

REALISING THE RIGHT OF EVERY CHILD TO A NATIONALITY IN EUROPE



TECHNICAL MEETING OF EXPERTS
(Strasbourg, 23 September 2021)

Issue paper



SESSION 2 - Preventing and reducing statelessness in Europe, including the possible consequences of childhood statelessness

Expected outcomes

Participants are invited to discuss and develop concrete technical recommendations on the prevention and reduction of statelessness in Europe, including the possible consequences of childhood statelessness. In this respect, participants will:

- Discuss outstanding gaps, share challenges and practical difficulties and promote good practices;
- Identify areas where member States can benefit from targeted technical support to develop and implement appropriate responses to statelessness;
- Identify concrete follow-up actions by member States and where appropriate, provide further suggestions for follow-up.

Modalities

Participants are encouraged to participate in the discussions as actively as possible in order to maximise the sharing of experience and good practices, with the view to inspiring possible solutions to difficulties encountered.

Each session is led by a moderator who will act as a facilitator and direct the discussions. The General Rapporteur will take note of the views expressed by participants and present key concluding remarks at the end of the technical meeting and at the international conference on 24 September. The outcome of the discussions will be presented in the final report of the technical meeting.

Pointers for discussion

To facilitate the exchange of views, a few issues are highlighted below and prioritised for discussion. The questions below are pointers only, participants are welcome to raise other issues they consider important. The topics for discussion have been regrouped under different but complementary themes. Participants may therefore be called upon to share their views on these issues from the different angles of the themes covered.

Implementing principles governing acquisition and deprivation of nationality and related criteria – The role of judges and national authorities

- What are the barriers to naturalisation faced by stateless migrants/refugees and how can Article 32 of the 1954 Convention best be implemented in practice (e.g., reduction in residence requirements, exemptions from documentation or language testing requirements, exemption from 'good character'/criminal conviction requirements etc.)?
- In the context of large-scale in situ stateless populations, could you provide examples of successful strategies for reducing and resolving statelessness. Based on your practical experience, what more can be done?

- On what grounds can an individual be deprived from his or her nationality? What are the procedural safeguards against arbitrary decision? Do individuals have access to legal aid and appeal rights?

- How is potential statelessness status identified in the context of deprivation of nationality?
- How can legal safeguards best be introduced and implemented to remove the risk of statelessness arising from deprivation, loss or renunciation of nationality?

Preventing childhood statelessness and ensuring child friendly procedures

- What are the main barriers to introducing and/or implementing legal safeguards in nationality laws to prevent childhood statelessness?
- How and when does (or should) the identification, determination, and recording of a child's nationality (or statelessness) take place at or after birth in order to ensure all otherwise stateless children acquire a nationality as soon as possible after birth?
- What are the specific barriers to birth registration and how can they best be overcome to ensure every child's birth is registered and they acquire a birth certificate (e.g., documentation requirements, lack of information, complex procedures, lack of recognition of birth certificates or parenthood, discriminatory practices or behaviours, etc.)?
- How should the specific risks of statelessness faced by refugee children/children of refugees born in transit, at sea, in camp settings, in country and unable to approach embassies for confirmation/acquisition of nationality be addressed? What safeguards are in place in countries and how can these be best implemented ?
- What are the criteria to be fulfilled by stateless individuals in the context of naturalisation ? How would you determine the content of a lawful and habitual residence ?
- Based on your practical experience, how can statelessness determination procedures be more child-friendly, in particular for unaccompanied children?

