

International and Regional Instruments

Subtheme	International norms and good practices	Sources
1954 Convention	<ul style="list-style-type: none"> State is party to the 1954 Convention with no reservations, and where legal regime allows, this has direct effect. 	UN Convention Relating to the Status of Stateless Persons, 1954
1961 Convention	<ul style="list-style-type: none"> State is party to the 1961 Convention with no reservations, and where legal regime allows, it has direct effect. 	UN Convention on the Reduction of Statelessness, 1961
Other instruments	<ul style="list-style-type: none"> State is party to the relevant international and regional instruments with no reservations (statelessness specific instruments are given more weight in assessment): <ul style="list-style-type: none"> European Convention on Nationality (ECN), 1997 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (CASRSS), 2006 European Convention on Human Rights (ECHR), 1950 Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive) Convention on the Rights of the Child (CRC), 1989 International Covenant on Civil and Political Rights (ICCPR), 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965 International Convention on the Rights of All Migrant Workers and Members of their Families (CMW), 1990 Convention on the Rights of Persons with Disabilities (CRPD), 2006 	European Convention on Nationality, 1997 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 European Convention on Human Rights, 1950 Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive) Convention on the Rights of the Child, 1989 International Covenant on Civil and Political Rights, 1966 International Covenant on Economic, Social and Cultural Rights, 1966 Convention on the Elimination of all Forms of Discrimination Against Women, 1979 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 International Convention on the Elimination of All Forms of Racial Discrimination, 1965 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 Convention on the Rights of Persons with Disabilities, 2006

Stateless Population Data

Subtheme	International norms and good practices	Sources
Availability and sources	<ul style="list-style-type: none"> • Qualitative and quantitative analysis of statelessness in the national context is available, and statelessness has been mapped. • State collects reliable quantitative data on stateless people on its territory and procedures for determining statelessness. • State gathers, analyses, and makes available statistical data and trends in relation to asylum, immigration, and statelessness, that is disaggregated by sex and age. 	<p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014): State parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Institute on Statelessness and Inclusion, The World’s Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p>
Stateless in detention data	<ul style="list-style-type: none"> • State has reliable measures in place to count stateless people detained, held, and released from immigration detention, that are disaggregated and routinely published. 	<p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014): State parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Institute on Statelessness and Inclusion, The World’s Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> <p>Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p>

Statelessness Determination and Status

Subtheme	International norms and good practices	Sources
All Groups		
Definition of a stateless person	<ul style="list-style-type: none"> The definition of a stateless person and the exclusion provisions align with the 1954 Convention. 	UN Convention Relating to the Status of Stateless Persons, 1954 : Articles 1(1) & 1(2).
Training	<ul style="list-style-type: none"> Training is provided to different government bodies on statelessness and relevant procedures. Training is provided for judges and lawyers on statelessness. 	UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016) : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for stateless status and refer them to appropriate channels. UNHCR, Statelessness Determination Procedures and the Status of Stateless Persons (“Geneva Conclusions”) (2010) : It is recommended that States provide specialised training on nationality laws and practices, international standards, and statelessness to officials responsible for making statelessness determinations. UNHCR Executive Committee, Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons.
Existence of a dedicated SDP	<ul style="list-style-type: none"> State identifies stateless people within its jurisdiction to provide them appropriate treatment to comply with its Convention obligations. State has established a statelessness determination procedure in law, leading to a dedicated stateless status. 	UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016) : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention. UNHCR, Handbook on Protection of Stateless Persons (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments.
Access to nationality	<ul style="list-style-type: none"> State expedites naturalisation procedures for stateless people providing preferential treatment compared to the general rules for foreign nationals. Stateless people are exempted from requirements such as nationality or integration tests, language testing, application fees, or minimum income requirements. 	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 32. UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.

