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Statelessness Determination Procedures: Policy Options, Practical Experiences and Challenges

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Context for today's seminar

- UNHCR 10 year campaign to end statelessness by 2024.
- EU Council Conclusions on Statelessness, adopted by the Justice and Home Affairs Council on 3-4 December 2015. These Conclusions:
 - Acknowledged *“the importance of identifying stateless persons and strengthening their protection ...”*
 - Recognised *the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness”; and*
 - Invited *“the Commission to launch exchanges of good practices among Member States, using the European Migration Network as a platform.”*



Statelessness in International Law

- Overarching principle in Article 15 of Universal Declaration of Human Rights:
Everyone has the right to a nationality
- 1954 Convention relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness
- These two Conventions make up a holistic response to the phenomenon of statelessness:
 - the 1954 Convention provides a definition of a stateless person, outlines core principles for their treatment and implies the need for a mechanism to identify stateless persons;
 - the 1961 Convention aims to establish safeguards to prevent statelessness from occurring. While States retain their own competence regarding the granting of nationality, the 1961 Convention underpins the principle that they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided. Safeguards against statelessness in nationality laws can reduce the phenomenon over time.



Statelessness in International Law - 2

- Statelessness referred to in other international conventions.
- UN Convention on the Rights of the Child– Article 7 – every child has the right to acquire a nationality and states should safeguard against a child becoming stateless.



Statelessness in International Law - 3

- International Covenant on Civil and Political Rights (ICCPR), Article 24(3) – *Every child has the right to acquire a nationality*
- Convention on the Elimination of All Forms of Discrimination against Women, Article 9 - *States Parties shall grant women equal rights with men to acquire, change or retain their nationality ... States Parties shall grant women equal rights with men with respect to the nationality of their children.*



Statelessness in International Law - 4

- Focus of today is 1954 Convention:
- Its main contribution is providing the definition of a stateless person in Article 1(1):
the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.
- The 1954 Convention also recognises the possible complementarities between refugee status and statelessness in its Preamble:
only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and [...]there are many stateless persons who are not covered by that Convention



Rights enshrined in 1954 Convention - 1

- 1954 Convention sets out certain minimum standards for the treatment of qualified stateless persons under the Convention.
- Rights enshrined in the Convention include:
 - provisions in relation to non-discrimination (Article 3), freedom of religion (Article 4) , access to courts (Article 16);
 - For Stateless persons lawfully staying in the territory of the Contracting State - Right to employment, including self-employment (Articles 17 and 18), housing (Article 21), right of association (Article 15)– treatment not less favourable than that accorded to non-nationals generally.



Rights enshrined in 1954 Convention - 2

- 1954 Convention sets out certain minimum standards for the treatment of qualified stateless persons under the Convention.
- Rights enshrined in the Convention include:
 - Education – access to elementary education on the same basis as nationals (Article 22).
 - Travel Documents – for stateless persons lawfully on the territory of the Contracting State and favourable consideration for other Stateless Persons in the territory, in particular if they cannot obtain a travel document from the country of their lawful residence (Article 28).
 - As far as possible, States should facilitate the assimilation and naturalisation of stateless persons, including by more favourable naturalisation rules and reducing costs. (Article 32)



Rights enshrined in 1954 Convention - 3

- How do States identify stateless persons, to allow stateless persons access to rights under the Convention or rights accorded to stateless persons under national law?
- The 1954 Convention is silent on this – it does not make it obligatory for States to institute a formal determination process or prescribe any methods for determination of statelessness.
- However, it is implicit in the Convention that States must identify stateless persons within their jurisdiction in order to provide them appropriate treatment and so as to comply with their Convention commitments (the same principle applies in relation to the 1951 Refugee Convention).



Rights enshrined in 1954 Convention - 4

- This is the focus of our discussion today.
- As with refugee status, a statelessness determination is declaratory in nature. A person is stateless from the moment they meet the conditions set out in Article 1(1) of the 1954 Convention.
- States are therefore encouraged to establish determination processes which allow them to identify and recognise stateless persons. This, in turn, can give recognised stateless persons access to the rights to which they are entitled under international law by virtue of their being stateless.



Statelessness in Irish law

- Ireland acceded to the 1954 Convention in 1962 and the 1961 Convention in 1973.
- Some provisions in Irish law:
- Irish Nationality and Citizenship Act 1956 (as amended):
 - Section 6(3): 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 16(1)(g): the Minister may in his/her absolute discretion waive conditions of naturalisation in certain cases including where the person is a stateless person within the meaning of the 1954 Convention;
- Irish Nationality and Citizenship Regulations 2011:
 - Regulation 13(2)(a) waives the certification fee for naturalisation for a person to whom section 16(1)(g) (above) applies.

