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EUROPEAN UNION
AGENCY FOR ASYLUM

Practical Guide on Nationality

Concepts related to nationality and statelessness in the context of international protection

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On 19 January 2022, the European Asylum Support Office (EASO) became the European Union Agency for Asylum (EUAA). All references to EASO, EASO products and bodies should be understood as references to the EUAA.

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About the guide

Why was this guide created? The mission of the European Union Agency for Asylum (EUAA) is to facilitate and support the activities of Member States of the European Union and the Schengen associated countries (EU+ countries ([1])) in the implementation of the Common European Asylum System. According to its overall aim to promote a correct and effective implementation of the Common European Asylum System and to enable convergence, the EUAA develops common operational standards and indicators, guidelines and practical tools.

How was this guide developed? This guide was created by experts from across the European Union (EU), with valuable input from the European Commission, the United Nations High Commissioner for Refugees, the European Council on Refugees and Exiles, the European Network on Statelessness and Dr Hugo Storey ([2]).

Thanks are expressed to the members of the working group who contributed to the drafting of this guide: Ms Victoria Brännmark, Mr Maxime Lismonde and Ms Marthe Rudlang.

The development was facilitated and coordinated by the EUAA. Before its finalisation, a consultation on the guide was carried out with all EU+ countries through the EUAA Asylum Processes Network. The guide was adopted by the EUAA Management Board in March 2025.

Who should use this guide? This guide is primarily intended for asylum case officers, interviewers and decision-makers as well as legal advisers in the national determining authorities and registration officers. Additionally, this tool is useful for quality officers and policymakers and may also benefit reception and detention officers, return officers, and legal counsellors.

How to use this guide. The scope of this guide is to support the reader with the understanding of the concepts of nationality and statelessness and their implications for the assessment of the application for international protection. The verification of nationality is covered in a limited way. The guide mainly covers aspects of the examination of inclusion. Some aspects of cessation and exclusion are mentioned in a limited way and only to the extent that they relate to nationality directly. Other aspects of exclusion (such as the application of Article 1D of the 1951 Convention Relating to the Status of Refugees ([3]) to persons who would be subject to it) are not covered in this guide.

([1]) The 27 EU Member States and Iceland, Liechtenstein, Norway and Switzerland.

([2]) Note that the finalised guide does not necessarily reflect the positions of the United Nations High Commissioner for Refugees, the European Council on Refugees and Exiles, the European Network on Statelessness and Dr Hugo Storey.

([3]) United Nations General Assembly, Convention Relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 and the Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267 (referred to in EU asylum legislation and by the Court of Justice of the European Union as 'the Geneva Convention').

How does this guide relate to national legislation and practice? This is a soft convergence tool within the Common European Asylum System. It reflects commonly agreed operational standards. The guide is not in itself legally binding.

How does this guide relate to other EUAA tools? The *Practical Guide on Nationality – Concepts related to nationality and statelessness in the context of international protection* should be used in conjunction with other EUAA practical guides and tools and judicial analyses. In particular, it should be used in conjunction with the *Practical Guide on Qualification for International Protection* ([4]), the *Practical Guide on Evidence and Risk Assessment* ([5]), the *Practical Guide on Registration* ([6]), the *Practical Guide: Personal Interview* ([7]), the *Practical Guide on the Application of Cessation Clauses* ([8]), the *Ending International Protection – Judicial analysis* ([9]) and the *Qualification for International Protection – Judicial analysis* ([10]). All EUAA practical tools and judicial analyses are publicly available online on the EUAA website: https://euaa.europa.eu/practical-tools-and-guides and https://euaa.europa.eu/asylum-knowledge/courts-and-tribunals.

The EUAA practical guides, tools and judicial analyses to which this practical guide refers will be progressively updated between 2025 and 2027. The updates will align these publications with the legislative instruments of the Pact on Migration and Asylum ([11]). Once published, the updated publications will also be available online at the EUAA webpages listed directly above.

Disclaimer

This guide was prepared without prejudice to the principle that only the Court of Justice of the European Union can give an authoritative interpretation of EU law.

([4]) EASO, *Practical Guide: Qualification for international protection*, April 2018.
([5]) EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024.
([6]) EASO, *Practical Guide on Registration – Lodging of applications for international protection*, December 2021.
([7]) EASO, *Practical Guide: Personal Interview*, December 2014.
([8]) EASO, *Practical Guide on the Application of Cessation Clauses*, November 2021.
([9]) EASO, *Ending International Protection — Judicial analysis*, Second edition, 2021.
([10]) EUAA, *Qualification for International Protection – Judicial analysis*, Second edition, January 2023.
([11]) European Commission: Directorate-General for Migration and Home Affairs, 'Pact on Migration and Asylum', European Commission website, 21 May 2024, accessed 24 January 2025, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

Contents

List of abbreviations

Abbreviation	Definition
APD (recast)	**asylum procedures directive —** Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
APR	**asylum procedure regulation —** Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU
COI	country of origin information
EUAA	European Union Agency for Asylum
EU	European Union
EU+ countries	Member States of the European Union and the Schengen associated countries
Member State(s)	Member State(s) of the European Union
QD (recast)	**qualification directive —** 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)
QR	**qualification regulation —** Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council
Refugee Convention	The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (referred to in EU asylum legislation and by the Court of Justice of the European Union as ‘the Geneva Convention’)

Abbreviation	Definition
screening regulation	Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226
Stateless Persons Convention	The 1954 Convention Relating to the Status of Stateless Persons
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

1.1. Relevant terminology

The table below contains short definitions of recurrent concepts related to the concept of nationality used throughout this practical guide. These concepts are detailed further in the dedicated chapters and sections of this practical guide.

Table 1. Definitions of recurrent concepts

	Definition
Country of origin	Country of origin means, for applicants who hold a nationality, the country of nationality, or, for stateless persons, the country of former habitual residence ([12]).
Country of reference	Country of reference is the country (or countries) of origin in respect of which the need for international protection is to be assessed. In principle, it overlaps with the country of origin. The country of reference is the country that has been identified and stated by the applicant as their country of origin. A country of reference may also be identified by you based on available indicators.
Citizenship	*A legal status and relation between an individual and a state or other territorial polity (such as the European Union, a federal province, or only partially recognised states) that entails specific legal rights and duties. Citizenship of a state is generally used as a synonym for nationality (...). Where citizenship is used in a meaning that is different from nationality it refers to the legal rights and duties of individuals attached to nationality under domestic law. In some national laws, citizenship has a more specific meaning and refers to rights and duties that can only be exercised by nationals after the age of majority (such as voting rights) or to rights and duties that nationals can only exercise in the national territory* ([13]).

([12]) Article 3(13) of Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024) (QR). See, similarly, Article 2(n) of 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) (OJ L 337, 20.12.2011) (QD (recast)): '"country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence.'

([13]) Global Citizenship Observatory, 'Glossary on Citizenship and Electoral Rights', San Domenico di Fiesole: Global Citizenship Observatory / Robert Schuman Centre for Advanced Studies / European University Institute, Globalcit website, 2020, accessed 18 October 2024, https://globalcit.eu/glossary/.

Denial of nationality	The denial of nationality is the decision of a national authority not to grant its nationality to a person who has never been a national of that country.
Deprivation of nationality	Any form of involuntary loss of nationality whether automatic or non-automatic (including lapse, withdrawal, nullification) that is not initiated by the person or their legal representative. It is also referred to as 'denationalisation', 'withdrawal' or 'revocation' of nationality.
***Ex lege* nationality**	A nationality is acquired *ex lege* when it is acquired by the sole effect of the law, automatically, without any intervention of the national authorities. The acquisition of the nationality does not require any specific legal, judicial or administrative step. Any such step may be needed not for the acquisition of the nationality (which is acquired) but for the recognition by the national authorities of the nationality and for the collection of evidence of it.
Jus sanguinis	Latin for 'right of blood'. It describes the right of a person to be granted the nationality of (one of) their parents, based on their blood ties at birth, regardless of where they were born.
Jus soli	Latin for 'right of the soil'. It describes the right of anyone born in the territory of a state to be granted the nationality of that state.
Nationality (in 'country of nationality')	Nationality denotes the legal bond between an individual and a state. A person can have single, dual or multiple nationality(ies). Nationality is generally synonymous with 'citizenship' (even though, in a few countries, there may be some minor differences between the two). Nationality, as defined here, is not to be confused with the much wider concept of nationality as a reason for persecution (see below).
Nationality (as a ground for persecution)	Nationality, as a reason for persecution, has a broader sociological meaning than nationality as understood in 'country of nationality'. Under reasons of persecution, the QD (recast) and the QR define that nationality is: *not [to] be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State* ([14]).
Naturalisation	It is the legal act by which a non-national of a country acquires the nationality of that country. This non-automatic mode of acquiring a nationality usually requires that the individual applies for it and fulfils different conditions, depending on national law.

([14]) Article 10(1)(c) QR. This is the same wording as that used in Article 10(1)(c) QD (recast).

Renunciation of nationality	Renunciation of nationality refers to the voluntary loss of nationality initiated by a declaration or application by the person to their national authorities informing them of their intention to give up their nationality.
Stateless person	'[A] person who is not considered to be a national by any State under the operation of its law' ([15]).
Third country	A country that is not a Member State of the European Union (EU) ([16]).
Indeterminate or 'doubtful' nationality	Indeterminate (or 'doubtful') nationality is not a type of nationality. It is an expression that rather conveys the idea of a lack of substantiation of nationality.

1.2. The role and significance of nationality (or lack thereof) in international protection procedures

1.2.1. The impact on the examination of the need for international protection

The identification of the applicant's nationality (or lack of nationality) is a key element of the assessment of the need for international protection.

A need for international protection may be established if the applicant has a well-founded fear of persecution or faces a real risk of serious harm in their country of nationality (or habitual residence, for stateless applicants) ([17]). International protection is a substitute to national protection: a person is in need of international protection precisely because they cannot find or access effective protection in their country of nationality. When the applicant is stateless, the need for international protection is assessed by examining whether they can return or not to their country of former habitual residence because of a well-founded fear or real risk ([18]).

([15]) Article 1(1) of the United Nations (UN) General Assembly, Convention Relating to the Status of Stateless Persons, United Nations, Treaty Series, vol. 360, p. 117, 28 September 1954; Article 3(15) APR and Article 2(5) screening regulation.

([16]) Although rare in practice, an EU citizen can apply for international protection status in another Member State of the EU (Member State) under the UN General Assembly, Convention Relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 and Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267 (referred to as the Refugee Convention for the purposes of this guide but EU asylum legislation and CJEU case-law refers to it as 'the Geneva Convention'). For this case, some Member States have adopted a specific protocol where they set out a number of specific circumstances in which the application by another EU national may be taken into consideration or declared admissible and therefore be examined by a Member State. See Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 24) on Asylum for Nationals of Member States of the European Union (OJ 115, 09/05/2008). See also EUAA, *Qualification For International Protection – Judicial analysis*, Second edition, January 2023.

([17]) See the definition of a refugee and a person eligible for subsidiary protection in Article 3(5) and (6) QR.

([18]) See the definition of a refugee and a person eligible for subsidiary protection laid down in Article 3(5) and (6) QR read in combination with Articles 7 and 8 QR on the actors of protection and on the internal protection alternative.

Properly identifying the nationality (or lack thereof) of each applicant for international protection and, consequently, identifying the country of nationality or of habitual residence is therefore key for the correct examination of their need for international protection. In the examination procedure they are relevant to:

- assess if the applicant is outside their country of nationality or former habitual residence;
- determine the territory of the country(ies) in relation to which the acts of persecution or the serious harm must be examined; and
- assess if the country of nationality may provide protection or if the applicant can return to the country of former habitual residence ([19]).

The concept of nationality may have an additional relevance in the examination of certain applications for international protection, as nationality is also one of the 'grounds' (or 'reasons') mentioned in the refugee definition for being persecuted ([20]).This is discussed in further detail in Chapter 8. Nationality as a reason for persecution.

1.2.2. The impact on procedural questions

Identifying the country of nationality or former habitual residence may determine which procedures are used in the examination of the application.

This section highlights some of the ways in which being a national of a country or having formerly habitually resided in a country may potentially trigger the application of certain procedures. It is however not intended to provide guidance on the conditions under which the latter may apply or the specific safeguards that need to be in place for them to apply.

The application of the procedures depends on the legal framework applicable at the moment of the lodging of the application. This section refers to the provisions of both Regulation (EU) 2024/1348 (APR) ([21]) and Directive 2013/32/EU (APD (recast)) ([22]). The APR is applicable to all applications lodged as of 12 June 2026. Before that date, the APD (recast) is applicable ([23]).

Similarly, this section contains references to the QD (recast) and the QR. The latter enters into application on 1 July 2026 ([24]).

Where applicable in the rest of this guidance, the relevant provisions of both legal frameworks are included.

([19]) Court of Justice of the European Union (CJEU), judgment of 9 November 2021, *LW v Bundesrepublik Deutschland*, request for a preliminary ruling, C-91/20, EU:C:2021:898, paragraphs 30-33. Summary available in the EUAA Case Law Database.
([20]) Article 3(5) QR.
([21]) Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348, 22.5.2024).
([22]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), (OJ L 180/60, 29.6.2013).
([23]) Article 79 APR.
([24]) Article 42 QR.

For example, being from a country that is considered to be a safe country of origin ([25]) is one of the grounds to apply an accelerated examination procedure. In the APD (recast), that acceleration ground is optional ([26]), while it is compulsory under the APR ([27]).

For applications to which the APR is applicable, it is also compulsory to apply an accelerated examination procedure to applicants:

> *of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, (...) 20 % or lower* ([28]).

It is also compulsory to apply the asylum border procedure to applicants who are subject to it based on that same ground ([29]). In such cases, the appeal procedure is also not automatically suspensive ([30]). The identification of the country of nationality or former habitual residence will be a triggering factor to assess whether those procedural consequences may apply, taking into account the individual circumstances of the applicant. Some factors may prevent their application. For example, when the applicant is an unaccompanied child, a border procedure may not be applied to them based on the fact that they are from a safe country of origin or from a country with a protection rate of 20 % or lower ([31]).

In contrast, depending on national law or policy, the examination of applications of nationals or stateless persons from a certain country of origin may be prioritised if the application is likely to be well-founded. This may be the case where a high proportion of applicants from that country is granted international protection. This prioritisation ground is applicable both under the APD (recast) ([32]) and the APR ([33]).

Furthermore, the importance of the identification of nationality is stressed in the legal instruments of the Common European Asylum System, for example, in the following aspects.

- Under Regulation (EU) 2024/1356 (screening regulation) ([34]), the preliminary vulnerability check includes the identification of whether a third-country national might be a stateless person ([35]) and an indication of nationalities or statelessness needs to be included in the screening form ([36]).

([25]) Articles 61-63 APR.
([26]) Article 31(8)(b) APD (recast).
([27]) Article 42(1)(e) APR.
([28]) Article 42(1)(j) APR.
([29]) Article 45(1) APR.
([30]) Article 68(3)(a) APR.
([31]) Article 53(1) APR.
([32]) Article 31(7)(a) APD (recast).
([33]) Article 34(5)(a) APR.
([34]) Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, 2024/1356, 22.5.2024).
([35]) Article 12(3) screening regulation.
([36]) Article 17(1)(b) screening regulation. See also Articles 8(5)(c) and 9(2)(a) and Article 14(1) screening regulation, which cover the identification of the applicant as part of the screening process.

- Under the QR, the applicant has specific obligations in relation to the substantiation of their nationality or country of former habitual residence using any documentation that may be at their disposal ([37]). This obligation already exists under the QD (recast) ([38]).
- Under the APD (recast), an accelerated procedure may be applied where:
  - 'the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or' ([39])
  - 'it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;' ([40]).
- Under the APR, the determining authorities have the obligation to accelerate the examination of applications where the applicant has intentionally misled the authorities, in particular in relation to the identification of their identity and nationality, under certain conditions ([41]).
- Under the APR, when an applicant claims not to have a nationality, this fact should be 'clearly registered pending the determination of whether the individual is stateless' ([42]).
- The determination and verification of the nationality of the applicant may be a reason for the competent authority to consider the detention and the application of alternatives to detention for an applicant ([43]).

Identifying the country of nationality of the applicant (or of habitual residence for stateless applicants) is necessary in all applications. However, the extent of the assessment may differ depending on the country of origin and the elements presented in the individual case.

Related EUAA publication

For further information on the impact of nationality (or lack thereof) on procedural aspects, see EASO, *Practical Guide on Registration – Lodging of applications for international protection*, December 2021.

In addition to being key to the examination of the asylum application, the identification of nationality early in the procedure may allow for the correct application of other procedures, such as family reunification and resettlement, and return procedures.

([37]) Article 4(2)(b)(v) and (vi) QR.
([38]) Article 4(2) QD (recast).
([39]) Article 31(8)(c) APD (recast).
([40]) Article 31(8)(d) APD (recast).
([41]) Article 42(1)(c) APR.
([42]) Article 27(2) APR.
([43]) Article 8(3)(a) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), (OJ L 180, 29.6.2013); Article 10(4)(a) of Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (OJ L, 2024/1346, 22.5.2024).

2. Concepts on nationality and statelessness

As stipulated by the QR and the Refugee Convention, a key requirement of the international protection regime is that the applicant should be outside of the territory of their country of nationality, and, for stateless applicants, outside of the country of former habitual residence. The country(ies) of nationality or of habitual residence is the country in respect of which the applicant's need for international protection is to be assessed to determine if they would have a risk of persecution or serious harm in the event of their return (see further in Section 3. Country of reference).