Introduction

1. International law establishes norms for the prevention and reduction of statelessness, including childhood statelessness. It is possible to end statelessness, but this requires legal safeguards to be established in national law and implemented in policy and practice, and a range of actors to be involved. Good practice exists and can be drawn upon in support of efforts to address statelessness. Examples will be highlighted throughout this paper¹, alongside common challenges and suggested actions to address these.
2. States have competence to set the conditions for acquisition and loss of nationality (usually based on family or territorial links) within the limits established by international law.² Key relevant limits set by international law include the avoidance of statelessness, non-discrimination, equality between men and women, and non-arbitrariness.³ However, conflicts in nationality laws, lack of safeguards in legislation to prevent statelessness, State succession, discrimination, and administrative or legal barriers to civil registration may lead to statelessness or a risk of statelessness for individuals. International and regional instruments have been established to address these risks, including the UN Convention Relating to the Status of Stateless Persons (1954 Convention),⁴ the UN Convention on the Reduction of Statelessness (1961 Convention),⁵ and the 1997 European Convention on Nationality (1997 ECN).⁶

I. Prevention of statelessness at birth

1. Children affected by statelessness in Europe

3. Nationality is usually acquired at birth either through the parents (*jus sanguinis*) or through the place of birth (*jus soli*). A primarily *jus sanguinis* approach is favoured by States in Europe and around the world today (with the exception of the Americas region). Most children will therefore automatically acquire a nationality from one or both of their parents by descent. However, some children may not be able to inherit their parents' nationality for different reasons (including gaps or conflicts in nationality laws, practical barriers, or discrimination). If they are born in a country where nationality is not acquired through the place of birth, this can leave them stateless or at risk of statelessness. Some profiles of children at particular risk of statelessness include:

¹ The elements of this background paper have been prepared with the support of Ms Nina Murray, Head of Policy and Research (European Network on Statelessness). The paper aims to inform discussions during the expert meeting (23 September 2021) by highlighting relevant international norms and guidance, recent legal developments, examples of good practice and outstanding challenges. The opinions expressed are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe nor of the UNHCR.

² Article 1 of the Hague Convention, 1930.

³ See e.g., International Covenant on Civil and Political Rights (Article 24.3), International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and Article 3), Convention of the Rights of the Child (Articles 2, 3, 7 and 8), Convention on the Elimination of All Forms of Discrimination against Women (Article 9), International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(iii)), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Rights of All Migrant Workers and Members of their Families, Convention on the Rights of Persons with Disabilities (Article 18), and Universal Declaration on Human Rights (Article 15).

⁴ UN Convention Relating to the Status of Stateless Persons, 28 September 1954.

⁵ UN Convention on the Reduction of Statelessness, 30 August 1961.

⁶ European Convention on Nationality, 6 November 1997.

- children in migration born to undocumented or stateless parents,⁷ or born on route to Europe or in transit
- children who cannot inherit a nationality from their parents (for example due to gender discriminatory nationality laws of the mother's country of nationality)⁸
- children of same-sex parents and/or children born as a result of surrogacy arrangements
- abandoned children (foundlings)
- adopted children
- children born to parents belonging to minority groups who face discrimination and/or barriers to acquiring or proving their legal identity and/or nationality (for example, some Roma children, or children of non-citizens or people with undetermined nationality)

2. Summary of international and regional norms and guidance

4. The 1961 Convention and the European Convention on Nationality prescribe detailed safeguards for States to introduce in their nationality laws to avoid statelessness at birth (i.e., childhood statelessness), including for children born on the territory, children born to nationals abroad, foundlings, and adopted children. This includes the obligation on State Parties to grant nationality to children born on their territory who would otherwise be stateless. Such provisions may be automatic by operation of the law, or upon application, which can be subject to specific, limited conditions, but must be non-discretionary.⁹ UNHCR provides detailed Guidelines for States on how to implement the provisions of the 1961 Convention,¹⁰ and other regional and international bodies have provided recommendations and concluding observations on how international and regional norms for the prevention and reduction of statelessness should be implemented.¹¹ The Council of Europe Human Rights Commissioner issued a Human Rights Comment, inviting Governments to act more vigorously to break this cycle by targeting measures to end statelessness, especially among children¹². 35 Council of Europe members States are Parties to the 1961 Convention, and 21 are parties to the ECN. The Convention on the Rights of the Child, which is universally ratified by all Council of Europe Member States, also obliges States to fulfil the right of every child to be registered immediately upon birth and to acquire a nationality.¹³