	<ul style="list-style-type: none"> • Previous criminal convictions or 'good character' requirements do not unreasonably prevent stateless people from acquiring nationality. 	<p>ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality. Council of Europe Committee of Ministers, Recommendation No. R (99) 18 of the Committee of Ministers to member States on the avoidance and reduction of statelessness (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state.</p>
Group 1: Dedicated statelessness determination procedure (SDP), leading to a dedicated stateless status		
<p>Access to procedures</p>	<ul style="list-style-type: none"> • To facilitate access, the procedure is located centrally or locally, appropriate to the country context, and competent authorities have the necessary expertise. • Accessible information is available to potential applicants on the procedure (e.g., wide dissemination, targeted campaigns, counselling) in a language they understand. • Application procedures are flexible and accessible (e.g., oral submissions permitted, simple forms in different formats, no language restrictions etc.). • There are safeguards in law permitting State authorities to initiate a procedure (<i>ex officio</i>). • There is no restriction on access based on lawful stay or residence and there is no time limit for access. • There is cooperation between agencies that may have contact with stateless people. 	<p>UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016): It is important that examiners develop expertise while ensuring that the procedures are accessible. Information on the procedure and counselling services must be available to potential applicants in a language they understand. It is recommended that governmental authorities be authorised to initiate procedures <i>ex officio</i>. Access to the SDP must be guaranteed, needs to be open to anyone regardless of lawful stay or residence, and must not be subject to time limits. Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice. UNHCR, Handbook on Protection of Stateless Persons (2014): States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise. For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.). Given that individuals are sometimes unaware of SDPs or hesitant to apply, procedures can usefully contain safeguards permitting State authorities to initiate a procedure. ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): Bureaucratic difficulties (e.g., complicated forms, inflexible procedures, language restrictions etc.) can impede access to SDPs. There is no basis in the 1954 Convention for requiring lawful stay, nor to set time limits for individuals to claim stateless status.</p>

<p>Assessment</p>	<ul style="list-style-type: none"> • The burden of proof is shared between applicant and examiner, taking into consideration the difficulties inherent in proving statelessness. • The standard of proof is the same as in asylum procedures ('reasonable degree'), in keeping with the humanitarian objective and inherent difficulties of proving statelessness in the likely absence of documentary evidence. • Measures are in place to guarantee substantive equality for women, children, and other groups at risk of discrimination in procedures. State follows the principle of the best interests of the child. • Clear guidance is available to determining authorities. 	<p>Convention on the Rights of the Child, 1989 Convention on the Rights of Persons with Disabilities, 2006: Article 18. CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014): Nationality laws may discriminate directly or indirectly against women. Legislative provisions that appear gender neutral may in practice have a disproportionate and negative impact on the enjoyment of the right to nationality by women. UNHCR, Good practices in nationality laws for the prevention and reduction of statelessness (2018): The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence. UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016): SDPs must take into consideration the difficulties inherent in proving statelessness. UNHCR, Handbook on Protection of Stateless Persons (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts). States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree'). Due to discrimination, women might face additional barriers in acquiring documentation (e.g., birth certificates or other identification documents). Children may face acute challenges in communicating basic facts with respect to their nationality. States must follow the principle of the best interests of the child. UNHCR, Statelessness Determination Procedures and the Status of Stateless Persons ("Geneva Conclusions") (2010): In statelessness determination procedures, the burden of proof should therefore be shared between the applicant and the authorities responsible for making the determination. Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence. ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances.</p>
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<p>Procedural safeguards</p>	<ul style="list-style-type: none"> • (Free where available) legal aid is offered to all applicants on the same basis as asylum applicants. • Applicants have the right to an individual interview. • Applicants have the right to (free) interpreting and translation. • Quality assurance audits of the procedure are undertaken. • Access to UNHCR is guaranteed as a safeguard in the procedure. • Decisions are given in writing with reasons. • There is a time limit for decisions, and it is no more than six months (except in exceptional circumstances where it should be no more than 12 months). • Referral mechanisms are in place including cross-referral between asylum procedures and the SDP. 	<p>UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016): Quality assurance audits of SDPs are considered good practice. Efficient referral mechanisms should be established and officials who may be in contact with stateless persons trained to identify and refer potential applicants.</p> <p>UNHCR, Handbook on Protection of Stateless Persons (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means. The right to an individual interview is essential. The right to assistance with interpretation/translation is essential. States are encouraged to guarantee access to UNHCR as a safeguard in the procedure. States are encouraged to incorporate the safeguard that decisions are made in writing with reasons. It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months.</p> <p>ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): If State funded legal aid is available, it should be provided to stateless claimants. If there is no State funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people. Assistance should be available for translation and interpretation. Cross-referral systems should exist in cases where the two determination procedures (refugee and stateless) are not conducted in a joint framework.</p>
<p>Protection during the procedure</p>	<ul style="list-style-type: none"> • Applicants have access to Convention rights based on presence and being ‘lawfully in’ the territory (i.e., identity documents, self-employment, freedom of movement, protection against expulsion). It is recommended that applicants for stateless status receive the same treatment as asylum-seekers. 	<p>UNHCR, Handbook on Protection of Stateless Persons (2014): An individual awaiting a decision is entitled, at a minimum, to all rights based on presence in the territory as well as ‘lawfully in’ rights (including identity papers, the right to self-employment, freedom of movement, protection against expulsion). It is recommended that individuals receive the same treatment as asylum-seekers. Allowing individuals to engage in wage-earning employment can reduce pressure on State resources and contributes to dignity and self-sufficiency. The status of those awaiting statelessness determination must reflect applicable</p>

