Action Sheet 2

Civil Status and the Prevention of Statelessness



Key message

Displacement often results in the loss or destruction of personal documentation and civil- and other registries. Lack of documentation and other means to prove one's identity can have serious consequences for individuals and communities, including restricted freedom of movement, limited access to life-saving assistance and services, and exposure to harassment or arbitrary arrest and detention. The issue of nationality deserves special attention as displacement can also trigger or increase the risk of statelessness or place stateless persons in an even more precarious legal position.

1. Civil status and documentation in the context of forced displacement

Personal documentation and civil registries establish and provide evidence of the civil and legal status of individuals, including as it relates to birth, parentage, marriage and divorce, death, absence and guardianship. In countries where such registries do not exist or are incomplete, other traditional systems can, to a certain extent, guarantee, the identity of individuals.

In situations of forced displacement, personal documentation is often lost, damaged or destroyed and both formal and traditional civil status systems seriously undermined. In some countries, civil registries may have been incomplete to begin with, certain segments of the population might have never been registered or issued documentation, or existing documents might have ceased to be valid because of a change in the legal or administrative regime.

As a result, individuals may encounter various difficulties in establishing and proving their legal and civil status or identity. Common obstacles include:

- Onerous legal or administrative requirements which internally displaced persons may have difficulty in fulfilling. Replacement documentation and/or recording of events, such as births, marriages, divorce or deaths of relatives, is often subject to strict criteria or high fees. In some cases, it may require displaced persons to return to the area of origin or the place of habitual residence, even if these remain unsafe.
- Discriminatory laws or practices, in particular against women, minority groups or indigenous persons, may prevent them from recording events and acquiring documentation or replacing lost documentation. In some cases, individuals face additional discrimination as a direct result of being displaced, in particular if they are viewed with suspicion or hostility by local authorities.
- National or local authorities may lack the capacity, including financial resources and expertise, to maintain civil status registries or issue replacement documentation. This is especially the case where conflict or natural disasters have disrupted the functioning of public institutions or where displacement is occurring on a large scale. In some cases, the authorities may also lack political willingness or under-estimate the importance of civil status and related documentation.
- Traditional systems, which often rely on witnesses and the knowledge of the elderly at the village or community level, can be undermined in situations of displacement owing to

separation of families and communities and the break-down of community structures and authority.

Access to registration or documentation can be obstructed by various logistical or practical difficulties, including restrictions on freedom of movement and/or inability to travel, for instance because of ongoing conflict or factors such as age or disability, lack of knowledge of the language of registration, and poor literacy.

Lack of documentation and an inability to register events relating to civil status can have serious consequences for individuals and communities. It can result in restricted freedom of movement, limited access to life-saving assistance and services, exposure to harassment, arbitrary arrest and detention, and various other protection risks. As an example:

- Absence of birth registration and certificates can make it difficult to obtain a legal identity, which is necessary in order to access education, health care, social benefits.
- Lack of death registration and certificates can make it difficult to manage, inherit and/or reclaim lost property. Where regulations regarding missing or absent persons are inadequate, the spouse and other family members may be prevented from reclaiming property, make decisions regarding their children, or marry again.

Documentation can broadly be divided into two categories:

- **Citizenship or civil status documents**, which provide proof of identity and facilitate the exercise of various rights. These include passports, identity documents, birth, death, marriage and family certificates, residence and voting cards, and housing, land and property documents.
- **Documents specific to displacement**, which are only provided to those affected by displacement. They can both prove identity and/or entitle the holder to access special assistance or services. Such documents are not necessarily needed or desirable in all cases and can, if not carefully managed, expose displaced individuals and communities to discrimination, stigma and other risks.

1.1 Preventing and responding to lack of civil status and/or documentation

Registration of civil status and issuance of documentation are the responsibility of the State. Every effort must be made to support and strengthen national systems to ensure that internally displaced persons have **full** and equal access to civil status registries and documentation, including replacement documentation. This can be achieved in various ways, including by building the capacity of the national system through financial or technical support and training, by cancelling or easing administrative requirements, and/or by addressing the various obstacles faced by displaced persons. As an example, in cases where freedom of movement is limited, temporary or mobile arrangements can be made to improve access to registration and documentation.

