

#IBELONG



Mapping
STATELESSNESS
in Ireland



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ABBREVIATIONS

AISIP	Asylum and Immigration Strategic Integration Programme System
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
CSO	Central Statistics Office
EUAA	European Union Agency for Asylum
EMN	European Migration Network
ENS	European Network on Statelessness
ISD	Immigration Service Delivery
ICCPR	International Covenant on Civil and Political Rights
IPAT	International Protection Appeals Tribunal
IPO	International Protection Office
IRPP	Irish Refugee Protection Programme
UNHCR	United Nations High Commissioner for Refugees

1. EXECUTIVE SUMMARY

Executive Summary

“*Statelessness is an easily resolvable and preventable issue. It is a matter of political will to change a person’s status and life, yet the consequences of inaction especially during the middle of a pandemic can be life-threatening. To protect and save lives, we urge governments to resolve statelessness and make sure that no one is left behind*”

Filippo Grandi, United Nations High Commissioner for Refugees¹

1.1 Background

UNHCR first produced a scoping paper on statelessness in Ireland in 2014. This report seeks to update that scoping paper and provide a better understanding of statelessness in Ireland. It examines the impact of current legislation, policy, and practice, where available, on stateless persons and makes recommendations for improvement. The 1954 Convention on the Status of Stateless Persons (the 1954 Convention) defines a stateless person as “*a person who is not considered as a national by any State under the operation of its law.*” The consequences of being stateless are serious with stateless persons often denied fundamental rights in many aspects of their life which results in marginalization, causing them significant social and economic hardship.

Ireland acceded to the 1954 Convention in 1962 and to the 1961 Convention on the Reduction of Statelessness (the 1961 Convention) in January 1973. Despite Ireland being a state party to both statelessness conventions, the issue has received little attention at the national level. There is no definition of ‘stateless persons’ within Irish law nor is there a statelessness determination procedure to identify stateless persons in Ireland. This lack of a formal system of identification and determination for stateless persons means they are invisible in practice and unable to effectively assert their rights under the 1954 Convention. Their invisibility is compounded by the lack of qualitative and quantitative data on stateless persons. This research demonstrates that the small number of stateless persons residing in Ireland may face many difficulties in engaging with the authorities and can be left without a legal solution to their status for years.

In 2014, UNHCR launched the #IBelong Campaign to End Statelessness with the aim of ending statelessness by 2024. It was developed in consultation with states, civil society and international organisations and provides a guiding framework made up of 10 actions that states can commit to in order to reduce and prevent statelessness. As we enter the final years of that campaign, time is running out for Ireland to take the necessary steps to meet its obligations under the 1954 and 1961 Conventions. The urgency of this call has also been reinforced by the UN Committee on the Elimination of Racial Discrimination who recommended in 2020, in its concluding observations on Ireland, the establishment of a statelessness determination procedure. We hope that this report will shine a light on the current situation for stateless people and add to the growing impetus for Ireland to establish such an identification and determination process and ensure that the rights of stateless persons are safeguarded.

¹ UN News, *Ending Statelessness ‘a matter of political will’ says UN Refugee Agency Chief*, 11 November 2020, available at: <https://news.un.org/en/story/2020/11/1077392>

1.2 Key findings

The present report shows that, in addition to the absence of a statelessness determination procedure, the identification and protection of stateless persons is hampered by the absence of coordinated policy and guidance for government staff who encounter stateless persons in the course of the international protection procedure or immigration procedures. In the international protection procedure, statelessness per se does not entitle a person to refugee status or subsidiary protection. Stateless persons who seek asylum will, however, be granted international protection if they have a well-founded fear of persecution in line with the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) or qualify for subsidiary protection under the International Protection Act 2015.

UNHCR examined the treatment of stateless persons in the international protection procedure in Ireland and noted that, although they may not be officially registered as stateless persons at the outset, there is evidence of positive engagement by the International Protection Office (IPO) and International Protection Appeals Tribunal (IPAT) in examining protection risks linked to statelessness and making clear findings on statelessness during the analysis of their claims. One challenge identified, however, is the need to ensure that stateless persons are identified as stateless at the registration stage of their asylum application, as individuals may find it difficult to change their status at a later stage. This can have repercussions for them beyond the protection procedure including when it comes to renewal of their permission to reside in Ireland or in the context of deportation proceedings. In addition, as shown by the analysis of IPO reports and IPAT decisions, the lack of identification of stateless persons in the context of the international protection procedure affects the reliability of the government's statistics on stateless persons in Ireland.

Stateless persons may also feature in other immigration procedures. The failure to formally recognise a person as stateless means they are likely to face delays in resolving their situation and be left in a legal limbo for prolonged periods of time. The present report shows that stateless persons face numerous obstacles and administrative hurdles when engaging with various government departments. There appears to be no clear nor consistent approach on how to engage with stateless persons on the renewal of permission to remain and other matters such as the registration of immigration permissions or applications for travel documents. Individuals are often asked to obtain evidence of engagement with Embassies or Consulates to obtain formal proof they are not citizens of a particular country. However, there are no policies in place in relation to the burden or standard of proof in such situations, which means that ad hoc solutions are sometimes reached in individual cases with no consistent practice. This creates anxiety for individuals who often must resort to legal representation to help resolve their situation and even then, still experience lengthy delays in obtaining a resolution.

In the absence of a statelessness determination procedure, stateless persons are also unable to enjoy their full rights under the 1954 Convention. This report examined, in particular, the practice of issuing travel documents and availing of Irish citizenship, noting inconsistencies in approach and a lack of clarity on procedures. Similarly, there are protection gaps in the procedures related to the grant of citizenship for potentially stateless children and in the revocation procedure, further increasing the risk of statelessness.

1.3 UNHCR Recommendations

Overall, the current practice as highlighted in this research, shows that Ireland is not meeting its full obligations under the 1954 and 1961 Conventions, particularly for stateless persons who do not seek international protection. Changes to law, policy and practice are required to ensure that stateless persons in Ireland are clearly identified and protected, and that proper legal safeguards are introduced to prevent statelessness.

UNHCR recommends that Ireland take steps to establish and implement a statelessness determination procedure to allow for the identification and protection of stateless persons. The establishment of such a procedure would ensure fairness, transparency, and efficiency in how such persons are dealt with and improve consistency within the immigration and international protection system in Ireland.

As part of an immediate response, UNHCR recommends greater coordination between state agencies and government departments in the collection, recording and publication of qualitative and quantitative data related to stateless persons in Ireland. Similarly, clear procedures should be established to ensure greater consistency and coordination among various departments and state agencies in their response to stateless persons. Steps should be taken to remove administrative obstacles to stateless persons in accessing their rights and raise awareness of their specific needs among government officials. Similarly, in order to raise awareness in the relevant government departments, statelessness focal points should be established, and a centralised approach should be taken to policy and practice in this area. Greater legal certainty, transparency and clarity of process would be of benefit to stateless persons and national authorities alike. The introduction of guidelines for assessing stateless persons in both the international protection procedure and relevant immigration procedures will also assist in achieving this aim.

In terms of reduction and prevention of statelessness, while Irish legislation contains some safeguards aimed at preventing childhood statelessness, these could be strengthened by ensuring automatic acquisition by birth of Irish citizenship for children born stateless or by the introduction of transparent procedures on how to avail of rights under Section 6(3) of the Irish Nationality and Citizenship Act 1956 (as amended).² Similarly, revocation of citizenship laws should be amended to ensure that there is a safeguard against statelessness in individual cases.³

In conclusion, UNHCR hopes that the findings and recommendations contained in this report will contribute to the ongoing dialogue with government officials, civil society and other relevant actors on what steps need to be taken to bring Ireland into line with international and European standards in the identification and protection of stateless persons and the prevention and reduction of statelessness.

² Section 6(3) of the Irish Nationality and Citizenship Act 1956 provides that ‘a person born on the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country. For further information see chapter 6.1 below.

³ Section 19 of the Citizenship Act 1956 provides for the various grounds when a certificate of naturalisation can be revoked including where the certificate was procured by fraud or misrepresentation. For further information see chapter 6.2 below.

2. INTRODUCTION

UNHCR first produced a [scoping paper on statelessness in Ireland](#) in 2014. This report seeks to update that paper and provide a better understanding of the situation of stateless persons in Ireland. UNHCR hopes that the findings and recommendations contained in this report will contribute to ongoing dialogue with government officials, civil society and other relevant actors on what steps can be taken to bring Ireland into line with international and European standards in the protection of stateless persons and the prevention and reduction of statelessness. Similar mapping papers have been produced in Belgium, Denmark and the Netherlands among other countries.⁴ This report aims to promote better understanding and awareness of statelessness and related issues in Ireland, in particular the need for a statelessness determination procedure. This report examines existing legislation and practices governing the recognition of stateless persons and the enjoyment of their rights. As it builds upon the 2014 scoping paper, the statistics used for the analysis are from 2015 onwards, where available.

This mapping study is divided into 7 chapters. After the executive summary, the second chapter sets out the legislative framework surrounding statelessness and the definition, causes and consequences of statelessness across the globe, while the third chapter examines statelessness in Ireland both with respect to the domestic legal framework and the practice. Chapter 4 provides a statistical overview of stateless persons in Ireland while chapter 5 focuses specifically on the right to obtain a travel document and access citizenship. Chapter 6 examines the reduction and prevention of statelessness in relation to children born in Ireland and the withdrawal of citizenship. The final chapter sets out the conclusions from this report and presents recommendations for the Irish authorities.

2.1 Statelessness across the Globe

Statelessness is a global phenomenon. UNHCR estimates that there are at least 4.3 million stateless persons worldwide.⁵ However, as most countries do not systematically collect any data on statelessness, the actual figure is believed to be substantially higher. The following sections look at the definition of a ‘stateless person’, the causes of statelessness and the consequences of being stateless for individuals concerned. UNHCR’s mandate with regard to stateless persons is also outlined in this section.

2.1.1 Definition of Statelessness

According to Article 1(1) of the 1954 Convention, a stateless person is someone ‘*who is not considered as a national by any State under the operation of its law.*’ The International Law Commission has concluded that this definition constitutes customary international law.⁶ The term ‘stateless person’ is given this meaning in this report. The UNHCR Handbook on Protection of Stateless Persons sets out further guidance on interpreting this definition.⁷

⁴ UNHCR, *Mapping Statelessness in Belgium*, October 2012, available at: <https://www.refworld.org/docid/5100f4b22.html>; UNHCR, *Mapping Statelessness in Denmark*, 10 November 2020, available at: <https://www.refworld.org/docid/5fe138154.html>; UNHCR, *Mapping Statelessness in the Netherlands*, November 2011, available at: <https://www.refworld.org/docid/4eef65da2.html>

⁵ UNHCR, *Mid-Year Trends 2022*, available at: <https://www.unhcr.org/statistics/unhcrstats/635a578f4/mid-year-trends-2022>

⁶ ILC, *Commentary on the Draft Articles on Diplomatic Protection* (2006) p. 49, para 3 of the commentary, available at: http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf

⁷ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html> (hereinafter UNHCR’s Statelessness Handbook).

The term 'national' reflects a formal bond between a person and the state.⁸ To determine nationality, it is not only necessary to look at the nationality laws of the states to which a person might have links, but also the practices of the states in applying and/or implementing those laws. A person's nationality must be assessed at the time of determination of eligibility under the 1954 Convention, which is neither a historic nor a predictive exercise.⁹ This means that when determining whether a person is stateless, it is not relevant if the person is in the process of naturalising or has the option to acquire the nationality of a particular state.

2.1.2 Causes of Statelessness

Statelessness can occur for numerous reasons. The reasons for statelessness can be grouped into three categories: (i) causes linked to the dissolution and separation of states and the transfer of territory between states; (ii) causes linked to the complex technical operation of citizenship laws and administrative practices; and (iii) causes linked to discrimination, for instance on account of gender, age, ethnicity, and/or race, or the arbitrary deprivation of nationality.

Under (i) statelessness may occur due to the dissolution and separation of states, transfer of territory between states and the creation of new states. For example, during decolonization processes, groups of persons may have been excluded from the nationality legislation of newly independent states. Statelessness can also be an outcome of the post-colonial formation of states. Large populations have remained without citizenship for decades as a result of such state-building processes in parts of Africa and Asia. In Europe, many people were left stateless after the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia.

Examples of causes under (ii) include when there are gaps in nationality laws or conflict between national laws in different states. This can include where national legal systems provide for automatic loss of nationality, for example after prolonged residence in another country. States may also require that a person renounce his or her nationality before acquiring the nationality of another state. Withdrawal or revocation of nationality may also lead to statelessness if there is no adequate safeguard in place to prevent statelessness.¹⁰ With the complexity of citizenship laws in different states, many people may fall through the cracks. As regards the presence or absence of administrative practices, the failure or inability to register births can contribute to an increased risk of statelessness. Birth certificates may be a key form of proof to acquire citizenship or prove links to a state, but birth registrations are sometimes complex and involve administrative barriers such as registration fees.¹¹ Language barriers and illiteracy may also hinder people from accessing birth registration authorities or processes. Certain population groups are particularly at risk of statelessness because their situation makes it difficult to access registration of births. These include nomadic and border populations, minorities, refugees, internally displaced persons and migrants.¹²

As indicated above in point (iii), discrimination in nationality law or in practice against certain parts of the population and arbitrary deprivation of nationality contribute to the creation of statelessness. Certain groups within a state or populations living across multiple states are sometimes arbitrarily denied or deprived of nationality based on ethnicity or religious beliefs. Examples of such populations are the Rohingya in Myanmar, the Bidoon in the Gulf region and parts of the Roma population in Europe. Other stateless groups include Kurds from Syria and ethnic Nepalese persons from Bhutan. An underlying theme of some situations of statelessness is ethnic and racial discrimination that leads to exclusion, where political will is often lacking to resolve the problem.