	<ul style="list-style-type: none"> • Applicants are entitled to engage in wage-earning employment and receive assistance to access basic rights (e.g., healthcare, shelter, social security). • Applicants are not at risk of detention or expulsion during the SDP procedure. 	<p>human rights such as, assistance to meet basic needs. Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention.</p> <p>ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): States should refrain from expelling or removing an individual pending the outcome of the determination process.</p>
Appeals	<ul style="list-style-type: none"> • There is an effective right of appeal to an independent body against first instance decisions. • Applicants have access to (free where available) legal aid and access to legal counsel. • There is no evidence of significant errors in decision making. 	<p>UNHCR, Handbook on Protection of Stateless Persons (2014): An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP. The applicant should have access to legal counsel and, where free legal assistance is available, it should be offered to applicants without financial means.</p> <p>ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): Applicants should have access to legal counsel both at first instance and on appeal.</p>
Stateless status	<ul style="list-style-type: none"> • Recognition of statelessness results in automatic permission to stay/legal status and renewable residence rights for minimum two years (preferably up to five years). • State grants recognised stateless people other Convention rights, including: <ul style="list-style-type: none"> ○ A travel document and identity documents ○ Family reunification ○ Permission to work ○ Primary, secondary, and higher education ○ Social security and healthcare ○ Right to vote • Any revocation or cessation of residence rights based on statelessness (if the person acquires a nationality) is subject to a proportionality test under international human rights law. 	<p>UN Convention Relating to the Status of Stateless Persons, 1954: Articles 7, 17, 22, 23, 24, 28.</p> <p>UNHCR, Handbook on Protection of Stateless Persons (2014): The status granted to a stateless person in a State party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable. Although the 1954 Convention does not address family unity, States parties are nevertheless encouraged to facilitate the reunification of those with recognised stateless status in their territory with their spouses and dependents. The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit. If an individual recognised as stateless subsequently acquires or reacquires the nationality of another State, they will cease to be stateless under the 1954 Convention. This may justify the cancellation of a residence permit on the basis of statelessness, although proportionality considerations under international human rights law, such as the right to a private and family life should be taken into account.</p>

Group 2: Procedures in which statelessness can be identified and other routes to regularisation		
<p>Procedures in which statelessness can be identified and other routes to regularisation</p>	<ul style="list-style-type: none"> • There is an effective and accessible procedure or a combination of procedures enabling the applicant to have their further stay and status determined. • Statelessness determination is an explicit objective of the mechanism in question (though not necessarily the only one). 	<p>UN Convention Relating to the Status of Stateless Persons, 1954 UNHCR, Handbook on Protection of Stateless Persons (2014): It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. European Court of Human Rights, Hoti v. Croatia (2018): The State has a positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of their further stay and status determined.</p>
<p>Access to procedures</p>	<ul style="list-style-type: none"> • There are obligations in law on authorities to consider a claim of statelessness within a relevant procedure and authorities are trained to identify and refer stateless people to a relevant procedure. • There are clear, accessible instructions for stateless people on how to claim their rights under the 1954 Convention and/or be identified as stateless. • The examination and/or identification of statelessness is conducted by an appropriate, accessible competent body with relevant expertise. • There is cooperation between agencies that may have contact with stateless people. 	<p>UN Convention Relating to the Status of Stateless Persons, 1954 UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016): Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. Access to the procedure must be guaranteed. Information on the procedure and counselling services must be available to potential applicants in a language they understand. It is important that examiners develop expertise while ensuring that the procedures are accessible. Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice. UNHCR, Handbook on Protection of Stateless Persons (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.). States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise.</p>
<p>Assessment</p>	<ul style="list-style-type: none"> • The burden of proof is shared between applicant and examiner, taking into consideration the difficulties inherent in proving statelessness. • The standard of proof is the same as in asylum procedures ('reasonable degree'), in keeping with the humanitarian 	<p>UNHCR, Good practices in nationality laws for the prevention and reduction of statelessness (2018): The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence.</p>