The issuance of displacement specific legislation or documentation is not necessarily needed or desirable in all cases and can, if not carefully managed, expose displaced individuals and communities to discrimination, stigma and other risks. Where displacement specific responses are needed care must be taken to avoid the creation of parallel systems that may result in differences in treatment and a divide between the displaced and the wider population. It must also be ensured that registration and/or documentation as an IDP does not result in limitations on various rights, such as freedom of movement, the right to return to the area of origin, to reclaim lost property, or to vote and stand for public office.

Statutory and customary law often overlap in plural legal systems. Each has advantages and disadvantages in resolving problems faced by IDPs. For example, customary law might offer fair and expedient mechanisms to resolve disputes, but women generally have fewer rights than under statutory law. The latter, in turn, often does not recognize marriages and land

ownership under customary law, so widows and female-headed households often find themselves without legal standing as regards inheritance, pension or other rights that require proof of marriage and land ownership.

2. Statelessness in the context of internal displacement

Nationality is usually associated with civil status. The right to a nationality is often referred to as "the right to have rights" because of its importance as the basis for claiming other rights, ranging from recognition before the law to access to basic services.

Most human rights are to be enjoyed by everyone within the jurisdiction of the State, although a few rights, such as some political rights, can be limited to nationals. Non-citizens, including stateless persons, however often face practical obstacles to exercising their rights, including recognition as a person before the law, education and freedom of movement. A **stateless person** is a person who is not considered as a national by any State under the operation of its laws. A person who technically holds a nationality but does not receive the benefits associated with nationality may be considered to be *de facto* stateless.

The term **nationality/citizenship** usually refers to the existence of a legal bond between a person and a State as provided for under the State's laws. Nationality generally arises from descent (*jus sanguinis*), birth on the territory of the State (*jus soli*), naturalization, or upon state succession.

Becoming internally displaced does not automatically affect a person's nationality status; most internally displaced persons remain nationals of their country. In some cases, however, there might be a close **connection between statelessness and internal displacement:**

- Statelessness can be a cause or a contributing factor to internal displacement, such as in cases where people have been forced to flee due to discrimination, including through the arbitrary deprivation of nationality of specific communities.
- Internal displacement can lead to statelessness, for instance in cases where territorial boundaries have been redrawn subsequent to displacement, or where birth registration is flawed or absent.
- Statelessness can serve as an obstacle to return or relocation, particularly when it prevents people from enjoying their rights, accessing basic services and establishing a sustainable livelihood.

Statelessness can result from a variety of causes, including:

- Discriminatory laws and practices;
- Conflict of nationality laws between States;
- The transfer of territory from one State to another;
- A failure to register children at birth;
- Arbitrary deprivation of nationality or denationalization of individuals or groups by the State;
- Administrative or procedural problems, such as excessive fees, lack of appeal or review procedures, or inability to obtain documentation; and
- Individual renunciation of nationality without acquisition of another nationality.

In situations of internal displacement, failure to register children at birth and loss of documentation testifying to nationality are frequent causes of *de facto* statelessness.

Lack of nationality can have serious consequences for stateless persons. These are frequently exacerbated during periods of internal displacement and include the inability to claim protection from relevant authorities; arbitrary arrest and prolonged detention; unfair travel

restrictions and limitations of freedom of movement; denial of employment or access to basic rights and services; inability to register marriages, the birth of children or the death of relatives; and denial of the right to stand for or vote in elections. On occasions, stateless persons have also been denied access to humanitarian assistance, both by relevant authorities and by the international humanitarian community.

Women often face particular difficulties due to discriminatory laws and practices relating to nationality. In some states, women who marry non-nationals are automatically deprived of their nationality, often without being able to acquire the nationality of their spouses. In addition, they might be prevented from re-establishing their former nationality in the event of a divorce, even though they might never have acquired, or have been deprived of, the nationality of their spouses.

Women are also frequently barred from passing their nationality on to their **children**, which might result in the child becoming stateless and in the denial of custody rights and restricted access for the mother to her children upon divorce or death of the spouse. A failure to register and extend nationality to displaced children, children born out of wedlock, children of minority groups and children of refugee, asylum-seeking or migrant families, places such children at particular risk of statelessness.