⁸ UNHCR's Statelessness Handbook, para 54.

⁹ UNHCR's Statelessness Handbook, para 50.

¹⁰ For further information see UNHCR, *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html>

¹¹ UNHCR, *Good Practices Paper - Action 7: Ensuring birth registration for the prevention of statelessness*, November 2017, available at: <https://www.refworld.org/docid/5a0ac8f94.html>

¹² *Ibid.*

Statelessness can also result from gender inequality in nationality laws. In some nationality laws, women are not able to pass on their nationality to their children. Moreover, women may lose their nationality upon marriage. Currently, 25 states discriminate against women in their laws and practice with regard to the transmission of nationality to their children.¹³

2.1.3 Consequences of Statelessness

The consequences of being stateless are considerable. Stateless people are among the most vulnerable in the world and often encounter many difficulties in every aspect of daily life. In practice, statelessness often results in the denial of fundamental rights, which in turn results in marginalization, causing significant social and economic hardship. Stateless persons are often at increased risk of discrimination, abuse, child labour, exploitation, trafficking and/or detention.

Nationality is an individual's basic right as it provides the legal connection between an individual and a state. Stateless persons, without nationality, are incapable of exercising their most fundamental rights. Stateless persons may often be denied access to employment, housing, education, health care and pensions. They may not be able to go to school, see a doctor, get a job, obtain a driving licence, open a bank account, own property, get married legally or register the birth of their child. Generally, stateless people are not counted or registered adequately, meaning their needs are not planned for and their existence not acknowledged.

2.2 The International and Regional Legal Framework

This chapter sets out the main international and regional legal framework on statelessness. At the international level, two conventions deal specifically with statelessness: the 1954 Convention relating to the Status of Stateless Persons¹⁴ and the 1961 Convention on the Reduction of Statelessness.¹⁵

2.2.1 1954 Convention relating to the Status of Stateless Persons

The 1954 Convention entered into force in 1960 and has 96 states parties. It sets the legal framework for the standard treatment of stateless persons and contains provisions regarding stateless persons' rights and obligations pertaining to their legal status in the country of residence. Most importantly, the Convention sets out the definition of a 'stateless person'. It requires that stateless persons have the same rights as citizens with respect to freedom of religion and education of their children. For other rights, such as the right of association, the right to employment and housing, it provides that stateless persons are to enjoy, at a minimum, the same treatment as other non-nationals. The 1954 Convention contains administrative provisions regarding the issuance of travel documents¹⁶ and identity papers¹⁷ as well as the requirement for states to facilitate the naturalisation of stateless persons.¹⁸ There is also a prohibition on the expulsion of stateless persons who are lawfully on the territory of a state party to the Convention.¹⁹

¹³ UNHCR, *Background Note on Discrimination in Nationality Laws and Statelessness*, 20 October 2021, available at: <https://www.refworld.org/docid/616fda104.html> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2022*, 4 March 2022, available at: <https://www.refworld.org/docid/6221ec1a4.html>

¹⁴ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html> (hereinafter the 1954 Convention).

¹⁵ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>

¹⁶ Article 28, 1954 Convention.

¹⁷ Article 27, 1954 Convention.

¹⁸ Article 32, 1954 Convention.

¹⁹ Article 31, 1954 Convention.

Ireland has ratified the 1954 Convention but has yet to implement many of its obligations arising thereunder. Ireland has made one reservation to the Convention, which reads as follows:

“With regard to article 29(1), the Government of Ireland do not undertake to accord to stateless persons treatment more favourable than that accorded to aliens generally with respect to

(a) The stamp duty chargeable in Ireland in connection with conveyances, transfers and leases of lands, tenements and hereditaments, and

(b) Income tax (including sur-tax).”²⁰

2.2.2 1961 Convention on the Reduction of Statelessness

The 1961 Convention on the Reduction of Statelessness is the primary international legal instrument adopted to date to deal with the means of avoiding statelessness. The 1961 Convention entered into force in 1975 and has 78 States Parties at the time of publication. Article 1(1) of the 1961 Convention provides ‘A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.’ The Convention provides for acquisition of nationality for those who would otherwise be stateless and who have an appropriate link with the state through factors of birth or descent. The issues of retention of nationality once acquired and transfer of territory are also addressed. The 1961 Convention does not only address nationality issues within the jurisdiction of a state, but also offers solutions to nationality problems which might arise between states. To this end, the principles outlined in the Convention provide a framework within which to resolve conflicts concerning nationality. Ireland has ratified the 1961 Convention and has partially implemented some of its obligations thereunder via nationality and citizenship legislation (discussed further below in chapter 6). Ireland has made one reservation to the Convention, which reads as follows:

“In accordance with paragraph 3 of article 8 of the Convention Ireland retains the right to deprive a naturalised Irish citizen of his citizenship pursuant to section 19(1)(b) of the Irish Nationality and Citizenship Act, 1956, on grounds specified in the aforesaid paragraph.”²¹

2.2.3 International Human Rights Law on Statelessness

Human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination against Women (CEDAW), and the International Convention on the Elimination of Racial Discrimination (ICERD) all contain provisions on the right to a nationality and on the prohibition of discrimination. Stateless persons falling within the definition of the term ‘refugee’ in the 1951 Refugee Convention are entitled to protection under that Convention as a refugee.²²

²⁰ United Nations Treaty Collection, Depositary Status on the Convention relating to the Status of Stateless Persons, available at: <https://bit.ly/3VRB3HV>

²¹ Declarations and Reservations to the 1961 Convention on the Reduction of Statelessness, available at: <https://www.unhcr.org/416113864.pdf>

²² UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> (Refugee Convention).

2.2.4 European Regional Legal Framework

In Europe, the Council of Europe has adopted two instruments of particular relevance: the European Convention on Nationality which entered into force in 2000²³ and the European Convention on the Avoidance of Statelessness in relation to State Succession, which entered into force in 2009.²⁴ Neither Convention has been signed by Ireland. The European Convention on Nationality (ECN) entered into force in 2000 and currently has 21 State Parties. This instrument contains several provisions guaranteeing against statelessness, some of which parallel to those found in the 1961 Convention and others of which complement the Convention. Article 4 provides, inter alia, that State Party nationality rules shall incorporate the principle that statelessness be avoided. Article 6(2) provides a safeguard against statelessness at birth comparable to that of the 1961 Convention. Further, Article 7, which governs the loss of nationality ex lege or at the initiative of a State Party, contains safeguards against statelessness.

The European Convention on the Avoidance of Statelessness in relation to State Succession entered into force in 2009 and has seven States Parties. It establishes rules for the acquisition of nationality with a view to preventing statelessness in the context of state succession.

The plight of stateless persons is also recognised in the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025).²⁵

In addition, the European Convention on Human Rights (ECHR), to which Ireland is party, is increasingly relevant to the prevention of statelessness and protection of stateless persons.²⁶ Although the ECHR does not explicitly provide for the right to a nationality, the European Court of Human Rights (ECtHR) has recognized in its jurisprudence that the impact of the denial of citizenship on a person's social identity brings it within the scope of Article 8 of the ECHR, which enshrines the right to respect for private and family life.²⁷ Further, the ECHR sets out rights to be enjoyed by all persons within a state's jurisdiction, whether they are the state's own nationals, foreign nationals, or stateless persons. In a 2018 decision the Court found that the failure of the state to ensure stability of residence for a stateless man over a 40-year period, amounted to a violation of Article 8 of the European Convention on Human Rights.²⁸

As regards the European Union, in 2015 the Council of the European Union adopted Conclusions on Statelessness which invited the European Commission to launch exchanges of good practices and encourage the active coordination of national statelessness focal points in relation to the UNHCR #IBELONG campaign.²⁹ Following this, the European Migration Network (EMN) was mandated to establish a platform for this exchange of information and good practices.³⁰ Within the EU legal framework, stateless persons are treated as third country nationals within the area of freedom, security, and justice under the Treaty on the Functioning of the European Union.³¹ Similarly,

²³ Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, available at: <https://www.refworld.org/docid/3ae6b36618.html>

²⁴ Council of Europe, *European Convention on the Avoidance of Statelessness in Relation to State Succession*, 15 March 2006, CETS 2006, available at: <https://www.refworld.org/docid/4444c8584.html>

²⁵ Council of Europe, *Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)*, available at: <https://bit.ly/3Fo7hDk> This includes implementing Council of Europe pledges to the UNHCR IBELONG campaign to end statelessness.

²⁶ For example, ECHR Press Unit, Factsheet – Deprivation of Citizenship, December 2020, available at: https://www.echr.coe.int/Documents/FS_Citizenship_Deprivation_ENG.pdf

²⁷ See ECHR, *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: <http://www.refworld.org/docid/509ea0852.html>.

²⁸ ECHR, *Hoti v. Croatia*, (Application no. 63311/14), ECLI:CE:ECHR:2018:0426JUD006331114, Council of Europe: European Court of Human Rights, 26 April 2018, available at: <https://www.refworld.org/cases,ECHR,5ae1b4e94.html>

²⁹ European Union, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, December 2015, available at: <https://bit.ly/3YfZLDh>

³⁰ For more information see EMN Platform of Statelessness, available at: <https://bit.ly/3FJEJLm> EMN Inform, Statelessness in the European Union, 2020, available at: <https://bit.ly/3ULH0Vj>

³¹ Article 67(2) Treaty on the Functioning of the European Union (2008/C 115/01), available at: <https://bit.ly/3Pggharz>

matters concerning stateless persons have been integrated into the work of certain EU agencies such as the European Union Agency for Asylum (EUAA) in the context of asylum and migration.³²

2.3 UNHCR's Mandate on Statelessness

The UN General Assembly has conferred on UNHCR a global mandate to provide protection to stateless persons worldwide and to engage in prevention and reduction of statelessness. The General Assembly has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”.³³ It has also entrusted UNHCR with the specific role foreseen in Article 11 of the 1961 Convention. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international instruments concerning statelessness, in particular the 1954 and the 1961 Statelessness Conventions. Such guidelines are included, among others, in the UNHCR Handbook on Protection of Stateless Persons (UNHCR Handbook).⁶ The Handbook is intended to guide government officials, the judiciary, and legal practitioners as well as UNHCR staff and others involved in addressing statelessness.³⁴ It addresses the definition of a stateless person, procedures to determine who is stateless, and the legal status of stateless persons at the national level.

With respect to stateless refugees, UNHCR has responsibility for refugees who are stateless pursuant to Article 6A(II) of the Statue of UNHCR and Article 1A(2) of the 1951 Convention Relating to the Status of Refugees. Although not all stateless persons are refugees, a stateless person can be a refugee and, if so, the protection afforded to refugees by the 1951 Convention and its 1967 Protocol apply to such stateless persons.

In 2014 UNHCR launched the #IBelong Campaign to End Statelessness with the aim of ending statelessness within 10 years.³⁵ The Global Action Plan to End Statelessness: 2014-2024 (Global Action Plan) was published in 2014 in conjunction with the #IBelong Campaign.³⁶ It was developed in consultation with states, civil society, and international organisations and sets out a guiding framework made up of 10 Actions to be taken by states to reduce and prevent statelessness. UNHCR has produced Good Practice Papers, in relation to 9 of the 10 Actions proposed in UNHCR's Global Action Plan. As the causes, profile and magnitude of statelessness vary, not all actions are relevant or necessary in all states. The action points relevant to a particular state will depend on the context there. Since 2012, UNHCR has also issued an annual background note on gender equality in legal provisions in national laws.³⁷ The background note provides updates on law reforms and an overview of nationality laws in various states.

³² On 19 January 2022 EASO was replaced by the EUAA with an enhanced mandate on asylum and reception practices. See also EASO, Asylum Report 2021, Section 4.13 *Statelessness in the asylum context*, available at: <https://www.easo.europa.eu/asylum-report>

³³ UN General Assembly Resolution A/RES/50/152, para. 15.

³⁴ Other relevant publications include UNHCR, *Nationality and Statelessness: Handbook for Parliamentarians* N° 22, July 2014, available at: <https://www.refworld.org/docid/53d0a0974.html> and UNHCR, *Good practices in nationality laws for the prevention and reduction of statelessness*, November 2018, Handbook for Parliamentarians N° 29, available at: <https://www.refworld.org/docid/5be41d524.html>

³⁵ For further information see <https://www.unhcr.org/ibelong/>

³⁶ UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, available at: <https://www.refworld.org/docid/545b47d64.html>

³⁷ UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2021*, 5 March 2021, available at: <https://www.refworld.org/docid/604257d34.html> UNHCR, *UNHCR and UNICEF: Background Note on Sex Discrimination in Birth Registration*, 6 July 2021, available at: <https://www.refworld.org/docid/60e2d0554.html> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2022*, 4 March 2022, available at: <https://www.refworld.org/docid/6221ec1a4.html>

3. STATELESSNESS IN IRELAND

Ireland acceded to the 1954 Convention on the Status of Stateless Persons on 17 December 1962 and to the 1961 Convention on the Reduction of Statelessness on 18 January 1973. Although Ireland is a state party to both statelessness conventions, as well as to other international human rights instruments that contain provisions relevant to statelessness, not all of their obligations are provided for in Irish law and the issue has received little attention at the national level. The two main action points of relevance in the Global Action Plan to End Statelessness with respect to Ireland are:

- Action 6: Grant protection status to stateless migrants and facilitate their naturalization³⁸ and
- Action 10: Improve quantitative and qualitative data on stateless populations.³⁹

As set out in this chapter and chapter 4, Ireland currently does not have a determination procedure to grant status to stateless persons nor is there any systematic collection of data regarding stateless persons here. Consequently, stateless persons residing in Ireland are rarely identified and recognised as such. Likewise, the lack of systematic qualitative or quantitative data means it is difficult to establish just how many stateless persons are in Ireland. This section outlines the law and practice around stateless persons in Ireland.⁴⁰ Statelessness encountered in Ireland is related to stateless refugees and migrants who have travelled to Ireland.