Article 3(5) QR – definition of a refugee

*'refugee' means a **third-country national** 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 the 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**, and to whom Article 12 does not apply.*

Article 3(6) QR – definition of a person eligible for subsidiary protection

*'person eligible for subsidiary protection' means a **third-country national or a stateless person** who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, **if returned** to his or her **country of origin**, or in the case of a **stateless person**, to his or her **country of former habitual residence**, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of **the protection of that country**.*

Whether a person has a nationality or not (and is, therefore, stateless) is a question of legal status. In order to correctly identify an applicant's nationality (or lack thereof), it is key to properly understand the meaning of nationality and statelessness.

Nationality denotes the legal bond that connects an individual to a state. Only a state can grant nationality to an individual ([44]). Holding the nationality of a state confers on its holder specific rights and obligations. Nationality is a legal means to identify a person as belonging to

([44]) H. Storey, *The Refugee Definition in International Law*, Oxford University Press, Incorporated, 2024, Section 3.2.1.

a specific country. It 'is not a physical or biological, but a legal fact' ([45]). In the context of international protection, nationality refers to the current nationality, that is the nationality the individual holds at the time of the assessment. For exceptions to this principle, see Section 4.2.2. Nationality not currently held.

Nationality as legal status compared to nationality as a reason for persecution

Nationality as a legal status for the purpose of determining an applicant's country of reference is not to be confused with the much wider concept of nationality as a reason for persecution (for the latter, see Section 8. Nationality as a reason for persecution

2.1. Modes of acquisition of nationality

Every country has its own set of rules regulating how it grants nationality. There are various ways in which a person can come to possess a nationality. Depending on national rules, a person may acquire nationality at birth through their parents (*jus sanguinis*) and/or by being born on the national territory of a country (*jus soli*). Most often, when nationality may be acquired for being born on the national territory of a country, the fulfilment of further conditions is needed such as the legal residency of the parents in the country, the duration of stay and the uninterruptedness of the stay. Another, less frequent, way of acquiring nationality based on the place of birth, can follow from state succession, for instance when a region secedes from a state to form a new state and its population acquires a new nationality (see further on the indicators of nationality in Section 3.1. Indicators of nationality (or lack thereof)).

Nationality can also be acquired independently of one's place of birth or of the parents' nationality(ies) or state succession. This is commonly referred to as 'naturalisation' and includes, for example, acquiring nationality by adoption or acquiring nationality based on 'socialisation' criteria (e.g. marriage, long-term residency) or owing to extraordinary achievements (e.g. in the fields of science or sports). Countries can naturalise a citizen in several ways. Often this consists out of a combination of several criteria such as duration of legal residency, linguistic criteria and socio-economic requirements. In addition, some countries offer other possibilities to acquire their nationality, for example based on economic investments.

([45]) H. Storey, *Nationality as an Element of the Refugee Definition and the Unsettled Issues of 'Inchoate Nationality' and 'Effective Nationality'*, Part 1, Ref Law, 11 June 2017.

Figure 1. The main modes of acquisition of nationality

The procedural requirements to 'formalise' the acquisition of a nationality can vary substantially, often depending on the mode of acquisition. For example, nationality by birth or descent often operates **automatically.** When nationality is acquired automatically, it is referred to as being acquired *ex lege*, by operation of the law. In these circumstances an individual does not 'apply' for the grant of nationality but rather follows a procedure for the acknowledgement, or confirmation of the nationality or for the acquisition of evidence of the nationality, which they already possess. This procedure is often part of the process of registering the birth of the child with the national authorities shortly after the birth but may also take place at a later stage.

There are cases where *ex lege* nationality is held by an applicant but not yet formally recognised. In this case, a person will automatically become the national of that state, for example at birth, even if their (already existing) nationality has not yet been formally acknowledged. In other words, the fact that the person may have not (yet) taken steps to have their nationality recognised by their national authorities (e.g. by registering themself with their national authorities) does not detract from the fact that there is a legal bond with that country based on which they can be considered to be a national of that country. Where an applicant has a nationality, even if they have no evidence to that effect, they are a national of that country.

The **non-automatic** modes of acquisition based on long-term residency and 'socialisation' criteria usually mean that the individual has to explicitly apply for nationality. The power to grant nationality may be discretionary, which means that the authority retains the possibility of assessment and judgement. This may be the case, for example, when it comes to the assessment of what constitutes an 'extraordinary achievement'. It can also be the case where the nationality may be granted based on purely opportunistic grounds. An application for nationality may be rejected even if it fulfils the required criteria.

There are also situations where, though the mode of acquisition is non-automatic, the authority has no discretion and has to grant nationality where the legal conditions of acquisition are met. This may be the case, for example, when the fact of being born of parents who are nationals is sufficient to be granted nationality but that a specific request needs to be made and a formal decision needs to be made by the national authorities. This is common where the child requests the recognition of that nationality once they have become an adult.

2.2. Multiple nationality

Persons who fulfil the conditions of nationality towards more than one country may possess two or more nationalities. This is referred to as 'dual' or 'multiple' nationality.

Multiple nationality may be acquired at birth or after birth. It often results from the interaction of different systems of nationality acquisition. For example, multiple nationality may arise in cases where nationality laws in the place of birth ascribe nationality on the basis of *jus soli*, whilst the domestic law of a parent's state of nationality ascribes nationality through descent. It may also occur where the parents are of different nationalities and both their states of nationality ascribe nationality to the newborn child on the basis of *jus sanguinis* ([46]). Multiple nationality may also result from a person acquiring a new nationality through naturalisation while retaining the nationality they already hold.

Certain countries prohibit individuals from holding multiple nationalities or only allow it under specific circumstances (such as where multiple nationalities were acquired at birth). In such cases, the person requesting naturalisation may be required to renounce their current nationality or their nationality may be automatically revoked when they voluntarily acquire another nationality.

See more on the topic of protection in cases of multiple nationality in Section 6.2. National protection in the case of multiple *nationality*.

2.3. The country of nationality as a state

The existence of nationality presupposes the existence of a sovereign state, as only a state can create a bond of nationality. The extent to which an entity constitutes a state is informed by international law ([47]).

If you are unsure whether a specific territory can be considered a sovereign state, you should consult your national guidelines on this matter.

Note however that the following situations **do not** result in a change of nationality.

- A state that loses its effective central government due to an armed conflict remains a state legally speaking ([48]) and its citizens remain this state's nationals.
- Non-state actors — for example armed groups — effectively exercise jurisdiction over a part of a state and sometimes assume state-like governmental functions in that

([46]) E. Fripp, *Nationality and Statelessness in the International Law of Refugee Status*, Bloomsbury Publishing Plc, 2016, paragraph 1.94.

([47]) See for example the criteria laid out in Article 1 of the Convention on Rights and Duties of States adopted by the Seventh International Conference of American States, 49 Stat. 3097, Treaty Series 881, 26 December 1933 (known as Montevideo Convention on Rights and Duties of States) according to which a state is constituted when an entity has a permanent population, a defined territory, government and capacity to enter into relations with other states.

([48]) See *mutatis mutandis* UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 2014, paragraph 21.

territory. In this context, these groups may present themselves as 'states', grant so-called 'citizenship' and issue civil status documentation, such as birth certificates, identity and travel documents. However, as long as these entities do not fulfil the conditions to be considered a state at the time of the examination of the application for international protection, the applicant would still be a national of the (official) state. International recognition of such a territory can be indicative of the fact that the territory has achieved statehood.

- A state's protective or administrative function is temporarily assumed by (international) organisations. In these situations, the residents are still nationals of the state in question ([49]). As detailed in Chapter 6, these organisations may however qualify as actors of protection under Article 7 QR ([50]) (see Section 6.1. National protection).

2.4. Nationality does not require residence

It is perfectly possible that a person holds a certain nationality but has never entered or resided in their country of nationality. They may have spent their whole life living abroad without ever acquiring another nationality. Since nationality is a question of law, it is irrelevant whether that person has ever resided in their country of nationality. The latter will remain the country of nationality.

2.5. Statelessness

2.5.1. Definition of statelessness in the context of international protection

The APR defines a stateless person as 'a person who is not considered to be a national by any State under the operation of its law' ([51]).

The notion 'under the operation of its law' should, in line with international customary law and the Stateless Persons Convention, be interpreted 'broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice' ([52]) as well as the way the law is implemented.

([49]) E. Fripp, *Nationality and Statelessness in the International Law of Refugee Status*, Bloomsbury Publishing Plc, 2016, paragraph 5.21.
([50]) And also Article 7 QD (recast).
([51]) Article 3(15) APR. The same definition is present in Article 2(5) of the screening regulation and Article 2(2) of Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, 2024/1351, 22.5.2024). This definition is identical to the one found in the UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117 (the Stateless Persons Convention). It is generally accepted that the definition of statelessness laid down in the Stateless Persons Convention also applies to the definition of statelessness under the Refugee Convention.
([52]) UNHCR, *Handbook on Protection of Stateless Persons*, 2014, paragraph 22.

In the context of international protection, a stateless applicant is an applicant who does not hold any nationality at the time of the assessment.

The fact that the applicant has not (yet) taken steps to have their *ex lege* nationality recognised by their national authorities (e.g. by registering themselves with their national authorities) does not detract from the fact that they are, legally speaking, nationals of that country. However, any indications that the national authorities will not recognise that nationality should be considered. It should also be noted that the mere absence of, or inability to produce documents substantiating a nationality does not make a person stateless. See Chapter 5. Evidence to determine nationality, statelessness and the country of origin.

The fact that an applicant who cannot, in practice, access certain rights to which they should normally be entitled as a national, does not mean they are rendered stateless as long as they are considered a national by a state under the operation of its law. Whether the applicant enjoys the rights to which nationals are generally entitled or can avail themselves of the protection of their country of origin has no bearing on the fact that they are nationals of that country.

2.5.2. Statelessness determination procedure

States that have acceded to the Stateless Persons Convention have rights and obligations towards stateless persons ([53]).

Recital 24 APR mentions that:

> *Without prejudice to the competence of Member States on the acquisition of nationality and the fact that, under international law, it is for each Member State, having due regard to Union law, to lay down the conditions for the acquisition and loss of nationality, in applying this Regulation, Member States should respect their international obligations towards stateless persons, in accordance with international human rights law instruments, including where applicable under the Convention relating to the Status of Stateless Persons, adopted in New York on 28 September 1954. Where appropriate, Member States should endeavour to identify stateless persons and strengthen their protection, thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment.*

In the country of asylum, a specific procedure may exist to formally determine whether an applicant is a stateless person and thus enable them, by granting them a formal status, to assert their rights in practice. Depending on national law, the rights and obligations of stateless persons may differ from those granted to beneficiaries of international protection.

([53]) The EU+ countries that are party to the Stateless Persons Convention are Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland.

The statelessness determination procedures vary among Member States of the European Union and the Schengen associated countries (EU+ countries). Depending on the national context, the procedure may be carried out by the determining authority as a part of the asylum procedure or may take the form of a different procedure carried out before another administrative or (quasi-) judicial authority, for example. The existence of a link between the two procedures may also vary.

Do not expect the applicant to go through the procedure for statelessness determination

When a stateless person is an applicant for international protection, they may not be in a position to gather the evidence that is expected from them in the framework of a statelessness determination procedure, where that determination is done by an authority other than the determining authority. Gathering such evidence may put them or their family members at risk. This is because it would require them to contact the relevant competent authorities from all the states to which they have a link (e.g. by birth, ancestry or residence). It could therefore put them at risk of persecution and would compromise the confidentiality principle in asylum claims. Therefore, you should not expect them to necessarily go through the statelessness determination procedure before you assess their need for international protection, unless both those procedures are conducted by the determining authority. In the latter case, the specific situation in which applicants for international protection find themselves may be considered during the statelessness determination procedure.

As a case officer, you may be confronted with three main situations with regard to a formal statelessness determination procedure.

1. **The applicant has already been formally declared stateless in your country**: in this scenario, the statelessness of the applicant can be considered as established. This is the case unless new elements have come to your attention which may change the conclusion of this assessment (e.g. the information on which the competent authority relied at the time of the assessment was outdated, incomplete or fraudulent). In this case, you should consult your national administration's policy on how to proceed.
2. **The applicant's request to be formally recognised as stateless has been rejected in your country**. You need to ascertain the reason(s) the status of stateless person has not been recognised. Assess to what extent these reasons may influence your preliminary findings on their statelessness in the context of the examination of their application for international protection. Based on all of the elements at your disposal, you may, exceptionally, still consider the applicant to be stateless for the purpose of the examination of their application for international protection ([54]).
3. **The determination procedure of the formal statelessness of the applicant is pending in your country**. As a case officer it is your responsibility to conduct the preliminary assessment on the statelessness of the applicant for the purpose of identifying a country of reference and examining their need for international protection, just as you identify and assess the possible nationality of an applicant. Your assessment is not

([54]) For more information on the topic of evidence assessment, consult EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024.

declaratory of the nationality or statelessness of the applicant (see Section 5. Evidence to determine nationality, statelessness and the country of origin). However, depending on your national legal context, you may need to wait until a decision has been made by the competent authority.

Recommendation in relation to the interplay between the asylum procedure and the statelessness determination procedure

It is recommended that the interplay between the asylum procedure and the statelessness determination procedure is organised at national level in such a way that it avoids unnecessary delays. It should allow for the swift and efficient processing of applications for international protection of (potentially) stateless applicants.

The importance of recording statelessness

If an applicant has been found to be stateless in the framework of the assessment of their application for international protection, it is important that this fact is adequately recorded in their administrative file. Reflecting this in official databases, documentation, decisions, and certificates issued by the administration facilitates the asylum procedure. It also ensures the provision of adequate information, support and protection to stateless applicants and stateless refugees.

There may be instances where the international protection previously granted to a stateless person ceases without them having acquired a nationality. In such cases, this person will still be stateless and will be in need of the specific protection available to stateless persons under the Stateless Persons Convention.

Moreover, the statelessness of beneficiaries of international protection may have consequences for them and their children. For example, the children of stateless beneficiaries of international protection, namely those who are born in a host country and who did not acquire any other nationality, are entitled under international law (and the nationality laws of many countries) to the nationality of the country in which they were born ([55]). Stateless persons may also benefit for an accelerated path to nationality based on a shorter duration of residence requirements.

The identification of statelessness could already have occurred and be recorded at an earlier stage, during the screening ([56]) or at the registration ([57]) and lodging of the application. Further information on this is available in the EASO, *Practical Guide on Registration – Lodging of applications for international protection*, December 2021.

([55]) European Parliament Research Service, *Acquisition and loss of citizenship in EU Member States – Key: trends and issues*, PE 625.116 of July 2018, p. 3.
([56]) For persons to whom the screening regulation applies, see Articles 12 and 17 screening regulation.
([57]) Article 27(1)(a) and Article 27(2) APR.

3. Country of reference

The country of nationality for applicants who have a nationality, and the country of former habitual residence for stateless applicants, is referred to as the 'country of reference'. This is the country in respect of which the applicant's need for international protection is to be assessed to determine if they would have a risk of persecution or serious harm in the event of their return.

The country of reference is, as a starting point, the country that is mentioned by the applicant as their country of origin or a country that you have identified, based on different indicators as (one of) the applicant's country(ies) of origin. This is a material fact of the application for international protection and it is the country for which the evidence assessment will be carried out. If it is accepted that the country mentioned by the applicant is indeed their country of origin, it is also the country in respect of which the risk assessment and the further legal analysis of the application will be carried out.

To that end, you should identify the country(ies) of which the applicant may likely be a national, based on their individual circumstances and the indicators detailed in this section, and hence determine their nationality(ies) or statelessness.

You may face situations where the applicant does not know what their nationality is. They may also incorrectly claim to have a specific nationality, not to have a specific nationality, or to be stateless. Knowing and understanding how nationality may be acquired or lost in the envisaged country(ies) will help you identify such situations and take the relevant steps to make further investigations. If the applicant's nationality is indeterminate, the examination of their need for international protection may be determined in a similar manner to that of a stateless person. In such cases, the country of former habitual residence of the applicant is used as a country of reference, instead of their country of nationality (see further in Section 4. Special situations in acquiring or losing nationality).

To assess the applicant's nationality (or lack thereof), you should be familiar with the nationality law of the country in question. If this assessment leaves you with doubts as to the applicant's nationality, your investigation needs to go further. You may follow the steps below.

- Consider how the relevant national legislation applies/applied to the applicant's specific circumstances.
- Take into account the relevant laws (e.g. constitution, nationality legislation) as well as how they are or were interpreted by the relevant authorities (e.g. ministerial decrees, regulations, orders) or judicial bodies, and consider the state practice of relevant officials in that country.
- Take into account the possible evolution in nationality laws: consider which of the current or past laws and practices of that country are relevant for the assessment.

3.1. Indicators of nationality (or lack thereof)

This section contains indicators that you can use when exploring whether an applicant may have the nationality of a country. These indicators are based on the most common ways a person may acquire a nationality, i.e. the different circumstances that can result in a person being born or becoming a national of a state. Since nationality is often acquired based on a combination of different criteria, most of the indicators below should also be considered in conjunction with each other.

You will also find information on situations that can result in statelessness.

Situations that are relevant for the assessment of (potential) statelessness and for the examination of applications of stateless applicants are highlighted in boxes like this one.

