applicant (passport, residence permit for stateless persons);

c) two photographs;

d) a slip on payment of the state duty (consular fees) or document on waiver of payment;

e) a document confirming availability of sources of subsistence (a statement of the individual's income, a declaration on income tax for the individual with a tax authority mark, a statement from work, labour book, pension certificate, a statement from the social protection agency confirming reception of a benefit, confirmation of receiving alimonies, a statement on availability of a deposit in a credit institution indicating the number of account, a certificate of inheritance right, a statement on the income of persons of whom the applicant is a dependent, or any other document confirming the receipt of income from an activity not prohibited by the law);

f) a document confirming continuous and uninterrupted residence on the territory of the Kyrgyz Republic (residence permit, note of registration, reference from local government);

g) a document confirming the level of knowledge of the state or official language by the applicant. Such a reference shall not be required from persons who graduated from an educational institution where the Kyrgyz or Russian language was the language of instruction.

2. If an applicant simultaneously applies for granting of citizenship of the Kyrgyz Republic to minor children, depending on the circumstances envisioned by this Law the following documents are to be provided:

a) an original and copies of the marriage certificate (divorce certificate), child's birth certificate, custody or trusteeship certificate or deprivation of parental rights;

b) written notarised agreement from children between 14 and 18 years of age for changing the citizenship.

3. In submitting the documents in accordance with part 2 of Article 14 of this Law, additionally to the documents listed in part 1 of this Article, a copy of one of the following documents shall be provided:

a) if the applicant is married to a citizen of the Kyrgyz Republic – the marriage certificate;

b) if the applicant has achievements in the field of science, technology, or culture, or possesses a profession or qualification, which is in demand in the Kyrgyz Republic – an application from an interested government agency to grant citizenship of the Kyrgyz Republic;

c) if the applicant is a refugee in the Kyrgyz Republic – a refugee identification document. Documents listed in points of clause 2 and point 5 of part 1 of this Article are not required;

d) if the applicant has made investments in the economy of the Kyrgyz Republic – a document confirming the contribution of investments issued by a government agency of the Kyrgyz Republic.

4. If the applicant is applying for citizenship of the Kyrgyz Republic under a simplified procedure, in addition to documents listed in part 1 of this Article, one of the following documents shall be provided by the applicant:

a) if the applicant has one parent who is a citizen of the Kyrgyz Republic - a copy of the applicant's birth certificate and a document confirming the parent's citizenship;

b) if the applicant was born in the Kyrgyz Republic – a document confirming the fact of birth in the Kyrgyz Republic;

c) if the applicant is a person of Kyrgyz ethnicity with citizenship of a foreign state or residing on the territory of a foreign state - a document confirming Kyrgyz ethnicity or Kyrgyz ethnicity of either parent and the document listed in point 6 of part 1 of this Article is not required.

### Article 34. The procedure for receiving and reviewing applications on issues of citizenship of the Kyrgyz Republic

1. Internal affairs agencies of the Kyrgyz Republic, diplomatic representations or consular agencies of the Kyrgyz Republic must accept all applications on issues of citizenship of the Kyrgyz Republic filed as a rule, in person by the applicant or sent by mail and also handed in through a third person in accordance with due circumstances, the list of which is approved by the President of the Kyrgyz Republic.

2. Internal affairs agencies or respective diplomatic representations or consular agencies processing applications on citizenship issues, provide their reasoned and well-grounded conclusions on the applications.

3. The Ministry of Internal Affairs of the Kyrgyz Republic, or the Ministry of Foreign Affairs of the Kyrgyz Republic send their opinions on issues of citizenship and other necessary materials agreed with the national security service of the Kyrgyz Republic to the Com-

mission on Citizenship issues of the Kyrgyz Republic under the President of the Kyrgyz Republic.

4. The total time period for reviewing applications on issues of citizenship by internal affairs agencies and diplomatic representations or consular agencies should not exceed 90 days in accordance with the general procedure and 30 days in accordance with the simplified procedure.

In conclusion of an application for renunciation of citizenship of the Kyrgyz Republic, information should be provided on unfulfilled obligations of the applicant to the state or his/her property obligations in which citizens, companies, agencies, organizations, or public associations have significant interests; information on being prosecuted for a crime or imprisoned as the result of a court sentence; or if the renunciation of citizenship by such a person contradicts the interests of state security of the Kyrgyz Republic.

**Article 35. Charging the state duty and consular fees**

In accordance with the procedure set forth by legislation of the Kyrgyz Republic, in the process of making applications to obtain, restore or renounce citizenship of the Kyrgyz Republic, on the territory of the Kyrgyz Republic a state duty is charged, while outside the Kyrgyz Republic a consular fee is charged.

**Article 36. Commission on Citizenship Issues under the President of the Kyrgyz Republic**

1. For a provisional review of citizenship issues listed in this Law, the President of the Kyrgyz Republic will create a permanent Commission on Citizenship Issues (hereafter – the Commission). The composition and the operating procedures of the Commission shall be determined under Regulations approved by decree of the President of the Kyrgyz Republic.