3.1 National Legal Framework

It is important to note that there is no specific national legislation that transposes international law on statelessness into Irish law. There is also no definition of 'stateless person' within Irish law. However, the Irish Nationality and Citizenship Act 1956 (as amended) and the International Protection Act 2015 contain relevant provisions with respect to statelessness.

3.1.1 Irish Nationality and Citizenship Act 1956 (as amended)

The law that governs citizenship in Ireland is the Irish Nationality and Citizenship Act 1956 as amended.⁴¹

Under section 6(3) of the 1956 Act, as amended by the 2001 Act, a person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country. Section 28 of the Act enables the Minister for Justice to issue a certificate of nationality to any person who is an Irish citizen and this provision has

³⁸ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, July 2020, available at: <https://www.refworld.org/docid/5f203d0e4.html>

³⁹ Action 10: Improve quantitative and qualitative data on stateless populations.

⁴⁰ On statelessness in Ireland see also European Network on Statelessness (ENS), *Index for Ireland*, March 2021, available at: <https://index.statelessness.eu/country/ireland>

⁴¹ Irish Nationality and Citizenship Act 1956 (No. 26 of 1956) as amended by the Irish Nationality and Citizenship Act 1986 (No. 23 of 1986), the Irish Nationality and Citizenship Act 1994 (No. 9 of 1994), the Irish Nationality and Citizenship Act 2001 (No. 15 of 2001), the Irish Nationality and Citizenship Act 2004 (No. 38 of 2004), the Civil Law (Miscellaneous Provisions) Act 2011 (No. 23 of 2011), the Gender Recognition Act 2015 and the Diplomatic Relations (Miscellaneous Provisions) Act 2017, known as the revised version of the 1956 Act, Law Reform Commission, August 2021, available at: <https://bit.ly/3hgttHB> Hereinafter the reference to the 1956 Act refers to this version of the Act.

been used by legal representatives to establish Irish nationality for stateless children.⁴² Section 10 of the 1956 Act deals with foundlings, providing that every deserted new-born child first found in the State shall, unless the contrary is proved, be deemed to have been born in the island of Ireland to parents at least one of whom is an Irish citizen.

The legal framework also provides for naturalisation of persons in Ireland. Section 16 of the Act states that the Minister may, “in his absolute discretion”, grant an application for a certificate of naturalisation although not all of the conditions for naturalisation are complied with in the case of refugees and of stateless persons within the meaning of the 1954 Convention. In practice, this section generally operates as a waiver in relation to the length of reckonable residence required (normally 5 years which is then reduced to 3 years under this waiver) before citizenship can be acquired.

Section 16 of the 1956 Act and the Irish Nationality and Citizenship (Fees) Regulations 2011⁴³ seek to give effect to Article 32 of the 1954 Convention, which requires states to facilitate, as far as possible, the naturalisation of stateless persons, to make every effort to expedite naturalisation proceedings and to reduce, as far as possible, the charges and costs of such proceedings.

The provisions of the 1956 Act relating to stateless persons are quite clear in their import. Additionally, these provisions partly fulfil the actions recommended in Action 6 of the Global Action Plan, to make the acquisition of nationality easier for stateless persons. Despite this, there can be significant practical obstacles to relying on these provisions in the absence of a stateless determination procedure as outlined below.

At the time of writing this report, two bills on nationality and citizenship are before Dáil Éireann (House of Representatives) and Seanad Éireann (Senate) respectively: The Irish Nationality and Citizenship (Citizenship for Children) Bill 2020⁴⁴ and the Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018.⁴⁵ While neither bill refers specifically to statelessness, they both provide for a shorter time period to acquire citizenship for children born on the island of Ireland.

3.1.2 International Protection Act 2015

Ireland is a state party to the 1951 Refugee Convention and its core provisions are transposed into national law by the International Protection Act 2015. Stateless persons who meet the definition of a refugee as set out in section 2 of the Act are entitled to refugee protection in Ireland. For stateless persons, the reference country for the refugee status assessment is ‘country of former habitual residence.’ Similarly, such persons are entitled to subsidiary protection if there is a real risk of them suffering serious harm on return to their country of former habitual residence.

⁴² For further information on the reduction of childhood statelessness see chapter 6.

⁴³ Irish Nationality and Citizenship Regulations 2011, S.I. No. 569/2011, available at: <https://bit.ly/3W8QlRj> See also the parliamentary question response by Minister of State at the Department of Justice James Browne to question 463-464 of 12 October 2021, available at: <https://bit.ly/3VOKJCX>

⁴⁴ Irish Nationality and Citizenship (Citizenship for Children) Bill 2020 (Bill 33 of 2020), available at: <https://www.oireachtas.ie/en/bills/bill/2020/33/>

⁴⁵ Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018 (Bill 124 of 2018), available at: <https://www.oireachtas.ie/en/bills/bill/2018/124/>

3.2 An overview of the practice concerning identification of stateless persons in Ireland

As mentioned above, Ireland does not have a formal statelessness determination procedure. There are, however, a number of contexts in which an inquiry into an individual's nationality may note their status as stateless: 1) the international protection procedure; 2) certain immigration procedures. This section outlines the practice surrounding stateless persons with respect to those processes.

3.2.1 Formal Declarations of Statelessness

Notwithstanding the absence of a formal determination procedure there have been instances when the national authorities have officially recognised a person's status as stateless. As outlined in the 2014 Scoping Paper on Statelessness in Ireland there have been two instances to UNHCR's knowledge when the authorities issued statelessness declarations.⁴⁶ In March 2014, the Irish authorities issued a declaration of statelessness to a stateless person in Ireland who was of Russian ethnicity from the territory of Estonia and in May 2014 a statelessness declaration was issued to a former Lithuanian citizen whose citizenship was revoked there in relation to a mistaken belief that the individual was from Azerbaijan at the time. This individual was subsequently naturalised in Ireland and became an Irish citizen.

Both statelessness declarations were positive developments. They marked the first time formal declarations had been issued recognizing the applicants' status as stateless persons and setting out the rights they were entitled to as a result. Since then, legal representatives have noted some reluctance from the Irish authorities to issue statelessness declarations. To UNHCR's knowledge no declarations of statelessness have been issued since 2014.

3.2.1.1 The Irish authorities position regarding a formal statelessness determination procedure

There has been little evidence to date of a political appetite to introduce a formal statelessness determination procedure in Ireland. This may be for a number of reasons, for example, the perception that the number of stateless persons is so low that such a process is not necessary. During the drafting of the International Protection Act 2015, UNHCR as well as other civil society organisations recommended the inclusion of an enabling provision or similar mechanism to enable the Minister for Justice to introduce a procedure for determining statelessness, but no such amendment was made to the International Protection Act.⁴⁷ The following responses to parliamentary questions provide some insight into the government's approach to such a procedure. In response to a parliamentary question in 2014, the then Minister for Justice and Equality, Frances Fitzgerald stated:

"Ireland is not unusual in so far as it does not have a specific procedure for determining statelessness claims. Of the nearly eighty countries to have ratified the 1954 Convention Relating to the Status of Stateless Persons only a small fraction (including only four EU countries - Spain, Latvia, Hungary and UK) have put in place specific determination procedures for non-protection statelessness claims. While the position adopted by other jurisdictions clearly does not determine the actions that Ireland might take in this area, some caution is nonetheless necessary to avoid a situation where Ireland, as a small country, could become a destination for stateless persons seeking access to a determination process. I have no immediate plans to introduce a formal

⁴⁶ UNHCR, *Scoping Paper: Statelessness in Ireland*, October 2014, available at: <https://www.refworld.org/docid/5448b6344.html>

⁴⁷ UNHCR, *UNHCR Comments on the General Scheme of the International Protection Bill*, May 2015, available at: <https://www.refworld.org/docid/5c2f5b437.html>; The Immigrant Council of Ireland and Irish Refugee Council also Immigrant Council of Ireland also made submissions to include a definition of statelessness; Immigrant Council of Ireland, *Submission to the Joint Oireachtas Committee on Justice, Defence and Equality on the General Scheme of the International Protection Bill 2015*, May 2015, available at: <https://bit.ly/3hjEVCg>; Irish Refugee Council, *Recommendations on the International Protection Bill 2015*, November, 2015, available at: <https://bit.ly/3uEnvDE>

determination procedure but will keep the matter under review, having regard also to developments in other jurisdictions and the nature of their determination procedures.”⁴⁸

Similarly, government officials in 2015 responding to a legal representative in this area have stated that there is no positive obligation on Contracting States under the 1954 Convention on the Status of Stateless Persons to implement a determination process for recognition of stateless persons. The officials noted at that time that deliberations were ongoing regarding having a formal process for stateless persons but that steps would need to be taken to ensure that any such process could not be a pull factor for statelessness driven migration or that Ireland was not taking on responsibilities for resolving cases that might be more appropriately dealt with in other Member States.

In October 2021, in response to the UN Committee on the Rights of the Child’s request⁴⁹ to report on any measures taken to establish a statelessness determination procedure, the Department of Children, Equality, Disability, Integration and Youth stated as follows in the draft combined fifth and sixth State Report of Ireland to the Committee:

“Ireland does not have a formal procedure for the determination of statelessness. As statelessness can arise at any stage in the immigration and protection process, it can typically be addressed through the various processes under the International Protection Act 2015 which contain clear provisions with regard to securing the best interests of the child, including unaccompanied minors, or the various immigration processes where statelessness is not co-existent with a protection need.”⁵⁰

Similarly, in relation to a parliamentary question the Minister for Justice, Helen McEntee noted that:

“Statelessness results from the complex interaction of many legal and other factors. There is no specific determination process for recognition of stateless persons in Ireland; claims of statelessness can arise at any point in the immigration and protection processes and the numbers involved are very low. My Department deals with such cases without recourse to a determination of their statelessness status. The determination of any such cases are not centralised in a single process or section of my Department’s Immigration Service Delivery. As such, applications for immigration permission or naturalisation are determined through the procedures set out under the Immigration Acts, the International Protection Act 2015 or the Irish Nationality and Citizenship Act 1956, as amended.”⁵¹

As part of this research the Department of Justice was consulted in relation to its practice regarding stateless persons. The approach adopted by the Department is to reach ad hoc solutions in relation to individual stateless cases whereby persons in this situation may be granted a right of residence in the State, accompanied by a right to work, without giving any detailed consideration to their statelessness claim. Due to the case-by-case approach and *ad hoc* solutions it is difficult to know if all persons claiming to be stateless were able to have their situation resolved in practice. However, in the absence of ongoing legal representations and requests by such persons or their legal representatives on that issue, the Department of Justice noted that it may be reasonably concluded that the issues they had raised which had prevented them from fully engaging in Irish life had been mitigated by the *ad hoc* solutions referred to. No updates were provided by the Department of Justice on the possibility of a statelessness determination procedure being introduced in the future. Without such a process, stateless individuals may spend considerable lengths of time trying to resolve their situation through various administrative and immigration procedures. They will likely face obstacles in each procedure due to lack of official confirmation

⁴⁸ Parliamentary question response to question 173 of 12 June 2014 by former Minister for Justice and Equality Frances Fitzgerald, available at: <https://www.oireachtas.ie/en/debates/question/2014-06-12/173/>

⁴⁹ UN Committee on the Rights of the Child, List of issues prior to submission of the combined fifth and sixth reports of Ireland, CRC/C/IRL/QPR/5-6, available at: <https://bit.ly/3YgprQo>

⁵⁰ Department of Children, Equality, Disability, Integration and Youth, Draft Combined Fifth and Sixth State Report of Ireland to the UN Committee on the Rights of the Child, October 2021, available at: <https://bit.ly/3VQxjX6>

⁵¹ Parliamentary question response to questions 444, 4445 and 447 by Minister for Justice, Helen McEntee, 7 December 2021, available at: <https://bit.ly/3FMgOG1>

of their status as stateless. Many will have no option but to seek legal assistance and representation in order to resolve their situation, which still does not guarantee that a resolution can be found in each individual situation. While the length of time for resolving such situations is case specific, some people, in the absence of an official recognition of their statelessness status spend months, sometimes even years, seeking a resolution.

3.2.1.2. UNHCR's guidance on the purpose of a formal statelessness determination procedure

The establishment of a formal determination procedure would provide clarity for stateless persons and ensure that they can access their rights under the 1954 Convention. Establishing a statelessness determination procedure is the most efficient means for state parties to the 1954 Convention to identify beneficiaries of that Convention.⁵² It is also in states' interests to establish statelessness determination procedures. For example, in countries where statelessness arises among mixed migratory movements, statelessness determination procedures help governments assess the size and profile of stateless populations in their territory and thus determine the government services required.⁵³ As set out in the UNHCR Statelessness Handbook:

*"Establishing whether a person is stateless can be complex and challenging but it is in the interests of both States and stateless persons that determination procedures be as simple, fair and efficient as possible. To this end, some States might consider adapting existing administrative procedures to include statelessness determination. Factors to consider include administrative capacity, existing expertise on statelessness matters, as well as expected size and profile of the stateless population. In any combined procedure it is essential that the definition of a stateless person is clearly understood and properly applied and that procedural safeguards and evidentiary standards are respected."*⁵⁴

Although the 1954 Convention does not spell out specific determination processes, procedural safeguards must assure fair and efficient determination procedures. First, the procedure must be accessible to stateless persons, including non-returnable persons in detention. This includes a state's obligation to disseminate information and to ensure that stateless persons become aware of determination mechanisms and feel comfortable accessing them. Determination mechanisms should be available to all persons within the territory, and there should be no requirement that a person be lawfully resident within the territory, as stateless persons normally have great difficulty in securing the documentation that is necessary to reside in a state lawfully. There is also no basis in the convention to set time limits for individuals to claim statelessness status. Further, pending the outcome of the determination procedure, individuals awaiting a statelessness determination should not be expelled from the state where the procedure is ongoing.