2.1 Preventing and responding to statelessness

Although States have committed themselves to preventing and reducing statelessness, lack of nationality remains a widespread human rights violation that places the lives and wellbeing of millions at risk.

In situations of displacement, States should make every effort to ensure the continuity of basic civil registration mechanisms, particularly the issuance of birth certificates to displaced people as a means to prevent statelessness. Stateless persons who habitually reside in the country and who have been displaced should continue to be authorized to exercise and enjoy their rights in areas of displacement and be protected against expulsion.

An adequate humanitarian response to statelessness will, in most cases, consist of efforts to protect the right to a nationality, by making sure that States grant nationality, and sustain efforts towards persons whose nationality status is in dispute or in doubt so that they are not discriminated against and are able to enjoy their rights. In exceptional cases, resettlement to a third country might need to be considered.

Some challenges in dealing with statelessness include:

- Contentious ethnic and political disputes, which often are among the root causes of statelessness. In some cases, States may perceive advocacy related to granting of nationality with hostility as constituting interference with domestic affairs.
- Lack of awareness and understanding of the consequences of statelessness by those affected. Stateless persons may not realize that they have lost their nationality or that it may result in deprivation of their rights. Communicating this may be difficult when those affected are illiterate or poorly educated.
- Failure to identify incidents of statelessness or prioritize responses to statelessness.

3. Role of human rights and humanitarian actors

International actors working on civil status issues, including documentation, should coordinate their positions and activities to ensure that a coherent and consistent message is delivered to national interlocutors at local and national levels. Efforts should be made to assist national and local authorities in exchanging information and in coordinating actions when documentation problems arise because of differences in practices or application of laws or regulations.

3.1 Activities relating to civil status and documentation

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Assessment • Assess and monitor problems related to civil status in statutory and customary la
(see Part III.1) settings to identify systemic shortcomings and concerns as regards IDPs.
Contingency planning • Support the authorities to develop a contingency plan that includes measures safely store existing records, update registries, protect confidentiality and facilita issuance of documents in emergency situations.
 Advocacy (see Part IV.3) Advocate with relevant authorities to ensure that internally displaced persons has access to civil status registration and documentation, including replacement documentation, without discrimination and without having to return to the area origin or travel in or through insecure areas. Encourage the authorities to cancel or ease onerous administrative or oth requirements and use flexible criteria and rules of evidence.
 Provide advice to relevant authorities and make recommendations on ways improve civil and legal status registration and documentation, in particular as relates to displaced persons. Where needed, consider building local and/or national capacity by providing training or modest financial or material assistance equipment to help the authorities to improve existing structures. Where existing structures are overwhelmed or mal-functioning, the authorities to provide it registration and documentation to internally displaced persons and oth affected populations. As an example, in emergency situations temporar documentation. On exceptional basis and following a careful review and assessment, support national authorities in providing displacement specific documentation to IDPs for specific purposes, such as to access certain assistance or services.
 Legal aid and advice to IDPs (see Part IV.5) Support and build the capacity of national lawyers, paralegals, NGOs and for points within the IDP community that can provide legal and other advice an assistance related to civil status and documentation to displaced persons. The can involve creating or supporting a network of legal or paralegal aid centres. Accompanying people to documentation centres and intervening with officials charge of registering civil status and delivering documents. Displaced persons may also need help to, for example, fill out forms, gath required documentation or alternative forms of evidence, and prepare and for complaints in court or administrative bodies.
 Information and outreach (see Part IV.6) Support national campaigns that inform people, in their own language, about c status requirements, procedures and where documents can be obtained. Mobilities teams can be used to facilitate access to isolated areas and IDPs with specific needs Engage the IDP community in identifying documentation and related protection risks specific to certain groups. This can include unaccompanied or separate children, other IDP children, ethnic minorities, indigenous peoples and widows.
 Community mobilization (see Part IV.10) Work with the community to maximize complementarities between customary and statutory law and mechanisms. As an example, provide support to alternative community methods/practices, that conform with international human rights law, resolve disputes related to identity, age, parentage and ownership.