2. In consideration of applications on issues of citizenship the Commission studies comprehensively the reasoning of the applicant, the opinions of state agencies and the attached documents as listed in Article 33 of this Law.

3. The Commission makes suggestions on each application individually for the consideration of the President of the Kyrgyz Republic.

4. The decision of the Commission shall be validated by minutes to be signed by all members of the Commission participating in the meeting.

**Article 37. Procedure and deadlines for making decisions on issues of citizenship of the Kyrgyz Republic**

1. Consideration of applications concerning issues of citizenship of the Kyrgyz Republic and the making of decisions on these shall, under the general procedure, be made within six months of the date of filing the application with the attachment of duly processed documents.

2. Consideration of applications of persons applying to receive or renounce citizenship of the Kyrgyz Republic and the making of decisions on them shall, under the simplified procedure, be made within three months of the date of filing the application with the attachment of duly processed documents.

3. Change in citizenship becomes effective from the moment of issuing of a decree by the President of the Kyrgyz Republic.

4. Repeated applications on issues of citizenship shall be considered one year after making the prior decision on the issue. In case where significant circumstances relating to

the case have emerged, which were not known and could not have been known to the applicant, the repeated application may be considered at an earlier stage.

### Article 38. Procedure for implementing decrees of the President of the Kyrgyz Republic on issues of citizenship of the Kyrgyz Republic

Implementation of decrees of the President of the Kyrgyz Republic on issues of citizenship of the Kyrgyz Republic in relation to petitioning persons located in the territory of the Kyrgyz Republic is the responsibility of the Ministry of Internal Affairs of the Kyrgyz Republic and its agencies; and on issues pertaining to persons residing outside the Republic, the responsibility of the Ministry of Foreign Affairs, diplomatic representations and consular agencies of the Kyrgyz Republic.

### Article 39. Issuance of passports and residence permits

1. Persons who have obtained citizenship of the Kyrgyz Republic in accordance with the procedure set forth by this Law are issued with Kyrgyz Republic citizen passports by the Kyrgyz Republic internal affairs agencies or diplomatic representatives and consular agencies of the Kyrgyz Republic. In the documents of children under 16 years of age, an entry is made confirming their citizenship of the Kyrgyz Republic.
2. Kyrgyz Republic internal affairs agencies issue foreign citizen or stateless person residence permits to persons residing in the Kyrgyz Republic who are not citizens of the Kyrgyz Republic.

### Article 40. Monitoring of implementation of decisions on issues of citizenship of the Kyrgyz Republic

Monitoring of implementation of decisions on issues of citizenship of the Kyrgyz Republic shall be carried out by the Commission on Citizenship Issues under the President of the Kyrgyz Republic.

### Article 41. Appealing decisions on citizenship issues

1. Decisions on issues of citizenship may be appealed through the court.
2. An appeal can be made within six months of the date a decision was made. A deadline for filing an appeal on a decision on citizenship issues that was missed for a legitimate reason can be revived in a judicial proceeding.

## CHAPTER 6
## FINAL PROVISIONS

### Article 42. Appeal against actions of officials on issues of citizenship

Refusal to consider applications on issues of citizenship of the Kyrgyz Republic and other actions of officials violating the procedure for implementing decisions on issues of citizenship of the Kyrgyz Republic may be appealed to a higher-level official or the court system.

**Article 43. Application of norms of interstate agreements**

If different norms than those contained in this Law are established by interstate treaties in force, the norms of the interstate treaties of which the Kyrgyz Republic is a party, shall be applied.

**Article 44. Coming into force of this Law**

1. This Law comes into force from the day of official publication.

[Published in the Erkin-Too newspaper on 1 June 2007 N 39]

2. With the passing of this law, the Kyrgyz Republic Law On Citizenship of the Kyrgyz Republic of 18 December 1993 N 1333-XII (Vedomosti of Jogorku Kenesh of the Kyrgyz Republic, 1994, N 1, page 1) becomes obsolete.

3. Suggest to the President of the Kyrgyz Republic that he brings his regulations into compliance with this Law within three months.

The Government of the Kyrgyz Republic:

a) within three months introduces draft laws resulting from this Law to the Jogorku Kenesh of the Kyrgyz Republic;
b) brings its regulations in compliance with this Law.