In terms of procedural guarantees the UNHCR Statelessness Handbook instructs that statelessness determination procedures should be formalized in law with due process guarantees integrated into administrative law practices.⁵⁵ Establishing procedures through legislation ensures fairness, transparency and clarity. Research suggests that states that have established a statelessness determination procedure have not seen a significant increase in the number of people claiming stateless status.⁵⁶

⁵² UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, July 2020, available at: <https://www.refworld.org/docid/5f203d0e4.html>

⁵³ UNHCR Statelessness Handbook, para. 10.

⁵⁴ UNHCR Statelessness Handbook, para. 64.

⁵⁵ For further information on the list of procedural safeguards to be incorporated see para 71 UNHCR Statelessness Handbook.

⁵⁶ UNHCR Good Practices Paper No. 6 pp. 9 "It is unlikely that the establishment of SDPs will create a "pull factor." Countries that have established an SDP have not seen large numbers of people applying for statelessness status. France, the State with the longest tradition of recognizing and protecting stateless persons, received an average of 224 applications for statelessness status between 2010 and 2016. In 2018, France received 420 applications for statelessness status and made 71 findings of statelessness status and 122 findings of statelessness refugee status. Although the number of applications increased, OFPRA, the determining authority, states that the admission rate is stable. Hungary received 284 applications in total between the establishment of the procedure in 2007 and 30 July 2019." See also UNHCR Statelessness Determination Procedures, Identifying and Protecting Stateless Persons, August 2014, available at: <https://www.refworld.org/docid/5412a7be4.html>

UNHCR has guidance which can assist the Irish authorities in the introduction of a statelessness determination procedure. Part two of UNHCR's Statelessness Handbook covers the modalities of establishing such a procedure to enable states to recognize and grant protection status to stateless persons, including questions of evidence that arise in the context of such procedures. UNHCR's good practice paper for Action 6 complements the Handbook by presenting a brief overview of key elements of such procedures as illustrated by good practices in selected countries.⁵⁷ It is therefore a helpful resource to assist Ireland in meeting its obligation to create a statelessness determination procedure. While solutions to the problem of statelessness must be tailored to suit the particular circumstances prevalent in a country, the examples and guidance on important factors such as the institutional location of a statelessness determination procedure and efficient referral mechanisms is beneficial.

In addition, UNHCR Ireland with EMN Ireland jointly hosted a seminar on statelessness determination procedures in 2016 which included presentations from the UK Home Office and the French Office for the Protection of Refugees and Stateless Persons, OFPRA, on their experiences introducing statelessness determination procedures.⁵⁸ Such information exchanges and dialogues on policy and practice are vital in assisting states establishing statelessness determination procedures.

3.2.2 The International Protection Procedure

The core provisions of the 1951 Refugee Convention are implemented into national law by virtue of the International Protection Act 2015.⁵⁹ Thus, under Irish law, a stateless person must demonstrate a well-founded fear of persecution in order to qualify for refugee status.⁶⁰ The High Court has noted that statelessness in itself is not sufficient to qualify for refugee status and such individuals must still meet the definition of a refugee.⁶¹

3.2.2.1 Identifying the country of habitual residence for stateless persons – the legal framework

In asylum cases, the International Protection Office (IPO) is responsible for the assessment and determination of nationality or country of habitual residence at first instance, and the International Protection Appeals Tribunal (IPAT) is similarly responsible upon appeal. Such an assessment is necessary in order to determine the reference country with respect to the examination of protection needs. This is acknowledged in the International Protection Act 2015 whereby 'country of origin' means *'the country or countries of nationality or, for stateless persons, of former habitual residence.'*⁶² There is also an obligation on IPO decision makers and IPAT Tribunal members to consider an applicant's nationality or lack thereof pursuant to section 28 of the Act for the purposes of the asylum procedure.⁶³

When determining the country of habitual residence for stateless persons, it is important to note that the preliminary determination of the country/countries by reference to which the examination of an application takes place is a question of law and fact to be determined by the national authorities. The drafters of the 1951 Convention defined a refugee's 'country of former habitual residence' as *'the country in which he had resided and where he had*

⁵⁷ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, July 2020, available at: <https://www.refworld.org/docid/5f203d0e4.html>

⁵⁸ UNHCR, *Seminar on Statelessness Determination Procedures*, May 2016, available at: <https://bit.ly/3UPNcvq>

⁵⁹ Ireland: International Protection Act 2015 [Ireland], N. 66, 30 December 2015, available at: <https://www.refworld.org/docid/56ded0f24.html>

⁶⁰ Section 2 International Protection Act 2015 "refugee" means a person, other than a person to whom section 10 applies, who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his or her country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it."

⁶¹ BDR v Refugee Appeals Tribunal [2016] IEHC 274, available at: <https://bit.ly/3FJmvEm>

⁶² Section 2 International Protection Act 2015.

⁶³ Section 28 International Protection Act 2015, Assessment of Facts and Circumstance 'elements referred to [] consist of the applicant's statements and all the documents submitted by him or her regarding his or her- c) identity; d) nationality or nationalities; e) country or countries, and place or places, of previous residence...'

suffered or fears he would suffer persecution if he returned'.⁶⁴ Further, UNHCR's Statelessness Handbook provides that 'habitual residence' is to be understood as 'stable, factual residence' which includes 'stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of ongoing residence there'.⁶⁵ It is noted that a definition of the concept of 'country of former habitual residence' is not provided in the EU Qualification Directive⁶⁶ or International Protection Act 2015.

3.2.2.2 Dual country of habitual residence

The issue of identifying the appropriate country of habitual residence arose in the High Court case of *B.D. (Bhutan and Nepal)*⁶⁷ which concerned an asylum seeker born in Bhutan of Nepali ethnicity who fled to Nepal to escape persecution in Bhutan. The IPAT determined that the applicant was stateless with Nepal identified as his country of habitual residence. The asylum seeker claimed that he was not stateless but was Bhutanese and that that country should be identified as the reference country of nationality for the purposes of his international protection claim. They also submitted that the persecutory deprivation of his nationality should be disregarded for the purposes of identifying the reference country for the asylum procedure among other matters. UNHCR submitted an *amicus curiae* intervention to assist the court in interpreting the country of habitual residence and, in particular, formulated the correct approach to be taken when there is more than one country of habitual residence.⁶⁸ UNHCR submitted that when a state arbitrarily deprives a person of his or her nationality and the person has no other nationality, the person should be regarded as stateless within the meaning of the 1951 Convention.⁶⁹ The unlawfulness of the act of deprivation of nationality does not negate the result of statelessness. When a stateless person has more than one country of former habitual residence, this person should only have to meet the refugee criteria of a well-founded fear of persecution in relation to one of those countries. When assessing if that stateless person is a refugee, it is also necessary to determine whether the person is excluded from refugee status pursuant to Article 1E.⁷⁰ The High Court held that the applicant was deprived of Bhutanese nationality by Bhutanese law and thus was regarded as stateless. It held that only Nepal was the country of former habitual residence and thus the test for where there are multiple countries of habitual residence was held not to arise in the case. The Tribunal's decision was upheld by the court.

3.2.2.3 Identifying the country of habitual residence for stateless persons – the practice

This recent response to a parliamentary question by Minister for Justice Helen McEntee, outlines the approach of the IPO to stateless applicants:

⁶⁴ UN Economic and Social Council, *Report of the Ad Hoc Committee on Statelessness and Related Problems*, New York, 16 January to 16 February 1950, available at: <https://bit.ly/3FkwGy2>; See also UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <https://www.refworld.org/docid/4f33c8d92.html> Para 103.

⁶⁵ UNHCR Statelessness Handbook, para 139.

⁶⁶ European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 2012.2011, 2011/95/EU, available at: <https://www.refworld.org/docid/4f197df02.html>

⁶⁷ *B.D. (Bhutan and Nepal) -v- The Minister for Justice and Equality & ors*, [2018] IEHC 461, Ireland: High Court, 17 July 2018, available at: https://www.refworld.org/cases,IRL_HC,5bb244524.html

⁶⁸ UNHCR, *Amicus curiae of UNHCR in the case of B.D.(Bhutan and Nepal) -v- The Minister for Justice and Equality & ors*, 25 June 2018, available at: <https://www.refworld.org/docid/5bb23fdb4.html>

⁶⁹ In this regard UNHCR's Statelessness Handbook paragraph 56 states that 'Bestowal, refusal, or withdrawal of nationality in contravention of international obligations must not be condoned. The illegality on the international level, however, is generally irrelevant for the purposes of Article 1(1)[1954 Convention]. The alternative would mean that an individual who has been stripped of his or her nationality in a manner inconsistent with international law would nevertheless be considered a 'national' for the purposes of Article 1(1); a situation at variance with the object and purpose of the 1954 Convention.'

⁷⁰ For further information on the use of Article 1E of the 1951 Refugee Convention see UNHCR, *UNHCR Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, March 2009, available at: <https://www.refworld.org/docid/49c3a3d12.html>

“Under the International Protection Act 2015, each application is assessed individually on its merits. Generally, all applicants for international protection are carefully interviewed and their cases are individually assessed by experienced caseworkers. The circumstances of each individual case is assessed having regard to both the subjective elements (the applicant’s own account or personal history) and objective elements (up-to-date information on the applicant’s country or place of origin).

Where it appears that an applicant may be stateless, the international protection officer makes a finding (solely for the purposes of the international protection determination process) as to whether the applicant is stateless. This finding is made having regard to all relevant evidence and to country of origin information as appropriate. The claims of stateless persons are determined in respect of their country of former habitual residence (the country with which the applicant has the closest connection).

While an applicant with multiple nationalities must establish a well-founded fear of persecution or a real risk of serious harm against each of his or her countries of nationality, in the case of a stateless applicant with multiple countries of former habitual residence, it is sufficient if the applicant can establish such a well-founded fear or risk with respect to any country of former habitual residence.”⁷¹

When an asylum seeker first applies for international protection, their country of origin, or country of former habitual residence if stateless, should be recorded during the preliminary interview.⁷² It is important that asylum seekers are aware of the need to clearly state their statelessness status early on in the process. While the IPO information note on the protection procedure refers to the applicant being asked short questions during the preliminary interview on various matters including one’s country of origin or habitual residence, there is no targeted information on declaring one’s status as stateless.⁷³ Anecdotal information shared with UNHCR indicates that once an asylum seeker is recorded as being a national of a particular country at the IPO registration stage it can be difficult to amend that later in the process, particularly in the absence of legal representation. There is a general practice at the IPO that once identity details, such as nationality, are recorded, the applicant will not be able to make changes to that information unless there is strong evidence to support such a change.⁷⁴ Often stateless individuals lack documentary evidence of their status and so it may be impossible to evidence this required change. Issues concerning statelessness and an applicant’s country, or countries, of former habitual residence are also explored at the substantive interview at the IPO and during appeal hearings at the IPAT if central to an asylum claim and/or when there is an issue regarding the individual’s identity and/or nationality or lack thereof.

As part of the training delivered by UNHCR in collaboration with the IPO for new decisions makers there is a component focused on ensuring that clear findings are made as to whether the applicant is a national of a particular country/countries or is stateless. If they are stateless the country of former habitual residence also needs to be identified for the purposes of the asylum procedure. Challenges arise where the applicant was first identified as being a national of a particular country, for example at registration, and then subsequently deemed to be stateless post the substantive interview stage.

3.2.2.4 Review of IPO and IPAT international protection decisions which include statelessness findings

As part of this research UNHCR reviewed 43 IPO decisions from the following three countries: Bhutan, Myanmar and Nepal. The countries were selected on the basis that stateless communities are present in these countries of habitual residence. Although all of the decisions issued referenced a specific country of origin and nationality at

⁷¹ Parliamentary question response by Minister for Justice, Helen McEntee to question 446, 7 December 2021, available at: <https://bit.ly/3uFdp5t>

⁷² Section 13 International Protection Act 2015.

⁷³ International Protection Office, *Information Booklet for Applicants for International Protection*, available here: <http://www.ipo.gov.ie/en/ipa/pages/publications>

⁷⁴ Correspondence with an Assistant Principal, IPO, Department of Justice 2019.

the top of the IPO recommendation report,⁷⁵ known as the section 39 report, nine of the decisions were linked to persons claiming to be stateless. This matter was explored at the substantive interview stage at the IPO. Most of the claims where the applicant asserted that they were stateless were accepted as stateless by the IPO apart from two claims where there was evidence to the contrary. The IPO reports analysed also demonstrated an understanding of the issues faced by stateless persons in their former country/countries of habitual residence and an effective analysis on how the applicant's stateless status may impact upon their risk of persecution and/or serious harm upon return to a particular country of origin. In one section 39 report it was noted that:

“with regard to the above COI, the applicant is effectively stateless. As such, I find the applicant could not be repatriated to his country of habitual residence [] Bhutan. Every person has certain inalienable rights, including the right to nationality as per the UN Universal Declaration of Human Rights. Repatriating the applicant to Bhutan where he would not have basic human rights would constitute degrading treatment.”

While noting the limited scope of this analysis it is positive to see engagement by IPO decision makers with matters relating to statelessness and clear findings being made on a person's status as stateless.