If the indicators apply to more than one country, it suggests that the applicant may potentially have two or more nationalities. It may also suggest that the applicant has a nationality that is different to the one they claim to hold. You should clarify this with the applicant in case of doubt ([58]).

In your assessment, you should also keep in mind the following points.

- The acquisition of a (new) nationality may be subject, under the national law, to the condition that their potential beneficiary renounces their current nationality. It is important to check how this legal requirement is applied as the authorities may or may not implement it in practice or may or may not request evidence of formal renunciation of a former nationality. This means that the applicant may or may not still be considered as a national. It is important to ascertain the steps that the applicant took in this regard and whether there have been any actions of the national authority to withdraw nationality.
- As it is for each state to determine who are its nationals, persons who have ties that would in principle trigger the granting of nationality may in fact be or have been deprived of or denied such nationality. Be aware that states may engage in discriminatory practices of denationalisation of individuals or groups of citizens based on race, colour, ethnicity, religion, gender, political opinion and other factors. Such discrimination can be 'either overt or created inadvertently in the laws' ([59]). For further information on how this situation may affect the determination of the country of reference and the examination of the need for international protection, see Sections 4.1. Deprivation or attribution of nationality contrary to international law and 4.2. Ex lege nationality not (yet) formally recognised and nationality not currently held.
- In the case of state succession or the transfer of territory or sovereignty to an existing or new state, new laws on nationality may be adopted. These may lead to the (automatic) granting of another nationality and/or to the loss of the nationality

([58]) This is part of your duty to investigate, as explained in the EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, particularly pp 24-25.

([59]) UNHCR, *Nationality and Statelessness: Handbook for Parliamentarians N° 22*, July 2014, p. 30.

previously held, with or without acquisition of a new one. Conversely, it can also lead to widespread statelessness where action on the part of individuals is required to confirm or acquire the new nationality and this action has not taken place (e.g. deadlines are missed, marginalised or vulnerable individuals are unaware that they need to take action or are excluded from this process, including due to discrimination).

- Some states have rules in relation to automatic revocation of nationality. For example, nationals who have left their country or reside abroad may lose their nationality automatically after a certain period of time or may lose it if they have not taken certain administrative steps to register abroad with their national authorities.

You will find further information on how these elements affect the determination of the country of reference and the examination of the need for international protection in Sections 4. Special situations in acquiring or losing nationality and 7. Nationality and acts of persecution or serious harm.

If none of the means to acquire a nationality are fulfilled in the individual case of the applicant, or if it appears that the applicant has lost the only nationality that they held, this is an indication that the applicant is stateless.

Indicators of nationality and how to use them

The indicators, which are described below, should be considered in conjunction with available **country of origin information** (COI) regarding the law and practice of the potential country(ies) of nationality at the time of the (possible) acquisition or loss and with reference to the applicant's statements and documents**.** On the importance of COI and how COI should be used in determining nationality, see Section 5.3. Country of origin information. This list of potentially relevant indicators **is not exhaustive** as the assessment must be adapted to the circumstances of the individual case.

(a) Birth in a country

The nationality law of some countries provides for the acquisition of nationality on the basis of birth on their territory (*jus soli*). Therefore, an applicant who was born in a country where *jus soli* applies could be considered as a national of that country. However, additional conditions, such as the parent's legal residence, may apply (see also Section 2.1. Modes of acquisition of nationality).

When an applicant was born in a country other than that of which they claim to be a national, and where *jus soli* applies, this could mean that the applicant has either more than one nationality or only the nationality of the country where they were born. You should explore this possibility further with the applicant.

(b) Descent

Nationality is often determined on the basis of the nationality of the applicant's parents or ancestor(s) in direct line (*jus sanguinis*). Therefore, an applicant may have acquired and hold the nationality(ies) of both their parents.

Keep in mind, though, that whilst the nationality laws of some countries permit mothers to pass on their nationality, this is not always the case. In some cases, it is only fathers who can pass it on.

Applicants born of parents who hold different nationalities may potentially hold the nationality of each of the parents. In such situations, keep in mind the rules of transmission of nationality for each of the relevant countries. For example, if the parents are not married, the father may only be legally considered as such if he has formally acknowledged the child. If paternity was not acknowledged, the nationality of the father may not be transmitted to the child. In addition, depending on national law, acknowledgement of paternity may be possible only by the father within an official marriage. This could potentially exclude the acquisition of the nationality of one or of both of their parents, for example:

- for children born out of wedlock, including for children born of an LGBTQI+ couple;
- for children born of parents that were married only traditionally or religiously;
- for children of a couple where the father was married to a woman other than the applicant's mother.

On the contrary, a child born out of wedlock may have also acquired the nationality based on legitimation (i.e. legal acknowledgement of paternity after birth) by a father who is a national of a country different to that of the mother.

- If neither of the parents' nationalities can be transmitted to the child because of the national rules related to the transmission of nationality by descent, or because both parents are stateless, this may cause statelessness.
- The implementation of the legislation of a state may conflict with that of another state and lead to statelessness.

  For example, State A, in which the individual was born, grants nationality by descent only (jus sanguinis), *but the individual's parents are nationals of State B. State B, on the other hand, grants nationality on the basis of place of birth* (jus soli) *and, under its nationality law, children born to a national abroad do not acquire nationality in all circumstances. The individual is thus rendered stateless.* ([60])
- Laws which make it impossible for mothers to pass their nationality on to their children may lead to statelessness when the father is either not recognised by national law (e.g. he has not acknowledged the child or the child was born out of wedlock), is unknown/absent, stateless or is unable to pass on his own nationality.

([60]) UNHCR, *Nationality and Statelessness: Handbook for Parliamentarians N° 22*, July 2014, p. 34.

(c) Adoption

An applicant may have acquired nationality as a result of (child or adult) adoption by a person who is a national of a country. Nationality may also have been acquired through naturalisation with special (mostly facilitated) conditions based on the fact that they have become the child of a national of that country.

An adopted child does not necessarily acquire the nationality of their adoptive parents.

(d) Orphans or foundlings

Orphans or abandoned children are often in situations of unconfirmed nationality.

Depending on the age at which they were abandoned or when they became orphans, it may be more difficult for them to know the nationality of their parents or the circumstances of their birth.

(e) Long-time residence in a country

An applicant who has resided for a long period of time in a country may have acquired the nationality in the country of residence through naturalisation or a similar procedure.

(f) Marriage

The nationality law of some countries may provide for the acquisition of nationality based on the fact that the person is the spouse of a person who is already a national of that country. This may include the automatic acquisition of nationality by marriage. When marriage alone is not sufficient to acquire the spouse's nationality and additional conditions need to be met, the spouse may benefit from less stringent conditions to acquire the nationality, in particular in cases where the couple has children.

If the spouse does not have to renounce their former nationality after having acquired that of their spouse, this may lead to a situation of dual nationality.

Women may become stateless if they lose their nationality when marrying a non-national:

- if their husband is stateless or if they are not able to acquire the spouse's nationality;
- if, having acquired the nationality of their spouse through marriage, their marriage is dissolved and their former nationality is not automatically restored.

(g) Family ties

Nationality law may provide for the acquisition of nationality after birth (with or without consent) that is conditional upon or results automatically from the simultaneous acquisition of nationality by a family member. For example, the children of naturalised parents may often

also become nationals without any further action or formalities. This is particularly the case if, at the time of naturalisation, they are underage and unmarried. Sometimes, national law requires these children, upon turning a particular age, to elect whether they wish to remain a national.

(h) Kinship / ethnicity / particular cultural background

Certain states may provide for the attribution of their nationality after birth on the basis of a particular cultural background, for example for persons of a particular ethnicity, mother tongue or another language that they speak and/or religious affiliation.

In some countries, naturalisation may be facilitated for communities or populations living abroad on the basis of ethnicity, religion or deeply rooted common historical ties. Therefore, an applicant may hold another nationality due to their ethnic kinship with the country under consideration.

Conversely, in certain countries, certain population groups or ethnicities may be excluded by law from acquiring nationality.

3.2. For applicants who hold a nationality: the country of nationality

For applicants who hold a nationality, it is their country of nationality that is taken as the country of reference for the purpose of examining the need for international protection. It is the country they claim they are a national of or the country that you have identified after further assessment as being a country of nationality.

The applicant's fears and risks in the event of return will be considered regarding that country. The availability of national protection will also be examined regarding that country.

If the applicant holds different nationalities and their fears or risks relate to only one of their countries of nationality, the availability of national protection will also be assessed in relation to the other country(ies) of nationality ([61]). On the topic of availing of protection, see further in Section 6. Protection and nationality (or lack thereof) .

3.3. For stateless applicants: the country of former habitual residence

When an applicant is assessed as being stateless, you need to determine the country of reference for the examination of the need for international protection. For stateless applicants, it is the 'country of former habitual residence'.

([61]) CJEU, judgment of 9 November 2021, *LW v Bundesrepublik Deutschland*, request for a preliminary ruling, C-91/20, EU:C:2021:898, paragraphs 30-33. Summary available in the EUAA Case Law Database.

3.3.1. Concept of 'country of former habitual residence'

The concept of country of former habitual residence is a **factual** one, based on all relevant personal and contextual circumstances of the individual applicant. This distinguishes it from the concept of nationality, which depends on the existence of a legal link with a state, which in turn presupposes the existence of such a state (see above Section 2.3. The country of nationality as a state). The notion of 'former habitual residence' is not defined by the Refugee Convention itself nor by the QR (or the QD (recast)).

It is important to note that the concept of country of former habitual residence included in Articles 3(5) and (6) QR ([62]) is applicable to stateless applicants only. The country of reference of the examination of the application for international protection of applicants with a nationality remains their country of nationality, even if they have stronger bonds with a country of residence.

3.3.2. Criteria to determine a country of former 'habitual' residence

This section presents some of the factors that may be considered in assessing whether a country may be considered as a country of 'habitual residence' in the expression 'country of former habitual residence' for a stateless applicant.

The following factors should be considered **in combination with one another**. This list of potentially relevant factors is not exhaustive as the assessment needs to be adapted to the individual case.

For the country to be considered a country of former habitual residence, the combination of different factors should show that the individual applicant has achieved a relevant degree of settled and stable existence over time.

The more criteria that are fulfilled, the more probable it is that the country at hand can be considered as a country of former habitual residence.

Depending on national law and practice, an applicant may be considered as having several countries of former habitual residence (see more information, see Section 6.4.2. Multiple countries of former habitual residence).

Table 2. Criteria to determine a country of former habitual residence

Physical presence	A country may only be considered as a country of former habitual residence if the applicant physically resided in that country.
Country	The concept of 'country' in the expression of country of former habitual residence is wider than the notion of 'state' and may include certain territories ([63]).

([62]) See also Article 2(d) and (f) QD (recast) for applicants to who those provisions apply.
([63]) See EUAA, *Qualification for international protection – Judicial analysis*, Second edition, January 2023, p. 41.

Nature of the residence	The concept of habitual residence is wider than that of legal residence, as a stateless person may be residing in a country where they have no legal right to stay. The absence of a legal entitlement to stay in the country of former habitual residence is a reality for many stateless applicants. The requirement of having legal residence is therefore not needed. *De facto* residence can be considered as a relevant indicator. However, if the applicant had a legal right to stay in the country, it would be a strong indication that the country may be regarded as a country of former habitual residence. The nature of the residence may also affect the right to return. It is unlikely that a stateless applicant who has left a country where they were not legally residing or where their legal residence has ended, will have a right to return to that country. However, if such a right to return exists, that would show a continuity in the residence, hence an indication of habitual residence. For example, an applicant may have resided legally in the country only because they were sponsored by their employer. After losing their job, they may not have the right to return to that country. However, it could still be considered a country of former habitual residence in their case.
Duration of the stay	For a country to be considered as one of former habitual residence, the stay should have a minimum duration. That minimum duration may vary depending on national practice. However, the duration of the stay cannot be assessed in isolation. For example, it may be necessary to consider a combination of factors such as the legal residence of the applicant in the country, with the reasons for them having moved there and their intention to stay there with their family. These factors may play a role in your appreciation of the duration and lead you to consider that it is sufficiently 'significant' in the individual circumstances. The 'intended' duration of the stay may also be relevant to consider. The idea of being 'habitually resident indicates that the person resides in [the country] on an on-going and stable basis' ([64]). This generally entails a notion of duration. To consider a country as a country of 'habitual' residence, the applicant's presence there needs to be more than merely short-term, intermittent or temporary.
Uninterrupted and permanent stay	There is no requirement that the stay should be uninterrupted or permanent for the country to be considered one of habitual residence. Regularity of the stay is however indicative of habitual residence. The more stable the residence, the more likely it is that the country may be considered as a country of former habitual residence.
Settlement	This is understood as having one's main centre of interest in a country is a strong indicator of stable residence in that country. However, the intention to settle is not necessary for the country to be considered one

([64]) UNHCR, *Handbook on Protection of Stateless Persons*, 2014, paragraph 139.

	of habitual residence. A stateless person may be led to build a stable life in a country without intending to. Other potentially relevant criteria are the reasons for moving to and for staying in that country. The existence of family ties may be relevant too, depending on individual circumstances (e.g. linked to the degree of relationship with the family members living there).
Existence of a previous nationality	The fact that an applicant formerly had the nationality of a country where they have resided is also an indicator that the country could be considered as being of former habitual residence.
Having received official documents from that country	The fact that the national authorities of that country have issued official (administrative) documents to the applicant may, depending on their purpose, show that the applicant had a settled life there.

3.3.3. Determining a country of 'former' habitual residence

The word 'former' in the expression 'country of former habitual residence' may be understood in different ways. The CJEU has not yet ruled on the exact scope of that word and practices vary among EU+ countries in relation to what 'former' habitual residence covers.

Three main different meanings coexist:

- the country of habitual residence that the applicant has fled from and where they claim to have a fear of persecution or face a risk of serious harm in case of return;
- the last country of habitual residence, meaning the country where the applicant had their previous habitual residence before making their application for international protection; or
- any country where the applicant has previously lived and which can be considered a country of habitual residence.

You should ascertain how this concept is applied within your national law and context. In its application, you should make sure that the principle of *non-refoulement* is respected at all times and that an applicant in need of international protection is not left without protection (see further in Section 6.4. Stateless applicants: return or protection).

3.3.4. Determining of country former habitual residence for stateless children

The determination of the country of former habitual residence of stateless children is based on the same indicators detailed above in Section 3.1. Indicators of nationality (or lack thereof). However, cases concerning children call for specific care, as situations of statelessness may arise as a direct result of the migratory journey of their parents. For example, the parents may have a nationality while their children do not. In addition, children may have been born in the host country.

When faced with such a situation, you should ascertain how the country of former habitual residence is determined in your national context while keeping in mind that the best interests of the child should be a primary consideration.

Related EUAA publication

For further information on how to apply the best interests of the child within the asylum procedure, see EASO, *Practical guide on the best interests of the child in asylum procedures*, 2019.

There are different ways in which the best interests of the child may be considered in the asylum procedure, for example in the way the concept of family unity is implemented.

Examples of considering the bests interests of stateless children when applying the concept of family unity

- Some EU+ countries consider the parent's country of reference as being the same for the child(ren), regardless of whether the parents are granted international protection. This may allow the parents who have not been granted international protection to request family reunification with their child where the latter is a beneficiary of international protection.
- Some EU+ countries use more favourable provisions in assessing the need for international protection of the child by considering the country of former habitual residence of the parent who has been granted international protection.

4. Special situations in acquiring or losing nationality

When determining the country of reference, you may encounter special situations posing some particular challenges that will require additional reflection.

4.1. Deprivation or attribution of nationality contrary to international law

It is a guiding principle of international law that each state determines, under its own law, who its nationals are. However, when a state creates its domestic nationality law, this needs to be in line with the international standards on nationality and the prevention and reduction of statelessness. The law and practice of the state concerned has to be consistent with international conventions, international custom and the principles of law generally recognised with regard to nationality ([65]). For instance, withdrawing the nationality of a person who does not hold another nationality and thus making them stateless is generally prohibited by international law.

The determination of the country of reference will be affected where nationality has been withdrawn or attributed. When a state withdraws a person's nationality in a way that is compliant with international law, the person will no longer hold that nationality and that country can no longer be considered a country of reference. Only the country of their other nationality, if applicable, will be considered a country of reference. However, specific issues may arise if nationality is attributed or withdrawn in contradiction with international law and those are the situations addressed in the following subsections.

Remember that, at this stage of the asylum examination, the question is merely to determine the country in respect of which the applicant's protection needs should be assessed. Whether a loss or attribution of nationality that is contrary to international law amounts to persecution or serious harm is a different question that needs to be assessed separately (see Section 7. Nationality and acts of persecution or serious harm).

4.1.1. Arbitrary and discriminatory deprivation of nationality

A state may deprive one of their citizens of their nationality based on arbitrary and discriminatory measures. A person can be deprived of nationality for reasons related to the Refugee Convention grounds (e.g. race, see Section 7. Nationality and acts of persecution or serious harm) or unrelated to it.

([65]) Article 1 of the League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, 13 April 1930.

The CJEU has not yet ruled on how to identify the country of reference in a case where the applicant has been deprived of their nationality in a way that is contrary international law. Depending on national practice, two different approaches are currently being followed.