Birth registration • Advocate for and assist national and local authorities in ensuring that all children are registered at birth and provided with birth certificates. This can be doen in various ways, including by providing advice, technical expertise, equipment and/or modest grants. Where birth registration has been delayed, arrangements must also be made to register older children.

Do you have suggestions about other activities? If so, share them with us at hqidphb@unhcr.org

3.2 Activities relating to the prevention of statelessness and the protection of stateless persons

All human rights and humanitarian actors can play a role in preventing and responding to statelessness. Such activities should, where possible, take place in consultation with UNHCR which is mandated to promote the prevention and reduction of statelessness and provide protection to stateless persons.¹ UNHCR can, upon request, provide legal, technical and operational expertise and advice to governments and partner organizations on ways to address statelessness.

	In our work we can	
	Assessment (see Part III.1)	• Ensure that protection assessments identify, where relevant, (i) individuals or groups who are stateless or are at risk of statelessness, (ii) the main causes for statelessness where it occurs, (iii) the main protection risks that result from statelessness, (iv) and any remedies or coping mechanisms that are already in place.
	Coordination	• Ensure that protection working groups adequately address issues of nationality and statelessness where these arise. Where possible, inform and work with UNHCR, which has a mandate to promote prevention and reduction of statelessness and provide protection to stateless persons.
	Legislation and administrative procedures	 Encourage, support or undertake a review of national laws, regulations, policies, procedures and practices to ensure that they adequately protect the right to acquire a nationality, including as regards protection against discriminatory deprivation, renunciation or loss of nationality.
	Advocacy (see Part IV.3)	 Following a review of national legislation, advocate with relevant authorities for the enactment, improvement or repeal of legislation to ensure that it adequately protects the right to nationality. UNHCR can offer technical guidance and support to authorities when preparing and implementing national legislation on statelessness. Where either the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness have not been adopted by the State, or where their adoption has been accompanied by reservations, advocate for the adoption and implementation of these instruments or the lifting of reservations.
	Assistance (see Part IV.7)	• Ensure that stateless persons are not discriminated against in distribution of relief and that they have equal access to all assistance and services, including food and non-food items, education, and health-care that is provided to persons of concern.

¹ UNHCR's mandate with regard to statelessness is based on Art. 11 CRS, read together with General Assembly resolutions and resolutions of the agency's own Executive Committee, in particular ExCom Conclusion 106 on identification, prevention and reduction of statelessness and protection of stateless persons.

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Interventions • Take action where needed to ensure that stateless persons are not being harassed, discriminated against, arbitrarily arrested or detained, or otherwise placed at risk, due to their lack of nationality.

Do you have suggestions about other activities? If so, share them with us at hqidphb@unhcr.org

4. Key international legal principles

4.1 Registration and documentation

International (and regional) human rights law requires States to take all necessary measures to ensure the full, equal and effective enjoyment of all rights and freedoms, including the right to equal recognition of and protection before the law.² This requires the authorities to ensure that everyone, including internally displaced persons, have a legal identity as well as the means to prove their identity if necessary in order to exercise their rights, for instance through civil status documentation.

This obligation is further outlined in Principle 20 of the Guiding Principles. It requires States to facilitate the issuance of new documents or the replacement of documents lost during displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents. The list of documents includes those needed for the enjoyment of civil and political rights, such as protection against arbitrary arrest and detention, freedom of movement, and the right to vote, as well as economic, social and cultural rights, including education, adequate housing, and health care.

Even when IDPs are arbitrarily deprived of documents by non-state actors or private individuals, the State remains responsible for providing effective protection or safeguarding their rights.