⁷ For more information on common profiles of migrants and refugees affected by statelessness, see <https://statelessjourneys.org/resources>

⁸ For more information on the 25 countries around the world that prevent women from passing on their nationality to their children on an equal basis with men, see: <https://equalnationalityrights.org/>

⁹ 1961 Convention, Articles 1-5; UNHCR, *Guidelines on Statelessness No. 4; Ensuring Every Child's Right to Acquire a Nationality through Article 1-4 of the 1961 Convention on the Reduction on Statelessness*, 21 December 2021, HCR/GS/12/04; UNHCR, *Good Practice Paper. Action 7* (1997).

¹⁰ UNHCR, *Guidelines on Statelessness No. 4; Ensuring Every Child's Right to Acquire a Nationality through Article 1-4 of the 1961 Convention on the Reduction on Statelessness*, 21 December 2021, HCR/GS/12/04.

¹¹ See e.g., UNHCR, *Good Practice Papers, Actions 2 & 7*; UNHCR, *Global Action plan to End Statelessness 2021-24*, November 2014, Action 4 and 7; Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return; UN CRC, *Concluding observations on the fourth periodic report of the Netherlands*, 8 June 2015, CRC/C/NDL/CO/4; CEDAW, *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women* (2014); UN Human Rights Council, *The right to a nationality: women and children*, Resolution A/HRC/RES/20/4 (2012); Council of Europe: Committee of Ministers, [Recommendation CM/Rec\(2009\)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children](#), 9 May 2009, CM/Rec(2009)13

¹² [Human Rights Commissioner, Human Rights Comment – Governments should act in the best interest of stateless children \(2013\)](#).

¹³ UN Convention on the Rights of the Child, 2 September 1990, Article 7.

3. Current state of play in Council of Europe member States

5. Following on from these international obligations, most Council of Europe member States have adopted at least some legal provisions in their nationality laws to prevent statelessness at birth, particularly in the case of foundlings and adopted children. However, safeguards are often partial, covering only some situations that give rise to statelessness, or some children, or there are barriers to their implementation in practice. As a result, childhood statelessness persists and is perpetuated in Europe. Addressing these challenges is complicated by a lack of accurate data on the number of children affected by gaps in law, policy, and practice to prevent and reduce statelessness in Europe. Even where statistics on the stateless population in a particular State are available, their accuracy relies on adequate mechanisms being in place to identify and determine statelessness, and this is rarely disaggregated by age (or other relevant variables such as gender/sex and ethnicity). In March 2021, UNHCR published a series of six quick guides on researching statelessness. To help remedy the paucity of reliable statistics on stateless people, UNHCR is working closely with States and other partners under the umbrella of the Expert Group on Refugee and IDP Statistics (EGRIS) to finalise and submit International Recommendations on Statelessness Statistics to the UN Statistical Commission for adoption in 2023.

6. The most effective way to prevent statelessness among children born on the territory is through a *jus soli* (birthright citizenship) approach to acquisition of nationality, whereby all children born on the territory of a State automatically acquire its nationality.¹⁴ However, most European States operate a *jus sanguinis* or combined *jus sanguinis* and *jus soli* approach to the acquisition of nationality at birth. It is therefore vital that States establish and implement specific legal safeguards to ensure that a child born on their territory who would otherwise be stateless acquires a nationality, and such safeguards should preferably operate automatically at birth.