1. An applicant who has been arbitrarily deprived of their nationality will be considered stateless (if they do not hold any other nationality) because they would no longer be considered as a national under the operation of the law of the state that denationalised them. Their protection needs will thus be assessed in respect of their country of former habitual residence (which could be the denationalising state or another country).
2. An applicant who has been arbitrarily deprived of their nationality will be considered stateless (if they do not hold another nationality) but their protection needs will, in any case, be assessed in respect of the country of (former) nationality of the denationalising state, regardless of whether the person has ever lived there and thus regardless of whether it can be considered a country of former habitual residence.

If the applicant has always lived in the denationalising country, choosing one approach over the other will not have any implications for the examination of their international protection needs. The country of former habitual residence and the denationalising country (and therefore the country of reference) are the same.

However, if the applicant's country of former habitual residence is not the denationalising country, approach 1 may lead to a protection gap based on your national law and practice. In some situations, assessing their needs for international protection regarding the country of former habitual residence (and not the denationalising country) could mean overlooking any acts that could amount to persecution or serious harm to which the applicant may have been subjected in their former country of nationality. This situation may in particular affect members of the diasporas who have spread from their original country to other countries, sometimes over several generations. See further on the act of denationalisation and its consequences in Section 7.1.1. Deprivation of nationality as a form of persecution or serious harm.

On the other hand, under approach 2, even if the applicant is no longer a national, the country would still be considered as a reference country.

Practical example
The applicant is a national of country A. He has never lived in country A but has resided his whole life in country B (without ever acquiring the nationality of country B or of any other country). One day, he learns that country A has arbitrarily stripped him of his nationality.
If you determine that the stateless applicant's country of reference is the country of former habitual residence, country B, you examine the applicant's protection needs in that country only (where he may not have a fear of persecution or serious harm). However, this approach disregards country A, the denationalising country. What may be a potential act of persecution or serious harm in country A – the fact that the applicant was deprived of his only nationality (and the consequences it caused) – will never be examined if country A is not considered as country of reference.
However, this would not preclude considering country B as a country of former habitual residence for assessing the need for international protection, depending on national practice (see further on the topic of protection in Section 6.4. Stateless applicants: return or protection).

Importance of implementing an approach that ensures a proper examination of the applicant's protection needs

It is recommended that national administrations ensure that their policy with regard to determining an applicant's country of reference does not create a situation where the protection needs of an applicant who has been arbitrarily deprived of their nationality are not fully examined.

4.1.2. Attribution of nationality in the context of occupation or annexation by another state

According to international law, during occupation or annexation of a state by another state, the occupying or annexing state is not entitled to change the nationality of the population in the occupied or annexed territory ([66]). In practice, however, collective attribution of nationality by the occupying or annexing state that is not in line with these international rules does occur.

In such cases, even if illegally attributed, the imposed nationality may create a legal bond with the country, depending on whether the person had a real possibility to opt out of adopting this nationality. The applicant may thus benefit from the protection of that country, provided they have no fear in that country. Thus, both countries of previous and newly attributed nationalities are to be considered as countries of reference.

Practical example

The applicant is a citizen of country A. One day, the region he lives in is illegally invaded and occupied by country B. Country B attributes nationality B to all the citizens of country A who live in the region occupied by country B. Both country A and country B are to be considered countries of reference.

If an applicant did not have a real possibility to opt out of the nationality that was imposed upon them by the occupying or annexing state, only the country of their original nationality should be considered as a country of reference. However, it is relevant to assess whether this act of attribution of nationality and its consequences constitute persecution or serious harm (see Section 7.1.3. Forced attribution of nationality). Keep in mind also that a foreign state acting on another country's territory does not preclude that state from being an actor of persecution in the occupied or annexed territory.

([66]) Article 47 of International Committee of the Red Cross, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 UNTS 287, 12 August 1949; see for example UNHCR, *International Protection Considerations Related to the Developments in Ukraine – Update III*, 24 September 2015, paragraph 6; UN Office of the High Commissioner on Human Rights, *'Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)'*, 2017, paragraph 57; Council of Europe, European Commission for Democracy Through Law (Venice Commission), *Report on the consequences of state succession for nationality*, CDL-STD(1997)023, 10 February 1997, paragraph 24.

4.2. *Ex lege* nationality not (yet) formally recognised and nationality not currently held

'Nationality' refers to a nationality that is actual or current. Where an applicant has a nationality, even if they have no evidence to that effect, they are a national of that country, and the latter will serve as the country of reference for the asylum examination. You may encounter some cases where *ex lege* nationality is held by an applicant but not yet formally recognised. For the purpose of the asylum examination, it may, in certain cases, also be possible to consider a nationality which the applicant does not (yet) hold but that they can be reasonably expected to avail themself of.

4.2.1. *Ex lege* nationality not (yet) formally recognised

As previously mentioned in Section 2.1. Modes of acquisition of nationality, a state's nationality law may provide for *ex lege* (automatic) acquisition of nationality. In this case, a person will automatically become the national of that state, for example at birth, even if their (already existing) nationality has not yet been formally acknowledged. In other words, the fact that the person may have not (yet) taken steps to have their nationality recognised by their national authorities (e.g. by registering themself with their national authorities) does not detract from the fact that there is a legal bond with that country based on which they can be considered to be a national of that country.

For example, a child was born abroad to parent(s) from a country which, by law, automatically grants nationality by descent (*jus sanguinis*) but no steps have yet been taken to register the birth with the national authorities. In this case, the child is not to be considered stateless as they, legally speaking, already hold said nationality, unless there are indications that their nationality will not be recognised in practice by the national authorities. Here, the national authorities are simply not aware of the child's existence and therefore cannot formally confirm the nationality. In such a case, the country of nationality can be considered as the country of reference because the person is a national of that country, even if their nationality has not been formalised yet.

Keep in mind that, in the context of the examination of the application for international protection, you are not carrying out the statelessness determination as such (see Section 2.5.2 Statelessness determination procedure), but you need to consider which country will be the country of reference to assess the need for international protection of the applicant.

A person who holds the nationality of a state by the operation of a national law, but where COI shows that it is unlikely that the national authorities have considered or will consider them as a national, the person would be considered stateless. The country may still be considered as a country of reference though, depending on national practice (see Section 4.1.1. Arbitrary and discriminatory deprivation of nationality on different approaches). The fact that a person was denied a nationality has implications on the possibility for them to return to and to avail themself of the protection of that country that refuses in practice to recognise them as a national (see Section 6.Protection and nationality

(or lack thereof)). It may also give rise to assessing whether the refusal to recognise them as one of their nationals could be considered as an act of persecution or serious harm (see Section 7.2 Absence of recognition of an ex lege nationality).

It should be noted that according to international standards ([67]), states have the obligation to grant nationality to children born on their territory and who would otherwise be stateless. Depending on national legislation, this may also be the case for stateless children not born on national territory. Therefore, it should be verified if an applicant (or an applicant's child) could indeed become a national of the host country based on this ground and would therefore not be in need of international protection.

4.2.2. Nationality not currently held

Exceptionally, a nationality that is not currently held by the applicant may be considered when assessing if the applicant could find protection in another country. In such a case, that country of nationality could also be considered as a country of reference for the assessment of the need for international protection. See further on this in Section 6.3. Nationality not currently held.

4.3. Nationality obtained in error or bad faith

Where nationality is not acquired automatically, it may happen that the competent national authority makes a mistake when conferring nationality to an individual, for example, because they incorrectly interpreted the applicable law. Mistakes can also be made by the person themself when applying for nationality, for instance, by unintentionally misrepresenting relevant material facts. Furthermore, both competent authorities and persons may deliberately defraud when conferring or applying for nationality.

Even if a nationality was obtained in error or bad faith, this nationality should be considered as valid and the country of nationality as a country of reference when examining the person's international protection needs, as that person is considered to be a national by the national authorities. However, be aware that 'in some cases the State, on discovering the error or bad faith involved in the nationality procedure in question, will subsequently have taken action to deprive the individual of nationality' ([68]). You will need to take this into account when determining whether the authorities still consider the applicant as one of their nationals and thus if the country can indeed be considered a country of reference.

([67]) UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989; Council of Europe, European Convention on Nationality, ETS 166, 6 November 1997.
([68]) UNHCR, *Handbook on Protection of Stateless Persons*, 2014, paragraphs 45-46.

4.4. Renunciation of nationality

Renunciation of nationality refers to the voluntary loss of nationality initiated by a declaration or application by the person or their legal representative, addressed to the relevant authorities expressing their intention or desire to give up the nationality in question.

If confronted with a case involving renunciation of nationality, the following should be considered.

- **The distinction between deprivation of nationality and renunciation**

Sometimes, the difference between deprivation of nationality and renunciation may not be clear in practice. For example, if a state pressures an individual into so-called 'voluntary' renunciation (e.g. by offering remission of lengthy imprisonment or hard labour), this can be considered deprivation of nationality and thus the considerations in relation to deprivation of nationality would apply (see Section 4.1. Deprivation or attribution of nationality contrary to international law).

- **The legal effects of renunciation**

Each country sets its own laws for formal renunciation of nationality. An individual may be permitted to renounce nationality as a right, without having to obtain a decision of the state allowing this. Some states will make renunciation dependent upon the individual not becoming stateless as a consequence ([69]). On the contrary, some countries do not recognise renunciation of nationality or, if they do, may also establish such cumbersome administrative procedures that cannot possibly be completed in practice.

In some countries, the renunciation procedure is non-discretionary, meaning that the state has no choice but to recognise the renunciation as it becomes effective automatically once all the legal conditions are met. In such a case, the applicant may already have lost their nationality by the simple fact of informing their national authorities of their renunciation.

In other countries, renunciation may be subject to the approval of a public authority. In this case, submitting an application for renunciation does not mean that the applicant has lost the nationality in question, as long as the national authorities have not approved their request.

Sometimes, the applicant may have renounced nationality in a way that does not respect the formalities required by national law and practice. Their renunciation may therefore not be legally valid and the person is still considered a national by their country of origin. It is therefore important to consult COI on domestic law and its application when it comes to the modalities of renunciation.

([69]) See in this respect, among others, Article 7 of the UN General Assembly, Convention on the Reduction of Statelessness, United Nations, Treaty Series, vol. 989, p. 175, 30 August 1961; Article 8 of the Council of Europe, European Convention on Nationality, Council of Europe, 6 November 1997.

- **Reasons behind the renunciation**

It is important to explore the reasons an applicant has decided to renounce their nationality. For example, they may have renounced their former nationality in order to acquire a new one. In that case, the country of their new nationality will become the country of reference. In the event that they renounced their former nationality without acquiring a new one, they should be considered stateless.

Where an applicant has effectively renounced the nationality of a country where they have no fear of persecution or serious harm (possibly that of their second country of nationality) shortly before or during the asylum procedure, this may raise questions regarding potential procedural abuse.

Practical example

The applicant is a national of country A where they lived their whole life. They also hold another nationality, that of country B. They leave country A, allegedly due to a well-founded fear of persecution. Upon arrival in the country of asylum (country C), they renounce their nationality of country B (where they say they have no fear of persecution or serious harm) and apply for asylum based on their fear in country A.

In such a case, since nationality is a legal question, the country of former nationality can no longer be considered the applicant's country of reference. However, and depending on national practice, it may be possible to contend that a person who renounces the nationality of a country where they had no well-founded fear voluntarily puts themself in a position where they are left only with the nationality of an allegedly unsafe country. *Prima facie*, this is not indicative of a genuine fear of persecution or serious harm. However, this should be assessed carefully and the applicant should be given ample opportunity to explain both the reasons and the timing of the renunciation, as there could be legitimate reasons that are not immediately apparent. In addition, the possibility to recover the renounced nationality should be explored too (see next point).

- **Possibility to regain nationality**

In some countries, recovering a previously renounced nationality may be a mere formality and the renunciation can be swiftly reversed, without having to undertake major administrative steps or fulfilling further substantial conditions (see also Section 6.3. Nationality not currently held, regarding administrative steps). In this case too, it is important to consult COI on domestic law and its application when it comes to the possibility for former nationals to reacquire their renounced nationality.

4.5. Enjoyment of the rights attached to nationality

The determination of the country(ies) of reference for an applicant who holds a nationality is done through the identification of the legal bond of nationality. A person's nationality does not have to pass any further qualitative test regarding its content or scope, i.e. as to whether it

actually carries some or all of the characteristics and rights thought be acquired by virtue of having a certain nationality. The question of whether the applicant may actually enjoy the fundamental rights attached to nationality is considered at a later stage, when examining the possible existence of a well-founded fear of persecution or a real risk of serious harm.

If the applicant is denied rights normally attached to the holding of a nationality, or cannot claim national protection, they may have a well-founded fear of persecution or a real risk of serious harm towards their country of nationality (see Section 7.2. Absence of recognition of an ex lege nationality). However, it does not negate the fact that the applicant is a national of that state, which remains the country of reference for the purpose of the assessment of the need for international protection.

5. Evidence to determine nationality, statelessness and the country of origin

Scope of this section and related EUAA publication

This section presents, in a non-exhaustive manner, different types of evidence that is relevant for determining an applicant's nationality or lack thereof and their country of origin. It does not provide guidance on how to assess this evidence.

For guidance on assessing evidence, see the EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024.

The nationality of the applicant (or the lack thereof) is a material fact of the application for international protection. The nationality is one of the elements needed to substantiate an application of international protection and is subject to the duty to cooperate between the applicant and the asylum administration ([70]). As such, this is a material fact in relation to which evidence needs to be collected and for which credibility needs to be assessed before it can be accepted or rejected.

An assessment that is not declaratory of the nationality or of the statelessness of the applicant

Your assessment of the nationality or of the statelessness of the applicant is necessary for the purpose of examining their need for international protection. Your assessment is not declaratory of the nationality or statelessness of the applicant. It is only for the competent authorities of the person's country of origin to officially declare one person's nationality. In the case of a stateless applicant, depending on your national system, a specific authority may have the competence to make a formal statelessness determination (see Section 2.5.2 Statelessness determination procedure).

As a case officer, you should explore the relevant elements related to that material fact, assess its credibility and reach a conclusion as to whether an applicant's stated nationality or statelessness can be accepted for the purposes of the assessment of their need for international protection.

When doing so, keep in mind the following points.

- The situation of an applicant may not be the same in terms of their nationality and/or statelessness than that of other family members. You need to identify the nationality and possible statelessness separately for each member of the family that made an application. For example, the situation of the father, the children and the spouse may differ. There may be different circumstances, different nationalities or statelessness risks that may emerge among children.

([70]) Article 4 QR.

- The lack of cooperation on the part of the applicant in establishing their nationality should not result in the conclusion that they are stateless but rather that their nationality claim has not been sufficiently substantiated ([71]).
- If the applicant has fulfilled their duty to substantiate and you have fulfilled your duty to investigate, yet the applicant's nationality remains indeterminate, the examination of their need for international protection may be determined in a manner similar to that of a stateless person. In such cases, the country of former habitual residence of the applicant is used as a country of reference, instead of their country of nationality ([72]). This could happen, for example, when evidence is lacking because the applicant was cut off from their family at a young age and does not know what their parent's nationality was or where exactly they were born ([73]).

Certain evidence (such as an applicant's statements indicating in-depth practical knowledge of a country) may help to establish that a person has lived in a specific country for a longer period of time. It does not prove per se the person's legal status as a national of that country. Yet, in the absence of other elements indicating that the person holds another nationality or is stateless, evidence demonstrating a person's prolonged residence in a country would normally be considered sufficient to substantiate the credibility of the claimed nationality.

Of course, evidence indicating that a person has resided in a specific country for a long period has a specific significance for persons who are stateless. This is because residing in a country is the main, although not the only, criterion when determining their country of former habitual residence (see Section 3.3. For stateless applicants: the country of former habitual residence).

Remember that in the asylum procedure, any type of evidence is admissible (as long as it is not in breach of the applicant's fundamental rights) ([74]). Some applicants may be able to present documents to support their claim, while for others, your assessment may have to rely on their statements and/or other types of evidence.

- **For applicants who do not submit documents**, keep in mind that there may be many legitimate reasons an applicant has never been or is no longer in possession of relevant documents that can attest to their nationality. This may include, for example, discriminatory practices relating to the issuance of documents, the applicant's fear of the authorities, the collapse of administrative processes due to a general conflict situation, loss or non-intentional damage and any objective impossibilities for applicants to obtain relevant documentation. In the absence of probative documents submitted by an applicant and/or in case of their inability to contact their national authorities, other relevant elements, notably the applicant's statements, may substantiate an applicant's nationality or statelessness.

([71]) See the obligations of the applicant in terms of cooperation in Article 9(2) APR and Article 4 QR as well as in Article 4 QD (recast).
([72]) UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reissued April 2019, HCR/1P/4/ENG/REV. 4, paragraph 89.
([73]) EUAA, *Qualification for International Protection – Judicial analysis*, Second edition, January 2023, Section 1.3.2. Nationality.
([74]) EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, p. 39.

- **Where applicants submit relevant documents** proving or indicating their nationality or statelessness, these should always be assessed against the background of their asylum claim. There may be cases where the document submitted may establish nationality but is in direct contradiction with the statements of the applicants concerning other material facts (e.g. passport received in person in the country of origin after the applicant's alleged date of departure).

Keep in mind that one piece of evidence alone may be sufficiently probative to support the credibility of the material fact as well as to confirm it (e.g. presenting an authentic national passport). On the other hand, a piece of evidence that is not probative of the material fact on its own (e.g. birth certificate) may support, in combination with other evidence and the statements of the applicant, the credibility of the material fact.

Point to remember

The credibility assessment combines the assessment of documentary and other evidence, the assessment of the applicant's statements and the consideration of factors that may lead to distortions.