Children are entitled to special protection and care under the law. All children should be registered immediately after birth and given a name. Where a child is illegally deprived of some or all of the elements of his or her identity, States should provide appropriate assistance and protection, with a view to speedily re-establishing that identity.³

Women have equal rights with men to recognition before the law and should be provided with documentation in their own name.⁴ Some conventions also specifically require State Parties to ensure registration of marriages in an official registry, in order to ensure that the equal rights of both parties are fully respected during and upon dissolution of marriage.⁵

International humanitarian law requires occupying powers to take all necessary steps to facilitate the identification of children and the registration of their parentage. In addition, all parties to a conflict should ensure that family or identity documents are not taken away from civilian detainees without a receipt being given. Deaths occurring during internment must be registered and death certificates issued.⁶

² See, at the international level, Arts. 6 and 7 of UDHR); Arts. 16 and 26 of ICCPR; Art. 15 of CEDAW; Art. 5(a) of ICERD; and Arts. 18 and 24 of CMW. At the regional level, see also Arts. 3 and 5 of AfCHPR and Arts. 3 and 8 of its Protocol on the Rights of Women in Africa; Arts. 3 and 24 of AmCHR; and Art. 18 of ArCHR. See also Principle 20 of the Guiding Principles on Internal Displacement. This right is generally considered to non-derogable. See e.g. Art. 4(2) of ICCPR and Art. 27(2) of AmCHR.

³ See e.g. at the international level, Art. 24 of ICCPR and Arts. 7 and 8 of CRC. At the regional level, Art. 6 of AfCRWC; Art. 18 of AmCHR and Art. 7 of the Covenant on the Rights of the Child in Islam.

 $^{^4}$ This right is inherent in the non-discrimination provisions contained in most human rights instruments. See also Art. 4(2)(k) of the Protocol to the AfCHPR on the Rights of Women in Africa.

⁵ See e.g. Art. 16(2) of CEDAW; the 1963 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Art. 21(2) of AfCRWC; and Art. 6(d) of the Protocol to the AfCHPR on the Rights of Women in Africa. See also GA Res 2018(XX) of 1 Nov 1965 on Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

⁶ See e.g. Arts. 50, 97(6) and 129 of the Fourth Geneva Convention.

4.2 Statelessness

4.2.1 Prevention of statelessness

International (and regional) human rights law guarantees everyone the right to a nationality, including the right to acquire, change and retain nationality, and the right to pass nationality on to one's children, without discrimination of any kind.⁷ Internally displaced persons should under no circumstances be deprived of, or prevented from acquiring a nationality, or from passing it on to their children, because they are displaced.

The granting or withdrawal of nationality is a sovereign act of States and, as such, is regulated by national law and regulations. The right to nationality however, requires States to take all appropriate steps, both internally and in cooperation with other States, to prevent and respond to statelessness and ensure that everyone has a nationality.

The 1961 Convention on the Reduction of Statelessness, which aims to prevent and reduce statelessness, also specifically requires States to refrain from arbitrarily denying or depriving individuals of their nationality; to ensure non-discrimination, due process and procedural guarantees when granting or withdrawing nationality; and to facilitate naturalization of stateless persons to the greatest extent possible.

Women are guaranteed equal rights with men in all matters related to nationality. Neither marriage nor divorce, or change or loss of nationality by the husband during marriage, should change or otherwise affect the nationality of the wife, render her stateless or force upon her the nationality of her husband.⁸

All **children** must be registered immediately upon birth and have the right to a name and a nationality. States must also take action to preserve the identity of the child, including nationality, name and family relations, and provide assistance and protection to re-establish identity where it has been lost.⁹ Some conventions specifically require States to grant children born in their territory nationality if they would otherwise be rendered stateless.¹⁰

4.2.2 Protection of stateless persons

Stateless persons are entitled to the full and effective enjoyment of human rights and freedoms. The only exceptions to this rule relate to the right to participate in government, which under the ICCPR can be limited to citizens of the State, and to some economic rights under the ICESCR, which allows developing States to determine to what extent such rights can be guaranteed to non-nationals.¹¹

The 1954 Convention relating to the Status of Stateless Persons specifically addresses some of the rights of stateless persons. It encourages States to accord stateless persons lawfully residing on their territory a standard of treatment comparable, in some instances, to that accorded to nationals of the State and, in other instances, to that accorded to nationals of a foreign country or aliens generally in the same circumstances. The Convention also

⁷ See Art. 15 of UDHR; Art. 24 of ICCPR; Art. 9 of CEDAW; Arts. 7 & 8 of CRC; Art. 5(d)(iii) of ICERD; Art. 29 of CMW; the 1954 Convention Relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness; and the 1957 Convention on the Nationality of Married Women. See also at the regional level, Art. 23 of AfCHPR and Art. 6(g) and (h) of its Protocol on the Rights of Women; Art. 6 of AfCRWC; Art. 18 and 20 of AmCHR; Art. XIX of AmDHR; Art. 24 of ArCHR; Art. 7 of Covenant on the Rights of the Child in Islam; and the1997 European Convention on Nationality.