	<p>objective and inherent difficulties of proving statelessness in the likely absence of documentary evidence.</p> <ul style="list-style-type: none"> • Clear guidance is available to determining authorities on how to identify or determine statelessness. 	<p>UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016): SDPs must take into consideration the difficulties inherent in proving statelessness.</p> <p>UNHCR, Handbook on Protection of Stateless Persons (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts). States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree').</p> <p>UNHCR, Statelessness Determination Procedures and the Status of Stateless Persons ("Geneva Conclusions") (2010): In statelessness determination procedures, the burden of proof should be shared between the applicant and the authorities responsible for making the determination. Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence.</p> <p>ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances.</p> <p>European Court of Human Rights, Hoti v. Croatia (2018): State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness. If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high.</p>
<p>Procedural safeguards</p>	<ul style="list-style-type: none"> • (Free where available) legal aid is offered to all stateless people. • Stateless people have the opportunity to claim their statelessness in an individual interview. • (Free) interpreting and translation is available to stateless people. • Decisions are given in writing with reasons. 	<p>UNHCR, Handbook on Protection of Stateless Persons (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means. The right to an individual interview is essential. The right to assistance with interpretation/translation is essential. States are encouraged to incorporate the safeguard that decisions are made in writing with reasons.</p> <p>ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): If State funded legal aid is available, it should be provided to stateless claimants. If there is no State funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people. Assistance should be available for translation and interpretation.</p>

<p>Protection</p>	<ul style="list-style-type: none"> • The protection status granted to a stateless person reflects international standards. • State grants stateless people other Convention rights, including: <ul style="list-style-type: none"> ○ Residence ○ Travel document ○ Family reunification ○ Permission to work ○ Education ○ Healthcare ○ Social security ○ Right to vote 	<p>UN Convention Relating to the Status of Stateless Persons, 1954 UNHCR, Handbook on Protection of Stateless Persons (2014): The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable. Although the 1954 Convention does not address family unity, States parties are nevertheless encouraged to facilitate the reunification of those with recognised stateless status in their territory with their spouses and dependents. The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.</p>
<p>Group 3: Stateless status without a clear identification mechanism</p>		
<p>Stateless status without a clear identification mechanism</p>	<ul style="list-style-type: none"> • There is a dedicated stateless status even if no formal procedure exists for determining statelessness. • Convention rights are granted to stateless people, including: <ul style="list-style-type: none"> ○ Residence ○ Travel document ○ Family reunification ○ Permission to work ○ Education ○ Healthcare ○ Social security ○ Right to vote 	<p>UN Convention Relating to the Status of Stateless Persons, 1954 UNHCR, Handbook on Protection of Stateless Persons (2014): The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable. Although the 1954 Convention does not address family unity, States parties are nevertheless encouraged to facilitate the reunification of those with recognised stateless status in their territory with their spouses and dependents. The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.</p>

Detention

Subtheme	International norms and good practices	Sources
Detention screening	<ul style="list-style-type: none"> • Powers for immigration detention are provided for in law and are restricted to purposes allowed under ECHR Article 5(1)(f). • A proposed country of removal is identified prior to detention for removal and detention is only maintained for so long as removal arrangements are in progress and executed with due diligence. • Statelessness is juridically relevant in decisions to detain. Stateless people are identified in order to protect their human rights and are not routinely detained on grounds of their statelessness. • Detention is a last resort after all alternatives have been explored. • Vulnerability assessments are carried out prior to detention. Specific circumstances of stateless people are understood and addressed, as are other experiences, characteristics and circumstances leading to vulnerability. 	<p>International Covenant on Civil and Political Rights, 1966: Articles 7 and 9(1). Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment.</p> <p>European Convention on Human Rights, 1950: Article 5 (1).</p> <p>EU Returns Directive: Articles 15(1), 15(4) and 16(3). Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p> <p>EU Return Handbook (2017): Attention should be paid to the specific situation of stateless persons.</p> <p>UNHCR, Handbook on Protection of Stateless Persons (2014): Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient.</p> <p>European Court of Human Rights, Auad v. Bulgaria (2011): The only issue is whether the authorities were sufficiently diligent in their efforts to deport the applicant.</p> <p>European Court of Human Rights, Mikolenko v. Estonia (2009): Detention may only be justified as long as deportation proceedings are being conducted with due diligence.</p> <p>ENS, Protecting stateless persons from arbitrary detention: a regional toolkit for practitioners (2015): Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.</p> <p>International Commission of Jurists, Migration and International Human Rights Law: A Practitioners' Guide (2014): The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.</p> <p>Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights.</p> <p>Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender, and</p>