7. A good practice example in relation to prevention of statelessness at birth can be found in **Spain**, where the Spanish Civil Code provides that Spanish nationality is granted automatically at birth to all those born in Spain to foreign parents 'if both parents lack a nationality or if the legislation of both of their countries of origin does not attribute a nationality to the child'. There is no requirement to fulfil a period of residence by the child nor the parents and no age limit for acquiring nationality. There is also an additional safeguard for the children of refugees, which provides that a child born to refugee parents may naturalise as Spanish after one year of residence in the country. Foundlings may acquire Spanish nationality by origin until they are 18 years-old, and safeguards are in place to prevent statelessness in adoption cases. All births in Spain are registered, and birth certificates are issued regardless of parents' status or the legal deadline for registration. Nationality is only recorded at birth if the child is Spanish. In the case of a child born stateless, a procedure is in place to record the child's Spanish nationality as a rebuttable presumption. Other good practices in Europe include: **Estonia** passed an amendment to its Citizenship Act in January 2015, which enables children born to stateless parents to acquire citizenship automatically at birth. While there are some glaring gaps in the legislation – adolescents between the ages of 16 and 18 and children born outside Estonia to stateless residents of Estonia still cannot automatically obtain citizenship – this is still a significant step forward. The **Armenian** National Assembly adopted amendments to Armenia's citizenship law on 7 May 2015, which ensures that all children born on Armenian territory acquire Armenian nationality who would otherwise be stateless. The **Norwegian** Ministry of Justice and Public Security issued a new instruction to the immigration authorities, on 28 October 2016, to permit all stateless children born in Norway to apply for and acquire Norwegian citizenship. Previously, stateless children born in Norway without lawful residence were ineligible for naturalization. Now, children born stateless in Norway are only required to have been continuously residing in Norway for three years before submitting their

¹⁴ See for example, the United States of America.

application for Norwegian citizenship. On 17 October 2019, the **Latvian** Parliament passed a landmark law that provides for the automatic grant of citizenship to children born to “non-citizens” of Latvia after 1 January 2020. The new law is a significant development towards ensuring that children are not born without a nationality.

8. However, in many States, national law and policy are not in line with international obligations, and/or barriers exist to the implementation of existing safeguards, preventing stateless children to acquire nationality in practice. States still do not protect all children born on their territory from statelessness, by, for example, making the child’s right to acquire nationality dependent on the parents’ status or legal residence, including making it a requirement that parents are also stateless. This leaves a significant gap where children born to parents who cannot confer their nationality to their child are concerned. This could arise where gender discrimination in the nationality laws of a mother’s country of nationality prevent her children from acquiring her nationality and the father is stateless, absent, or unknown. Significantly, there is a lack of comprehensive frameworks to determine whether a child born on the territory acquires a nationality as soon as possible after birth and implement legal safeguards where these apply. In many cases, legal safeguards are not automatic, require additional registration or proof of statelessness, and/or there are practical barriers to accessing those safeguards, presenting practical barriers, including lack of information about the procedure, fees, language barriers, or lack of access to required documentation.

9. There are some barriers to acquisition of nationality that affect specific children, heightening the risk of both statelessness and discrimination in the enjoyment of the right to a nationality. In the case of refugee children, additional hurdles can arise if acquisition of nationality of either the country of birth or the country of a parent’s nationality is contingent on contact with the consular authorities of a country of origin.¹⁵ Safeguards are often lacking to ensure that refugees are not expected to contact the authorities of their country of origin from which they fear persecution for their children to acquire or confirm their nationality. The risk of statelessness can also be heightened for some children in migration if a child is born in transit and access to birth registration and certification is complicated or impossible in the place of birth (for example, due to the inability of parent/s to meet documentation requirements, or for other logistical reasons including digitalisation of civil registry systems which prevent some children from acquiring a birth certificate).¹⁶ Children with links to individuals suspected of being foreign fighters or born in areas under the control of designated terrorist groups to foreign mothers or fathers are also at risk of statelessness, when excluded from birth registration and documentation or if their birth certificates are not recognised by other Governments as a result of their birth in a conflict zone.¹⁷ Safeguards to facilitate the confirmation of their nationality and issuance of documentation are commonly lacking.