This section will present different types of evidence which can help substantiate an applicant's nationality (or lack thereof) and highlight certain specificities in this regard:

- Statements by the applicant;
- Documentary evidence;
- Country of origin information;
- Other evidence.

5.1. Statements by the applicant

Statements may be the only evidence that an applicant can provide to assert their country of origin. Additionally, and in particular for the applicant who states that they (exclusively) hold one nationality, statements may indicate that they may actually hold another (additional) nationality. This may be evident through the information they provide, such as their place of birth, nationality of family members and past residency.

Statements can be oral or written, collected during the personal interview or at previous stages of the procedure. When no other, or only limited, documentary evidence is available, it can be especially useful during the personal interview to explore certain topics to help establish the credibility of the person's alleged nationality or statelessness.

Good practice

The topics to explore need to be selected, adapted and formulated based on the applicant's profile and narrative. A good practice is to always take the applicant's statements as a starting point for asking questions relating to their origin. For example, if a person mentions certain places, events, people or local administrative authorities, ask them to elaborate.

Examples of topics to explore to determine the country of origin

Family ties

The exploration of family ties is particularly important to gather information on the way an applicant may (not) have acquired or lost a nationality.

- The identity of family members.
- The civil status of family members.
- The type of marriage of the applicant's parents and of the applicant and their spouse.
- Changes in family compositions.

Information related to the personal experience of the applicant in the country of origin

- The procedures they have followed to obtain the documents they have submitted (e.g. passport, ID card, driver's licence, electoral card).
- The place of residence and occupation of family members.

General knowledge

- Information about administrative/public bodies (type, function, location, type of services provided).
- Educational system (school enrolment, programmes).
- Transport available in the country (public transport, routes).
- Security events (particularly in countries where violence is prevalent or there is an armed conflict).
- Other important events (natural disasters, political events such as elections, sport or cultural events).
- Other recent events prior to departure.
- Geographical knowledge (local and national level, local landscape in the stated area of residence).
- National characteristics (currency, measurement units).
- Local media outlets (newspapers, radio stations, TV channels).
- Tradition, culture, religion (e.g. national holidays, culinary specialities, celebrities).
- Local language(s) and ethnic groups.
- Local and national calendar(s).
- Local and national service providers (local banks, telecommunication providers, names of local shops).

In the case of a **person who claims to hold a nationality but has never (or not for a long time) resided in their country of nationality**, the topics to explore during the personal interview will need to be **carefully adapted**. They should include, if applicable, the reasons behind the applicant's long residency abroad (migratory history), family ties, contacts with the diaspora, potential interactions with the consulate authorities (notably procedures to obtain documents) and contacts with public authorities in the country of origin (e.g. to establish proof of birth, marriage, death of parents).

For an applicant who claims to be stateless, you can ask questions regarding their specific situation as a stateless person in their country of former habitual residence in addition to questions about the country itself. This can include, if applicable, their family history, specific documents or administrative procedures or social services that are only applicable to stateless persons, rights and limitations in the country of origin and specific events that affected their community in particular.

Examples of topics to explore to determine statelessness and country of former habitual residence

- Descent and civil status (married, divorced).
- Place and circumstances of birth or adoption.
- Administrative steps taken by the parents to register birth or adoption with competent authorities and their result.
- Applicant's perception of having acquired or lost a nationality.
- Situation of family members (present and past), including (migratory) history, (e.g. (in)ability to reunite with family members).
- Ethnic origin linked to known discriminatory practices.
- Situation of stateless persons of similar background.
- Attempts or impossibility to obtain identity or travel documents.
- Rights enjoyed and limitations faced in the examined country (e.g. access to social welfare, education, right to vote, right to inheritance).
- Place of residence (e.g. camps, border areas, detention, attempted expulsion by national authorities).

In addition to the specific topics above, the Indicators of nationality (or lack thereof) mentioned in Section 3.1. based on the modes of acquisition can serve as a basis to inform further topics to explore during the personal interview.

Related EUAA publication

For guidance on how to conduct the personal interview, see EASO, *Practical Guide: Personal interview*, December 2014.

5.2. Documentary evidence

This section will present different types of documents that can be relevant to assess an applicant's nationality and highlight specific considerations in this regard. Remember that the examination of the probative value of documentary evidence involves an examination of its relevance and reliability ([75]).

Point to remember

Possessing a nationality is not contingent upon possessing documents. A national passport, for example, is declaratory but not constitutive of nationality. Conversely, a person is not rendered stateless simply because they are not in possession of documents that attest to a nationality.

The points below will help you to correctly evaluate the submitted documents and set some reasonable expectations regarding an applicant's ability to obtain (further) documents from their national authorities. Keep them in mind when considering documents as evidence.

- **The issuing authority's competence for certifying nationality**

It should be noted that not all documents that mention the nationality of the applicant necessarily prove, per se, the applicant's nationality. This is due to the fact that the authorities that issue these documents may not be competent to certify or confer nationality or because, in practice, they may issue documents without necessarily requiring that the person submits the necessary probative documents. For example, a local council may issue a birth certificate stating a child's (foreign) nationality, although it is not legally competent to determine or grant nationality.

- **Expecting the applicant to obtain documents from their national authorities**

Applicants have the duty to submit all the elements available to them which substantiate their application, and in this context, to submit all the documentation at their disposal regarding their nationality or nationalities.

A decision as to whether an applicant can be expected to contact the authorities of their country of origin, without putting themself or others at risk, in order to obtain documents, is to be determined on a case-by-case assessment.

Point to remember

([75]) For rules applicable to the examination of the relevance and reliability of documentary evidence, consult the EUAA, *Practical Guide on Evidence and Risk Assessment*, Section 2.1. Assess documentary and other evidence.

The determining authority is bound by the principle of confidentiality, as laid down in Article 7 APR.

Under no circumstances is contact to be made with authorities of a state regarding which an individual alleges a well-founded fear of persecution and/or a real risk of serious harm.

If the feared actor of persecution is a non-state actor, or where the applicant's fear is linked to the general security situation in the country of origin, it is generally possible for the applicant to contact their national authorities.

Holders of multiple nationalities who do not fear persecution or serious harm in one of their countries of origin can be expected to contact the authorities of that country.

In general, if the state is the persecutor, the applicant would in principle not be able to obtain documents from their national authorities. In certain situations, however, even if the applicant fears a state actor, depending on the situation in the country of origin and on the type of document and procedure involved to obtain it, the applicant may still be able to obtain documents from the national authorities. This may be the case where they can obtain these documents via a third party, notably family members, without putting themself or others at risk.

Before requesting the applicant to provide documents, ensure that you base your expectations on reliable and updated COI and that you take into account the applicant's individual circumstances.

- **The use of forged documents does not necessarily invalidate a nationality**

Bear in mind that applicants may use documents that are not authentic. This does not necessarily mean that they do not hold the claimed nationality and indeed there may be legitimate explanations for applicants resorting to false documents. Therefore, the applicant should be given the opportunity to explain the reasons behind their use of forged or false documents. In such a case, particular attention should also be paid to the applicant's statements as evidence of their alleged nationality, which should be thoroughly investigated.

Practical example of submitting a forged passport while being a national

The applicant, a national of country A, has never needed a passport in the past. When war broke out in his country, he fled abroad without having the opportunity to apply for a passport. When he arrives in the country of asylum, he met people from his country who told him he will not stand a chance in the asylum procedure if he does not present a national passport. Therefore, he obtained a forged one on the black market and submitted it to the asylum authority.

- **Some documents have a higher probative value**

Among the documents that can be relevant to establish an applicant's nationality or lack thereof, one should make a distinction based on their probative value. On the one hand, there are national passports, specific documents issued as a result of a statelessness determination

procedure, and identity cards (a) — which have a particular probative value — and on the other hand, there are other types of documents (b).

(a) Passports and identity cards

While having a nationality does not depend on having documents, passports and identity cards are documents that, if authentic, have a particular probative value and allow you to establish an applicant's nationality ([76]). This is also because national passports and identity cards contain biometric data and are therefore more difficult to forge. Yet, it should be remembered that in some countries an authentic passport can also be obtained through corruption, in which case it would not have any probative value. The same can be said for countries of origin where the issuance process is not subject to sufficient controls.

National passports

In general, a national passport is a document issued by a state to its own nationals for traveling abroad.

The possession of a passport creates a rebuttable presumption of nationality ([77]). Therefore, unless there are concrete indications that would suggest that an applicant does not have or no longer has the nationality of the country which issued the passport, the asylum administration should consider that the passport establishes the nationality of the applicant. This is also valid for expired passports, although the reason the applicant did not or could not renew their passport should be explored. If COI indicates that passports of a given country may be issued to non-nationals (e.g. because corruption is rampant or because procedures regarding the issuance of passports are generally lax), the presumption created by the possession of a passport may be rebutted.

Exceptionally, authentic and legitimately issued passports may not evidence their holder's nationality. Some states issue passports to specific categories of non-nationals and stateless persons. In this case, passport holders may not enjoy full rights as citizen, including the right to enter and reside in the country that issued the passport. This is the case, for example, for 'passports of convenience', issued by states for professional reasons to non-nationals (e.g. honorary consuls may hold a passport of the country they represent despite not being nationals). Such passports do not constitute proof of nationality. It is helpful to familiarise yourself with relevant domestic legislation and COI on administrative practices in the country of origin to help you identify such cases (e.g. passport numbers for non-nationals may differ from those of nationals).

In addition, a person who held a passport in the past may no longer have one, for different reasons. Passports belong to the government and can be cancelled, withdrawn or refused to

([76]) EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, Section 2.1.2. Authentication of documents.

([77]) UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reissued April 2019, paragraph 93.

be issued. This may be the case for example if there is a court order or an arrest warrant in place (e.g. due to a person's (suspected) involvement in a serious crime).

Finally, many people may have never possessed a passport, simply because they never needed it (e.g. because they did not use to travel abroad), they destroyed it or it was withheld.

Identity cards

Identity (ID) cards are issued by states for the purpose of identification within their national territory and may sometimes be used for cross-border travel. However, some countries do not issue national ID cards at all. Depending on the country of issuance, ID cards may have a similar probative value as passports, for instance when they may only be issued to nationals of a country.

Some countries, however, also issue official ID cards to foreign nationals. In such cases, the foreign nationality of the holder may be explicitly mentioned or indirectly indicated (use of particular numbers/codes) on the card. In such a case, it can be helpful to consult COI on the conditions and requirements used to determine the mention of the foreign nationality on an ID card (e.g. type of documents required to prove foreign nationality to the administrative authorities who issue the ID card) ([78]).

Useful online databases on passports and other official documents issued by countries worldwide

- Public Register of Authentic identity and travel Documents Online (PRADO) ([79]) is a database of specimen of identity and travel documents made publicly available by the Council of the European Union.
- 'EdisonTD' ([80]) is a database developed by the Dutch authorities in cooperation with the authorities in Australia, Canada, the United Arab Emirates, the United States of America and the International Criminal Police Organization (Interpol). Part of the database is publicly available.

(b) Other documents

Many other documents can substantiate, either by themselves or in combination with other evidence, that an applicant has a certain nationality. A list of such other documents is provided below.

Consular certificates

A consular certificate is a document certifying that the holder has been recorded in the register of nationals residing in an area outside of the national territory for which the consulate is competent. The main purpose of the consular certificate is to enable its holder to request

([78]) EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, pp. 57-60.
([79]) Council of the European Union, 'PRADO - Public Register of Authentic identity and travel Documents Online', Consilium.europa website, undated, accessed 22 October 2024, https://www.consilium.europa.eu/prado/en/prado-start-page.html.
([80]) EdisonTD, 'edison', EdisonTD website, undated, accessed 22 October 2024, https://www.edisontd.nl/about.

the assistance of their national authorities when abroad (e.g. to facilitate nationality transmission for children born outside of their country of nationality).

Consular certification systems normally require a person to submit evidence of their nationality including, for example, the production of a valid passport. Therefore, an authentic consular certificate may be considered equivalent to a passport in terms of probative value if it also contains a picture of the holder and depending on the conditions required by the consular post for issuing the certificate. In this sense, caution should also be exerted when an applicant submits a consular certificate alleging that they are not a national of that state. This assumption may simply be the result of the applicant not having submitted the required proof to the consulate. It does not necessarily mean that the applicant does not have the nationality.

Not many countries issue consular certificates. Hence, the absence of such a certificate may not indicate lack of nationality.

Other travel documents

Usually, travel documents can be issued by states to individuals who are not their nationals and who, for various reasons, cannot obtain an ordinary passport.

Travel documents issued by a country other than the country of reference (e.g. refugee passport, 'blue' passport) may include the mention of the holder's nationality or lack thereof. In the latter case, the possession of such a travel document should raise questions as to why the applicant has left that country and can lead to applying an inadmissibility ground (i.e. the concepts of 'first country of asylum' or 'safe third country') ([81]).

In other cases, applicants may be in possession of other types of travel documents (e.g. laissez-passer) which may contain indications of nationality or lack of citizenship in specific situations.

Birth certificates

Birth certificates are issued to document a person's birth or the registration of such a birth. They usually include the name of the child, the date and place of birth and, often, the name and sometimes the nationality of the parents. However, birth certificates per se do not contain conclusive information on the person's nationality. They may only mention one nationality per parent and therefore disregard that the parents may hold additional nationalities. More importantly, the authorities that issue birth certificates do not have the legal competence to certify nationality and may not require any evidence whatsoever of the parents' nationality upon registration of the birth.

In certain situations, however, birth certificates may substantiate nationality by themselves. This is the case where the birth certificate proves that the factual elements required by domestic nationality law are met. For instance, the applicant may be born in a country that applies *jus soli*. In such a case, the applicant's nationality can be inferred from the birth

([81]) See Section V APR.

certificate (with mention of the place of birth) combined with COI confirming that the country applies unrestricted *jus soli*.

In most cases, birth certificates alone are not sufficient to establish nationality and need to be combined with other elements. For example, when domestic law sets out that nationality is transferred through the father, the applicant's birth certificate bearing information on the identity of the father, along with the father's proof of nationality (e.g. passport or consular certificate), may suffice to substantiate the applicant's nationality.

Citizenship or nationality certificates

Citizenship or nationality certificates are documents issued by the state to certify that the person who is identified in the certificate holds the nationality of that state. Such certificates include the name and surname of the person, their date and place of birth. They may include other identification elements, such as a photograph of the person, the name of their parents (and their own identification data) and the way nationality was acquired. The presence of a picture of the applicant on the certificate will strengthen its probative value as you will be able to make a clear connection between the document and the applicant.

The date of issue is also included. The validity of nationality certificates may be limited in time (e.g. 6 months). Indeed, unlike a birth certificate, which certifies an immutable one-off event, a certificate of nationality can only certify a factual state at the time when it was established. However, even an 'expired' nationality certificate may give you a strong indication as to the (previous) nationality of the applicant.

As for all documents, keep in mind the circumstances and conditions under which nationality certificates may be issued by national authorities. There may be some limitations, for example, some countries only issue such certificates for nationals who were born abroad.

Residency cards and permits

Residency cards and permits are issued by the state to help identify that a person is legally staying on its national territory, often for a longer period of time.

Residency does not equal nationality. It is not the case that because someone has legally resided in a particular country for a prolonged period, or even their whole life, that it can be presumed that they have acquired the nationality of that country. Residency cards often mention the nationality of the holder, which is an indication of the applicant's nationality but not evidence of the fact.

However, legal residency in a country is an important element to consider in the case of stateless applicants to determine the country of habitual residence or in the context of a safe third country assessment.

Other documents

In some countries, other types of documents, such as a driver's licence or voting cards are widely used as a primary identity document. They contain similar personal details and features as conventional identity cards.

In addition, marriage certificates (official statements by national authorities attesting that two persons are married) commonly contain indications on the spouses' nationality(ies).

In particular for stateless persons, specific documents attesting their registration with international organisations in relation to service provision can constitute a means of identification (e.g. cards issued to internally displaced persons).

Finally, other types of documents do not have probative value but may be considered to substantiate the applicant's claimed nationality (or lack of thereof). Such document can be, for example, school certificates, medical certificates, employment contracts, property deeds or rental contracts.

Be mindful of the fact that a state's acknowledgment of the existence of nationality (e.g. by putting a 'special' stamp in the applicant's passport) or a decisive indication of status by the competent authorities of the state in question (e.g. a letter from their embassy) may often be 'indicative', not constitutive, of the existence of nationality.

5.3. Country of origin information

The availability of high-quality, reliable and relevant COI is essential to the decision-making process. With regard to evidencing nationality or statelessness in particular, a primordial element is information on nationality laws in the applicant's country of origin. This includes national legislation which should contain precise information about the categories of persons eligible for nationality, the conditions that need to be fulfilled (if any), but also administrative procedures used to obtain nationality documents. Most importantly, COI should also include information on how these laws and regulations are applied in practice.

Keep in mind that up-to-date COI on how national laws are implemented at the time of your assessment may not be relevant. This is because nationality laws and practices can fluctuate over time and the applicant's situation must be assessed in the light of their own history. You may encounter cases where you need to look for COI on the laws and practices relevant at the time the applicant could have acquired or lost a nationality (time of birth time of creation of a new state where the applicant used to live, etc.).

COI that may indicate possible situations of statelessness

COI should also cover any (practical) restrictions or difficulties in the effective access to nationality and the recognition of nationality by national authorities for certain categories of the population of that country.