<p>Alternatives to detention</p>	<ul style="list-style-type: none"> • The obligation to always consider non-custodial alternatives to detention is established in law, and alternative measures established in law are less coercive and invasive, subject to a proportionality test and time limit. • Detention is in practice a measure of last resort and alternatives are applied as part of any assessment of the necessity and proportionality of detention in an individual case. 	<p>intersex (LGBTI) persons (2013): European entities should assess the situation of LGBTI persons in detention.</p> <p>International Covenant on Civil and Political Rights, 1966: Article 9.</p> <p>EU Returns Directive: Article 15(1).</p> <p>UN General Assembly, Protection of migrants, A/RES/63/184 (2009): Calls upon all States to adopt alternative measures to detention.</p> <p>UN Human Rights Committee, F.K.A.G. et al. v Australia and M.M.M. et al. v Australia (2013): Any decision relating to detention must consider less invasive means of achieving the same ends.</p> <p>UNHCR, Handbook on Protection of Stateless Persons (2014): Detention can only be justified where other less invasive or coercive measures have been considered and found insufficient.</p> <p>Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau (2012): The obligation to always consider alternatives before resorting to detention should be established by law.</p> <p>International Detention Coalition, There are alternatives (2015): Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.</p> <p>Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention (2012): States have an obligation to consider and apply appropriate and viable alternatives to immigration detention that are less coercive and intrusive.</p>
<p>Procedural safeguards</p>	<ul style="list-style-type: none"> • A maximum period of detention is set in law, for the shortest possible time not exceeding six months (plus 12 months in specific circumstances). • Detainees are informed in writing of the reasons (in fact and law) for their detention. • Detainees are provided with information in a language they understand on how to challenge their detention, contact details of legal advice and support providers, and guidance on how to access an SDP. • There are regular periodic reviews of the necessity for continued detention before a court or an independent body, which can order release. 	<p>International Covenant on Civil and Political Rights, 1966: Article 9(4).</p> <p>European Convention on Human Rights, 1950: Article 5(4).</p> <p>EU Returns Directive: Articles 12, 13(3) and 15(5).</p> <p>European Court of Human Rights, Alimuradov v. Russia (2019): The individual must have at their disposal a procedure for judicial review of the lawfulness of detention capable of leading to release.</p> <p>European Court of Human Rights, Kim v. Russia (2014): The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> <p>UNHCR, Handbook on Protection of Stateless Persons (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means.</p> <p>UNHCR, Detention Guidelines (2012): To guard against arbitrariness, maximum periods of detention should be set in national law.</p>

	<ul style="list-style-type: none"> • Detainees have at their disposal effective remedies to challenge their detention before a court without delay. • Rules are in place governing the process of re-documentation/ascertaining nationality. • Detainees have access to (free) legal representation in law and practice. 	<p>UN Human Rights Council, Report of the Working Group on Arbitrary Detention (2010): A maximum period of detention must be established by law and upon expiry the detainee must be automatically released.</p> <p>UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988): Anyone who is arrested shall be informed at the time of the reason for his arrest.</p> <p>ENS, Protecting stateless persons from arbitrary detention: a regional toolkit for practitioners (2015): The detaining State should have rules in place that govern the process of re-documentation and/or ascertaining entitlement to nationality.</p> <p>International Commission of Jurists, Migration and International Human Rights Law: A Practitioners' Guide (2014): The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it.</p> <p>Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention (2012): Detention should always be for the shortest time possible. Stateless detainees shall receive their order of detention in writing and in a language they understand. Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees. To avoid arbitrariness, detention should be subject to automatic, regular, and periodic review throughout the period of detention before a judicial body independent of the detaining authorities. The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation.</p>
<p>Protections on release</p>	<ul style="list-style-type: none"> • State issues identification and basic rights (e.g., stay, healthcare, shelter, etc.) to stateless people released from detention and protects them from re-detention. • Cumulative time spent in detention counts towards the maximum time limit for detention, after which, the person must be released immediately. 	<p>UN Convention Relating to the Status of Stateless Persons, 1954: Article 27</p> <p>Court of Justice of the European Union, Kadzoev, C-357/09 PPU (2009): After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release.</p> <p>UNHCR, Handbook on Protection of Stateless Persons (2014): Being undocumented cannot be used as a general justification for detention.</p> <p>ENS, Protecting stateless persons from arbitrary detention: a regional toolkit for practitioners (2015): State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention.</p>