However, the issue remains that such persons are not fully identified and recognised as stateless within the asylum procedure. The country of origin and nationality in IPO section 39 reports as well as the IPO case management databases refers to specific countries of nationality rather than recording applicants' stateless status and country(ies) of habitual residence. There is also a lack of clarity on whether, once a finding of statelessness is made in the asylum procedure, it is technically possible to amend the case management database to accurately reflect that finding. Failure to do so means that such persons will not be included in the statistical record of stateless persons within the asylum procedure. This indicates that the true number of stateless persons in the asylum procedure may be higher than the official statistics.⁷⁶ The IPO has confirmed that it is currently examining its information systems to see how it can enhance the capture of statistics in respect of stateless applicants as they move through the international protection process.⁷⁷

UNHCR also undertook an analysis of the statelessness decisions in the IPAT decisions archive as part of this research. The analysis revealed that there was a gap between the number of cases officially recorded as stateless⁷⁸ and the number of cases where statelessness was asserted by the applicant and expressly determined in the course of a Tribunal decision. From 2014 to the end of 2019, approximately⁷⁹ 28 cases were examined by the IPAT where statelessness was raised as an issue, 13 of which contained express determinations by the Tribunal members in finding the appellant's stateless in their analysis of the claim. As is standard practice, each Tribunal decision has the following details listed at the top of the decision: 1) the appellant's name; 2) the appellant's nationality. Six cases indicated 'stateless' in the heading of the Tribunal decision regarding the appellant's nationality, sometimes with the country of habitual residence also listed in brackets for. e.g. 'stateless Myanmar.' This is inconsistent with the statistical data recorded by IPAT for the same time period which indicates that IPAT only received one appeal from a stateless appellant. However, as indicated in Chapter 4 below, this issue arises as the Tribunal's data of nationality is automatically recorded from the Asylum and Immigration Strategic Integration Programme System (AISIP) system and based on the IPO's previous designation of nationality. The analysis of decisions in the IPAT decisions archive also shows that there were 7 cases where a nationality was listed at the top of the Tribunal decision but the appellant was actually found to be stateless by the Tribunal. Five cases explicitly referred to the 1954 UN Convention on Statelessness in the body of the analysis. Of the 13 decisions where statelessness was expressly determined, 12 were recognised by the Tribunal as being in need of international protection. Ethnic

⁷⁵ This is known as the section 39 report under the International Protection Act 2015.

⁷⁶ See Chapter 4 for the statistics on stateless persons in the asylum process.

⁷⁷ Correspondence with an Assistant Principal, IPO, Department of Justice, January 2022.

⁷⁸ For further information on the number of stateless appellants before the International Protection Appeals Tribunal see Chapter 4.

⁷⁹ This is an approximation as it is not known if all Tribunal decisions issued by the IPAT were uploaded onto the decision archive during that time period.

discrimination and the resulting discriminatory nationality laws and practices were the main causes of instances of statelessness as identified by the Tribunal from 2014 to 2019.

Overall, this analysis of both IPO and IPAT decisions indicates that decision-makers and Tribunal members are engaging with issues related to statelessness, but this is not necessarily being accurately recorded in the biodata information of the decisions themselves when referring to country of origin or nationality, or in relation to the biodata concerning the applicant on AISIP. It is important that a person is clearly identified as being stateless in the asylum procedure, not only in the substantive assessments, but in all related databases and registers. Failure to correctly identify their status will have repercussions for them. For example, should they be granted international protection there may be ramifications when it comes to later administrative requirements such as when renewing residence permission or applying for citizenship. Similarly, there may be implications for persons assessed not to be in need of international protection when it comes to the subsequent deportation process and identification of the relevant country for removal purposes.

Where a stateless person is found not to be in need of international protection by the IPO and IPAT, they may still be granted permission to remain under section 49 of the International Protection Act 2015.⁸⁰ In the absence of a formal determination process, an interim solution would be for the Minister for Justice, and IPO authorised officers on her behalf, to grant permission to remain to stateless persons on the basis of a finding of statelessness in this procedure. In the case of a negative outcome, a deportation order will be issued obliging the applicant to return to his or her country of habitual residence, something which is rarely possible in practice.

3.2.3 Immigration Procedures

Stateless persons are not only found in the protection procedure but may also appear in various immigration procedures in Ireland. Under Section 3 of the Immigration Act 1999 when the Minister for Justice is considering the making of a deportation order, she will consider on a discretionary basis whether or not to grant permission to remain.⁸¹ Immigration Service Delivery (ISD) in the Department of Justice considers the representations made by persons in this situation i.e. those persons who have been notified of a proposal to make a deportation order in respect of them and who, in response, have submitted written representations in response to that proposal. This legislative provision makes no specific reference to stateless persons but rather refers to the Minister for Justice's obligation to consider any representations made against deportation, on humanitarian or other specified grounds, when considering whether or not to make a deportation order. The Minister for Justice must also take into account human rights obligations under the European Convention on Human Rights Act 2003.⁸²

In addition, there is a general discretion under immigration legislation to grant permission to persons to remain in the State. Section 4 of the Immigration Act 2004 states that *'an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State.'*⁸³ Similarly, where a person already has an immigration

⁸⁰ Section 49 International Protection Act 2015 "(1) Where a recommendation referred to in section 39 (3)(c) is made in respect of an application, the Minister shall consider, in accordance with this section, whether to give the applicant concerned a permission under this section to remain in the State (in this section referred to as a "permission"). (2) For the purposes of his or her consideration under this section, the Minister shall have regard to— (a) the information (if any) submitted by the applicant under subsection (6), and (b) any relevant information presented by the applicant in his or her application for international protection, including any statement made by him or her at his or her preliminary interview and personal interview. (3) In deciding whether to give an applicant a permission, the Minister shall have regard to the applicant's family and personal circumstances and his or her right to respect for his or her private and family life, having due regard to— (a) the nature of the applicant's connection with the State, if any, (b) humanitarian considerations, (c) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions), (d) considerations of national security and public order, and (e) any other considerations of the common good."

⁸¹ Immigration Act, 1999 (as amended by Trafficking Act, 2000) [Ireland], No. 22 of 1999, 7 July 1999, available at: <https://www.refworld.org/docid/3ae6b60b12.html>

⁸² Ireland: Act No. 20 of 2003, European Convention on Human Rights Act 2003 [Ireland], 30 June 2003, available at: <https://www.refworld.org/docid/47a708170.html>

⁸³ Immigration Act 2004 [Ireland], 13 February 2004, available at: <https://www.refworld.org/docid/45e6f47a2.html>

permission that they wish to renew under Section 4(7) of the Immigration Act 2004 a permission may be renewed or varied on application thereof by the person concerned. This latter provision will not apply to those persons who have been put on notice of a proposal to make a deportation order in respect of them.

Where an immigration permission is granted by the ISD under any of these provisions, it is at the discretion of the Minister for Justice as to what rights are to be granted and for what period of time. Such conditionality may not afford stateless persons all of the rights guaranteed under the 1954 Convention. A grant of residence in any case does not explicitly declare its underlying rationale and does not, as a matter of practice, include a formal declaration of statelessness. Once a permission is granted for a given period, it remains at the discretion of the Minister for Justice as to whether the permission is to be renewed and on what terms. Some practical issues may arise for individuals where they are granted permission in this way without recognition of their statelessness. This may result in further administrative obstacles and hurdles for stateless persons when seeking to renew their permission to remain, register their permission to reside with the Immigration Service Delivery or An Garda Síochána (the national police force), or if they seek an Irish travel document and subsequently apply for naturalisation. This can also have implications beyond the immigration process, for example, when the applicant is registered with a residency card stating that they have a certain nationality, this can create challenges for them when employers and/or other state departments/bodies require the production of a national passport despite the applicant being stateless. Legal representatives consulted as part of this research indicated that they have, on occasion, made submissions to request that the word 'stateless' be included under the nationality heading on a permission to remain grant letter in order to alleviate any subsequent administrative difficulties. UNHCR is aware of at least one case where the permission to remain grant letter included the indication of 'stateless' and welcomes this practice, which should ease any future administrative burdens the individual concerned may face.

In some permission to remain grant letters which were shared by legal representatives with UNHCR for the purpose of this research, there was a stipulation such as *'permission to remain has been renewed to enable you to continue your efforts to obtain a valid passport'* or *'no future renewals will be considered without a valid passport.'* Additionally, applicants seeking to renew their permission to remain were sometimes requested to provide evidence of *'reasonable efforts'* they had made to obtain a passport from their Embassy or Consular Authority from their country of origin for renewal of permission. In one such correspondence from ISD, permission was granted to enable the individual concerned to obtain a valid passport. The letter addressed to the legal representative stated that:

*'If you cannot obtain a valid passport in this time you must show that they have made reasonable and formal efforts to obtain a national passport and that it has been formally and unreasonably refused. Provision of original correspondence from the relevant consular authorities is an essential component when considering the registration of these applicants with Gardai National Immigration Bureau (GNIB), while not in possession of valid passports.'*⁸⁴

Other similar correspondence shared with UNHCR noted that when individuals applied for renewal of their permission to remain, they were required to

*'produce to Irish Naturalisation and Immigration Service (INIS) an up-to-date national passport or provide evidence that you are a Stateless person. If you are not in a position to produce a passport to this office, you will need to provide documentary evidence that you have made reasonable efforts to obtain a passport through your Embassy/Consular Authority of your country of origin. If you do not comply with these conditions, the processing of your renewal application will be delayed and future permission may be refused.'*⁸⁵

⁸⁴ Correspondence shared by Catherine Cosgrave, Immigrant Council of Ireland with the consent of her client. It should be noted that GNIB registered immigration permission prior to 2016 when ISD took over responsibility for registering immigration permission in the Dublin area.

⁸⁵ Correspondence shared by Catherine Cosgrave, Immigrant Council of Ireland.

This administrative practice shows the need to have consistency and clarity regarding the burden and standards of proof in establishing statelessness and the special situation faced by such persons, who may receive such requests repeatedly when trying to renew permission to remain. There appears to be no clarity or established policy and practice on what other evidence is required to demonstrate an individual's status as stateless. Likewise, it is not clear what standard of proof must be met. For example, is there any consideration of the citizenship laws and practice in relevant countries? Additionally, consular authorities or Embassies are under no obligation to issue formal correspondence to non-nationals of their country and, therefore, may not cooperate in such a process. Of particular concern was another correspondence from ISD which indicated that an individual was given permission *'for one year to enable you to obtain a valid passport. No future renewals will be considered without a valid passport in your name.'*⁸⁶

The Department of Justice in the context of permission to remain considerations at the repatriation stage of the immigration process, has indicated that when an individual claims to be stateless, the central issue is the degree to which the immigration service requires documentary evidence supporting that assertion. The standard used is one of 'reasonable efforts' which would include the individual concerned presenting documentary evidence of their formal interactions with the consular authorities of their country of origin/country of former habitual residence, including any responses received.⁸⁷ The result of their efforts will not lead to the person being recorded as 'stateless' with the Irish authorities and they are more likely to be recorded with respect to their former country of habitual residence. The Department of Justice informed UNHCR that such requests would not need to be repeated on an annual basis if the person presented with sufficient documentary evidence of their efforts to obtain a passport, but each case would be examined on its own merits.⁸⁸ As regards the individual cases recorded as stateless by the authorities in an immigration procedure in March and May 2014 as outlined in chapter 3.2.1 above, such a designation would have resulted from the individual self-reporting as statelessness and not on account of any in-depth examination of their personal circumstances or situation by the authorities, so less weight is placed on that designation by Department of Justice officials.⁸⁹

The approach outlined above does not appear to be fully in accordance with the guidance set out in UNHCR's Statelessness Handbook which notes that *"[g]iven the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence."* The Handbook also notes that further flexibility is warranted where it is difficult for individuals to obtain documents originating from a foreign authority properly notarized.⁹⁰ While UNHCR recognises that contact with a foreign authority may be of assistance to a statelessness determination, it is also cognisant of the fact that flexibility may be necessary as practices may vary with some foreign authorities accepting enquires from another state while others may only respond to individuals or fail to respond overall.⁹¹ Practical considerations may also need to be taken into account as regards persons contacting Embassies for e.g. where in-person presence is required and the individual needs to travel to another country to engage such Embassies but may not have appropriate travel documentation. Such requests to Embassies are also not necessary in cases where there is otherwise adequate proof. As regards the standard of proof, UNHCR advises that the same standard of proof as set out in refugee status determination is utilized, namely establishing to a 'reasonable degree' that an individual is not considered as a national by any state under the operation of its law.⁹²

⁸⁶ Correspondence shared by Catherine Cosgrave, Immigrant Council of Ireland.

⁸⁷ Correspondence with the Assistant Principal, Repatriation Division, ISD, December 2019.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ UNHCR Statelessness Handbook, fn. 51, pg. 34.

⁹¹ UNHCR Statelessness Handbook, paras 96-99.

⁹² UNHCR Statelessness Handbook, para 91 and UNHCR, *Submission by the United Nations High Commissioner for Refugees in the case of AS (Guinea) v. Secretary of State for the Home Department before the Court of Appeal (Civil Division)*, 20 February 2018, C5/2016/3473/A, available at: <https://www.refworld.org/docid/5a9d54884.html>.