Practical example. Based on reliable COI, you know that women in country A cannot pass their nationality on to their children. When the applicant states that they are from country A because their mother has country A's nationality this needs to be further explored as they may, in fact, be stateless.

It is also important to note that a person that you consider to be stateless may not necessarily be considered as stateless by other countries or by the country of former habitual residence (see further on the definition of the country of former habitual residence in Section 3.3. For stateless applicants: the country of former habitual residence). In particular, when researching the treatment of stateless persons in the legislation of a country, you should know whether the applicant would fall under the category of stateless persons or not in that country.

Practical example. You would like to know how the applicant, who you consider to be stateless according to your national guidelines, would be treated in country B where they had their former habitual residence. Based on COI, you know that country B does not consider people of the origin of the applicant as stateless but rather as having the nationality of country C. The fact that country B considers the applicant a national of country C does not lead you to assess the need for protection vis-à-vis country C. The country of reference remains country B.

The fact that country B considers the applicant a national of country C is, however, relevant to determine how the applicant is treated in country B as a national of country C: the rights they have there, whether they have access to protection, etc.

Useful online databases

- The Global Nationality Laws Database ([82]) is a collection of thematically related laws which covers 177 countries and compares laws over time. It is run by the Global Citizenship Observatory (GLOBALCIT) and 'is an online observatory committed to fact-based and non-partisan analysis of citizenship laws' ([83]), based at the European University Institute. GLOBALCIT relies on a large international network of country experts who, inter alia, provide input to the database which compares data across countries and over time. It is a valuable source if you need to find out more about national laws in specific countries. A search will most likely generate several entries and you may need to check through multiple entries to ascertain the correct current state of the law.
- The Legislation online database 'covers … the legislation of 57 [Organization for Security and Co-operation in Europe] participating States on a number of human rights and rule of law related topics' ([84]). It is issued by the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights.
- Refworld ([85]) is a global law and policy database on refugee law and statelessness, operated by UNHCR.

Related EUAA publication

The EASO, *Practical Guide on the use of country of origin information by case officers for the examination of asylum application*, December 2020 provides information on how to use COI at different stages of the examination of applications for international protection.

5.4. Other evidence

(a) Documents issued as a result of the statelessness determination procedure

An applicant may submit a document that attests that they have been formally recognised or registered as a 'stateless person', either in the country of asylum itself, in their country of former habitual residence or in another country, prior to the asylum claim. See Section 2.5.1. Definition of statelessness in the context of international protection for considerations relating to that procedure in the host country of refuge.

If the applicant submits a document which proves the positive outcome of this formal determination procedure, their statelessness can be considered as substantiated. Depending on the authority that is competent under the national law to make the decision on the statelessness determination, the document may be a court decision or a certificate issued by the competent public administration, for example.

([82]) Global Citizenship Observatory, 'Global Nationality Laws Database', Robert Schuman Centre, undated, accessed 22 October 2024, https://globalcit.eu/national-citizenship-laws/.
([83]) Global Citizenship Observatory general website, undated, accessed 22 October 2024, https://globalcit.eu/.
([84]) Organization for Security and Co-operation in Europe, 'Legislationline.org', undated, accessed 22 October 2024, https://www.osce.org/odihr/legislationline.
([85]) UNHCR, Refworld Global Law & Policy Database, undated, accessed 22 October 2024, https://www.refworld.org/.

Special passports or travel documents (e.g. a stateless passport) delivered by the competent authorities, based on the result of the statelessness determination procedure, have therefore similar probative value as national passports.

(b) Data related to travel to the Schengen area

Information provided in visa applications submitted by the applicant or their family members to the country of asylum or other countries, in particular through the Visa Information System, can be considered relevant evidence. The Visa Information System records can shed light on the nationality and travel documents that the applicant possesses.
The Schengen Information System provides information on public security issues related to the applicant, connection to criminal proceedings and use of falsified documents. It can also contain mentions of nationality and documentary evidence in this regard.

(c) Language analysis, assessment or indication

Language analysis does not establish the country of nationality of the applicant but may give indications of the place (or one of the places) the applicant has socialised by residing there for a longer period. Conversely, an applicant holding a specific nationality may not be able to speak their national language or may speak it with difficulty, for example, if they have lived abroad for a long period.

There is a whole range of possible language assessments that rank from formal scientific processes to more informal procedures. If you plan to use any of these tools, exercise great care when assessing the credibility of an applicant's country of nationality or formal habitual residence ([86]).

([86]) See also EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, Section 1.1.2. Collect pieces of evidence relevant to the application; EUAA, *Study on Language Assessment for Determination of Origin of Applicants for International Protection*, September 2022.

6. Protection and nationality (or lack thereof)

International protection is secondary to the protection available to a person in their country of origin. For this reason, the assessment of the availability of protection in the country of origin is a mandatory step in the analysis of the need for international protection. The assessment needs to be undertaken if you have previously established that there is a fear of persecution or serious harm in the event of the applicant's return to their home area in the country of origin.

To be considered a refugee or eligible for subsidiary protection, the applicant should be unable or, owing to a fear of persecution for one of the Refugee Convention reasons or to a real risk of serious harm, unwilling to avail themself of the protection in their country of origin.

For a stateless applicant, if fear of persecution for one of the Refugee Convention grounds has been ascertained, the examination should focus on whether they are unable or, owing to such fear of persecution, unwilling to return to their country of former habitual residence.

Article 3(5) QR – definition of a refugee

'refugee' means a third-country national 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 the 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, is* ***unable or, owing to such fear, unwilling to return to it****, and to whom Article 12 does not apply.* (emphasis added)

Article 3(6) QR – definition of a person eligible for subsidiary protection

'person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is ***unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.*** (emphasis added)

In this guide, you will find additional information in relation to specific aspects concerning nationality that may have an impact on your assessment of the availability of national protection for an applicant.

6.1. National protection

Every state is responsible for ensuring that the rights of its nationals are respected. The need for international protection only arises when this national protection is denied or unavailable.

National protection may be understood in two ways.

1. The basic general protection that is granted to all nationals of a state and that is limited to **the right to return to, reside and be protected against *refoulement* from** the country of nationality.

This national protection is generally available to applicants who hold a nationality and who are acknowledged as being nationals by the relevant state authorities. However, stateless applicants, including applicants who hold a nationality that is not acknowledged by the national authorities, may not be able to benefit from these basic rights. In such cases, they would not be protected by a state within this first meaning of national protection because they would not be legally entitled to it. The deprivation of protection within this first meaning may also be sufficiently serious as to amount to persecution depending on the individual circumstances (see Sections 7.1. Deprivation, denial or forced attribution of nationality as a form of persecution or serious harm and 7.2. Absence of recognition of an ex lege nationality as a form of persecution or serious harm).

This assessment needs to be done on a case-by-case basis as nationals may encounter restrictions to those basic rights of citizenship, while a stateless applicant or an applicant who holds the nationality but which is not acknowledged by the national authorities may, in practice, benefit from those rights depending on the general and personal circumstances.

2. The **availability of the national protection that is provided by the actors of protection** in the country of origin within the meaning of Article 7 QR ([87]), or the availability of an **internal protection alternative**, within the meaning of Article 8 QR ([88]).

It is relevant to assess this type of national protection in all cases where an applicant has substantiated the claim that they have a fear of persecution or that they face a real risk of serious harm, regardless of whether the applicant has a nationality or is stateless.

Stateless applicants may have requested or have had a reasonable possibility to request the protection that is available to any person, including non-nationals, under the state's jurisdiction of their country of former habitual residence.

You would have to rely on specific COI on the way authorities of the country of former habitual residence ensure the respect of the rights of non-nationals and, in particular, of stateless foreigners that are in a comparable situation to that of the applicant. Consider all relevant personal circumstances in addition to the statelessness of the applicant.

([87]) As well as Article 7 QD (recast).
([88]) As well as Article 8 QD (recast).

Examining the applicant's possibility to find an internal protection alternative may also be relevant when they claim to fear non-state actors of persecution or serious harm. In that sense, the examination will be based on the same elements as for applicants who have a nationality.

Related EUAA Publications

For information on the topic of national protection by actors of protection and internal protection alternative may be found in EASO, *Practical Guide on Qualification for International Protection,* April 2018, p. 36 onwards and EASO, May 2021.

6.2. National protection in the case of multiple nationality

When the applicant holds more than one nationality and it is accepted that they have a fear of persecution or of serious harm in one of their countries of nationality, you will need to assess whether they can be effectively protected against those feared acts of persecution or serious harm by any of their country(ies) of nationality. If national protection is available in any of the applicant's countries of nationality, be it the one regarding which the fear or risk is expressed or another one, the fear or risk would not be considered well-founded. This was confirmed by the CJEU in case C-91/20 (*LW*).

CJEU, 2021, *LW* ([89])

33. … an applicant who is a national of more than one third country is considered to be deprived of protection only if he or she cannot or, because of the fear of being persecuted, does not wish to avail himself or herself of the protection of any of those countries. That reading is, moreover, confirmed by Article 4(3)(e) of that directive, under which, among the factors which must be taken into account in the individual assessment of an application for international protection, is the fact that it is reasonable to believe that the applicant could rely on the protection of another country where he or she could assert citizenship.

It is important to assess whether the national protection can be considered effective, non-temporary and accessible within the meaning of Article 7(2) QR ([90]). The desire of an applicant not to rely upon the protection of a particular country of nationality is irrelevant.

([89]) CJEU, judgment of 9 November 2021, *LW* v *Bundesrepublik Deutschland*, request for a preliminary ruling, case C-91/20, EU:C:2021:898, paragraph 33. Summary available in the EUAA Case Law Database. This extract is still relevant for the interpretation of the provisions of the QR and APR, considering that the wording of Article 3(5) and 3(6) QR are identical to that of Article 2(d) and 2(f) QD (recast) and that Article 34(2)(f) APR mirrors the content of Article 4(3)(e) QD (recast).

([90]) And of Article 7(2) QD (recast).

Ineffective protection

If it is established that the applicant has a fear of persecution or faces a risk of serious harm in each of their countries of nationality, without finding effective protection in any of them, their fear would be considered well-founded. For example, the applicant may have a fear of persecution or serious harm in both their countries of nationality for different reasons and is unwilling to avail themself of the protection of any of them due to such fear or risk. This could be the case where, for example, a foreign occupation force or an armed conflict prevent the country of nationality from extending protection or make such protection ineffective in practice.

Not the protection normally granted to nationals

The applicant may have the nationality of a country regarding which they allege no fear of persecution or face no risk of serious harm but in which protection is not effective as it does not entail the protection that is normally granted to nationals. This would be the case where the applicant does not have the right to enter and reside in the country of nationality or could be *refouled* to the country where a fear of persecution or a risk of serious harm has been established. In such circumstances, the applicant would not be considered as benefitting from effective national protection in that country ([91]).

Denial of protection

The country of nationality may also have already denied protection to the applicant, for example, by refusing to admit them to the national territory. If the applicant has not expressed any fear or risk in relation to that country of nationality and if such explicit acts of denial of protection have not yet occurred, the applicant would be expected to request national protection in that country before it can be deemed ineffective. If the applicant did not request national protection, their application would be rejected as it cannot be concluded that the protection is ineffective. However, if after the rejection of their application, the applicant requests national protection and it turns out that national authorities refuse to grant protection, for example by refusing to admit the applicant, the latter may submit a subsequent application on this ground.

If there is no explicit refusal of protection by the national authorities but they do not reply to the request within a reasonable time, their silence may be considered as a refusal ([92]).

It is not necessary that they make the request if you know already, based on relevant and up-to-date COI, that national protection would not be effective.

([91]) See in this regard UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reissued April 2019, HCR/1P/4/ENG/REV. 4, paragraph 107.

([92]) Ibid.

6.3. Nationality not currently held

Both the APR and the QD (recast) have highlighted the need to consider a nationality that is accessible to the applicant when examining their international protection needs.

Article 34(2) APR ([93]) – Examination of applications

... For the purpose of examining an application, the determining authority shall take the following into account: [...]

(f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;

It should be noted, however, that the CJEU has not yet interpreted the exact meaning of these provisions.

A nationality that is not currently held by the applicant can be considered if COI regarding a country's nationality law and its application clearly indicates that applying for such a nationality would amount to a mere formality and that the state has no discretionary power to refuse granting nationality. For example, in some countries, children can apply to become a national through a simplified application procedure, where the only requirement is having a parent who is a national.

Consequently, the applicant would be reasonably expected to take steps to formally acquire such nationality, for example by declaration or by making use of an option available to them (e.g. when the applicant has the possibility to opt for that nationality after having reached legal majority). What constitutes reasonable efforts by the applicant in this regard can only be determined on a case-by-case basis, based on their personal circumstances. You should never request an applicant who claims to have a fear of persecution or serious harm towards their national authorities to approach them to confirm their nationality or take steps to acquire nationality. You need to take into account the steps that are needed in practice and the administrative or financial burden these steps may entail. For example, the amount of administrative and other fees if any, the timeframes for the procedure, the reasonableness of the evidentiary requirements and the possibility for the applicant to gather the evidence to substantiate their nationality (e.g. identity card, citizenship certificate, passport, birth certificate).

By contrast, where acquiring a nationality would require more than a mere formality or where the state retains discretionary power on the granting of

([93]) A similar formulation is found at Article 4(e) QD (recast), under the heading 'Assessment of facts and circumstances', which states that:
The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account: [...]
(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

nationality and therefore maintains room to refuse an application, this 'potential' nationality will not be considered when assessing if the applicant can obtain protection in another country.

For example, an individual may be able to apply for the nationality of a state by naturalisation through presence on the territory, marriage or ancestry. In such cases, the applicant would often be required to make an application to the national authorities of the country, without there being any guarantee that, upon processing the application, the person would be granted nationality.

6.4. Stateless applicants: return or protection

For the assessment of the risk upon return of stateless applicants, Articles 3(5) and 3(6) QR ([94]) make a distinction between stateless applicants who have a fear of persecution and for those for whom a nexus with the reasons for being persecuted is not present but who have substantiated a risk of serious harm.

- If the applicant is eligible for **refugee status**, you need to assess whether they are unable or unwilling, owing to a well-founded fear of persecution, to **return to their country of former habitual residence**.
- If the applicant is eligible only for **subsidiary protection**, the assessment needs to consider whether they are unable or unwilling, owing to a real risk of serious harm, to **avail themself of the protection of their country of former habitual residence**. In such a case, the availability of national protection is assessed in the same way as for applicants who hold a nationality. For all stateless applicants, the examination may first focus on whether they are unable or unwilling to **return** to their country of former habitual residence. The ability to return to the country of former habitual residence is one of the aspects of protection. Therefore, if the applicant may not return to their country of former habitual residence, owing to a real risk of serious harm, they will also not be able to benefit from the protection of actors of protection in that country.

A stateless applicant who does not qualify for refugee status nor for subsidiary protection (for example, because their inability or unwillingness to return to their country of former habitual residence is not based on a fear of persecution or a real risk of serious harm) may still be entitled to protection under the Stateless Persons Convention (see Section 2.5.2 Statelessness determination procedure).

6.4.1. Inability or unwillingness to return

Stateless applicants are not legally entitled to claim the protection of any state. They cannot rely on the duty of a state to allow them entry and residence, nor on the basic right to be protected against *refoulement*. When assessing the availability of protection, the initial focus will be on the applicant's (in)ability or (un)willingness to return to that country. The inability or

([94]) As well as Article 2(d) and (f) QD (recast).

unwillingness to return covers both legal and practical obstacles to return. However, the reason for not being able or willing to return must be related to a fear of persecution ([95]) or a real risk of serious harm.

Examples of unwillingness to return

1. The stateless applicant substantiates the fact that they cannot return to their country of former habitual residence because they have been the victim of segregation and mistreatment due to their ethnic origin. In this case, the link between the unwillingness to return and a ground for international protection may be established.
2. The applicant is stateless but cannot return to the country of former habitual residence because the border is closed for sanitary reasons or they do not wish to return because job opportunities in that country do not correspond to their professional expectations. Despite the applicant's inability to return, those reasons would not be sufficient to fulfil the conditions to be granted international protection.

The assessment of the inability or unwillingness to return requires that you assess what would happen to the applicant if they were to return to the country of former habitual residence.

In some situations, where a stateless applicant has left their country of former habitual residence without any fear of persecution (or real risk of serious harm), they may nonetheless lose their rights to return and/or reside in that country. They may later claim to fear the treatment given to irregular migrants in that country. Depending on your national law and practice, the situation of such stateless applicants could be considered as relevant under the statelessness determination procedure (see further in Section 2.5.2 Statelessness determination procedure). It could also be that, under your national law and policy, this is considered as a possible ground for international protection or for other forms of national protection. You should familiarise yourself with the rules applicable in your national context. Keep in mind that the principle of *non-refoulement* should be respected in all cases.

6.4.2. Multiple countries of former habitual residence

Importance of adopting an approach that does not create a protection gap

It is recommended that national administrations ensure that their practice does not create situations where stateless applicants, while having a well-founded fear of being persecuted or facing a real risk of serious harm, would not be able to access (international) protection (protection gap). The purpose of international protection is to make sure that an applicant who has a well-founded fear of persecution or faces a real risk of serious harm may (continue to) find protection from it. The principle of *non-refoulement*, direct and indirect, should be respected at all times.

([95]) UNHCR, Handbook on *procedures and criteria for determining refugee status and guidelines on international protection* under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, reissued April 2019, HCR/1P/4/ENG/REV. 4, paragraphs 101-102.