10. Children belonging to minority groups are often disproportionately impacted by barriers to birth registration and consequent risk of statelessness as their parents are more likely to lack the identity documents necessary to complete birth registration or to receive a birth certificate, for example, Roma children in the Western Balkans and Ukraine.¹⁸ In some countries, it is not possible for children’s births to be registered immediately at birth if parents (often mothers) are undocumented. Subsequent birth registration procedures are often lengthy, complex, and bureaucratic with many administrative barriers that marginalised and minority communities may struggle to overcome such as high fees, lack of access to legal aid, and stringent evidentiary requirements.

¹⁵ Gyulai, G. 2017, *The long-overlooked mystery of refugee children’s nationality*, in *World’s Stateless Children*, Institute on Statelessness & Inclusion.

¹⁶ European Network on Statelessness (May 2020) *Birth Registration and the Prevention of Statelessness in Europe: Identifying Good Practices and Remaining Barriers*, Statelessness Index.

¹⁷ UNCCT, *Children Affected by the Foreign Fighter Phenomenon: Ensuring a Childs-based Approach* (2020)

¹⁸ ERRC, ENS, and ISI (26 October 2017) *Roma Belong. Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*

11. LGBTIQ+ families in Europe sometimes also face problems with birth registration and recognition of legal parentage, putting children in these families at risk of statelessness. For example, if authorities in one country fail to recognise birth certificates issued in another with names of both same-sex parents, or if it is not possible to register the birth of a child of same-sex parents (or include both parents on the birth certificate).¹⁹

12. Some of these challenges can be addressed through amendments to laws, whilst others require procedures and guidance to be adopted alongside training and capacity building to support the work of civil registry and competent authorities for nationality determination, immigration and asylum, social welfare and minority rights. In all cases, good practice exists and can be drawn upon alongside the local expertise of civil society, representatives of affected communities, UN and other intergovernmental agencies, when seeking to address these issues.²⁰ For example, in the **Czech Republic** and **Austria**, if the documents required to complete birth registration cannot be presented by parents, measures are envisioned to facilitate the child's registration, such as providing a solemn declaration, an oral hearing, or ex officio investigation by civil registrars.²¹

II. Prevention of statelessness later in life

1. Summary of international and regional norms and guidance

13. International and regional law also establishes safeguards that must be implemented in national law to prevent statelessness arising as a consequence of renunciation, loss, or deprivation of nationality. A key principle of international law is that no-one shall be arbitrarily deprived of their nationality.²² Deprivation is arbitrary if it is unlawful, discriminatory, does not serve a legitimate aim or is not proportionate, or is carried out without regard to due process. Established norms prevent any deprivation or loss of nationality from affecting children or spouses of the individual concerned (derivative loss) and proscribe safeguards to prevent statelessness arising in different situations under which domestic law may provide for renunciation, loss, or deprivation of nationality.²³ UNHCR has published guidelines on Loss and Deprivation of Nationality under the 1961 Convention.²⁴ The Institute on statelessness and inclusion published in 2020 principles on deprivation of nationality as a national security measures.²⁵

¹⁹ UNHCR and UNICEF: [Background Note on Sex Discrimination in Birth Registration](#), 6 July 2021 Patricia Cabral (3 February 2021) [Protecting the right to a nationality for children of same-sex couples in the EU – A key issue before the CJEU in V.M.A. v Stolichna Obsthina \(C-490/20\)](#).

²⁰ UN High Commissioner for Refugees (UNHCR), Good Practices Paper - Action 2: [Ensuring that no child is born stateless](#), 20 March 2017; UN High Commissioner for Refugees (UNHCR), Good Practices Paper - Action 7: [Ensuring birth registration for the prevention of statelessness](#), November 2017; Open Society Foundations (OSF), [A Community-Based Practitioner's Guide: Documenting Citizenship and Other Forms of Legal Identity](#), June 2018

²¹ ENS (2020) [Thematic Briefing, Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers](#)

²² Universal Declaration of Human Rights, 10 December 1948, Article 15(2); European Convention on nationality, Article 4; 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; UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34.