3.2.4 Registration of immigration permission

The ISD is responsible for registering immigration permissions in Dublin city and county since taking over that function from the Garda National Immigration Bureau (GNIB) in 2016. Registration of immigration permissions for those outside Dublin is carried out by immigration officers under the control of the local Registration Officer in An Garda Síochána. When an immigration permission is granted, stateless persons may experience practical difficulties registering with the relevant authorities due to a lack of documentation evidencing their identity. Section 9 of the Immigration Act 2004 creates an obligation in respect of all non-Irish nationals over the age of 16 residing in the State to register with the relevant registration office. A person who contravenes section 9(2)(a) of the Immigration Act 2004 by failing to register may be found guilty of an offence and liable on summary conviction of a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or both.⁹³ Pursuant to Section 9 there is also a requirement on individuals to produce their passport or other equivalent document, issued by or on behalf of an authority recognised by the Irish government, which establishes his or her identity and nationality. Permission to remain letters may include the following standard wording with regard to registration:

*'you are required under Section 9(2)(a) of the Immigration Act 2004 to produce a passport issued by an authority recognised by the Irish government which establishes your identity and nationality, unless you can give a satisfactory explanation of the circumstances which prevent you from doing so.'*⁹⁴

This obligation extends to stateless persons granted immigration permission and stateless international protection beneficiaries alike. Furthermore, letters granting permission to remain frequently state that the permission is conditional upon registration with the relevant authorities. Letters may include standardised wording as follows: "[p]lease note that a failure to register promptly will be considered to constitute a failure to comply with the laws of the State and may constitute in itself a ground for revoking your permission to be in the State."

Without a certificate of registration having been issued, stateless persons may accordingly not be able to produce evidence of their right to be in the State or to work legally. The extent to which this is an issue at registration with ISD is unclear. However, legal representatives have noted that, while the number of persons impacted is low, such persons face similar obstacles at various stages of any administrative procedures they encounter during their time in Ireland. The challenge also remains that stateless persons at this stage of the process, without any formal recognition of their statelessness status, may not be visible.

Under the Immigration Act 2004 (Registration Certificate Fee) Regulations 2012 persons must pay €300 when they register with ISD or immigration officers in An Garda Síochána.⁹⁵ This fee is waived in the Immigration Act 2004 (Registration Certificate Fee) Regulations 2017 in the case of beneficiaries of international protection, programme refugees⁹⁶ and a number of other categories of persons but not in the case of stateless persons.⁹⁷

⁹³ Section 13 Immigration Act 2004.

⁹⁴ Immigration Act 2004 [Ireland], 13 February 2004, available at: <https://www.refworld.org/docid/45e6f47a2.html>; Section 9(2)(a) states the following "a non-national shall comply with the following requirements as to registration: (a) he or she shall, as soon as may be, furnish to the registration officer for the registration district in which he or she is resident, the particulars set out in the Second Schedule, and, unless he or she gives a satisfactory explanation of the circumstances which prevent his or her doing so, produce to the registration officer a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality."

⁹⁵ Immigration Act 2004 (Registration Certificate Fee) Regulations 2012, S.I. 444/2012, available at: <https://bit.ly/3uInQoP> as amended by Immigration Act 2004 (Registration Certificate Fee) (Amendment) Regulations 2017, S.I. No. 277/2017, available at: <https://bit.ly/3HrQNwG>

⁹⁶ A programme refugee is a refugee who has been resettled to Ireland under the Irish Refugee Protection Programme (IRPP). Section 59 of the International Protection Act 2015 provides the legal basis for programme refugees in Ireland.

⁹⁷ Ireland: S.I. No. 277/2017 - Immigration Act 2004 (Registration Certificate Fee) (Amendment) Regulations 2017 [Ireland], 11 February 2021, available at: <https://www.refworld.org/docid/6025081a4.html>

4. STATISTICAL OVERVIEW OF STATELESS PERSONS IN IRELAND

The gathering of statistics in Ireland is challenging as no one office of the Department of Justice is able to provide all the statistics pertaining to stateless persons. Instead, different sources provide statistics on different groups of stateless persons where available.

In July 2018, the then Minister for Justice and Equality, Charles Flanagan responded to a parliamentary question on the availability of statistics:

“Statelessness results from the complex interaction of many legal and other factors. There is no specific determination process for recognition of stateless persons in Ireland; claims of statelessness can arise at any point in the immigration and protection processes and the numbers involved are very low. These cases are frequently disposed of without recourse to a determination of statelessness through procedures (e.g. permission to remain) set out under the Immigration Acts or International Protection Acts. Such cases are not centralised in a single process or section of the immigration service and, as such, statistics on stateless persons are not available in the way sought by the Deputy.”⁹⁸

When seeking statistics for the purposes of this report UNHCR requested an update on the number of stateless persons in the various units of the ISD in the Department of Justice since the 2014 scoping paper on statelessness was produced. According to the Irish Refugee Protection Programme (IRPP) no stateless persons were resettled as programme refugees in Ireland from 2014 to May 2021. However, it was noted that 11 Palestinians have been resettled through the IRPP, 10 of whom arrived in 2016 and 1 further person arrived in 2017.⁹⁹ In relation to applications by stateless asylum seekers to the IPO, the Minister for Justice Helen McEntee reported in a recent parliamentary question response that *“during the period 2017-to 2021 (end of October) there have been less than 6 applications in respect of persons who specifically claimed that they were stateless when they lodged their applications for international protection.”¹⁰⁰*

Nevertheless, from the analysis of cases reviewed above in chapter 3.2.2.4 above, there are more stateless persons applying for asylum than those officially recorded for statistical purposes by both the IPO and IPAT. The practice seems to suggest that a stateless asylum seeker’s country of former habitual residence is listed as their nationality on international protection applications. The reason for this is not entirely clear and may be due to various reasons, including that the asylum seekers themselves do not identify themselves as stateless and just state the country they previously lived in, or IPO staff conducting preliminary interviews are not fully aware of what constitutes statelessness and the importance of accurately recording an applicant as stateless during the asylum procedure. In 2021 UNHCR conducted training with the IPO staff involved in the registration of international protection applications at the preliminary interview on various protection matters, including statelessness, so it is hoped that this will assist with the correct identification of stateless, or potentially stateless, applicants in future.

⁹⁸ Parliamentary question response No. 342- 344 on 10 July 2018 by former Minister for Justice and Equality Charles Flanagan, available at: <https://www.oireachtas.ie/en/debates/question/2018-07-10/343/>

⁹⁹ Palestinians are a special category of stateless persons who also fall under the mandate of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

¹⁰⁰ Parliamentary question response by Minister for Justice, Helen McEntee to question 446, 7 December 2021, available at: <https://bit.ly/3uFdp5t>

The practice of the International Protection Appeals Tribunal registry is to record an applicant's nationality, but this is exclusively based on IPO's previously designated nationality. Therefore, the IPO's original designation of nationality is maintained in the Tribunal administration even if a finding of statelessness is made during the substantive consideration of an appeal by the Tribunal or during the substantive process at the IPO. This means that an incorrect designation of an applicant's nationality at the outset at the IPO stage appears to stay with them throughout the protection process. According to the Tribunal, between 2014 and the beginning of 2021 only one person recorded as stateless by the IPO submitted an appeal to the Tribunal in 2019 with their country of former habitual residence being Nigeria. This is inconsistent with the substantive decisions of the Tribunal analysed from the Tribunal's decision archive as set out in chapter 3.2.2.4 above which accurately record findings of statelessness.

According to ISD data, from 2014 to 2021 there was only one stateless individual granted international protection.¹⁰¹ Likewise with reference to immigration procedures in Ireland, the Repatriation Division of ISD, which considers permission to remain applications, does not retain a record of individuals who make representations that they are stateless for the purposes of seeking permission to remain under Section 3 of the Immigration Act and thus no related statistics are available. Similarly, the travel document section does not record statistics in relation to nationality or statelessness status. While there may be details on file relating to statelessness, this is based on a self-reported status by the individual concerned and not a formal designation by the Irish authorities.¹⁰² Since 2014 only one statelessness travel document has been issued to a person determined to be stateless.

According to GNIB records, as of November 2019 there were 29 persons registered as stateless in the State with a significant proportion of such persons being registered with ISD in the Dublin region. It was not possible to obtain information on the residency status of the individuals concerned for the purposes of this report. In terms of applications from stateless persons for citizenship from 2014 to 2019 it was reported that 2 certificates of nationality were issued to stateless individuals with 6 applications from stateless persons still being processed at the end of 2019.¹⁰³ No further information was available on the status of the two individuals granted citizenship during that time period nor the outcomes for the pending applications from stateless persons. According to the Department of Justice since 2019 there have also been two certificates of nationality issued under s.28 of the Irish Nationality and Citizenship Act 1956.¹⁰⁴ This has been updated in light of a further two successful applications under this provision in 2022. A recent parliamentary question response from the Minister for Justice indicates that in the last five years there were 14 applications for citizenship received where a claim of statelessness has been made, of which nine continue to be processed at this time.¹⁰⁵

As part of this research the Central Statistics Office (CSO) was contacted in relation to the 2016 census. In that census, it was noted that 1,167¹⁰⁶ persons ticked 'no nationality' or wrote 'stateless' in under question 10 '*what is your nationality?*', which provided 3 categories for responses 1) Irish; 2) Other nationality; 3) No nationality.¹⁰⁷ There was no change in the wording of this question from the 2011 census and the CSO indicated that the question was completed by self-declaration, so it is possible that some respondents may have ticked 'no nationality' in error. The next census was postponed until April 2022 in light of the Covid-19 pandemic. Upon consultation by UNHCR with the CSO, the step-by-step guide for completing the next census was updated to include the following detail with respect to the nationality question "*if you are not an Irish citizen and are not recognised as a citizen by any other country mark the box 'no citizenship.'*" This amendment may lead to more accurate self-reporting of stateless persons to enhance the accuracy of the data collected.

¹⁰¹ Correspondence with the IPO, August 2021. It should be noted that prior to 2014 7 stateless individuals were granted international protection since November 2002. Their countries of habitual residence included Estonia, Kuwait, Moldova, Latvia and Ukraine among others.

¹⁰² Correspondence with Principal Officer, Repatriation Division, Department of Justice, November 2019.

¹⁰³ Correspondence with the Citizenship Unit, December 2019.

¹⁰⁴ For further information see Chapter 6 below.

¹⁰⁵ Parliamentary question response by Minister for Justice Helen McEntee to questions 444,445 and 447, 7 December 2021 available at: <https://bit.ly/3FMgOG1>

¹⁰⁶ For further information see the Central Statistics Office, 2016 census reports, available at: <https://www.cso.ie/en/census/census2016reports/>

¹⁰⁷ For further information on the 2016 census see <https://www.cso.ie/en/census/census2016reports/>

While UNHCR recognises the instances of stateless cases in Ireland appears to be relatively low it is important to ensure that data is gathered and recorded to have an accurate picture of the situation. Inconsistency in the recording of statelessness within the international protection process and a lack of other data sources with the capacity to indicate statelessness means that the true extent of statelessness in Ireland is uncertain. Having considered the available data sources and having consulted with the various authorities as to how such data is compiled, it is reasonable to conclude that there is an absence of reliable data on potential cases of statelessness, such that the extent of statelessness in Ireland cannot be identified accurately. Mapping the extent of statelessness within Ireland is essential in order for the Irish authorities to effectively respond to statelessness. Action 10 of the Global Action Plan to End Statelessness: 2014-2024 calls upon states to improve quantitative and qualitative data on stateless populations.¹⁰⁸ UNHCR has also produced a useful guide on how states and other actors can effectively research statelessness at the national level which may be of assistance in this process.¹⁰⁹

¹⁰⁸ For further information see <https://www.unhcr.org/ibelong/global-action-plan-2014-2024/>

¹⁰⁹ UNHCR, *Quick Guides: Researching Statelessness*, March 2021, available at: <https://www.refworld.org/docid/6054c9ca4.html>

5. RIGHTS OF STATELESS PERSONS IN IRELAND

Although there is no formal recognition of stateless persons in Ireland, stateless persons may have access to a number of rights depending on their legal status in Ireland. For example, as beneficiaries of international protection if granted protection in the asylum procedure, they are entitled to the rights set out in the International Protection Act 2015. In the absence of a statelessness determination procedure, however, stateless persons in Ireland are not identified as such and on the whole are unable to enjoy their full rights under the 1954 Convention. This section considers two specific rights under the 1954 Convention: access to travel documents and access to naturalisation in Ireland.

5.1 Travel Documents for Stateless Persons

Article 28 of the 1954 Convention provides “[the] Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require..” In Ireland, stateless persons who have been granted refugee status may obtain travel documents, known as ‘Travel Document (Convention of 28 July 1951)’, on the basis of their status as a refugee. Both beneficiaries of international protection and their family members may obtain a travel document in accordance with section 55 of the International Protection Act 2015. In the case of stateless persons granted subsidiary protection however, they may only receive a travel document if they can demonstrate they are unable to obtain a national passport. There is also a specific travel document issued for stateless persons known as ‘Travel Document (Convention of 28 September 1954)’ but this is only issued to persons determined to be stateless in advance of the application for the travel document. Stateless persons must submit a declaration of statelessness with their application to avail of that type of travel document. Since 2014 only one travel document of this kind has been issued to a person determined to be stateless by the Department of Justice.

Stateless persons residing on other grounds and not officially recognised as stateless by the Irish authorities may apply for a travel document in a similar way to other persons with permission to remain who do not hold a national passport. These applications are processed outside a legislative framework and on a case-by-case basis.¹¹⁰ The travel document is not specifically aimed at stateless persons but is available on an exceptional basis for persons with permission to remain, which may include stateless individuals.¹¹¹ Certain conditions are required to obtain these travel documents: a) the person applying is present in the State; b) the person is legally residing in the State; c) the person is unable to obtain a national passport from their country of origin.¹¹² In general there is no obligation on the Irish authorities to issue such documents. However the State’s obligation under international law to provide travel documents to stateless persons is acknowledged by the Department of Justice on the relevant website “You may apply for a travel document if you: have been declared stateless in accordance with the New York Convention of 1954.”¹¹³ Without a formal statelessness determination procedure in Ireland, it is difficult to see how an individual could establish this and no data is collected on applications made by stateless persons. Where a person self-declares as stateless, they need to provide a detailed explanation of their situation, supported by a personal immigration history and country of origin information in relation to obtaining passports from their

¹¹⁰ Correspondence with Principal Officer, Repatriation Division, Department of Justice, November 2019.