		<p>Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. When calculating the total time spent by an individual in detention, it is highly desirable that time spent in detention on previous occasions is taken into consideration.</p>
<p>Return and readmission agreements</p>	<ul style="list-style-type: none"> Statelessness is considered a juridically relevant fact in return and readmission agreements, and any efforts to secure return or readmission take place only subsequent to a determination of statelessness. 	<p>UNHCR, Handbook on Protection of Stateless Persons (2014): Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness.</p>

Prevention and Reduction

Subtheme	International norms and good practices	Sources
Stateless born on territory	<ul style="list-style-type: none"> • State has a provision in law to grant nationality to anyone born on the territory who would otherwise be stateless. • Conferral of nationality to otherwise stateless children born on the territory is automatic at birth. • There are no conditions on acquisition of nationality by a child relating to their or their parents' legal status (i.e., lawful residence). • If children are required to prove they cannot access another nationality the burden of proof is shared, an appropriate standard of proof is adopted, and special procedural considerations are given to the challenges faced by children in communicating basic facts about their nationality. • If the provision for a stateless child born on the territory to acquire nationality is by application, this is available as soon as possible and no later than 18 years old, ending no sooner than 21; and any residence criteria for the child does not exceed five years preceding the application. • There are specific provisions to protect the right to a nationality of children born to refugees. 	<p>UN Convention on the Reduction of Statelessness, 1961: Article 1.</p> <p>European Convention on Nationality, 1997: Articles 2 and 6(2)(b).</p> <p>Convention on the Rights of the Child, 1989: Articles 3 and 7.</p> <p>European Parliament, Resolution on the protection of children in migration (2018): The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.</p> <p>Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return: States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless.</p> <p>Committee on the Rights of the Child, Concluding observations on the fourth periodic report of the Netherlands (2015): Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State.</p> <p>UNHCR, Guidelines on Statelessness No. 4 (2012): The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application. The test is not an inquiry into whether a child's parents are stateless. A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities. Decision-makers must consider Articles 3 and 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected. States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten</p>

		<p>years in all. Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21. Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities.</p> <p>ENS, No Child Should Be Stateless (2015): The 1961 Convention and the ECN oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth. Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on. Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention. Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child.</p>
Foundlings	<ul style="list-style-type: none"> • Foundlings are granted nationality automatically by law. • The safeguard applies to all young children not yet able to communicate the identity of their parents or place of birth. • Nationality acquired by foundlings can only be lost if it is proven that the child possesses another nationality. 	<p>UN Convention on the Reduction of Statelessness, 1961: Article 2. European Convention on Nationality, 1997: Article 6(1)(b). UNHCR, Guidelines on Statelessness No. 4 (2012): At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth. Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality.</p>
Adoption	<ul style="list-style-type: none"> • Any loss of nationality is conditional upon possession or acquisition of another nationality. Children are not exposed to a risk of statelessness during the adoption process. 	<p>UN Convention on the Reduction of Statelessness, 1961: Article 5. European Convention on Nationality, 1997: Article 6(4)(d). Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland (2015): State must ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption. ENS, No Child Should Be Stateless (2015): Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child’s country of origin.</p>
Ius sanguinis	<ul style="list-style-type: none"> • Safeguards are in place to ensure that a child born abroad can acquire a parent’s nationality automatically (or shortly after birth) if otherwise stateless. 	<p>UN Convention on the Reduction of Statelessness, 1961: Article 4. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 4</p>