²³ 1961 Convention, Articles 7,8 and 9; European Convention on Nationality, Articles 5,7,8, and 11.

²⁴ 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

²⁵ [Principles on deprivation of nationality as a national security measure](#) (2020)

2. Current state of play in Council of Europe member States

14. Good practice examples in this area include countries that do not have any measures in domestic law to deprive individuals of their nationality, where nationality can only be lost through voluntary renunciation, such as the **Czech Republic**, **North Macedonia**, and **Poland**. In **Portugal**, **Serbia**, and **Slovenia**, although deprivation of nationality can be triggered in cases of alleged fraud in the naturalisation process, there are safeguards in law to ensure it can never render the individual stateless. Many countries have established safeguards in law to prevent voluntary renunciation of nationality resulting in statelessness. For example, in **Portugal** and **the Netherlands**, renunciation only takes place after the person has acquired another nationality, and in **North Macedonia**, the **United Kingdom**, and **Norway**, there are safeguards to guarantee reacquisition of nationality if the person does not acquire another nationality within a specific timeframe.²⁶

15. A key challenge in this area is that deprivation of nationality appears to be on the rise globally and specifically in Europe, increasingly used by States as a counterterrorism measure.²⁷ A recent thematic briefing published by ENS on deprivation of nationality and the prevention of statelessness in Europe, based on data from its Statelessness Index, shows that of 27 States analysed, nine have amended their legislation since 2010 to expand powers to deprive individuals of their nationality on national security grounds. There has also been an increase in the use of deprivation of nationality as a sanction for fraudulent acquisition of nationality. This expansion of powers has not been accompanied by automatic safeguards against statelessness. Only 8 of the 27 countries analysed explicitly prohibit statelessness arising from deprivation of nationality.²⁸ A number of States maintain reservations to the 1961 Convention permitting them to render individuals stateless in limited circumstances. Experts report a lack of transparency around how deprivation powers are exercised with many facing difficulties accessing this information. In many countries, this decision is taken by a political authority or a government body, rather than providing the additional safeguard of requiring a court to issue the decision.²⁹

16. In addition to increasing legal powers and gaps in legal safeguards, there are also issues with how loss/renunciation/deprivation powers are implemented in practice, which lead to an increased risk of statelessness. In some countries, the authorities do not adequately determine whether the person would be rendered stateless before depriving them of their nationality. It is often unclear how States determine statelessness for the purpose of deprivation of nationality on national security grounds, for example, and sometimes conduct their own interpretation of another State's nationality laws, which is contrary to the international legal principle that statelessness must be assessed based on the law of the State or States with which the person enjoys a relevant link and how the competent authorities in that State or those States apply the law in practice in the specific case.³⁰ Nationality status must be confirmed in writing by the competent authority of the State in question, and not be based on another State's interpretation of its nationality laws.³¹

²⁶ European Network on Statelessness (22 July 2021) [Thematic Briefing. Deprivation of Nationality and the Prevention of Statelessness in Europe](#)

²⁷ See Institute on Statelessness and Inclusion, 'The World's Stateless 2020: Deprivation of Nationality', (2020); Jules Lepoutre, 'Citizenship Loss and Deprivation in the European Union (27+1)', EUI Working Paper RSCAS 2020/29, Robert Schuman Centre for Advanced Studies, Global Governance Programme-392, GLOBALCIT (2020); Emilien Fargues, Iseult Honohan, 'Revocation of Citizenship: The New Policies of Conditional Membership', EUI Working Paper RSC 2021/23, Robert Schuman Centre for Advanced Studies, Global Governance Programme-438, GLOBALCIT (2021).

²⁸ Bulgaria, Croatia, Czech Republic, North Macedonia, Poland, Portugal, Serbia and Slovenia.

²⁹ Only Belgium and Portugal of 27 Index countries, for more information see: ENS, [Thematic Briefing, Deprivation of Nationality](#).