¹¹¹ The Travel Document Application Form indicates that such temporary travel documents are issued in exceptional circumstances only, usually for the purpose of seeking urgent medical treatment or other humanitarian reasons, to a person who is currently resident in Ireland, and does not hold a national passport.

¹¹² Correspondence with Principal Officer, Repatriation Division, Department of Justice, November 2019.

¹¹³ Department of Justice, Applying for Travel Document, available at: <https://bit.ly/3FHBu1O>

country of former habitual residence.¹¹⁴ The travel document section will examine any evidence regarding their attempts to obtain a passport, including official refusal responses from any Embassies. This is echoed in the travel document application form which requires individuals to “*enclose with this application a letter from your Embassy/ High Commission showing that they have formally and unreasonably refused your application for a passport or travel document*”.¹¹⁵

If the Embassy or national authorities of an individual’s former country of origin/habitual residence provide no official response, then the travel document section will examine evidence of a person’s genuine attempts to apply for a passport including formal correspondence and copies of completed application forms.¹¹⁶ This approach by the Irish authorities, while understandable in the absence of a formal statelessness determination procedure, is problematic as it fails to acknowledge that the individual concerned is stateless and, therefore, may have no ties to any Embassies of countries they formerly resided in. It appears to be an ad hoc measure in response to the Irish authorities’ failure to formally recognise persons as stateless. Such processes are inefficient and may last for a protracted period before individuals can access travel documents.¹¹⁷ An experienced legal representative in this area has noted that it is rare for Embassies and/or Consulates to issue a letter confirming that it is not possible for them to assist and it is necessary to write at least 3 or 4 times to the Embassy and evidence no response before the ISD will accept that the person has made efforts to obtain a passport.

Correspondence with the travel document section shared with UNHCR Ireland’s office indicates that even if a person is granted a travel document once for exceptional reasons, they may face similar challenges during the renewal of their travel document regarding the requirement to have a letter from an Embassy showing that they refused an application for a passport for the individual concerned.¹¹⁸

5.2 Access to Citizenship

Article 32 of the 1954 Convention provides ‘*The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*’ Article 34 of the 1951 Refugee Convention similarly obliges state parties to facilitate the naturalisation of refugees, including those who are stateless stating that ‘*in particular, costs should be reduced, and the naturalization procedures expedited.*’ In Ireland provisions on the acquisition and loss of nationality are found in the Irish Nationality and Citizenship Act 1956 (as amended).

As indicated above in chapter 3.1.1., Section 16 of the 1956 Act states that the Minister may, “*in his absolute discretion,*” grant an application for a certificate of naturalisation, although not all of the conditions for naturalisation are complied with, in the case of refugees and of stateless persons within the meaning of the 1954 Convention. In practice this section generally operates as a waiver in relation to the length of reckonable residence required (normally 5 years) so that stateless persons can apply, like refugees, within 3 years. This is more straightforward if the individual concerned is a stateless refugee. The Department of Justice confirmed that the determination as to the relevant residency criterion to be applied for an application for citizenship is done when the application is received. If the individual is formally recognised by the Minister for Justice as stateless then the 3-year residency criterion will apply. However, for other stateless persons without a formal recognition of their status as stateless by the Irish authorities it is difficult to show how they can benefit from this residence waiver in practice. Legal

¹¹⁴ Correspondence with Principal Officer, Repatriation Division, ISD Department of Justice, November 2019.

¹¹⁵ Department of Justice, Travel Document Application Form, available at: <https://bit.ly/3VNQDnZ>

¹¹⁶ Correspondence with Principal Officer, Repatriation Division, ISD Department of Justice, November 2019.

¹¹⁷ The processing times for travel documents have been increased during the Covid-19 pandemic to 27 weeks as indicated in this response to a parliamentary question 183/184 October 2021 by Minister of State at the Department of Justice Deputy James Browne, available at: <https://www.justice.ie/en/JELR/Pages/PQ-13-10-2021-183>

¹¹⁸ Correspondence shared by Immigrant Council of Ireland, November 2019.

representatives may sometimes submit an affidavit to the effect that that the applicant is stateless, but there is a lack of information available on the practice to demonstrate whether that is sufficient for a stateless person to avail of the 2-year waiver.

All applicants for naturalisation must pay a €175 application fee to initiate a citizenship application. The standard certificate fee for citizenship applications is set at €950, but in the case of recognised refugees and stateless persons there is no certification fee.¹¹⁹ As indicated by the Minister of State at the Department of Justice in relation to a parliamentary question on the circumstances upon which fees for an application for naturalisation can be waived *“The fees in relation to applications for a certificate of naturalisation are governed by the provisions of the Irish Nationality and Citizenship Regulations 2011....the standard certification fee is set at €950, while a reduced fee of €200 applies in the case of an application made on behalf of a minor or in certain cases where the application is made by a widow, widower or surviving civil partner of an Irish citizen. In the case of recognised refugees or stateless persons, there is no certification fee.”*¹²⁰ The Department of Justice reported that if an individual is accepted by the Minister for Justice as stateless then they will be able to avail of the certificate fee waiver. However, to UNHCR’s knowledge there has been no formal declarations of statelessness issued since 2014 so it is unclear how stateless individuals who are not officially recognised as such can successfully apply for fee waivers in practice. A legal representative in this area noted that in her experience the citizenship unit does not waive the naturalisation fees for stateless persons.

In June 2021, UNHCR delivered training with the citizenship unit within the Department of Justice on the specific situation of refugees and stateless persons seeking naturalisation in Ireland. It is hoped that this training will assist the unit in their future engagement with stateless persons. Nevertheless, the application of waivers relating to the period of reckonable residency and certification fee for stateless naturalisation applications remains a challenge in the absence of a formal determination procedure.

¹¹⁹ Parliamentary question response to question no. 492 of 7 September 2018 by former Minister for Justice Deputy Charles Flanagan, available at: <https://www.justice.ie/en/JELR/Pages/PQ-07-09-2018-492>

¹²⁰ Parliamentary question report to question 579 of 28 September 2021, by Minister of State at the Department of Justice James Browne, available at: <https://www.oireachtas.ie/en/debates/question/2021-09-28/579/>

6. REDUCTION AND PREVENTION OF STATELESSNESS

As indicated above the 1961 Convention is the leading international instrument that provides rules for the conferral and withdrawal of citizenship to prevent cases of statelessness from arising. By adopting the 1961 Convention safeguards that prevent statelessness, states contribute to the reduction of statelessness over time.

6.1 Reduction of Childhood Statelessness

A central focus of the 1961 Convention is the prevention of statelessness at birth by requiring states to grant citizenship to persons born on their territory, or born to their nationals abroad, who would otherwise be stateless. To prevent statelessness in such situations, states may grant nationality to children automatically at birth or upon application with the national authorities.¹²¹ States must also ensure that foundlings acquire a nationality.¹²²

UNHCR notes that the rules for prevention of statelessness among children contained in the 1961 Convention must also be interpreted in light of other human rights treaties. In this regard Article 7 of the UN Convention on the Rights of the Child (CRC) provides that:

*'States Parties shall ensure the implementation of these rights [right to a name, nationality, and to know and be cared for by parents] in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.'*¹²³

Article 3 of the CRC further requires that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration. The right of every child to acquire a nationality and the principle of the best interests of the child together create a presumption that states need to provide for the acquisition at birth or as soon as possible after birth, ideally by automatic acquisition of nationality at birth by a child otherwise born stateless in their territory, in accordance with Article 1(1)(a) of the 1961 Convention. In UNHCR's view, automatic acquisition would be the best and safest way of avoiding childhood statelessness.¹²⁴

In Ireland, section 6(3) of the Irish Nationality and Citizenship Act 1956 provides that *'a person born on the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country.'*¹²⁵ This is a significant provision in granting citizenship to stateless children born on the territory of Ireland and goes towards meeting Action 2 of the Global Action Plan to ensure that no child is born stateless.¹²⁶ While UNHCR contacted the relevant authorities in the Department of Justice during this research, no information was available on the practice surrounding this legislative provision. The Department of Justice did confirm that in order to benefit from the provisions of section 6(3) it must be established by, or on behalf of an applicant, that they are not entitled to

¹²¹ Article 1 of the 1961 Convention on the Reduction of Statelessness.

¹²² Article 2 of the 1961 Convention on the Reduction of Statelessness.

¹²³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

¹²⁴ UNHCR Guidelines on Statelessness No. 4: *Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at <http://www.refworld.org/docid/50d460c72.html> para. 11; UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, Action 2, available at: <https://www.refworld.org/docid/545b47d64.html>, p. 13; UNHCR, *Good Practices Paper - Action 2: Ensuring that no child is born stateless*, 20 March 2017, available at: <https://www.refworld.org/docid/58cfab014.html>

¹²⁵ Irish Nationality and Citizenship Act 1956 as revised, Law Reform Commission, August 2021, available at: <https://bit.ly/3hgittHB>

¹²⁶ Action 2: Ensure that no child is born stateless; UNHCR's Global Action Plan to End Statelessness 2014-2024.

citizenship of any other country. The condition of ‘not being entitled to citizenship’ should not be interpreted so narrowly as to deny citizenship to a child whose right to citizenship through their parent(s) is legally recognized by another country, but who cannot acquire citizenship of that other country in practice. In this regard the UNHCR Handbook on Stateless Persons states *“An individual’s nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise.”*¹²⁷

There have been at least four successful applications of this provision on behalf of a stateless child, one in 2020, another in 2021 and two in 2022.¹²⁸ Although the wording in section 6(3) of the 1956 Act appears to indicate automatic application of citizenship, in practice, persons requesting citizenship on this basis apply to the Minister for Justice for a certificate of nationality pursuant to Section 28 of the 1956 Act. In such situations the Minister for Justice, or a government official on her behalf, must be satisfied that the applicant concerned ‘is an Irish citizen, and the issue of the certificate is necessary in all circumstances of the case’ and they then may issue a certificate of nationality accordingly. As there is no clearly prescribed formal procedure in place for applications under Section 6(3) it can be difficult to know what considerations are taken into account to deem that a certificate of nationality is necessary in the circumstances of an individual case. When contacted, the Department of Justice indicated that normally certificates of nationality are not issued on this basis and that individuals falling within the scope of section 6(3) of the 1956 Act are advised to proceed straight to the Passport Office. However, when the Passport Office was contacted during this study, they indicated that stateless persons, including children, would require that status be confirmed by the citizenship unit of the Department of Justice before issuing a national passport.

Section 10 of the Irish Nationality and Citizenship Act 1956 provides for the citizenship of foundlings in stating that ‘every deserted newborn child first found in the State shall, unless the contrary is proved, be deemed to have been born in the Island of Ireland to parents at least one of whom is an Irish citizen.’ However, like section 6(3), there is no established procedure regarding the application of this legislative provision in practice nor are any statistics available on its use. The Department of Justice reported that each application is judged on its individual merits, strictly in accordance with the provisions of the relevant legislation. The Department was unaware of this provision for foundlings being applied since 2014. The European Network on Statelessness (ENS) highlighted the following concerns in relation to this provision:

*“It is unclear if the provision on foundlings applies to older children, and the lack of regulation of all forms of assisted human reproduction may have consequences for some children, particularly children of same-sex couples born abroad and if the Irish parent is not a birth parent.”*¹²⁹

The absence of clear procedures for the application of section 6(3) and 10 of the Citizenship Act 1956 invariably means that persons may need to seek judicial review in the superior courts to access a remedy in their individual situation. UNHCR recommends that automatic acquisition of nationality at birth for a child who is otherwise stateless or a foundling is the most efficient way to avoid childhood statelessness.

¹²⁷ UNHCR’s Statelessness Handbook, para. 50.

¹²⁸ Berkeley Solicitors, *Stateless Child born in Ireland granted a Certificate of Nationality*, available at: <https://bit.ly/3iJhmDh>; Berkeley Solicitors, *Client of Berkeley Solicitors granted a Certificate of Nationality for their minor stateless child*, available at: <https://bit.ly/3hc3bGl>

¹²⁹ ENS Statelessness Index Country Briefing, October 2021, Ireland, available at: <https://bit.ly/3PhXgwa>

6.2 Withdrawal of Citizenship and Statelessness

The 1961 Convention also has measures prohibiting the withdrawal of citizenship through loss, renunciation or deprivation of nationality when such withdrawal would result in statelessness. Only under a few limited exceptional circumstances does the Convention allow for the withdrawal of nationality resulting in statelessness.¹³⁰ Ireland has retained a reservation to this Convention as outlined in section 2.3.2. enabling the loss of citizenship for naturalised Irish persons with reference to Article 8(3) of the 1961 Convention.¹³¹

There are no provisions in Irish law for revocation¹³² of citizenship granted at birth, only for revocation of citizenship obtained by naturalisation.¹³³ Section 19 of the Citizenship Act 1956 provides for the various grounds when a certificate of naturalisation can be revoked including where the certificate was procured by fraud or misrepresentation.¹³⁴ Under Section 19(2) the Minister for Justice is obliged to give individuals notice of her intention to revoke a certificate of naturalisation, including the reasons why such action is being taken. The person concerned may then request an inquiry before a special committee appointed by the Minister. This is not a judicial body, but the chairman of the committee must have judicial experience. However, there is no explicit safeguard preventing statelessness in the event that an individual's certificate of naturalisation is revoked. During the drafting of the 1961 Convention at the UN Conference on the Elimination or Reduction of Future Statelessness, Ireland noted in a memorandum submitted by the Minister for External Affairs at that time that, with respect to revocation, *'in any case, where the revocation of an Irish certificate of naturalisation would result in statelessness, the Minister for Justice would take this factor into consideration in deciding whether or not to revoke the certificate.'*¹³⁵ This seems to indicate that the possibility of a person becoming stateless upon revocation of citizenship is considered by the committee. The revocation procedure was examined by the Supreme Court in 2020 in the case of *Damache v the Minister for Justice and Equality*.¹³⁶ The Supreme Court held that the Sections (19)(2) and 19(3) of the Irish Nationality and Citizenship Act 1956 as amended are unconstitutional because the revocation process does not meet the requirements of natural justice. The Court held that *'the process by which citizenship may be lost must be robust and at the very least (...) must observe minimum procedural standards in order to comply with the State's human rights obligations.'* It emphasised that a high degree of procedural fairness is required given the loss of many crucial rights associated with citizenship during revocation and the fact that a person may be rendered

¹³⁰ For further information see UNHCR, *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html>

¹³¹ Article 8(3) 1961 Convention *"Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time: (a) that, inconsistently with his duty of loyalty to the Contracting State, the person (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State; (b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State."*

¹³² Revocation is the terminology used in the Citizenship Act 1956 which is equivalent to deprivation as set out in the 1961 Convention.