*President of the Kyrgyz Republic K. Bakiev*
*Adopted by Jogorku Kenesh of the Kyrgyz Republic on 27 March 2007*

# Convention Relating to the Status of Stateless Persons

*Adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954.*
*Entry into force: 6 June 1960, in accordance with Article 39.*

**Preamble**

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement,

Have agreed as follows:

## CHAPTER I
## GENERAL PROVISIONS

**Article 1. Definition of the term "stateless person"**

**1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.**

**2. This Convention shall not apply:**

(I) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(II) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(III) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

**Article 2. General obligations**

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

**Article 3. Non-discrimination**

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

**Article 4. Religion**

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

**Article 5. Rights granted apart from this Convention**

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

**Article 6. The term "in the same circumstances"**

For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

**Article 7. Exemption from reciprocity**

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

**Article 8. Exemption from exceptional measures**

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall

not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

**Article 9. Provisional measures**

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

**Article 10. Continuity of residence**

1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

**Article 11. Stateless seamen**

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

## CHAPTER II
## JURIDICAL STATUS

**Article 12. Personal status**

1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

**Article 13. Movable and immovable property**

The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

### Article 14. Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

### Article 15. Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

### Article 16. Access to courts

1. A stateless person shall have free access to the courts of law on the territory of all Contracting States.
2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi.
3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

## CHAPTER III
## GAINFUL EMPLOYMENT

### Article 17. Wage-earning employment

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable that that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.
2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

### Article 18. Self-employment

The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

### Article 19. Liberal professions

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

## CHAPTER IV
## WELFARE

### Article 20. Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

### Article 21. Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

### Article 22. Public education

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

### Article 23. Public relief

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

### Article 24. Labour legislation and social security

1. The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities; remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities

and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

A) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

B) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

1. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

2. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

3. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

## CHAPTER V
## ADMINISTRATIVE MEASURES

### Article 25. Administrative assistance

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

### Article 26. Freedom of movement

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

### Article 27. Identity papers

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

**Article 28. Travel documents**

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

**Article 29. Fiscal charges**

1. The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

**Article 30. Transfer of assets**

1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

**Article 31. Expulsion**

1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

**Article 32. Naturalization**

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

## CHAPTER VI
## FINAL CLAUSES

### Article 33. Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

### Article 34. Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

### Article 35. Signature, ratification and accession

1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.
2. It shall be open for signature on behalf of:

(a) Any State Member of the United Nations;
(b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and
(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

1. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
2. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### Article 36. Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

**Article 37. Federal clause**

In the case of a Federal or non-unitary State, the following provisions shall apply

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

**Article 38. Reservations**

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

**Article 39. Entry into force**

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

**Article 40. Denunciation**

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

**Article 41. Revision**

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

**Article 42. Notifications by the Secretary-General of the United Nations**

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 35:

(a) Of signatures, ratifications and accessions in accordance with article 35;
(b) Of declarations and notifications in accordance with article 36;
(c) Of reservations and withdrawals in accordance with article 38;
(d) Of the date on which this Convention will come into force in accordance with article 39;
(e) Of denunciations and notifications in accordance with article 40;
(f) Of request for revision in accordance with article 41.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at New York, this twenty-eighth day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 35.

# Convention on the Reduction of Statelessness

*Done at New York on 30 August 1961*

The Contracting States

*Acting* in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954

*Considering* it desirable to reduce statelessness by international agreement

*Have* agreed as follows:

## Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he had passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;
(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
(c) that the person concerned has always been stateless.

**Article 2**

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

**Article 3**

For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

**Article 4**

1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

(a) at birth, by operation of law, or
(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;
(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
(c) that the person concerned has not been convicted of an offence against national security;
(d) that the person concerned has always been stateless.

## Article 5

1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article 1 of this Convention.

## Article 6

If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

## Article 7

1. (a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

## Article 8

1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph I of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;
(b) where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:
(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

(I) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
(II) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

**Article 9**

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

**Article 10**

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.
2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

**Article 11**

The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

**Article 12**

1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of article 1 or of article 4 of this Convention, grant its nationality at birth by

operation of law, the provisions of paragraph 1 of article 1 or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2. The provisions of paragraph 4 of article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

**Article 13**

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

**Article 14**

Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

**Article 15**

1. This Convention shall apply in all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

**Article 16**

1 This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This Convention shall be open for signature on behalf of:

(a) any State Member of the United Nations;

(b) any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;

(c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

1. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

2. This Convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 17**

1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.

2. No other reservations to this Convention shall be admissible.

**Article 18**

1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.

**Article 19**

1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.

2. In cases where, in accordance with the provisions of article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.

**Article 20**

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:

(a) signatures, ratifications and accessions under article 16;

(b) reservations under article 17;

(c) the date upon which this Convention enters into force in pursuance of article 18;

(d) denunciations under article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General As-

sembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.

## Article 21

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.

DONE at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General of the United Nations to all Members of the United Nations and to the non-member States referred to in article 16 of this Convention.

# List of Acronyms

| | |
|---|---|
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| NGO | Non-governmental organization |
| USSR | Union of Soviet Socialist Republics |
| CIS | Commonwealth of Independent States |
| ID | Identity document |
| ICCPR | International Covenant on Civil and Political Rights |
| CRC | Convention on the Rights of the Child |
| SCME | State Committee on Migration and Employment |
| SGBV | Sexual and gender based violence |
| UPVK MVD | Department of Passport and Visa Control of the Ministry of Interior |


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