³⁰ Further implications of this practice are highlighted in ENS and The AIRE Centre, [Written submissions on behalf of the interveners in Pham v. United Kingdom](#), 19 April 2021, available at:

UN High Commissioner for Refugees (UNHCR), [Handbook on Protection of Stateless Persons](#), 30 June 2014

³¹ UNHCR Guidelines No. 5

17. Other challenges include the risk of statelessness arising from discrimination in provisions on deprivation of nationality. For example, many countries distinguish between single and multiple nationality holders for the purposes of safeguarding against statelessness in their legislation on loss or deprivation of nationality. International law warns against discrimination between single and multiple nationality holders. While such discrimination may be intended to avoid statelessness, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance has reminded States that the ‘protection of mono nationals from statelessness cannot be a legal justification or defence for exposing dual nationals to citizenship stripping’. This type of distinction is often found in provisions relating to deprivation on national security grounds and risks disproportionately impacting on minority communities, reinforcing already present racialised inequalities, and potentially constituting direct discrimination on the basis of ‘national or social origin’.

III. Reduction of statelessness

1. Summary of international and regional norms and guidance

18. The only way to reduce or resolve statelessness is for stateless people to acquire a nationality. However, it is important to distinguish between the practical steps required to reduce *in situ* statelessness and statelessness in a migratory context.³² In the case of *in situ* stateless people, who have long-established ties to the countries where they are living, the solution is not to grant a protection or residence status that prolongs their statelessness. The Committee on the Elimination of Racial Discrimination has highlighted how denial of nationality for long-term residents may create disadvantages inconsistent with international law.³³ Instead, States should reduce and resolve *in situ* statelessness by confirming or granting nationality to those who lack it, including through targeted nationality campaigns or nationality verification efforts.³⁴ States should also work to identify and eliminate discriminatory laws, policies, and practices that perpetuate intergenerational (risk of) statelessness affecting minorities and marginalised populations.³⁵

19. In the case of stateless migrants or refugees, States should identify who is stateless on their territory, formally determine their statelessness through a dedicated statelessness determination procedure (SDP) and then grant them adequate protection status and rights in line with the 1954 Convention and international human rights law.³⁶ Establishing an SDP helps States assess the size of the stateless population on their territory, adequately identify and protect stateless migrants and refugees, and fulfil their obligations under international law including to reduce statelessness. Most countries in Europe are yet to introduce a dedicated SDP resulting in many stateless persons facing years of uncertainty, social exclusion, risks of arbitrary immigration detention, and other human rights violations, including prolonged statelessness. Although almost all Council of Europe Member States are party to the 1954 Convention, there continues to be a gap between accession and implementation of these obligations in domestic law and practice.

³² UNHCR (2010), [Statelessness Determination Procedures and the Status of Stateless Persons](#) (“Geneva Conclusions”)

³³ Committee on the Elimination of Racial Discrimination, *General Recommendation 30. Discrimination Against Non-Citizens*, 12 March 2004, CERD/C/64/Misc.11/rev.3.

³⁴ UNHCR Handbook on Protection of Stateless Persons, paragraph 59.

³⁵ UNHCR, *Good Practice Paper, Action 1*, page 1.

³⁶ UNHCR Handbook on Protection of Stateless Persons, Chapter 2.

20. The 1954 Convention requires that States parties facilitate naturalisation for stateless people on their territory as far as possible.³⁷ States should expedite naturalisation procedures for stateless people, providing preferential treatment compared to the general rules for foreign nationals. This could include, exempting stateless people from requirements such as citizenship or integration tests, language testing, application fees, or minimum income requirements. Previous criminal convictions or 'good character' requirements should also not unreasonably prevent stateless people from acquiring nationality.³⁸