'A stateless person may have more than one country of former habitual residence' ([96]). The conditions to consider a country as one of former habitual residence may be fulfilled in respect of several countries if the applicant lived in those countries in succession (or even simultaneously if the applicant split their residence between countries). However, contrary to the question of people with several nationalities, neither the Refugee Convention nor the QR ([97]) provide any specific guidance for assessing the need for international protection of stateless applicants with several countries of former habitual residence.

The *travaux préparatoires* of the Refugee Convention suggests that the drafters were concerned not to differentiate, in terms of definition, between refugees with a nationality and those without a nationality ([98]). Consequently, all the applicant's previous countries of residence should be considered as relevant for the purpose of examining the need for international protection, like this is the case for applicants with multiple nationalities. However, while avoiding unjustified differences between the examination of the application of a national of several countries and that of a stateless applicant with several countries of former habitual residence, it is important to take into account the specificities inherent to the situation of a stateless person. In particular, keep in mind that a stateless person is generally not entitled to a right to return in its countries of former habitual residence and therefore cannot avail themself of the protection from such other countries if needed.

For the purpose of assessing the possibility of the applicant to return to a country of former habitual residence, and to avoid a protection gap, national administrations should only consider the countries of former habitual residence:

- to which the applicant is able to return;
- in which they will not be at risk of persecution or serious harm; and
- in which they will not be exposed to a risk of violation of the principle of *non-refoulement* (direct or indirect).

Indeed, an applicant would not be genuinely in need of international protection if, despite being at risk in one country of former habitual residence, they have the ability to secure protection in another country of former habitual residence ([99]).

Note that, as explained in Section 3.3.3. Determining a country of 'former' habitual residence, in some EU+ countries, only one country of former habitual residence is taken into account for the purpose of examining the need for international protection.

([96]) UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reissued April 2019, HCR/1P/4/ENG/REV. 4, paragraph 104.
([97]) Or the QD (recast).
([98]) M. Foster and H. Lambert, *International Refugee Law and the Protection of Stateless Persons*, Oxford University Press, 2019, pp. 94-95.
([99]) J. C. Hathaway and M. Foster, *The Law of Refugee Status*, Cambridge University Press, Second edition, 2014, p. 73.

6.5. Nationality and cessation of international protection

The cessation clauses correspond to circumstances under which a person is no longer a refugee or beneficiary of subsidiary protection because international protection is no longer necessary or justified. The rationale behind the cessation clauses is that international protection is a 'protection of substitution'. When it is established that the person is no longer in need of protection because they can avail themself of the protection of their country of nationality or because it is established that they can safely return to their country of former habitual residence, the protection status is withdrawn ([100]).

Related EUAA publications

The cessation clauses are provided in Article 11(1) and 16 QR. For further information on how to assess and apply the cessation, consult EASO, *Practical Guide on the Application of Cessation Clauses*, November 2021 and EASO, *Ending international protection — Judicial analysis*, Second edition, 2021.

6.6. Exclusion based on the holding of rights and obligations attached to the possession of a nationality by an applicant who has taken up residence

An applicant who resides in a third country of which they are not a national, but who enjoys a status in that country that comprises rights and obligations that are the same or equivalent to those of its nationals, may be excluded from refugee status based on Article 12(1)(b) QR and Article 1E Refugee Convention. The applicant is considered not to be in need of refugee protection as they benefit, in practice, from the national protection of that third country.

Article 12(1)(b) QR – Exclusion of refugee status

1. A third-country national or a stateless person shall be excluded from being a refugee where that third-country national or stateless person:

(...)

(b) is recognised by the competent authorities of the country in which third-country national or stateless person has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or equivalent rights and obligations.

([100]) Article 14(1)(a) and (4) QR and recitals 64 and 65 QR.

This provision is rarely applied as only in few exceptional circumstances would an applicant hold the rights and obligations conferred with a nationality without actually holding the nationality of that country. Such cases have occurred in the past. For example, where a country intended to confer its nationality to a particular category of people closely related to it and provided them with rights and obligations equivalent to those of nationals as a transitory measure before nationality was granted ([101]). However, the (possible) acquisition of nationality is not a condition to apply this exclusion ground.

Below are some considerations in relation to the application of this provision.

- The applicant should have taken up residence in the country at hand, which implies more than a mere temporary or short-term stay.
- The notion of 'country' necessarily amounts to a national state, as only a state may confer a nationality.
- The applicant should not have a well-founded fear of persecution in that country.
- The applicant should be protected against deportation and expulsion and the principle of *non-refoulement* should be respected by the country at hand.
- The 'rights and obligations which are attached to the possession of the nationality of that country or equivalent rights and obligations' may include the civil, political, economic, social and cultural rights of nationals, thus opening the possibility for the applicant to enjoy rights equivalent to those of nationals. The rights need not be wholly identical: some minor variations could occur, for example in relation to the access to certain sensitive public positions or to military obligations.
- The rights and obligations should be recognised by the country.
- The country should allow the applicant to leave and return.

UNHCR Guidance on the interpretation of Article 1E Refugee Convention

For further information on the interpretation of this exclusion ground, consult UNHCR, *Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, March 2009.

([101]) UNHCR, *Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, March 2009, paragraph 3.

7. Nationality and acts of persecution or serious harm

Persecution or serious harm, within the meaning of the QR, may take an infinite variety of forms, some of which may concern or affect nationality. The persecution or serious harm takes the form of an involuntary loss, denial or attribution of nationality due to facts that may be related or unrelated to the nationality of the applicant. For example, the applicant may have their nationality withdrawn because of their political opinions. The reasons for withdrawal may also be unrelated to a Refugee Convention ground and be part, for example, of a penal sentence. In this case, you will need to conduct an examination of subsidiary protection.

7.1. Deprivation, denial or forced attribution of nationality as a form of persecution or serious harm

Despite the right to a nationality being enshrined in several human rights treaties, a universal 'right to nationality' that can be invoked by any individual in relation to any particular country does not exist ([102]). States retain the sovereign right to establish their own legislation regulating nationality, which includes provisions concerning the acquisition or loss of such nationality and their own laws regulating the personal status of individuals (see Section 2. Concepts on nationality and statelessness). However, human rights law and international obligations impose certain limits on the state's power in matters of attribution and loss of nationality ([103]).

Deprivation, denial or forced attribution of nationality may amount to persecution or serious harm per se and/or to a future risk thereof based on the consequences such actions may have on the applicant's core rights (and obligations) that are attached to the holding of a nationality.

Article 9 QR – Acts of persecution ([104])

1. An act shall be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention where it is:

(a) *sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the [European Court of Human Rights]; or*

([102]) M. Foster, and H. Lambert, *International Refugee Law and the Protection of Stateless Persons*, Oxford, 2019; online edition, Oxford Academic, 23 May 2019, p. 147.
([103]) UNHCR, *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, paragraph 86.
([104]) See also Article 9 QD (recast).

(b) *an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner to an act referred to in point (a).*

2. Acts of persecution as qualified in paragraph 1 may, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

Article 15 QR ([105]) – Serious harm

Serious harm as referred to in Article 3(6) consists of:

(a) *the death penalty or execution;*

(b) *torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or*

(c) *a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*

As a case officer, you should look into the domestic legislation on nationality or the policy of the home country and consider how it is applied in practice. Remember that even an apparently neutral law or policy may be applied in a discriminatory fashion.

Discrimination should be sufficiently serious to amount to persecution

Discriminatory laws or the application of nationality laws in a discriminatory manner may only qualify as an act of persecution if the impact is found to be sufficiently severe. Accordingly, you need to consider whether they create aggravating circumstances. This could include severe consequences of a substantially prejudicial nature for the applicant or if they occur as an accumulation of other various discriminatory measures that could create a risk of persecution or serious harm in case of return.

For example, discriminatory practices can be considered as amounting to persecution where:

- they result in the applicant becoming stateless thereby leading to the deprivation of the applicant's fundamental rights attached to nationality, such as the right to reside and not be expelled; and
- the applicant belongs to a specific ethnic or religious group that has a particularly strong, longstanding, genuine and effective connection to the territory.

([105]) See also Article 15 QD (recast).

Gender discriminatory nationality laws may also under some circumstances qualify as persecution. For example, nationality law may prevent women from passing their nationality to their child, thus rendering in some instances a child stateless, for example when they are unable to acquire the nationality of their father because he is stateless or unknown. You should then consider the seriousness of the consequences of these discriminations on the child to assess whether their statelessness leads to a risk of persecution in case of return.

Example of a measure that has the appearance of legality but is misused

The withdrawal of nationality could be part of the judicial sentence for committing a crime, depending on the circumstances, such as the severity of the crime. However, based on relevant and up-to-date COI on the way justice is dispensed in that country for certain categories of the population, and based on the personal circumstances of the applicant, you may conclude that the sentence was disproportionately harsh and was likely primarily based on the ethnic origin of the applicant. You may also be aware of common practices of fabricated charges. In this case, the withdrawal of nationality may be used to silence the applicant rather than to impose a legitimate punishment. Despite its apparent legality, the measure may have been implemented in a way that aims at harming the applicant.

When assessing whether a deprivation, denial or forced attribution of nationality would amount to persecution or serious harm, it is important to consider the reason the measure was used and how it was enforced.

Note that the act may often take the form of a legal or administrative measure which is discriminatory in itself or which is implemented in an arbitrary or discriminatory manner. It may have the appearance of legality and it may be misused for the purpose of persecution or serious harm.

7.1.1. Deprivation of nationality as a form of persecution or serious harm

Deprivation of nationality is permitted when it is carried out in conformity with domestic and international law (e.g. the Convention on the Reduction of Statelessness ([106]) and the European Court of Human Rights) and complies with specific procedural and substantive standards. In particular, deprivation of nationality (and the domestic laws on which it is based) should comply with the principles of proportionality and non-discrimination of groups and should seek to minimise the creation of statelessness ([107]). Under the 1961 Convention on the Reduction of Statelessness, contracting states may not deprive a person of its nationality if such deprivation would render them stateless ([108]). Deprivation of nationality means the non-consensual loss of

([106]) UN General Assembly, Convention on the Reduction of Statelessness, United Nations, Treaty Series, vol. 989, p. 175, 30 August 1961.
([107]) United Nations Human Rights Council, *Human rights and arbitrary deprivation of nationality,* Report of the Secretary General, 14 December 2009, UN Doc A/HRC/13/34, paragraph 25.
([108]) See Article 8 of the UN General Assembly, Convention on the Reduction of Statelessness, United Nations, Treaty Series, vol. 989, p. 175, 30 August 1961.

nationality. In that respect, it differs from renunciation, which implies a voluntary action taken by the national. This difference may, however, be considerably less clear in practice.

States may deprive a national of their nationality primarily because they wish to cut ties of legal responsibility to a particular citizen (or group of its citizens). By transforming them into a non-national, the affected person may lose many rights, including their right to reside in the country and may become vulnerable to expulsion.

In addition to the context of the deprivation of nationality itself, you would need to assess the **severity of the consequences of the deprivation** on the applicant, to assess possible **past persecution or serious harm**, and the possible **future risks.** Deprivation of nationality, even unlawful or arbitrary, does not automatically equate to persecution or serious harm, nor to a well-founded fear upon return. To do so, the deprivation must have a negative impact on the applicant's basic fundamental rights as a citizen, so as to create a situation of ill-treatment that would amount to persecution or serious harm. Whether the deprivation of nationality amounts to persecution or serious harm is a question of fact and extent, which needs to be assessed in each individual case ([109]).

The right of a national to enter their own country is a fundamental right under international law. While a state may be entitled to derogate from their obligations at times of public emergency, it cannot do this on discriminatory basis ([110]). Besides, the right to enter and remain in one's country, the right to internal freedom of movement and the right to choose where to reside are generally considered as fundamental rights of nationals of a country. Certain restrictions can however be justified, even for nationals, for example to protect national security, public order and public health.

Moreover, the enjoyment of certain human rights such as access to education, health care, legal employment, property ownership, political participation, etc. within a country is often dependent on holding the nationality of that state. The loss of nationality may mean the loss of those rights too.

Therefore, important indicators to consider in the assessment on whether the deprivation of nationality may amount to persecution or serious harm and on whether the applicant may have a well-founded fear upon return are as follows.

- Whether the applicant had been or will be **expelled from or denied the right to return to their country** as a result of the deprivation of their nationality.
- Whether any **other rights** were or are practically **available and accessible** to the applicant despite the denationalisation and the conditions under which they have access to them. These rights may include the right to reside in their country, the right to education, healthcare, legal employment, certificates and legal documentation, property ownership, etc.

([109]) EUAA, *Qualification for international protection – Judicial analysis*, Second edition, January 2023, p. 57.
([110]) See Article 4 of the UN General Assembly, International Covenant on Civil and Political Rights, New York, 16 December 1966.

Keep also in mind that the effects of deprivation of nationality do not cease with the act of deprivation itself. Denationalisation often has consequences that may be sufficiently serious as to give rise to a future risk of persecution or serious harm ([111]).

Consequences of deprivation of nationality for stateless applicants

An applicant may be rendered stateless by the act of deprivation. The deprivation in itself could amount to persecution or serious harm when it leads to the statelessness of the applicant, depending on the circumstances in which it happened. Additionally, becoming stateless generates great difficulties in accessing the most fundamental civil, economic, social and political rights. Due to their lack of identity documents, stateless applicants may be or have been segregated from society, for example, with limited or no access to education, medical treatment, social welfare or the official labour market. This brings increased risk of forced employment, gender-based violence and abuses because of their precarious legal and administrative situation in the country of former habitual residence. They may also not be able to return to their home. Therefore, the consequences of depriving a person of a nationality may include the loss of fundamental rights and possible further discrimination due to the lack of nationality. These consequences may be sufficiently serious as to amount to persecution or serious harm, depending on the individual circumstances.

Example of consequences of deprivation of nationality for a stateless applicant

The applicant was deprived of his nationality because of his religious affiliation, rendering him stateless. As most of the people from the same religion in his country, the applicant lost his right to reside there, was stripped of his and his family's belongings and was expelled by the national authorities from the country of which he had been a national and where he had always resided. The applicant was forced to find his way to another country but was not accepted there because the authorities and the population were hostile to his settlement there and to that of the people of his country in a similar situation. He had to work in dire conditions; he could barely cater for his basic needs and lived with the constant fear of being mistreated and expelled again. The deprivation of nationality combined with the reasons for the deprivation, the acts taken by the authorities in the aftermath of denationalisation and the concrete consequences for the applicant could be considered as several acts of persecution, with continuous effects on the applicant.

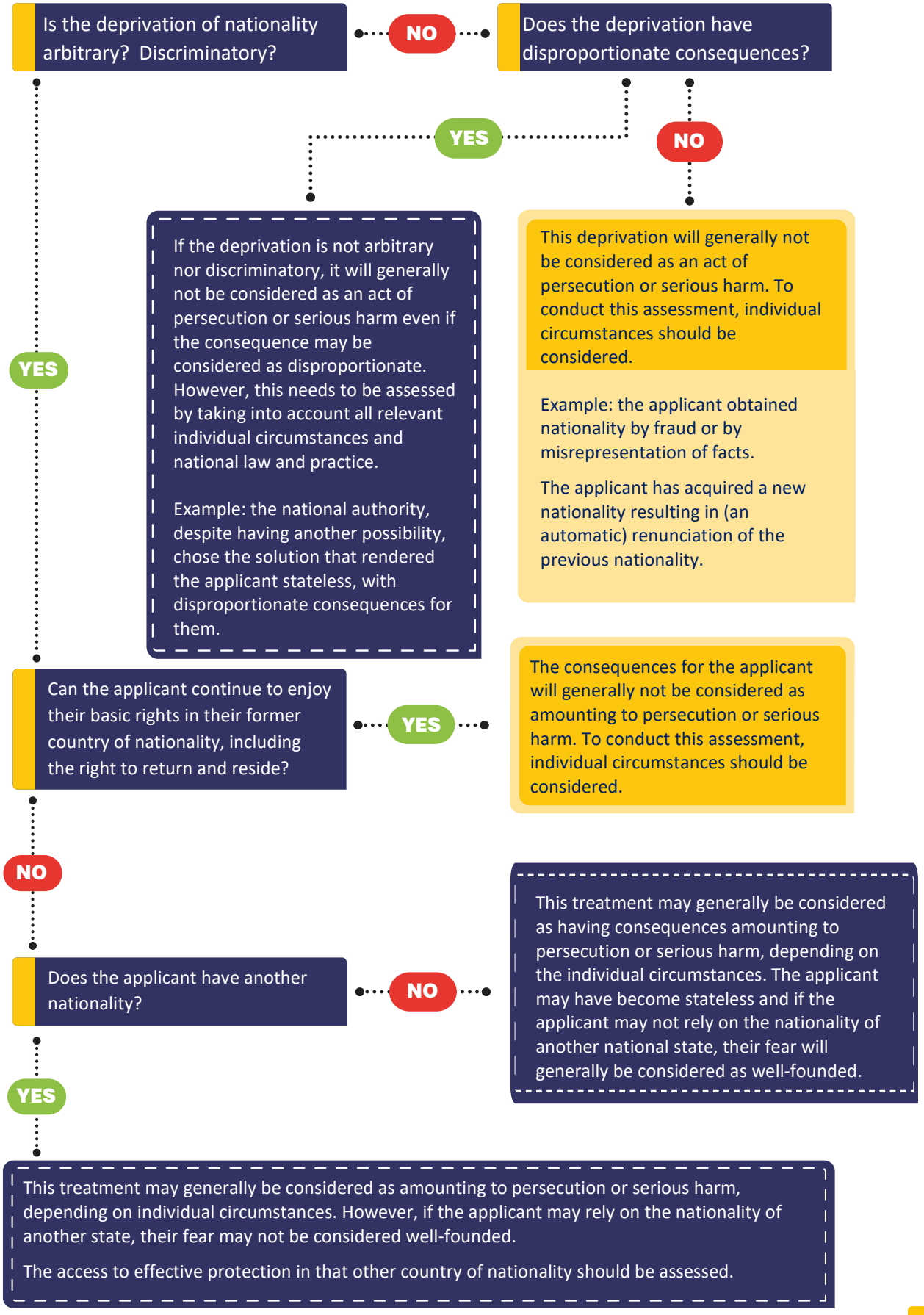
All relevant general and personal circumstances and COI at your disposal should be taken into account in the assessment.