¹³³ Although it should be noted that, there is a pending Supreme Court case in relation to the refusal to renew an Irish passport issued to a Irish born child as a result of the father's revocation of refugee status in the case of *UM (a minor suing by his father and next friend MM) v. Minister for Foreign Affairs and Trade and Passport Appeals Officer*, [2020] IECA 154.

¹³⁴ Section 19(1) Irish Nationality and Citizenship Act 1956: *"The Minister may revoke a certificate of naturalisation if he is satisfied— (a) that the issue of the certificate was procured by fraud, misrepresentation whether innocent or fraudulent, or concealment of material facts or circumstances, or (b) that the person to whom it was granted has, by any overt act, shown himself to have failed in his duty of fidelity to the nation and loyalty to the State, or (c) that (except in the case of a certificate of naturalisation which is issued to a person of Irish descent or associations) the person to whom it is granted has been ordinarily resident outside the State or, in the case of an application for a certificate of naturalisation granted under section 15A, resident outside the island of Ireland (otherwise than in the public service) for a continuous period of seven years and without reasonable excuse has not during that period registered annually in the prescribed manner his name and a declaration of his intention to retain Irish citizenship with an Irish diplomatic mission or consular office or with the Minister, or (d) that the person to whom it is granted is also, under the law of a country at war with the State, a citizen of that country, or (e) that the person to whom it is granted has by any voluntary act, other than marriage or entry into a civil partnership, acquired another citizenship."*

¹³⁵ For further information see UN Conference on the Elimination or Reduction of Future Statelessness Addendum to Comments by Governments on the revised Draft Convention on the Elimination of Future Statelessness and the revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its sixth session, A/CONF.9/5/Add.3 available at: <https://bit.ly/3iKEoCY>

¹³⁶ Supreme Court, *Damache v Minister for Justice and Equality, Ireland and the Attorney General*, 10 February 2021, available at: <https://bit.ly/3Hv9tMk>

stateless.¹³⁷ In light of this judgment new legislative provisions for the revocation of certificates of naturalisation will have to be adopted.¹³⁸ The Department of Justice when contacted as part of this study, indicated that the Minister for Justice is considering the implications of the Supreme Court judgment.¹³⁹

As outlined above, only some aspects of the 1956 Act as amended concerned with renunciation, loss and revocation of citizenship are broadly in line with the relevant requirements of the 1961 Convention. There remains scope for the introduction of greater safeguards, both legal and in practice, and UNHCR would advocate, in particular, for the removal of the 1961 Convention reservation on loss of citizenship and for the introduction of a provision preventing, as a general principle, the revocation of citizenship where this would render a person statelessness.

¹³⁷ Supreme Court, *Damache v Minister for Justice and Equality, Ireland and the Attorney General*, 10 February 2021, available at: <https://bit.ly/3Hv9tMk> p.86.

¹³⁸ Irish Legal News, Legislation required before revocation of citizenship can take place again, 11 February 2021, available at: <https://bit.ly/3FTvS4N>

¹³⁹ Correspondence with the Citizenship Unit, ISD, Department of Justice, January 2022; ESRI, Research Series Number 116, *Pathways to Citizenship through Naturalisation in Ireland*, December 2020, available at: https://www.esri.ie/system/files/publications/RS116_2.pdf

7. CONCLUSION

Overall, the phenomenon of statelessness has not received much attention in Ireland. While it is positive that Ireland has ratified the 1954 and 1961 Conventions, it is apparent from this research that they have not been incorporated fully into law and administrative practice at the national level. There appears to be a limited understanding of statelessness and its implications. Stateless persons in Ireland are not a visible population and the absence of accurate statistical data collection and recording hampers understanding of the issue. This invisibility of stateless persons may mean there is a lack of political resolve to address statelessness matters. While the number of stateless persons in Ireland may be low, this research highlights the fact that such persons may face lengthy delays in accessing their rights, if at all, and experience administrative hurdles and challenges any time they engage with government authorities in relation to their status. Practice by officials in ISD at the Department of Justice appears to indicate an unwillingness to accept assertions of statelessness without substantiation, but in the absence of a formal determination procedure and policy, these individuals, who are already in a vulnerable situation, are left with no guidance as to how to demonstrate their lack of nationality and resolve their situation.

This research demonstrates that the problems stateless individuals encounter reoccur regularly at various stages of administrative procedures, including renewal of permission to remain and requesting a travel document. This is amplified by the fact that they appear to face the same challenges at times of renewal of their permission to remain and when reissuing a travel document. Stateless persons can spend a considerable amount of time, over years, trying to rectify their situation in a state of heightened anxiety. Without practical procedures to enable them to assert their rights under the 1954 Convention, such persons, in effect, are being denied their rights.

Some stateless persons may appear in the international protection procedure, but this is also not without its challenges. If an individual fails to be correctly registered as stateless upon entry to Ireland and the protection procedure, it can be difficult to amend and rectify their status subsequently in the procedure. This is so even if an IPO authorised officer and/or IPAT Tribunal member finds that the applicant is stateless in their decision. The analysis of IPO section 39 reports and IPAT decisions shows that there is an understanding of statelessness, albeit inconsistently interpreted, but this does not appear to fully translate to the individual person concerned being accurately recorded as stateless across ISD systems. As regards the prevention and reduction of statelessness, the national legal framework provides for the reduction of childhood statelessness, but the absence of a transparent procedure and guidance means there is a lack of clarity on how to enable stateless children born in Ireland to assert their right to citizenship under section 6(3) of the Irish Nationality and Citizenship Act 1956. Section 6.2 of this report also highlights the lack of legal safeguards to prevent statelessness in the current revocation procedure. Following the Supreme Court decision of *Damache v. Minister for Justice and Equality* there is an opportunity for the Irish authorities to reform the law in this area in order to avoid statelessness as a result of revocation.

A lot of the issues raised in this report would be solved by the establishment of a clear and transparent determination procedure. A statelessness determination procedure would facilitate access to the rights guaranteed to stateless persons under international and national law. Formalising a determination procedure would ensure fairness, transparency, and efficiency to the benefit of stateless persons and the Irish authorities. Presently, and in the absence of a determination procedure, UNHCR recommends greater co-ordination between state agencies both in the way that data is collected and recorded and the way that statelessness is assessed in individual cases. There are practical steps that can be taken to alleviate the burden on stateless persons in both the international protection and immigration procedures through more coordination and understanding of the issues faced by this cohort of people.

UNHCR remains at the disposal of the government to provide technical legal advice on the formulation of a statelessness determination procedure and to assist with capacity building activities for the relevant government authorities.

7.1 Recommendations:

In order to facilitate Ireland's full compliance with its obligations under the 1954 and 1961 Conventions and to ensure that stateless persons are able to enjoy the rights to which they are entitled, UNHCR makes the following recommendations to the government of Ireland. Some of the recommendations are procedural in nature while others are focused on providing a more appropriate framework for individuals who are currently residing in Ireland and not formally recognised as stateless. The main recommendation is the introduction of a statelessness determination procedure, but suggestions are also provided on mechanisms which can be utilised in the interim period before introducing such a procedure. All the recommendations fall within one or more of the four categories of identification, prevention and reduction of statelessness, and/or protection of stateless persons in line with the 1954 and 1961 Conventions. UNHCR remains at the disposal of the government to assist in the implementation of these recommendations:

1 Establish and implement a statelessness determination procedure to allow for the identification and protection of stateless persons

Ireland should establish an accessible and efficient statelessness determination procedure in line with its obligations under the 1954 Convention and human rights law. Such a procedure should adhere to international best practice in this area as highlighted in UNHCR's guidance and would meet the recommendation of the UN Committee on the Elimination of All Forms of Racial Discrimination to establish such a procedure.¹⁴⁰ It could be introduced by way of a new legislative framework which would include provisions guaranteeing stateless persons the respective rights to which they are entitled under the 1954 Convention.

2 Consider acceding to the European Convention on Nationality

The European Convention on Nationality was adopted by the Council of Europe in 1997 and entered into force in 2000. Among the main principles of the Convention are the prevention of statelessness and non-discrimination in matters related to nationality.

3 Establish an effective quantitative and qualitative data collection procedure and ensure statistics are systematically gathered in relation to stateless persons

Data collection should be harmonized among various government departments to ensure a consistent approach to accurate data recording on stateless persons in Ireland. Collecting statistical data will ensure an enhanced understanding of the scope of the problem of statelessness and assist with developing solutions to meet the needs of stateless persons in Ireland. UNHCR's guide to researching statelessness may be of assistance in undertaking qualitative and quantitative data collection.¹⁴¹

4 Increase awareness of statelessness and its impact among the various governmental institutions, departments and other relevant independent bodies who may encounter stateless persons.

Awareness raising initiatives could be employed in the Department of Justice, Immigration Service Delivery units including the International Protection Office, Repatriation Division and Citizenship Unit among others. Consideration could also be given to employing awareness raising initiatives with other relevant bodies including the International Protection Appeals Tribunal, the Legal Aid Board and An Garda Síochána. This could be facilitated by not only establishing a focal point on statelessness in each of these departments and relevant bodies but also providing training and guidance on the identification and protection of stateless persons.

¹⁴⁰ ICERD, *Concluding Observations on the Combined Fifth to Ninth Reports of Ireland*, CERD/C/IRL/CO/5-9, 23 January 2020, available at: <https://bit.ly/3YswxBt>

¹⁴¹ UNHCR, *Quick Guides: Researching Statelessness*, March 2021, available at: <https://www.refworld.org/docid/6054c9ca4.html>

5 Establish a coordinated and consistent approach to administrative requests regarding stateless persons across Immigration Service Delivery at the Department of Justice including in the area of renewal of permission to remain, registration of immigration permission, travel document applications and access to citizenship.

This recommendation would meet the requirement to protect stateless persons who are currently residing in Ireland without a formal recognition of their status. This report has highlighted that frequently this cohort of people face lengthy administrative obstacles and barriers in relation to their engagement with immigration procedures. A coordinated approach across Immigration Service Delivery in the Department of Justice with clear guidelines would assist in creating a more streamlined and efficient process and the removal of such administrative challenges which is of assistance to both the individual stateless persons concerned and officials operating in this area. Any guidelines, in the absence of a formal statelessness determination procedure, should include guidance on ensuring flexibility in relation to documentary requirements imposed on stateless persons.

6 Establish guidelines on the identification and protection of stateless persons in the international protection procedure

Such guidelines could focus not only on early identification and recording of stateless persons but also on the protection risks faced by stateless persons and related human-rights developments in order to improve consistency in decision-making in this area. In addition, the guidelines could address procedural matters such as measures to be taken when a person is first registered with a specific nationality and then subsequently is found to be stateless in the protection procedure.

7 Establish guidelines on the identification and protection of stateless persons as part of permission to remain considerations under the Immigration Act 2004 and International Protection Act 2015 on an interim basis pending the introduction of a statelessness determination procedure.

As demonstrated in this report stateless persons may appear in various immigration procedures as well as in the international protection procedure. In the absence of a formal statelessness determination procedure, on an interim basis, guidelines could be developed in relation to permission to remain considerations for stateless persons who are found not to be eligible for international protection in the protection procedure and stateless persons in immigration procedures. Such guidelines could focus on identification of stateless persons and other various factors such as documentary evidence requirements, recording of data and procedural safeguards.

8 Facilitate naturalisation for stateless children by ensuring automatic acquisition at birth or, in the alternative, by clearly prescribing a procedure for children born stateless in Ireland to avail of Irish nationality in accordance with Article 6(3) of the Irish Nationality and Citizenship Act 1956

Automatic acquisition at birth for children born stateless in Ireland would be an efficient and effective way to prevent childhood statelessness. In the alternative, a clear and transparent procedure with published guidance should be developed so that parents, guardians, and legal representatives of such children know how to assert this right in practice.

9 Remove the reservation to the 1961 Convention concerning revocation of citizenship for naturalised persons and introduce a new legislative provision in the Irish Nationality and Citizenship Act 1956 (as amended), preventing the revocation of citizenship where this would render a person stateless.

Removing the reservation to the 1961 Convention and introducing such a new legislative provision would be a safeguard against statelessness in case of loss and deprivation of nationality in any form and meet the State's obligations under the 1961 Convention.

STATELESSNESS