2. Current state of play in Council of Europe member States

21. There are a few examples of good practice in implementing effective measures to facilitate naturalisation for stateless migrants in Europe. Residence requirements for naturalisation vary significantly between countries. In some cases, up to ten years' legal or permanent residence is required as a pre-condition to apply for naturalisation, and this is often not reduced for stateless people even where it is for other groups, such as refugees. Very few States provide for exemptions from standard naturalisation requirements for stateless people. This means that stateless migrants face significant barriers to resolving their statelessness in almost all European countries. In countries without an SDP, they can face significant hurdles to acquiring a residence permit, which even when acquired often does not provide a route to permanent residence and naturalisation for several years (if at all). In other countries, where a route to naturalisation is available, other administrative hurdles can get in the way, such as very high fees, discretionary 'good character' clauses, or documentation requirements that stateless people cannot meet.

22. In the context of large-scale *in situ* stateless populations, some examples of successful strategies for reducing and resolving statelessness can be identified.³⁹ These include amendments to nationality laws to automatically recognise stateless people with a proven link to a country as nationals, or to automatically grant nationality to children born to certain groups on the territory as nationals, as well as expedited naturalisation or registration campaigns. UNHCR has identified four key common elements to successful strategies for reducing large-scale stateless populations:

1. States identified and acknowledged the existence of large-scale, protracted situations of stateless in their territory.
2. UNHCR and other actors, including civil-society representatives, undertook targeted advocacy and provided technical advice to States.
3. States demonstrated the political will to resolve statelessness.
4. Collaboration among a broad range of stakeholders ensured that governments mobilised State institutions to reform laws and policies and dedicated the resources needed to implement the changes.⁴⁰

23. Some progress to reduce statelessness can be identified in States that were formerly part of the SFRY or the USSR. Measures taken have included public registration campaigns, joint outreach activities involving community representatives, civil society, and UNHCR, provision of legal aid to resolve legal identity and nationality issues, amendments to civil registration and citizenship laws to recognise specific groups as nationals, facilitate late birth registration, or provide a route to permanent residence and naturalisation, and others. However, it must be recognised that the majority of people who remain stateless or at risk of statelessness (i.e., due to lack of proof of nationality) in

³⁷ 1954 Convention, Article 32. UNHCR, 'Good Practices Papers – Action 6'.

³⁸ Council of Europe Committee of Ministers, Recommendation No. R (99) 18 of the Committee of Ministers to member States on the avoidance and reduction of statelessness (1999).

³⁹ UNHCR, [Good Practice Paper, Action 1](#).

⁴⁰ UNHCR, [Good Practice Paper, Action 1](#), page 3

Europe are members of minority groups, such as Roma, Ashkaeli, and Egyptians, and ethnic Russians.⁴¹ The link between discrimination against minorities and (risk of) statelessness therefore cannot be ignored and must be proactively addressed by States to prevent discrimination in the enjoyment of the right to a nationality.⁴²

24. In many countries, progress to reduce and resolve statelessness is either too slow or is undermined by partial solutions that do not address or provide a sustainable solution to the root cause of the problem. For example, to be effective, timebound registration campaigns must be accompanied by concerted efforts to build trust with affected communities and work together to combat antigypsyism and other forms of discrimination, to ensure they are accessible to the most marginalised and at-risk groups. In many countries, bureaucratic procedures hinder progress to reduce statelessness. Complex and discretionary evidentiary requirements, high fees, and lengthy administrative or court procedures combined with discriminatory attitudes of officials, and lack of trust between affected communities and authorities often get in the way of resolving the most complex cases. Outreach and registration campaigns should therefore be accompanied with legal reform to build flexibility into registration procedures to ensure that every child can be registered immediately at birth regardless of the status or actions of their parents, as well as implementation of legal safeguards to prevent statelessness at birth and ensure every child acquires a nationality as soon as possible after birth.

⁴¹ Ref stateless minorities [UN SR on Minority Issues](#), UNHCR report on stateless minorities.

⁴² UN High Commissioner for Refugees (UNHCR), "[This is Our Home](#)" Stateless Minorities and their Search for Citizenship, 3 November 2017.