	<ul style="list-style-type: none"> • Conditions on acquisition of nationality by <i>ius sanguinis</i> are not discriminatory in nature. Women and men have equal rights to confer their nationality to their children in law and practice. 	<p>CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014): Requires State parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed.</p> <p>UNHCR, Guidelines on Statelessness No. 4 (2012): Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth, responsibility falls to the contracting State of the parents to grant its nationality to the child.</p> <p>European Court of Human Rights, Genovese v. Malta (2011): The State must ensure that the right to nationality is secured without discrimination.</p>
<p>Birth registration</p>	<ul style="list-style-type: none"> • Law and practice provide that all children are registered immediately upon birth regardless of the residence/documentation status of their parents or family members. • Documentary proof of birth is issued to children regardless of their or family members' residence/documentation status. • Any official determination of the child's nationality is carried out by a competent authority with the necessary expertise, in line with good practice, and an established procedure that adheres to the best interests of the child. • State determines whether a child would otherwise be stateless as soon as possible after birth. Such a period does not exceed five years. • There are no mandatory requirements for authorities to report undocumented individuals to immigration authorities. State clearly prohibits the sharing of information about migrants suspected of irregular presence with immigration authorities and these firewalls are binding on State authorities and the private sector. • Free and prompt birth registration is assured in law and practice even if the period within which the birth should have been declared has expired. 	<p>UN Convention on the Reduction of Statelessness, 1961: Articles 1 and 4.</p> <p>International Covenant on Civil and Political Rights, 1966: Article 24(2).</p> <p>Convention on the Rights of the Child, 1989: Articles 3 and 7.</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7.</p> <p>UN Sustainable Development Goal 16.9</p> <p>European Parliament, Resolution on minimum standards for minorities in the EU (2018): Calls on Member States to take immediate corrective measures to stop discriminatory birth registration.</p> <p>UN Human Rights Council, The right to a nationality: women and children, Resolution A/HRC/RES/20/4 (2012): Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child.</p> <p>Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return: Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration.</p>

		<p>CMW, Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration and Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return: Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children’s personal data, in particular biometric data, should only be used for child protection purposes.</p> <p>UNHCR, Guidelines on Statelessness No. 4 (2012): Article 7 CRC applies irrespective of the nationality, statelessness, or residence status of the parents. States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child’s status of undetermined nationality. Such a period should not exceed five years.</p> <p>Global Compact for Safe, Orderly and Regular Migration: States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration.</p> <p>Global Compact on Refugees : States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents.</p> <p>Council of Europe: ECRI General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination (2016): States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on State authorities and the private sector.</p> <p>Council of Europe, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children (2009): Member States should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown.</p>
<p>Reduction</p>	<ul style="list-style-type: none"> • State is actively engaged in promoting birth registration focussing on high-risk groups and has taken action specifically 	<p>UN Convention on the Reduction of Statelessness, 1961: Article 9.</p> <p>UN Human Rights Council, Recommendations of the Forum on Minority Issues at its eleventh session on the theme “Statelessness: a minority issue” (2019): States</p>

	<p>aimed at reducing statelessness. State helps stateless people to naturalise.</p>	<p>should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities. UNHCR, Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness (2015): States parties to the 1954 Convention are required to help stateless persons become naturalised nationals. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Actions 1, 4, 7 and 8.</p>
<p>Deprivation of nationality</p>	<ul style="list-style-type: none"> • Any provisions for deprivation of nationality do not permit loss or deprivation where this would result in statelessness. • Deprivation of nationality is only ever carried out in pursuance of a legitimate purpose, is provided for by law, is necessary, proportionate and in accordance with procedural safeguards. • State does not deprive persons of nationality for the purpose of safeguarding national security. • There are safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness. • There are no provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals. 	<p>UN Convention on the Reduction of Statelessness, 1961: Articles 7, 8 and 9 International Covenant on Civil and Political Rights, 1966: Article 26 European Convention on Nationality, 1997: Articles 5, 7, 8 and 11. Universal Declaration of Human Rights: Article 15(2). UNHCR Guidelines on Statelessness No.5 (2020): The prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g., where authorities persistently refuse to issue or renew documents without providing an explanation or justification). UN Human Rights Council, Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009): para. 23 Principles on Deprivation of Nationality and the Draft Commentary: Principle 2.2: Deprivation of nationality refers to any loss, withdrawal, or denial of nationality that was not voluntarily requested by the individual. Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards. Principle 5: States must not render any person stateless through deprivation of nationality. Principle 6: Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals. Principle 7: Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards. Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation.</p>