Depending on the circumstances of the loss of nationality, you may consider whether and to what extent the individual has endeavoured to reverse the deprivation of nationality and to recover the nationality that was withdrawn. If applicable, you would need to examine the reasons that prevented or would prevent them from doing so.

([111]) J. Hathaway and M. Foster, *The Law of Refugee Status*, Second edition, Cambridge University Press, 2014, pp. 251–252.

Figure 3 is a flowchart to assist in determining whether a situation of deprivation of nationality could (or not) amount to persecution or serious harm, depending on the circumstances. Keep in mind that the assessment of whether the deprivation and its consequences amount to (past) persecution or serious harm and whether it may create a future risk of persecution or serious harm is always conducted on a case-by-case basis, taking into account all relevant COI and elements of the individual application.

Figure 3. Flowchart on the deprivation of nationality



7.1.2. Denial of nationality as a form of persecution or serious harm

The denial of nationality does not in itself amount to persecution or serious harm, as states retain the sovereign right to establish their own legislation regulating nationality and access to it. However, where nationality law includes discriminatory provisions (e.g. on the basis of ethnicity, language, race or religion ([112])), the denial of nationality (and of the rights attached to it) may amount to persecution or serious harm where it constitutes a severe violation of international human rights law.

The fact that the nationality laws of a country do not confer nationality to all those born in its territory (e.g. because *jus soli* does not apply) does not mean that these persons are refugees or beneficiaries of subsidiary protection per se.

Moreover, being subjected to a generally applicable but restrictive naturalisation policy which is not inherently arbitrary does not in itself constitute persecution or serious harm ([113]). For example, nationality laws may provide for requirements of long-term residence or proof of substantial financial resources for naturalisation. Rejection of an application for naturalisation because the person does not meet such criteria would not be regarded as arbitrary. Even where the naturalisation policy would be inherently arbitrary, it is necessary to assess the consequences of it to determine if they would amount to persecution or serious harm.

Nationality laws may also include ambiguous religion or belief-related provisions that leave the possibility of discriminatory application ([114]). For example, an individual may be denied nationality for having a religion considered to be 'inconsistent with the national customs and law' of the country. Similarly, persons with diverse sexual orientations, gender identities and expressions and sex characteristics may face discrimination in the context of nationality laws. Many states that criminalise persons based on their actual or perceived sexual orientations, gender identities and expressions and sex characteristics interpret their nationality laws that contain requirements such as to be of 'sound mind', 'good moral character' or have 'knowledge of civic values', to exclude them from becoming nationals ([115]).

Discrimination may also be based on the person's disability. For example, nationality laws may explicitly bar people with mental or physical disabilities from acquiring citizenship ([116]).

7.1.3. Forced attribution of nationality as a form of persecution or serious harm

There may be situations where a state forcibly attributes its nationality to a person or to a whole population. This could happen, for example, if the state is occupying the territory of another country in violation of international law and illegally assimilates the population living on the occupied territory to its own territory and population (see 4.1. Deprivation or attribution

([112]) UNHCR, *"This is Our Home" Stateless Minorities and their Search for Citizenship*, 2017 p. 3.
([113]) F. Michelle and H. Lambert, *International Refugee Law and the Protection of Stateless Persons*, Oxford, 2019; online edition, Oxford Academic, 23 May 2019, p. 155-156.
([114]) UNHCR, *Background Note on Discrimination in Nationality Laws and Statelessness*, 2021, p. 10.
([115]) Ibid. pp. 13-14.
([116]) Ibid. pp. 10-11.

of nationality contrary to international law). The forced attribution may in itself be considered as an act of persecution or serious harm of the nationalising state. Further consequences may follow from the forced attribution of nationality, which may also amount to persecution or serious harm. For example, the nationalising state may use new nationals for military purposes, for example through forced military conscription or participation in an armed conflict.

7.2. Absence of recognition of an *ex lege* nationality as a form of persecution or serious harm

A person may be a national of a specific country *ex lege* by operation of its law by birthright (*jus soli* or *jus sanguinis*) but still not be recognised as such by their national authorities. This can be due to the fact that the person cannot or can no longer fulfil the (legal) requirements to be considered as a national. However, it could also be the result of the refusal of national authorities to apply their laws on nationality to certain categories of nationals on a discriminatory basis. Note that this situation is different from denial of nationality, which applies to persons who have never been nationals (see Section 7.1.2. Denial of nationality as a form of persecution or serious harm) and from deprivation of nationality whereby a person has been stripped of a nationality (see Section 7.1.1. Deprivation of nationality as a form of persecution or serious harm).

The absence of recognition may be based on a lack of evidence to substantiate the fact that the person fulfils the legal requirements to be considered as a national. Such absence of recognition would generally not be considered as an act of persecution or serious harm.

National authorities may not be able to process a request to register a newborn and therefore to recognise them as a national, due to a lack of evidence clarifying where the child was born, the identity of the child's parents or due to the lack of other evidence of birth. Lack of evidence may also affect refugee children who have long been migrating, as they are unlikely to be able to substantiate their nationality and to be considered as nationals by their national authorities.

Situations where national authorities do not recognise a held nationality may lead to a person not being able to access the rights attached to nationality. Since they are not considered as nationals by their country of nationality, these persons may not be able to rely on a national state protection. In such cases, though, the absence of recognition of the applicant's nationality would not necessarily be considered as resulting from an act of persecution or serious harm.

The absence of recognition may be the result of discriminatory practices of the national authorities which refuse to recognise persons who are already nationals and who should be recognised as such, based on their national law.

For example, this could take the form of discriminatory administrative practices that prevent the acquisition, or restoration of nationality, leading to the deprivation or loss of nationality, or which prevent access to evidence of a held nationality based on the applicant's ethnicity, religion or political opinions. Discriminatory practices may include excessive administrative fees, unreasonable deadlines, excessive evidentiary requirements and objective impossibilities to acquire documentation substantiating a nationality that is actually held (identity card, citizenship certificate, passport).

Such documentation is vital to proving the applicant's entitlement to nationality. Where the discrimination is systematic and persistent ([117]), it can leave the person at risk of statelessness.

Even where the law is not exclusionary, women and girls from minority groups may experience discrimination in practice when seeking to access nationality rights. Barriers with regard to birth registration and obtaining birth certificates hinder the ability of women to register or naturalise their children. This is especially the case for women belonging to ethnic and religious minorities, women living in conflict areas and refugee women ([118]).

Those discriminatory practices aim at depriving the applicant from the rights linked to their nationality because they would not be able to exercise them in practice in the absence of the necessary evidence showing they are already nationals. When the interferences with rights linked to nationality crosses the threshold of sufficient severity, they would generally be considered as amounting to persecution or serious harm.

In some cases, a state may leave a formal nationality to an individual while denying them the resulting rights of citizenship. In particular, it may not grant them the protection of the state.

Similar considerations as the ones that apply to nationals who are deprived of their nationality are also applicable to applicants who hold a nationality *ex lege* but who are not recognised as such by their national authorities and who cannot enjoy the rights attached to their nationality (see Section 7.1.1. Deprivation of nationality as a form of persecution or serious harm).

([117]) UNHCR, *"This is Our Home" Stateless Minorities and their Search for Citizenship*, 2017 p. 7.
([118]) UN Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem - Violence against women and girls, nationality laws and statelessness,* A/78/256, paragraph 12.

8. Nationality as a reason for persecution

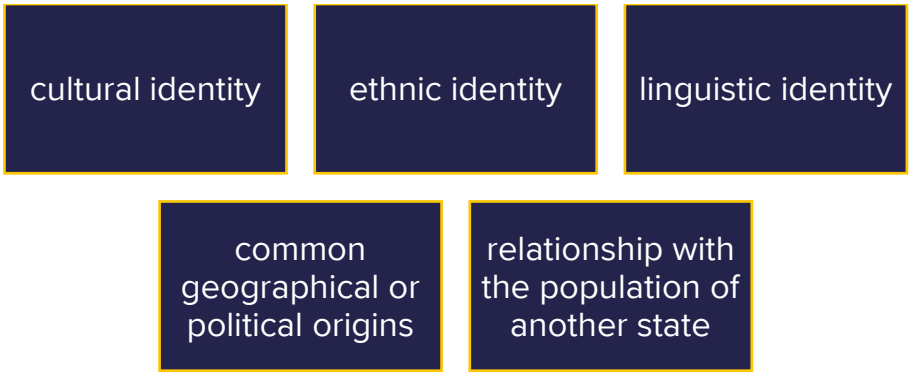
The definition of refugee refers to five reasons for persecution: race, religion, nationality, membership of a particular social group and political opinion. When considered as a reason for persecution, nationality is understood in a broad sense, as the QR defines, in a non-exhaustive manner.

Article 10(1)(c) QR ([119]) – reasons for persecution

[...] the concept of nationality shall not be confined to ***citizenship or lack thereof*** *but shall, in particular, include membership of a* ***group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State****;* (emphasis added)

Hence, 'nationality' as a reason for persecution has a much broader socio-political meaning than 'nationality' in the legal sense ([120]).

Figure 2. The (non-exhaustive) components of 'nationality' as a reason for persecution



As clarified by the QR, nationality as a reason for persecution encompasses nationality in the legal sense, meaning formal citizenship or a lack thereof. For example, it includes both the case where a person does not enjoy 'full citizenship' in their own state and is reduced to an inferior status in terms of civil and political rights or that of a person who is altogether deprived of citizenship in their own country, rendering them stateless ([121]).

In addition, nationality as a Refugee Convention ground comprises many other elements. It refers to a person's identification as a member of a culturally, ethnically, linguistically,

([119]) The same wording is used in Article 10(1)(c) QD (recast).
([120]) UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/1P/4/ENG/REV. 4, reissued in 2019, paragraphs 74-76.
([121]) H. Storey, *The Refugee Definition in International Law*, Oxford University Press, Incorporated, 2024, pp. 613-617; J. Hathaway and M. Foster, *The Law of Refugee Status* Cambridge University Press, 2014, pp. 397-398.

geographically, distinct group, due to the group's political origins, its relationship with the population of another state or an otherwise distinct 'national' group ([122]).

Stateless persons may be eligible for refugee status or for subsidiary protection. However, statelessness is not, as such, a ground to be granted international protection. A stateless applicant will need to fulfil the same substantial conditions as an applicant with a nationality in order to qualify for refugee status or subsidiary protection. They need to have a well-founded fear of persecution (for reasons of race, religion, nationality, political opinion or membership of a particular social group) or be at risk of serious harm in the case of return to their country of origin. A stateless person is not necessarily a refugee ([123]) nor are they necessarily in need of subsidiary protection. This does not preclude that a person who has been determined to be stateless is entitled to benefit from the rights established in the Stateless Persons Convention.

Since the ground of nationality is understood in such a broad way, where persecution happens for this reason, it frequently overlaps with other grounds, in particular with that of race and political opinion. In practice, it is therefore often not possible to distinguish whether a person is being persecuted based on the ground of nationality or another ground.

There must be a nexus, i.e. a causal link:

- between the reason (nationality) and the persecution; or
- between the reason (nationality) and the absence of protection against such persecution.

In the first case, the applicant's fear of persecution is linked to their (actual or imputed) nationality. In the second case, the persecution may be for reasons outside the definition of a refugee, but it is tolerated, encouraged or not prevented by the actors of protection due to the applicant's nationality.

Persecution due to nationality can arise in a variety of situations. Below is a non-exhaustive list (non-exhaustive) of situations in which persecution is based on nationality, focusing on situations that are perhaps less obvious than those that would come to mind.

- **Persecution based on imputed nationality**

As with other reasons for persecution, the applicant may often not actually possess the alleged 'national' characteristics (ethnic, linguistic, etc.) but may be wrongly perceived to do so by the actor of persecution. In this case, persecution would be based on imputed nationality. In practice, international protection claims based on imputed nationality often arise where the persecutor perceives that a minority group identifies with and is loyal to another state (often a neighbouring one) where the same ethnic or linguistic group is present and/or is dominant.

([122]) H. Storey, *The Refugee Definition in International Law*, Oxford University Press, Incorporated, 2024, pp. 613-617; J. Hathaway and M. Foster, *The Law of Refugee Status* Cambridge University Press, 2014, pp. 397-399.

([123]) UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reissued April 2019, HCR/1P/4/ENG/REV. 4, paragraph 102.

- **Persecution based on formal citizenship**

Persecution based on nationality in the sense of legal citizenship can affect persons holding one or more nationalities. For example, this may occur where a dual national is threatened with persecution in their country of first nationality by actors who are hostile towards individuals from the country of the person's second nationality. This situation can occur for example where the two countries are at war with each other or where there are frequent political tensions between the two. Of course, the overlap with the ground of (imputed) political opinion is evident in such a case.

Another example of a dual national being persecuted for reasons that are exclusively linked to the ground of nationality could be if the person's other country of nationality is associated with a danger to public health and anyone with links to that country is subjected to mistreatment.

Persecution based on nationality may occur where foreign citizenship is merely potential. This would be the case, for example, where the persecutor assumes, rightly or wrongly, that a person is eligible for another foreign citizenship. This could be assumed based on the person having married a person from the other country; holding a particular name; having relatives who are foreign nationals; or having been born or having lived there for a long time.

There can also be instances where persecution arises based on former citizenship, regardless of whether that citizenship was held recently or a long time ago and regardless of whether the change of citizenship was automatic or was actively sought by the person. A person may also face persecution in a country due to their former citizenship of a predecessor state which no longer exists.

Of course, persecution based on obtaining another nationality will only give way to international protection as long as the applicant who is being persecuted for holding another nationality cannot obtain protection in their other country of nationality (e.g. because of armed conflict).

Finally, lack of formal citizenship can also be a reason for persecution. This is the case of persons who are stateless in the country in which they live in and where they are being persecuted for being stateless.

- **Both minorities and majorities can be persecuted based on nationality**

Often, persecution based on nationality targets national minorities (ethnic, linguistic, cultural) and commonly takes the form of severe discrimination. Depending on the circumstances, notably if persecution is group-based, belonging to such a minority may in itself give rise to a well-founded fear of persecution.

Note that there is no internationally agreed definition of 'minority'. The existence of a minority depends on objective factual factors (such as the existence of a shared ethnicity, language or

religion ([124])) as well as on subjective factors whereby an individual identifies as belonging to a national or ethnic, religious or linguistic minority group ([125]).

The rights of minorities may be formally recognised and protected by the national legal framework in their country of origin. However, in practice members of minorities may suffer from discrimination and, possibly, persecution. Conversely, minorities may enjoy the same rights as other groups in practice, despite not being granted a formal protective or minority status in their country of origin's legal framework.

While persecution for reasons of nationality more often affects demographic minorities, it can also target a national majority in a country. As stated by UNHCR:

> *Whereas in most cases persecution for reason of nationality is feared by persons belonging to a national minority, there have been many cases in various continents where a person belonging to a majority group may fear persecution by a dominant minority* ([126]).

- **Intersection with the other Refugee Convention grounds**

The ground of nationality often intersects with that of 'political opinion', for instance where a certain ethnic or linguistic group has a common political history or is associated with a political movement. Members of a such a group may be falsely accused of adhering to a separatist movement that seeks territorial unity with a neighbouring state simply by virtue of their ethnicity or language. Or a group may be viewed as a separate 'national' group due to having been favoured by or associated with a former colonial power in the past.

Moreover, when individuals, themselves as members of a national minority, are politically active to defend their community's rights, they may face persecution based on both the ground of nationality and expressing their political opinion.

Since both the grounds of 'nationality' and 'race' include an aspect of ethnic identity, those grounds of persecution often overlap. Membership of an ethnic group can be based on many factors, such as a shared ancestry, dialect, folklore or physical appearance, which can also fall under the wider definition of nationality. For the same reasons, 'nationality' may intersect with 'members of a particular social group'.

Lastly, 'nationality' can also overlap with the ground of religion, for instance if persons of a given nationality also follow a common religious belief which is different from the rest of society.

([124]) Note that the issue of international protection claims by religious minorities would normally fall under the ground of 'religion' although there may be overlaps with other grounds, including nationality. For more details, consult EUAA, *Practical Guide on Interviewing Applicants with Religion-based Asylum Claims,* November 2022.

([125]) UN, 'Minorities – inclusion NOT stereotyping', United Nations website, undated, accessed 22 October 2024, https://www.un.org/en/fight-racism/vulnerable-groups/minorities; https://www.un.org/en/fight-racism/vulnerable-groups/minorities.

([126]) UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/1P/4/ENG/REV. 4, reissued in 2019, paragraph 76.

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