⁸ The equal rights of women and men are guaranteed in the non-discrimination provisions of most human rights instruments, such as Arts. 1, 2 and 7 of UDHR; Arts. 3 and 26 of ICCPR; Art. 2 of CRC; and generally in CEDAW. More specifically see Art. 9 of CEDAW; Arts. 1-3 of the Convention on the Nationality of Married Women; and the 1961 Convention on the Reduction of Statelessness.

⁹ Arts. 7(1) and 8 of CRC; Art. 24(2) of ICCPR; Art. 6 of AfCRWC; Art. 18 of AmCHR; and Art. 7 of the Covenant on the Rights of the Child in Islam.

¹⁰ See Art. 1 of the Convention on the Reduction of Statelessness; Art. 6(4) of AfCRWC; Art. 20 of AmCHR; and the European Convention on Nationality.

¹ Art. 2(3) of ICESCR and Art. 25 of ICCPR.

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guarantees stateless persons the right to identity and travel documents, and protects them from expulsion, except on grounds of national security or public order.¹²

5. Key Actors

- At the national/local level, key actors include the ministry of interior, civil and administrative courts and tribunals, municipal agencies responsible for maintaining records and/or issuing documentation, civil society and NGOs, lawyer's associations, and displaced individuals and communities themselves.
- At the international level, key actors include UNHCR, which is mandated to promote prevention and reduction of statelessness and contribute to the protection of stateless persons; UNFPA, UNICEF, UNDP, OHCHR, the International Commission on Civil Status, the Hague Conference on Private International Law (HccH) and NGOs such as Plan International.

Resources

Civil status and documentation

- Birth Registration and Armed Conflict, UNICEF, 2007.
 www.unicef-irc.org/publications/pdf/insight-br-eng.pdf
- Implementation of the 1998 UN Guiding Principles on Internal Displacement in Domestic Law and Policy: Study on the Recovery of Personal Documentation, by Foley, Nesse and McCallin, forthcoming in a manual on domestic laws and policies on internal displacement by the Brookings Institution-University of Bern Project on Internal Displacement and the American Society of International Law.
- Guide pratique international de l'état civil, Commission internationale de l'état civil, 2006.
 www.ciec1.org

Statelessness

- The World's Stateless People: Q & A, UNHCR, 2006. www.unhcr.org/statelessness
- Refugees Magazine, Special Report: The Strange Hidden World of the Stateless, No. 147, Issue 3, 2007: www.unhcr.org/statelessness
- Nationality and Reduction of Statelessness: International, Regional and National Perspectives, Refugee Survey Quarterly, Vol. 25, No. 3, 2006.
- Nationality and Statelessness: A Handbook for Parliamentarians, UNHCR/IPU, 2005.
 www.unhcr.org/statelessness
- Women 2000 and Beyond: Women, Nationality and Citizenship, UN Division for the Advancement of Women, June 2003. www.un.org/womenwatch/daw/public/jun03e.pdf
- The Human Rights of Stateless Persons, by Weissbrodt and Collins, in Human Rights Quarterly, Vol 28, Number 1, February 2006, pp. 245-276. www.press.jhu.edu/journals/human_rights_quarterly
- Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention relating to the Reduction of Statelessness, UNHCR, 1996, revised 1999.
 www.unhcr.org/statelessness

Useful websites

- United Nations High Commissioner for Refugees (UNHCR): www.unhcr.org/statelessness
- Commission internationale de l'etat civil (CIEC): www.ciec1.org
- Hague Conference on Private International Law (HccH): www.hcch.net
- Universal Birth Registration Database: http://ssl.brookes.ac.uk/ubr/

¹² Arts. 27, 28 and 31of the Convention relating to the Status of Stateless Persons.